

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

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3	In the Matter of the Petitions for Redetermination	)
4	Under the Sales and Use Tax Law of:	)
5	CHUY'S MGMT SERVICES FRESNO LLC, dba	) SR KHO 97-229177
6	Chuy's Mesquite Broiler	) Case ID 341587
7		) Fresno, Fresno County
8	CARPINTERIA CHUY'S, INC.	) SR GH 99-199551
9		) Case ID 341590
10	CHUY'S MGMT SERVICES CAMARILLO	) SR AR 100-398096
11		) Case ID 341591
12	CHUYS MGMT SERVICES STEVENSON	) SR AR 100-395036
13	RANCH LLC, dba Chuy's	) Case ID 341592
14		) Simi Valley, Ventura County
15	CHUY'S MGMT SERVICES BAKERSFIELD	) SR ARH 100-398106
16		) Case ID 341593
17	CHUY'S MGMT SERVICES THOUSAND OAKS	) SR AR 100-398102
18		) Case ID 341594
19	JEANINE GAYLE STENOIEN,	) SR AR 99-381606
20	dba Chuy's	) Case ID 341596
21	Petitioners	) Paradise Valley, Arizona

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22	Type of Business:	Mexican restaurants
23	Audit periods: <sup>1</sup>	04/18/98 – 12/31/01 (Case ID 341587)
24		10/01/97 – 12/31/01 (Case ID 341590)
25		01/01/98 – 12/31/01 (Case ID's 341591, 341594)
26		01/01/97 – 12/31/01 (Case ID 341592)
27		10/01/98 – 12/31/01 (Case ID 341593)
28		01/01/95 – 12/31/01 (Case ID 341596)

<sup>1</sup> Each determination was issued January 3, 2006, which is more than three years after January 31, 2002, the date the sales and use tax return was due for the fourth quarter 2001, which is the final reporting period for each determination. Accordingly, each determination is timely only to the extent that the fraud penalty each asserts is upheld.

1	<u>Items</u>	<u>Disputed Amounts</u>			
2	Fraud Penalty	\$35,406 (Case ID 341587)			
3		\$18,656 (Case ID 341590)			
4		\$49,784 (Case ID 341591)			
5		\$91,060 (Case ID 341592)			
6		\$44,570 (Case ID 341593)			
7		\$50,362 (Case ID 341594)			
8	Interest	\$ 85,162 (Case ID 341587)			
9		\$ 53,156 (Case ID 341590)			
10		\$145,543 (Case ID 341591)			
11		\$265,355 (Case ID 341592)			
12		\$106,791 (Case ID 341593)			
13		\$136,298 (Case ID 341594)			
14		\$147,098 (Case ID 341596)			
15		<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
16			341587		341590
17	As determined:	<u>\$141,623.61</u>	\$50,400.75	\$188,344.87	\$59,116.13
18	Adjustment - Sales and Use Tax Department			<u>-113,721.82</u>	-28,430.46
19	- Appeals Division		<u>-14,994.77</u>		<u>-12,029.88</u>
20	Proposed redetermination	\$141,623.61	\$35,405.98	\$ 74,623.05	\$18,655.79
21	Less concurred	<u>141,623.61</u>	<u>00.00</u>	<u>74,623.05</u>	<u>00.00</u>
22	Balance, protested	<u>\$ 00.00</u>	<u>\$35,405.98</u>	<u>\$ 00.00</u>	<u>\$18,655.79</u>
23			<u>341591</u>		<u>341592</u>
24	As determined:	<u>\$199,136.19</u>	\$78,713.28	\$232,362.49	\$104,818.55
25	Adjustment - Sales and Use Tax Department			<u>+ 131,877.52</u>	+ 56,711.33
26	- Appeals Division		<u>-28,929.19</u>		<u>- 70,469.82</u>
27	Proposed redetermination	\$199,136.19	\$49,784.09	\$364,240.01	\$91,060.06
28	Less concurred	<u>199,136.19</u>	<u>00.00</u>	<u>364,240.01</u>	<u>00.00</u>
29	Balance, protested	<u>\$ 00.00</u>	<u>\$49,784.09</u>	<u>\$ 00.00</u>	<u>\$91,060.06</u>
30			<u>341593</u>		<u>341594</u>
31	As determined:	<u>\$178,281.56</u>	\$61,903.85	<u>\$201,447.67</u>	\$81,489.59
32	Adjustment - Appeals Division		<u>-17,333.45</u>		<u>-31,127.64</u>
33	Proposed redetermination	\$178,281.56	\$44,570.40	\$201,447.67	\$50,361.95
34	Less concurred	<u>178,281.56</u>	<u>00.00</u>	<u>201,447.67</u>	<u>00.00</u>
35	Balance, protested	<u>\$ 00.00</u>	<u>\$44,570.40</u>	<u>\$ 00.00</u>	<u>\$50,361.95</u>
36			<u>341596</u>		
37	As determined:	\$424,352.81	\$191,586.36		
38	Adjustment - Sales and Use Tax Department	<u>-141,132.16</u>	- 35,283.05		
39	- Appeals Division		<u>- 85,498.06</u>		
40	Proposed redetermination	\$283,220.65	\$ 70,805.25		
41	Less concurred <sup>2</sup>	<u>283,220.65</u>	<u>70,805.25</u>		
42	Balance, protested	<u>\$ 00.00</u>	<u>\$ 00.00</u>		

28 <sup>2</sup> For this case, petitioner protests the interest only.

1		<u>341587</u>	<u>341590</u>	<u>341591</u>
2	Proposed tax redetermination	\$141,623.61	\$ 74,623.05	\$199,136.19
3	Interest through 12/31/06, 4/30/07, 10/31/07 <sup>3</sup>	85,161.58	53,156.00	145,543.13
4	25% penalty for fraud	<u>35,405.98</u>	<u>18,655.79</u>	<u>49,784.09</u>
5	Total tax, interest, and penalty	\$262,191.17	\$146,434.84	\$394,463.41
6	Payments	<u>141,623.61</u>	<u>146,434.84</u>	<u>225,133.84</u>
7	Balance Due	<u>\$120,567.56</u>	<u>\$ 00.00</u>	<u>\$169,329.57</u>
8			<u>341592</u>	<u>341593</u>
9	Proposed tax redetermination		\$364,240.01	\$178,281.56
10	Interest through 12/31/06 (tax paid in full 12/21/06 –both)		265,355.44	106,790.87
11	25% penalty for fraud		<u>91,060.06</u>	<u>44,570.40</u>
12	Total tax, interest, and penalty		\$720,655.51	\$329,642.83
13	Payments		<u>434,632.20</u>	<u>199,781.56</u>
14	Balance Due		<u>\$286,023.31</u>	<u>\$129,861.27</u>
15			<u>341594</u>	<u>341596</u>
16	Proposed tax redetermination		\$201,447.67	\$283,220.65
17	Interest through 3/31/07, 5/31/03 <sup>4</sup>		136,297.66	147,097.51
18	25% penalty for fraud		<u>50,361.95</u>	<u>70,805.25</u>
19	Total tax, interest, and penalty		\$388,107.28	\$501,123.41
20	Payments		<u>201,447.67</u>	<u>304,875.03</u>
21	Balance Due		<u>\$186,659.61</u>	<u>\$196,248.38</u>

22           These matters were scheduled for Board hearing on February 24, 2010, but petitioners did not  
23 respond to the Notice of Hearing. Accordingly, the Board Proceedings Division informed petitioners  
24 that these matters would be presented to the Board for decision without oral hearing. Subsequently,  
25 petitioners' representative contacted the Board Proceedings Division requesting an oral hearing before  
26 the Board.

### UNRESOLVED ISSUES

27           **Issue 1:** Whether there is clear and convincing evidence of fraud or intent to evade the tax. We  
28 conclude that there is and that the fraud penalties have been properly applied.

          Petitioners operated Mexican restaurants, which they leased as franchisees from Baja Broilers,  
Inc. (franchisor). For the periods at issue, Ms. Jeanine Gayle Stenoien was identified in the Board's  
records as either the owner, a corporate officer, or a managing member of the petitioner companies.

<sup>3</sup> Tax paid in full on 12/21/06, 4/16/07, and 10/12/07, for 341587, 341590, and 341591, respectively.

<sup>4</sup> Tax paid in full on 3/9/07 for 341594 and on 5/22/03 for 341596.

1 Also, she prepared and signed most of the sales and use tax returns for the companies. All of the  
2 petitioners' seller's permits were closed out as of November 30, 2003, and ownership of the restaurants  
3 was transferred to California Restaurant Group.

4 Ms. Stenoien provided no records to the Sales and Use Tax Department (Department), stating  
5 that all records had been destroyed accidentally at some unspecified time prior to the audit. The  
6 Department referred the audit to the Investigations Division (ID), and ID issued a subpoena to the  
7 franchisor, who provided copies of Monthly Profit Guide (MPG) reports for 1999, 2000, and 2001.  
8 The MPG reports were monthly sales summaries prepared by petitioners and used by the franchisor to  
9 calculate the franchise fees, at 20 percent of total gross sales, excluding tax. In addition, ID issued  
10 search warrants to three banks, each of which provided deposit records, and to each restaurant location.  
11 Contrary to Ms. Stenoien's claim that the records had been destroyed, managers at each restaurant  
12 provided daily sales records and federal income tax returns for 1999, 2000, and 2001.

13 To establish audited total sales for 1999, 2000, and 2001, the Department used the amounts of  
14 gross sales reported to the franchisor on the MPG reports. For the years 1997 and 1998, ID scheduled  
15 the amounts paid by petitioners to the franchisor, as shown in the franchisor's records. Since the fee  
16 paid to the franchisor was 20 percent of gross sales, ID multiplied those amounts by five to compute  
17 audited total sales. Although audited total sales significantly exceeded amounts reported for sales tax  
18 purposes, ID noted that the audited amounts were virtually the same as the amounts of gross sales  
19 reported on petitioners' federal tax returns. In addition, ID interviewed the restaurant managers and  
20 bookkeepers, who stated they were instructed by Ms. Stenoien to deposit sales tax reimbursement into  
21 her personal bank account rather than the businesses' accounts. Ms. Stenoien then used her personal  
22 checks to pay petitioners' sales and use taxes. In total, the audited amount of unreported gross sales  
23 was \$20,548,982, in comparison to reported taxable measure of \$13,446,968, which represents an  
24 understatement of 153 percent. ID imposed 25 percent penalties for fraud or intent to evade the tax  
25 because it concluded Ms. Stenoien had intentionally avoided paying the tax.

26 Ms. Stenoien does not protest the fraud penalty added to the business she owned as a sole  
27 proprietor (case ID 341596), and petitioners do not dispute the audited understatements of reported  
28 total sales. However, the other restaurants contend they should not be subject to the fraud penalty.

1 According to those restaurants, ID found no evidence that any other members or persons of authority  
2 participated in the underreporting, and all individuals other than Ms. Stenoien were innocent victims  
3 who had no knowledge that sales tax was not being paid. The restaurants note that Ms. Stenoien has  
4 conceded responsibility. In that regard, Ms. Stenoien has paid in full the petitioners' tax liabilities and  
5 has entered a plea of "no contest" to grand theft. She states that she has made full restitution of the  
6 sales tax, acknowledged responsibility for her conduct, and paid her debt to society.

7 Thus, Ms. Stenoien admits that she intended to evade tax. While acting on behalf of the  
8 petitioner companies, Ms. Stenoien reported the correct amount of sales to the franchisor and on  
9 federal tax returns, thereby demonstrating her knowledge of the correct amount of taxable gross  
10 receipts that should have been reported on sales and use tax returns. Despite such knowledge,  
11 Ms. Stenoien, acting on behalf of petitioners, reported significantly less to the Board. The  
12 underreporting was substantial and occurred in every quarter of the audit period. Further, the evidence  
13 indicates that Ms. Stenoien specifically directed that sales tax reimbursement be deposited by  
14 petitioners into her personal account. These facts are clear and convincing evidence of intent to evade  
15 tax. Ms. Stenoien has offered no non-fraudulent explanation, and indeed has admitted her intent to  
16 evade the tax via her plea of no contest. We therefore conclude that the understatements were due to  
17 fraud. We find it disingenuous and implausible for the petitioner companies to disavow knowledge of  
18 or responsibility for Ms. Stenoien's actions, since she either owned or controlled each of the petitioner  
19 companies. Thus, her actions and intent in acting for the companies were essentially the actions and  
20 intent of the companies themselves. Moreover, it is undisputed that Mr. Stenoien was acting within the  
21 scope of her authority for each petitioner. Petitioners are therefore liable for the penalties because  
22 employers are liable for fraud committed by their employees within the scope of employment, even if  
23 the employers were not aware of the fraud.

24 **Issue 2:** Whether petitioners are entitled to relief from interest. We conclude there is no basis  
25 for relief.

26 Petitioners protest the imposition of interest, on the basis that Ms. Stenoien has paid the tax  
27 liabilities and has paid her debt to society. Petitioners also reiterate the argument that the respective  
28 companies and member investors were innocent victims. We reject that argument for the same reasons

1 explained under Issue 1. The law provides for relief of interest under only very narrow circumstances,  
2 none of which are applicable here. Therefore, we conclude that there is no basis for relief from  
3 interest.

4 **AMNESTY**

5 Each petitioner received written notice dated January 7, 2005, that it was the subject of a  
6 criminal investigation and not eligible to participate in amnesty. Since a person not eligible for  
7 amnesty is not subject to amnesty penalties, the amnesty double fraud penalties have been deleted from  
8 the determinations, and the amnesty interest penalty will not be applied.

9 **OTHER DEVELOPMENTS**

10 None.

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13 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
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**EVIDENCE OF FRAUD RELIED ON BY DEPARTMENT**

1.	Substantial deficiency, which cannot be explained as due to negligence or honest mistake.	Yes
2.	More than one set of records.*	No
3.	Falsified records.*	No
4.	Substantial discrepancies between amounts reported on sales and use tax returns and amounts recorded on income tax returns, for which there is no valid explanation.	Yes
5.	Permit or license held by taxpayer for prior period indicating that taxpayer was knowledgeable about the requirements of law.	No
6.	Tax properly charged to customers, evidencing a knowledge of the requirements of the law, but not reported.	Yes
7.	Transfers of amounts of sales tax reimbursement from the businesses' accounts to a personal bank account.	Yes
8.	Consistent substantial underreporting.	Yes

\* Although there was only one set of records at each location and those records were not falsified, Ms. Stenoien did not provide any records to the Department. In order to obtain financial information, the Department issued subpoenas to the franchisor, three banks, and the individual restaurants.