

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

In the Matter of the Petition for Redetermination )  
 Under the Sales and Use Tax Law of: )  
 JOAQUIN E. HERNANDEZ, ) Account Number SR AA 99-677607  
 dba Hernandez Market ) Case ID 523684  
 Petitioner ) Los Angeles, Los Angeles County

Type of Business: Grocery store

Audit period: 4/1/06 – 3/31/09

<u>Item</u>	<u>Disputed Amount</u>		
Unreported taxable sales	\$627,490		
Negligence penalty	\$ 5,278		
		<u>Tax</u>	<u>Penalty</u>
As determined		\$52,776.79	\$5,277.66
Less concurred		- 1,008.81	<u>0.00</u>
Balance, protested		<u>\$51,767.98</u>	<u>\$5,277.66</u>
Proposed tax redetermination		\$52,776.79	
Interest through 7/31/12		19,397.56	
Negligence penalty		<u>5,277.66</u>	
Total tax, interest, and penalty		\$77,452.01	
Payments		<u>425.00</u>	
Balance Due		<u>\$77,027.01</u>	
Monthly interest beginning 8/1/12		<u>\$261.76</u>	

A Notice of Appeals Conference was mailed to petitioner’s address of record, and the notice was not returned by the Post Office. Petitioner did not respond to the notice or appear at the appeals conference, which was held as scheduled. We thereafter sent petitioner a letter offering him the opportunity to provide any additional arguments and evidence in writing he wished us to consider, but he did not respond.

**UNRESOLVED ISSUES**

**Issue 1:** Whether adjustments are warranted to the audited understatement of reported taxable sales. We recommend no adjustment.

1 Petitioner has operated a neighborhood grocery store in Los Angeles since 1995, and has been  
2 audited by the Board three times previously, each of the prior audits resulting in deficiencies of the  
3 same type asserted in this fourth audit. Petitioner failed to provide records to support his \$178,562  
4 reported taxable sales for this fourth audit period. The Sales and Use Tax Department (Department)  
5 decided to compute taxable sales on a markup basis and requested petitioner's purchase information  
6 directly from petitioner's known suppliers. It received responses from Pepsi, Coca-Cola, East LA  
7 Beverage, and Jetro, enabling it to compile taxable merchandise purchases of \$611,173 for the audit  
8 period. It adjusted the audited purchases by two percent for self-consumption and two percent for  
9 pilferage, and computed a weighted taxable merchandise markup of 37.32 percent. It computed  
10 audited taxable sales of \$806,052, compared that amount with reported taxable sales of \$178,562, and  
11 calculated the audited understatement of \$627,490 which represents an error ratio of 351.41 percent.

12 We find that the Department was justified in computing petitioner's sales using an alternate  
13 method because petitioner's reported amounts were not supported by cash register tapes or other  
14 source documentation, and that the information provided by petitioner's known vendors is reliable.  
15 Considering that petitioner's reported taxable sales of \$178,562 is far less than his purchases of taxable  
16 purchases from his known vendors that responded to the Department's inquiries, it is clear that  
17 petitioner significantly understated his taxable sales. Petitioner has provided no basis or  
18 documentation for his general contention that the audited cost of taxable merchandise sold is  
19 overstated. We conclude that no adjustment is warranted.

20 **Issue 2:** Whether petitioner was negligent. We conclude that he was negligent.

21 The Department imposed the penalty because the error rate is large and petitioner's records  
22 were incomplete and inadequate for sales and use tax audit purposes. Petitioner did not specifically  
23 argue that he was not negligent, and we find that the record overwhelmingly establishes his negligence.

#### 24 **OTHER MATTERS**

25 None.

26  
27 Summary prepared by Pete Lee, Business Taxes Specialist II  
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**MARKUP TABLE**

Percentage of taxable vs. nontaxable purchases	Unknown*
Mark-up percentages developed	37.32%
Self-consumption allowed in dollars	\$12,223
Self-consumption allowed as a percent of taxable purchases	2%
Pilferage allowed in dollars	\$11,979
Pilferage allowed as a percent of taxable purchases	2%

\* Petitioner did not provide complete purchase information and the Department had to instead use information from petitioner's vendors. Since petitioner provided no information regarding total purchases, the percentage of taxable to total merchandise purchased is not known.