

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Administrative Protest)
 4 Under the Sales and Use Tax Law of:)
 5 ANGELA LEIVA, dba Pupuseria San Antonio) Account Number: SR CH 100-389986
 6) Case ID 514980
 7 ANGELA LEIVA & ABUNDIO HERNANDEZ) Account Number: SR CH 100-967569
 8 dba, Pupuseria San Antonio) Case ID 514979
 9 Taxpayers) Hayward, Alameda County

10 Type of Business: Restaurant
 11 Liability period: 07/01/06 – 06/30/07 (514980)
 12 07/01/07 – 03/31/09 (514979)

13 <u>Item</u>	<u>Disputed Amount</u>	
14 Unreported taxable sales	\$253,381 (514980)	
	\$263,836 (514979)	
	<u>514979</u>	<u>514980</u>
16 Tax determined and protested	\$23,085.73	\$22,170.89
Interest through 12/31/11	6,295.60	8,525.71
17 Finality penalty	<u>2,308.57</u>	<u>2,217.09</u>
Total tax, interest, and penalty	\$31,689.90	\$32,913.69
18 Payments	- 695.93	- 2,964.34
19 Balance Due	<u>\$30,993.97</u>	<u>\$29,949.35</u>
20 Monthly interest beginning 01/01/12	<u>\$130.61</u>	<u>\$112.04</u>

21 A Notice of Appeals Conference was mailed to taxpayers' address of record, and the notice was
 22 not returned by the Post Office. Taxpayers did not respond to the notice or appear at the appeals
 23 conference, which was held as scheduled. We thereafter sent taxpayers a letter offering them the
 24 opportunity to provide any additional arguments and evidence in writing it wished us to consider, but
 25 they did not respond.

26 UNRESOLVED ISSUE

27 **Issue:** Whether any reductions are warranted to unreported taxable sales. We find that no
 28 adjustments are warranted.

1 Taxpayers operated a restaurant that operated as a sole proprietorship from May 1, 2004, until a
2 partnership was formed July 1, 2007. The partnership closed its permit when the business was sold in
3 February 2010. Taxpayers were contacted in August 2009 by an inspector from the Board's Statewide
4 Compliance and Outreach Program. The inspector noted that taxpayers' method of reporting appeared
5 to be based on estimates because the same amount was reported for two consecutive quarters, and the
6 amounts reported for several other quarters were rounded to the nearest thousand dollars. Taxpayers
7 informed the Sales and Use Tax Department (Department) that the business averaged daily sales of
8 \$600 to \$900 on weekdays, and \$1800 to \$2,000 on the weekends. During the on-site inspection of the
9 business, the Department noted that all of taxpayers' sales of food products were subject to tax under
10 the 80-80 rule (see Rev. & Tax. Code, § 6359, subd. (d)(6)) and that recorded sales, based on the
11 register tapes available on the day of inspection, were significantly higher than reported amounts. The
12 Department therefore concluded that taxpayers had underreported their taxable sales.

13 Taxpayers did not maintain or provide the Department any records, except for 27 cash register
14 tapes from July 2007, for which the average daily sales, after adjustment for sales tax included, was
15 \$1,183.63. The Department multiplied that average daily sales amount by the number of days in
16 operation, 362 for the sole proprietorship after allowing for three holidays and 633 for the partnership
17 after allowing for 6 holidays, to establish taxable sales of \$428,474 for the sole proprietorship (which
18 exceeded reported taxable sales by \$253,381) and \$749,237 for the partnership (which exceeded
19 reported taxable sales by \$263,836). Taxpayers' only contention is that they do not believe the liability
20 is accurate because they paid \$9,000 in taxes quarterly.

21 Since taxpayers failed to provide any records other than the cash register tapes, we find the
22 Department was justified in using an alternative method to establish taxable sales. We also note that
23 the Department's method is conservative because it does not include catering sales, which taxpayers
24 did not ring up on the cash register. Taxpayers have not provided any evidence to refute the
25 Department's findings. We note that, contrary to taxpayers' claim that they paid \$9,000 in taxes
26 quarterly, for the 11 quarters that these businesses were in operation, the average amount of tax paid
27 per quarter was \$5,254. In summary, we find the Department established taxable sales based on the
28 best available evidence, and that no adjustment is warranted.

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OTHER DEVELOPMENTS

Since taxpayers did not timely pay the determinations or file petitions for redetermination, finality penalties were applied. Although we explained in a post-conference letter to taxpayers that they could request relief of the finality penalties and included forms they could use to do so, taxpayers have not requested relief. Accordingly, we have no basis upon which to consider recommending relief of the finality penalties.

Summary prepared by Thea C. Etheridge, Business Taxes Specialist II