

## 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 & ABUNDIO HERNANDEZ ) Account Number: SR CH 100-967569  
 6 dba, Pupuseria San Antonio ) Case ID 514979  
 7 Taxpayer ) Hayward, Alameda County

8 Type of Business: Restaurant

9 Liability period: 07/01/07 – 03/31/09

10 <u>Item</u>	<u>Disputed Amount</u>
11 Unreported taxable sales	\$263,836
12 Tax determined and protested	\$23,085.73
13 Interest through 11/30/12	7,639.01
14 Finality penalty	<u>2,308.57</u>
15 Total tax, interest, and penalty	\$33,033.31
16 Payments	- 695.93 <sup>1</sup>
17 Balance Due	<u>\$32,337.38</u>
18 Monthly interest beginning 12/01/12	<u>\$111.95</u>

17 A Notice of Appeals Conference was mailed to taxpayer's address of record, and it was not  
 18 returned by the Post Office. Taxpayer did not respond to the notice or appear at the appeals  
 19 conference, which was held as scheduled. We thereafter sent taxpayer a letter offering it the  
 20 opportunity to provide any additional arguments and evidence in writing it wished us to consider, but it  
 21 did not respond. This matter was scheduled for Board hearing in December 2011 and again in March  
 22 2012, but was postponed each time at taxpayer's request, first to allow additional time for a newly-  
 23 retained representative to prepare for the hearing, and then to allow additional time for taxpayer to  
 24 review material recently provided by the Sales and Use Tax Department (Department). The matter

25 \_\_\_\_\_  
 26 <sup>1</sup> Taxpayer has not filed a claim for refund for this payment, which was made October 2, 2009. The six-month period for  
 27 filing a timely claim for refund has expired, and the three-year period expired April 30, 2012 for the most recent quarter,  
 28 the first quarter 2009. (See Rev. & Tax. Code, § 6902.) We attempted to contact taxpayer by telephone on August 1, 2011,  
 to explain the statute of limitations for filing claims for refund, but taxpayer hung up and did not answer when we  
 attempted to call back.

1 was rescheduled for hearing in June 2012 but was postponed for settlement consideration.

## 2 UNRESOLVED ISSUE

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

5 Taxpayer operated a restaurant from July 2007 through February 2012. In August 2009, an  
6 inspector from the Board's Statewide Compliance and Outreach Program contacted taxpayer. The  
7 inspector noted that taxpayer's method of reporting appeared to be based on estimates because the  
8 same amount was reported for two consecutive quarters, and the amounts reported for several other  
9 quarters were rounded to the nearest thousand dollars. Taxpayer informed the Department that the  
10 business averaged daily sales of \$600 to \$900 on weekdays, and \$1800 to \$2,000 on weekend days.  
11 During the on-site inspection of the business, the Department noted that all of taxpayer's sales of food  
12 products were subject to tax under the 80-80 rule (Rev. & Tax. Code, § 6359, subd. (d)(6)) and that  
13 recorded sales, based on the register tapes available on the day of inspection, were significantly higher  
14 than reported amounts. The Department therefore concluded that taxpayer had underreported its  
15 taxable sales.

16 Taxpayer initially provided the Department no records except for 27 cash register tapes from  
17 July 2009, for which the average daily sales, after adjustment for sales tax included, was \$1,183.63.  
18 The Department multiplied that average daily sales amount by the number of days in operation to  
19 establish taxable sales of \$749,237, which exceeded reported taxable sales by \$263,836, and discussed  
20 its findings with taxpayer. Thereafter, taxpayer provided monthly income and expense folders and  
21 some purchase invoices. However, those records included no verifiable sales information. For  
22 example, taxpayer provided no cash register tapes or meal tickets to support the recorded sales  
23 amounts. Further, the Department noted that some of the folders included only a total amount of sales  
24 for the month, and, for the folders that did list sales amounts next to each day of the month, the sales  
25 amounts were all whole numbers, many of which were rounded to the nearest \$100. Also, the same  
26 sales amount was sometimes recorded on several successive days. Thus, the Department found the  
27 additional records did not support an adjustment. Taxpayer's only contention is that it does not believe  
28 the liability is accurate because it paid \$9,000 in taxes quarterly.

