

**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: )  
OMAR MANZOR MOTAWAKEL ) Account Number: SR AC 101-248616  
AND FARZAN FARMANI, dba ) Case ID 519058  
El Patron Fusion Grill )  
Petitioner ) Chatsworth, Los Angeles County

Type of Business: Restaurant  
Liability period: 11/01/08 – 07/15/09

<u>Item</u>	<u>Disputed Amount</u>
Unreported taxable sales	\$225,000
Tax as determined and protested	\$19,692.00
Interest through 04/30/12	4,014.42
Failure-to-file penalty	<u>1,969.20</u>
Total tax, interest, and penalty	<u>\$25,675.62</u>
Monthly interest beginning 05/01/12	<u>\$ 114.87</u>

This matter was scheduled for Board hearing on February 1, 2012, but was postponed at petitioner’s request because of a scheduling conflict.

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner Omar Motawakel is liable as a partner for the unpaid liabilities of the restaurant. We find he is liable.

On June 5, 2009, Mr. Motawakel applied for a seller’s permit and submitted an application signed by himself and Farzan Farmani, identified as co-owners of El Patron Fusion Grill (El Patron). The Sales and Use Tax Department (Department) issued a seller’s permit to the partnership with an effective start date of May 1, 2009. On June 24, 2009, Mr. Motawakel contacted the Department requesting that the seller’s permit be closed, and indicating that the business never made sales because the partnership was forced to vacate the location prior to opening the business. However, the Department was informed by Farzan Farmani, by employees of the business, and by the property landlord that the partnership had operated a restaurant from November 1, 2008, through July 15, 2009,

1 although it had filed no sales and use tax returns. The Department revised the start date of the business  
2 to November 1, 2008, and issued a Notice of Determination based on estimated sales of \$25,000 per  
3 month, which was the projected amount of sales listed on the seller's permit application.

4 Mr. Motawakel contends that he cannot be held liable for the tax liability because he was never  
5 a partner in the business. He alleges he was hired by Mr. Farmani to manage the business and to assist  
6 with the purchase of the business from the previous owner. Although no partnership agreement has  
7 been submitted, we cannot ignore the fact that Mr. Motawakel filed an application for a seller's permit  
8 in which he specifically identified himself as a co-owner of the business, and that he subsequently  
9 requested that the permit be closed out. We find that these actions represent strong evidence that  
10 Mr. Motawakel was a partner with Mr. Farmani in the business operating El Patron. Further, we find  
11 that, by his actions, petitioner represented to the Department that he had the authority and was acting  
12 as a co-owner or partner on behalf of the partnership. Petitioner has not provided any documentation  
13 to the contrary, and we therefore conclude that he was a partner and is jointly and severally liable for  
14 the determination at issue.

#### 15 OTHER MATTERS

16 Since the liability at issue relates to periods for which petitioner did not file sales and use tax  
17 returns, the Notice of Determination includes a failure-to-file penalty of \$1,969.20. Although  
18 petitioner did not specifically dispute the penalty in the petition for redetermination, he stated at the  
19 conference that he should not be held liable for the penalty since he was never a partner in the  
20 business. During the conference, we explained the conditions for relief of the penalty and provided a  
21 form petitioner could use to request relief. Petitioner has not submitted a request for relief, and we  
22 thus have no basis to consider recommending relief of the penalty.

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24 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
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