

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Petition for Redetermination)
4 Under the Sales and Use Tax Law of:)

5 MOHAMMAD RAOUF, dba In & Out Market)

6 Petitioner)

Account Number: SR JHF 100-377666
Case ID 464805

Woodland, Yolo County

7 Type of Business: Convenience store

8 Audit period: 10/01/04 – 09/30/07

9 Item Disputed Amount

10 Unreported taxable sales \$206,560

11 Negligence penalty \$ 1,604

TaxPenalty

12 As determined:

\$25,043.77

\$2,504.36

13 Adjustment - Appeals Division

- 9,001.42- 900.13

14 Proposed redetermination

\$16,042.35

\$1,604.23

15 Less concurred

- 138.5900.00

15 Balance, protested

\$15,903.76\$1,604.23

16 Proposed tax redetermination

\$16,042.35

17 Interest through 7/31/10

5,792.53

17 10% penalty for negligence

1,604.23

18 Total tax, interest, and penalty

\$23,439.11

19 Monthly interest beginning 8/1/10

\$ 93.58

20 UNRESOLVED ISSUES

21 **Issue 1:** Whether adjustments are warranted to the unreported taxable sales. We recommend
22 no further adjustment.23 Petitioner operates a convenience store. He provided limited records to the Sales and Use Tax
24 Department (Department) for audit. Based on its preliminary analysis, the Department found that the
25 cost of taxable goods sold exceeded reported taxable sales for 2004, 2005, and 2006, and the book
26 markups for exempt sales of food ranged from 268 percent to 481 percent, which were significantly
27 higher than expected. Based on those facts, the Department concluded that reported taxable sales were
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1 understated and claimed exempt sales of food were overstated. Accordingly, the Department decided
2 to conduct a detailed markup analysis.

3 The Department calculated an audited weighted average markup of 21.83 percent based on a
4 shelf test, and a taxable to total merchandise percentage of 85.94 based on a purchase segregation test.
5 The Department computed the audited cost of taxable good sold by reducing the cost of goods sold
6 recorded on the federal returns by one percent for pilferage and then multiplying the remainder by the
7 taxable purchase percentage of 85.94 percent. It then applied the markup of 21.83 percent to establish
8 audited taxable sales.

9 At the appeals conference, petitioner contended that his losses due to theft and pilferage were
10 significantly higher than one percent. He also requested an allowance for the cost of self-consumed
11 taxable merchandise and asserted that the percentage of taxable to total merchandise purchased should
12 be lower than 85.94 percent. Based on its review of additional records provided by petitioner after the
13 conference, the Department recommended an increase of the pilferage allowance from one percent to
14 three percent. It also estimated the cost of self-consumed taxable merchandise at \$50 per month. In
15 addition, based on its examination of additional purchase records, the Department adjusted recorded
16 cost of goods sold for purchases of phone cards and reduced the audited percentage of taxable to total
17 merchandise purchases to 74 percent. The Department used these revised figures to compute an
18 audited understatement of reported taxable sales of \$206,560 (\$118,792 less than the \$325,352 it had
19 established in the audit) and an estimated cost of self-consumed taxable merchandise of \$1,800.

20 Petitioner contends that further adjustments are warranted to the audited allowance for theft, the
21 audited cost of self-consumed taxable merchandise, the amount of phone card purchases, and the
22 percentage of taxable to total merchandise purchased but has not provided documentation to support
23 further adjustments. Moreover, we have reviewed the audit workpapers and have found no errors or
24 inconsistencies, and we note that the audited markup of 21.83 is somewhat lower than the markup we
25 would expect in a business of this nature (25 to 40 percent). In the absence of supporting evidence, we
26 recommend no further adjustment.

27 **Issue 2:** Whether petitioner was negligent. We conclude he was.
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MARKUP TABLE

Percentage of taxable vs. nontaxable purchases	74%
Mark-up percentages developed	22%
Self-consumption allowed in dollars	\$600 per year
Self-consumption allowed as a percent of total purchases	0.62%
Pilferage allowed in dollars	\$8,699
Pilferage allowed as a percent of total purchases	3%