

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination )  
4 Under the Sales and Use Tax Law of: )5 BENJAMIN ROJAS, dba Petal's Flower Shop )  
6 Petitioner )

Account Number SR X CH 100-674288

Case ID 546335

San Lorenzo, Alameda County

7  
8 Type of Business: Flower shop

9 Liability period: 07/01/06 – 06/30/09

10 Item Disputed Amount11 Unreported taxable sales \$265,441<sup>1</sup>  
12 Negligence penalty \$ 2,346TaxPenalty

13 As determined \$25,015.55 \$2,501.53

14 Post-D&amp;R adjustment - 1,560.08 - 155.99

14 Proposed redetermination, protested \$23,455.47 \$2,345.54

15 Proposed tax redetermination \$23,455.47

16 Interest through 11/30/12 7,456.82

16 Negligence penalty 2,345.54

17 Total tax, interest, and penalty \$33,257.83

17 Payments - 36.00<sup>2</sup>18 Balance Due \$33,221.8319 Monthly interest beginning 12/01/12 \$ 117.10

## 20 UNRESOLVED ISSUES

21 **Issue 1:** Whether adjustments are warranted to the unreported taxable sales. We find no further  
22 adjustment is warranted.23 Petitioner operates a café and a flower shop that are adjacent to one another. Petitioner  
24 reported taxable sales of \$10,755 for the three-year period July 1, 2006, through June 30, 2009. In  
25 March 2010, the Statewide Compliance Outreach Program of the Sales and use Tax Department26  
27 <sup>1</sup> Since petitioner disputes an unspecified portion of the unreported taxable sales, we show the entire amount as disputed.28 <sup>2</sup> The D&R refers to a payment of \$267.93 made on March 7, 2012. However, that payment has been applied to the liability for the return filed with no remittance for the fourth quarter 2011 and is no longer applied to this determination.

1 (Department) performed an unannounced inspection of petitioner's café and flower shop. Petitioner  
2 stated that, on average, he makes sales of about \$120 per day in the café and \$40 to \$50 in the flower  
3 shop. However, he also alleged that the café was closed from July 1, 2006, through August 31, 2009,  
4 which includes the entire liability period, due to problems with licensing and remodeling. Petitioner  
5 further stated that he sold flowers from various other locations (on the streets), but he only reported the  
6 sales of flowers made from the primary business location.

7 In response to the Department's request for all available records, petitioner provided federal  
8 income tax returns, incomplete sales tickets, and a hand-written sales journal. The Department  
9 concluded that the federal tax returns were the most reliable source of information regarding  
10 petitioner's sales. Thus, it compared the amounts of taxable sales reported on petitioner's sales and use  
11 tax returns for the fiscal years ending June 30, 2007, 2008, and 2009, with the gross receipts reported  
12 on federal tax returns for the calendar years 2007, 2008, 2009, to establish an understatement of  
13 \$282,938. Based on evidence provided after the appeals conference, the Department found that some  
14 of the sales were nontaxable sales for resale, and we therefore recommend a reduction of the  
15 understatement of reported taxable sales of \$17,497, from \$282,938 to \$265,441. Petitioner contends  
16 that the understatement is excessive because the gross receipts reported on his federal tax returns  
17 include nontaxable sales for resale and funds from sources other than sales, such as loan proceeds.

18 We find that the Department has used the most reliable of petitioner's severely limited records  
19 to establish petitioner's sales. Regarding petitioner's claim that the café did not operate during the  
20 liability period, we first note that we asked petitioner for evidence, but he has provided no  
21 documentation to show that the café was closed. In any event, the alleged closure of the café would  
22 not be a basis for adjustment of the amount of sales established by the Department because the  
23 Department has relied on the amounts recorded on petitioner's federal tax returns. It is irrelevant  
24 whether those sales were made at the café or the flower shop. We also find that it was appropriate for  
25 the Department to compare amounts reported on sales and use tax returns for fiscal year periods with  
26 amounts reported on federal tax returns for calendar year periods. In that regard, we note that the  
27 three-year periods, while not exactly the same, are closely comparable, and petitioner has not provided  
28 any records the Department could have used to allocate the sales to different periods. Petitioner has

1 provided no evidence that the amounts he reported on federal tax returns included funds from sources  
2 other than sales, such as loan proceeds. Also, the Department has recommended an adjustment for the  
3 amount of sales petitioner has documented as nontaxable sales for resale. We find no further  
4 adjustment is warranted.

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

6 The Department imposed a negligence penalty because petitioner did not provide adequate  
7 records, and the understatement was substantial. Petitioner disputes the penalty on the basis that he  
8 was unaware of the recordkeeping requirements.

9 Petitioner provided severely limited records, and the federal tax returns represented the most  
10 complete record of his sales. The amount of understatement, based on a comparison of sales reported  
11 on federal tax returns and sales tax returns, is \$265,441, which represents an error ratio of almost  
12 2,500 percent in comparison to reported taxable sales of \$10,755. We find that any businessperson,  
13 even one with limited experience, would have noted a difference of that magnitude between the  
14 amounts of sales he was reporting to two different government agencies. Thus, we find that the sorely  
15 incomplete records and the substantial understatement are evidence of negligence, and the penalty was  
16 properly applied, even though petitioner had not been audited previously.

17 **OTHER MATTERS**

18 None.

19  
20 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
21  
22  
23  
24  
25  
26  
27  
28