

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Administrative Protest)
Under the Sales and Use Tax Law of:)
SARAVANA BHAVAN, INC., dba Anapoorna) Account Number: SR BH 100-030369
Taxpayer) Case ID 522442
San Mateo, San Mateo County

Type of Business: Restaurant
Audit period: 10/01/04 – 12/31/07

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Additional taxable sales	\$234,412		
Negligence penalty	\$ 1,934		
Finality penalty	\$ 1,933		
As determined		\$26,289.70	\$2,628.97
Adjustment - Sales and Use Tax Department		<u>-6,950.61</u>	- 695.05
Finality penalty			<u>+ 1,932.51</u>
Protested		<u>\$19,339.09</u>	<u>\$3,866.43</u>
Proposed adjusted tax		\$19,339.09	
Interest through 12/31/11		8,334.61	
Negligence penalty		1,933.92	
Finality penalty		<u>1,932.51</u>	
Total tax, interest, and penalty		\$31,540.13	
Payments		<u>-8,627.86</u>	
Balance Due		<u>\$22,912.27</u>	
Monthly interest beginning 01/01/12		<u>\$62.48</u>	

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

UNRESOLVED ISSUES

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2 **Issue 1:** Whether any adjustments are warranted to the additional taxable sales. We conclude
3 that no adjustments are warranted.

4 Taxpayer operates a restaurant. For audit, taxpayer provided bank statements and credit card
5 merchant statements for the audit period, and guest checks and cash register tapes for December 2007.
6 The Sales and Use Tax Department (Department) found that bank deposits exceeded reported total
7 sales, and, for several months, there were no deposits of cash, which were indications that reported
8 taxable sales were understated.

9 The Department observed taxpayer's business for three days and established a ratio of 81.91
10 percent to 18.09 percent, credit card sales versus cash sales. Taxpayer argued that the test period was
11 not representative because it occurred during the recession period, and more customers had paid in
12 cash on the day of observation because they had lost their credit card privileges. Taxpayer argued that
13 the ratio of cash sales during the audit period was between 5 and 11 percent. The Department, finding
14 taxpayer's argument plausible, performed a reaudit increasing the credit card ratio to 90 percent
15 (10 percent cash ratio). The Department used recorded credit card deposits and a percentage of credit
16 card sales to total sales of 90 percent to compute unreported taxable sales of \$234,412, the amount in
17 dispute.

18 It is not clear whether taxpayer disagrees with the reaudit findings, but it has not expressly
19 conceded the amount of additional taxable sales. In any event, we find the audit method used by the
20 Department was appropriate based on the very limited records made available for audit, and that it was
21 conservative in using a 90 percent credit card ratio rather than the 81.91 percent ratio from its
22 observation test. Taxpayer has not provided any evidence that the credit card ratio of 90 percent
23 should be increased further. Absent evidence to the contrary, we find no basis for adjustment.

24 **Issue 2:** Whether taxpayer is negligent. We find it was.

25 The Department imposed the 10 percent penalty for negligence because the amount of
26 understatement is significant, and taxpayer did not provide adequate records. Taxpayer provided the
27 Department a request for relief form in which it requested relief of the negligence and finality penalty
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1 because the understatement was due to inexperience in running a business and because the business did
2 not employ professional help in reporting taxable sales.

3 We find the understatement of \$234,412 and error ratio of 27.5 percent to be clear indications
4 that taxpayer failed exercise the due care of a reasonably prudent businessperson in a similar situation.
5 Further, even though taxpayer did not have professional help, it should at least have been aware, based
6 on its own records (bank deposits and merchant statements) that its gross receipts were substantially
7 more than the amount of sales reported. Taxpayer's severe lack of records also independently supports
8 imposition of the negligence penalty. Thus, even though this was taxpayer's first audit, we find the
9 facts in this case clearly show that the understatement was due to negligence. (There is no statutory
10 basis for relief of this penalty. The relief provisions, which essentially require that the taxpayer show
11 it was not negligent in failing to perform the act for which the automatic penalty was applied, is not
12 applicable to negligence penalty, which applies, of course, only if negligence is established.)

13 **Issue 3:** Whether the finality penalty should be relieved. We find no basis for relief.

14 The finality penalty was automatically applied because taxpayer did not pay the determination
15 or file a petition for redetermination before the determination became final. As noted above, taxpayer
16 requested relief based on inexperience in running a business and lack of professional help. We find
17 these explanations do not bear on taxpayer's failure to timely petition or pay the determination.
18 Taxpayer has not offered any explanation, reasonable or otherwise, for its failure to timely pay the
19 determination or file a petition for redetermination. We therefore find relief is not warranted.

20 **OTHER DEVELOPMENTS**

21 None.

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