

**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: )  
ELOY VARGAS TEJADA, dba Taqueria La Paz ) Account Number SR BH 99-808595  
Taxpayer ) Case ID 506556  
City and County of San Francisco

Type of Business: Restaurant  
Liability period: 04/01/06 – 03/31/09

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Unreported taxable sales	\$183,000 <sup>1</sup>		
Negligence penalty	\$ 2,617		
Finality penalty	\$ 2,561		
As determined		\$27,699.02	\$2,769.97
Finality penalty			2,713.60
Adjustment – Post D&R		- 1,530.00	- 306.01
Proposed redetermination		\$26,169.02	\$5,177.56
Less concurred		<u>10,613.98</u>	<u>00.00</u>
Balance, protested		<u>\$15,555.04</u>	<u>\$5,177.56</u>
Tax		\$26,169.02	
Interest through 03/31/12		8,049.71	
Negligence penalty		2,616.96	
Finality penalty		<u>2,560.60</u>	
Total tax, interest, and penalty		\$39,396.29	
Payments		<u>-15,217.16</u>	
Balance Due		<u>\$ 24,179.13</u>	
Monthly interest beginning 04/01/12		<u>\$ 63.89</u>	

**UNRESOLVED ISSUES**

**Issue 1:** Whether adjustments are warranted to the amount of unreported taxable sales. We find no adjustment is warranted.

<sup>1</sup> Audited taxable sales of \$457,500 based on 915 days at \$500 per day less concurred taxable sales \$274,500 based on 915 days at \$300, the lowest daily sales figure estimated by taxpayer.

1 Taxpayer operates a small restaurant that does not serve beer, wine, or liquor, and he accepts  
2 payments by cash only. During an inspection by the Sales and Use Tax Department (Department),  
3 taxpayer stated he does not use a cash register or guest book to record sales, but instead memorizes his  
4 sales and keeps a count of the receipts in his head. At the time of the inspection, taxpayer estimated  
5 that his average daily sales were about \$500, and the Department used that estimate to compute taxable  
6 sales, which exceeded reported taxable sales by \$325,870. The Department also conducted two  
7 partial-day observations, and it totaled the observed sales to establish approximate sales for one day of  
8 \$464, which the Department considered to be secondary evidence that taxpayer's estimate was  
9 reasonable. Taxpayer contends that the restaurant made sales of \$500 only on good days, and that  
10 average sales were between \$300 and \$400 per day. However, taxpayer provided no records to support  
11 his current estimate of daily sales of \$300 to \$400 or otherwise, and the Department used taxpayer's  
12 own estimate to establish taxable sales. We find no adjustment is warranted to the \$500 daily sales  
13 figure used by the Department to compute taxable sales. However, while preparing for the Board  
14 hearing in this matter, the Department noted that the number of days of operation used to compute  
15 audited sales was incorrect. Since the restaurant was not open on Sunday, the number of days of  
16 operation each year should have been the number of days in the year reduced by 52, but the total  
17 number of days per year was inadvertently reduced by only 48. The Department has recommended an  
18 adjustment to correct this error and to additionally allow two days per quarter for vacations and  
19 holidays, reducing the measure of understated tax by \$18,000 (36 days at \$500 per day), to \$307,870.  
20 Since this is a small restaurant operated by a sole proprietor, we find it logical to conclude that the  
21 owner would close the restaurant for vacations and holidays. In the absence of evidence, we find the  
22 allowance of two days per quarter to be reasonable.

23 **Issue 2:** Whether taxpayer was negligent. We find that he was.

24 The Department imposed a negligence penalty because taxpayer provided no records.  
25 Taxpayer disputes the penalty on the basis that the Department's estimate is excessive. Also, taxpayer  
26 states the Department never requested records.

27 The Department indicates taxpayer did not maintain sales receipts or register tapes and did not  
28 provide sales journals or other summary reports for examination. We find it unlikely that the

1 Department did not request those records, and we find that any businessperson, even one with limited  
2 experience, should recognize that it is necessary to maintain records of his or her sales. Therefore,  
3 although taxpayer had not been audited before, we find that the complete absence of records and the  
4 amount of understatement of \$307,870, which represents an error rate of about 206 percent in  
5 comparison to reported taxable sales of \$149,630, fully support the Department's finding that taxpayer  
6 was negligent.

7 **Issue 3:** Whether relief of the finality penalty is warranted. We find relief is not warranted.

8 Since taxpayer did not timely pay the determination or file a petition for redetermination, a  
9 finality penalty of \$2,560.60 has been applied. Taxpayer filed a request for relief of the finality  
10 penalty on the basis that he did not receive the Notice of Determination. The Notice of Determination  
11 was mailed to taxpayer's address of record, and there is no evidence that it was returned by the Post  
12 Office. Accordingly, we are not persuaded by taxpayer's unsupported assertion that he did not receive  
13 the determination, and we find relief of the finality penalty is not warranted.

14 **OTHER MATTERS**

15 None.

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