

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION PETITION FOR REHEARING SUMMARY

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
MORDEHAY RABINOWIZ, dba T. O. Catering) Account Number SR AC 13-875980
Petitioner) Case ID 489446
_____) Van Nuys, Los Angeles County

Type of Business: Catering truck
Liability period: 07/01/03 – 06/30/08

<u>Item</u>	<u>Disputed Amount</u>	
Unreported taxable sales	\$	490,950
Unclaimed exempt sales of food	\$	- 126,326
Disallowed claimed sales tax included	\$	267
Fraud penalty	\$	6,621
	<u>Tax</u>	<u>Penalty</u>
As determined	\$32,820.68	\$8,205.20
Pre-D&R adjustment	- 1,221.97	- 305.53
Post-D&R adjustment	- 5,113.86	- 1,278.45
Proposed redetermination, protested	\$26,484.85	<u>\$6,621.22</u>
Less concurred	- 94.02	
Balance, protested	<u>\$26,390.83</u>	
Proposed tax redetermination	\$26,484.85	
Interest through 02/28/14	15,814.64	
Fraud penalty	<u>6,621.22</u>	
Total tax, interest, and penalty	<u>\$48,920.71</u>	
Monthly interest beginning 03/01/14	<u>\$ 132.42</u>	

The Board heard this matter on October 23, 2012, and concluded that no further adjustments are warranted and that the understatement was the result of fraud. Accordingly, the Board ordered the tax and penalty redetermined as recommended by the Appeals Division. Petitioner filed a timely petition for rehearing. The matter was scheduled on the Consent calendars in July 2013 and September 2013, but was deferred both times, first at the request of the Appeals Division for time to review new information received from petitioner, and then at the request of the Sales and Use Tax Department (Department) for additional time for further review. The matter was rescheduled from the Consent

1 calendar to the Adjudicatory calendar in November 2013 following petitioner's contact with Member
2 Runner's office, and then was postponed to allow petitioner the opportunity to make a public comment
3 at a Board hearing in Culver City.

4 **UNRESOLVED ISSUE**

5 **Issue 1:** Whether the petition for rehearing should be granted. We recommend that it be
6 denied.

7 In the petition for rehearing, petitioner reiterates his contentions that the Department has not
8 proven fraud by clear and convincing evidence, that the 75-percent ratio used by the Department to
9 establish audited hot food sales should be reduced, and that adjustments should be made to the gross
10 receipts reported on federal income tax returns for funds from checks cashed for customers. The fraud
11 penalty was fully considered at the Board hearing, and petitioner has provided no additional evidence
12 regarding this issue. As support for his assertion that the percentage of hot food to total sales of food
13 was lower than 75 percent, petitioner submitted a schedule that had been provided prior to the Board
14 hearing and statements from ten customers stating that they purchased only cold food items. We
15 contacted the customers who had provided telephone numbers, and find, based on their responses, that
16 the customers' statements are not convincing. Regarding petitioner's assertion that adjustments are
17 required to the amounts of gross receipts reported on federal income tax returns, petitioner has
18 provided no evidence that was not previously considered, and we recommend no adjustment.

19 We conclude that the information presented to support the petition for rehearing either has been
20 fully considered by the Board or does not represent reliable or convincing evidence. Further, we find
21 that the Board correctly decided this matter and that petitioner has not provided a basis for rehearing.
22 We thus recommend that the petition for rehearing be denied.

23
24 Summary prepared by Lisa Burke, Business Taxes Specialist III
25
26
27
28