

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION FINAL ACTION SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 MUSLEH SALEH ZOKARI, dba Mo's Market) Account Number: SR KHM 97-316639
 6 Petitioner) Case ID 392337
 7 _____) Orland, Glenn County

8 Type of Business: Mini-mart

9 Audit period: 01/01/03 – 12/31/05

10 Item Disputed Amount

11 Unreported taxable sales \$158,573

12 Tax as determined: \$29,353.60

13 Less concurred -17,857.0514 Balance, protested \$11,496.55

15 Proposed tax redetermination \$29,353.60

16 Interest through 5/31/10 14,913.37

17 Total tax and interest \$44,266.97

18 Payments 0.40

19 Balance Due \$44,266.5720 Monthly interest beginning 6/1/10 \$ 171.23

21 The Board hearing in this matter was held on November 18, 2009. The Board allowed
 22 petitioner 30 days to provide additional evidence and the Sales and Use Tax Department (Department)
 23 30 days to respond.

24 **UNRESOLVED ISSUE**25 **Issue:** Whether adjustments are warranted to the audited amount of unreported taxable sales.

26 We recommend no adjustment.

27 Petitioner operates a mini-mart. The issue in this matter is the amount of additional taxable
 28 sales established on a markup basis. At the Board hearing, petitioner's representative contended that
 the audited markup was excessive, arguing that, in the shelf test, the Department used the wrong size
 container for soda in some cases. The Board granted additional time for petitioner to provide specific
 examples of errors in the shelf test, along with supporting documentation.

1 When the Department contacted petitioner to arrange for review of any additional records,
2 petitioner explained that the issue was not incorrect sizes of containers listed in the shelf test but
3 incorrect selling prices for the various sizes of soda containers. However, petitioner had no
4 documentation, such as detailed cash register tapes, to support revisions to the selling prices used in the
5 shelf test. The Department noted that the selling prices used in the shelf test had been obtained either
6 by observation of the prices shown on the store shelves or from petitioner's daughter, who was
7 operating the store while her father was out of the country. In the absence of documentation, the
8 Department recommended no adjustments.

9 We find that petitioner has not provided adequate evidence to support its contention that the
10 audited markup for soda sales is excessive. In the shelf tests, the Department used the best available
11 information to establish the selling prices, and petitioner has not documented any errors in those prices.
12 We find no adjustment is warranted based on selling prices provided several years after the audit
13 period, without objective evidence. Further, we note that, based on our experience examining audits of
14 similar business, we would expect the markup for soda to be in the general range of 35 to 60 percent.
15 The audited markup of 41.93 percent is within the lower portion of that range.

16 In addition, we have concluded that the individual markups calculated in shelf tests for other
17 categories of merchandise are reasonable. Moreover, barring unusual circumstances, we expect the
18 overall taxable markup for a business like petitioner's to be in the range of 25 to 40 percent. The
19 audited overall markup of 24.47 percent is already slightly below the low end of this range, and
20 petitioner has provided no evidence to indicate that his actual markup was any lower than this
21 percentage. Since petitioner has not provided sufficient evidence to support a reduction of the audited
22 markups, and the available evidence does not show that any of the individual audited markups were
23 excessive or that the overall audited markup was excessive, we recommend no adjustment.

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27 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III
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MARKUP TABLE

Percentage of taxable vs. nontaxable purchases	78.71%
Mark-up percentages developed	24.47%
Self-consumption allowed in dollars	\$548 per year
Self-consumption allowed as a percent of total purchases	0.09%
Pilferage allowed in dollars	\$17,564
Pilferage allowed as a percent of total purchases	1%