

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
GILBERTO GONZALEZ PEREZ,) Account Number: SR ARH 97-176033
dba Latino's Night Club) Case ID 396030
Petitioner) Bakersfield, Kern County

Type of Business: Beer bar
Audit period: 01/01/03 – 06/30/06

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Unreported sales	\$46,828		
Negligence penalty	\$ 343		
As determined:		\$3,431.71	\$343.18
Less concurred		- 36.68	00.00
Balance, protested		<u>\$3,395.03</u>	<u>\$343.18</u>
Proposed tax redetermination		\$3,431.71	
Interest through 4/30/09		1,489.15	
10% penalty for negligence		<u>343.18</u>	
Total tax, interest, and penalty		<u>\$5,264.04</u>	
Monthly interest beginning 5/1/09		<u>\$ 22.88</u>	

A Notice of Appeals Conference was mailed to petitioner's address of record, and the notice was not returned by the Post Office. Petitioner did not respond to the notice or appear at the appeals conference, which was held as scheduled, nor did petitioner respond to our post-conference letter offering him an opportunity to provide arguments and evidence in writing. This matter was scheduled for Board hearing on August 19, 2008, but petitioner did not respond to the Notice of Hearing. Accordingly, the Board Proceedings Division informed petitioner that the matter would be presented to the Board for decision without oral hearing. Subsequently, petitioner contacted Board Proceedings to request that the case be scheduled for hearing at a Board meeting in the future, stating that he needed

1 additional time to prepare because he has been caring for his ill mother. The matter was then
2 scheduled for Board hearing on October 1, 2008, but was postponed because petitioner's representative
3 was ill. It was then scheduled for February 26, 2009, but was postponed because, although petitioner
4 appeared at the Board meeting, petitioner's representative did not appear, and petitioner indicated that
5 he could not argue his case because the representative has the records relevant to this appeal.
6 Petitioner indicated that he would present additional documents for our review, which are discussed
7 under "Other Developments."

8 UNRESOLVED ISSUES

9 **Issue 1:** Whether the audited amount of sales established on a markup basis is excessive. We
10 conclude no adjustments are warranted.

11 Petitioner operated a bar, selling bottled beer only, as an absentee owner. The Sales and Use
12 Tax Department (Department) established audited taxable sales on a markup basis, using costs of
13 goods sold from federal income tax returns for 2003, 2004, and 2005, and, since no federal return was
14 provided for 2006, using information from vendors to establish costs of goods sold during the first six
15 months of 2006. The Department then adjusted the audited cost of goods sold for self-consumption of
16 2 percent, bottle breakage of 1 percent, pilferage of 1 percent, and thefts of \$596 in 2004 that were
17 documented by police reports. The Department then added a markup of 349.71 percent, established by
18 shelf test, and compared audited and reported taxable sales to calculate an understatement of \$46,828.

19 Petitioner contends that the cost of goods sold as recorded on his federal returns was too high,
20 but he has not amended those returns or provided any other documentation to show that they were
21 incorrect. Petitioner contends that an adjustment should be made to account for the fact that the
22 business was closed for two months in 2005. However, this was already accounted for in the markup
23 audit method because there should have been no purchases during a period of non-operation. That fact
24 is demonstrated here since the cost of goods sold of \$4,010 reflected on petitioner's 2005 federal return
25 is significantly less than the \$8,580 reported on his 2004 federal return. Petitioner also contends that
26 the audit does not adequately account for burglaries. However, the audit does account for all
27 documented burglaries. Accordingly, we recommend no adjustments.

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

1 from time to time because of ABC violations. However, petitioner has not provided documentation to
2 show that his business was closed for those months. We conclude that petitioner has not established
3 any basis for adjustments.

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Summary prepared by Reynaldo D. Obligacion, Business Taxes Specialist III

MARKUP TABLE

Percentage of taxable vs. nontaxable purchases	100%
Mark-up percentages developed	349.71%
Self-consumption allowed in dollars	\$144 per year
Self-consumption allowed as a percent of total purchases	2%
Breakage allowed in dollars	\$74 per year
Breakage allowed as a percent of total purchases	1%
Pilferage allowed in dollars	\$74 per year
Pilferage allowed as a percent of total purchases	1%
Beer stolen, documented in police report for 2004	\$596