STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

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:	)	
GI JOYN YOO and KYUNG AE YOO dba Hyde Park Liquor	)	Account Number: SR AS 99-355131 Case ID 390865
Petitioner	)	Inglewood, Los Angeles County

Type of Business: Liquor store

Audit Period: 04/01/03 – 03/31/06

Item	Amount in Dispute
Unreported Taxable Sales	$625,892

	Tax
As determined	$58,051.61
Adjustments: Sales and Use Tax Department	- 5,707.60
Proposed redetermination	$52,344.01
Amount concurred in	-707.92
Protested	$51,636.09
Proposed tax redetermination	$52,344.01
Interest through 9/30/09	17,437.25
Total tax and interest	$69,781.26
Payments	-29,730.00
Balance due	$40,051.26
Monthly interest beginning 10/1/09	$150.76

UNRESOLVED ISSUE

Issue: Whether petitioner has established that the amount of its audited taxable sales is overstated. We conclude it has not, and that no adjustments are warranted.

During the audit, petitioner provided federal income tax returns (FITR's) for 2003, 2004, and 2005, purchase invoices, general ledgers, bank statements, and income statements. Petitioner prepares its sales and use tax returns from sales summaries to which daily cash register tapes are recorded. The Sales and Use Tax Department (Department) compared total sales reported on FITR's and sales and use tax returns and found no difference for 2005, but found slight differences in 2003 and 2004. The Department also found that achieved markups using reported total sales and cost of goods sold

recorded in the general ledger were -17.80 percent for 2004 and 10.58 percent for 2005. Since there was a negative markup for one year and the markup for the other year, while positive, was still lower than the Department expected for this type of business, the Department decided to use the markup method to determine petitioner's taxable sales.

The Department examined petitioner's General Ledger purchase accounts to determine if all purchases were accounted for, and concluded that the recorded purchases for 2004 were reliable to establish total purchases and thus cost of taxable goods sold. To establish the cost of taxable goods sold for 2004, the Department reduced recorded purchases of taxable merchandise of $454,973 by two percent for pilferage or $9,042, and taxable self consumption of $2,860 based upon $55 per week of taxable merchandise consumed.

The Department conducted a shelf test markup using costs from purchase invoices for December 2005 and selling prices provided by petitioner, that resulted in markups of 38.78 percent for liquor, 33.29 percent for beer, 52.40 percent for soda, 17.26 percent for cigarettes, and 60.53 percent for miscellaneous taxable merchandise. These markups were weighted based on the ratio of purchases in the December 2005 shelf test for each product category to compute a weighted markup of 31.09 percent.

The Department then marked up the cost of taxable goods sold of $443,071 by 31.09 percent to compute audited taxable sales of $580,821. When compared to reported taxable sales of $373,987, this resulted in an understatement of taxable sales of $206,834, or an error ratio of 55.31 percent. The error ratio was applied to reported taxable sales for each quarterly period in the audit period to compute total understated taxable sales of $625,892.

Petitioner contends that the audited taxable weighted markup of 31.09 percent is excessive, claiming that its markup is approximately 24 percent. Petitioner stated at the appeals conference that it could provide supporting documentation to establish a lower markup, but has not done so. Petitioner also contends that the projection of the audited percentage of error of 55.31 percent applied to the entire audit is excessive, but has not provided support for this contention either.

We find that the Department was justified to use the markup method to determine petitioner's unreported taxable sales. The negative achieved markup for 2004 and low achieved markup for 2005

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were not adequate for this type of business and the records indicate that recorded purchases for 2003 and 2005 could not be relied upon. We have reviewed the audit and found no inherent errors with respect to the computation of the audited cost of taxable goods sold. In addition, we examined the computation of the Department's shelf test and found no errors.

With respect to the audited percentage of error of 55.31 percent error ratio, Audit Manual section 1306.20 allows for audit results to be projected based upon a percentage of error, unless there is convincing evidence to the contrary. Here, petitioner's records for 2003 and 2005 were unreliable and thus, as explained above, the Department used the 2004 records and computed a percentage of error. Because no more reliable evidence was available, we find that it was appropriate to apply the percentage of error computed for 2004 to entire audit period. Hence, we conclude that the Department used the best available information to establish its determination. Petitioner has not met its burden of proving that the determination is incorrect or of providing records from which a more accurate determination can be made. We thus recommend no adjustments other than as set forth in the reaudit performed prior to the appeals conference.

OTHER DEVELOPMENTS

None.

Summary prepared by Rey Obligacion, Business Taxes Specialist III

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MARKUP TABLE FOR 2004

Percentage of taxable vs. nontaxable purchases	85.92%
Mark-up percentage developed	31.09%
Self-consumption allowed in dollars	$2,860
Self-consumption allowed as a percent of purchases	0.628 %
Pilferage allowed in dollars	$9,042
Pilferage allowed as a percent of total purchases	2%