

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:)
MUSLEH SALEH ZOKARI, dba Mo's Market) Account Number: SR KHM 97-316639
Petitioner) Case ID 392337
Orland, Glenn County

Type of Business: Mini-mart

Audit period: 01/01/03 – 12/31/05

<u>Item</u>	<u>Disputed Amount</u>
Unreported taxable sales	\$158,573
Tax as determined:	\$29,353.60
Less concurred	<u>-17,857.05</u>
Balance, protested	<u>\$11,496.55</u>
Proposed tax redetermination	\$29,353.60
Interest through 11/30/09	<u>13,861.53</u>
Total tax and interest	\$43,215.13
Payments	<u>0.40</u>
Balance Due	<u>\$43,214.73</u>
Monthly interest beginning 12/1/09	<u>\$ 195.69</u>

UNRESOLVED ISSUE

Issue: Whether adjustments are warranted to the audited amount of unreported taxable sales.

We recommend no adjustment.

Petitioner operates a mini-mart. The Department found discrepancies between petitioner's recorded and reported total sales. Also, the Department used the gross receipts and cost of goods sold figures reported on petitioner's federal income tax returns to compute achieved markups ranging from 18 to 21 percent, which it regarded as lower than expected for this business. In addition, petitioner claimed over 34 percent of its sales as exempt sales of food products, which seemed high based on the Department's observation of the merchandise sold.

The Department decided to establish audited taxable sales on a markup basis. The Department conducted a purchase segregation test to establish the audited percentage of taxable to total

1 merchandise purchased of 78.71 percent. The Department used recorded cost of goods sold and the
2 results of the segregation test to compute audited taxable purchases. The Department then deducted an
3 estimated cost of self-consumed merchandise of \$137 per quarter and an estimated pilferage loss,
4 calculated at 1 percent, to establish the audited cost of taxable goods sold.

5 The Department conducted a shelf test to establish audited markups of 9.78 percent for beer,
6 41.93 percent for soda, 35.15 percent for cigarettes and tobacco products, and 53.17 percent for
7 miscellaneous taxable merchandise. The Department used an estimated markup of 25 percent for
8 wine. Using these markups and the ratios of purchases in each category established in the purchase
9 segregation test, the Department computed a weighted average markup of 24.47 percent, which it
10 added to the audited cost of taxable good sold to establish audited taxable sales. The Department
11 computed a percentage of error in reported taxable sales of 22.76 percent for the audit period.

12 Petitioner contends that the audited markups are excessive, contending that the soda markup
13 should be 17 to 29 percent, the miscellaneous taxable markup should be 20 to 25 percent, and the
14 cigarette and tobacco markup should be 15 to 19 percent. Petitioner has provided no evidence, such as
15 shelf tests for a different period, to show that the audited markups are excessive. Although petitioner
16 has shown that he sometimes sold 2-liter bottles of soda at selling prices below the costs recorded on
17 the shelf test, we find that evidence is insufficient to support his contention that all sales of soda were
18 at a very low markup. Based on our experience examining audits of similar businesses, the general
19 range of markups for soda is 35 to 60 percent. The audited markup for soda of 41.93 percent is within
20 the lower portion of this range and we believe is reasonable for petitioner's business. The general
21 range of markups we expect to see for miscellaneous taxable merchandise is 40 to 100 percent. Again
22 the audited markup of 53.17 percent for this category is within the lower portion of the range and we
23 believe is reasonable for petitioner's business. With respect to cigarettes and tobacco products, we
24 note that petitioner states the markup should be 15 to 19 percent but there were no markups of less than
25 20.96 in the shelf test of cigarettes and tobacco products, which we find directly contradicts
26 petitioner's estimate. We find that the 35.15 percent markup for cigarettes and tobacco products is
27 reasonable for petitioner's business.

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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%