CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law of: WORLD MARKETING LEADER, INC., dba Cold Stone Creamery Petitioner	Account Number: SR Y GH 97-899059 Case ID 602909 Cupertino, Santa Clara County

Type of Business: Ice cream parlor

Audit period: 10/01/07 – 09/30/10

Item	Disputed Amount
Understated taxable sales	$91,672

Tax, as determined and protested	$10,670.20
Post-D&R adjustment	- 2,481.61
Proposed tax redetermination	$ 8,188.59
Interest through 09/30/14	2,702.83
Total tax, and interest	$10,891.42
Monthly interest beginning 10/01/14	$ 40.94

This matter was scheduled for Board hearing in August 2014, but was rescheduled at petitioner's request since the Sacramento Board meeting is more convenient.

UNRESOLVED ISSUE

Issue: Whether further reductions to the amount of understated taxable sales are warranted. We conclude that no further reductions are warranted.

Petitioner has operated a Cold Stone Creamery ice cream parlor in Cupertino, California since August 2001. Petitioner also operated a second location in Campbell, California from August 2004, through July 2012. For audit, petitioner provided franchise sales reports, monthly sales logs, bank statements, and federal income tax returns for the years 2007, 2008, and 2009. The Sales and Use Tax Department (Department) found that gross receipts reported on petitioner's federal income tax returns substantially agreed with total sales reported on petitioner's sales and use tax returns. Further, the Department found the book markup of 275.30 percent acceptable and decided to accept petitioner's reported total sales. Since petitioner admittedly rang all of its sales as "to go" (nontaxable) and then estimated 90 percent of its sales as nontaxable, the Department established petitioner's taxable sales based on taxable sales ratios developed during observation tests conducted at both locations.

The Department observed petitioner's sales activity for two full days and established a taxable sales ratio of 20.83 percent for the Cupertino location. The Department applied the taxable sales ratio to total sales for that location to establish audited taxable sales of $182,632 for the Cupertino location. For the Campbell location, the Department initially observed petitioner's sales activity for two partial days. Because the Department concluded that the two partial day observations were flawed, the Department observed petitioner's sales activity for a full day and established a taxable sales ratio of 11.52 percent for the Campbell location. The Department applied the taxable sales ratio to total sales for that location to establish audited taxable sales of $91,539 for the Campbell location. Overall, the Department established audited taxable sales of $274,171 ($182,632 + $91,539), which exceeded reported taxable sales by $120,570. In a post-D&R reaudit, the taxable sales ratio was reduced to 9.83 percent for the Campbell location which resulted in a reduction of understated taxable sales to $91,672.

Petitioner contends that the taxable sales ratios established from the observation tests are overstated. Petitioner asserts that 2 to 5 percent of its sales at the Campbell location are taxable as opposed to 9.83 percent established by the Department, and less than 10 percent of its sales at the Cupertino location are taxable as opposed to 20.83 percent established by the Department. We reviewed the audit work papers and found no errors in the Department's calculations of the taxable sales ratios. Moreover, petitioner provided no documentation to support lower taxable sales ratios than those established during the observation tests. Accordingly, we find no further reductions are warranted.

OTHER MATTERS

None.

Summary prepared by Ted Matthies, Business Taxes Specialist III