

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:)
PHILIP ANDRES ANACKER,) Account Number SR JH 99-551473
MAURA STANLEY HARRINGTON, and) Case ID 611321
JAKE ANTHONY WHITELEY,)
dba Flying Goat Coffee Roastery & Cafe)
Petitioner) Healdsburg, Sonoma County

Type of Business: Coffee house

Audit period: 07/01/07 – 06/30/10

<u>Item</u>	<u>Disputed Amount</u>
Unreported taxable sales	\$292,019
Tax, as determined	\$25,978.97
Less concurred	<u>- 2,187.68</u>
Balance protested	<u>\$23,791.29</u>
Proposed tax redetermination	\$25,978.97
Interest through 2/29/16	<u>11,877.87</u>
Total tax and interest	\$37,856.84
Payments	<u>- 8,010.00</u>
Balance due	<u>\$29,846.84</u>
Monthly interest beginning 3/1/16	<u>\$ 89.84</u>

This matter was scheduled for Board hearing in February 2015, but it was postponed for settlement consideration.

UNRESOLVED ISSUE

Issue: Whether adjustments to the amount of unreported taxable sales are warranted. We conclude that no adjustments are warranted.

Petitioner has operated a coffee house with indoor seating for 42 customers since October 1994. For audit, petitioner provided its federal income tax returns, annual and quarterly profit and loss statements, point-of-sale (POS) system reports, purchase invoices, fixed asset schedules, and sales and use tax return worksheets. The Sales and Use Tax Department (Department) found that the records petitioner provided were complete, but it questioned the accuracy of the records because a comparison

1 of petitioner's recorded taxable sales with its recorded total coffee shop sales showed a recorded
2 taxable sales ratio of 11 percent, which was lower than the Department expected. The Department also
3 observed that petitioner's staff erroneously rang up taxable "to-go" sales of soda as exempt, and
4 erroneously rang up taxable sales of coffee for consumption on the premises as exempt when the
5 coffee was served in the customers' own cups. Thus, the Department decided to perform site
6 observation tests to establish an audited taxable sales ratio for use in computing audited taxable sales.

7 The Department observed petitioner's operations on Tuesday, October 5, 2010, and on
8 Wednesday, March 2, 2011. While petitioner's records showed an average taxable sales ratio of
9 23.53 percent for both test days combined, the Department's observations showed an average taxable
10 sales ratio of 37.49 percent for both days combined. However, during the observation tests, the
11 Department had recorded all sales of items that were consumed on the premises as taxable transactions
12 even though the customers might have stated that the purchased items were "to go." Therefore, to
13 allow for possible errors in the results of its observation tests, the Department used the lower taxable
14 sales ratio of 23.53 percent computed from petitioner's records for the test days. Multiplying
15 petitioner's recorded total sales of \$2,338,668 for the audit period by 23.53 percent resulted in audited
16 taxable sales of \$550,289, which exceeded petitioner's recorded taxable sales by \$292,019.¹

17 As an additional analysis, the Department reviewed petitioner's recorded sales for six months
18 in 2010 to test the variability of petitioner's recorded taxable sales ratios per day. The Department
19 calculated recorded taxable sales ratios per day ranging from 1.76 percent to 27.31 percent, averaging
20 11.85 percent per day, with recorded taxable sales ratios of 15 percent or less on 125 days out of the
21 182 analyzed days. However, since the recorded taxable sales ratios were inconsistent with the results
22 of the two-day observation test, and were inconsistent with the Department's random observations of
23 petitioner's business at various times of day, the Department concluded that petitioner had failed to
24 properly record many of its taxable sales.

27 ¹ The Department also established a difference between recorded and reported taxable sales of \$20,785 as a separate item in
28 the audit.

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OTHER MATTERS

None.

Summary prepared by Lisa Burke, Business Taxes Specialist III