

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 JUST FOR YOU CAREGIVERS, INC.) Account Number SR EH 101-620684
 Case ID 854794
 6 Petitioner) Moreno Valley, Riverside County

7 Type of Business: Medical marijuana dispensary

8 Audit period: 01/01/11 – 06/30/14

9 <u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
10 Unreported taxable sales	\$976,955		
11 As determined		\$78,176.49	\$7,817.65
12 Post-D&R adjustments		- 00.00	-7,817.65
13 Proposed redetermination, protested		<u>\$78,176.49</u>	<u>\$ 00.00</u>
14 Proposed tax redetermination		\$78,176.49	
Interest through 09/30/16		<u>18,000.35</u>	
15 Total tax and interest		<u>\$96,176.84</u>	
Monthly interest beginning 10/01/16		<u>\$ 390.88</u>	

16 UNRESOLVED ISSUES

17 **Issue:** Whether any adjustments to the amount of unreported taxable sales are warranted. We
 18 find that no adjustments are warranted.

19 Petitioner has operated a mobile medical marijuana dispensary since August 2010. For audit,
 20 petitioner provided federal income tax returns (FITR's) for the years 2011 and 2012, and contribution
 21 reports for the years 2011, 2012, and 2013. The Business Tax and Fee Department noted that both the
 22 gross receipts reported on the FITR's and the amounts of sales recorded in the contribution reports
 23 were materially consistent with reported sales on the sales and use tax returns. However, the
 24 Department noted that petitioner listed only 121 sales to members in its contribution reports for a
 25 three-year period, but the website www.weedmaps.com showed 325 customer reviews of petitioner's
 26 business during that same period. In addition, petitioner reported zero sales in the first quarter 2014,
 27 but the website www.weedmaps.com included 26 customer reviews during that quarter. The
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1 Department concluded that this was evidence that petitioner had failed to record a substantial portion
2 of its sales in its contribution reports, and had substantially understated its reported taxable sales.

3 The Department was unable to perform a markup analysis because petitioner failed to provide
4 any sales invoices or purchase invoices from which it could compute a markup. The Department was
5 also unable to perform an observation test, since petitioner did not operate from a retail location. Due
6 to these facts and petitioner's incomplete records, the Department used the results of a recently
7 completed audit of a similar medical marijuana dispensary with average quarterly sales of \$72,053 to
8 establish audited taxable sales of \$1,008,742 ($\$72,053 \times 14$ quarters). When compared to reported
9 taxable sales of \$31,787, the Department computed unreported taxable sales of \$976,959. The
10 Department states that the business that it used for its estimate of petitioner's taxable sales was also a
11 mobile medical marijuana dispensary with similar selling prices, but shorter hours of operation.

12 Petitioner contends that the Department's estimates using average quarterly sales from an
13 unrelated medical marijuana dispensary are inaccurate and not representative of petitioner's business.

14 If we divide average quarterly audited taxable sales of \$72,053 by 90 operation days per
15 quarter, we compute average sales of \$800 per day, and using an average sales price of \$40, we
16 compute an average of 20 sales per day.¹ We find that an average of 20 sales per day and an average
17 of \$800 per day are reasonable, and thus, we find that the audit produced reasonable results. Petitioner
18 did not provide records or other documentary evidence to show that the Department's estimates are
19 excessive. Accordingly, we recommend no reduction to the amount of unreported taxable sales.

20 **RESOLVED ISSUES**

21 The Department applied a negligence penalty because the records provided for audit were
22 inadequate, and the understatement was significant. At the appeals conference, the Department
23 recommended deleting the negligence penalty because petitioner had not been audited previously, and
24 thus, is entitled to leniency. The Appeals Division agrees with this recommendation.

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28 ¹ We note that the average sales amount in petitioner's contribution reports was \$236 ($\$28,587 \div 121$ sales). Using the
average sale of \$236 from petitioner's contribution reports would show just slightly more than three sales per day ($\$800 \div$
\$236).

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OTHER MATTERS

At the appeals conference, petitioner stated that it did not have the ability to pay the audit liability. We informed petitioner that it may contact the Riverside District office to inquire about a payment plan. Petitioner also inquired about settlement, and we informed petitioner that the settlement program is handled by the Settlement and Taxpayer Services Division, and provided petitioner with the contact information.

Summary prepared by Gary A. Lomazzi, Business Taxes Specialist II