

## 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 BAS FOOD SERVICES, INC. ) Account Number SR Y EA 99-798942  
 6 Petitioner ) Case ID 507142  
 7 \_\_\_\_\_ ) San Juan Capistrano, Orange County

8 Type of Business: Restaurants

9 Audit period: 01/01/06 – 12/31/08

10 <u>Item</u>	<u>Disputed Amount</u>
11 Unreported taxable sales	\$256,876
12 Tax as determined and protested	\$19,907.94
13 Interest through 07/31/12	<u>6,564.68</u>
14 Total tax and interest	\$26,472.62
15 Payments	<u>- 3,340.31<sup>1</sup></u>
16 Balance Due	<u>\$23,132.31</u>
17 Monthly interest beginning 08/01/12	<u>\$ 82.84</u>

## 16 UNRESOLVED ISSUE

17 **Issue:** Whether adjustments are warranted to the unreported taxable sales. We find no  
 18 adjustment is warranted.

19 Petitioner operates four “El Pollo Loco” fast food restaurants. Petitioner reported all sales as  
 20 taxable except for the second quarter 2006 (2Q06), when it claimed a deduction for \$66,869 for  
 21 exempt sales to the United States government, which petitioner acknowledges was an error. The Sales  
 22 and Use Tax Department (Department) found a difference between recorded amounts of sales tax  
 23 reimbursement collected and reported sales tax of \$19,908, which represents unreported taxable sales  
 24 of \$256,876. The Department noted that this difference was partially explained by the erroneously  
 25 claimed deduction of \$66,869 for 2Q06, which was offset by an over-reporting error of \$10,823 in  
 26 1Q06. The Department concluded that the remaining difference between sales tax reimbursement  
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28 <sup>1</sup> An overpaid penalty of \$1,082.31 has been applied as a credit, and is thus included in this amount of payments.

1 collected and sales tax paid represented excess sales tax reimbursement. In that regard, the Department  
2 reviewed several cash register tapes and noticed that, when petitioner reduced the bill for coupons or  
3 discounts, the amount of sales tax reimbursement computed on the net amount was frequently one cent  
4 higher than it should be because the cash register system apparently always rounded up to the next  
5 cent, rather than rounding to the nearest cent. The Department reasoned that, with voluminous  
6 transactions, this additional one cent could result in a significant amount of excess tax reimbursement.

7         Petitioner contends that the audited amount of excess tax reimbursement is substantially  
8 overstated, arguing that, for sales with discounts, the amount of tax was sometimes computed  
9 differently than it was in the cash register receipts reviewed by the Department. At the appeals  
10 conference, petitioner provided a few sample register receipts showing that tax had been computed on  
11 the full amount of the bill (before discounts), and the discounts were then deducted. Petitioner argues  
12 that, when the discounted amount was computed in this manner, the discounts were actually tax-  
13 included amounts, and the amount of tax due should be reduced accordingly. On that basis, petitioner  
14 asserts that the recorded amount of tax is greater than the tax actually due, but does not represent  
15 excess tax reimbursement because the discount should be partially attributed to a reduction of the tax.

16         For situations in which petitioner collected sales tax reimbursement on the full selling price, the  
17 separately stated amount of tax was represented to its customers as the amount of sales tax collected.  
18 Thus, we find that the amount of sales tax reimbursement collected from the customer was the  
19 separately stated amount computed on the full selling price, before the discounts. (Cal. Code Regs., tit.  
20 18, § 1700, subd. (a)(2)(A).) Petitioner disputes this conclusion, citing the Sales and Use Tax  
21 Department Audit Manual section 0412.35, which explains that a 5 percent discount of \$5.41 on a sale  
22 of \$108.25, including tax, would be allocated at \$5.00 merchandise and \$0.41 tax. However, the  
23 discounts at issue here were not computed as a percentage of the total, tax-included selling price.  
24 Instead, the amount of the discount was a specific amount (\$1.00, \$1.50, and \$5.00 on the cash register  
25 tapes provided), which were deducted from the total, tax-included sale amount. Using this procedure,  
26 petitioner has collected excess sales tax reimbursement. (See Cal. Code Reg., tit. 18, § 1700, subd.  
27 (b)(5)(A)1.) Thus, we find that petitioner used two different methods to compute the amount due, net  
28 of discounts. In the first method, petitioner reduced the selling price by the discount before computing

1 the amount of sales tax reimbursement, and those amounts of tax were sometimes excessive because  
2 the cash register system always rounded the tax amount up to the next cent. In the second method,  
3 petitioner computed tax on the full selling price and then deducted discounts of a set amount. For  
4 those sales, the amount of sales tax reimbursement collected is the separately stated amount shown on  
5 the cash register receipt, and, since that amount exceeded the amount due, after the discounts, the  
6 difference represents excess tax reimbursement. Petitioner has not refunded any of the excess tax  
7 reimbursement to its customers, and thus we find no adjustment is warranted.

8 **OTHER MATTERS**

9 None.

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11 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
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