STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Redetermination and Claim for Refund Under the Sales and Use Tax Law of:	
FINBARS ITALIAN KITCHEN SB, INC.	Account Number: SR EA 100-448615 Case ID's 435792, 519738
Petitioner/Claimant	Seal Beach, Orange County

Type of Business: Restaurant

Audit period: 12/01/04 – 09/30/06

Item	Disputed Amount
Unreported mandatory tips	$61,947

Tax as determined and protested:	$4,800.90
Proposed tax redetermination	$4,800.90
Interest	941.90
Total tax and interest	$5,742.80
Payments	-5,742.80
Balance Due	00.00

UNRESOLVED ISSUE

Issue: Whether the gratuities at issue represent mandatory tips that are included in petitioner's taxable gross receipts. We conclude that the gratuities were mandatory and thus taxable gross receipts.

Petitioner operates several restaurants. During the audit period, petitioner's menu stated "[a]n eighteen percent gratuity will be added to parties of eight or more," but petitioner did not include such amounts it its reported taxable sales. The Sales and Use Tax Department (Department) concluded that these gratuities were mandatory and thus taxable gross receipts. Petitioner filed a timely petition for redetermination, paid the liability in full, and filed a protective claim for refund of the payment. Petitioner contends that, despite the statement on its menu, the gratuity was not truly mandatory and was included only at the customers' discretion. Petitioner also states that all gratuities were given to servers, and it retained no portion of those gratuities.

In addition to the statement on its menu during the audit period, for parties of eight or more, petitioner actually added an 18-percent gratuity to the amounts billed to the customers. Petitioner has

presented no documentation showing that its customers specifically requested that the gratuities be added to their bills or that the gratuities were added only upon a customer's request. We thus find that the gratuities petitioner added to the bills of parties of eight or more were taxable mandatory gratuities. (Cal. Code Regs., tit. 18, § 1603, subd. (g).) Accordingly, we recommend no adjustment to the determination and that the claim for refund be denied.

OTHER DEVELOPMENTS

None.

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

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