

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

1  
2  
3 In the Matters of the Petition for )  
4 Redetermination and Claim for Refund )  
5 Under the Sales and Use Tax Law of: )  
6 LOS ANGELES COUNTRY CLUB ) Account Number: SR AS 18-002721  
7 ) Case ID's 361952, 416903  
8 )  
9 )  
10 )  
11 )  
12 )  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

Type of Business: Golf club with restaurant

Audit Period: 10/01/02 – 09/30/05

<u>Item</u>	<u>Amount in Dispute</u>
Unreported sales	\$851,800
Tax as determined	\$89,381.91
Adjustment: Appeals Division	-19,108.35
Proposed redetermination	<u>\$70,273.56</u>
Proposed tax redetermination	\$70,273.56
Interest through 10/31/10	<u>31,828.23</u>
Total tax, interest, and penalties	\$102,101.79
Payments	<u>-24,604.27</u>
Balance due	<u>\$77,497.52</u>
Monthly interest beginning 11/1/10	<u>\$266.40</u>

**UNRESOLVED ISSUE**

**Issue:** Whether further adjustments are warranted to the audited understatement of reported taxable sales. We recommend no further adjustments.

Petitioner is a non-profit organization operating a country club with golf course and tennis courts, offering food and beverages with eating and drinking facilities, and selling merchandise at its pro and gift shop. Petitioner has had numerous prior audits, the latest one being for the period July 1, 1999, through June 30, 2002. During this audit, the Sales and Use Tax Department (Department) found no material differences between total sales and sales tax reimbursement recorded in petitioner's records and total sales and sales tax reported for sales and use tax purposes. Likewise, recorded gross receipts reconciled with gross receipts reported on federal income tax returns with no material

1 differences. The Department also found that petitioner's book markups for sales of food were  
2 reasonable and it thus concluded that reported sales of food were substantially accurate. However,  
3 with respect to sales of beer, wine, and liquor, the Department found, using petitioner's financial  
4 statements, that the average book markup for the audit period was 114.67 percent, which it concluded  
5 was far lower than expected for a business of this nature. Thus the Department decided to establish  
6 audited sales of those beverages on a markup basis.

7         The Department conducted a shelf test markup for bar sales using costs from the August 2005  
8 purchase invoices and the prices listed on the Bar Fact Sheet, which petitioner's assistant controller  
9 prepared, and computed a weighted average bar markup of 271.89 percent. To establish audited cost  
10 of bar sales, the Department reduced the recorded cost of bar sales for an estimated loss from shrinkage  
11 and breakage of liquor, beer, and wine, by 1 percent; for sales of wine sold at cost at certain hosted  
12 wine events; and for the cost of supplies, computed at 8.3284 percent. No adjustment was made for  
13 self consumption since petitioner stated that it does not provide complimentary drinks to employees or  
14 customers. To establish audited bar sales, the Department applied the weighted average markup factor  
15 of 3.7189 to the audited cost of bar sales. It then added the wine sales at cost from certain hosted wine  
16 events to the audited bar sales established by markup. The Department initially found that audited bar  
17 sales exceeded reported bar sales by \$1,083,416.

18         In our Decision and Recommendation (D&R), we recommended that a reaudit be prepared to  
19 allow 1 percent of the cost of bottled beer purchases for breakage of bottled beer and 6 percent of the  
20 cost of wine purchases for overpouring and spillage, and to increase from 1 to 2 percent the allowance  
21 for pilferage. The Department made the recommended computations to reduce the understatement of  
22 reported bar sales from \$1,083,416 to \$851,800 for the audit period. Petitioner contends that the  
23 audited bar sales should not be established using the markup method and that the audited  
24 understatement of reported taxable bar sales were excessive.

25         We find it was appropriate for the Department to use the markup method to establish taxable  
26 bar sales. Since the book markups did not appear adequate for this type of business, the Department  
27 had a valid basis for further investigation. Further, the audited weighted average bar markup of around  
28 272 percent, computed based on petitioner's records, substantially exceeded the book markup for bar

1 sales of around 114 percent, which confirmed the Department's concerns regarding the apparent  
2 understatement of reported bar sales. We have reviewed the Department's reaudit, and found no  
3 errors. In the absence of supporting evidence, we recommend no further adjustments.

4 Petitioner has paid \$24,604.27 against the determined liability and filed a timely claim for  
5 refund for such payment. Since we recommend that no further adjustments be made and there is  
6 unpaid liability remaining, we recommend that the claim for refund be denied.

### 7 **RESOLVED ISSUE**

8 We conclude that relief from the amnesty interest penalty is warranted. Petitioner filed a  
9 request for relief of the amnesty interest penalty, signed under penalty of perjury, explaining that it did  
10 not participate in the amnesty program because it did not believe there had been any understatement of  
11 sales and use taxes during the amnesty period. Petitioner was not notified that it had been selected for  
12 audit until several months after the amnesty period ended. After the audit started, the Department did  
13 not find any errors when comparing recorded and reported taxable sales. Thus, we find it was  
14 reasonable for petitioner to assume, at the time the amnesty applications were due, that it had no  
15 liability during the amnesty-eligible periods. Additionally, petitioner's prior audits did not disclose  
16 any understatements due to unreported taxable bar sales. We also note that the understated bar sales in  
17 comparison to reported total sales for the audit period resulted in an error rate of 5.75 percent, which is  
18 fairly small. Based on the foregoing, we conclude that there was reasonable cause for petitioner to not  
19 participate in the amnesty program. Thus, we recommend that relief from the amnesty interest penalty  
20 of \$495.72 be granted. Since petitioner's payments toward the determination exceed the tax and  
21 interest due for the amnesty-eligible period and since petitioner did not direct application of that  
22 payment otherwise, for these purposes (that is, without regard to how the Department has actually  
23 applied the payments) we regard petitioner as having paid the amnesty-eligible tax and interest due.  
24 We therefore do not condition our recommendation for relief on timely payment of the amnesty-  
25 eligible tax and interest due.

### 26 **OTHER DEVELOPMENTS**

27 None.

28 Summary prepared by Rey Obligacion, Retired Annuitant

**MARKUP TABLE**

Percentage of taxable vs. nontaxable purchases	100%
Mark-up percentage developed	271.89%
Self-consumption allowed in dollars	None
Self-consumption allowed as a percent of total purchases	None
Allowance for spillage of wine in dollars	\$49,339
Spillage allowed as a percent of wine purchases	6%
Breakage of bottled beer in dollars	\$1,111
Breakage allowed as a percent of bottled beer purchases	1%
Shrinkage allowed in dollars	\$19,940
Shrinkage allowed as a percent of total purchases	2%