

## 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 KAREN L. & LAWRENCE J. MILLER, )  
6 dba Boomers )

Account Number: SR AA 99-704491

Case ID 461286

7 LAWRENCE J. & CLIFF W. MILLER, )  
8 dba Boomers )

Account Number: SR AA 101-063376

Case ID 461281

9 Petitioners

Long Beach, Los Angeles County

10 Type of Business: Cocktail lounge

11 Audit period: 04/01/04 – 06/30/05 (461286)

07/01/05 – 03/31/07 (461281)

12 ItemDisputed Amount

	<u>461286</u>	<u>461281</u>
13 Unreported sales	\$188,217	\$367,221
14 Negligence penalty	\$ 1,607	\$ 3,101

	<u>461286</u>		<u>461281</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
15 As determined	\$17,465.44	\$1,746.54	\$32,774.21	\$3,277.42
16 Adjustment – Appeals Division	<u>-1,391.11</u>	<u>-139.10</u>	<u>-1,767.54</u>	<u>-176.73</u>
17 Proposed redetermination	\$16,074.33	\$1,607.44	\$31,006.67	\$3,100.69
18 Less concurred	<u>-546.40</u>		<u>-710.90</u>	
Balance, protested	<u>\$15,527.93</u>	<u>\$1,607.44</u>	<u>\$30,295.77</u>	<u>\$3,100.69</u>
19 Proposed tax redetermination	\$16,074.33		\$31,006.67	
20 Interest through 10/31/11	9,313.12		14,218.26	
Negligence penalty	<u>1,607.44</u>		<u>3,100.69</u>	
21 Total tax, interest, and penalty	<u>\$26,994.89</u>		<u>\$48,325.62</u>	

22 Monthly interest beginning 11/01/11	<u>\$80.37</u>	<u>\$155.03</u>
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23 **UNRESOLVED ISSUES**

24 **Issue 1:** Whether further adjustments are warranted. We find that no further adjustments are  
25 warranted.

26 Petitioners, Karen and Lawrence Miller, husband and wife co-ownership, and Lawrence and  
27 Cliff Miller, father and son partnership, operated a cocktail lounge from April 1, 2004, through June  
28 30, 2005, and July 1, 2005, through March 31, 2007, respectively. Petitioners stated they reported

1 their sales tax based upon bank deposits. For the audit, petitioners provided federal income tax returns,  
2 profit and loss statements, bank statements, purchase invoices, and purchase information from vendors.

3 The Department performed one markup audit for the period April 1, 2004, through March 31,  
4 2007, and split the audit results into appropriate periods for each permit. We recommended some  
5 adjustments in the D&R, and a reaudit was performed. Recorded taxable purchases were reduced by  
6 \$15,237 (3.9 percent) for self-consumption, 2 percent for pilferage, and \$1,676 for beer bottle breakage  
7 (1% of beer purchases), to compute audited cost of taxable goods sold of \$365,917. The Department  
8 computed markups using costs from purchase invoices from March 2007 and selling prices listed on  
9 the Bar Fact Sheet. For liquor, the Department used a 1.5-ounce pour as listed on the Bar Fact Sheet,  
10 plus an allowance of 12 percent for over-pouring and spillage. In the reaudit, the markups were  
11 weighted for happy hour sales, entertainment sales, and regular sales, based on ratios estimated by  
12 petitioners, to compute a weighted markup of 295.68 percent. The weighted markup was added to the  
13 audited cost of taxable goods sold to compute audited taxable sales of \$1,447,869, which exceed  
14 reported taxable sales by \$555,437, resulting in error ratios of 40.24 percent for January through June  
15 2004, 66.63 percent for 2005, 73.82 percent for 2006, and 66.35 percent for the first quarter 2007.

16 Petitioners contend that the pour size should be increased to 3.5 ounces; that the allowance for  
17 self-consumption should be increased for drinks given away; that an allowance should be given for  
18 drinks sold 2 for the price of 1; and that the audit results are inconsistent with petitioners' lifestyle.

19 The auditor may accept an average pour size up to 1.5 ounces without testing, but a pour size in  
20 excess of 1.5 ounces must be supported. (Sales and Use Tax Department Audit Manual § 0806.05.)  
21 Here, the Department used a 1.5-ounce pour based on information from the owner. As recommended  
22 in the Decision and Recommendation, the Department conducted an undercover pour test. The two  
23 drinks in the test were analyzed by the County of Los Angeles Sheriff's Department and revealed an  
24 average pour size of 1.09 ounces. We thus find no basis for adjustment of the 1.5 ounce pour size used  
25 by the Department, which is the pour size we expect based on our examination of audits of other bars,  
26 and generous when compared to the undercover test results.

27 Petitioners have provided no documentation to support their contentions regarding self-  
28 consumption or 2 for 1 pricing, and we thus find that no adjustment is warranted for these contentions.



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**MARKUP TABLE**

Percentage of taxable vs. nontaxable purchases	100% taxable
Mark-up percentages developed	295.68%
Self-consumption allowed in dollars	4,923 per year
Self-consumption allowed as a percent of taxable purchases	3.9 %
Pilferage allowed in dollars	2,501 per year
Pilferage allowed as a percent of taxable purchases	2%