

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

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3 In the Matter of the Petition for Redetermination )  
4 Under the Sales and Use Tax Law of: )  
5 RISTORANTI PIEMONTESEI, INC., ) Account Number: SR BH 19-741548  
6 dba Palio D’asti ) Case ID 488832  
7 Petitioner )  
San Francisco, San Francisco County

8 Type of Business: Restaurant and panini shop

9 Audit period: 01/01/05 – 12/31/07

<u>Item</u>	<u>Disputed Amount</u>
11 Unreported taxable sales of food	\$484,777
12 Tax as determined and protested:	<u>\$41,206.13</u>
13 Proposed tax redetermination	\$41,206.13
14 Interest through 9/30/10	<u>14,737.96</u>
14 Total tax and interest	<u>\$55,944.09</u>
15 Monthly interest beginning 10/1/10	<u>\$ 240.37</u>

**UNRESOLVED ISSUE**

17 **Issue:** Whether relief is warranted based on petitioner’s alleged reliance on erroneous advice.

18 We find that relief is not warranted.

19 Petitioner operates an upscale restaurant in San Francisco and a panini shop located on the  
20 campus of the University of California, San Francisco. The Sales and Use Tax Department  
21 (Department) found that the amounts of taxable and total sales reported for the restaurant were  
22 substantially accurate. The Department concluded that petitioner’s recorded total sales for the panini  
23 shop were substantially accurate but that its reported taxable sales were understated because they did  
24 not include sales of hot panini. Since petitioner had not segregated sales of hot and cold panini in its  
25 records, the Department asked petitioner to keep detailed sales reports, including sales of hot panini, in  
26 its recorded taxable sales for one month. Using these sales reports, the Department computed 47.07  
27 percent taxable to total sales for the panini shop, which it applied to recorded total sales to establish  
28 audited taxable sales, which resulted in the disputed deficiency. Petitioner does not dispute the

1 calculation of the deficiency, but rather contends that it should be relieved of that liability because its  
2 failure to report sales tax on sales of hot panini was the result of its reliance on advice received in a  
3 prior audit.

4 The parties agree that the work papers from the prior audit do not specifically mention sales of  
5 hot panini, but petitioner contends that its panini shop has operated in the same manner throughout  
6 both audit periods. Further, petitioner states that the grills for panini are clearly visible and that the  
7 prior auditor should have recognized petitioner made sales of hot panini. In addition, petitioner states  
8 that its previous president recalls a discussion during which the prior auditor orally agreed that sales of  
9 hot panini were not taxable.

10 We have reviewed the workpapers for the prior audit, and the only comment regarding sales of  
11 food relates to cold sandwiches. Since petitioner's records did not segregate sales of hot and cold  
12 panini, those records would not have disclosed to the prior auditor that petitioner was selling hot  
13 panini. As for petitioner's comments regarding the visibility of the panini grills, petitioner appears to  
14 contend that the prior auditor's failure to inform petitioner that sales of hot panini are taxable, even  
15 though she must have seen those grills, represents erroneous advice by the Board. The Board may  
16 relieve a taxpayer of its liability for taxes due only when that taxpayer reasonably relied on the Board's  
17 *written* advice in response to a written request for advice. Prior audit advice can provide a basis for  
18 relief where the report of the prior audit shows that the issue in question was examined. Since there  
19 was no such written evidence in the prior audit that the issue was examined, there was no written  
20 advice for purposes of section 6596. Thus, regardless of petitioner's assertions that the panini grills  
21 were visible or that there were discussions during the prior audit regarding sales of hot panini, the  
22 requirements for relief pursuant to section 6596 were not satisfied. Accordingly, we conclude that  
23 there is no basis for relief from the tax due on petitioner's sales of hot panini.

24 **OTHER DEVELOPMENTS**

25 None.

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