

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

In the Matter of the Petition for Redetermination)
 Under the Sales and Use Tax Law of:)
 LYNNETTE MARIE SHAW, dba) Account Number: SR JH 101-112239
 Marin Alliance for Medical Marijuana) Case ID 507974
 Petitioner) Fairfax, Marin County

Type of Business: Medical marijuana dispensary
 Audit period: 10/01/05 – 06/30/08

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Unreported sales	\$4,291,152		
As determined		\$332,564.32	\$33,256.44
Adjustment - Appeals Division		<u>00.00</u>	<u>-33,256.44</u>
Proposed redetermination, protested		<u>\$332,564.32</u>	<u>\$ 00.00</u>
Proposed tax redetermination		\$332,564.32	
Interest through 03/31/12		<u>134,224.03</u>	
Total tax and interest		\$466,788.35	
Payments		<u>- 0.14</u>	
Balance Due		<u>\$466,788.21</u>	
Monthly interest beginning 04/01/12		<u>\$ 1,939.96</u>	

This matter was scheduled for Board hearing on December 14, 2011, and again on February 28, 2012, but was postponed both times at petitioner’s request, first to allow additional time to submit an opening brief and then to allow additional time to prepare for the hearing.

UNRESOLVED ISSUES

Issue 1: Whether petitioner’s sales of medical marijuana qualify as exempt sales of medicine. We conclude they do not.

Petitioner began selling medical marijuana in July 1997 and obtained a seller’s permit in July 2008, with an effective start date of October 1, 2005, when the Board began issuing seller’s permits for sales of medical marijuana. Petitioner provided summaries of her sales of marijuana, from which the Department compiled sales of \$4,219,152, a sum that is uncontested.

1 Petitioner contends that her sales of medical marijuana were exempt sales of medicines,
2 arguing that Revenue and Taxation Code section 6369, subdivision (a)(1) allows an exemption for the
3 sale of medicine that is “recommended” rather than prescribed by a person authorized to prescribe
4 medicine. Petitioner also argues that her business is a health facility and that her sales of medical
5 marijuana from a health facility were exempt from tax pursuant to section 6369, subdivision (a)(3).

6 As relevant here, the sale and use of medicines are exempt from sales and use tax when the
7 medicines are prescribed by a person authorized to prescribe medicines and dispensed per that
8 prescription by a pharmacist in accordance with law, and when the medicines are furnished by a health
9 facility for treatment of a person pursuant to the order of a licensed physician, dentist, or podiatrist.
10 (Rev. & Tax Code, § 6369, subd. (a).) Petitioner conceded at the appeals conference that her business
11 does not meet the requirements of a registered pharmacy. Thus, without regard to any other factor, her
12 sales of marijuana do not qualify for exemption pursuant to subdivision (a)(1) of section 6369.

13 Petitioner contends that her facility qualifies as a health facility within the meaning of
14 subdivision (a)(3) of section 6369. Petitioner’s basis for asserting she operates a health facility for
15 these purposes is that the City of Fairfax has provided her a permit to operate. She therefore asserts
16 she is licensed as a clinic. Petitioner is mistaken. None of the licenses and certifications issued to
17 petitioner is a license to operate a clinic issued by the California Department of Health. Further,
18 petitioner has not shown that she provides medical advice or treatment to patients or that she or any of
19 her employees are qualified to do so. Accordingly, we find that petitioner’s sales of marijuana were
20 not exempt from tax under subdivision (a)(3) of section 6369 because she was not operating a health
21 facility for these purposes. (See also Cal. Code Regs., tit. 18, § 1591, subd. (a)(4).)

22 **Issue 2:** Whether petitioner is entitled to relief based on reliance on written advice from the
23 Board. We conclude that relief is not warranted.

24 In a declaration dated April 28, 2011, petitioner states that her business opened in its present
25 location in 1997, and she contacted the Board to obtain a seller’s permit but was advised by a Board
26 employee that she could not obtain a permit for the sale of an “illegal substance.” Petitioner also states
27 that the Board, at some time prior to 2002, specifically instructed her not to collect sales tax
28 reimbursement because the Board did not have a category of businesses selling medical marijuana to

1 which the Board would grant sellers' permits. Although she no longer has the described advice letter,
2 she asserts that it must have been available in 2002 because, at that time, the Town of Fairfax
3 conducted a compliance audit of her business and found that petitioner was in compliance with the
4 mandated good faith efforts to acquire necessary permits from the Board. Petitioner states that the
5 Town of Fairfax would not have reached that conclusion if she had not presented the advice letter
6 instructing her to not collect tax reimbursement.

7 We find that the conclusion by the Town of Fairfax does not document that petitioner received
8 written advice from the Board. Further, the evidence does not show that petitioner requested advice in
9 writing regarding the application of tax to sales of medical marijuana or received any advice in writing
10 that specifically addressed that issue. Accordingly, we find that petitioner has not show that her failure
11 to report tax was the result of erroneous written advice of the Board, and that relief is not warranted
12 pursuant to section 6596.

13 **RESOLVED ISSUE**

14 Since petitioner did not file sales and use tax returns for the period at issue, a failure-to-file
15 penalty was automatically applied. Petitioner filed a request for relief of the penalty on the basis that
16 there was considerable confusion about the application of tax to medicinal marijuana during the period
17 at issue. Petitioner states that she applied for and received a seller's permit as soon as it was clearly
18 established that a permit is required. The Department has concluded that the failure-to-file penalty
19 should be relieved.

20 **OTHER MATTERS**

21 None.

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