

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
GARY BECKER COMPANY, INC.) Account Number: SR EAA 97-202305
) Case ID 387047
Petitioner)
Newport Coast, Orange County

Type of Business: Retailer of office furniture and advertising

Audit Period: 1/1/02 – 6/30/05

<u>Item</u>	<u>Disputed Amount</u>
Unreported trade vouchers	\$387,643
	<u>Tax</u>
As determined	\$179,734.75
Concurred in	<u>148,755.20</u>
Protested	<u>\$ 30,979.55</u>
Proposed tax redetermination	\$179,734.75
Interest through 4/30/09	<u>87,496.62</u>
Total tax and interest	\$267,231.37
Payments	<u>- 10,780.01</u>
Balance due	<u>\$256,451.36</u>
Monthly interest beginning 5/1/09	<u>\$1,126.36</u>

UNRESOLVED ISSUE

Issue: Whether the amount of audited taxable sales include nontaxable cash discounts. We find that it does not and recommend no adjustments.

Petitioner is engaged in business as a retailer of office furniture and supplies. Petitioner also rents advertising space on billboards owned by Clear Channel Communications (CCC). During the audit period, petitioner sold office furniture and supplies to CCC in exchange for which it received cash plus trade vouchers that entitled petitioner to rent advertising space provided by CCC. The trade vouchers had a face value equal to 50 percent of the amount of the sale. Thus, petitioner received 50 percent of the retail price of the goods it sold to CCC in cash, and 50 percent of the retail price in

1 trade vouchers. Petitioner then sold the trade vouchers to its advertising customers, usually for an
2 amount less than the face value of the vouchers.

3 Petitioner listed the trade vouchers on its sales invoices as a credit for "Trade for Billboard,"
4 and charged and collected sales tax reimbursement only on the 50 percent of its sale price to CCC
5 represented by the cash payment. Petitioner did not report the face value of the trade vouchers in the
6 measure of tax. The Department treated the transactions as barter transactions (Cal. Code Regs., tit.
7 18, § 1654) and the trade vouchers as part of the payment for the purchase of the tangible personal
8 property petitioner sold to CCC. The Department determined, on an actual basis, that petitioner
9 received trade vouchers with a face value of \$1,505,998 from CCC as part of the sale price of
10 petitioner's retail sales, and found that this face value are includable in petitioner's gross receipts from
11 its retail sales of tangible personal property to CCC.

12 Petitioner states that, based on a test it performed of its records from June 18, 2004, through
13 November 3, 2004, it collected only 74.26 percent of the face value of the trade vouchers from its
14 advertising customers. Therefore, petitioner contends that 25.74 percent (25.74 percent X \$1,505,998
15 = \$387,643) of the face value of the trade vouchers represent nontaxable cash discount.

16 We find petitioner's argument to be without merit because it is the agreed upon sale price
17 between the buyer and seller at the time of the initial sales transactions that determines the amount of
18 taxable measure, not the amount of a later adjusted price or the amount a taxpayer ultimately collects
19 from that sale. (*Hawley v. Johnson* (1943) 58 Cal. App. 2d 232, 237.) Here, the sales invoices show
20 that petitioner and CCC agreed at the time of the initial transactions that the value of the furniture sold
21 to CCC was equal to the total of the cash CCC paid and the face value of the trade vouchers given by
22 CCC. We find that the face value of the trade vouchers should not be reduced to reflect the amount
23 that petitioner ultimately did not collect from the sales of the trade vouchers. Thus, we conclude that
24 no reduction in the taxable measure is warranted.

25 AMNESTY

26 Petitioner timely applied for amnesty and entered into an installment payment agreement for
27 the amnesty-eligible liabilities. Thus, the amnesty interest penalty does not apply. (Rev. & Tax. Code,
28 § 7074, subd. (a).)

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OTHER DEVELOPMENTS

None.

Summary prepared by John K. Chan, Business Taxes Specialist I