

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION FINAL ACTION SUMMARY

In the Matter of the Administrative Protest)
 and Claim for Refund Under the Sales and)
 Use Tax Law of:)
 UNIVERSAL CITY STUDIOS, INC.) Account Number: SR AC 11-784389
 dba Universal Studios – Tour Division) Case ID'S 378248, 373822
 Taxpayer/Claimant) Universal City, Los Angeles County

Type of Business: Theme park with sales of food and merchandise

Audit Period: 7/01/96 – 4/30/02

<u>Items</u>	<u>Amount in Dispute</u>
Unreported taxable sales from catered events	\$3,051,925
Claim for refund	\$ 200,000 or as determined

	<u>Tax</u>
As disclosed by audit dated 4/14/06	\$1,630,265.41
Adjustments - Appeals Division	- 68,051.90
- Post hearing	- 123,614.78
Tax by reaudit dated 11/6/09	\$1,438,598.73
Amount concurred in	<u>-1,187,731.33</u>
Protested	<u>\$ 250,867.40</u>
Tax liability	\$1,438,598.73
Interest (tax paid in full 6/21/06)	<u>855,821.31</u>
Total	\$2,294,420.04
Payments on determination	-36,928.74
Payments per amnesty returns	<u>-2,570,689.45</u>
Balance to be refunded	<u>-\$ 313,198.15</u>

The Board held the oral hearing in the above-referenced matter on July 1, 2009, and granted taxpayer/claimant (hereafter taxpayer) 30 days to provide a post hearing submission and the Sales and Use Tax Department (Department) 30 days to respond.

Taxpayer applied for amnesty, filed amnesty returns, and paid the amount reported thereon prior to the issuance of the Notice of Determination. After deducting those payments from the audited tax due, the Sales and Use Tax Department (Department) issued a Notice of Determination to taxpayer for the remaining tax due of \$25,519.41. Taxpayer did not file a timely petition for redetermination, but the Department accepted taxpayer's letter protesting the audit as an administrative protest. Also,

1 taxpayer filed a claim for refund that is timely for all payments because it was filed within six months
2 from the date the determination became final. Thus, this appeal covers all protested amounts, most of
3 which were reported and paid with the amnesty returns.

4 UNRESOLVED ISSUE

5 **Issue:** Whether the Department's computation of taxable sales from catered events is
6 excessive. We recommend a reduction in the measure of deficiency for taxable sales from catered
7 events of \$1,505,119, from \$4,557,044 to \$3,051,925.

8 At the Board hearing, taxpayer submitted a schedule as exhibit B to compare its reported
9 taxable sales with taxpayer's calculation of the fair retail value of those sales. However, although
10 taxpayer collected mandatory gratuities in connection with its sales in dispute here, which it agrees
11 were subject to tax, its exhibit B did not include gratuities.¹ The Board therefore requested that, as part
12 of its post-hearing submission, taxpayer submit a revised exhibit B that reflects gratuities of 15 and
13 19 percent. The Board also requested information based on taxpayer's post-audit period contracts
14 since those included more specific information regarding the charges for food and beverages than is
15 available for the contracts during the audit period. Taxpayer provided the requested documents as part
16 of its post-hearing submission. The Sales and Use Tax Department (Department) reviewed taxpayer's
17 submission and recommended no adjustment.

18 The issue in dispute is the audited measure of tax related to taxpayer's events, primarily from
19 the sale of food and beverages but with some miscellaneous sales of tangible personal property, such
20 as t-shirts. To establish the taxable portion of the lump sum event contracts, the Department applied
21 45 percent to the total receipts from taxpayer's event contracts.

22 Taxpayer contends that the 45 percent is excessive and not representative of events during the
23 audit period. As explained in our Post Hearing Analysis, we find that the 45 percent taxable ratio
24 properly reflects the taxable sales included in taxpayer's events which involve food and beverages.
25 However, taxpayer did have some events during which food and beverages were not provided. We
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27 ¹ Taxpayer contended that the gratuities were already in its reported taxable gross receipts, but for the reasons explained in
28 our Post Hearing Analysis, we find that the reported measure could not have included the taxable mandatory gratuities, and
we thus reject taxpayer's contention.

1 find that the 45 percent ration should be applied only to contracts which involve the service of food
2 and beverages, and that four percent should be applied to contracts where no food and beverages were
3 provided to account for sales of miscellaneous merchandise.

4 We have used the profit and loss statements for the same test period used by the Department in
5 its audit to recompile taxable event revenue to account for events that did not include the furnishing of
6 food and beverages, computing a measure of tax for unreported taxable sales of \$3,051,925. We
7 recommend that the audited measure of deficiency for unreported taxable sales be reduced by
8 \$1,505,119, from \$4,557,044 to \$3,051,925. Since the Notice of Determination was issued only for
9 the \$25,519.41 audited deficiency in excess of the amounts reported on amnesty returns and the
10 adjustments we recommend exceed this determined liability for which the administrative protest was
11 accepted, we recommend that the administrative protest be granted. Based on our recommended
12 adjustments, taxpayer's payments towards the audit liability exceed the adjusted audit liability, and we
13 therefore recommend that the claim for refund be granted as to that overpayment of \$313,198.15 (tax
14 of \$191,666.68 and interest of \$121,531.47).

15 LATE SUBMISSION

16 During the week prior to the date scheduled for Board decision in this matter, petitioner made a
17 late submission asking for three additional adjustments to those we recommend above: for gift cards,
18 for events with food but no alcohol, and for "non-Globe" events. We asked the Department to review
19 the submissions, and by memorandum dated December 14, 2009, the Department concludes the
20 petitioner's late submission does not warrant further adjustment. We agree.

21 If the gift cards were third-party gift cards, then we would agree that an adjustment would have
22 been warranted with respect to the "non-food" events. However, the gift cards in question were issued
23 by petitioner itself, for use by recipients to purchase tangible personal property from petitioner.
24 Although by email on December 14, 2009, petitioner claims that tax was paid when the gift cards were
25 redeemed towards the purchase of merchandise, petitioner has not established that such was the case.²

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27 ² The Department's memorandum mentions the possibility that the sales of merchandise pursuant to the gift cards may have
28 been taxed at a "discounted" sales price. By this terminology, the Department means that petitioner may have deducted the
value of any redeemed gift card from the sale price of merchandise prior to calculating the tax due. For example, a

1 In the absence of such proof, we find that no adjustment is warranted for gift cards sold in connection
2 with events where no food or beverages were served.

3 With respect to gift cards provided in connection with events where food was sold, we find that
4 no adjustment would be warranted even if the gift cards were third-party cards or if petitioner could
5 show that it reported and paid sales tax on the sales where persons redeemed the gift cards to purchase
6 merchandise. In our post-hearing analysis, we noted that the Department used a 45 percent taxable
7 ratio for the events where food was served. As such, based on the understanding that for some of the
8 events petitioner also furnished tangible personal property to the guests, we reduced the Department's
9 45 percent taxable ratio for 4 percent taxable merchandise sales in referring to the figure for sales of
10 food and beverages as 41 percent. However, we emphasize now that this explanation was merely a
11 mechanism to analysis the reasonableness of the Department's taxable percentage, and this was a
12 *further* basis for such a finding. However, as the Department notes in its December 14, 2009
13 memorandum, the method it used to determine the taxable percentage was based solely on the food and
14 beverages petitioner served, and *not* on any miscellaneous merchandise. In fact, based on our finding
15 that the 45 percent taxable figure should not be applied to the non-food events, we could well have
16 found that the reduction for the non-food events should have been partially offset by an increase to the
17 taxable ratio in the food events for the same four percent miscellaneous sales offset against the
18 reduction for non-food events. The simple reason that we did not do so is that we decided to hold the
19 Department to the 45 percent ratio it determined for the food events, to ensure that we did not
20 recommend upholding a deficiency that could possibly be more than the true deficiency. For the
21 reasons further explained below, we find that the Department's 45 percent taxable ratio is exceedingly
22 conservative, and certainly after removing the non-food events, does not warrant any further
23 adjustment.

24 With respect to the late submission's claim to a further adjustment for the 11.7 percent of
25 events for which it states no alcohol was served, we find no further adjustment is warranted. In its
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27 customer makes a purchase of merchandise for \$20, paying by gift card of \$5 plus cash of \$15. The Department surmises
28 that petitioner may have collected tax reimbursement on the \$15 paid in cash, and remitted only that amount as sales tax.

1 calculations, the Department used a table of charges for alcohol (attached to its December 14, 2009
2 memorandum as exhibit 1) which shows the hourly charge for the bar packages included with its
3 events. The first hour was the highest charge, with the second and third hours 50 percent or slightly
4 more than the first hour, and each additional hour far less. There were three packages: beer, wine, and
5 soda at \$12.00 per person for the first hour; hosted well bar at \$15.00 per person for the first hour; and
6 hosted premium bar at \$17.00 per person for the first hour. Obviously, the absolute minimum charge
7 for any event where alcohol was served was for one hour at the beer, wine, and soda rate of \$12.00,
8 and that is the amount the Department used in its calculations: a single hour at the lowest possible rate.
9 Thus, the only way petitioner's request to make an adjustment for all non-alcohol events could be
10 accurate is if every single one of the alcohol events was for a single hour of beer, wine, and soda, *and*
11 petitioner did not make any beverage charge at all (e.g., for soda or juice). Petitioner does not even
12 suggest that its alcohol charge was always the lowest possible such charge, and we reject such a
13 possibility. We find that the Department's use of the minimum possible charge where alcohol was
14 served would have more than compensated for the relatively small minority of events where no alcohol
15 was served, even if that \$12.00 per person per event amount had not been discounted, but it was.

16 The Department used the \$12.00 figure in its initial calculations resulting in a 52 percent
17 taxable ratio. However, the Department reduced that figure by *more than ten percent*, compensating
18 for the non-alcohol events even under petitioner's apparent theory that \$12.00 per person per alcohol
19 event is sufficient. Furthermore, the Department failed to include the 19 percent gratuity on the
20 alcohol charge in its calculations, even though such gratuity was clearly added to the client's charges.

21 With respect to petitioner's contention that a further adjustment is warranted because a number
22 of events were non-Globe events, again we reject this contention because the Department's
23 calculations were eminently reasonable, especially after our recommendation to remove the non-food
24 events. The Department did not include any miscellaneous merchandise in its calculation of the
25 taxable ratio for the food and beverage events, did not include the mandatory gratuity on the alcohol
26 charges, and after determining a ratio that appears reasonable, further reduced the ratio. We conclude
27 that no further adjustment is warranted.

28 Summary prepared by David H. Levine, Tax Counsel IV