

## 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 JOHNNY BATISTA, ) Account Number SR BH 100-958958  
 6 dba Bernal Heights Dispensary ) Case ID 531628  
 7 Petitioner ) City and County of San Francisco

8 Type of Business: Medical marijuana dispensary

9 Liability period: 10/1/06 – 9/30/09

10 Item Disputed Amount

11 Unreported sales \$2,849,645<sup>1</sup>  
 12 Negligence penalty \$ 24,661

	<u>Tax</u>	<u>Penalty</u>
13 As determined and protested	\$246,605.18	<u>\$24,660.51</u>
14 Interest through 3/31/12	71,722.60	
15 Negligence penalty	<u>24,660.51</u>	
16 Total tax, interest, and penalty	<u>\$342,988.29</u>	
17 Monthly interest beginning 4/1/12	<u>\$1,438.53</u>	

## 18 UNRESOLVED ISSUES

19 **Issue 1:** Whether petitioner has established that the audited understatement is excessive. We  
 20 conclude that he has not.

21 Petitioner began operating this marijuana dispensary business in San Francisco in March 2005.  
 22 Effective July 1, 2010, ownership of the business was changed to Bernal Heights Collective, LLC, SR  
 23 BH 101-651869, with petitioner as its managing member. Petitioner provided no support for his  
 24 reported amounts and provided only the following records for examination the Sales and Use Tax  
 25 Department (Department): federal income tax returns for 2006 through 2008; sales and use tax returns

26 \_\_\_\_\_  
 27 <sup>1</sup> This is the measure of tax in the Field Billing Order dated February 1, 2010, for this item. Petitioner has not identified the  
 28 portion of this amount which he disputes.

1 for the liability period; and cash register z-tapes reflecting daily sales for 11 days between  
2 November 23, 2009, and December 14, 2009, with customer counts for eight of those days. Petitioner  
3 did not provide the basic and complete sales and purchase records normally expected of a prudent  
4 businessperson: profit and loss statements, general ledgers, sales journals, sales invoices, daily cash  
5 register tapes, purchase journals, purchase invoices, and sales and use tax return worksheets. Based on  
6 the z-tapes and customer counts petitioner provided, the Department computed that petitioner's taxable  
7 sales averaged \$3,066 per day, excluding sales tax reimbursement, with an average of 68 customers per  
8 day. In a December 28, 2009 site test, the Department observed that petitioner made taxable sales of  
9 \$2,937 to 70 customers. The Department added the site test sales to the sales from the 11 days of z-  
10 tapes to establish audited daily taxable sales of \$3,055, which it multiplied by 1,011, the days  
11 petitioner was open during the liability period, to compute audited taxable sales of \$3,088,628, and  
12 deducted petitioner's reported taxable measure of \$238,982 to establish unreported taxable sales of  
13 \$2,849,646.

14         Petitioner contends that his sales were lower during the first two years of the liability period,  
15 which started with an average of 10 to 15 customers per day. Petitioner also contends his former  
16 accountant stole money and product from the business. We asked petitioner if he has records or other  
17 documents to establish that sales were lower at the beginning of the audit period, but he indicated he  
18 did not. Since the Department computed the deficiency based on the best information available, using  
19 a method that we conclude is valid, and since petitioner provided no documentation to indicate that the  
20 computations are incorrect, we conclude no adjustment is warranted for this assertion. With respect to  
21 petitioner's allegations about his former accountant, even if correct, they cannot alter the result. Theft  
22 of money has no bearing on the amount of petitioner's taxable sales, and thus does not affect the  
23 measure of tax. Where the Department computes audited sales using the markup method, theft of  
24 product does need to be taken into account. Here, however, the audit method was based on actual  
25 sales, and is not affected by thefts (to the extent that sales would have been reduced because of theft of  
26 product, that reduction would already be accounted for in the audit method). Accordingly, we  
27 conclude no adjustment is warranted for petitioner's allegations about his former accountant.

