

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Petitions for Redetermination )  
 4 Under the Sales and Use Tax Law of: )  
 5 COMMUNITY FLAVOR, LLC, ) Account Number: SR CH 97-842718  
 6 dba Patient's Care Collective ) Case ID's 469262, 483974  
 7 Petitioner ) Berkeley, Alameda County

7 Type of Business: Medical marijuana dispensary  
 8 Audit Periods: 01/01/05 – 12/31/07 (Case ID 469262)  
 9 01/01/08 – 09/30/08 (Case ID 483974)

10 <u>Item</u>		<u>Disputed Amount</u>
11 Disallowed claimed exempt sales of marijuana		\$4,877,205 (Case ID 469262)
12 Disallowed claimed exempt sales of marijuana cookies		\$671,205 (Case ID 469262)
		\$136,472 (Case ID 483974)
	<u>469262</u>	<u>483974</u>
14 Tax as determined, protested	<u>\$485,485.91</u>	<u>\$11,941.33</u>
15 Proposed tax redetermination	\$485,485.91	\$11,941.33
16 Interest through 9/30/10	<u>167,507.62</u>	<u>1,024.88</u>
17 Total tax and interest	\$652,993.53	\$12,966.21
Payments	<u>-51,033.79</u>	<u>-12,966.21</u>
18 Balance due	<u>\$601,959.74</u>	<u>\$0.00</u>
19 Monthly interest beginning 10/1/10	<u>\$2,534.30</u>	

## 19 UNRESOLVED ISSUES

20 **Issue 1:** Whether petitioner's sales of marijuana qualify as exempt sales of medicine. We  
 21 conclude they do not.

22 Petitioner operates a medical marijuana dispensary in Berkeley, California at which it sells  
 23 marijuana and edible marijuana products such as marijuana cookies. Petitioner asserts that the  
 24 marijuana it furnishes qualifies as a medicine furnished pursuant to physicians' prescriptions.  
 25 Petitioner further asserts that its facility is similar to a clinic, and thus meets the definition of a health  
 26 facility pursuant to California Code of Regulations, title 18, section (Regulation) 1591,  
 27 subdivision (a)(4)(B). As such, petitioner contends that its sales of marijuana are exempt from tax.  
 28 (Rev. & Tax. Code, § 6369, subd. (a)(3); Cal. Code Regs., tit. 18, § 1591, subd. (d)(3) (it is undisputed

1 that other exemptions for sales of medicines are inapplicable, for example, petitioner concedes it does  
2 not use a licensed pharmacist to fill prescriptions.)

3         There is no dispute that medical marijuana is a medicine for purposes of section 6369 and  
4 Regulation 1591 or that a physician’s recommendation for medical marijuana may meet the definition  
5 of prescription if the recommendation contains all of the components listed in subdivision (a)(7) of  
6 Regulation 1591. A clinic as defined by Health and Safety Code section 1200 or 1200.1 does qualify as  
7 a health facility for purposes of Regulation 1591. However, Health and Safety Code section 1205  
8 provides that a clinic may not operate in this state without first obtaining a license as a clinic under the  
9 Health and Safety Code. Petitioner concedes that its facility does not hold such a license, which means  
10 that petitioner’s facility is not a clinic under Health and Safety Code sections 1200 and 1200.1, and  
11 thus is not a health facility for purposes of the section 6369 exemption. We thus conclude that  
12 petitioner’s sales of medical marijuana do not qualify for the section 6369 exemption, and are subject  
13 to tax.

14         **Issue 2:** Whether petitioner’s sales of marijuana cookies qualify as exempt sales of food  
15 products. We conclude they do not.

16         Sales of food products for human consumption are generally exempt from sales tax. (Rev. &  
17 Tax. Code, § 6359, subs. (a), (b); Cal. Code Regs., tit. 18, § 1602, subd. (a).) However, “food  
18 product” for purposes of the exemption does not include “medicines and preparations in liquid,  
19 powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.”  
20 (Rev. & Tax. Code, § 6359, subd. (c).) There is no dispute that the marijuana cookies sold by  
21 petitioner qualify as medicines. Petitioner argues that section 6359, subdivision (c), does not apply to  
22 marijuana cookies because that subdivision applies only to medicines in liquid, powdered, granular,  
23 tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts. Petitioner is mistaken.  
24 Any product that is a medicine is excluded from the definition of “food product,” as are any  
25 “preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary  
26 supplements or adjuncts.” This is made clear in Regulation 1602, subdivisions (a)(3), excluding  
27 medicines, and (a)(4), excluding supplements in one of the listed forms. Since the cookies are  
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1 medicines, we conclude that their sales do not qualify for exemption under section 6359, and are  
2 subject to tax.

3 **Issue 3:** Whether petitioner is entitled to relief of tax and interest based upon reliance on  
4 erroneous advice from the Board. We conclude that petitioner is not entitled to relief.

5 In February 2007, the Board issued a Special Notice explaining the application of tax to sales  
6 of medical marijuana. Prior to this date, petitioner had claimed its sales of medical marijuana and  
7 marijuana cookies as exempt sales of medicine and food products. After receipt of the notice, around  
8 May 2007, petitioner began collecting sales tax reimbursement on sales of medical marijuana, but not  
9 on the sales of marijuana cookies. Petitioner argues that, prior to receipt of the notice, it was not aware  
10 that sales of medical marijuana are subject to tax. Petitioner states it had a good faith belief that such  
11 sales were exempt sales of medicine, and the Board had not previously notified marijuana sellers that  
12 their sales are subject to tax. Petitioner concedes that it did not rely upon oral or written advice from  
13 the Board, but seeks relief from the tax because, it claims, the law is ambiguous.

14 The Board may relieve a taxpayer of liability for tax, interest, and penalty under section 6596,  
15 subdivision (a), where it finds that the taxpayer's failure to make a timely return or pay the correct  
16 amount of tax was due to the taxpayer's reasonable reliance on written advice from the Board in  
17 response to a written request for advice. Petitioner did not rely upon such erroneous written advice  
18 from the Board in failing to report and pay tax on its retail sales of medical marijuana. The law does  
19 not provide for relief of tax or interest based upon a taxpayer's misunderstanding of the law.  
20 Accordingly, we find there is no basis for relief from the liability.

21 **OTHER DEVELOPMENTS**

22 None.

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24 Summary prepared by Rey Obligacion, Retired Annuitant  
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