State Board of Equalization
450 N Street
Sacramento, Calif. 942879

Jan. 21, 2015

Public Hearing:

Subject: *16102 of the Business and Professions Code and the Veteran artists

*THE ELEPHANT IN THE ROOM

The war against veteran's benefits and the denial of my existence is over. When SB 919 Section 643 was written Mr. Connell was kept from knowing or having the lawful input of similarly situated veterans that had their businesses destroyed by denying the plain language of B&P 16102. Mr. Connell, notified me and not the SBOE that has a record of my payments, original baseless audit, (see People V Preston and **White V Sparks 9ht Circuit)

I revealed my veterans status as far back as the 1994 audit to no avail. The effect of the audit ended my artist relationship with THE GRATEFUL DEAD.

I was unable to attend my brother's funeral in 1995 due the unlawful tax burden. Tim O'Keefe (from my mothers second marriage) was the Navy diver that rapidly recovered the A-6 Intruder (1994) from the San Francisco Bay crash, averting ecological jet fuel spill disaster.

The consequences of these errors resulted in 14 years of the Elephant Drawing was not seen in public. (**public art 1st amendment denial)

Richard B. Powers USMC Honorable (Rick B. Powers artist)

STATE BOARD OF EQUALIZATION
Appeal Name: Richard Powers
Case ID: 2 ITEM #. 2
Date: 1/21/15 Exhibit No: 1.1
TP FTB DEPT PUBLIC COMMENT

Approved Minutes - Wednesday July 25, 200

The Board met at its offices at 450 N Street, Sacramento, at 11:00 a.m. with Chairman Andal, Vice Chairman Parrish, Mr. Klehs and Mr. Chiang present.

BUSINESS TAXES HEARINGS

Rhonda Sarnicola & Robert Rustigian, SR AC 13-877526-010; 89000097510

7-1-91 through 6-30-94, $218,385.91

For Petitioner:	Kai Mickey, Consultant
For Sales and Use Tax Department:	Kevin Hanks, Hearing Representative

Contribution: Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether the evidence establishes that the measure of tax was established in accordance with the facts.

Whether relief from the 25 percent penalty for fraud or intent to evade the tax is warranted. Ms. Mandel entered during the discussion of this appeal on behalf of

Dr. Connell in accordance with Government Code Section 7.9.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Andal, Mr. Parrish, Mr. Klehs, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the fraud penalty be reduced to a negligence penalty.

Upon motion of Mr. Parrish, seconded by Mr. Andal and duly carried, Mr. Andal, Mr. Parrish, Mr. Klehs voting yes, Mr. Chiang and Ms. Mandel voting no, the Board ordered that the disputed measure of pilferage be reduced by 1%.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and duly carried, Mr. Andal, Mr. Parrish, Mr. Klehs voting yes, Mr. Chiang voting no and Ms. Mandel abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Section with the above adjustments, directing the staff to implement a 3 year payment plan.

Avante Apparel & Accessories, Inc., SR AA 11-802145-010; 89000032680

1-1-93 through 12-31-95, $13,521.06

For Petitioner:	Appearance Waived
For Sales and Use Tax Department:	Kevin Hanks, Hearing Representative

Contribution: Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether the evidence shows that the audited taxable sales are excessive.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and duly carried, Mr. Andal, Mr. Parrish, Mr. Klehs, Ms. Mandel voting yes and Mr. Chiang not participating, the Board ordered that the petition be redetermined in accordance with the revised Appeals Section recommendation.

Chevron U.S.A., Inc., SR BH 18-602500-070, -080, -090, -0A0; 89000227860, 89000227870, 89000227880, 89000227450

7-1-85 through 12-31-90, $220,279.56

For Petitioner:	Appearance Waived
For Sales and Use Tax	Sharon Jarvis, Counsel

Department:

Contribution: Disclosures pursuant to Government Code Section 15626: No disqualifying contributions were disclosed.

Issue: Whether petitioner is entitled to exemption for sales of jet fuel under Revenue and Taxation Code section 6385 (as it read prior to the June 30, 1991 amendment).

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Andal, Mr. Parrish, Mr. Klehs, Mr. Chiang voting yes and Ms. Mandel not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Section. Minute Man Vending, Inc., SZ JH 19-680569-010; 89000266060

10-1-90 through 3-31-93, $14,311.42

Axel Hillebrandt, SZ JH 99-411475-010; 89002240520

4-1-93 through 6-30-93, $2,460.70, $273.18

For Petitioner:	Axel Hillebrandt, President/Owner
	George Lamaison, Accountant
For Sales and Use Tax Department:	Kevin Hanks, Hearing Representative

Contribution: Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether audited taxable sales were established in accordance with the facts.

Whether relief from the negligence penalty is warranted.

Whether the corporation is entitled to a refund or the sole proprietor is entitled to an offset.

Whether the refund or overpayment is warranted based on erroneous advice from the Board.

Action: Upon motion of Mr. Parrish, seconded by Mr. Andal and unanimously carried, Mr. Andal, Mr. Parrish, Mr. Klehs, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the negligence penalty be deleted.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish, Mr. Klehs, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined with adjustments and supported the appellant's filing of a Board of Control claim. Ms. Mandel did not participate in the Board of Control claim.

Clayton Howard Au (Deceased), SR BHA 19-713597-010; 89000272030

1-1-95 through 3-31-98, $47,120.75

For Petitioner:	Terry Au, Petitioner's Wife
For Sales and Use Tax Department:	Kevin Hanks, Hearing Representative

Contribution: Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether the evidence shows that some of the taxable sales included in the measure of tax were in fact reported as taxable on petitioner's sales and use tax returns.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish, Mr. Klehs, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the disputed measure be reduced by 50% based on staff's recommendation.

Richard Brian Powers, SR CH 21-763169-020; 89000327470

1-1-97 through 12-31-97, $1,592.00

For Petitioner:	Richard B. Powers, Owner
	Charles D. Crawford, Witness
	Sandra Sandell, Witness
For Sales and Use Tax Department:	Jeffrey Graybill, Counsel

Contribution: Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether Business and Professions Code section 16102 (Section 16102) exempts the otherwise taxable retail sales of petitioner, an honorably discharged United States Marine Corps veteran, from sales tax.

Whether the applicable statutes of the Sales and Use Tax Law, as applied to petitioner, are unconstitutional under the First and Fourteenth Amendments to the United States Constitution.

Action: Mr. Parrish moved to grant the petition, seconded by Mr. Andal but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang and Ms. Mandel voting no, Mr. Klehs not voting.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried. Mr. Andal, Mr. Parrish, Mr. Klehs, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 12:05 p.m. and reconvened at 2:10 p.m. with Mr. Andal, Mr. Parrish, Mr. Chiang, and Ms. Mandel present.

BUSINESS TAXES HEARINGS

John H. Kimo, Inc., SN BH 52-006159-010; 89000965800

7-1-94 through 10-31-95, $10,615.97

Kimo J. Cochran, SR BH 97-196208-010; 89002074000

11-1-95 through 6-30-97, $7,736.28

For Petitioner:	Kimo J. Cochran, Owner/President
	Joseph B. Zaarour, Accountant
For Sales and Use Tax Department:	Kevin Hanks, Hearing Representative

Contribution: Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether the evidence supports reductions in the audited costs of goods sold.

Whether the evidence supports reductions of the markups to reflect discounted selling prices during "Happy Hour".
Mr. Klehs entered the Boardroom during discussion of this petition.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the disputed measure of tax be reduced by 35%.

Ray's Is The Place, SR KH 97-121701-010; 89002060790

4-1-95 through 12-31-96, $12,929.29

For Petitioner:	Zouhair Younam, President
For Sales and Use Tax Department:	Kevin Hanks, Hearing Representative

Contribution: Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

author Connell

TO THE MEMBERS OF THE CALIFORNIA BOARD OF EQUALIZATION,

The Genius of Business & Professions Code 16102

"Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefor." B&P Code 16102

Reason for Establishment: If for some reason a law is not clear by the text (which is again quite clear), then we need to look at the original intent behind the law.

". . . the most Universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it; or the cause which moved the legislator to enact it." 1 William Blackstone Commentaries 61

When reading the plain intent and taking into consideration the application of this law upon the persons it was designed to effect, we must consider several salient facts. First, when it comes to the defense of the country, there are those who will fight abroad hand to hand and engage the enemy directly. Then, there are those who remain home and often, pay greater taxes in support of the war. It is also noted, that many who go off to War are not going to come back. It is they who will bear the greatest burden. Not only will they and their heirs be deprived of all future earning potential, but also of the very existence of that person. Further, the effects of war often go on to burden the individual who went to war in many ways. This is not disputed by either side (if I may so presume).

Many veterans of conflicts experience loss of limbs mental anguish and sometimes shock from such extraordinary circumstances as only War tends to cause. People who have been in such conflicts often end up tuning out of society altogether. Not only is this a problem to them, but it is a problem for us since they once again live among us. There is a compelling state interest in having such individuals reintroduced to society.

Board Proceedings Sacr Directors

Special Notice

STATE BOARD OF EQUALIZATION

450 N STREET
SACRAMENTO, CA 95814

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BOE WEBSITE AND BOARD MEMBER CONTACT INFORMATION
www.boe.ca.gov

CUSTOMER SERVICE CENTER
1-800-400-7115

TTY
711

Tax Repayment Available for Qualified Itinerant Veteran Vendors

If you are a qualified itinerant veteran vendor, you may receive a repayment of sales tax, interest, and penalties you paid to the Board of Equalization (BOE) from April 1, 2002 to March 31, 2010. You must have been a qualified itinerant veteran vendor at the time the sales were made. This repayment only applies to sales in which you did not collect sales tax reimbursement from your customers. The repayment amount you receive will be reduced by any amounts that were previously refunded, credited, or paid to you.

Who qualifies for the repayment?

Qualified itinerant veteran vendors are generally those who

- were honorably discharged from the United States Armed Forces;
- are sole proprietors with no employees;
- have no permanent place of business in this state; and
- are unable to obtain a livelihood by manual labor due to a service related disability.

Examples of qualified itinerant veteran vendors include:

Swap meet or flea market vendors, lunch wagon operators, caterers, and coffee cart providers.

Examples of goods and services commonly sold by qualified itinerant veteran vendors include:

Meals, firewood, fireworks, automotive tools, home repair services, and mobile windshield repairs.

What do I need to do?

If you qualify for a repayment of tax paid, complete and submit BOE-101, *Claim for Refund or Credit* to the BOE before January 1, 2016. This form is located on the BOE website at *www.boe.ca.gov* under the Forms & Pubs tab.

Refund requests will be considered for payments of sales tax, interest, and penalties on sales of items for $100 or less (excluding alcoholic beverages) made between April 1, 2002, and March 31, 2010. Refunds will not be issued before January 1, 2016. The law places a limit on the total amount of money available to make repayments. Therefore, if the amount of approved claims exceeds the authorized limit, the BOE will prorate the repayment amounts due to each qualified veteran.

How do I obtain more information?

For more information, please see Assembly Bill 919, Ch. 643 (2014). You may also call our Customer Service Center at 1-800-400-7115 (TTY:711). Customer service representatives are available to assist you weekdays from 8:00 a.m. to 5:00 p.m., (Pacific time), except state holidays.

Monetarial extraction center 916 445 2841

DECEMBER 2014
L-399

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

California Copy Certification by Document Custodian

I, Richard Brian Powers, hereby swear (or affirm) that the foregoing
Name of Document Custodian (Printed)
(attachment) is a true and complete photocopy made by me of the document titled
DD 214 MC Honorable.
Name of Original Document

Richard B Powers — 514 Lexington Ave, Apt D El Cerrito, Ca 94530
Signature of Document Custodian — Address

State of California
County of Contra Costa } s.s.

Subscribed and sworn to (or affirmed) before me on this 20th day of January, 2015, by Richard Brian Powers, proved to me on the basis of satisfactory evidence to be the person who appeared before me.
Month
Name of Document Custodian (Printed)

Kim A Hauber
Signature of Notary Public

Kim A Hauber
For other required information (Notary Name, Commission No. etc.)

KIM A. HAUBER
COMM. #1977439
NOTARY PUBLIC • CALIFORNIA
ALAMEDA COUNTY
Commission Expires MAY 6, 2016

Seal

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this jurat to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The certificate is attached to a document titled/for the purpose of

Copy of DD 214 MC Honorable release from Active Duty

containing 2 pages, and dated n/a

Additional Information

Method of Affiant Identification

Proved to me on the basis of satisfactory evidence:
○ form(s) of identification ○ credible witness(es)

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

Other

☐ Affiant(s) Thumbprint(s) ☐ Describe: _____

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THIS IS AN IMPORTANT RECORD
SAFEGUARD IT.

PERSONAL DATA

1. LAST NAME-FIRST NAME-MIDDLE NAME: POWERS, Richard Brian
2. SERVICE NUMBER: 2217490
4. DEPARTMENT, COMPONENT AND BRANCH OR CLASS: USMC
5a. GRADE, RATE OR RANK: LCPL
b. PAY GRADE: (E-3)
6. DATE OF RANK: 01 Jul 1967
7. U.S. CITIZEN: [X] YES [ ] NO
8. PLACE OF BIRTH (City and State or Country): Gloucester, Massachusetts
9. DATE OF BIRTH: DAY 11 MONTH Apr YEAR 1947

SELECTIVE SERVICE DATA

10a. SELECTIVE SERVICE NUMBER: 30 88 47 928
b. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY, STATE AND ZIP CODE: Local Board No. #88 Federal Building Room 208, 121 Ellicott St. Buffalo, New York 14203
c. DATE INDUCTED: DAY / MONTH N/A / YEAR

TRANSFER OR DISCHARGE DATA

11a. TYPE OF TRANSFER OR DISCHARGE: Released from Active Duty
b. STATION OR INSTALLATION AT WHICH EFFECTED: Marine Corps Base, Camp Pendleton, California
c. REASON AND AUTHORITY: "202" Expiration of Enlistment Paragraph 13258 MCPM & MCO 1900.2E
d. EFFECTIVE DATE: DAY 12 MONTH Apr YEAR 1968
12. LAST DUTY ASSIGNMENT AND MAJOR COMMAND: ServCo, 13thEngrBn,5thMarDiv,CamPen,Calif.
13a. CHARACTER OF SERVICE: HONORABLE
b. TYPE OF CERTIFICATE ISSUED: None
14. DISTRICT, AREA COMMAND OR CORPS TO WHICH RESERVIST TRANSFERRED: Marine Corps Automated Services Center, 1500 E. Bannister Rd., Kansas City, Missouri 64131
15. REENLISTMENT CODE: RE-1

SERVICE DATA

16. TERMINAL DATE OF RESERVE/UMT&S OBLIGATION: DAY 29 MONTH Dec YEAR 1971
17. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION
a. SOURCE OF ENTRY: [X] ENLISTED (First Enlistment) [ ] ENLISTED (Prior Service) [ ] OTHER [ ] REENLISTED
b. TERM OF SERVICE (Years): 2
c. DATE OF ENTRY: DAY 13 MONTH Apr YEAR 1966
18. PRIOR REGULAR ENLISTMENTS: None
19. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SVC: PVT(E-1)
20. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State): Buffalo, New York
21. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County, State and ZIP Code): [redacted], [redacted], Erie, New York 14150

22. STATEMENT OF SERVICE		YEARS	MONTHS	DAYS
a. CREDITABLE FOR BASIC PAY PURPOSES	(1) NET SERVICE THIS PERIOD	02	00	00
	(2) OTHER SERVICE	00	03	13
	(3) TOTAL (Line (1) plus Line (2))	02	03	13
b. TOTAL ACTIVE SERVICE		02	00	00
c. FOREIGN AND/OR SEA SERVICE		00	00	00

23a. SPECIALTY NUMBER & TITLE: 1121 Plumb&WtrSupMan
b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER: 862.381 Plumber

24. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED
Rifle Marksman's Badge
National Defense Service Medal
Meritorious Mast

25. EDUCATION AND TRAINING COMPLETED
High School-4years
Plumb&WtrSupMan course at 1st ScolCo,MCES,MCB,CamLej for 5 weeks completed in 1966
Red Cross Senior Course on Lifesaving & Water Safety at CamPen for 2 wks completed in 1966
MCI course in Water Supply completed in 1967
MCI course on the Slide Rule 13.33B completed in 1967
MCI course on the Marine Noncommissioned Officer 03.3D completed in 1967

VA AND EMP. SERVICE DATA

26a. NON-PAY PERIODS/TIME LOST (Preceding Two Years): None
b. DAYS ACCRUED LEAVE PAID: Twenty one (21) Days Due
27a. INSURANCE IN FORCE (NSLI or USGLI): [ ] YES [X] NO
b. AMOUNT OF ALLOTMENT: $ N/A
c. MONTH ALLOTMENT DISCONTINUED: N/A
28. VA CLAIM NUMBER: c. None
29. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE: [X] $10,000 [ ] $5,000 [ ] NONE

REMARKS

30. REMARKS
25 Continued
Course on Psychology 1A at Chapman College, Orange,Calif., completed in 1967 - 3 credit hours

Good Conduct Medal Period Commences: 13 April 1966

AUTHENTICATION

31. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County, State and ZIP Code): [redacted] Grand Island, New York 14072
32. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED: Richard B. Powers
33. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER: L. A. TAYLOR,CAPTAIN,USMC-COMMANDING OFFICER
34. SIGNATURE OF OFFICER AUTHORIZED TO SIGN: L. A. Taylor