

Tuesday, November 14, 2017

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:33 a.m., with Ms. Harkey, Chairwoman, Ms. Ma and Mr. Horton present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Sergeant Authurine “Bunny” Clay, Army National Guard and Tax Technician, Field Operations Department, Culver City District Office.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Rhythmic Ascension, LLC, 984387

2012, \$736.00 Claim for Refund

For Appellant:

LaMonté Howard, Taxpayer

For Franchise Tax Board:

Maria Brostehous, Tax Counsel

Marguerite Mosnier, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has established reasonable cause for the late filing of its return as a basis for abatement of the late filing penalty imposed under Revenue and Taxation Code (R&TC) section 19172.

Whether appellant has established reasonable cause for the late payment of tax as a basis for abatement of the late payment penalty under R&TC section 19132.

Action: Ms. Harkey moved to reverse the action of the Franchise Tax Board. The motion failed for lack of a second.

Upon motion of Ms. Stowers, seconded by Ms. Ma and duly carried, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, Ms. Harkey voting no, Mr. Runner absent, the Board sustained the action of the Franchise Tax Board.

Thomas D. McMillin, 997713

2014, \$137,130.00 Tax, \$34,282.50 Late-Filing Penalty, \$38,464.75 Demand Penalty, \$79.00 Filing Enforcement Fee

For Appellant:

Thomas D. McMillin, Taxpayer

For Franchise Tax Board:

Mira Patel, Tax Counsel

Marguerite Mosnier, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has shown reasonable cause for his failure to respond to the notice and demand.

Whether appellant has shown that the filing enforcement fee was improperly imposed.

Appellant’s Exhibit: Notice of Action Cover Sheet ([Exhibit 11.1](#))

Action: Upon motion of Mr. Horton, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, Mr. Runner absent, the Board sustained the action of the Franchise Tax Board.

Exhibits to these minutes are incorporated by reference.

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The Board recessed at 10:35 a.m. and reconvened at 10:41 a.m. with Ms. Harkey, Ms. Ma, Mr. Horton and Ms. Stowers present.

Leslie's Holdings, Inc. & Subs., 955278

2007, \$563,522.00 Claim for Refund

2008, \$656,661.00 Claim for Refund

2010, \$834,014.00 Claim for Refund

For Appellant:

Steve Weddell, Taxpayer

Brook Hicks, Taxpayer

Kathy Freeman, Representative

Alan Bollinger, Representative

Ronald Cox, Representative

For Franchise Tax Board:

Laura Taing, Tax Counsel

Craig Swieso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether interest expense incurred by appellant is properly classified as business or nonbusiness income.

Action: Upon motion of Mr. Horton, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board submitted the appeal for decision.¹

The Board recessed at 12:24 p.m. and reconvened at 1:36 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

Bank of America Corporation and its Affiliates, 983272

2008, \$5,692,009.00 Claim for Refund

For Appellants:

Davis Belk, Witness

Lauren Hood, Witness

Larry Smilie, Witness

Derick Brannan, Representative

Karen Mirandi, Representative

Jon Sperring, Representative

For Franchise Tax Board:

Thomas Lo Grossman, Tax Counsel

Craig Swieso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether dividend income received from appellant's investment in China

Construction Bank constitutes business income.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 11.2](#))

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 11.3](#))

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and duly carried, Ms. Harkey, Mr. Runner, Ms. Ma and Mr. Horton voting yes, Ms. Stowers voting no, the Board reversed the action of the Franchise Tax Board.

¹ The Board continued this matter November 15, 2017

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The Board recessed at 3:13 p.m. and reconvened at 3:29 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board made the following orders:

Scott Ray James, II, 653261 (DF)

04/01/08 to 06/01/09, \$72,223.38 Tax, \$8,513.02 Late Payment/Late Filing Penalty

Action: Redetermine as recommended by the Appeals Bureau.

Larry Shaw Auto Sales, Inc., 717614 (DF)

10/01/07 to 12/31/11, \$6,900.84 Tax

Action: Redetermine as recommended by the Appeals Bureau.

Bhopinder Singh Sandhu, 804558 (GH)

04/01/10 to 03/31/13, \$62,489.80 Tax, \$6,248.98

Action: Redetermine as recommended by the Appeals Bureau.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board made the following orders:

Shainaaz Ali and Zain Ali, 976062

2010, \$2,243.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Robert Carrillo and Christine Carrillo Wells, 911144

1998, \$3,346.28 Tax

1999, \$9,835.09 Tax

2000, \$859.77Tax

Action: Modify the action of the Franchise Tax Board.

Susan B. Chick and Michael M. Lawrence, 941619

2006, \$16,023.00 Tax, \$3,204.60 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

Sharee Clark, 947307

2014, \$1,584.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Pamela R. Davis, 943811

2011, \$527.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Fortunato R. Delacruz and Yolanda C. Delacruz, 869343

2012, \$1,907.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Frank Eller and Susan Pennington, 937910

2011, \$990.78 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Imelda Fierro De Mendoza, 956590

2015, \$1,114.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michael J. George and Donya L. George, 823463

2008, \$7,987.00 Tax

2009, \$17,379.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Gary M. Grimm and Ginger Grimm, 981856

1996, \$6,167.33 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Curt F. Hennecke, 862025

2012, \$12,075.00 Assessment, \$3,030.75 Filing Penalty, \$82.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board.

Wallace A. Little and Nina L. Shaw, 801799

2008, \$3,254.00 Tax

Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

Minghwa Ou and Davina Ou, 947470

2011, \$762.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Rolando A. Panganiban and Paula P. Panganiban, 937418

2010, \$3,920.00 Assessment

Action: Sustain the action of the Franchise Tax Board as modified by its concessions.

Gary J. Preston, 924933, 943531

2013, \$1,330.00 Claim for Refund

2014, \$412.33 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Clifton Rose, 951284

2005, \$2,076.00 Tax, \$521.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

Chriss W. Street, 946247

2007, \$57,300.00 Tax, \$11,460.00 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Viewer Reviews, Inc., 936109, 948087

2013, \$2,489.96 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Mark Yapelli, 954404

2010, \$396.00 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

LEGAL APPEALS PROPERTY TAXES MATTERS, CONSENT

With respect to the Legal Appeals Property Taxes Matters, Consent Agenda, upon a single motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Mr. Horton voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board made the following orders:

Petition for Penalty Abatement on Unitary Value

Smart City Networks, LP (2099), 1014921

2017, \$911,000.00 Penalty

Action: Deny the petition for penalty abatement on 2017 unitary value as recommended by the Appeals Bureau. Ms. Stowers not participating in accordance with Government Code section 7.9.

Petition for Reassessment and Penalty Abatement on Unitary Value

Fireline Network Solutions, Inc. (8199), 1017405

2017, \$525,000.00 Unitary Value, \$52,500.00 Penalty

Action: Deny the petition for reassessment and approve penalty abatement on 2017 unitary value as recommended by the Appeals Bureau. Ms. Stowers not participating in accordance with Government Code section 7.9.

LEGAL APPEALS MATTER, ADJUDICATORY

Key Events, Inc., 600095 (BH)

07/01/01 to 12/31/09, \$52,313.03 Tax, \$887.18 Amnesty Interest Penalty

Key Events, Inc., 953675 (BH)

04/01/10 to 07/31/14, \$40,615.76 Tax

Considered by the Board: August 30, 2017, Memorandum Opinion

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Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Runner, seconded by Ms. Ma and duly carried, Ms. Harkey, Mr. Runner and Ms. Ma voting yes, Mr. Horton and Ms. Stowers voting no, the Board adopted the Memorandum Opinion as presented by staff.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Charles Harper, 942651

2009, \$486,316.00 Assessment

Considered by the Board: June 20, 2017

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board adopted a decision denying the petition for rehearing.

Andre Jackson, 876260

2012, \$8,177.00 Tax, \$2,044.25 Late Filing Penalty, \$2,044.25 Demand Penalty, \$78.00 Filing Enforcement Fee

Considered by the Board: June 20, 2017

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board adopted a decision denying the petition for rehearing.

Marshall Reddick, 827716

2003, \$86,454.00 Tax, \$36,795.00 Noneconomic Substance Penalty, \$39,279.98 Interest-Based Penalty

2004, \$403,617.00 Tax, \$161,447.00 Noneconomic Substance Penalty, \$159,240.24 Interest-Based Penalty

2005, \$552,003.00 Tax, \$199,365.00 Noneconomic Substance Penalty, \$179,661.57 Interest-Based Penalty

2006, \$259,170.00 Tax, \$96,095.00 Noneconomic Substance Penalty, \$60,876.18 Interest-Based Penalty

Considered by the Board: June 20, 2017

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Harkey moved to grant the petition for rehearing. The motion failed for lack of a second.

Mr. Horton moved to deny the petition for rehearing. Mr. Horton withdrew his motion.

Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board granted the petition for rehearing.

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Fuscoe Engineering, Inc., 668149

2003, \$7,369.00 Claim for Refund

2004, \$5,414.00 Claim for Refund

2005, \$6,660.00 Claim for Refund

2006, \$53,091.00 Claim for Refund

Eric Armstrong and Nancy Armstrong, 668151

2004, \$9,499.00 Claim for Refund

2005, \$10,157.00 Claim for Refund

2006, \$12,077.00 Claim for Refund

John Olivier and Cynthia Olivier, 668188

2004, \$9,845.00 Claim for Refund

2005, \$13,469.00 Claim for Refund

2006, \$14,686.00 Claim for Refund

Raymond S. Tokihiro and Thu Cuc, 668193

2005, \$8,919.00 Claim for Refund

2006, \$9,789.00 Claim for Refund

Patrick R. Fuscoe and Bonnie K. Fuscoe, 668203

2003, \$97,643.00 Claim for Refund

2004, \$136,848.00 Claim for Refund

2005, \$177,628.00 Claim for Refund

2006, \$192,270.00 Claim for Refund

Considered by the Board: July 27, 2017

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and duly carried, Ms. Harkey, Ms. Ma and Mr. Horton voting yes, Ms. Stowers voting no, Mr. Runner not participating, the Board adopted a decision denying the petition for rehearing.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board made the following orders:

Action: Approve the Board Meeting Minutes of September 26-28, 2017.

Action: Modify the invitation to the annual meeting of the Board and county assessors to convene at 10:00 a.m., and otherwise approve it as recommended by staff ([Exhibit 11.4](#)).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

David J. Gau, Executive Director, provided a report regarding the status of pending and upcoming organizational issues.

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BOARD MEMBER REQUESTED MATTERS

Dissenting Opinion on the Appeal of Shawn Victor Bachor, 771334 (Mr. Horton)

Mr. Horton made introductory remarks regarding his Dissenting Opinion on the appeal of *Shawn Victor Bachor, 771334*, to be published with the Board's Memorandum Opinion on the matter. Ms. Stowers stated for the record that the Controller's Office will be joining Mr. Horton in this Dissenting Opinion.

Dissenting Opinion on the Appeal of Key Events, Inc., 600095, 953675 (Mr. Horton)

Mr. Horton made introductory remarks regarding his Dissenting Opinion on the appeal of *Key Events, Inc., 600095, 953675*, to be published with the Board's Memorandum Opinion on the matter. Ms. Stowers stated for the record that the Controller's Office will be joining Mr. Horton in this Dissenting Opinion.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 4:03 p.m. and reconvened immediately in closed session with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

CLOSED SESSION

The Board met to discuss personnel matters (Gov. Code § 11126(a)).

The Board recessed at 4:14 p.m. and reconvened immediately in open session with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

The Board recessed at 4:16 p.m.

The foregoing minutes are adopted by the Board on January 25, 2018.

Note: The following matters were removed from the calendar prior to the meeting: *Daryl L. Ver Doorn and Cathy A. Ver Doorn, 924161; Leonard C. Rogers and Mary Ann Rogers, 863414; and, Jonathan D. Bergman and Myrna J. Bergman, 861156; and, Isaac M. Bergman and Adriane Bergman, 861157.*

Wednesday, November 15, 2017

The Board met at its offices at 5901 Green Valley Circle, Culver City at 9:37 a.m., with Ms. Harkey, Chairwoman, Mr. Runner, Vice Chair, Ms. Ma and Mr. Horton present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Home Fashion Expo, 733640 (RC)

10/01/08 to 06/30/12, \$38,250.12 Tax

For Petitioner:

Ahmed S. Owainat, Taxpayer

For Business Tax and Fee Department:

Nenita DeLaCruz, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether further adjustments are warranted to the unreported taxable measure.
Whether adjustments are warranted to the measure of unreported district taxes.
Whether petitioner is entitled to relief of interest.

Action: Upon motion of Mr. Runner seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the petition be submitted for decision.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD NOVEMBER 14, 2017

Leslie's Holdings, Inc. & Subs, 955278

Final Action: Mr. Runner moved to modify the action of the Franchise Tax Board to allow 16 percent of the \$310 million loan as a deductible business expense. The motion was seconded by Ms. Harkey but no vote was taken.

Upon motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board deferred consideration of the matter to later in the day.

SALES AND USE TAX APPEALS HEARINGS

Joseph M. Comella, 631065 (SO)

07/01/08 to 03/31/09, \$00.00 Tax, \$1,045.40 Late-Payment/Filing Penalty, \$528.97 Finality Penalty

Linda M. Comella, 631066 (SO)

07/01/08 to 03/31/09, \$00.00 Tax, \$1,045.40 Late-Payment/Late Filing Penalty, \$528.97 Finality Penalty

For Petitioners:

Joseph M. Comella, Taxpayer

Linda M. Comella, Taxpayer

For Business Tax and Fee Department:

Joseph Boniwell, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether relief of the late-payment penalty assessed against Final Score Food & Beverage Co., Inc. (Final Score) and included in petitioner's liability pursuant to Revenue and Taxation Code section 6829 is warranted.

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Whether further relief of interest is warranted.

Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the penalties be deleted; 56 months of interest be relieved for the periods of April 1, 2010 through June 30, 2012, March 1, 2012 through July 31, 2012, December 1, 2012 through November 30, 2013, and January 1, 2015 through December 31, 2015; and, that the petition otherwise be redetermined as recommended by the Appeals Bureau. The Board directed staff to inform the taxpayer of the Offer in Compromise program.

Belle Du Jour, Inc., 837270 (AA)

10/01/10 to 09/30/13, \$22,503.61 Tax, \$00.00 Penalty

For Petitioner:

Kristen Dee Trattner, Taxpayer

Haig Keledjian, Attorney

For Business Tax and Fee Department:

Nenita DeLaCruz, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether additional adjustments are warranted to the unreported taxable sales.

Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the petition be granted and the tax be redetermined accordingly.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD NOVEMBER 14, 2017

Leslie's Holdings, Inc. & Subs, 955278 (Continued)

Final Action: Upon motion of Ms. Stowers, seconded by Mr. Runner and duly carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton voting no, the Board modified the action of the Franchise Tax Board to allow 16 percent of claimed interest as business interest.¹

The Board recessed at 12:35 p.m. and reconvened at 1:43 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

Leslie's Holdings, Inc. & Subs, 955278 (Continued)

Final Action: Upon motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board rescinded its prior vote.

Upon motion of Ms. Stowers, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board modified the action of the Franchise Tax Board to allow 16 percent of claimed interest as business interest.

¹ The Board rescinded this action later in the day.

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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
NOVEMBER 15, 2017**

Home Fashion Expo, 733640 (RC)

Final Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered to allow a 15 percent adjustment to purchases of floor covering to account for tax-paid purchases consumed on construction contracts, and that the petition otherwise be redetermined as recommended by the Appeals Bureau.

SALES AND USE TAX APPEALS HEARINGS

Ayad Sami Alawneh, 716716, 839883, 840041 (FH)

10/01/09 to 12/31/09, \$36,480.51 Tax \$9,181.60 Fraud Penalty

07/01/05 to 09/30/09, \$523,538.94 Tax, \$130,884.80 Fraud Penalty

01/01/10 to 12/31/12, \$441,623.97 Tax, \$110,406.03 Fraud Penalty

For Petitioner: Ehab Alawneh, Representative

For Business Tax and Fee Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether any further adjustments to the amount of unreported taxable sales are warranted.

Whether there is clear and convincing evidence to support the imposition of the 25-percent penalty for fraud or intent to evade the payment of tax.

Action: Upon motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Bureau.

G3 Mastering Solutions, Inc. 549262 (AA)

10/01/06 to 09/30/09, \$53,262.43 Tax

For Petitioner: Hong (Michael) Ye, Representative

For Business Tax and Fee Department: Kevin Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments to the amount of disallowed claimed nontaxable sales for resale are warranted.

Action: Ms. Harkey moved to accept resale certificates from AWA DVD and Nordex Technology, Inc. The motion failed for lack of a second.

Ms. Harkey moved to accept resale certificates from AWA DVD and Nordex Technology, Inc., and remove these two due to resale in fact, and that the petition otherwise be redetermined as recommended by the Appeals Bureau. The motion was seconded by Mr. Runner. Ms. Harkey withdrew her motion.

Upon motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that resale certificates from AWA DVD and Nordex Technology, Inc., be removed from the audit based on resale in fact and industry practice, and that the petition otherwise be redetermined as recommended by the Appeals Bureau.

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The Board recessed at 2:54 p.m.

The foregoing minutes are adopted by the Board on January 25, 2018.

Note: The following matters were removed from the calendar prior to the meeting: *Rashad Sons, Inc., 739287; Treasure Box, Inc., 562424; and, Isaac Pete Gharibeh, 469663.*

Thursday, November 16, 2017

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Ms. Harkey, Chairwoman, Mr. Runner, Vice Chair, Ms. Ma and Mr. Horton present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Tea Drop, Inc., 924359 (AP)

01/01/11 to 12/31/13, \$25,264.39 Tax

For Petitioner:

Marc Brandeis, Representative

Greg Reynolds, Representative

For Business Tax and Fee Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments to the amount of unreported taxable sales are warranted.

Action: Upon motion of Ms. Ma, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the petition be granted and the tax be redetermined accordingly.

Newport Jewelers by Gabe Arik Corp., 757324, 796213 (AA)

01/01/09 to 12/31/12, \$272,642.11 Tax, \$27,264.24 Finality Penalty

For Petitioner/Claimant:

Daniel Arik, Taxpayer

Steve Mather, Attorney

For Business Tax and Fee Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether additional adjustments to the amount of unreported taxable sales are warranted.

Whether a reduction is warranted to the amount of disallowed claimed nontaxable sales for resale.

Whether a reduction is warranted to the amount of disallowed claimed exempt sales in interstate commerce.

Action: Mr. Runner moved to grant the administrative protest and claim for refund. The motion was seconded by Ms. Harkey. Mr. Runner withdrew his motion.

Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the administrative protest (Case ID: 757324) be granted and the tax be redetermined accordingly.

Upon motion of Mr. Runner, seconded by Ms. Harkey and duly carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton voting no, the Board found that the claims for refund (Case ID: 796213) were timely and therefore grants the refund of all payments in full.

The Board recessed at 11:45 a.m. and reconvened at 11:56 a.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

Thursday, November 16, 2017

Access San Diego, LLC, 624311 (FH)

01/01/01 to 12/31/09, \$473,064.05 Tax, \$612.21 Amnesty Interest Penalty

For Petitioner:

Christopher H. Lee, Taxpayer

Priscilla A Burpee, Representative

Jesse McClellan, Attorney

For Business Tax and Fee Department:

Kevin Smith, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether additional adjustments to the measure of unreported taxable sales are warranted.

Action: Mr. Runner moved to grant the petition based upon the decision in the appeal of *Key Events*. Ms. Harkey offered an amendment to grant the petition based upon the acknowledgment of both the Appeals Bureau and the Department that this case falls under the presidential opinion in the appeal of *Key Events*, which was adopted by the Board. The amended motion was seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner and Ms. Ma voting yes, Mr. Horton and Ms. Stowers abstaining.

The Board recessed at 12:22 p.m. and reconvened at 1:05 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

D & H Distributing, 916046, 977893, 997311 (OH)

04/01/08 to 03/31/11, \$4,807,552.93 Tax

For Petitioner/Claimant:

Ernie Meisel, Representative

Robert Miller, Representative

Marty Dakessian, Attorney

Lucian Khan, Attorney

Ruben Sislyan, Attorney

For Business Tax and Fee Department:

Scott Claremon, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether additional adjustments to the measure of disallowed claimed nontaxable sales are warranted.

Whether petitioner has established that it is entitled to relief of its liability for the tax on its drop shipment sales due to its reliance on erroneous written advice.

The Board recessed at 2:44 p.m. and reconvened at 3:01 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

D & H Distributing, 916046, 977893, 997311 (OH) (Continued)

Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the petition be submitted for decision.

Thursday, November 16, 2017

Jeremy Daniel Kintner, 606857 (AC)

05/28/09 to 12/31/09, \$48,135.38 Tax, \$19,254.15 Failure to Report Tax Penalty

For Petitioner: Mark Bernsley, Attorney

For Business Tax and Fee Department: Andrew Kwee, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is personally liable for the tax debts incurred by suspended corporation H.K. Architectural Supply.

Whether additional adjustments to the amount of liability assessed against petitioner are warranted.

Whether BTFD has established fraud by clear and convincing evidence, such that the 40-percent penalty for failure to report sales tax for which reimbursement has been collected is applicable.

Action: Ms. Harkey moved to remove the fraud penalty, and that the petition otherwise be redetermined as recommended by the Appeals Bureau. The motion failed for lack of a second.

Upon motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Bureau.

Doomid, Inc., 416893, 552763 (DF)

04/01/05 to 09/30/08, \$118,830.40 Tax, \$00.00 Penalty

04/01/05 to 09/30/08, \$67,859.00 Claim for Refund

For Petitioner/Claimant: Shawn Nazari, Representative

For Business Tax and Fee Department: Nenita DeLaCruz, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether additional adjustments to the amount of unreported taxable sales are warranted.

Whether petitioner has made an overpayment of \$67,859, representing prepayments of sales tax on sales of diesel fuel that petitioner was unable to collect from the purchaser.

Action: Upon motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board continued the hearing to the December 2017 Sacramento meeting.

Doomid, Inc., 626011, 681012 (DF)

01/01/09 to 06/30/12, \$492,441.57 Tax, \$49,244.17 Negligence Penalty

01/01/09 to 06/30/12, \$532.00 Claim for Refund

For Petitioner/Claimant: Shawn Nazari, Representative

For Business Tax and Fee Department: Nenita DeLaCruz, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether further adjustments are warranted to the amount of unreported taxable sales.

Whether petitioner was negligent.

Action: Upon motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board continued the hearing to the December 2017 Sacramento meeting.

Thursday, November 16, 2017

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
NOVEMBER 16, 2017**

D & H Distributing, 916046, 977893, 997311 (OH)

Final Action: Ms. Harkey moved to grant relief under Revenue and Taxation Code section 6596 for drop shipments on in-state transactions. The motion failed for lack of a second.

Mr. Runner moved to grant the petition. The motion failed for lack of a second.

Ms. Stowers moved that the petition be redetermined as recommended by the Appeals Bureau. The motion failed for lack of a second.

Ms. Harkey moved to grant relief under Revenue and Taxation Code section 6596 for drop shipments on in-state transactions. The motion was seconded by Mr. Runner but failed to carry, Ms. Harkey and Mr. Runner voting yes, Ms. Ma, Mr. Horton and Ms. Stowers voting no.

Ms. Stowers moved that the petition be redetermined as recommended by the Appeals Bureau. The motion failed for lack of a second.

Upon motion of Ms. Ma, seconded by Ms. Stowers and duly carried, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, Ms. Harkey and Mr. Runner voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Bureau.

The Board adjourned at 5:15 p.m. with Ms. Harkey giving many thanks and appreciation to John Fears and his wonderful team at the Culver City office, Joann Richmond and her Board Proceedings team, the Media Services team, Information Technology staff, the Appeals Bureau, Department staff, Court Reporters, California Highway Patrol Officers and security staff.

The foregoing minutes are adopted by the Board on January 25, 2018.

Note: The following matters were removed from the calendar prior to the meeting: *Branvid, Ltd.*, 495215; and, *Desert Solar, Inc.*, 864800.