

2007 MINUTES OF THE STATE BOARD OF EQUALIZATION

Tuesday, April 24, 2007

The Board met at its offices at 450 N Street, Sacramento, at 9:57 a.m., with Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

[B] CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

B1 Jackie Bolds, 354039

1996, \$28,609.64 Claim for Refund

1998, \$2,288.29 Claim for Refund

1999, \$7.66 Claim for Refund

For Appellant:

Jackie A. Bolds, Taxpayer

Jerrel Bolds, Representative

For Franchise Tax Board:

Suzanne Small, Tax Counsel

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

Issue: Whether appellant's claims for refund for the appeal years are barred by the statute of limitations.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 4.1)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 4.2)

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision which included a concession by the Franchise Tax Board.

B2 Christopher L. Bittman and Kendra J. Noble, 352180

2000, \$152,591.00 Claim for Refund

Konrad S. Rautenberg and Cheryl E. Noriye, 353822

2000, \$42,583.00 Claim for Refund

Stephen J. Cullen, 355266

2000, \$9,880.00 Claim for Refund

William Jurika and Michelle Jurika, 355276

2000, \$709,723.00 Claim for Refund

For Appellant:

Joan E. Low, Representative

For Franchise Tax Board:

Craig Scott, Tax Counsel

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

Issues: Whether appellants filed their claims for refund prior to the expiration of the applicable statute of limitations.

Whether the other state tax credit provisions allow for a refund despite the statute of limitations.

Whether appellants are entitled to equitable relief from the statute of limitations.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 4.3)

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Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

[C] SALES AND USE TAX APPEALS HEARING

C1.a. United Parcel Service, Inc., 98724, 126831, 131381, 153034, 192709, 242411 (OH)

C1.b. United Parcel Service, Inc., 98726, 131383, 131431, 153036, 207917, 242304 (EAA)

C1.c. United Parcel Service, Inc., 272826 (CH)

10-1-97 to 6-30-03, \$5,308,711.00 Tax

For Claimant:

Howard Mantel, Representative

Brenda Fountain, Representative

Bruce Macrae, Representative

Christine Bisauta, Tax Counsel

For Department:

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

Issue: Whether use tax applies to gifts of tangible personal property which the donor, a common carrier, itself delivered from an out-of-state location to donees in this state.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 11:27 a.m. and reconvened at 1:35 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

[C] SALES AND USE TAX APPEALS HEARINGS

C4 Inner Circle Entertainment II, Inc., 283636 (BH)

4-1-00 to 3-31-03, \$39,022.05 Tax

For Petitioner:

Frank Finelli, Taxpayer

For Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether tax applies to petitioner's mandatory services charges invoiced to each banquet customer in addition to charges for food and drinks.

Whether petitioner can be relieved of the sales tax deficiency on mandatory service charges.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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C5 Harry R. Sawl, 298342 (UT)

April 7, 2000, \$28,463.42 Tax, \$2,846.34 Failure to File Penalty

For Petitioner: Harry Sawl, Taxpayer
Frank Tammen, Witness
Lynn Sawl, Witness

For Department: Carla Caruso, Tax Counsel

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

Issues: Whether petitioner purchased the aircraft for use in California.
Whether the determination is barred by the three-year statute of limitations.
Whether petitioner is entitled to relief from the penalty for failure to file a return.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

C6 Anil Kumar Sharma, 318327 (KH)

1-1-02 to 1-31-05, \$35,381.97 Tax, \$00.00 Penalty

For Petitioner: Anil Sharma, Taxpayer
For Department: Kevin Hanks, Hearing Representative

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

Issue: Whether adjustments are warranted for the audited understatement of reported taxable sales.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

[D] SPECIAL TAXES APPEALS HEARING

D1 Cheuk Fung, 209724 (MT)

10-1-94 to 12-31-00, \$75,348.56 Underground Storage Tank Maintenance Fee, \$7,534.86 Failure to Timely Pay Penalty

For Petitioner: Cheuk Fung, Taxpayer
For Department: Robert Tucker, Tax Counsel

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

Issues: Whether petitioner is liable for the UST Fee assessed for the periods in issue.
Whether relief from the 10 percent penalty for failure to timely pay the fees should be granted.

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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PUBLIC HEARINGS

F1 Property Taxes – State Assessee Presentations on the Valuation of State-Assessed Properties

Stanley Siu, Chief, Valuation Division, Property and Special Taxes Department, made introductory remarks regarding the State Assessee's presentations on the valuation of state-assessed properties (Exhibit 4.4).

Speakers: Peter Michaels, Law Office of Peter Michaels

[B-FA] FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD APRIL 24, 2007

B2 Christopher L. Bittman and Kendra J. Noble, 352180
Konrad S. Rautenberg and Cheryl E. Noriye, 353822
Stephen J. Cullen, 355266
William Jurika and Michelle Jurika, 355276

Final Action: Ms. Steel moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu, and Ms. Mandel voting no.

Upon motion of Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu, Mr. Leonard, and Ms. Mandel voting yes, Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

[C-FA] FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD APRIL 24, 2007

C1.a. United Parcel Service, Inc., 98724, 126831, 131381, 153034, 192709, 242411 (OH)

C1.b. United Parcel Service, Inc., 98726, 131383, 131431, 153036, 207917, 242304 (EAA)

C1.c. United Parcel Service, Inc., 272826 (CH)

Final Action: Ms. Chu moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard, Ms. Steel and Ms. Mandel voting no.

Upon motion of Ms. Steel, seconded by Mr. Leonard and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Yee and Ms. Chu voting no the Board ordered that the refund be granted, subject to verification, and the tax be redetermined accordingly.

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C3 Linda Prieto, 288214 (GH)
7-1-00 to 6-30-03, \$4,000.00 Tax

For Petitioner:

Waived Appearance

For Department:

Kevin Hanks, Hearing Representative

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

Issue: Whether the federal income tax returns should be used to establish petitioner's total taxable sales.

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

C4 Inner Circle Entertainment II, Inc., 283636 (BH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

C5 Harry R. Sawl, 298342 (UT)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

[D-FA] FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD APRIL 24, 2007

D1 Cheuk Fung, 209724 (MT)

Final Action: Ms. Steel moved that the failure to timely pay penalty be abated, otherwise redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu, and Ms. Mandel voting no.

Upon motion of Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu, Mr. Leonard, and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 3:22 p.m.

The foregoing minutes are adopted by the Board on June 1, 2007.

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Note: The following case was removed from the calendar prior to the meeting: **C2** *Schilling Robotics, LLC, 295382 (JH)*.