

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION REVISED SUMMARY FOR BOARD HEARING

In the Matters of the Administrative Protest, Claim)
for Refund, and Petition for Redetermination)
Under the Sales and Use Tax Law of:)

ENYINNAYA CHRISTIAN OJOGHO, dba)
Nineties Sporting Goods)

Taxpayer)

Account Number: SR X AS 100-201658
Case ID's 396268, 414889, and 610607

Los Angeles, Los Angeles County

Type of Business: Retailer of sporting goods

Audit period: (Case ID's 396268, 414889) 1/1/97 – 3/31/05;¹ (Case ID 610607) 4/1/02 – 3/31/05

Item	Case ID's 396268 ² , 414889		Case ID 610607	
	Disputed Amount		Disputed Amount	
Unreported taxable sales	\$1,140,978		\$796,701	
Penalties	\$ 44,772		\$ 20,487	
Interest	Unstated		Unstated	
	<u>Tax</u>	<u>Penalties</u>	<u>Tax</u>	<u>Penalties</u>
As determined	\$95,616.84	\$15,703.72	\$65,727.91	\$27,138.46
Add'l penalties added when final		30,144.64		\$1,302.09
Pre-D&R adjustments	- 1,804.89	- 898.15	00.00	00.00
Post-D&R adjustments	<u>00.00</u>	<u>- 178.70</u>	<u>00.00</u>	<u>- 7,953.90³</u>
Balance, protested	<u>\$93,811.95</u>	<u>\$44,771.51</u>	<u>\$65,727.91</u>	<u>\$20,486.65</u>
Adjusted tax	\$93,811.95		\$65,727.91	
Interest through 08/31/14	83,347.43 ⁴		55,623.84	
Negligence penalty	3,010.07		00.00	
Failure-to-file penalty	6,311.67		00.00	
Finality penalty	9,267.24		00.00	
Amnesty double failure-to-file penalty	5,813.80		00.00	
Amnesty double-finality penalty	5,699.75		00.00	
Amnesty interest penalty	14,668.98		1,302.09	
Amnesty double-fraud penalty			6,651.81	
Fraud penalty – 25 percent	00.00		12,377.34	
Fraud penalty – 50 percent	<u>00.00</u>		<u>8,109.31</u>	
Total tax, interest, and penalty	\$221,930.89		\$149,792.30	

¹ The determination did not include an assessment for the period April 1, 2003, through September 30, 2003, due to the expiration of the statute of limitations.

² The Board of Equalization issued a levy to the taxpayer dated July 30, 2014, and thereafter collected \$190,145.93. The collected amount in excess of this liability was applied to other final liabilities.

³ We have recommended conditional relief of amnesty penalties totaling \$7,953.90. However, since the conditions have not been met, we show them in the table below as amounts that will be included in the notice of redetermination.

⁴ This amount is net of \$10,387.32, the amount of interest for the period February 14, 2009, through September 27, 2010, for which we have recommended relief.

1	Payments	- 34,203.56	00.00
2	Balance Due	<u>\$187,727.33</u>	<u>\$149,792.30</u>
3	Monthly interest beginning 09/01/14	<u>\$ 298.04</u>	<u>\$ 328.64</u>

4 The administrative protest and claim for refund (Case ID's 396268 and 414889) were
5 scheduled for Board hearing in June 2011, but were deferred, as requested by the Sales and Use Tax
6 Department (Department), for further review and development. On April 26, 2012, the Department
7 issued a second Notice of Determination (NOD) asserting additional tax and evasion penalties for the
8 period April 1, 2002, through March 31, 2005.⁵ Taxpayer filed a timely petition for redetermination
9 for this second NOD (Case ID 610607). These matters were scheduled for Board hearing in March
10 2014, but were postponed at petitioner's request due to his representative's medical emergency. They
11 were rescheduled for Board hearing in June 2014, but were postponed at petitioner's request due to a
12 scheduling conflict.

13 UNRESOLVED ISSUES

14 **Issue 1:** Whether additional adjustments to the amount of unreported taxable sales are
15 warranted. We find that no further adjustments are warranted.

16 Taxpayer operated sporting goods stores in three locations during the audit period and, in
17 November 1998, started accepting orders through the Internet. The Department found that taxpayer
18 was operating without a seller's permit and issued a permit to him in April 2003, with an effective start
19 date of January 1, 1997. Taxpayer did not file any sales and use tax returns for periods prior to the
20 second quarter of 2003 (2Q03) until May 2005, when he filed amnesty returns for 3Q01 through 4Q02
21 and reported the amounts of sales estimated by the Department at that time in the ongoing audit.
22 Taxpayer's seller's permit was closed effective June 30, 2005, when the business incorporated.
23 According to the website for the successor corporation, Ojogho American Enterprises, Inc., the
24 business has been in operation since 1990.

25 For audit, taxpayer provided limited summary records. Given the lack of detailed records, the

26 _____
27 ⁵ Without regard to whether the finding that taxpayer knowingly operated without a seller's permit or otherwise intended to
28 evade the tax is upheld, the Notice of Determination was timely issued for the period April 1, 2002, through December 31,
2002, under the under the 10-year statute of limitations (Rev. and Tax. Code § 7073, subd. (d)). Absent a finding of fraud,
the determination would not have been timely for the period January 1, 2003, through March 31, 2005.

1 Department decided to prepare a bank deposit analysis to establish audited taxable sales. In the
2 original audit and a subsequent reaudit, the Department assumed that cash deposits represented sales at
3 the store locations and credit card deposits represented internet sales. Under these assumptions, the
4 Department computed taxable store sales of \$609,637 for the three-year period for which bank
5 statements were available, April 1, 2002, through March 31, 2005, and then used the quarterly average
6 of \$16,935 for each of the three locations to compute additional taxable store sales of \$745,140 for the
7 period January 1, 1997, through March 31, 2002. To establish audited taxable internet sales, the
8 Department examined the internet sales summaries that taxpayer provided for a five-year period and
9 computed that 11.97 percent of taxpayer's recorded internet sales were taxable sales.⁶ The Department
10 applied the taxable sales ratio to taxpayer's credit card deposits and computed taxable internet sales of
11 \$283,698 for the audit period. Overall, the Department established audited taxable sales of \$1,638,475
12 (\$609,637 + \$745,140 + \$283,698). After it deducted taxable sales of \$114,342 for the second and
13 third quarters of 2003, which were barred by the statute of limitations, the Department compared
14 adjusted audited taxable sales of \$1,524,133 with reported taxable sales of \$383,155 for the same
15 periods to compute unreported taxable sales of \$1,140,978 upon reaudit.⁷

16 After re-examining the audit and reaudit work papers, the Department concluded that it erred
17 when it failed to consider that a portion of taxpayer's credit card deposits represented in-store sales
18 paid for by credit card. The Department compared total credit card deposits of \$1,122,612 with
19 taxpayer's total recorded internet sales of \$271,629 to compute in-store sales paid by credit card of
20 \$850,983 for the period April 1, 2002, through March 31, 2005. After adjustments to exclude sales tax
21 reimbursement, the Department added audited taxable in-store sales of \$786,127 (paid by credit card)
22 to audited taxable in-store sales of \$609,637 (paid in cash) and audited taxable internet sales of
23 \$30,610 to compute audited taxable sales of \$1,426,374, which exceeded the understatement of
24 \$629,673 previously established for the relevant period by \$796,701.

25
26 ⁶ The Department considered the majority of the sales of items that were shipped outside of California to be exempt sales in
27 interstate commerce. However, the Department noted that, for 28 of the sales of items shipped out of state, taxpayer added
28 sales tax reimbursement to the selling price. The Department included the 28 sales with excess sales tax reimbursement
with the sales of items shipped to California customers when it computed the taxable sales ratio.

⁷ To correct errors in its analysis, the Department completed a reaudit on April 30, 2008, which reduced the audited amount
of unreported taxable sales by \$22,026, from \$1,163,004, to \$1,140,978.

1 Taxpayer contends that audited taxable sales for the period April 1, 2002, through March 31,
2 2005, should be computed by reducing total bank deposits of \$1,732,248 by \$208,361 for nontaxable
3 sales for resale and by \$1,248,588 for exempt sales in interstate commerce, which would result in
4 taxable sales of \$275,299. Since the first determination includes unreported taxable sales of \$427,181
5 for the relevant period, which exceeds taxable sales of \$275,299 computed by taxpayer, he contends
6 that the second determination should be deleted in its entirety.⁸ In support, taxpayer provided sales
7 invoices showing total internet sales of \$1,427,511 for the relevant period. When asked why the
8 internet sales of \$1,427,511 exceed credit card deposits of \$1,122,611 for the same period, taxpayer
9 stated that some of the sales were not completed because orders were cancelled or the credit card
10 charges were reversed due to credit card fraud. Taxpayer states that most of his in-store sales are paid
11 in cash, with only 1.5 percent of credit card deposits representing in-store taxable sales.

12 While taxpayer provided internet sales invoices totaling \$284,442 during the audit and reaudit,
13 he subsequently provided internet sales invoices totaling \$1,427,511, consisting of exempt sales in
14 interstate commerce of \$1,248,588 and taxable sales of \$178,923. We recommend accepting the
15 accuracy of recorded taxable internet sales of \$178,923 for the period April 1, 2002, through March 31,
16 2005. However, while taxpayer's cash deposits represent some of his in-store taxable sales during that
17 period, the records of in-store credit card sales are less clear. We note that the internet sales invoices
18 provided by taxpayer exceed the known credit card deposits for the same period by \$304,900. We
19 therefore find that taxpayer has not provided all of his bank account information, and that his actual
20 gross receipts exceeded his total known bank deposits by an unknown amount. We find that taxpayer
21 did make nontaxable sales for resale to two customers, and taxpayer's exempt sales in interstate
22 commerce were greater than the amount calculated in the audit. However, since the amount of
23 taxpayer's gross receipts is unknown, we conclude that a reduction to the amount of unreported taxable
24 sales would be warranted only if audited taxable sales were shown to be unreasonable.

25
26
27 ⁸ Adjustments for sales tax reimbursement included in the bank deposits would result in taxable sales of \$254,388, which
28 exceed taxpayer's reported taxable sales for the same period by \$55,499. An unknown portion of that understatement is
attributed to taxable sales for the period April 1, 2003, through September 30, 2003, which was not assessed in the audit
due to the expiration of the statute of limitations. Therefore, we are unable to determine the amount of the audited
understatement in the first determination with which taxpayer is in agreement, but conclude that it is relatively minor.

1 To verify that audited taxable sales are reasonable, we subtracted recorded taxable internet
2 sales of \$178,923 for the period April 1, 2002, through March 31, 2005, from audited taxable sales of
3 \$1,426,374 for the same period to compute audited in-store taxable sales of \$1,247,451. We then
4 subtracted audited in-store cash sales of \$609,637 to compute audited in-store credit card sales of
5 \$637,814, which represents 51 percent of the in-store sales. The Department investigated average
6 credit card sales ratios for similar stores in the area and found credit card sales ratios ranging from
7 50 percent to 66 percent or higher. Since the audited credit card sales ratio of 51 percent is near the
8 bottom of this range, we find that audited taxable sales are reasonable and recommend no reduction.

9 **Issue 2:** Whether relief of interest is warranted due to an unreasonable error or delay by an
10 employee of the Board. With respect to the first determination, we recommend relief of interest for the
11 period February 14, 2009, through September 27, 2010. With respect to the second determination, we
12 conclude that no relief of interest is warranted.

13 Regarding the interest applied to the first determination, we recommend relief of interest for the
14 period February 14, 2009, through September 27, 2010, based on our finding that assigning the case to
15 four different attorneys in the Appeals Division to issue a D&R during that period resulted in an
16 unreasonable delay. In the supplemental D&R for this appeal, we concluded that the delay from the
17 date the case was assigned to the fourth attorney on February 22, 2010, until the D&R was issued on
18 September 27, 2010, was not unreasonable, in part because two deadline extensions were authorized
19 by the Chief Counsel. However, we note that numerous delays accumulated from the time the appeals
20 conference was held until the D&R was issued, and upon further reflection and review, we believe that
21 the aggregate delay is simply not reasonable. Accordingly, we now recommend that the interest for the
22 period February 22, 2010, through September 27, 2010, also be relieved.

23 While the second determination was not issued until April 26, 2012, long after the case
24 involving the first determination was delayed in the Appeals Division, we questioned whether relief of
25 the interest applied to the second determination for the period February 14, 2009, through
26 September 27, 2010, also was warranted, and whether any other delay in issuing the second
27 determination warranted relief of interest. We concluded that the delay in accurately determining
28 audited taxable sales and issuing a second determination can largely be attributed to the fact that

1 taxpayer withheld records until the second appeals conference, when he provided internet sales
2 invoices totaling \$1,143,069 more than the internet sales invoices provided prior to that date. Since
3 taxpayer substantially contributed to any delay in issuing the second determination by withholding
4 records and information about his bank accounts, we recommend no relief of the interest applied to the
5 second determination.

6 **Issue 3:** Whether the amnesty penalties applied to the first determination for periods prior to
7 July 1, 2001, should be relieved. We recommend no additional relief of the amnesty penalties.

8 Although taxpayer timely applied for amnesty, filed amnesty returns for the period, July 1,
9 2001, through December 31, 2002, and entered into a qualifying installment payment agreement for
10 the reported liabilities, he did not file amnesty returns for periods prior to July 1, 2001. Taxpayer filed
11 a request for relief of the amnesty penalties applied to the first determination for periods prior to
12 July 1, 2001, based on his stated belief that the audit in progress at the time he filed amnesty returns
13 would cover only the period July 1, 2001, through December 31, 2002.

14 We note that, at the beginning of the audit process, the Department sent taxpayer
15 correspondence that indicated that the period eligible for amnesty generally was July 1, 2001, through
16 December 31, 2002, which could have been misleading. However, before the amnesty application
17 deadline, the Department sent taxpayer an amnesty reminder letter with the estimated audit liability for
18 all of the amnesty-eligible periods, and taxpayer listed periods as far back as January 1999 on his
19 amnesty application. Accordingly, we find that taxpayer was aware of the period covered by the tax
20 amnesty program and knew the Department's estimate of the amount due for all of the amnesty-
21 eligible periods. Since taxpayer had been making sales of tangible personal property and collecting
22 sales tax reimbursement during the amnesty-eligible periods, without a seller's permit and without
23 filing any returns, we find that taxpayer knew that he owed tax for periods prior to July 1, 2001. Given
24 that taxpayer failed to comply with the provisions for tax amnesty for periods prior to July 1, 2001, we
25 conclude that relief of the amnesty penalties applied to those periods is not warranted.

1 **Issue 4:** Whether the penalty for failure to file returns for the periods January 1, 1997, through
2 June 30, 2001, and January 1, 2003, through March 31, 2003, should be relieved.⁹ We find that relief
3 of the penalty for these periods is not warranted.

4 Taxpayer filed a request for relief of this penalty, claiming that his bookkeeper was responsible
5 for filing the returns, and taxpayer had not been aware that his bookkeeper had failed to do so.
6 Taxpayer also states that he was unaware that the Board had closed his previous seller's permit.

7 We do not accept that taxpayer could have believed that his bookkeeper was filing returns and
8 paying taxes on his behalf when he never signed any returns or checks payable to the Board.
9 Regarding the closing of the prior permit, Board records indicate that taxpayer personally came into
10 the Culver City district office on April 9, 1996, to close his prior seller's permit (SR AS 99-474507).
11 Therefore, we find that taxpayer knew that his prior permit had been closed, and conclude that relief
12 from the failure-to-file penalty is not warranted.

13 **Issue 5:** Whether taxpayer was negligent. We find that he was.

14 The Department applied the negligence penalty to the tax assessed in the first determination for
15 the period October 1, 2003, through March 31, 2005,¹⁰ because taxpayer failed to provide adequate
16 records, and he substantially underreported his taxable sales. Taxpayer presented no specific
17 arguments regarding the application of the negligence penalty other than his assertion that the audit
18 liability was too high.

19 Taxpayer did not provide any sales records from his retail stores, such as invoices or cash
20 register tapes, and provided bank statements for only one account, when there is evidence that he had
21 others. Therefore, we find that, at a minimum, taxpayer was negligent and the penalty was properly
22 imposed.

23
24
25
26 ⁹ Initially, the penalty for failure to file returns was imposed for the period January 1, 1997, through March 31, 2003.
27 However, the penalty has been relieved for the period for which taxpayer filed amnesty returns, July 1, 2001, through
December 31, 2002.

28 ¹⁰ The negligence penalty was added for the period for which a failure-to-file penalty was not imposed, April 1, 2003,
through March 31, 2005. However, no liability for the period April 1, 2003, through September 30, 2003, was established
in the first determination due to the expiration of the statute of limitations for issuing a determination for those quarters.

1 **Issue 6:** Whether the finality penalty should be relieved. We find that relief is not warranted.

2 Since taxpayer did not file a timely petition for redetermination with respect to the first
3 determination, the determination became final and a finality penalty was added to the unpaid tax.
4 Taxpayer filed a request for relief of this penalty, claiming that he sent an appeal after he received the
5 audit report, but he must have sent the appeal prior to the issuance of the NOD. The Department has
6 no record of having received any letter from taxpayer between the time the audit was completed and
7 the NOD was issued, and taxpayer did not mention a prior appeal in his administrative protest. We
8 thus find no support for taxpayer's assertion, and find no other basis for relief.

9 **Issue 7:** Whether the collection cost recovery fee should be relieved. We find that relief of the
10 fee is not warranted.

11 In a demand notice dated January 26, 2011, taxpayer was advised that continued failure to pay
12 the liability established in the first determination could result in collection action, including the
13 imposition of a collection cost recovery fee. A \$925 collection cost recovery fee was imposed on
14 May 10, 2011. On the form he filed on July 28, 2011, to request that all penalties and interest be
15 relieved, taxpayer checked the box labeled "collection cost recovery fee," but stated no facts and
16 offered no arguments pertaining to the fee. Because taxpayer has not established that his failure to pay
17 the interest and penalties asserted against him was due to reasonable cause and circumstances beyond
18 his control, there is no basis upon which we can find that relief of the collection cost recovery fee
19 would be warranted once the tax and interest are paid in full.

20 **Issue 8:** Whether the second NOD was timely issued. We conclude that it was.

21 Taxpayer contends that the three-year statute of limitations for issuing the second NOD is
22 applicable because he filed returns for the liability period, and argues that, under the three-year statute
23 of limitations, the latest the Department could have timely issued a NOD for any period included in the
24 second NOD was April 30, 2008. Since the second NOD was not issued until April 26, 2012, taxpayer
25 contends that the second determination is invalid and the liability should be deleted.

26 Since there is no statute of limitations for issuing an NOD in the case of fraud, we conclude
27 that the NOD was issued timely for every quarter included therein as long as the finding of fraud is
28 sustained. If the finding of fraud was not sustained, the NOD would not have been timely issued for

1 the period January 1, 2003, through March 31, 2005. However, under the 10-year statute of limitations
2 provided in Revenue and Taxation Code section 7073(d) regarding the tax amnesty program, the NOD
3 was issued timely for the period April 1, 2002, through December 31, 2002, regardless of a finding of
4 fraud or intent to evade the tax.

5 **Issue 9:** Whether there is clear and convincing evidence to support an assertion of the
6 50-percent penalty for knowingly operating without a permit for the purpose of evading tax for the
7 period April 1, 2002, through March 31, 2003, and the 25-percent penalty for fraud for the period
8 April 1, 2003, through March 31, 2005. We find that the evidence is clear and convincing.

9 During the investigation prior to issuing the second determination, the Department concluded
10 that it had erred when it imposed a negligence penalty, rather than evasion penalties, for the periods for
11 which records were available when it issued the first determination, because the evidence of fraud was
12 clear and convincing. Therefore, in the second determination, the Department imposed the 50-percent
13 penalty for knowingly operating without a permit because, even though taxpayer had knowledge of the
14 requirements to obtain a seller's permit and file sales and use tax returns, taxpayer did not obtain the
15 permit for the account at issue until April 2003, when the Department contacted him. Moreover, the
16 Department's examination of the sales invoices that taxpayer provided during the audit and reaudit
17 showed that taxpayer knowingly collected sales tax reimbursement while operating without a permit.
18 The Department imposed the 25-percent fraud penalty for the remainder of the liability period because,
19 even though taxpayer understood his responsibility to report his sales, as evidenced by the fact that he
20 charged sales tax reimbursement and reported taxable sales on sales and use tax returns, the
21 understatement in relation to the reported measure of tax is very large, occurred in every quarter of the
22 relevant period, and cannot be explained satisfactorily as being due to negligence.

23 Taxpayer contends that a memorandum dated March 9, 2006, from the auditor to the audit
24 supervisor, supports his contention that he was negligent and not fraudulent. We note that, in the
25 memorandum, the auditor presented facts to his supervisor, indicated that the imposition of a fraud
26 penalty may not be a "slam dunk," and asked his supervisor to please advise. As stated above, the
27 Department later concluded that its failure to impose a fraud penalty in the first determination was an
28 error. Since taxpayer previously had obtained two seller's permits and had filed sales and use tax

1 returns for the second permit,¹¹ but failed to obtain a seller's permit for this business until the
2 Department contacted him, we find that the evidence that taxpayer knowingly operated without a
3 permit for the liability period for the purpose of evading the payment of taxes is clear and convincing.
4 Regarding the 25-percent fraud penalty, we find that, if we add in-store cash sales of \$410,173 based
5 on bank deposits to recorded taxable internet sales of \$109,301 for the period April 1, 2003, through
6 March 31, 2005, shown in the sales invoices provided by taxpayer, we compute recorded taxable sales
7 of \$519,474, which exceed reported taxable sales of \$26,208 for the same period by \$493,266. We
8 compute that taxpayer reported only 5 percent of the taxable sales recorded in his own records
9 ($\$26,208 \div \$519,474$), and conclude that taxpayer's failure to report 95 percent of his recorded taxable
10 sales is clear evidence of fraud. We thus find that both the 50-percent penalty for knowingly operating
11 without a permit and the 25-percent penalty for fraud are warranted.

12 **RESOLVED ISSUES**

13 We have recommended relief of the penalty for failure to file returns, the amnesty interest
14 penalty, and the amnesty double finality penalty applied to the first determination for the period July 1,
15 2001, through December 31, 2002, based on our finding that taxpayer filed amnesty returns for that
16 period and had reason to believe that the amounts reported on his amnesty returns were acceptable.
17 Regarding the amnesty penalties applied to the second determination, we have recommended relief of
18 the amnesty double fraud penalty and the amnesty interest penalty if taxpayer, within 30 days of the
19 date that the final decision in this matter is issued, either pays the amnesty-eligible tax and interest due
20 or enters into an installment payment plan to do so over a period not to exceed 13 months, and then
21 successfully completes that agreement.

22 **OTHER MATTERS**

23 Between April 21, 2006, and June 21, 2007, the Board collected a total of \$42,511.80 from
24 taxpayer through bank levies, and applied \$34,993.09 to taxpayer's amnesty returns for the period
25 July 1, 2001, through December 31, 2002, and \$7,518.71 to the remaining liability assessed in the first
26

27 _____
28 ¹¹ Taxpayer obtained a seller's permit for a partnership in March 1990, but in 1994, he claimed that the business was never
operated and the seller's permit was closed. Taxpayer then obtained a seller's permit for a sole proprietorship for the period
May 1994 through June 1995, for which he filed sales and use tax returns reporting zero sales.

1 determination.¹² On July 9, 2007, taxpayer filed a timely claim for refund (Case ID 414889) for these
2 payments. Between February 21, 2011, and May 18, 2011, the Board collected a total of \$9,859.85
3 through bank levies, and taxpayer filed another timely claim for refund for these payments on June 17,
4 2011. We compute that, since the payments of \$17,378.56 (\$7,518.71 + \$9,859.85) pay the tax
5 established for the first quarter of 1997 through the fourth quarter of 1998 in full, the claims for refund
6 are ripe for consideration with respect to those quarters, as well as for the amounts taxpayer reported
7 on his amnesty returns.¹³ Based on our finding that taxpayer has not overpaid the tax due for any of
8 the periods under consideration, we recommend that the claims for refund be denied.

9
10 Summary prepared by Deborah Cumins, Business Taxes Specialist III

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26 ¹² The Board also collected by levy an additional payment of \$27.78 that was applied to a late-payment penalty taxpayer
27 incurred for his failure to pay the tax of \$280 he reported for the third quarter of 2004 until April 2005. There is no
28 indication that taxpayer is seeking a refund of this payment.

¹³ Between July 15, 2011, and June 10, 2013, the Board collected a total of \$16,485.90 through bank levies and an offset.
While taxpayer has not yet filed a claim for refund for these payments, time remains to do so for payments made on or after
the date of the Board hearing, under the three-year statute of limitations for enforced collections.