

WEDNESDAY, APRIL 17, 2002

The Board met at its offices at 450 N Street, Sacramento, at 9:55 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Pacific Corporation, 90027

1984, \$498,412.00 Assessment

1985, \$517,835.00 Assessment

1986, \$59,523.00 Assessment

1987, \$151,313.00 Assessment

1988, \$359,742.00 Assessment

1989, \$461,972.00 Assessment

For Appellant:

Eric J. Coffill, Representative

Richard Dorf, Ph.D., Witness

For Franchise Tax Board:

Craig Swieso, Tax Counsel

Joel Fajans, Witness

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

Issues: Whether appellant has shown that electricity is other than tangible personal property for purposes of Revenue and Taxation Code sections 25135 and 25136.

Whether appellant has shown that the sale of the electricity at issue here, if electricity is tangible personal property, occurred in Oregon, rather than California, for purposes of Revenue and Taxation Code section 25136.

Respondent's Exhibit: Sales of Electronic Energy (Exhibit 4.1)

California Energy Maps (Exhibit 4.2)

91-SBE-003 Opinion on Retail Marketing Services, Inc. (Exhibit 4.3)

Action: Upon motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board reversed the action of the Franchise Tax Board.

Mr. Andal moved to direct the Appeals Section to draft a formal opinion stating "for purposes of California Tax Law, electricity is intangible." The motion was seconded by Ms. Mandel. Mr. Andal withdrew his motion before a vote was taken.

Mr. Andal made a substitute motion directing the Appeals Section to draft a formal opinion. The motion was seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board directed the Appeals Section to draft a formal opinion using the language "for purposes of California Tax Law, electricity is intangible."

Exhibits to these minutes are incorporated by reference.

WEDNESDAY, APRIL 17, 2002

The Board recessed at 11:05 a.m. and reconvened at 11:15 a.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

Brian D. Kelly, 114265

1994, \$1,368.00 Claim for Refund

For Appellant:

David R. Kelly, CPA

For Franchise Tax Board:

Lorig Mushegain, Tax Counsel

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

Issues: Whether appellant's claim for refund is timely under the applicable statute of limitations.

Whether the statute of limitations can be equitably tolled.

Appellant's Exhibit: 1997 California Tax Handbook, Section 335 (Exhibit 4.4)

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Michael J. Carboni, 61147

1988, \$15,896.00 Tax, \$794.80 Penalty, Negligence

1989, \$15,392.00 Tax, \$769.60 Penalty, Negligence

For Appellant:

Michael J. Carboni

For Franchise Tax Board:

Dennis Haase, Tax Counsel

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

Issue: Whether appellant has met his burden to prove error in the proposed assessments, and the underlying federal actions.

Respondent's Exhibit: IRS Schedule 1s & Explanations of Adjustments (Exhibit 4.5)

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel voting no, the Board deleted the negligence penalty.

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

FINAL ACTION ON APPEAL HEARD APRIL 17, 2002

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Brian D. Kelly, 114265*, the Board sustained the action of the Franchise Tax Board.

The Board recessed at 11:50 a.m. and reconvened at 1:35 p.m. with Mr. Chiang, Mr. Klehs, and Mr. Andal present.

WEDNESDAY, APRIL 17, 2002

FINAL ACTION ON APPEAL HEARD APRIL 17, 2002

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Mr. Parrish and Ms. Mandel absent, in the appeal of *Michael J. Carboni, 61147*, the Board sustained the action of the Franchise Tax Board.

BUSINESS TAXES APPEALS HEARINGS

Kenneth Michael Wolff, 89000966440, 89000966450, 89002070250

12-1-95 to 12-25-95, \$8,700.00 Tax

\$870.00 Penalty, Failure to File

\$870.00 Penalty, Failure to Timely Pay

12-1-96 to 12-25-96, \$8,700.00 Tax

\$870.00 Penalty, Failure to File

\$870.00 Penalty, Failure to Timely Pay

12-1-97 to 12-25-97, \$8,700.00 Tax

\$400.00 Penalty, Failure to File

\$300.00 Penalty, Failure to Timely Pay

For Petitioner: Kenneth Michael Wolff

For Sales and Use Tax Department: Sandy McCaleb, Hearing Representative

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

Issues: Whether estimated taxable sales are overstated.
Whether relief from the penalty for failure to file returns is warranted.
Whether relief from the penalty for failure to timely pay the determinations is warranted.

Action: Dr. Connell moved to delete the finality penalty and redetermine the tax using the petitioners' 1998 tax return. The motion was seconded by Mr. Andal. No vote was taken.

Upon motion of Dr. Connell, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Dr. Connell voting yes, Mr. Parrish absent, the Board ordered to delete all penalties and redetermine the tax using the petitioner's 1998 tax return.

PUBLIC HEARINGS**STATE ASSESSEE PRESENTATIONS ON THE VALUATION OF THEIR PROPERTIES**

Speakers: Peter W. Michaels, Cooper, White & Cooper, representing:

WEDNESDAY, APRIL 17, 2002

Global Crossing North America, Inc.
Global Crossing Telecommunications, Inc. (2207)
Global Crossing Bandwidth, Inc. (2351)
Global Crossing North American Networks, Inc. (7536)
Budget Call Long Distance, Inc. (7585)
Global Crossing Telemanagement, Inc. (7668)
Global Crossing Local Services, Inc. (P634)

Mr. Parrish stated for the record that he would have voted with the majority in the appeal of *Michael J. Carboni*, 61147 and the petition of *Kenneth Michael Wolff*, 89000966440, 89000966450, 89002070250.

The Board adjourned at 2:10 p.m.

The foregoing minutes are adopted by the Board on May 30, 2002.