

Wednesday, June 30, 2004

The Board met at its offices 450 N Street, Sacramento, at 10:00 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Approval of Contract Over \$1 Million

David Gau, Deputy Director, Property and Special Taxes Department, reported that the item before the Board is a proposed contract that requires Board Member approval prior to being established. And that the purpose of the contract is to provide cigarette tax stamps, application machinery, validation devices, and a tracking system. Contractor to be determined (Exhibit 6.13).

Ms. Migden directed, at Mr. Leonard's request, Mr. Hirsig to report at the next meeting on the Board of Equalization's options to change the procurement process that restricts Members' discussion in an open forum.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the cigarette tax stamp contract over \$1 million.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 10:05 a.m. and reconvened at 10:07 a.m. with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

James and Jean A. Bagley, 217274

1994, \$436,394.00 Assessment

1995, \$214,272.00 Assessment

1996, \$525,255.00 Assessment

1997, \$57,700.00 Assessment

For Appellant:

Derick J. Brannan, Representative

Kathleen Dill, Representative

James Bagley, Taxpayer

Jean Bagley, Taxpayer

For Franchise Tax Board:

Charlene Woodward, Tax Counsel

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

Issue: Whether appellants were California residents from 1994 through 1997.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

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SALES AND USE TAX APPEALS HEARING

George M. Wilkins, Jr., 170195, 195685

7-1-98 to 6-30-99, \$2,691.83 Tax

7-1-99 to 6-30-01, \$3,029.00 Tax

For Petitioner:

George H. Ellis, Representative

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

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

Issue: Whether the evidence warrants adjustments to audited purchases for changes in inventory.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

CHIEF COUNSEL MATTERS**RULEMAKING—SALES AND USE TAX**

Janice Thurston, Assistant Chief Counsel, Business Taxes Division, Legal Department, was available to answer questions regarding the Section 100 Changes to Sales and Use Tax Regulations.

Section 100 Change to Sales and Use Tax Regulation 1527.5, Rural Tax Investment Exemption

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Section 100 Change to *Sales and Use Tax Regulation 1527.5, Rural Tax Investment Exemption* (Exhibit 6.14).

Section 100 Change to Sales and Use Tax Regulation 1533.1, Farm Equipment

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Section 100 Change to *Sales and Use Tax Regulation 1533.1, Farm Equipment* (Exhibit 6.15).

Section 100 Change to Sales and Use Tax Regulation 1533.2, Diesel Fuel

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Section 100 Change to *Sales and Use Tax Regulation 1533.2, Diesel Fuel* (Exhibit 6.16).

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Section 100 Change to Sales and Use Tax Regulation 1534, Timber Harvesting Equipment

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Section 100 Change to *Sales and Use Tax Regulation 1534, Timber Harvesting Equipment* (Exhibit 6.17).

Section 100 Change to Sales and Use Tax Regulation 1535, Racehorse Breeding Stock

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Section 100 Change to *Sales and Use Tax Regulation 1535, Racehorse Breeding Stock* (Exhibit 6.18).

Section 100 Change to Sales and Use Tax Regulation 1603, Taxable Sales of Food Products

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Section 100 Change to *Sales and Use Tax Regulation 1603, Taxable Sales of Food Products* (Exhibit 6.19).

Authorization to Publish Sales and Use Tax Regulation 1619, Foreign Consuls

Janice Thurston, Assistant Chief Counsel, Business Taxes Division, Legal Department, made introductory remarks regarding the authorization to publish *Sales and Use Tax Regulation 1619, Foreign Consuls* (Exhibit 6.20).

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board authorized publication of *Sales and Use Tax Regulation 1619, Foreign Consuls*.

RULEMAKING—PROPERTY TAX

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, was available to answer questions regarding the Section 100 Changes to Property Tax Rules.

Section 100 Change to Property Tax Rule 131, Fruit and Nut Tree and Grapevine Exemption

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Section 100 Change to *Property Tax Rule 131, Fruit and Nut Tree and Grapevine Exemption* (Exhibit 6.21).

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Section 100 Change to Property Tax Rule 302, Board's Function & Jurisdiction

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Section 100 Change to *Property Tax Rule 302, Board's Function and Jurisdiction* (Exhibit 6.22).

Section 100 Change to Property Tax Rule 305, Application

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Section 100 Change to *Property Tax Rule 305, Application* (Exhibit 6.23).

Adoption of Revised Language to proposed Property Tax Rule 136, Limited Liability Companies as Qualifying Organizations for the Welfare Exemption

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, made introductory remarks regarding the adoption of revised language to proposed *Property Tax Rule 136, Limited Liability Companies as Qualifying Organizations for the Welfare Exemption* (Exhibit 6.24).

Ms. Migden directed, at Mr. Parrish's request, that all future Board materials be completely tabbed for easy reference.

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the revised language to proposed *Property Tax Rule 136, Limited Liability Companies as Qualifying Organizations for the Welfare Exemption*.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 6.25).

Don Chapman, Tax Technician I, Sacramento District Office
David O. Keefer, Business Taxes Specialist I, Ventura District Office
Shirley Nilsson, Secretary, Out-of-State District Office
Stanley J. Rose, Business Taxes Administrator III, San Jose District Office
Kathleen Schatz, Budget Analyst, Budget Section of the Financial Management
Division, Headquarters

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Action: Approve the corrections to Board Meeting Minutes of May 28, 2003 (Exhibit 6.26).

Action: Approve extensions of time to complete and submit 2004-05 Local Assessment Rolls pursuant to Revenue and Taxation Code section 155 granted to Butte, Colusa, Fresno, Glenn, Inyo, Lassen, Los Angeles, Madera, Modoc, Mono, Monterey, Orange, Plumas and Yuba Counties (Exhibit 6.27).

Action: Approve proposed revisions to Audit Manual Chapter 10, Occasional Sales - Sale of a Business (Exhibit 6.28).

BOARD COMMITTEE REPORT

Property Tax Committee

Action: Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the Property Tax Committee report (Exhibit 6.29).

OTHER ADMINISTRATIVE MATTERS

Adoption of the 2004-05 Private Railroad Car Tax Rate

David Hayes, Manager, Research and Statistics Section, Legislative Division, was available to answer questions regarding the 2004-05 Private Railroad Car Tax Rate.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted a rate for the 2004-05 private railroad car tax of 1.088 percent (Exhibit 6.30).

Adoption of the 2004 State-Assessed Property Roll

Stanley Siu, Chief, Valuation Division, Property and Special Taxes Department, was available to answer questions regarding the 2004 State-Assessed Property Roll.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2004 State-Assessed Property Roll (Exhibit 6.31).

Adoption of the 2004 Private Railroad Car Roll

Stanley Siu, Chief, Valuation Division, Property and Special Taxes Department, was available to answer questions regarding the 2004 Private Railroad Car Roll.

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Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2004 Private Railroad Car Roll (Exhibit 6.32).

Offers in Compromise Recommendations

Jean Ograd, Assistant Chief Counsel, Settlement and Administration Division, Legal Department, was available to answer questions regarding the Offers in Compromise Recommendations.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the offers in compromise of *IMX Sales & Marketing, Inc.*, *Hamid Ahwazi*, *Gerald Vern Mitchell*, and *Robert Allan Gunn*, as recommended by staff.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Gerald L. Kreuzberg and Beverly Gray-Kreuzberg, 242016

1995, \$627.45 Assessment

For Claimant:

Appearance Waived

For Franchise Tax Board:

Jean Cramer, Tax Counsel

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

Issue: Whether appellant filed a timely claim for refund for 1995 prior to the expiration of the statute of limitations.

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

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD JUNE 30, 2004

James and Jean A. Bagley, 217274

Final Action: Mr. Parrish moved to reverse the action of the Franchise Tax Board. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Mr. Parrish moved to reverse the action of the Franchise Tax Board as to 1994 through May 31, 1996 and sustain as to June 1, 1996 through 1997. The motion was seconded by Mr. Leonard but no vote was taken.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 10:55 a.m. and reconvened immediately in closed session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

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CLOSED SESSION

The Board met to discuss settlements (Revenue and Taxation Code sections 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 11:20 a.m. and reconvened immediately in open session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD JUNE 30, 2004

James and Jean A. Bagley, 217274

Final Action: Mr. Parrish moved to reverse the action of the Franchise Tax Board as to 1994 through May 31, 1996 and sustain as to June 1, 1996 through 1997. The motion was seconded by Mr. Leonard. Mr. Parrish withdrew the motion.

Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Migden voting no, Ms. Mandel abstaining, the Board reversed the action of the Franchise Tax Board as to 1994.

Mr. Parrish moved to reverse the action of the Franchise Tax Board as to 1995. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Mr. Parrish moved to reverse the action of the Franchise Tax Board as to January 1 to May 31, 1996. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JUNE 30, 2004

George M. Wilkins, Jr., 170195, 195685

Final Action: Mr. Leonard moved to grant the petition. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

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

The Board adjourned at 11:30 a.m.

The foregoing minutes are adopted by the Board on August 24, 2004.

Note: The following cases were removed from the calendar prior to the meeting: *Jeffrey A. Spillers, 220154; Douglass W. Dunn, 215857; Raffi Ohanes Sepetjian, 195054; Joyeria Internacional, Inc., 139250; and, National Medical Care, Homecare Division, Inc., 59219, 60413, 89000080330, 89000080340, 89000080360, 89000080370, 89000080380*

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