

Tuesday, November 29, 2016

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m., with Ms. Ma, Chairwoman, Ms. Harkey, Vice Chair, Mr. Runner 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 California Highway Patrol Officer Gregory Dominguez.

### CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

James K. Brewster, 918129

2013, \$1,795.00 Assessment

For Appellant:

Katherine Castro, Representative

For Franchise Tax Board:

Brad Coutinho, Tax Counsel

Marguerite Mosnier, Tax Counsel

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

Issue: Whether appellant is entitled to the head of household filing status for the 2013 tax year.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 11.1](#))

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

Exhibits to these minutes are incorporated by reference.

Ahmad Ghaderi and Susan L. Ghaderi, 773301

2006, \$74,684.00 Assessment, \$13,987.50 Late Filing Penalty

2007, \$207,588.00 Assessment, \$46,623.81 Late Filing Penalty

For Appellants:

Ahmad Ghaderi, Taxpayer

Jere E. McDonald, Representative

For Franchise Tax Board:

Susanne Coakley, Tax Counsel

Ciro Immordino, Tax Counsel

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

Issues: Whether appellants have shown error in the Franchise Tax Board's (FTB or respondent) disallowance of the claimed automobile expense deduction for 2006.

Whether appellants have shown that the distributions they received from their wholly-owned corporation during 2007 constituted a bona fide loan, rather than a constructive dividend.

Whether appellants have shown that respondent erroneously imposed a late filing penalty for 2007.

Appellant's Exhibit: Auto Expenses Spreadsheet, Copies of Checks ([Exhibit 11.2](#))

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

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that the appeal be submitted for decision, granting the Franchise Tax Board 30 days to examine checks for auto expenses provided in today's exhibit, the appellant 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board, and sustained the action of the Franchise Tax Board as to the remaining issues.

Alan R. Brayton, 852168

2004, \$910,572.00 Accuracy-Related Penalty

For Appellant:

Alan R. Brayton, Taxpayer  
Richard Carpenter, Attorney

For Franchise Tax Board:

Eric Yadao, Tax Counsel  
Marguerite Mosnier, Tax Counsel

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

Issue: Whether appellant has shown error in the determination of the Franchise Tax Board that the accuracy-related penalty should not be abated.

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

John R. Wrage and Kristina Wrage, 864549

2006, \$54,523.00 Assessment

2007, \$34,125.00 Assessment

2008, \$16,947.00 Assessment

For Appellants:

John R. Wrage, Taxpayer  
L. Larry Clumeck, Representative

For Franchise Tax Board:

Todd Watkins, Tax Counsel  
Michael Cornez, Tax Counsel

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

Issues: Whether appellants have shown that the distribution they received during 2006 from their wholly-owned California S corporation constitutes a bona fide loan, rather than a shareholder distribution.

Whether appellants have shown that respondent made improper adjustments to appellants' 2007 and 2008 returns.

Appellant's Exhibit: Miscellaneous Document ([Exhibit 11.3](#))

Action: Mr. Horton moved to sustain the action of the Franchise Tax Board. The motion failed for lack of a second.

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

The Board recessed at 12:00 p.m. and reconvened at 1:35 p.m. with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

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**LEGAL APPEALS MATTERS, CONSENT**

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

**Tellabs San Jose, Inc., 207816, 228236, 362015 (GH)**

06/01/99 to 06/17/03, \$331,149.35 Tax, \$31,609.43 Negligence Penalty, \$1,505.54 Failure-to-File Penalty, \$31,609.43 Amnesty Double Negligence Penalty, \$1,505.54 Amnesty Double Failure-to-File Penalty, \$50,591.44 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

**The College Network, Inc., 561674 (OH)**

07/01/06 to 06/30/09, \$1,300,763.91 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

**Mikial Singh Nijjar, 486239 (CH)**

07/01/01 to 12/31/03, \$128,151.74 Tax, \$32,037.94 Fraud Penalty, \$5,931.35 Failure-to-File Penalty, \$17,209.59 Amnesty Double Fraud Penalty, \$12,815.17 Finality Penalty, \$6,883.84 Amnesty Double Finality Penalty, \$6,959.09 Amnesty Interest Penalty

**Mastermind Group, Inc., 486237 (CH)**

10/01/03 to 12/31/07, \$743,192.98 Tax, \$185,798.26 Fraud Penalty, \$72,377.89 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

**Ijaz Corporation, 773295 (STF)**

12/22/08 to 08/04/11, \$52,404.00 Tax, \$13,101.05 Unlicensed Distributions Penalty, \$5,240.40 Failure-to-File Penalty, \$5,240.40 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

**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 Ms. Harkey, seconded by Mr. Runner and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board made the following orders:

**Michael A. Giurbino and Suzanne E. Giurbino, 861813**

2007, \$484,236.00 Tax, \$96,847.20 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

**1217 21<sup>st</sup> Street, LLC, 817233**

2007, \$301.66 Claim for Refund

2008, \$249.44 Claim for Refund

2009, \$189.93 Claim for Refund

2010, \$91.19 Claim for Refund

2011, \$31.50 Claim for Refund

2012, \$34.25 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Prudencio Ancheta and Shirley Ancheta, 822206

2008, \$816.00 Tax

2009, \$891.00 Tax

2010, \$905.00 Tax

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

Frank S. Dopp and Lani Warren, 864565

2007, \$1,372.40 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Alexander Edler, 871636

2008, \$1,205.00 Tax

2009, \$2,118.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Jay K. Ghiya, 879983

2012, \$23,547.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jannik Hansen, 872888

2008, \$506.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Jona G. Lobaton, 823693

2007, \$11,426.00 Tax, \$2,856.50 Late Filing Penalty, \$2,285.20 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Michael Maguire, 881666

2010, \$888.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Travis D. Medley, III and Michelle L. Medley, 858556

2011, \$22,146.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Thomas E. Norris and Norma B. Norris, 779206

2009, \$2,708.00 Tax

Action: Modify the action of the Franchise Tax Board.

John Pagkalinawan and June Frances Capalla, 856286

2007, \$11,417.00 Tax, \$2,283.40 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

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Pejman Salimpour, 876698

2008, \$94,788.00 Claim for Refund

Rafatollah Salimpour and Farah Salimpour, 876713

2008, \$56,390.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Stephen Shultz and Andrea Shultz, 937565

2011, \$934.53 Tax

Action: Sustain the action of the Franchise Tax Board.

Toby A. Smith, 874094

2010, \$1,826.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Elouise Tait, 909735

2009, \$33,508.00 Tax, \$6,701.60 Accuracy-Related Penalty

2010, \$8,399.00 Tax, \$1,679.80 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Cheward P. Teodosio and Marlyn L. Teodosio, 879963

2010, \$21,922.00 Tax, \$5,498.00 Late Filing Penalty, \$4,398.40 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Juliana Tyler and David Tyler, 932121

2014, \$489.15 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

John Yardley, 866226

2012, \$1,659.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Zepha Group, LLP, 791796, 848510

2008, \$800.00 Tax, \$200.00 Late Filing Penalty, \$200.00 Demand Penalty, \$100.00 Partnership  
Late Filing Penalty, \$82.00 Filing Enforcement Fee2011, \$800.00 Tax, \$200.00 Late Filing Penalty, \$200.00 Demand Penalty, \$432.00 Partnership  
Late Filing Penalty, \$78.00 Filing Enforcement Fee

Action: Modify 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 Mr. Horton, seconded by Ms. Harkey and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner and Mr. Horton voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board made the following orders:

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**Petition for Penalty Abatement on Unitary Value**

Central California Traction Company (818), 961003

2016, \$825,000.00 Penalty

Action: Deny the petition for penalty abatement on 2016 unitary value as recommended by the Appeals Division. Ms. Stowers not participating in accordance with Government Code section 7.9.

**Petition for Reassessment and Penalty Abatement on Unitary Value**

Digital Transportation Corporation (8184), 956385

2016, \$62,700 Unitary Value, \$6,270.00 Penalty

Action: Approve the petition for reassessment and penalty abatement on 2016 unitary value as recommended by the Appeals Division. Ms. Stowers not participating in accordance with Government Code section 7.9.

**LEGAL APPEALS MATTER, ADJUDICATORY**

Sahak Jeirianian, 841617 (STF)

01/01/01 to 05/12/03, \$743,023.50 Tax, \$185,755.88 Fraud Penalty, \$59,207.85 Failure-to-File Penalty, \$74,302.35 Finality Penalty

Considered by the Board: April 27, 2016, Summary Decision (Rev. &amp; Tax. Code, § 40)

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

Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board adopted the written summary decision as presented by staff.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY**

Christene Brown, 797860

2011, \$946.00 Tax, \$236.50 Late Filing Penalty, \$236.50 Demand Penalty

Considered by the Board: May 24, 2016

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

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

**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE****OFFER-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Harkey, seconded by Mr. Horton and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board approved the Offer in Compromise Recommendations of *Abdel A. Alghazali; William Gregory Carter; Sebastopol Ford, Inc.; Jeanette Denis-Perez; Flash Transport, Inc.; Alberto C. Guerra, Jr.; MBT Enterprises, Inc.; Sanjeewa Ratnaweera; Astro Express, Inc.; Scarlet Tea Room, Inc.; Charlene Thayer; Tranquility Health Collective, LLC; Ruben Dario Ulloa; Pan De Vida, Inc.*; and, *David Reza Zarrin*; as recommended by staff.

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## ADMINISTRATIVE SESSION

### ADMINISTRATIVE MATTERS, CONSENT

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

Action: Adopt the following resolutions, extending its sincere and grateful appreciation to the retirees for their dedicated service to the State Board of Equalization and to the State of California, their congratulations on each retiree's well-earned retirement, and best wishes to them and their families for continued success, happiness and good health in the years to come ([Exhibit 11.4](#)).

Alfonso C. Barretto, Business Taxes Specialist I, Field Operations Department,  
Out-of-State Chicago District Office  
Carla Caruso, Tax Counsel IV, Litigation Division, Legal Department,  
Headquarters  
Wayne J. Grupe, Business Taxes Specialist II, Field Operations Department, Out-  
of-State Chicago District Office  
Patrick Mayers, Business Taxes Specialist I, Data Analysis Section, Business  
Tax and Fee Department, Headquarters  
Michaeleen R. Orelup, Business Taxes Specialist I, Field Operations Department,  
Out-of-State Chicago District Office  
Patricia Thomas, Data Processing Manager II, Technology Services Department,  
Headquarters  
James S. Wrenn, Business Taxes Specialist I, Consumer Use Tax Section,  
Business Tax and Fee Department, Headquarters

Action: Approve the Board Meeting Minutes of October 11, 2016 and October 25, 2016.

Action: Approve proposed revisions to Compliance Policy and Procedures Manual Chapter 7, *Collections* as recommended by staff ([Exhibit 11.5](#)).

Action: Approve the 2017 revision of Assessors' Handbook Section 581, *Equipment and Fixtures Index, Percent Good and Valuation Factors* ([Exhibit 11.6](#)).

Action: Adopt revised Property Tax Form BOE-261-G, *2017 Claim for Disabled Veteran's Property Tax Exemption* as recommended by staff ([Exhibit 11.7](#)).

### OTHER ADMINISTRATIVE MATTERS

#### Business Tax and Fee Deputy Director's Report

Susanne Buehler, Deputy Director, Business Tax and Fee Department, made introductory remarks regarding the effects of Proposition 10 on cigarette and tobacco products consumption ([Exhibit 11.8](#)).

Action: Upon motion of Mr. Horton, seconded by Ms. Stowers and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board approved the backfill determination of \$15.3 million for fiscal year 2015-16 for the effects of Proposition 10 on cigarette and tobacco products consumption as recommended by staff.

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### Administration Deputy Director's Report

Chris Holtz, Chief, Business Management Division, Administration Department, presented the following 2017/18 Budget Change Proposals (BCPs) for the Board's direction and approval for inclusion in the Governor's fiscal year 2017/18 budget: *Proposition 56, The California Healthcare, Research, and Prevention Tobacco Tax Act of 2016*; and, *Proposition 64, Control, Regulate, and Tax Adult Use of Marijuana Act*.

Action: Upon motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board approved the 2017/18 BCP *Proposition 56, The California Healthcare, Research, and Prevention Tobacco Tax Act of 2016*, as recommended by staff ([Exhibit 11.9](#)).

Action: Upon motion of Ms. Harkey, seconded by Mr. Horton and duly carried, Ms. Harkey, Mr. Runner, Mr. Horton voting yes, and Ms. Ma and Ms. Stowers voting no, the Board approved the 2017/18 BCP *Proposition 64, Control, Regulate, and Tax Adult Use of Marijuana Act*, as recommended by staff, and requested a status report at three and six months ([Exhibit 11.10](#)).

Chris Holtz, Chief, Business Management Division, Administration Department, provided an update on BOE vacancies and the status of the vacancy plan development approved by the Board in August 2016.

### Technology Deputy Director's Report

Chris Caietti, Chief Technology Officer, and Trista Gonzalez, Business Taxes Administrator, Technology Services Department, provided a report regarding the progress on the CROS project to replace BOE's two current legacy-technology tax administration systems.

Ms. Ma directed staff to move up the schedule for rollout of the CROS interface for cash receipts at BOE cashier counters, to be sooner than April 2018.

### FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD NOVEMBER 29, 2016

Jessica Chase, 760013 (AS)

07/01/09 to 06/30/12, \$253,959.54 Tax, \$25,364.01 Negligence Penalty

For Taxpayer: Waived Appearance

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 any adjustment to the unreported taxable cost of merchandise withdrawn from resale inventory for self-consumption is warranted.

Whether taxpayer was negligent.

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

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RM Custom Wood Finishing, Inc., 586214 (EA)

07/01/03 to 03/31/08, \$31,296.98 Claim for Refund

Ramon Murguia, 586215 (EA)

07/01/00 to 06/30/03, \$20,762.84 Claim for Refund

For Claimants: Waived Appearance

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

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

Issues: Whether the claim for refund filed for the period July 1, 2000, through June 30, 2003, was timely for all of claimant's payments toward the NOD.

Whether claimants are entitled to relief based upon alleged erroneous oral advice they received from Board employees.

Whether relief of interest is warranted.

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

#### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 3:55 p.m. and reconvened immediately in closed session with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

#### **CLOSED SESSION**

The Board met to discuss settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 4:08 p.m. and reconvened immediately in open session with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

Ms. Ma announced the appointment of Trista Gonzalez to the position of Chief, Tax Policy Division, Business Tax and Fee Department, effective immediately.

The Board recessed at 4:09 p.m.

*The foregoing minutes are adopted by the Board on January 25, 2017.*

Note: The following matters were removed from the calendar prior to the meeting: *Cesar Z. Lugo, 790947; Ruby P. Baylin, 905708; Thomas A. Hrubik and Mary L. Hrubik, 935055; Suri Investments, Inc., 689145; 2S Pizza, Inc., 740225; and, Isaac Pete Gharibeh, 469663.*

**Wednesday, November 30, 2016**

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m., with Ms. Ma, Chairwoman, Ms. Harkey, Vice Chair, Mr. Runner and Mr. Horton present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

### **PETITION FOR RELEASE OF SEIZED PROPERTY HEARING**

Midwest Enterpris, Inc., 974926 (STF)

06/14/16 Seizure Date, \$1,728,118.00 Approximate Value

For Petitioner: Victor Sherman, Attorney

For Business Tax and Fee Department: Pamela Mash, Tax Counsel

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

Issue: Whether the cigarettes and tobacco products should be forfeited because they are described by Business and Professions Code section 22978.2 and Revenue and Taxation Code section 30436.

Action: Upon motion of Ms. Stowers, seconded by Ms. Harkey and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board determined that staff properly seized the tobacco products.

### **SALES AND USE TAX APPEALS HEARINGS**

Paedick Gharapanianse, 568598 (AC)

07/01/07 to 06/30/10, \$78,232.76 Tax, \$7,910.77 Negligence Penalty

For Petitioner: Paedick Gharapanianse, Taxpayer

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

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

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

Whether petitioner was negligent.

Whether relief of interest is warranted.

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and duly carried, Ms. Ma, Ms. Harkey and Mr. Runner voting yes, Mr. Horton and Ms. Stowers voting no, the Board ordered that the negligence penalty be removed, the markup be reduce to 28 percent, and that the tax and interest be redetermined accordingly.

Hector Cruz Costibolo, 793771 (AR)

10/01/08 to 12/09/10, \$21,795.08 Tax, \$1,641.50 Late Filing Penalty, \$1,079.50 Late Payment Penalty

For Petitioner: Hector Costibolo, Taxpayer

For Business Tax and Fee Department: Monica Silva, Tax Counsel

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

Issues: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of K & H Diversified, Inc. pursuant to Revenue and Taxation Code section 6829.

Whether petitioner has established reasonable cause sufficient for relieving the late-filing and late-payment penalties originally assessed against K&H.

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Whether the liability at issue was discharged in petitioner's bankruptcy.

Action: Upon motion of Ms. Harkey, seconded by Ms. Stowers and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board ordered the petition be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise program.

Ruben Diaz Garcia, 520275 (UT)

09/09/05 Date of Purchase, \$27,225.00 Tax, \$2,722.50 Failure to File Penalty, \$2,772.50 Finality Penalty

For Petitioner: Ruben Garcia, Taxpayer

Joseph Mudd, Attorney

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

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

Issue: Whether the purchase and use of an aircraft by Advanced Aviation, LLC was subject to use tax.

Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board ordered the hearing be continued to a later date, 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 parties' submissions and provide its recommendation to the Board.

The Board recessed at 11:20 a.m. and reconvened at 11:32 a.m. with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

Shaw Dadban, 811132 (FH)

05/26/06 to 12/31/10, \$00.00 Tax, \$69,386.90 Fraud Penalty, \$20,168.23 Failure to Remit Collected Tax Penalty

For Petitioner: Shaw Dadban, Taxpayer

Ahren Tiller, Attorney

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

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

Issue: Whether the Department has established clear and convincing evidence to support an assertion of the fraud penalties.

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

The Board adjourned at 11:59 a.m.

*The foregoing minutes are adopted by the Board on January 25, 2017.*

Note: The following matters were removed from the calendar prior to the meeting: *Treasure Box, Inc., 562424; Pacific Tire Motorsports, 553564, 579010; Lewis K. Eisaguirre, 741340; and, Kaisuen Kong, 516021, 553424.*