

Tuesday, March 18, 2008

The Board met at its offices at 450 N Street, Sacramento, at 10:25 a.m., Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Darlene D. Hollins, 383301

2006, \$347.00

For Appellant:

Tyler McKinney, Representative

Darlene D. Hollins, Taxpayer

For Franchise Tax Board:

Lisa Lawson, Hearing Representative

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

Issue: Whether appellant was “disabled” for purposes of the Homeowners and Renters Property Tax Assistance Law during the year at issue.

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

SALES AND USE TAX APPEALS HEARINGS

Ardeshir Eil Larijani, 295381 (GH)

1-1-00 to 12-31-02, \$00.00 Tax, \$107,810.69 Fraud Penalty

For Petitioner:

Andy Larijani, Taxpayer

Gary Packebush, Bookkeeper

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

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

Issue: This matter appears to involve no unresolved issues, as petitioner has expressly conceded the tax liability and the fraud penalty. It is the Appeals Division’s understanding that petitioner will be asking the Board for relief from the penalty on other grounds.

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

The Board recessed at 11:15 a.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang present.

Michael Richard Luna, 356507 (KH)

1-01-02 to 12-31-04, \$14,886.42 Tax

For Petitioner:

Michael Luna, Taxpayer

Terrence Johnson, Witness

For Sales and Use Tax Department:

Mariflor Jimenez, Hearing Representative

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

Issues: Whether petitioner should be relieved of the tax based on alleged reliance on information from prior audits.

Whether the Department has accurately computed petitioner’s sales of draperies.

Action: The Board deferred the hearing to later in the day to assess petitioner’s new evidence.

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Patton Music Company, Inc., 119350 (KH)

7-1-97 to 6-30-00, \$513,942.45 Tax

For Petitioner:

Eric Miethke, Attorney

James Armstrong, Taxpayer

James Reed, Taxpayer

For Sales and Use Tax Department:

Randy Ferris, Tax Counsel

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

Issue: Whether rebates that petitioner received directly from cigarette manufacturers for discounting cigarette prices to petitioner's purchasers by those same amounts, constitute taxable gross receipts.

Action: Upon motion of Dr. Chu, seconded by Mr. Chiang and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the liability in connection with cigarette rebates received from third-parties prior to the first quarter 1999 be removed, and that the amnesty-interest penalty be relieved if, within 30 days of the Notice of Redetermination, petitioner either: pays the remaining amount of amnesty-eligible tax and interest due; or enters into an installment agreement with the Sales and Use Tax Department for full payment of the remaining amount of amnesty-eligible tax and interest due within 13 months, and successfully completes that installment agreement; otherwise redetermine as recommended by the Appeals Division.

Ms. Mandel entered the Boardroom, present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

The Customer Company, 113119 (JHF)

4-5-97 to 3-31-00, \$652,491.67 Tax

For Petitioner:

Ned Roscoe, Representative

John Roscoe, Representative

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

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

Issues: Whether rebate payments received by petitioner from cigarette manufacturers are additional taxable gross receipts related to the sale of cigarettes.

Whether petitioner is entitled to relief pursuant to Revenue and Taxation Code section 6596 because the Department allegedly did not include Volume Price Reduction payments received by petitioner in prior audit periods as part of taxable gross receipts.

Whether California's participation in the "Simplified Sales Tax Agreement" offers support for petitioner's contentions.

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the liability in connection with cigarette rebates received from third-parties prior to the first quarter 1999 be removed, and that the amnesty-interest penalty be relieved if, within 30 days of the Notice of Redetermination, petitioner either: pays the remaining amount of amnesty-eligible tax and interest due; or enters into an installment agreement with the Sales and Use Tax Department for full payment of the remaining amount of amnesty-eligible tax and interest due within 13 months, and successfully completes that installment agreement; otherwise redetermine as recommended by the Appeals Division.

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Cigarettes Cheaper!, 80069 (JHF)
10-1-96 to 9-30-99, \$1,856,420.61 Tax
For Petitioner:

Ned Roscoe, Representative
John Roscoe, Representative

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether rebate payments received by petitioner from cigarette manufacturers are additional taxable gross receipts related to the sale of cigarettes.

Whether petitioner is entitled to relief pursuant to Revenue and Taxation Code section 6596 because the Department allegedly did not include Volume Price Reduction payments received by petitioner in prior audit periods as part of taxable gross receipts.

Action: The Board deferred the hearing to later in the day to assess petitioner's new evidence.

Fast N Easy, Inc., 89000770840 (KHM)
10-1-94 to 12-31-97, \$33,421.19 Tax
For Petitioner:

Kavinder K. Chatkara, Representative
Pardeep Chatkara, Witness

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether rebate payments received by petitioner from cigarette manufacturers are additional taxable gross receipts related to the sale of cigarettes.

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be granted and the tax be redetermined accordingly.

Michael Richard Luna, 356507 (KH) (Continued from earlier in the day.)

Kevin Hanks, Hearing Representative, Sales and Use Tax Department, requested additional time to review the petitioner's new evidence.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, 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.

PUBLIC HEARINGS

Business Taxpayers' Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers' Bill of Rights Hearings. Mr. Gilman entered into the record documents submitted by individuals. (Exhibit 3.1.)

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Speakers: William Connell, Military Veteran and owner of All American Surf Dog
Clayton Hale, President, Contract Management Strategies, Inc.
Bob Wood, Contract Management Strategies, Inc.
Diane Buaas, Vice President, State and Local Tax, Contract Management Strategies, Inc.
Rebecca Saltzman, Chief of Staff, Americans for Safe Access
Dale Gieringer, Coordinator, California NORMAL
Lisa Sawoya, Former owner/operator, of the Hollywood Compassionate Clinic in Los Angeles
Dona Ruth Frank, Manager, Organic Cannabis Foundation LLC
Lisa Molyneux, Owner/Founder, Greenway Compassionate Relief, Inc.
Rebecca DeKeuster, Community Liaison, Berkeley Patients Group
Bill Pearce, Former owner/operator of the River City Patient Center
Tariq Alazraie, Former owner/operator of Bay Area Safe Access and Valencia Street Caregivers
Richard E. V. Harris, Attorney and Resident of Oakland, California

Dr. Chu directed staff to provide a report on refund claims filed by hospitals for tax-exempt purchases and proposed changes to procedures at the May meeting.

Ms. Yee stated that she would like to encourage her colleagues to think about either supporting Senate Joint Resolution 20, authored by Senator Carole Migden, or communicating to the Governor and Attorney General about taking leadership regarding the state's position on this issue.

Mr. Leonard directed staff to investigate the allegation of the Board of Equalization sharing confidential permit information with the federal government with regard to medical marijuana dispensaries.

Exhibits to these minutes are incorporated by reference.

Property Taxpayers' Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, was available to answer questions regarding the Property Taxpayers' Bill of Rights Hearings.

Speaker: John Paskaly, Partner, Komar, LLC

Dr. Chu directed staff to research the issue of treating dissolution of engagement to marry the same as dissolution of marriage in regard to transfer of property and reassessment.

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SALES AND USE TAX APPEALS HEARING

Cigarettes Cheaper!, 80069 (JHF) (Continued from earlier in the day.)

10-1-96 to 9-30-99, \$1,856,420.61 Tax

For Petitioner:

Ned Roscoe, Representative

John Roscoe, Representative

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

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

Issues: Whether rebate payments received by petitioner from cigarette manufacturers are additional taxable gross receipts related to the sale of cigarettes.

Whether petitioner is entitled to relief pursuant to Revenue and Taxation Code section 6596 because the Department allegedly did not include Volume Price Reduction payments received by petitioner in prior audit periods as part of taxable gross receipts.

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the liability in connection with cigarette rebates received from third-parties prior to the first quarter 1999 be removed, and that the amnesty-interest penalty be relieved if, within 30 days of the Notice of Redetermination, petitioner either: pays the remaining amount of amnesty-eligible tax and interest due; or enters into an installment agreement with the Sales and Use Tax Department for full payment of the remaining amount of amnesty-eligible tax and interest due within 13 months, and successfully completes that installment agreement; otherwise redetermine as recommended by the Appeals Division.

Upon motion of Dr. Chu, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board directed staff to treat rebates received directly from third-party cigarette manufacturers in exchange for reducing the retail prices of the cigarettes by those same amounts as nontaxable for retail sales made prior to January 1, 1999, and as taxable for retail sales made thereafter, and that the amnesty interest penalty related to such taxable rebates be relieved if the usual conditions are satisfied.

FINAL ACTION ON HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING HELD MARCH 18, 2008

Darlene D. Hollins, 383301

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD MARCH 18, 2008

Ardeshir Eil Larijani, 295381 (GH)

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

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The Board adjourned at 4:55 p.m.

The foregoing minutes are adopted by the Board on May 29, 2008.

Note: The following matters were removed from the calendar prior to the meeting: *Carlos M. Alcala and Norma Alcala, 259159; Okboon Lee, 335693 (JH); and, George Sanderson Sturges, Jr., 298532 (UT).*