

Wednesday, May 14, 2008

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 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.

SALES AND USE TAX APPEALS HEARINGS

Amer Ibrahim Masri, 289102, 336003 (EA)

7-1-01 to 12-31-01, \$1,354.00 Claim for Refund

1-1-03 to 9-30-04, \$4,441.00 Claim for Refund

For Claimant: Amer Masri, Taxpayer

For Department: Christine Bisauta, Tax Counsel

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

Issue: Whether claimant has established that the amounts of total sales reported for the periods at issue included sales tax reimbursement totaling \$75,339 which he did not claim as sales tax included deductions.

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 claims be submitted for decision.

Bruce Allen Scott and Hal D. Lawrence, 330669, 351500 (FH)

1-1-01 to 12-31-03, \$118,150.66 Tax, \$0.00 Amnesty-Related Penalties

1-1-01 to 12-31-03, \$73,980.54 Claim for Refund

For Petitioner/Claimant: Hal Lawrence, Taxpayer

For Department: Carla Caruso, Tax Counsel

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

Issue: Whether petitioner should be relieved of sales tax on its sales of salvage vehicles based on equitable principles of detrimental reliance.

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 claim and petition be submitted for decision.

McMullen Oil Recycling Co., Inc., 347374 (AA)

1-1-03 to 12-31-03, \$3,115.00 Claim for Refund

1-1-05 to 12-31-05, \$1,498.00 Claim for Refund

For Claimant: Andrew Hopwood, Representative

For Department: Trecia Nienow, Tax Counsel

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

Issues: Whether claimant has established that it is entitled to a deduction for returned merchandise.

Whether claimant has established that it is entitled to a deduction for tax-paid purchases resold.

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 claims be submitted for decision.

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Vista Café, Inc., 332208, 328978 (AS)

1-1-01 to 12-31-03, \$93,540.28 Tax, \$9,354.06 Negligence Penalty, \$7,098.43 Double Negligence Penalty, \$9,280.56 Amnesty Interest Penalty

1-1-01 to 12-31-03, \$2,000.00 Claim for Refund

For Petitioner/Claimant: Varduhi Rose Torosian, Taxpayer

For Department: Kevin Hanks, Hearing Representative

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

Issues: Whether the Sales and Use Tax Department has accurately computed petitioner's taxable sales.

Whether petitioner was negligent.

Whether the claim for refund should be granted.

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 claim and 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.

The Board recessed at 10:30 a.m. and reconvened at 1:30 p.m. with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Lucky Mozel, Inc., 286785 (AP)

7-1-99 to 3-7-03, \$16,993.12 Tax, \$11,258.01 Negligence Penalty

For Petitioner: Robert Marc Hindin, Attorney

For 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 taxable sale of cigarettes.

Whether additional adjustments are warranted to the audited overstatement of claimed prepayments of sales tax to fuel vendors.

Whether petitioner was negligent.

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.

Vector Design, Inc., 255265 (AC)

4-1-00 to 3-31-03, \$409,072.59 Tax, \$40,907.30 Negligence Penalty, \$50,594.00 Amnesty Interest Penalty

For Petitioner: Vincent Latona, Taxpayer

Steve Mather, Attorney

For Department: Robert Tucker, Tax Counsel

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

Issues: Whether adjustments are warranted to the audited understatement of reported taxable measure.

Whether petitioner was negligent.

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Action: Upon motion of Mr. Leonard, 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 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.

Ameritrans, Inc., 315414, 315417 (KHO)

10-1-99 to 6-30-01 and 7-1-01 to 9-30-03, \$47,724.07 Tax, \$10,358.28 Penalties

Ameriwest, Inc., 281204, 315418 (KHO)

4-1-95 to 9-30-96 and 10-1-96 to 9-30-03, \$236,352.10 Tax, \$71,461.29 Penalties

For Petitioner: Donald A. Driftmier, CPA

For Department: Trecia Nienow, Tax Counsel

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

Issues: Whether petitioner Ameritrans, Inc. has shown that the Department improperly assessed use tax on unreported lease income.

Whether the administrative fees Ameritrans charged Ameriwest were subject to tax.

Whether Ameriwest collected excess sales tax reimbursement on nontaxable leases of vehicles.

Whether Ameriwest is entitled to relief from the 10-percent penalty for failure to file returns.

Whether taxpayers are entitled to relief from the 10-percent penalties added to their liabilities in case IDs 315414, 315417, and 315418 for their failure to timely pay the determinations.

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 petitions be submitted for decision.

Contractors Wardrobe, Inc., 311396 (AR)

1-1-02 to 6-30-04, \$103,950.00 Tax

For Petitioner: Steve Teeman, Taxpayer

For Department: Robert Tucker, Tax Counsel

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

Issue: Whether the subject piece of equipment was purchased and used in California during the audit period.

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.

Justin F. McJones and Madeleine A. McJones, 311626 (UT)

April 9, 2003, \$7,344.00 Tax

For Petitioner: Justin McJones, Taxpayer

John O'Connor, Representative

For Department: Carla Caruso, Tax Counsel

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

Issue: Whether petitioners' purchase of the vessel is subject to use tax.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel 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.

American Textile Systems, 359067 (AA)

1-1-02 to 12-31-04, \$118,851.00 Tax

For Petitioner: Alan Nathan, Taxpayer

For Department: Carla Caruso, Tax Counsel

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

Issue: Whether petitioner has established that the difference between accrued and reported sales tax represents sales tax erroneously recorded on nontaxable sales or other accounting errors.

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.

Paula J. Hunter, 379962 (EH)

1-1-03 to 3-31-06, \$41,473.30 Tax

For Petitioner: Paula Hunter, Taxpayer

For Department: Christine Bisauta, Tax Counsel

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

Issue: Whether petitioner is liable for sales tax on her unreported retail sales of tangible personal property.

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.

SPECIAL TAXES APPEALS HEARING

Mike Issa Grair, 310010 (ET)

1-1-02 to 11-30-03, \$22,320.13 Tax, \$00.00 Failure to File Penalty

For Petitioner: Mike Grair, Taxpayer

John A. Caven, Accountant

For Department: Monica Brisbane, Tax Counsel

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

Issue: Whether any adjustments are warranted to the measure of untaxed tobacco products petitioner distributed in this state.

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.

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FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MAY 14, 2008

Amer Ibrahim Masri, 289102, 336003 (EA)

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 claims be denied as recommended by the Appeals Division.

Bruce Allen Scott and Hal D. Lawrence, 330669, 351500 (FH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the claim be denied and petition be redetermined as recommended by the Appeals Division.

McMullen Oil Recycling Co., Inc., 347374 (AA)

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 claims be denied as recommended by the Appeals Division.

Lucky Mozel, Inc., 286785 (AP)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Ameritrans, Inc., 315414, 315417 (KHO)

Ameriwest, Inc., 281204, 315418 (KHO)

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petitioner be relieved of the interest that accrued on the tax incurred on and after July 1, 1999 for the 13 months of delay in issuing the Decision and Recommendation, and otherwise redetermine as recommended by the Appeals Division.

Contractors Wardrobe, Inc., 311396 (AR)

Final Action: Upon motion of Ms. Yee, seconded by Dr. Chu 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.

American Textile Systems, 359067 (AA)

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.

Paula J. Hunter, 379962 (EH)

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. The Board directed staff to offer petitioner a payment plan and to inform the petitioner of the Offer in Compromise Program.

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FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD MAY 14, 2008

Mike Issa Grair, 310010 (ET)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 4:05 p.m.

The foregoing minutes are adopted by the Board on June 24, 2008.

Note: The following matter was removed from the calendar prior to the meeting: *Presentation of Retirement Resolution to Joseph D. Young.*