

**Thursday, May 15, 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.

### **HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING**

Asuncion P. Hamoy, 406636

2006, \$347.50

For Claimant: Asuncion P. Hamoy, Taxpayer

For Franchise Tax Board: Suzanne Small, Tax Counsel

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

Issue: Whether respondent properly denied appellant's claim for property tax assistance.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 5.4)

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.

Exhibits to these minutes are incorporated by reference.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Billy W. Blanks and Gayle H. Blanks, 268581

1998, \$663,038.00 Assessment

1999, \$987,125.00 Assessment

BG Star Productions, Inc., 268579

1998, \$112,394.00 Assessment

1999, \$62,250.00 Assessment

For Appellant: Thomas W. Henning, Attorney

Billy Blanks, Taxpayer

Glenn Bystrom, CPA

For Franchise Tax Board: Renel Sapiandante, Tax Counsel

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

Issues: Whether appellants have shown that respondent erred in its determination that an installment sales agreement existed in 1998 between appellants and NCP Marketing, Inc., so that the installment sales rules of Internal Revenue Code section 453A are not applicable to tax year 1998.

Whether respondent erroneously failed to consider the effect on contingent installment obligations on the value of the 1999 Final Agreement in the calculation of interest under Internal Revenue Code section 453A.

Whether the board should impose a frivolous appeal penalty on appellants.

Respondent's Exhibit: Miscellaneous Documents (Exhibit 5.5)

Mr. Sapiandante stated that the Franchise Tax Board withdrew the issue of imposing a frivolous appeal penalty.

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Action: Upon motion of Dr. Chu, 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 appeal be submitted for decision, granting the appellant 60 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board.

Charlotte Chao Carr, 359071

George Carr, 380591

1987, \$7,294.00 Tax, \$2,348.59 Penalties

1988, \$9,383.00 Tax, \$469.15 Penalties

For Appellant 359071:

Charlotte Chao, Taxpayer

Andrea Suarez, Attorney

For Appellant 380591:

George Carr, Taxpayer

For Franchise Tax Board:

Mark McEvelly, Tax Counsel

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

Issues: Whether either appellant is entitled to innocent spouse relief.

Whether the Board has jurisdiction to consider appellant-husband's claim for innocent spouse relief and, if so, whether he is entitled to innocent spouse relief.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 5.6)

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.

Steven L. Lane, 390952

2005, \$1,641.00 Claim for Refund

For Appellant:

Steven L. Lane, Taxpayer

David Kabachnick, Enrolled Agent

For Franchise Tax Board:

Suzanne Small, Tax Counsel

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

Issue: Whether appellant has shown reasonable cause for abatement of the late payment penalty.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 5.7)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 5.8)

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.

The Board recessed at 12:25 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

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Dean Scheu, 377476

2001, \$3,096.27 Relief Requested

For Appellant:

Dean Scheu, Taxpayer

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

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

Issue: Whether appellant has shown that respondent erred when it granted innocent spouse relief to appellant's former spouse for the 201 tax year.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 5.9)

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.

Daniel V, Inc., 342609

1997, \$40,759.23 Assessment

1998, \$840,010.32 Assessment

For Appellant:

Marty Dakessian, Attorney

David Keligian, Attorney

Ron Lane, Taxpayer

David Hehn, Witness

For Franchise Tax Board:

William Gardner, Tax Counsel

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

Issues: Whether respondent has shown that appellant had a commercial domicile in California during the appeal years.

Whether appellant has shown that accuracy-related penalties imposed by the Franchise Tax Board for the appeal years should be abated.

Whether appellant has shown that it had "reasonable cause" for filing a late tax return for 1997.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 5.10)

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.

Thomas Y. Chung and Chan N. Chung, 395925

2000, \$185,814.00 Assessment

For Appellant:

Thomas R. Lamons, Attorney

For Franchise Tax Board:

William Gardner, Tax Counsel

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

Issue: Whether appellant is entitled to a deduction for bad debt and/or worthless stock.

Appellant's Exhibit: Declaration of Tae Joon Kim (Exhibit 5.11)

Action: The Board granted the appellant's request for postponement.

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Robert Fouts and Maureen Fouts, 383284

2000, \$245,549.00 Tax, \$61,387.25 Penalty

For Appellant:

John F. Nolan, Attorney, CPA

For Franchise Tax Board:

Ronald Hofsdal, Tax Counsel

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

Issues: Whether and when appellants cease to be California residents; specifically: whether appellants were California residents when the sale of the family business occurred on October 28, 1999; and whether appellants when they received the income from the sale of the family business on or about January 7, 2000.

Whether Revenue and Taxation Code section 17554 operated to make the income from the sale of the family business on October 28, 1999, taxable in California, even if appellants ceased to be California residents prior to receiving that income on or about January 7, 2000.

Whether income earned under a consulting agreement is California-source income, thereby making such income taxable in California regardless of appellants' state of residence.

Whether appellants have shown reasonable cause for their failure to furnish information upon respondent's demand to do so.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 5.12)

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.

#### **FINAL ACTION ON HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING HELD MAY 15, 2008**

Asuncion P. Hamoy, 406636

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 modified action of the Franchise Tax Board.

#### **HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING**

Larry R. Stieber, 397117

2006, \$1.00 or more

For Claimant:

No Appearance

For Franchise Tax Board:

Suzanne Small, Tax Counsel

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

Issue: Whether appellant was "disabled" for Homeowners and Renters Property Tax Assistance purposes for twelve months, including December 31, 2005.

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.

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**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD MAY 15, 2008**

Charlotte Chao Carr, 359071  
George Carr, 380591

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 sustained the action of the Franchise Tax Board in the appeal of *Charlotte Chao Carr, 359071*; and, dismissed the appeal of *George Carr, 380591*; for lack of jurisdiction.

Steven L. Lane, 390952

Final Action: Ms. Steel moved to reverse the action of the Franchise Tax Board. The motion was seconded by Mr. Leonard but the vote was suspended.

The Board deferred final action on this matter to later in the day.

Dean Scheu, 377476

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.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Byron Reynolds, 382836

2004, \$4,158.00 Tax, \$2,130.75 Penalties

For Appellant:

Waived Appearance

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether appellant has shown error in respondent's proposed determination of tax for 2004.

Whether appellant has shown the late filing penalty and the failure to file after demand penalty imposed by respondent should be abated.

Whether a frivolous appeal penalty should be imposed.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 5.13)

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 and imposed a \$5,000.00 frivolous appeal penalty.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD MAY 15, 2008**

Daniel V, Inc., 342609

Final Action: Ms. Steel moved to reverse the action of the Franchise Tax Board. The motion was seconded by Mr. Leonard but no vote was taken.

The Board deferred consideration of this matter to later in the day.

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Robert Fouts and Maureen Fouts, 383284

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 sustained the action of the Franchise Tax Board.

Steven L. Lane, 390952 (Continued from earlier in the day)

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

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 sustained the action of the Franchise Tax Board.

Daniel V, Inc., 342609 (Continued from earlier in the day)

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

Ms. Yee moved to sustain the action of the Franchise Tax Board. The motion was seconded by Dr. Chu but no vote was taken.

The Board deferred consideration of this matter to the May Sacramento meeting.

The Board adjourned at 4:10 p.m.

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

Note: The following matters were removed from the calendar prior to the meeting: *David H. Ward, 400893; Jennifer Hernandez-Mike and Thomas Estama, 378220; and, Elizabeth A. Welmas, 400894.*