

Wednesday, August 6, 2008

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:28 a.m., with 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.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Electronic Data Systems Corporation (EDS), 361467 (Continued from August 5, 2008)

Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and duly carried, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Dr. Chu voting no, Ms. Mandel not participating, the Board ordered that its August 5, 2008 motion that the appeal be submitted for decision, granting the appellant 30 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 be expunged.

Ms. Mandel moved that the appeal be submitted for decision. Mr. Leonard made a substitute motion to reverse the action of the Franchise Tax Board. The substitute motion was seconded by Ms. Steel but no vote was taken.

Upon motion of Ms. Mandel, 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 submitted the appeal for decision.

SALES AND USE TAX APPEALS HEARINGS

Bobby Eugene Cook, 333472 (FH)

1-1-01 to 11-30-03, \$21,724.38 Tax, \$1,599.59 Amnesty Interest Penalty

For Petitioner: Bobby Cook, Taxpayer

For Department: Kevin Hanks, Hearing Representative

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

Issue: Whether further adjustments are warranted to the audited amount of unreported taxable sales.

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.

Jasvir Badesha, 315512 (EH)

12-1-01 to 12-31-04, \$67,329.13 Tax, \$6,842.52 Negligence Penalty, \$1,692.49 Double

Negligence Penalty, \$1,635.18 Amnesty Interest Penalty

Jasvir Badesha and Amarjit Badesha, 315514 (EH)

10-1-01 to 9-30-04, \$48,509.73 Tax, \$4,976.22 Negligence Penalty, \$2,118.21 Double

Negligence Penalty, \$2,273.70 Amnesty Interest Penalty

For Petitioner: James Taheran, Enrolled Agent

Clyde Sleight, Representative

For Department:

Mariflor Jimenez, Hearing Representative

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

Wednesday, August 6, 2008

Issues: Whether further adjustments are warranted to the audited understatements of reporter taxable sales.

Whether petitioners were 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.

Ms. Mandel stated that she would not participate in the matter of *American Telephone and Telegraph Company, 251880, 330162*, in accordance with Government Code section 87105, and left the Boardroom.

American Telephone and Telegraph Company, 251880, 330162 (OH)

1-1-95 to 12-31-99, \$3,480,913.12 Tax

For Petitioner/Claimant:

Jeffrey G. Varga, Attorney

Michael James Guerriero, Attorney

For Department:

Bradley Heller, Tax Counsel

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

Issues: Whether charges for certain software transactions between petitioner's Network Systems division and its California customer are subject to use tax.

Whether petitioner is entitled to an adjustment to the measure of use tax for property withdrawn from resale inventory for self-consumption.

Whether petitioner's sales of software, which were shipped to Pacific Bell in San Ramon, are subject to the Contra Costa Transportation Authority and Bay Area Rapid Transit district taxes.

Whether the Department included charges for nontaxable engineering services in petitioner's measure of tax.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel absent and not participating in accordance with Government Code section 87105, the Board ordered that the claim and petition be submitted for decision.

Ms. Mandel returned to the Boardroom.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY

Sea World, Inc., 415835 (FH)

4-1-04 to 6-30-07, \$72,945.47

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Ms. Steel. No other disqualifying contributions were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel not participating in accordance with Government Code section 15626, the Board approved the refund as recommended by staff.

Wednesday, August 6, 2008

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 11:30 a.m. and reconvened immediately in closed session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 11:42 a.m. and reconvened immediately in open session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

The Board recessed at 11:43 a.m. and reconvened at 1:29 p.m. with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

Carrolandia #1 Auto Sales, Inc., 360245 (AS)

7-1-01 to 6-30-03, \$60,052.50 Tax, \$00.00 Penalty

For Petitioner:

Ray Borroel, Bookkeeper

Jorge Lagos, President

Lia Lagos, Secretary

For Department:

Kevin Hanks, Hearing Representative

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

Issue: Whether adjustments are warranted to the audited understatement of reported taxable sales.

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.

Jose Efrain Medinilla, 252958 (AP)

1-1-00 to 9-30-03, \$29,549.45 Tax, \$2,954.98 Negligence Penalty, \$3,988.03 Amnesty Interest Penalty

For Petitioner:

Jose E. Medinilla, Taxpayer

For Department:

Kevin Hanks, Hearing Representative

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

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

Whether adjustments are warranted to the audited overstatement of claimed nontaxable sales for resale.

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.

Wednesday, August 6, 2008

Jake Earl Williams, 288780 (EH)

1-1-00 to 6-30-01, \$4,415.64 Tax, \$622.02 Amnesty Interest Penalty

For Petitioner: Jack Adams, Enrolled Agent

For Department: Kevin Hanks, Hearing Representative

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

Issue: Whether petitioner has provided evidence to show that the missing ROS forms do not represent retail sales subject to tax.

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.

Trung Duc Trinh and Shelly C. Yun-Trinh, 330253 (AS)

4-1-02 to 12-31-02, \$2,720.85 Tax, \$1,232.54 Negligence Penalty

Shaya Beverly Center, Inc., 330254 (AS)

1-1-02 to 6-30-03, \$16,704.83 Tax, \$3,578.06 Negligence Penalty

For Petitioner: Jung Hoon Oh, CPA

For Department: Mariflor Jimenez, Hearing Representative

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

Issues: Whether petitioner has established that further reductions are warranted to the taxable measure of understated taxable sales.

Whether petitioner was negligent.

Action: Upon motion of Dr. Chu, 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 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.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
AUGUST 6, 2008**

Bobby Eugene Cook, 333472 (FH)

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.

Jasvir Badesha, 315512 (EH)

Jasvir Badesha and Amarjit Badesha, 315514 (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.

Wednesday, August 6, 2008

SALES AND USE TAX APPEALS HEARING

Robere's Jewelry, Inc., 220461 (FH)

7-1-98 to 3-31-02, \$79,461.04 Tax, \$12,230.76 Negligence Penalty, \$24,973.53 Amnesty Interest Penalty

For Petitioner: Appearance Waived

For Department: Kevin Hanks, Hearing Representative

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

Issues: Whether any additional adjustments to the deficiency for unreported taxable sales per bank deposits is warranted.

Whether petitioner is entitled to any additional labor deductions.

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 redetermined as recommended by the Appeals Division.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
AUGUST 6, 2008**

American Telephone and Telegraph Company, 251880, 330162 (OH)

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and duly carried, Dr. Chu, Ms. Yee and Mr. Leonard voting yes, Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 87105, the Board ordered that the claim for payments made towards the determination be denied and the petition be redetermined as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARING

Eduardo Orta, 390729 (AP)

7-1-03 to 6-30-06, \$46,924.17 Tax, \$4,692.44 Negligence Penalty, \$4,692.42 Finality Penalty

For Petitioner: No Appearance

For Department: Kevin Hanks, Hearing Representative

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 adjustments are warranted to the audited understatement of reported taxable sales.

Whether taxpayer was negligent.

Whether relief from the finality penalty should be granted.

Action: Upon motion of Ms. Mandel, 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 redetermined as recommended by the Appeals Division.

Wednesday, August 6, 2008

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
AUGUST 6, 2008**

Carrolandia #1 Auto Sales, Inc., 360245 (AS)

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.

Jose Efrain Medinilla, 252958 (AP)

Final Action: Upon motion of Ms. Mandel, 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 redetermined as recommended by the Appeals Division.

Jake Earl Williams, 288780 (EH)

Final Action: Ms. Steel moved that the petition be granted. 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 ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 2:42 p.m.

The foregoing minutes are adopted by the Board on September 17, 2008.

Note: The following matter was removed from the calendar prior to the meeting: *Adnan Hasan Bawanah, 314857 (ET)*.