

Thursday, August 7, 2008

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

SALES AND USE TAX APPEALS HEARINGS

Daniel Ilko, 262991, 334436 (FH)

1-1-96 to 6-30-96, \$8,491.21 Tax

10-1-93 to 9-30-96, \$33,542.25 Tax, \$18,231.96 Amnesty Interest Penalty, \$6,118.05 Finality Penalty

For Petitioner: A. Lavar Taylor, Attorney

For Department: Cary Huxsoll, Tax Counsel

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

Issues: Whether the notices of determination issued to petitioner as a responsible person for the unpaid tax liabilities of Executive Auto Sales were timely issued.

Whether petitioner's personal liability for the tax liability incurred by Executive Auto Sales was discharged in his Chapter 7 bankruptcy.

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.

James William Justice, 330247 (EA)

Joyce Allen Justice, 327635 (EA)

1-1-98 to 2-19-02, \$59,634.43 Tax, \$10,078.08 Late Payment Penalty, \$13,814.34 Amnesty Interest Penalty

For Petitioner: A. Lavar Taylor, Attorney

For Department: Robert Tucker, Tax Counsel

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

Issues: Whether the Notices of Determination issued to petitioners were timely for all quarters included in the liability period.

Whether petitioners are personally liable as responsible persons for the unpaid liabilities of South Coast Deli's, Inc. for the period January 1, 2008, through February 19, 2002.

Whether petitioners' liabilities were discharged in bankruptcy.

Whether there is reasonable cause to relieve the penalties for late payments on returns and prepayments that were originally assessed against South Coast Deli's, Inc.

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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Steven C. Kissen, Diana M. Jianas, and John C. Calderone, 101472 (EA)
1-1-98 to 12-31-98, \$21,297.71 Tax, \$2,876.37 Negligence Penalty, \$9,268.52 Amnesty Interest Penalty

Steven C. Kissen, Thomas E. Stone, and Alex T. Jianas, 101476 (AC)
5-11-98 to 10-31-99, \$6,283.32 Tax, \$788.27 Negligence Penalty, \$2,101.31 Amnesty Interest Penalty

Mr. Bones-Fine Cigars and Tobaccos, Inc., 101475 (EA)
1-1-99 to 9-30-99, \$14,929.14 Tax, \$1,675.08 Negligence Penalty, \$4,317.57 Amnesty Interest Penalty

Mr. Bones-Fine Cigars and Tobaccos, Inc., 249937 (FH)
4-1-00 to 9-30-02, \$13,041.29 Tax, \$2,751.37 Negligence Penalty, \$4,468.07 Amnesty Interest Penalty

Steven C. Kissen and Diana M. Jianas, 101474 (EA)
10-1-96 to 12-31-97, \$4,840.58 Tax, \$3,305.76 Negligence Penalty, \$13,199.98 Amnesty Interest Penalty

For Petitioner: Steven C. Kissen, Taxpayer

For Department: Mariflor Jimenez, Hearing Representative

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

Issues: Whether the evidence shows that petitioner accurately reported all its taxable sales for the audit periods.

Whether petitioner was negligent.

Whether the cigar markup is excessive.

Whether the audited allowance of 3.5 percent for spoilage of cigars should be increased.

Whether the audited sales should be computed using bank deposits instead of marking up merchandise purchases.

David H. Levine, Tax Counsel, Appeals Division, Legal Department, announced the revised recommendation of the Appeals Division that interest be relieved for the period of delay in scheduling the Board hearing in each of these matters resulting from the mistaken belief that cigarette rebates were at issue.

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 petitions be submitted for decision.

Manouch Lankarani, 252973 (EH)
10-1-99 to 9-30-00, \$16,003.07 Tax, \$00.00 Penalty

Mountain Magic Motors, Inc., 252972, 359519 (EH)
10-1-00 to 12-31-02, \$1,686.03 Tax, \$2,334.89 Claim for Refund

For Petitioner/Claimant: Manouch Lankarani, Taxpayer

Linus Amarikwa, Representative

For Department: Kevin Hanks, Hearing Representative

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

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Issue: Whether petitioners have established that they are entitled to allowances for bad debts against the 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 claim and petition be submitted for decision.

Vishwa Rup Lakhanpal, 100564, 234649 (AR)

7-1-96 to 9-30-99, \$43,049.55 Tax, \$9,893.88 Amnesty Interest Penalty, \$00.00 Negligence Penalty

7-1-96 to 9-30-99, \$10,000.00 Claim for Refund

For Petitioner/Claimant: Vishwa Rup Lakhanpal, Taxpayer
Anita Lakhanpal, Witness
Joseph J. Cohen, Representative

For Department: Kevin Hanks, Hearing Representative

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

Issues: Whether petitioner owes tax or the tax reimbursement collected on rebates paid to petitioner by cigarette manufacturers.

Whether the audit computations result in an excessive amount of gross receipts from sales of cigarettes.

Whether the Department has accurately computed the amount of unrecorded cigarette purchases.

Whether audited taxable sales should be reduced for sales for resale.

Whether any portion of the interest that has accrued on the audit liability should be relieved because the failure to pay tax was due to an unreasonable error or delay by an employee of the Board.

Whether the claim for refund should be denied.

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 claim and petition be submitted for decision.

Danny Kangsok Kim, 386898 (EA)

4-1-03 to 3-31-06, \$21,404.94 Tax, \$00.00 Penalty

For Petitioner: Danny Kangsok Kim, Taxpayer

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. Steel, 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.

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Fred E. Peters, 391649 (EA)

1-1-03 to 12-31-05, \$15,500.00 Tax, \$6,200.00 Negligence Penalty

For Petitioner:

Fred Peters, Taxpayer

Lydia Turanchik, Attorney

Charles Betz, Witness

For Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether petitioner has established that two specific sales are exempt or nontaxable transactions.

Whether petitioner was negligent.

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 submitted for decision.

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

Upon a single 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 expunged its August 5, 2008 motion with respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu not participating in *Time Warner Entertainment Co., L.P., 391663 (OH)*; the Board made the following orders:

William S. Kurr, 445807 (OH)

1-1-99 to 11-30-00, \$414,208.87

Action: Approve the credit and cancellation as recommended by staff.

Michael C. Fina Corporate Sales, Inc., 433828 (OH)

7-1-99 to 12-31-04, \$68,387.78

Action: Approve the credit and cancellation as recommended by staff.

Monica R. Ruiz, 445525 (EH)

7-1-06 to 12-31-06, \$51,369.94

Action: Approve the credit and cancellation as recommended by staff.

Bowne of Los Angeles, Inc., 133520 (AS)

10-1-98 to 12-31-02, \$362,230.95

Action: Approve the refund as recommended by staff.

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Telogy, Inc., 422014 (CH)

10-1-04 to 9-30-05, \$56,321.09

Action: Approve the refund as recommended by staff.

Ariat International, Inc., 444199 (CH)

10-1-04 to 9-30-07, \$64,915.34

Action: Approve the refund as recommended by staff.

Sims Group USA Corporation, 433716 (CH)

4-1-05 to 6-30-07, \$56,997.92

Action: Approve the refund as recommended by staff.

Westamerica Graphics Corp., 400031 (EA)

1-1-04 to 3-31-07, \$537,023.01

Action: Approve the refund as recommended by staff.

Cubic Defense Systems, Inc., 375114 (FH)

1-1-00 to 12-31-02, \$158,790.60

Action: Approve the refund as recommended by staff.

Hyundai Motor Finance Company, 396356 (EA)

4-1-04 to 12-31-06, \$204,813.73

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 436855 (KH)

2-4-08 to 3-14-08, \$219,563.00

Action: Approve the refund as recommended by staff.

Time Warner Entertainment Co., L.P., 391663 (OH)

1-1-04 to 9-30-06, \$84,184.19

Action: Approve the refund as recommended by staff. Dr. Chu not participating.

Gateway Companies, Inc., 334971 (OH)

7-1-98 to 9-30-05, \$183,952.77

Action: Approve the refund as recommended by staff.

Motor Coach Industries, Inc., 440263 (OH)

10-1-07 to 12-31-07, \$213,940.11

Action: Approve the refund as recommended by staff.

Sutter Visiting Nurse Association and Hospice, 420057 (KH)

1-1-06 to 6-30-07, \$296,266.98

Action: Approve the refund as recommended by staff.

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Gateway Professional, LLC, 334976 (OH)

10-1-01 to 9-30-05, \$488,901.86

Action: Approve the refund as recommended by staff.

BMW of North America, LLC, 444613 (OH)

7-1-01 to 9-30-04, \$69,015.91

Action: Approve the refund as recommended by staff.

Star CNC Machine Tool Corp., 417774 (AP)

10-1-04 to 9-30-06, \$81,986.60

Action: Approve the refund as recommended by staff.

Star Financial Services, 433715 (AP)

4-1-05 to 12-31-07, \$103,940.66

Action: Approve the refund as recommended by staff.

Mission Financial Services Corporation, 430891 (EA)

7-1-07 to 12-31-07, \$79,611.67

Action: Approve the refund as recommended by staff.

Rackable Systems, Inc., 420667 (CH)

4-1-04 to 9-30-06, \$223,354.26

Action: Approve the refund as recommended by staff.

Pure Process Systems, Inc., 444729 (OH)

1-1-05 to 3-31-07, \$114,579.35

Action: Approve the refund as recommended by staff.

1st United Services Credit Union, 424979 (CH)

4-1-06 to 6-30-07, \$54,972.74

Action: Approve the refund as recommended by staff.

Sprint Communications Company, LP, 404176 (OH)

1-1-04 to 3-31-05, \$146,348.40

Action: Approve the refund as recommended by staff.

First Financial Credit Union, 433712 (AP)

1-1-07 to 12-31-07, \$148,728.43

Action: Approve the refund as recommended by staff.

Northrop Grumman Federal Credit Union, 432541 (AS)

1-1-03 to 6-30-07, \$289,893.35

Action: Approve the refund as recommended by staff.

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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
AUGUST 7, 2008**

Daniel Ilko, 262991, 334436 (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.

SALES AND USE TAX APPEALS HEARING

Mostafa Vakilian, 254076 (EA)

1-1-99 to 12-31-01, \$90,320.66 Tax, \$9,032.08 Negligence Penalty, \$18,420.01 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 additional adjustments are warranted to the audited amount of unreported taxable sales.

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 HEARINGS HELD
AUGUST 7, 2008**

James William Justice, 330247 (EA)

Joyce Allen Justice, 327635 (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 petition be redetermined as recommended by the Appeals Division.

Steven C. Kissen, Diana M. Jianas, and John C. Calderone, 101472 (EA)

Steven C. Kissen, Thomas E. Stone, and Alex T. Jianas, 101476 (AC)

Mr. Bones-Fine Cigars and Tobaccos, Inc., 101475 (EA)

Mr. Bones-Fine Cigars and Tobaccos, Inc., 249937 (FH)

Steven C. Kissen and Diana M. Jianas, 101474 (EA)

Final Action: Upon motion of Mr. Leonard, 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 portion of the amnesty-interest penalty which is based on interest that had accrued during the period of delay in scheduling the hearing in each petition be relieved, conditioned on payment of the amnesty-eligible tax and interest, and that each petition otherwise be redetermined in accordance with the revised recommendation of the Appeals Division.

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Manouch Lankarani, 252973 (EH)

Mountain Magic Motors, Inc., 252972, 359519 (EH)

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 claim and petition be redetermined as recommended by the Appeals Division.

Vishwa Rup Lakhanpal, 100564, 234649 (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 claim and the petition be redetermined as recommended by the Appeals Division.

Fred E. Peters, 391649 (EA)

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

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARING HELD AUGUST 5, 2008**

Electronic Data Systems Corporation (EDS), 361467

Final Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and duly carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu voting no, the Board reversed the action of the Franchise Tax Board and directed the parties, if parties choose to petition for rehearing, to provide the correct amount to be included in the sales factor.

The Board adjourned at 12:45 p.m.

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