

Wednesday, August 20, 2008

The Board met at its offices at 450 N Street, Sacramento, 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 HEARING

Mehdi Behmard, 106372 (KH)

9-15-95 to 3-31-99, \$99,138.99 Tax, \$10,064.06 Penalty, \$39,478.10 Amnesty Interest Penalty

For Petitioner: Gary M. Kimzey, Representative

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

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

Issues: Whether the understated taxable sales are excessive.

Whether petitioner is entitled to a larger allowance for shrinking/pilferage in excess of the two percent already allowed in the audit.

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.

Mr. Leonard suggested a change in the Audit Manual to include auditing all of the stores in pool purchases that are involved with an audited business in order to obtain a more accurate picture of the business.

PROPERTY TAXES HEARINGS

Nehemiah Corporation of America, 403977

2001-2002

For Claimant: Louis A. Gonzalez, Jr., Attorney

Scott Syphax, President

Walter McDaniel, CO.O.

Glenda R. Claremon, Attorney

For Property and Special Taxes Department: Daniel Paul, Tax Counsel

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

Issue: Whether petitioner has established that respondent erred in its determination that petitioner does not qualify for an organizational clearance certificate because petitioner is not organized and operated exclusively for charitable purposes within the meaning of Revenue and Taxation Code section 214.

Claimant's Exhibit: Miscellaneous Documents (Exhibit 8.5)

Staff's Exhibit: Miscellaneous Documents (Exhibit 8.6)

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 ordered that the petition be submitted for decision.

Exhibits to these minutes are incorporated by reference.

Wednesday, August 20, 2008

Spaulding Center for Wooden Boats, 403978
2005-2007

For Claimant:

Mark Welther, Taxpayer
Michael Wiener, Taxpayer
Thomas S. Wrobel, Attorney

For Property and Special Taxes Department: Andrew Jacobson, Tax Counsel

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

Issue: Whether petitioner has established that respondent erred in its determination that petitioner does not qualify for an organizational clearance certificate because petitioner is not organized and operated exclusively for charitable purposes within the meaning of Revenue and Taxation Code section 214.

Claimant's Exhibit: Miscellaneous Documents (Exhibit 8.7)

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 claim be submitted for decision, granting the claimant 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the claimant's supporting documents, the Department's response and provide its recommendation to the Board.

CHIEF COUNSEL MATTERS

RULEMAKING

Proposed Amendments to Sales and Use Tax Regulation 1574, *Vending Machine Operators*, Section 100 Changes

Tim Treichel, Tax Counsel, Settlement Division, Legal Department, was available to answer questions regarding the proposed amendments to Sales and Use Tax Regulation 1574, which will update the percentages in the table used by vending machine operators to compute taxable sales to reflect the most current tax rates. (Exhibit 8.8.)

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 approved the section 100 changes to Sales and Use Tax Regulation 1574, *Vending Machine Operator*, as recommended by staff.

Adoption of Proposed Amendments to Sales and Use Tax Regulation 1599, *Coins and Bullion*, Section 100 Changes

Tim Treichel, Tax Counsel, Settlement Division, Legal Department, was available to answer questions regarding the proposed amendments to Sales and Use Tax Regulation 1599, which will increase the coins and bullion bulk sales exemption threshold to \$1,500 effective January 1, 2009. (Rev. & Tax. Code § 6355.) (Exhibit 8.9.)

Wednesday, August 20, 2008

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 approved the section 100 changes to Sales and Use Tax Regulation 1599, *Coins and Bullion*, as recommended by staff.

OTHER CHIEF COUNSEL MATTERS

***Loeffler, et al. (Appellants) v. Target Corp. (Respondents)*, Second District Court of Appeal No. B199287 Los Angeles, Superior Court No. 360004**

Ms. Mandel stated that she would not participate in this matter in accordance with Government Code section 87105 and left the Boardroom.

John Waid, Tax Counsel, Legal Affairs Division, Legal Department, made introductory remarks regarding the request for approval to file amicus curiae brief on the question of whether or not a customer may sue a retailer under the Unfair Competition Law (Bus. & Prof. Code, §§. 17200 et seq.) for allegedly collecting sales tax reimbursement on a nontaxable transaction. (Exhibit 8.10.)

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 approved filing of the amicus brief as recommended by staff.

Ms. Mandel returned to the Boardroom.

Eagle Lodge West Conference

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, introduced Bradley Marsh, law firm of Winston and Strawn, Acting Chair of the California State Bar's State & Local Tax Committee, who provided a summary of the annual conference among government and private tax practitioners designed to foster dialogue and discussion regarding difficult tax issues. (Exhibit 8.11.)

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 approved creation of an evaluation team to consider tax law procedures simplification proposals, as recommended by staff.

The Board recessed at 12:31 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:31 p.m. and reconvened immediately in closed session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Wednesday, August 20, 2008

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 2:23 p.m. and reconvened immediately in open session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Ramon Hirsig, Executive Director, announced the appointment of Robert Ingenito to the position of Manager, Research and Statistics Section, Legislative and Research Division.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single 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 made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California. (Exhibit 8.12.)

Marilyn Hubbard, Information Systems Technician, Technology Services
Division, Headquarters
Richard C. Loe, Associate Tax Auditor, West Covina District Office
Richard E. Passalacqua, Associate Tax Auditor, Bakersfield Branch Office of the
Ventura District
Oveta Riffle, Business Taxes Compliance Supervisor III, Consumer Use Tax
Section, Headquarters

Action: Approve the Board Meeting Minutes of July 8, 2008.

Action: Approve the property tax forms. (Exhibit 8.13.)

Action: Approve the proposed revisions to Audit Manual Chapter 4, *General Audit Procedures*, and Chapter 5, *Penalties*. (Exhibit 8.14.)

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**Customer Services and Administrative Efficiency Committee**

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report and the actions therein. (Exhibit 8.15.)

Wednesday, August 20, 2008

OTHER ADMINISTRATIVE MATTERS**Deputy Directors Reports**

David Gau, Deputy Director, Property and Special Taxes Department provided a status report on implementation of the flavored malt beverage regulations.

Elizabeth Houser, Deputy Director, Administration Department, introduced Doug Button, Director of Real Estate, Department of General Services, who provided the status of on-going BOE headquarters repair projects. Ms. Houser also provided a facilities update on the headquarters space assessment and the Santa Ana/Laguna Hills consolidation and move. (Exhibit 8.16.)

The Board directed staff to report the following information: the specific staff/functions among the 500 identified to be relocated offsite; where the BOE will/should be in the next 10 years in regards to housing employees; and, the current number of employees and how best to house them all, whether in one building or decentralized.

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 authorized staff to work with the Department of General Services to negotiate leases for the Board of Equalization's current expected un-housed employees.

Elizabeth Houser, Deputy Director, Administration Department, reported on the Governor's Executive Order S-09-08 and the State Controller's response. (Exhibit 8.17.)

Elizabeth Houser, Deputy Director, Administration Department, reported the current status of the 2008/09 Budget, including the newly proposed amnesty program and 1 percent sales tax increase.

Fiscal Year 2009/10 Budget Change Proposals

Elizabeth Houser, Deputy Director, Administration Department, made introductory remarks regarding the Fiscal Year 2009/10 draft budget change proposals. Ms. Houser recommended they be presented for the Board's feedback to staff for suggested improvements to the documents and that staff bring the proposals back in September for the Board's vote. Ms. Houser reported that the Department of Finance is in agreement with this strategy. (Exhibit 8.19.)

Each proposal was individually introduced by staff. The Members discussed their various concerns and provided the following suggestions to guide staff in improving the proposals:

- Consider different ways of doing things rather than using the same old processes.
- Provide the anticipated affect of the down-turned economy.
- Automate processes where possible.
- Provide more statistical data.

Wednesday, August 20, 2008

After introduction and discussion of each proposal, Dr. Chu took an unofficial poll of support/not support for each proposal; the results are as follows.

BCP U.S. Customs Program--Dr. Chu, Ms. Yee and Ms. Mandel in support, Mr. Leonard and Ms. Steel not in support.

BCP Out-of-State Audits and Registration--Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel in support, Mr. Leonard not in support.

BCP Environmental Stewardship Program--Dr. Chu, Ms. Yee and Ms. Mandel in support, Mr. Leonard and Ms. Steel not in support.

BCP Natural Gas Public Purpose Programs Surcharge--Dr. Chu, Ms. Yee and Ms. Mandel in support, Mr. Leonard and Ms. Steel not in support.

BCP Flavored Malt Beverages--Dr. Chu, Ms. Yee and Ms. Mandel in support, Mr. Leonard and Ms. Steel not in support.

BCP Cigarette and Tobacco Enforcement--Dr. Chu, Ms. Yee and Ms. Mandel in support, Mr. Leonard and Ms. Steel not in support.

BCP Administrative Appeals--Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel in support, Mr. Leonard not in support.

BCP Tax Refund Litigation--Dr. Chu, Ms. Yee and Ms. Mandel in support, Mr. Leonard and Ms. Steel not in support.

BCP Facilities – Headquarters--Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel in support.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD AUGUST 20, 2008

Mehdi Behmard, 106372 (KH)

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

FINAL ACTION ON PROPERTY TAXES HEARING HELD AUGUST 20, 2008

Nehemiah Corporation of America, 403977

Final Action: Ms. Steel moved to grant the claim. 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 Dr. Chu 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.

The Board adjourned at 4:49 p.m.

The foregoing minutes are adopted by the Board on November 13, 2008.

Note: The following matters were removed from the calendar prior to the meeting: *Convenience Acquisition Company, LLC, 236133 (KH); Property Tax Committee.*