

Wednesday, October 29, 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

Anwar Ali Meherally, 333841 (FH)

4-1-00 to 4-30-02, \$19,728.00 Tax, \$2,206.76 Late-Payment Penalty, \$2,942.07 Amnesty Interest Penalty

For Petitioner: Anwar Meherally, Taxpayer
Nazem Tiliani, Enrolled Agent

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

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

Issues: Whether petitioner's personal liability for the unpaid liabilities of Car Tune, Inc. was discharged in the consolidated bankruptcy.

Whether petitioner is personally liable for the unpaid tax liabilities incurred by Car Tune while the corporation was suspended.

Whether there is reasonable cause to relieve petitioner of the penalties originally assessed against Car Tune and included in the determination against petitioner.

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.

Anywhere Communications, LLC, 397944 (EA)

7-1-03 to 11-30-05, \$10,047.60 Tax, \$0.00 Negligence Penalty

For Petitioner: Sandeep Thakore, Taxpayer

For Sales and Use Tax Department: Christine Bisauta, Tax Counsel

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

Issue: Whether adjustments are warranted to the audited understatement of reported taxable sale of cellular telephones.

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. Yee directed staff to re-examine the district offices' procedures for informing taxpayers who are applying for new sellers permits of publications and/or regulations that they will need to comply with, and additionally provide even further assistance with walking the taxpayers through the publications and/or regulations.

Barbara Jean Lovitt, 378798 (AR)

10-1-05 to 10-6-05, \$281.00 Tax, \$28.10 Failure-to-File Penalty

For Petitioner: Barbara Jean Lovitt, Taxpayer

For Sales and Use Tax Department: Todd MacMurray, Hearing Representative

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

Issues: Whether petitioner is liable for the determined tax.

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Whether petitioner has established reasonable cause for relief of the failure-to-file penalty.

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 failure to file penalty be abated, otherwise redetermined as recommended by the Appeals Division.

Mr. Leonard directed staff to revisit the procedures for closing Sales and Use Tax accounts by third parties.

Tal Rubin, 360275 (AC)

1-1-03 to 3-31-03, \$8,322.00 Tax, \$882.20 Late Payment Penalty

For Petitioner: Tal Rubin, Taxpayer

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

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

Issues: Whether petitioner is personally liable as a responsible person for the tax liability of Sunrise Collections, Inc.

Whether Sunrise Collections, Inc. should be relieved of the penalty for late payment of a return.

Whether the Notice of Determination was timely issued.

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.

Lloyd R. Jensen, Sr. and Wilma L. Jensen, 349155 (UT)

October 29, 2002, \$19,409.48 Tax, \$0.00 Penalty

For Petitioner: Louis Gandolfo, Representative

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

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

Issues: Whether petitioners' purchase and use of the motor home is subject to California use tax.

Whether the transaction was exempt as a sale in interstate commerce.

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.

The Board recessed at 12:05 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

San Clemente Auto Rental, 405669, 451146 (EA)

7-1-03 to 6-30-06, \$773,194.00 Disallowed Bad Debt Deductions

7-1-03 to 6-30-06, \$61,480.93 Claim for Refund

For Petitioner/Claimant: John Lauer, Representative

Bill Lauer, Representative

Joe Lauer, Representative

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For Sales and Use Tax Department: Christine Bisauta, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether adjustments are warranted to the disallowed amount of claimed bad debt deductions.
Whether the claim for refund filed July 7, 2008 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 petition be submitted for decision.

Orco Block Company, 334549, 341724 (EA)
4-1-01 to 3-31-04, \$49,206.99 Tax, \$94,985.00 Claim for Refund
For Petitioner/Claimant: Heather Theilacker, Representative
Robert Johnson, Representative
Richard J. Muth, Witness

For Sales and Use Tax Department: Lisa Andrews, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether adjustments are warranted to the audited overstatement of claimed nontaxable sales for resale.
Whether adjustments are warranted to the audited amount of unreported gross receipts for amounts customers paid which were not refunded even if the customer returned the containers.
Whether petitioner is entitled to relief pursuant to Revenue and Taxation Code section 6596 from the tax applicable to the charges addressed under Issue 2.
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 petition be submitted for decision.

Mr. Leonard directed staff to schedule a discussion of Revenue and Taxation Code section 6596.

4100 Newport, Inc., 336851 (UT)
July 22, 2004, \$15,773.00 Tax, \$0.00 Failure-to-File Penalty
For Petitioner: Kristen Brown, Attorney
For Sales and Use Tax Department: Carla Caruso, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether the purchase and use of the vessel by petitioner is subject to California use 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.

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One-Stop Auto Supply, 336169 (EH)

4-1-01 to 4-30-04, \$7,464.71 Tax

For Petitioner:

Floyd Vail, Taxpayer

Russell L. Davis, Attorney

For Sales and Use Tax Department:

Todd MacMurray, Hearing Representative

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

Issue: Whether adjustments are warranted to the audited amount of disallowed claimed nontaxable sales for resale.

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.

Artashes Ambartsumyan, 335123 (EH)

5-24-03 to 9-30-04, \$14,714.84 Tax

Artashes Ambartsumyan, 334788 (EH)

5-24-03 to 9-30-04, \$4,282.43 Tax

For Petitioner:

Artashes Ambartsumyan, Taxpayer

Sarwat E. Mikhail, CPA

For Sales and Use Tax Department:

Lisa Andrews, Hearing Representative

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

Issues: Whether petitioner is liable for the prepaid sales tax collected on sales of motor vehicle fuel and diesel.

Whether adjustments are warranted to the audited numbers of gallons of motor vehicle fuel and diesel.

Whether the audited understatement should be adjusted for nontaxable sales of food and for freight charges petitioner paid to his vendors.

Whether adjustments are warranted to the disallowed amount of claimed sales for resale.

Whether adjustments are warranted to the disallowed amount of cash discounts because the Department erroneously concluded that petitioner claimed deductions for cash discounts on sales for resale.

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, 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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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
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Anwar Ali Meherally, 333841 (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 amnesty interest penalty be waived, otherwise redetermined as recommended by the Appeals Division.

Anywhere Communications, LLC, 397944 (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.

Tal Rubin, 360275 (AC)

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.

Lloyd R. Jensen, Sr. and Wilma L. Jensen, 349155 (UT)

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.

San Clemente Auto Rental, 405669, 451146 (EA)

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.

Orco Block Company, 334549, 341724 (EA)

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.

4100 Newport, Inc., 336851 (UT)

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.

One-Stop Auto Supply, 336169 (EH)

Final Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that petitioner's sale to C&M Building Materials be accepted as having been made pursuant to a resale certificate taken in good faith, that the remaining two disputed sales be assessed on an actual basis, and that the petition otherwise be granted.

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SPECIAL TAXES APPEALS HEARING

Adnan Hasan Bawanah, 314857 (ET)

3-22-04 to 12-31-04, \$272,484.00 Tax, \$68,121.00 Fraud Penalty, \$27,148.40 Finality Penalty

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Tim Treichelt, Tax Counsel

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

Issues: Whether applicant purchased and distributed unstamped cigarettes and therefore owes excise tax for the cigarettes distributed.

Whether there is clear and convincing evidence that the understatement of tax is the result of fraud or intent to evade the tax.

Whether applicant has established reasonable cause to relieve the 10-percent finality penalty.

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.

LEGAL APPEALS MATTERS, CONSENT

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

Audrey Ovington Enterprises, Inc., 392190, 393720 (GH)

4-1-03 to 3-31-06, \$7,749.35 Tax

Action: Redetermine as recommended by the Appeals Division.

Tobacco Trading, Inc., 347399 (ET)

8-17-98 to 6-14-00, \$9,686,942.00 Tax, \$2,421,735.50 Fraud Penalty

Action: Redetermine as recommended by the Appeals Division.

Charles A. Seiniger, 314425 (AS)

7-1-98 to 5-31-04, \$509,087.69 Tax, \$222.61 Failure-to-File Penalty, \$50,908.77 Finality Penalty, \$36.64 Failure to Make a Timely Prepayment Penalty

Action: Redetermine as recommended by the Appeals Division.

Philip Press, Inc., 379140 (AS)

1-1-03 to 12-31-05, \$138,686.53 Tax, \$15,204.95 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Ghani Ebrahim Kothawala, 342923 (FH)

4-1-01 to 3-31-04, \$4,402.81 Tax, \$34.05 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

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Croce's, Inc., 397935 (FH)

7-1-03 to 6-30-06, \$3,266.73 Tax

Action: Redetermine as recommended by the Appeals Division.

Seasilver USA, Inc., 348807 (FH)

1-1-00 to 3-31-04, \$566,771.44 Tax, \$50,591.56 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Harbor Pipe & Steel, Inc., 354605 (EH)

7-1-01 to 6-30-05, \$30,803.72 Tax, \$3,808.69 Amnesty Interest Penalty

Mal Wal of Southern California, Inc., 354604 (EH)

7-15-02 to 6-30-05, \$82,182.60 Tax, \$1,156.30 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Hesperia Truss, Inc., 400356 (EH)

4-1-02 to 6-30-05, \$0.00 Tax, \$14,779.28 Negligence Penalty, \$905.84 Double Negligence

Penalty, \$766.08 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Corona Auction House, Inc., 377130 (EH)

1-1-02 to 12-31-04, \$26,446.53 Tax, \$0.00 Negligence Penalties, \$1,205.25 Amnesty Interest

Penalty

Action: Redetermine as recommended by the Appeals Division.

Yael Rubin, 360274 (AC)

1-1-03 to 3-31-03, \$0.00 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Sunrise Collections, Inc., 282023 (AC)

7-1-00 to 6-30-03, \$17,914.70 Tax, \$2,344.09 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

The Board adjourned at 4:30 p.m.

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