

THURSDAY, DECEMBER 5, 2002

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, Mr. Parrish and Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

BUSINESS TAXES APPEALS HEARINGS

Richard Lee Harvey, 117100

7-1-96 to 6-30-99, \$12,443.68 Tax

For Petitioner:

Richard Harvey

Bettye Harvey

For Sales and Use Tax Department:

Trecia Niewnow, Tax Counsel

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

Issue: Whether the evidence establishes that the audited measure of tax is excessive.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

Louis Alphonse Raynor, 77916

1-1-92 to 6-30-98, \$40,448.06 Tax

\$00.00 Penalty, Failure to File

For Petitioner:

Louis Alphonse Raynor

For Sales and Use Tax Department:

Warren L. Astleford, Tax Counsel

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

Issues: Whether the evidence shows petitioner was an employee of businesses for which he did photography and thus not liable for sales tax on his transactions with the businesses.

Whether the evidence supports additional adjustments for sales for resales, interstate commerce sales, and tax-paid purchases resold.

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

Loma Linda Mercantile, 51644, 89000411980

4-1-94 to 6-30-97, \$445,125.55 Tax

\$44,512.57 Penalty, Negligence

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Jeffrey H. Graybill, Tax Counsel

Action: The Board took no action.

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Biatrix Derbederian, 128562

4-1-97 to 3-31-00, \$49,396.13 Tax

\$4,939.63 Penalty, Negligence

Hovanes P. Derbederian, 128563

10-1-97 to 9-30-00, \$57,999.33 Tax

\$5,799.94 Penalty, Negligence

For Petitioner: Haig Keledjian, Attorney

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

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

Issues: Whether the audit methods used to establish audited taxable sales were appropriate under the circumstances.

Whether the evidence shows that the audited measure of tax is excessive.

Whether the 10 percent penalty for negligence should not be imposed.

Whether relief is warranted from the interest added to the determination.

Action: Upon motion of Mr. Chiang, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to submit additional documentation, the Department 30 days to review the documentation and the Appeals Division 30 days thereafter to bring the matter back to the Board with a final recommendation.

Jacqueline A. and Garo Tutunjian, 83364

1-1-96 to 9-30-99, \$27,185.50 Tax

\$2,718.57 Penalty, Negligence

For Petitioner: No Appearance

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

Action: The Board took no action.

Cliffstar Corporation, 144392

3-18-96 to 12-31-00, \$221,149.56 Tax

For Petitioner: Gary Reddish, Representative

Steve Anthony, Controller

For Sales and Use Tax Department: Robert D. Tucker, Tax Counsel

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

Issues: Whether the Notice of Determination issued on September 28, 2001, includes periods that are barred by the statute of limitations.

Whether relief from the failure to file penalty is warranted.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

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Deltec Electronics Corporation, 91345

1-1-96 to 3-31-99, \$98,245.27 Tax

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Action: The Board took no action.

Jurek Mariusz Pilek and Samantha Kate Beard-Pilek, 17830

1-1-92 to 9-30-98, \$49,180.80 Tax

\$00.00 Penalty, Failure to File

For Petitioner:

Jurek Pilek

Samantha Pilek

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

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

Issues: Whether the evidence establishes that the audited amount of understated taxable sales is excessive.

Whether the evidence supports an additional allowance for tax-paid purchases resold.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the disputed measure of tax be reduced by 5 percent..

United Staffing Solutions, Inc., 139134, 143254

1-1-98 to 12-31-98, \$15,299.00 Tax

\$00.00 Penalty, Finality

For Petitioner:

No Appearance

For Property and Special Taxes Department:

Robert D. Tucker, Tax Counsel

For Department of Toxic Substances Control

Dennis Mahoney

Action: The Board took no action.

PETITIONS FOR RELEASE OF SEIZED PROPERTY**Abbas Tahery, 188098**

6-19-02 Notice of Seizure and Forfeiture

For Petitioner:

No Appearance

For Property and Special Taxes Department:

Blanca Breeze, Tax Counsel

Action: The Board took no action.

Shady Kathem Muhammad, 191416

Notice of Seizure and Forfeiture

For Petitioner:

Appearance Waived

For Property and Special Taxes Department

Blanca Breeze, Tax Counsel

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

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Issue: Whether the cigarettes should be forfeited to the State of California because they are described by subdivision (b) of revenue and Taxation Code section 30436.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board determined the staff properly seized the cigarettes.

FINAL ACTION ON PETITIONS HEARD DECEMBER 5, 2002

Mr. Klehs moved to redetermine in the petition of *Richard Lee Harvey, 117100*. The motion failed for lack of a second.

Upon motion of Mr. Parrish, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be redetermined with adjustments.

Mr. Klehs moved to redetermine in the petition of *Louis Alphonse Raynor, 77916*. The motion failed for lack of a second.

Upon motion of Mr. Parrish, seconded by Mr. Chiang and duly carried, Mr. Chiang and Mr. Parrish voting yes, Mr. Klehs voting no, Ms. Mandel abstaining, Mr. Andal absent, the Board ordered that the petition be redetermined with adjustments.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Cliffstar Corporation, 144392*, be redetermined as recommended by the Appeals Division.

The Board adjourned at 10:40 p.m.

The foregoing minutes are adopted by the Board on February 6, 2003.