

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of HOWARD BRIEF

Appeal Case ID No. 530872

June 21, 2011

Excerpts from Respondent's Opening Brief

Ciro Immordino, Tax Counsel

STATE BOARD OF EQUALIZATION



Appeal Name: HOWARD BRIEF

Case ID: 530872 ITEM #: B2

Date: JUNE 21, 2011 Exhibit No: _____

TP FTB DEPT _____

COPY

13

YEAR

2004

Partnership Return of Income

7347314

CALIFORNIA FORM

565

For calendar year 2004 or fiscal year beginning and ending

A Principal business activity name (same as federal) Real Estate	Partnership name (place label within block or type or print) Check box if name changed <input type="checkbox"/>		D FEIN [REDACTED]
	Hyams, Hyams and Brief		
B Principal product or service (same as federal) Rentals	DBA		E Date business started in California ● 1/01/81
	Number and street (or PO Box number if mail is not delivered to street address)	PMB no.	F Enter total assets at end of year See instructions. ● \$ 492.
C Principal business activity code (same as federal) ● 531120	City Seal Beach	State CA	I Check applicable box (1) <input type="checkbox"/> Initial return (2) <input checked="" type="checkbox"/> Final return (3) <input type="checkbox"/> Amended return
	ZIP Code 90740	H Secretary of State file number ● GPGP	
G Check accounting method ● (1) <input checked="" type="checkbox"/> Cash (2) <input type="checkbox"/> Accrual (3) <input type="checkbox"/> Other (attach explanation)			

Caution: Include only trade or business income and expenses on line 1a through line 21 below. See the instructions for more information.

Income	1 a Gross rpt. or sales \$	b Less returns & allowances \$	c Balance	1c
	2 Cost of goods sold (Schedule A, line 8)			2
	3 GROSS PROFIT. Subtract line 2 from line 1c			3
	4 Ordinary income (loss) from other partnerships and fiduciaries. Att. sch.			4
	5 Net farm profit (loss). Attach federal Schedule F (Form 1040)			5
	6 Net gain (loss) from Schedule D-1, Part II, line 17			6
	7 Other income (loss). Attach schedule			7
	8 Total income (loss). Combine line 3 through line 7			8
Deductions	9 Salaries and wages (other than to partners)			9
	10 Guaranteed payments to partners			10
	11 Repairs			11
	12 Bad debts			12
	13 Rent			13
	14 Taxes			14
	15 Deductible interest expense not claimed elsewhere on return			15
	16 a Depreciation and amortization. Attach form FTB 3885P \$	3,298.		
	b Less depreciation reported on Sch. A and elsewhere on return \$	3,298.	c Balance	16c
	17 Depletion. Do not deduct oil and gas depletion			17
	18 Retirement plans, etc.			18
19 Employee benefit programs			19	
20 Other deductions. Attach schedule			20	
21 Total deductions. Add line 9 through line 20			21	
22 Ordinary income (loss) from trade or business activities. Subtract line 21 from line 8			22	
23 Tax - \$800.00 (limited partnerships, LLPs, and REMICs only). See instructions.			23	
Payments	24 Nonresident withholding credit (\$800 maximum). See instructions	24	0	
	25 Amount paid with extension of time to file return (form FTB 3538)	25	0	
	26 Total payments. Add line 24 and line 25			26
Amount Due or Refund	27 Tax due. If line 23 is more than line 26, subtract line 26 from line 23			27
	28 Use Tax. See instructions.			28
	29 Refund. If the total of line 23 and line 28 is less than line 26, subtract the total from line 26			29
	30 Penalties and interest			30
	31 Total amount due. Add line 23, line 28, and line 30, then subtract line 26 from the result. Make the check or money order payable to the Franchise Tax Board			31

Please Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		
	Signature of general partner <i>[Signature]</i>	Date 2/19/05	Telephone 562-594-4439
Paid Preparer's Use Only	Paid Preparer's signature <i>[Signature]</i>	Date 2/04/05	Check if self-employed <input type="checkbox"/> Paid Preparer's SSN/PTIN P00039476
	Firm's name (or yours if self-employed) Martin & Associates		FEIN [REDACTED]
	and address 101 Main Street, Suite 360 Huntington Beach, CA 92648		Telephone 714-374-2060

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Schedule A Cost of Goods Sold

1	Inventory at beginning of year	1	
2	Purchases less cost of items withdrawn for personal use	2	
3	Cost of labor	3	
4	Additional IRC Section 263A costs. Attach schedule	4	
5	Other costs. Attach schedule	5	
6	Total. Add line 1 through line 5	6	
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on Side 1, line 2	8	

- 9 a Check all methods used for valuing closing inventory:
- (1) Cost (2) Lower of cost or market as described in Treas. Reg. Section 1.471-4(3) Write down of "subnormal" goods as described in Treas. Reg. Section 1.471-2(c) (4) Other. Specify method used and attach explanation _____
- b Check this box if the LIFO inventory method was adopted this taxable year for any goods. If checked, attach federal Form 970
- c Do the rules of IRC Section 263A (with respect to property produced or acquired for resale) apply to the partnership? Yes No
- d Was there any change (other than for IRC Section 263A purposes) in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation Yes No

- J What type of entity is filing this return? Check one only:
- 1 General partnership
 - 2 Limited partnership required to pay annual tax
(is doing business in California, is registered with SOS, or is organized in California)
 - 3 Limited partnership, limited liability company (LLC), or other entity NOT required to pay annual tax
(is not doing business in California, is not registered with SOS, and is not organized in California)
 - 4 REMIC
 - 5 Limited liability partnership
 - 6 Other (See instructions)

K Enter the maximum number of partners in this partnership at any time during the year. (Be sure to attach a California Schedule K-1 (565) for each partner)

	Yes	No
L Is any partner of the partnership related by blood or marriage to any other partner?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
M Is any partner of the partnership a trust for the benefit of any person related by blood or marriage to any other partner?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
N Are any partners in this partnership also partnerships or LLCs?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
O Does the partnership meet all the requirements shown in the instructions for Question O?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
P Is this partnership a partner in another partnership or LLC? If "Yes," attach a statement with the name(s) and FEIN(s) of each entity	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Q Was there a distribution of property or transfer (for example by sale or death) of a partnership interest during the taxable year? If "Yes," see the federal instructions concerning an election to adjust the basis of the partnership's assets under IRC Section 754	<input checked="" type="checkbox"/>	<input type="checkbox"/>
R Is this partnership a publicly traded partnership as defined in IRC Section 469(k)(2)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
S Is this partnership under audit by the IRS or has it been audited in a prior year?	<input type="checkbox"/>	<input type="checkbox"/>
T Did this partnership or its subsidiary(ies) have a transfer or acquisition of more than 50% in control or ownership? (See instructions - Penalties May Apply)	<input type="checkbox"/>	<input type="checkbox"/>
U (1) Does the partnership have any foreign nonresident partners?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(2) Does the partnership have any nonresident partners?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(3) Were Form 592, Form 592-A, and Form 592-B filed for these partners?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
V Is this an investment partnership? See General Information O, Investment Partnerships, in the instructions	<input type="checkbox"/>	<input checked="" type="checkbox"/>
W Is the partnership apportioning income to California using Schedule R?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
X Has the partnership included a Reportable Transaction, Listed Transaction or Registered Tax Shelter within this return? (See instructions for definitions.) If "Yes," complete and attach Federal Form 8886 or 8271 for each such transaction	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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YEAR:

Partner# 1

2004

Partner's Share of Income, Deductions, Credits, etc.

CALIFORNIA SCHEDULE K-1 (565)

month day year month day year

For calendar year 2004 or fiscal year beginning and ending

Partner's identifying number Partnership's FEIN Secretary of State file number GPGP Partnership's name, address, state, and ZIP Code

Howard Brief

Hyams, Hyams and Brief 909 Electric Ave. #13 Seal Beach CA 90740

A Is this partner a: (1) general partner, or (2) limited partner?

E Partner's share of liabilities:

B What type of entity is this partner?

Nonrecourse Qualified nonrecourse financing Other

(1) Individual (2) S Corporation (3) Estate/Trust (4) C Corporation (5) General Partnership (6) Limited Partnership (7) LLP (8) LLC (9) IRAs/Keogh/SEP (10) Exempt Organization

F Tax shelter registration number

C Is this partner a foreign partner? Yes No

G (1) Check here if this is a publicly traded partnership as defined in IRC Section 469(k)(2) (2) Check here if this is an investment partnership (R&TC Sections 17955 and 23040.1)

D Enter partner's percentage (i) Before decrease or termination (ii) End of year Profit sharing Loss sharing Ownership of capital

H Check here if this is: (1) A final Schedule K-1 (565) (2) An amended Schedule K-1 (565) I Is this partner a nonresident of California? Yes No

J Analysis of partner's capital account:

Table with 5 columns: (a) Capital account at beginning of year, (b) Capital contributed during year, (c) Partner's share of line 3, line 4, and line 7, Form 565, Schedule M-2, (d) Withdrawals and distributions, (e) Capital account at end of year, combine column (a) through column (d). Values: -265,272, 1,672,990, 1,748,725, -341,007

Caution: Refer to Partner's Instructions for Schedule K-1 (565) before entering information from this schedule on your California return.

Main table with 5 columns: (a) Distributive share items, (b) Amounts from federal Schedule K-1 (1065), (c) California adjustments, (d) Total amounts using California law. Combine col. (b) and col. (c), (e) California source amounts and credits. Rows include Ordinary income, Net income from rental activities, Portfolio income, Guaranteed payments, Charitable contributions, etc.

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REQID:

SCHEDULE E (Form 1040)

Supplemental Income and Loss (From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)

OMB No. 1545-0074

2004

Attachment Sequence No. 13

Department of the Treasury Internal Revenue Service (99)

Attach to Form 1040 or Form 1041. See Instructions for Schedule E (Form 1040).

Name(s) shown on return

HOWARD BRIEF

Your social security number

Part I Income or Loss From Rental Real Estate and Royalties Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see page E-3). Report farm rental income or loss from Form 4835 on page 2, line 40.

Table with 3 columns: Property description, Yes/No for personal use. Row 1: COMMERCIAL, 222 MAIN ST, Yes checked.

Main income/expense table with columns: Properties (A, B, C) and Totals. Rows include Rents received (66600), Expenses (3360, 3170, 1980, 4680, 2280, 3485, 2665), and Total rental real estate and royalty income (34210).

Handwritten numbers 17 and 23

Handwritten number 4

Name(s) shown on return. Do not enter name and social security number if shown on other side.

Your social security number

HOWARD BRIEF

Caution. The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations Note. If you report a loss from an at-risk activity for which any amount is not at risk, you must check column (e) on line 28 and attach Form 6198. See page E-1.

27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? Yes No

Table with 5 columns: (a) Name, (b) Enter P for partnership, S for S corporation, (c) Check if foreign partnership, (d) Employer identification number, (e) Check if any amount is not at risk. Row A: HYAMS HYAMS AND BR, P, 3175.

Table with 5 columns: (f) Passive loss allowed, (g) Passive income from Schedule K-1, (h) Nonpassive loss from Schedule K-1, (i) Section 179 expense deduction from Form 4562, (j) Nonpassive income from Schedule K-1. Totals: 30, 31, 32.

Part III Income or Loss From Estates and Trusts

Table with 2 columns: (a) Name, (b) Employer identification number. Rows A and B.

Table with 4 columns: (c) Passive deduction or loss allowed, (d) Passive income from Schedule K-1, (e) Deduction or loss from Schedule K-1, (f) Other income from Schedule K-1. Totals: 35, 36, 37.

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs)—Residual Holder

Table with 5 columns: (a) Name, (b) Employer identification number, (c) Excess inclusion from Schedules Q, line 2c, (d) Taxable income (net loss) from Schedules Q, line 1b, (e) Income from Schedules Q, line 3b. Total: 39.

Part V Summary

Table with 2 columns: Description, Amount. Rows 40-43. Row 43: Reconciliation for real estate professionals. Handwritten '23' and '18' are visible.

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