

Wednesday, January 8, 2003

The Board met at its offices 450 N Street, Sacramento, at 9:35 a.m., with Mr. Chiang, Chair, Ms. Migden, Mr. Leonard, Mr. Parrish and Mr. Westly present.

ORGANIZATION OF THE BOARD

Mr. Chiang moved to nominate Ms. Migden Chairwoman and Mr. Parrish Vice Chairman for an indefinite period of time. The motion was seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Ms. Migden, Mr. Leonard, Mr. Parrish and Mr. Westly voting yes.

SALES AND USE TAX APPEALS HEARING

Natural Nine, Inc. 84736

7-1-96 to 6-30-99, \$2,959,376.00 Tax

Alan K. Minato, 99815

11-18-97 to 6-30-99, \$1,597,735.00 Tax

For Petitioner:

Larry Rothman, Attorney

For Sales and Use Tax Department:

Jeffrey H. Graybill, Tax Counsel

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

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

Whether the fraud penalty was properly imposed.

Whether Mr. Alan K Minato, a corporate officer, remains liable for the period in which the corporate entity Natural Nine, Inc, was a suspended corporation, even though the corporation was later revived.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition be submitted for decision.

Woodcraft Studios, Inc., 128584

7-1-97 to 6-30-00, \$19,926.00 Tax

For Petitioner:

George Posztos, President

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

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

Issue: Whether the evidence provided is sufficient to support nontaxable status for the disallowed claimed sales for resale at issue.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition be submitted for decision.

Basic Brown Bears, Inc., 145482, 190348

10-1-97 to 9-30-00, \$738,335.00 Tax

For Petitioner:

Frank Holby, Representative

Nancy Van Horn, Representative

Wednesday, January 8, 2003

For Sales and Use Tax Department: Warren L. Astleford, Tax Counsel
 Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
 Issues: Whether petitioner's total tour charges of \$12 or \$3 are taxable gross receipts from the retail sales of stuffed animals, or nontaxable gross receipts from services that include the transfer of the stuffed animals as an incidental part of the sale.
 Whether petitioner is entitled to a refund of the cost of materials used to produce a basic baby bear.
 Action: Upon motion of Mr. Parrish, seconded by Mr. Westly and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition be submitted for decision.

Eddie Thomas, 56605

1-1-96 to 12-31-98, \$355,243.00 Tax

For Petitioner: Appearance Waived
 For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
 Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
 Issues: Whether the evidence shows that additional allowances for shrinkage are warranted.
 Whether the evidence establishes that the audited taxable markup is excessive.
 Whether the 10 percent penalty for negligence was properly applied.
 Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

FINAL ACTION ON PETITIONS HEARD JANUARY 8, 2003

Upon motion of Mr. Chiang, seconded by Mr. Westly and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petitions of *Natural Nine, Inc. 84736* and *Alan K. Minato, 99815*, be denied and redetermined as recommended by the Appeals Division.

Upon motion of Mr. Chiang, seconded by Mr. Westly and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition of *Woodcraft Studios, Inc., 128584*, be denied and redetermined as recommended by the Appeals Division.

Mr. Chiang moved to deny the petition and redetermine as recommended by the Appeals Division in the petition of *Basic Brown Bears, Inc., 145482, 19034*. Mr. Parrish made a substitute motion to reduce the disputed measure of tax by 10 percent. The motion was seconded by Mr. Westly and duly carried, Mr. Parrish, Mr. Leonard and Mr. Westly voting yes, Ms. Migden and Mr. Chiang voting no.

The Board recessed at 10:40 a.m. and reconvened at 2:15 p.m. with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly present.

Wednesday, January 8, 2003

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Canon U.S.A., Inc., 55446

1989, \$1,692,224.00 Assessment

Alps Electric (USA), Inc., 55001

3-31-89, \$365,000.00 Claim for Refund

For Appellant:

Alan D. Bollinger, Representative

Rex Halverson, Representative

For Franchise Tax Board:

Michael Brownell, Tax Counsel

Larry Bobiles, Tax Counsel

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

Issues: Whether or not pre-2001 California law on the elimination of intercompany inventory sales and purchases in the combined reports of unitary business groups should be interpreted so as to require the utilization of the carryover tax basis method for the transferred inventory items.

Whether or not the gain deferral approach to eliminated intercompany sales contained in the post-1965 federal consolidated return regulations can be read into pre-2001 California law on the combined reporting requirements for unitary business operations in the absence of a statute or regulation either adopting such approach or incorporating the federal regulations.

Whether or not the differing approaches set forth in respondent's pre-2001 combined report-filing guidelines for intercompany sales of inventory and intercompany sales of fixed assets violate equal protection, due process, or the Commerce Clause.

Respondent's Exhibit: Intercompany Transaction Hypothetical; Announcement of Water's-Edge Election (Exhibit 1.1)
Letter (Exhibit 1.2)

Action: Mr. Parrish moved that the Board find that the gain from the intercompany transactions should be recognized in the last Worldwide combined reporting year. It should be apportioned to California based on the factors of that last Worldwide combined reporting year. Finally, the Franchise Tax should be assessed to Appellant in the first Water's Edge year, not to exceed the revised assessment amount, with interest to be computed on the assessment as if FTB notice 89-601 spread the additional tax over the five-year period beginning with the first Water's Edge year. The motion was seconded by Mr. Chiang but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Mr. Westly voting no.

Upon motion of Mr. Chiang, seconded by Mr. Westly and duly carried, Ms. Migden, Mr. Chiang and Mr. Westly voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the action of the Franchise Tax Board be sustained.

Ms. Migden moved to draft a formal opinion. The motion was seconded by Mr. Westly but failed to carry, Ms. Migden and Mr. Westly voting yes, Mr. Parrish, Mr. Leonard and Mr. Chiang voting no.

2003 MINUTES OF THE STATE BOARD OF EQUALIZATION

Wednesday, January 8, 2003

Exhibits to these minutes are incorporated by reference.

The Board adjourned at 3:10 p.m.

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

Note: The following case was removed from the calendar prior to the meeting: *Stephen A. Kellenberger, 93388.*