

Tuesday, January 31, 2006

The Board met at its offices at 450 N Street, Sacramento, at 11:15 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Carolyn Bailey-Thomas, 308455
1997, \$1,085.36 Claim for Refund

For Claimant: Carolyn Bailey-Thomas, Taxpayer
For Franchise Tax Board: Dennis Haase, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether respondent abused its discretion in refusing to abate interest.
Appellant's Exhibit: Miscellaneous Documents (Exhibit 1.1)
Action: Mr. Parrish moved that the interest be abated. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Mr. Chiang, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, the Board modified the action of the Franchise Tax Board by abating the interest that accrued from August 15, 2003 to present.

Exhibits to these minutes are incorporated by reference.

Tuan Q. Nguyen and Jacqueline Hoang, 306870
1999, \$166,193.00 Assessment

For Appellant: Martin A. Logies, CPA
For Franchise Tax Board: William Gardner, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellants' family foundation was a "private operating foundation," as defined in the Internal Revenue Code, thereby allowing appellants to deduct the fair market value of property they contributed to the foundation.
Appellant's Exhibit: Miscellaneous Documents (Exhibit 1.2)
Respondent's Exhibit: Miscellaneous Documents (Exhibit 1.3)
Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 11:58 a.m. and reconvened at 1:35 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Deluxe Corporation, 297128
1997, \$104,896.00 Claim for Refund
1998, \$238,471.00 Claim for Refund
1999, \$254,320.00 Claim for Refund
2000, \$206,177.00 Claim for Refund
2001, \$175,877.00 Claim for Refund

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For Claimant: Jeffrey M. Vesely, Attorney
Marty Dakessian, Attorney
Brett E. Scribner, Corporate Officer

For Franchise Tax Board: Ann Hodges, Tax Counsel

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

Issues: Whether respondent has the authority to determine whether or not "vouchers" that employers are required to obtain that verify that employees are qualified employees for purposes of the Enterprise Zone hiring credit, are invalid.

If so, whether appellant has established that it is entitled to all of the Enterprise Zone hiring credits claimed in its amended returns.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 1.4)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 1.5)

Department's Exhibit: Miscellaneous Documents (Exhibit 1.6)

Action: Mr. Parrish moved that vouchers M2 and T2 exhibited in Appendix B of respondent's supplemental brief be disqualified and that the claim as to the remaining 49 vouchers be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish voting no, the Board ordered the appeal be submitted for written opinion sustaining the action of the Franchise Tax Board as to the authority to audit Enterprise Zone hiring credit vouchers. The Board's decision on this matter shall not become final until the matter is brought back to the Board for adoption of the proposed opinion.

Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Chiang, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel abstaining, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board.

James Bagley and Jean A. Bagley, 217274

1994, \$436,394.00 Assessment

1995, \$214,272.00 Assessment

1996, \$525,255.00 Assessment

1997, \$57,700.00 Assessment

For Appellant: Derick J. Brannan, Representative
James Bagley, Taxpayer
Jean A. Bagley, Taxpayer

For Franchise Tax Board: John Penfield, Tax Counsel

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

Issues: Whether appellants were California residents during the years at issue.

Whether respondent's conduct at the prior hearing prejudiced the Board's determination that appellants were California residents during 1995, 1996 and 1997.

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Action: Mr. Chiang moved to reverse the action of the Franchise Tax Board as to 1994 and 1995. Mr. Parrish seconded the motion. Ms. Yee made a substitute motion to reverse the action of the Franchise Tax Board for the entire appeal. The substitute motion was seconded by Mr. Parrish and duly carried, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel voting no.

Craig Woods Schiemann, 300905

2002, \$1,439.00 Assessment, \$359.75 Late Filing Penalty

For Appellant: Craig Woods Schiemann, Taxpayer

For Franchise Tax Board: Mark McEvilly, Tax Counsel

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

Issues: Whether appellant has met his burden to prove error in the proposed assessment.

Whether appellant has shown reasonable cause for relief from the late filing penalty.

Whether a frivolous appeal penalty should be imposed.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 3:50 p.m. and reconvened at 4:00 p.m. with Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

Christopher Joseph Neal and Zack John Colburn, 89002251130 (KHO)

4-1-94 to 3-31-97, \$34,470.99 Tax

For Petitioner: Zack John Colburn, Taxpayer

For Sales and Use Tax Department: Sharon Jarvis, Tax Counsel

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

Issues: Whether rebates petitioner received directly from cigarette manufacturers for discounting cigarette prices to its customers constitute additional taxable gross receipts.

Whether petitioner received erroneous advice from the Board and is entitled to relief under Revenue and Taxation Code section 6596.

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

William E. Wehrli, 253121 (CH)

10-1-96 to 9-30-02, \$729,658.20 Tax, \$182,414.74 Fraud Penalty

For Petitioner: R. William Wehrli, Representative

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

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

Issues: Whether petitioner is entitled to adjustments to the audit liability for refunds to purchasers (returned merchandise), nontaxable installation labor, and nontaxable delivery charges.

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Whether there is sufficient evidence to sustain the fraud penalty.

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

Ms. Mandel left and Mr. Chivaro entered the Boardroom on behalf of Mr. Westly in accordance with Government Code section 7.9.

Hilton Supply Management, Inc., 236447 (AS)

1-1-97 to 3-31-00, \$96,625.66 Tax

For Petitioner:

Joseph A. Vinatieri, Attorney
Michael Fannon, Representative
Edwina Burt, Representative

For Sales and Use Tax Department:

Bradley Heller, Tax Counsel

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

Issue: Whether a purchasing management fee petitioner charged as part of petitioner's retail sales of equipment and supplies to hotels owned by its parent corporation was part of petitioner's taxable gross receipts.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard and Mr. Chivaro voting yes, Mr. Chiang absent and not participating, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

Mr. Chivaro left and Ms. Mandel entered the Boardroom on behalf of Mr. Westly in accordance with Government Code section 7.9.

CHIEF COUNSEL MATTERS

RULEMAKING

Request for authorization to amend Sales and Use Tax Regulation 1707, Electronic Funds Transfer, Section 100 Change

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the section 100 change to Regulation 1707, *Electronic Funds Transfer* (Exhibit 1.7).

Request for authorization to amend Property and Special Taxes Regulation 4905, Payment by Electronic Funds Transfer, Section 100 Change

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the section 100 change to Regulation 4905, *Payment by Electronic Funds Transfer* (Exhibit 1.8).

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Revisions to State Board of Equalization Rules of Practice

Kristine Cazadd, Chief Counsel, Legal Department, made introductory remarks regarding the request for approval of Board of Equalization Rules for California Tax Administration and Appellate Review (New Rules), Chapter 1, *Title*, and Chapter 2, *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees*. In addition, Ms. Cazadd provided a status report on proposed revisions to the State Board of Equalization Rules of Practice (Cal. Code Regs., tit. 18, §§ 5010-5095) into the Board of Equalization Rules for California Tax Administration and Appellate Review (New Rules). The New Rules provide more comprehensive guidance regarding the administrative and appellate review processes for all of the tax and fee programs administered by the Board, including Taxpayer Bill of Rights Reimbursement ClaiMs. (Exhibit 1.9.)

Mr. Leonard stated for the record that his notes regarding this matter will be posted to his website.

Speaker: Joseph A. Vinatieri, Attorney, Bewley Lasseben & Miller LLP

Action: The Board deferred consideration of this matter.

PROPERTY TAX**Board Consideration of Findings and Decisions**

Cingular Wireless, LLC (2606), 315682

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Leonard and Ms. Mandel voting yes, Ms. Yee not participating, Mr. Parrish absent, the Board approved the Findings and Decision as recommended by staff.

Calpine Construction Finance Company (1132), 315964

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the Findings and Decision as recommended by staff.

Metcalf Energy Center, LLC (1133), 315913

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the Findings and Decision as recommended by staff.

Los Esteros Critical Energy Facility, LLC (1143), 315962

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the Findings and Decision as recommended by staff.

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Delta Energy Center, LLC (1128) 315963

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the Findings and Decision as recommended by staff.

High Desert Power Trust 2000-A (1127), 316098

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating, Mr. Parrish absent, the Board approved the Findings and Decision as recommended by staff.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

James R. Bullard and Michelle M. Bullard, 312880

2003, \$181.00 Claim for Refund

For Claimant: No Appearance

For Franchise Tax Board: Suzanne Small, Tax Counsel

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

Issue: Whether appellants have shown reasonable cause exits to abate the late filing penalty.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD JANUARY 31, 2006

Tuan Q. Nguyen and Jacqueline Hoang, 306870

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board sustained the action of the Franchise Tax Board.

Craig Woods Schiemann, 300905

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JANUARY 31, 2006

Christopher Joseph Neal and Zack John Colburn, 89002251130 (KHO)

Final Action: The Board deferred consideration of the petition and referred the issue to the March Sacramento Chief Counsel Matters to expedite the rulemaking process.

Ms. Mandel left and Mr. Chivaro entered the Boardroom on behalf of Mr. Westly in accordance with Government Code section 7.9.

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Hilton Supply Management, Inc., 236447 (AS)

Final Action: Ms. Yee moved that the petition be redetermined as recommended by the Appeals Division. The motion failed for lack of a second.

Upon motion of Mr. Leonard, seconded by Mr. Chivaro and duly carried, Mr. Leonard and Mr. Chivaro voting yes, Ms. Yee voting no, Mr. Chiang not participating, Mr. Parrish absent, the Board ordered that the petition be granted and the tax be redetermined accordingly.

Mr. Chivaro left and Ms. Mandel entered the Boardroom on behalf of Mr. Westly in accordance with Government Code section 7.9.

William E. Wehrli, 253121 (CH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 5:49 p.m.

The foregoing minutes are adopted by the Board on March 29, 2006.

Note: The following matters were removed from the calendar prior to the meeting: *Charles M. Corbalis and Linda J. Corbalis, 298787; P.J. Helicopters, Inc., 224188; Verizon California, Inc. (201), 316353; and, UNOCAP (480), 316350.*