

Wednesday, January 31, 2007

The Board met at its offices at 450 N Street, Sacramento, at 1:30 p.m., with Ms. Yee, Interim Chairwoman, Mr. Leonard, Interim Vice Chair, Ms. Steel and Ms. Chu present and Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

ORGANIZATION OF THE BOARD

Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Ms. Chu and Ms. Mandel voting yes, the Board appointed Ms. Yee as the Board Chair.

Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Ms. Chu and Ms. Mandel voting yes, the Board appointed Ms. Chu as the Board Vice Chair.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Adam W. Dieter, 273276
1992, \$126,909.00 Assessment

For Appellant: Edward T. Perry, Attorney
For Franchise Tax Board: Natasha Page, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether respondent properly attributed a portion of appellant's income to California based on the number of days appellant allegedly performed business-related duties in California for RENKA, Inc; and in the alternative, whether the payment from RENKA was a dividend.
Action: Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

Timothy Jenkins, 348922
2001, \$792.59 Assessment

For Appellant: Timothy Jenkins, Taxpayer
For Franchise Tax Board: Todd Watkins, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant has demonstrated error in the proposed assessment, which is based on federal action.
Appellant's Exhibit: Miscellaneous Documents (Exhibit 1.1)
Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

Exhibits to these minutes are incorporated by reference.

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Penny-Newman Grain Company, 338714

1998, \$1.00 Assessment

1999, \$1.00 Assessment

2000, \$64,861.00 Assessment

Kevin M. Hiedeman and Ann L. Hiedeman, 338698

1998, \$4,593.00 Claim for Refund

Jeffrey Barnes and Kay Hogle, Inc., 338707

1998, \$9,759.00 Claim for Refund

1999, \$24,895.00 Claim for Refund

2000, \$1,650.00 Claim for Refund

Michael B. Nicoletti and Debra C. Nicoletti, 338711

1998, \$67,851.00 Claim for Refund

1999, \$12,975.00 Claim for Refund

James Netto and Delia Netto, 338694

1999, \$27,451.00 Assessment

For Appellant:

Mike Nicoletti, Taxpayer

Chris Micheli, Attorney

Craig Vitale, CPA

For Franchise Tax Board:

Shane Hofeling, Tax Counsel

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

Issue: Whether appellant's railroad system and rail scales are qualified property for purposes of the Manufacturers' Investment Credit.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

The Board recessed at 2:41 p.m. and reconvened at 2:50 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

Ms. Mandel stated that she would not participate in the matter of *General Electric Capital Corporation, 104862*, in accordance with Government Code section 87105, and left the Boardroom.

General Electric Capital Corporation, 104862 (OH)

1-1-94 to 12-31-99, \$Undetermined

For Claimant:

Patrick F. Guerin, Representative

William J. McConnell, Representative

Joseph A. Vinatieri, Attorney

Marie Budinsky-Maher, Witness

For Department:

Randy Ferris, Tax Counsel

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

Issue: Whether claimant is entitled to refund for bad debts it incurred under a private label credit card issued by Levitz Furniture.

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Action: Ms. Steel moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Ms. Steel and Mr. Leonard voting yes, Ms. Yee and Ms. Chu voting no, Ms. Mandel absent and not participating in accordance with Government Code section 87105.

Upon motion of Ms. Yee, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel absent and not participating in accordance with Government Code section 87105, the Board ordered that the petition be submitted for decision.

Ms. Mandel returned to the Boardroom.

Robert Warren Rosenbaum, 331543 (KH)

1-1-00 to 12-31-02, \$77,959.34 Tax

For Petitioner:

Robert Warren Rosenbaum, Taxpayer

Lenden F. Webb, Attorney

Gary L. Huss, Attorney

For Department:

Robert Tucker, Tax Counsel

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

Issues: Whether taxpayer has established that he is entitled to an additional allowance for returned merchandise deductions.

Whether taxpayer is entitled to relief from the tax due based on prior audit advice.

Whether taxpayer is entitled to relief of the penalty for failure to timely pay the determination.

Action: Ms. Steel moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu, and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Paul J. Polizzi, 243663, 334650 (GH)

1-1-97 to 6-30-02, \$236,328.66 Tax

For Petitioner:

Kai Mickey, Representative

For Department:

Kevin Hanks, Hearing Representative

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

Issues: Whether taxpayer has established that the additional taxable gross receipts are excessive.

Whether the Department has met its burden of proof to show that taxpayer committed fraud.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be deferred and rescheduled to another Board meeting.

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U.S. Car Nation, 255367 (EA)

7-1-98 to 6-30-01, \$2,268,986.42 Tax, \$244,761.43 Penalty

For Petitioner: Abe Golomb, Representative

For Department: Kevin Hanks, Hearing Representative

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

Issues: Whether further adjustments are warranted to the audited understatement of reported taxable sales.

Whether petitioner was negligent.

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

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD JANUARY 31, 2007**

Adam W. Dieter, 273276

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

Timothy Jenkins, 348922

Final Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and directed the Taxpayers' Rights Advocate Offices of the Board of Equalization and the Franchise Tax Board to assist appellant.

Penny-Newman Grain Company, 338714

Kevin M. Hiedeman and Ann L. Hiedeman, 338698

Jeffrey Barnes and Kay Hogle, Inc., 338707

Michael B. Nicoletti and Debra C. Nicoletti, 338711

James Netto and Delia Netto, 338694

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Chu and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
JANUARY 31, 2007**

Ms. Mandel stated that she would not participate in the matter of *General Electric Capital Corporation, 104862*, in accordance with Government Code section 87105, and left the Boardroom.

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General Electric Capital Corporation, 104862 (OH)

Final Action: Ms. Chu moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Ms. Steel, Mr. Leonard voting no, and Ms. Mandel absent and not participating in accordance with Government Code section 87105.

The Board postponed this matter to the March 20, 2007, Board meeting.

Ms. Mandel returned to the Boardroom.

Robert Warren Rosenbaum, 331543 (KH)

Final Action: Ms. Steel moved that the petition be granted and the tax redetermined accordingly. The motion was seconded by Mr. Leonard but failed to carry, Ms. Steel, and Mr. Leonard voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Chu and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

U.S. Car Nation, 255367 (EA)

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

The Board adjourned at 5:10 p.m.

The foregoing minutes are adopted by the Board on April 25, 2007.

Note: The following case was removed from the calendar prior to the meeting: *Ultradent Products, Inc., 215829 (OH)*.