

Wednesday, February 28, 2007

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Carlos R. Chavez, 339274

2005, \$345.00

For Claimant: Shirley Fabian-Enduch, Representative

For Franchise Tax Board: Suzanne Small, Tax Counsel

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

Issues: Whether respondent properly denied appellant's claim for property tax assistance.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.17)

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 submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Alaska Airlines, Inc., 342596

1997, \$1.00 or more Claims for Refund

1998, \$1.00 or more Claims for Refund

1999, \$1.00 or more Claims for Refund

For Appellant: Kathleen P. Dill, Representative

Jon A. Sperring, Representative

Laurie A. Sands, Witness

For Franchise Tax Board: Kathryn Harker, Tax Counsel

John Penfield, Tax Counsel

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

Issue: Whether respondent Franchise Tax Board properly applied the special apportionment formula for air transportation companies.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.18)

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 submitted the appeal for decision.

Vance White, 332851

1992, \$421.75 Claim for Refund

1993, \$339.25 Claim for Refund

1994, \$464.50 Claim for Refund

For Appellant: Vance White, Taxpayer

For Franchise Tax Board: Bruce Langston, Tax Counsel

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

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Issues: Whether appellant has shown reasonable cause to abate the notice and demand penalties for 1992, 1993, and 1994, and the late-filing penalty for 1992.

Whether the collection costs and lien fees were properly imposed for 1992.

If appellant has shown reasonable cause for abatement of the penalties, above, whether appellant's claims for refund were timely.

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 submitted the appeal for decision.

Donald Iwuchukwu, 309168

1997, \$4,535.00 Assessment

For Appellant:

Donald Iwuchukwu, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

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

Issue: Whether federal changes to appellant's 1997 tax return are final and correct.

Respondent's Exhibit: Miscellaneous Documents (Exhibit 2.19)

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board postponed this matter to the June Culver City meeting.

Elke L. Coffey, 333143

2000, \$7,721.62 Claim for Refund

For Appellant:

Elke L. Coffey, Taxpayer

Arnold Kaufman, Accountant

For Franchise Tax Board:

Diane Ewing, Tax Counsel

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

Issue: Whether appellant's claim for refund was filed within the applicable statute of limitations; and if so, whether the Franchise Tax Board was authorized to assess tax and whether appellant has shown an overpayment exists.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.20)

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 submitted the appeal for decision.

Nathalie M. Lohrli, 329170

1996, \$54,658.17 Amount of Relief Requested

1997, \$50,520.11 Amount of Relief Requested

1998, \$30,388.49 Amount of Relief Requested

1999, \$54,658.17 Amount of Relief Requested

For Appellant:

David Lohrli, Taxpayer's Husband

Nathalie Lohrli, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

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

Issues: Whether deficiencies should have been assessed against appellant's husband rather than appellant.

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Whether appellant has shown that respondent erred when it determined that she was not entitled to innocent spouse relief for the 1996, 1997, 1998 and 1999 tax years.

Whether appellant has shown entitlement to equitable relief from the proposed deficiencies under Revenue and Taxation Code section 18534.

Whether appellant is entitled to relief from liability because she held title to rental property as a “nominee” only.

Appellant’s Exhibit: Miscellaneous Documents (Exhibit 2.21)

Respondent’s Exhibit: Miscellaneous Documents (Exhibit 2.22)

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 submitted the appeal for decision.

Terry L. Moreland and Peggy J. Moreland, 286425

1997, \$2,396.00 Assessment

1998, \$802,532.00 Assessment

1999, \$52,215.00 Assessment

For Appellant:

Howard S. Fisher, Attorney

For Franchise Tax Board:

Renel Sapiandante, Tax Counsel

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

Issues: Whether appellants are entitled to deduct certain litigation expenses.

Whether losses related to leasing certain aircraft are passive or active.

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 submitted the appeal for decision.

Tonya Harris, 351399

2001, \$567.00 Claim for Refund

For Appellant:

Tonya Harris, Taxpayer

For Franchise Tax Board:

Bruce Langston, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed.

Issue: Whether the Franchise Tax Board properly denied appellant’s claim for Child and Dependent Care Expenses Credit for the 2001 tax year.

Action: The Board postponed this matter to the June Culver City meeting.

The Board recessed at 11:50 a.m. and reconvened at 1:30 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Benjamin R. Du and Carmela L. Du, 339310

1999, \$288,938.00 Claim for Refund

For Appellant:

Charles P. Rettig, Attorney

Sharyn M. Fisk, Attorney

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Bruce Langston, Tax Counsel

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

Issues: Whether the Board has jurisdiction to hear this appeal, given that the Voluntary Compliance Initiative (VCI) bars certain taxpayers from claiming a refund of amounts paid under the VCI.

Whether the statute of limitations bars appellants from receiving a refund of interest paid in connection with the tax reported in their amended return.

If the Board has jurisdiction to hear this appeal and the statute of limitations does not bar appellants' refund claim, whether appellants are entitled to interest suspension under Revenue and Taxation Code section 19116.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.23)

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 submitted the appeal for decision.

Brian K. Shaw, 341954

1990, \$93,544.00 Tax, \$23,386.00 Penalty

1991, \$29,347.00 Tax, \$7,336.75 Penalty

1992, \$122,052.00 Tax, \$30,513.00 Penalty

1993, \$128,948.00 Tax

1994, \$113,193.00 Tax, \$28,298.25 Penalty

For Appellant:

Charles P. Rettig, Attorney

David Roth, Attorney

For Franchise Tax Board:

John Penfield, Tax Counsel

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

Issue: Whether the Franchise Tax Board correctly determined that appellant was resident of California throughout the entire period from 1990 through 1994 and that appellant's income was entirely taxable to California.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.24)

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 submitted the appeal for decision.

Daniel L. Mahnke, 334606

2003, \$164.00 Tax, \$100.00 Late Filing Penalty, \$45.00 Notice and Demand Penalty

For Appellant:

Daniel L. Mahnke, Taxpayer

For Franchise Tax Board:

Suzanne Small, Tax Counsel

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

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Issues: Whether appellant has demonstrated error in the underlying tax.
 Whether there is reasonable cause for appellant's failure to file a timely return and failure to file upon respondent's notice and demand.
 Whether the Board should impose a frivolous appeal penalty.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.25)

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 submitted the appeal for decision.

Jose Alvarez, Jr., 342600

2003, \$1,712.00 Tax, \$428.00 Penalty for Failure to File, \$ 428.00 Notice and Demand Penalty
 For Appellant: Jose Alvarez, Jr., Taxpayer

For Franchise Tax Board: Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed.

Issues: Whether appellant has shown that the assessment of underlying tax by the Franchise Tax Board is incorrect.
 Whether appellant has shown "reasonable cause" for not filing a California tax return for 2003.
 Whether appellant has shown "reasonable cause" for its failure to file upon notice and demand.
 Whether the filing enforcement cost recovery fee imposed by respondent should be abated.

Whether a frivolous appeal penalty should be imposed against appellant.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.26)

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 submitted the appeal for decision.

Victor Roy, 307162

2001, \$2,026.00 Tax, \$506.50 Penalty

2002, \$1,765.00 Tax, \$441.25 Penalty

For Appellant: No Appearance

For Franchise Tax Board: Mark McEvelly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms filed.

Issues: Whether appellant has demonstrated error in the proposed assessment.
 Whether appellant has shown reasonable cause such that the late filing penalty should be abated.

Whether the Board should impose a frivolous appeal penalty.

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 postponed this matter to the June Culver City meeting.

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**FINAL ACTION ON HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE
CLAIM HEARING HELD FEBRUARY 28, 2007**

Carlos R. Chavez, 339274

Final 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 sustained the action of the Franchise Tax Board.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD FEBRUARY 28, 2007**

Alaska Airlines, Inc., 342596

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

Vance White, 332851

Final Action: Ms. Yee moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Mandel but failed to carry, Ms. Yee and Ms. Mandel voting yes, Ms. Chu, Mr. Leonard and Ms. Steel voting no.

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

Elke L. Coffey, 333143

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.

Nathalie M. Lohrli, 329170

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.

Terry L. Moreland and Peggy J. Moreland, 286425

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.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Lisa Cervantes, 351773

1991, \$00.00 Penalty, \$00.00 Interest

1992, \$8,917.50 Notice and Demand Penalty, \$526.77 Interest

1993, \$4,610.50 Notice and Demand Penalty, \$155.00 Late Filing Penalty, \$803.98 Interest

1994, \$4,018.50 Notice and Demand Penalty, \$1,603.50 Late Filing Penalty, \$2,457.73 Interest

1995, \$4,680.75 Notice and Demand Penalty, \$2,311.50 Late Filing Penalty, \$2,989.62 Interest

1996, \$1,109.88 Late Payment Penalty, \$1,082.27 Interest

For Appellant:

Appearance Waived

Kevin O'Hara, Attorney

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

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

Issues: Whether appellant timely filed her claims for refund for 1992, 1993, 1994, 1995, and 1996, prior to the expiration of the statute of limitations.

If so, whether appellant has shown reasonable cause for abatement of the notice and demand, late filing, and late payment penalties.

Whether appellant has shown that respondent Franchise Tax Board abused its discretion in denying her request for abatement on interest.

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.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD FEBRUARY 28, 2007

Benjamin R. Du and Carmela L. Du, 339310

Final 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 sustained the action of the Franchise Tax Board.

Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, the Board ordered the appeal be submitted for written opinion indicating that the Board does not have jurisdiction over VCI 1 issues. 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.

Brian K. Shaw, 341954

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

Daniel L. Mahnke, 334606

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 and imposed a \$5,000 frivolous appeal penalty.

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Jose Alvarez, Jr., 342600

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 and imposed a \$2,500 frivolous appeal penalty.

The Board adjourned at 3:40 p.m.

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

Note: The following cases were removed from the calendar prior to the meeting: *Hiroshi Katahira and Keiko Katahira, 312776; Ronald Ashimine and Sheue Ling Chang, 351909; and, Donald E. Schrock and Lucie Kay Schrock, 341970.*