

WEDNESDAY, MARCH 13, 2002

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

BUSINESS TAXES APPEALS HEARINGS

Kurtis A. East, 89000094530

7-1-94 to 12-31-97, \$1,573.32 Tax

\$00.00 Penalty, Negligence

For Petitioner: Kurtis A. East
Linda A. East

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

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

Issue: Whether the evidence shows that the audited markup is excessive.

Action: Mr. Klehs moved to reduce the measure of tax by 50 percent. The motion failed for lack of a second.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish voting yes, Ms. Mandel abstaining, Mr. Andal absent, the Board ordered that the disputed measure of tax be reduced by 50 percent.

Vinotemp International Corporation, 89000053450

4-1-94 to 12-31-97, \$22,253.11 Tax

\$00.00 Penalty, Negligence

For Petitioner: Frances Ravel, President

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

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

Issues: Whether the evidence shows that the block sample test is not representative of petitioner's sales.

Whether the evidence shows that a certain sale qualifies as an exempt sale in interstate commerce.

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

Model Market Inc. / Ronald F. Hudson, 89000448310

8-3-87 to 3-31-88, \$9,423.11 Tax

\$940.31 Penalty, Finality

For Petitioner: Robert S. Schriebman, Attorney

For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel

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

WEDNESDAY, MARCH 13, 2002

Issues: Whether the Board had the authority to issue a dual determination against the corporate president as an individual.
 Whether petitioner is relieved of the liability as an individual because he filed personal bankruptcy in 1993.
 Whether the determination was issued within the applicable statute of limitations.
 Whether a refund of the tax is warranted based on claimant's allegation that the disputed issues are the subject of a pending court case.
 Whether the Board provided claimant with proper notice of the liability.
 Whether relief from the penalty for failure to timely pay the determination (finality penalty) is warranted.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and duly carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang voting no, Ms. Mandel abstaining, the Board ordered that the petition be granted.

Cerberus Pyrotronics, Inc., 33746

10-1-94 to 9-30-97, \$310,329.38 Tax

\$31,074.42 Penalty, Negligence

For Petitioner: No Appearance

For Sales and Use Tax Department: Unassigned

Action: The Board took no action.

Alfredo Hernandez-Torres, 63107

8-1-97 to 7-14-99, \$754,153.67 Tax

\$188,538.43 Penalty, Fraud

\$9,629.24 Penalty, Failure to File

For Petitioner: Alfredo Hernandez-Torres

For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel

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

Issues: Whether the facts prove that petitioner was not an owner of the business.
 Whether relief from the fraud penalty is warranted.
 Whether relief from the failure to file penalty is warranted.

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

Krikor A. and Lucy Toprakjian, 89000447130

10-1-94 to 12-31-94, \$1,822.00 Tax

For Petitioner: Lucy Toprakdjian

For Sales and Use Tax Department: Mark Woolston, Hearing Representative

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

Issue: Whether petitioners properly reported fuel tax credits on their return for the fourth quarter 1994.

WEDNESDAY, MARCH 13, 2002

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

Gutierrez Restaurants, Inc., 89002335470, 27335

7-1-95 to 12-31-95, \$2,708.50 Tax
\$00.00 Penalty, Negligence
1-1-96 to 3-31-98, \$46,507.36 Tax
\$00.00 Penalty, Negligence

For Petitioner: Barri Sibbald, CPA

For Sales and Use Tax Department: Richard Goodrich, Hearing Representative

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

Issues: Whether the department was justified in impeaching petitioner's records.
Whether the evidence shows that the current audit results are incorrect because the prior audit results are incorrect.

Action: Deferred consideration of this matter to later in the day.

Conam Inspection, Inc., 89002320200

4-1-94 to 3-31-97, \$62,686.12 Tax
Conam-MMP, Inc., 89000966320
4-1-95 to 12-31-97, \$45,191.20 Tax
\$00.00 Penalty, Failure to File

For Petitioner: David Sniezko, Consultant
James Levinson, Consultant

For Sales and Use Tax Department: Warren L. Astleford, Counsel

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

Issues: Whether petitioners' transfers of x-ray film negatives are taxable retail sales of tangible personal property or nontaxable transfers of property incidental to the performance of a service.

Alternatively, whether petitioner is entitled to a tax-paid purchase resold deduction on the cost of its tax paid purchase of x-ray film

Whether the sales of capital assets at issue are subject to tax.

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

The Board recessed at 10:35 a.m. and reconvened at 10:45 a.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

WEDNESDAY, MARCH 13, 2002

Trimco Finish Inc., 16734

10-1-94 to 9-30-97, \$4,264.52 Tax

For Petitioner: Mark Louvier, President
Sandy Garland, Controller

For Sales and Use Tax Department: Sandy McCaleb, Hearing Representative

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

Issue: Whether it was proper to project the results of the test of ex-tax purchases to the remainder of the audit period.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs voting no, the Board ordered that the petition be granted.

VTE Sports Productions, Inc., 33985, 133825

8-9-88 to 6-30-90, \$185,344.10 Tax

\$46,336.07 Penalty, Fraud

\$18,534.41 Penalty, Failure to File

For Petitioner: Elliott H. Kajan, Attorney

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issues: Whether the evidence supports additional adjustments to the measure of tax.
Whether relief from the 25 percent penalty for fraud or intent to evade the tax is warranted.

Whether relief from the 10 percent penalty for failure to file returns is warranted.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Six to Eight Weeks, Inc., 30212

12-13-94 to 12-31-98, \$38,812.40 Tax

\$32,929.20 Penalty, Fraud

For Petitioner: No Appearance

For Sales and Use Tax Department: Mark Woolston, Hearing Representative

Action: The Board took no action.

Classic Installation Company, LLC, 41255

4-1-95 to 12-31-97, \$7,779.80 Tax

For Petitioner: John Webb, President

For Sales and Use Tax Department: Warren L. Astleford, Counsel

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

Issue: Whether petitioner's purchases of the materials used in construction contracts are subject to sales tax (i.e., the retailer's liability) and, therefore, exempt from use tax.

WEDNESDAY, MARCH 13, 2002

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

J. Antonio-Rangel Guizar and Federico Jasso Contreras, 32588

7-1-95 to 6-30-98, \$14,297.56 Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: Mark Woolston, Hearing Representative

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

Issue: Whether the evidence shows that the disallowed sales for resale were in fact valid sales for resale.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Kaiser Aluminum & Chemical Corporation, 33471

10-1-94 to 3-31-98, \$00.00 Tax

\$36,169.01 Penalty, Negligence

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

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

Issue: Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

TNT Motor Corporation, 55796

10-1-95 to 9-30-98, \$51,680.30 Tax

\$12,920.12 Penalty, Fraud

For Petitioner: No Appearance

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issues: Whether audited taxable sales were established in accordance with the facts.

Whether relief from the fraud penalty is warranted.

Action: (Motion Expunged)

WEDNESDAY, MARCH 13, 2002

Harbor City Discount Auto Center, Inc., 89000180250

1-1-91 to 9-30-95, \$115,836.03 Tax
\$32,799.09 Penalty, Fraud

Anthony Tonsich, 89000966260

2-3-92 to 9-30-95, \$99,084.70
\$24,771.19 Penalty, Fraud

For Petitioner: Nicholas Tonsich, Attorney

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issues: Whether petitioners have established that the difference between recorded and reported sales is comprised of cancelled sales and/or other transactions in which petitioners' customers paid the applicable tax directly to the Department of Motor Vehicles.

Whether the use of Kelly Blue Book values accurately reflects the sales prices of the vehicles for which no contracts were available.

Whether use tax applies to petitioners' withdrawal of four vehicles from inventory for own use.

Whether relief from the 25 percent penalty for fraud is warranted.

Action: (Motion Expunged.)

FINAL ACTION ON PETITIONS HEARD MARCH 13, 2002

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Vinotemp International Corporation, 89000053450*, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Andal, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish voting no, the Board ordered that the petition of *Krikor A. and Lucy Toprakjian, 89000447130*, be redetermined as recommended by the Appeals Section.

Mr. Klehs moved to redetermine in the petition of *Conam Inspection, Inc., 89002320200* and *Conam-MMP, Inc., 89000966320*. The motion failed for lack of a second.

Mr. Parrish moved to grant. The motion failed for lack of a second.

The Board deferred consideration of the matter for 30 days.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Classic Installation Company, LLC, 41255*, be redetermined as recommended by the Appeals Section.

WEDNESDAY, MARCH 13, 2002

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang not participating, the Board ordered that the petition of *Alfredo Hernandez-Torres, 63107*, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board granted the petitioner 30 days to submit additional documentation, the Department 30 days to review the documentation, and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation in the petition of *Gutierrez Restaurants, Inc., 89002335470, 27335*.

The Board recessed at 11:40 a.m. and reconvened at 1:30 p.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

BUSINESS TAXES APPEALS HEARINGS

Casmalia Disposal, 89000924710

7-1-90 to 6-30-91, \$421,200.00 Fee

For Petitioner:

Charles M. Calderon, Attorney

Howard D. Coleman, Attorney

Ken Hunter

For Department of Toxic:

P. Charles Peterson, Senior Staff Counsel

For Sales and Use Tax Department:

Judy Nelson, Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed for Mr. Klehs. No other disqualifying contributions were disclosed.

Issues: Whether petitioner is liable for the disposal facility fee for fiscal year 1990-91, even though it stopped accepting commercial waste for disposal and began closing its hazardous waste facility during fiscal year 1989-90.

Whether petitioner is exempt from the facility fee under the provisions of subdivision (e)(1) of the Health and Safety Code section 25205.3.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be deferred to the next Sacramento Board meeting.

Coatings Resource Corporation, 56469

1-1-96 to 12-31-96, \$16,176.00 Tax

For Petitioner:

Edwin Laird, President/CEO

For Department of Toxic:

Dennis H. Mahoney, Senior Staff Counsel

For Sales and Use Tax Department:

Judy Nelson, Counsel

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

Issue: Whether the hazardous waste in question is exempt from the generator fee because it is recycled.

WEDNESDAY, MARCH 13, 2002

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

Shawn R. Campbell, 89000159220, 89000972450

1-1-94 to 6-30-95, \$17,904.06 Tax

\$4,476.02 Penalty, Fraud

7-1-95 to 12-31-96, \$14,162.94 Tax

\$3,540.77 Penalty, Fraud

\$786,800.00 Dyed Diesel Fuel

For Petitioner: Robert L. McCord, Attorney
Shawn Campbell

For Sales and Use Tax Department: Judy Nelson, Counsel

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

Issues: Whether petitioner has established that he did not use red-dyed diesel fuel on California highways during the period at issue.

Whether relief from the fraud penalty is warranted.

Whether relief from the dyed diesel fuel penalty is warranted.

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

Multilayer Technology, Inc., 89000450500, 89000450470

10-1-94 to 12-31-97, \$143,720.42 Tax

For Petitioner: David R. Rennie, Manager
Richard V. Carlson, Partner

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issue: Whether petitioner made retail sales of manufacturing aids (photoplots and test fixtures) subject to sales tax when the purchasers provided petitioner with purchase orders passing title in the manufacturing aids to the purchasers for consideration.

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

The Board recessed at 3:20 p.m. and reconvened 3:30 p.m. with Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel present.

WEDNESDAY, MARCH 13, 2002

Brian C. Cozart and Riley B. Cozart, 26499

1-1-96 to 12-31-98, \$28,234.55 Tax

For Petitioner: Abe Aliari, Accountant

For Sales and Use Tax Department: Stephen M. Smith, Counsel

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

Issue: Whether labor charges for refurbishing, reconditioning, or fabrication of new parts associated with the sale of used grinding machines represent taxable labor.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish voting yes, Ms. Mandel voting no, the Board ordered that the petition be redetermined with adjustments.

Manuel Jose Gamboa, 48264

4-1-95 to 9-30-98, \$40,577.05 Tax

\$6,734.42 Penalty, Negligence

For Petitioner: Manuel Gamboa

Marc A. Zimmerman, Attorney

For Sales and Use Tax Department: Stephen M. Smith, Counsel

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

Issues: Whether the disallowed claimed labor charges related to sales of used forklifts represents valid repair labor that should be excluded from taxable gross receipts.

Whether the evidence shows that the audited parts shelf test markup is excessive.

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the negligence penalty be deleted.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the disputed measure of tax be reduced by 10 percent.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the remainder of the petition be redetermined as recommended by the Appeals Section.

John Gregory MacFaden, 29284

1-1-95 to 9-30-98, \$29,372.60 Tax

\$00.00 Penalty, Negligence

For Petitioner: Melvin D. Thomas, Attorney

John Gregory MacFaden

For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel

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

Issues: Whether petitioner's written waiver of the statute of limitations was invalid.

WEDNESDAY, MARCH 13, 2002

Whether petitioner has met his burden of proving that his claimed nontaxable sales for resale were in fact sales for resale.

Action: Mr. Klehs moved to reduced the measure of tax by 5 percent. The motion was seconded by Mr. Parrish but failed to carry, Mr. Klehs and Mr. Parrish voting yes, Mr. Chiang and Mr. Andal voting no, Ms. Mandel passing.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined with adjustments.

Bassem Sayegh and Jaklin Sayegh, 50322

10-1-95 to 9-30-98, \$18,303.67 Tax

\$1,835.45 Penalty, Negligence

For Petitioner: Joseph Jabbour, Accountant

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

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

Issues: Whether the audited understatement of taxable sales was established in accordance with the facts.

Whether a greater allowance for pilferage is warranted.

Whether relief from the negligence penalty is warranted.

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

Jewelry Doctor, Inc., 89000112920

1-1-93 to 12-31-95, \$83,020.07 Tax

\$8,302.03 Penalty, Negligence

For Petitioner: No Appearance

For Sales and Use Tax Department: Unassigned

Action: The Board took no action.

E & K Scientific Products, Inc., 59949

4-1-96 to 3-31-99, \$6,710.33 Tax

For Petitioner: Kevin Ruf, Representative

Egon T. Ruf, Party

For Sales and Use Tax Department: Warren L. Astleford, Counsel

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

Issues: Whether the invoice notation, "FOB Campbell," (petitioner's place of business) meets the explicit written agreement requirement of California Code of Regulations, Title 18, section 1628, subdivision (b), for the passage of title when delivery is by petitioner's truck.

Whether relief from the tax liability is warranted pursuant to Revenue and Taxation Code section 6596, based on alleged erroneous advice from the Sales and Use Tax Department.

WEDNESDAY, MARCH 13, 2002

Action: Upon motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be granted.

California Washington Can Corporation, 29595, 62361

4-1-94 to 3-31-97, \$8,838.75 Tax

For Petitioner: Janet Pass, Attorney

For Sales and Use Tax Department: Stephen M. Smith, Counsel

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

Issue: Whether the new wooden pallets petitioner purchased ex-tax are exempt because they are allegedly non-returnable containers.

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

Smith Bruni Design Consultants, Inc., 34324

7-1-91 to 3-3-99, \$72,159.09 Tax

\$7,216.05 Penalty, Failure to File

For Petitioner: Steven Blanc, Attorney

For Sales and Use Tax Department: Warren L. Astleford, Counsel

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

Issues: Whether petitioner's charges to clients were for nontaxable services or for sales of tangible personal property subject to sales tax.

Whether relief from the penalty for failure to file returns is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the failure to file penalty be deleted, otherwise redetermined as recommended by the Appeals Section.

Tammy Rae Taylor, 89002266610

1-1-95 to 12-31-96, \$4,773.42 Tax

\$00.00 Penalty, Negligence

Tammy Taylor Nails, Inc., 49961

1-1-97 to 12-31-97, -\$4,039.73 Claim for Refund

For Petitioner: Edward Tawil, Accountant

Tammy Taylor

For Sales and Use Tax Department: Sandy McCaleb, Hearing Representative

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

Issues: Whether petitioners' disallowed claimed sales for resale are valid sales for resale.

Whether the unreported sales from kiosks and trade shows are subject to tax.

Whether the Department correctly calculated the over-reported taxable sales.

WEDNESDAY, MARCH 13, 2002

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the petition be redetermined with adjustments.

Marco Micheletti, 89002084220

1-1-90 to 12-31-97, \$22,907.08 Tax

\$1,956.53 Penalty, Failure to File

For Petitioner: No Appearance

For Sales and Use Tax Department: Unassigned

Action: The Board took no action.

FINAL ACTION ON PETITIONS HEARD MARCH 13, 2002

Upon motion of Ms. Mandel, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal and Mr. Parrish voting no, the Board ordered that the petition of *Coatings Resource Corporation, 56469*, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Shawn R. Campbell, 89000159220, 89000972450*, be redetermined as recommended by the Appeals Section.

BUSINESS TAXES APPEALS HEARINGS

Sarkis Karadjian, 89000969510, 92430, 89000970520

4-1-90 to 6-30-92, \$14,801.85 Tax

\$23,403.40 Penalty, Finality

4-1-90 to 4-30-92, \$197,425.38. Tax

\$77,869.56 Penalty, Finality

4-1-90 to 4-30-92, \$25,000.00 Claim for Refund

For Petitioner: No Appearance

For Sales and Use Tax Department: Judy Nelson, Counsel

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

Issues: Whether the Notices of Determination were properly issued to taxpayer as an owner of the business.

Whether taxpayer is entitled to relief from payment of the 25 percent penalties imposed for intent to evade payment of tax.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

WEDNESDAY, MARCH 13, 2002

FINAL ACTION ON PETITIONS HEARD MARCH 13, 2002

Mr. Andal moved to grant in the petition of *Multilayer Technology, Inc.*, 89000450500, 89000450470. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal and Mr. Parrish voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Andal, seconded by Mr. Chaing and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Bassem Sayegh and Jaklin Sayegh*, 50322, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Andal and duly carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel voting no, the Board ordered that the petition of *California Washington Can Corporation*, 29595, 62361, be redetermined with adjustments.

BUSINESS TAXES APPEALS HEARINGS

Rajinder Pal Bawa and Manjit Singh Bawa, 29082

4-1-96 to 9-30-97, \$29,391.16 Tax

\$00.00 Penalty, Negligence

For Petitioner: Jorge Manzur, CPA

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

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

Issues: Whether the evidence warrants an additional adjustment to the taxable purchase ratio for commingled taxable and nontaxable merchandise.

Whether the evidence warrants an additional adjustment for pilferage.

Whether the evidence warrants an additional adjustment for self-consumed merchandise.

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

Manjit Singh Bawa and Rajinder Pal Singh Bawa, 29081

4-1-96 to 6-30-98, \$61,158.21 Tax

\$00.00 Penalty, Negligence

For Petitioner: Jorge Manzur, CPA

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

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

WEDNESDAY, MARCH 13, 2002

Issues: Whether petitioner's allegation, that unreported taxable sales based upon the mark-up method are excessive, warrants relief from the tax.

Whether projection of the taxable sales understatement found in the six-month test period on a fixed dollar basis yields a more accurate result than computing the taxable sales understatement on a percentage of error basis.

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

M.R.B. Corporation, 47804

12-15-97 to 6-30-99, \$20,823.44 Tax

\$00.00 Penalty, Negligence

For Petitioner: Jorge Manzur, CPA

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

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

Issues: Whether petitioner's allegation that unreported taxable sales based upon the mark-up method are excessive warrants relief from the tax.

Whether the audited liability should be projected as a fixed quarterly amount, based upon the results of the six-month test period.

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

Delano Furniture Center Inc., 89002238240

10-1-93 to 12-31-97, \$167,748.85 Tax

\$00.00 Penalty, Fraud

For Petitioner: Angel Dayan, Representative

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

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

Issues: Whether the evidence shows that bank deposits include nontaxable income such as discounts, loans, and finance company income.

Whether the evidence shows that taxable sales established using the markup method are overstated because the costs of good sold are overstated.

Whether the evidence shows that the audited excess tax reimbursement is overstated.

Whether the evidence supports a credit for bad debts.

Whether the evidence warrants relief from the 25 percent penalty for fraud or intent to evade the tax.

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

WEDNESDAY, MARCH 13, 2002

TNT Motor Corporation, 55796

10-1-95 to 9-30-98, \$51,680.30 Tax

\$12,920.12 Penalty, Fraud

For Petitioner: Nicholas Tonsich, Attorney

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issues: Whether audited taxable sales were established in accordance with the facts.
Whether relief from the fraud penalty is warranted.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the action ordering the petition be redetermined as recommended by the Appeals Section be expunged.

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

Harbor City Discount Auto Center, Inc., 89000180250

1-1-91 to 9-30-95, \$115,836.03 Tax

\$32,799.09 Penalty, Fraud

Anthony Tonsich, 89000966260

2-3-92 to 9-30-95, \$99,084.70

\$24,771.19 Penalty, Fraud

For Petitioner: Nicholas Tonsich, Attorney

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issues: Whether petitioners have established that the difference between recorded and reported sales is comprised of cancelled sales and/or other transactions in which petitioners' customers paid the applicable tax directly to the Department of Motor Vehicles.

Whether the use of Kelly Blue Book values accurately reflects the sales prices of the vehicles for which no contracts were available.

Whether use tax applies to petitioners' withdrawal of four vehicles from inventory for own use.

Whether relief from the 25 percent penalty for fraud is warranted.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the action ordering the petition be redetermined as recommended by the Appeals Section be expunged.

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

WEDNESDAY, MARCH 13, 2002

The Board adjourned at 6:35 p.m.

The foregoing minutes are adopted by the Board on May 30, 2002.