

WEDNESDAY, MAY 8, 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. Andal present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

### **FINAL ACTION ON APPEAL HEARD MAY 7, 2002**

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, in the appeal of *Thomas Gumina, 91411*, the Board sustained the action of the Franchise Tax Board with the exception of abating interest from January 1999 to October 2000.

### **ADMINISTRATIVE SESSION**

#### **BOARD COMMITTEE REPORT**

#### **Legislative Committee Minutes**

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, and Mr. Parrish absent, the Board approved the committee minutes.

### **BUSINESS TAXES APPEALS HEARINGS**

National Film Laboratories Inc., 89000013400

7-1-93 to 12-31-96, \$146,985.30 Tax

For Petitioner:

Eric Loong, CFO

David Gaugloff, CPA

For Sales and Use Tax Department: Robert D. Tucker, Tax Counsel

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

Issues: Whether petitioner's sales of the videotapes were nontaxable sales for resale.

Whether petitioner's sales of the videotapes were exempt as sales for export under Revenue and Taxation Code section 6387.

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal not participating in accordance with Government Code section 15626, and Mr. Parrish absent, the Board ordered that the petition be postponed to the August Culver City meeting.

Albert Kelly Ruiz, 89000025720

7-1-95 to 6-30-98, \$8,515.89 Tax

\$851.63 Penalty, Negligence

For Petitioner:

Albert K. Ruiz

Tom Myers, General Counsel for AIDS Health Care Foundation

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For Sales and Use Tax Department: Sandy McCaleb, 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 relief from the negligence 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.

**Michael Patrick Gerrity, 40654**

4-1-95 to 3-31-97, \$40,737.66 Tax

\$00.00 Penalty, Negligence

**Gerrity Grafix, Inc., 40676**

4-1-97 to 3-31-98, \$5,551.25 Tax

For Petitioner: No Appearance

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

Action: Board took no action.

**The Practice Builder Ad Agency, 36971, 141075**

7-1-95 to 9-30-98, \$80,845.58 Tax

\$00.00 Penalty, Negligence

For Petitioner: Alan Floria, Attorney

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

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

Issue: Whether petitioner received and relied on erroneous advice in the prior audit.

Action: Mr. Andal moved to grant the petition from June 27, 1995. Mr. Klehs seconded the motion. No vote was taken.

Upon motion of Mr. Andal, seconded by Mr. Chiang 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 granted.

**Tharwat Y. Shaker and Nabila E. Shaker, 61365, 61366**

1-1-96 to 9-30-98, \$21,573.25 Tax

\$2,157.34 Penalty, Negligence

7-1-95 to 9-30-98, \$11,016.76 Tax

\$1,101.69 Penalty, Negligence

For Petitioner: No Appearance

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

Action: Board took no action.

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**Home Tech Security, Inc., 97864**

7-1-96 to 6-30-99, \$41,928.39 Tax

\$4,118.94 Penalty, Negligence

For Petitioner: Saul Sobol, CPA

For Sales and Use Tax Department: Peter Horton, Hearing Representative

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

Issues: Whether the Department was justified in using the cost accountability method to compute the measure of tax.

Whether relief from the 10 percent penalty for negligence 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 submitted for decision granting the petitioner 30 days to provide 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.

**Ramjibhai M. and Vidya R. Patel, 89002055140**

1-1-94 to 12-31-96, \$51,903.05 Tax

\$5,370.42 Penalty, Negligence

For Petitioner: Ramjibhai M. Patel

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

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

Issues: Whether the audited markups for gas and mini-mart merchandise sales were excessive.

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 to delete the negligence penalty, otherwise redetermined in accordance with the recommendation of the Appeals Section. The Board directed staff to provide petitioner with a generous payment plan.

**FINAL ACTION ON PETITION HEARD MAY 8, 2002**

Mr. Parrish moved to reduce the measure of tax in the petition of *Albert Kelly Ruiz, 89000025720*. The motion was seconded by Mr. Andal but failed to carry, Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting no.

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

The Board recessed at 10:15 a.m. and reconvened at 1:35 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

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**BUSINESS TAXES APPEALS HEARINGS****Three G's, Inc., 61331**

1-1-97 to 12-31-97, \$10,926.68 Claim for Refund

1-1-99 to 12-31-99, \$11,041.60 Claim for Refund

For Petitioner: Thomas J. O'Keefe, Attorney  
William S. Manos, Jr., President

For Sales and Use Tax Department: Monica G. Brisbane, Tax Counsel

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

Issue: Whether claimant is entitled to a refund of the environmental fee imposed under the authority of Health and Safety Code section 25205.6.

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

**Gerald Francis Benson, 103667, 103668**

1-1-98 to 12-31-98, \$1,364.40 Claim for Refund

1-1-99 to 12-31-99, \$1,937.52 Claim for Refund

For Petitioner: Gerald Francis Benson

For Sales and Use Tax Department: M. Judith Nelson, Tax Counsel

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

Issues: Whether claimant has shown that he either paid diesel fuel tax on fuel "used for purposes other than operating motor vehicles upon the public highways of the state" or on fuel used in construction equipment that is exempt from vehicle registration.

Whether claimant received and relied upon misinformation qualifying for a refund of the diesel fuel tax.

Whether the evidence warrants a greater allowance for diesel fuel used in an exempt manner.

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

**Columbia Diagnostics, Inc., 80554**

4-1-97 to 12-31-98, \$50,982.66 Claim for Refund

For Petitioner: Robert E. Meinershagen, President

For Sales and Use Tax Department: Robert D. Tucker, Tax Counsel

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

Issue: Whether claimant is entitled to a refund of the penalties paid to the Board for filing late sales and use tax returns, and for failing to make timely sales and use tax prepayments.

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

**Mad Dogg Athletics, Inc., 41245**

7-1-95 to 9-30-98, \$5,657.60 Tax

For Petitioner: John R. Baudhuin, President/CEO

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

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

Issues: Whether the monitors purchased in Italy and brought to California were purchased for storage, use, or consumption in California.

Alternatively, whether petitioner is entitled to a credit for tax it paid to the government of Italy on its purchase of the monitors.

Whether petitioner is entitled to a credit for taxes allegedly paid to other states for extax purchases of supplies.

Whether petitioner's extax purchases of various promotional items were for its own consumption (use) rather than for resale.

Whether petitioner has shown that claimed nontaxable sales for resale were, in fact, valid sales for resale.

Alternatively, whether petitioner has shown that certain disallowed sales for resale qualify as exempt sales in interstate commerce or for export.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Section.

**Baron Brothers Nursery, Inc., 93435**

1-1-97 to 3-31-00, \$4,606.00 Tax

\$00.00 Penalty, Negligence

For Petitioner: Richard Baron, President

Germaine Bordagaray, Company Controller

For Sales and Use Tax Department: James M. Stillwell, Tax Counsel

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

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

Whether relief from the interest is warranted.

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

The Board recessed at 3:05 p.m. and reconvened at 3:10 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

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Larry Cecil Whittaker, 89000414090, 89000414120

4-1-90 to 12-31-93, \$37,662.87 Tax

\$3,766.28 Penalty, Negligence

1-1-94 to 2-26-97, \$161,587.41 Tax

\$16,158.75 Penalty, Negligence

Larry Cecil Whittaker, 89000414110

7-1-93 to 12-31-93, \$5,234.00 Tax

Larry Cecil Whittaker, 89000414140

5-1-90 to 12-31-93, \$73,648.79 Tax

For Petitioner:

Larry Cecil Whittaker

For Sales and Use Tax Department:

Richard Goodrich, Hearing Representative

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

Issues in the petition of 89000414090 and 89000414120:

Whether the understated taxable sales were established in accordance with the facts.

Whether the evidence supports additional allowances for bad debts.

Whether the evidence supports additional allowances for cash discounts.

Whether the evidence supports additional allowances for returned merchandise credits.

Whether relief from the negligence penalties is warranted.

Issue in the petition of 89000414110:

Whether petitioner is allowed to claim credit for the alleged prepaid taxes in the same period in which the fuel was purchased, rather than in a subsequent period in which petitioner paid the vendor for the tax and fuel.

Issues in the petition of 89000414140:

Whether the measure of tax was established in accordance with the facts.

Whether the evidence provided supports additional credits for taxes prepaid to fuel vendors.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Larry Cecil Whittaker, 89000414120*, be redetermined in accordance with the revised recommendation of the Appeals Section.

Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, and Mr. Andal absent, the Board ordered that the petitions for the remaining audit periods of *Larry Cecil Whittaker, 89000414090, 89000414110, 89000414140*, be submitted for decision.

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Ali Derakhshanfar, 109507

7-1-97 to 6-30-00, \$14,387.15 Tax

\$1,438.77 Penalty, Negligence

For Petitioner: Ali Derakhshanfar

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 observation test conducted by the Sales and Use Tax Department is representative of the sales made by petitioner during the audit period.

Whether relief from the negligence penalty is warranted.

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

Manouch Lankarani, 89002331750, 28041

4-1-95 to 6-30-95, \$580.86 Tax

\$349.86 Penalty, Negligence

7-1-95 to 3-31-98, \$14,162.04 Tax

\$2,241.29 Penalty, Negligence

For Petitioner: Linus Amarikwa, Tax Specialist

Manouch Lankarani, Taxpayer

Farib Lankarani, Taxpayer Spouse

For Sales and Use Tax Department: Peter Horton, Hearing Representative

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

Issues: Whether relief from the sales tax is warranted with respect to sales for which customers demanded title and stated that they would register the vehicles with the Department of Motor Vehicles.

Whether the evidence establishes that petitioner is entitled to additional deductions for bad debts and repossession losses.

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

The Board recessed at 4:10 p.m. and reconvened at 4:15 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

### **FINAL ACTION ON PETITIONS HEARD MAY 8, 2002**

Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Three G's, Inc.*, 61331, be redetermined as recommended by the Appeals Section.

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Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Columbia Diagnostics, Inc., 80554*, be redetermined as recommended by the Appeals Section.

Mr. Klehs moved to redetermine the petition of *Baron Brothers Nursery Inc., 93435*. Ms. Mandel made a substitute motion to grant 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. The motion was seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent.

Mr. Klehs moved to redetermine the petition of *Larry Cecil Whittaker, 89000414090, 89000414110, 89000414140*. Mr. Parrish made a substitute motion to redetermine the petition and delete the negligence penalty. The motion failed for lack of a second.

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

Mr. Klehs moved to redetermine the petition of *Ali Derakhshanfar, 109507*. Mr. Parrish made a substitute motion to redetermine the petition and delete the negligence penalty. The motion failed for lack of a second.

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

Mr. Klehs moved to redetermine the petition of *Manouch Lankarani, 89002331750, 28041*. Mr. Parrish made a substitute motion to redetermine and reduce the negligence penalty by 10 percent. The motion failed for lack of a second.

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

The Board adjourned at 4:15 p.m.

*The foregoing minutes are adopted by the Board on June 20, 2002.*

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