

THURSDAY, MAY 9, 2002

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

**BUSINESS TAXES APPEALS HEARINGS**

Farla Binder, 89000068610

1-1-95 to 3-31-98, \$69,753.06 Tax

\$6,975.39 Penalty, Negligence

For Petitioner: Barry Shapiro, Representative  
Farla Binder

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

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 negligence penalty is warranted.

Action: 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 be submitted for decision.

Podell Industries, Incorporated, 76777

1-1-96 to 6-30-99, \$135,763.16 Tax

\$00.00 Penalty, Negligence

For Petitioner: William Weintraub, Attorney  
Anthony Podell, Former CEO  
Ana Villalobos

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

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

Issues: Whether documentation presented proves that certain samples withdrawn from resale inventory (account 613) were purchased tax-paid.

Whether documentation presented proves that certain samples withdrawn from resale inventory (account 614) were either resold to outlet stores or employees, or subsequently returned to resale inventory.

Whether the facts support petitioner's claim that the Maserati purchased out-of-state was not purchased for use in California.

Action: Upon motion of Mr. Parrish, 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 be submitted for decision, directing staff to bring the matter back before the Board at the next Sacramento meeting.

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**Master Protection Corporation, 89000027670**

4-1-93 to 3-31-96, \$92,809.14 Tax

\$9,667.25 Penalty, Negligence

For Petitioner: Theodore P. Jonavic, CPA

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

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

Issues: Whether petitioner properly reported tax on retail sales of fire suppression systems.

Whether disallowed claimed sales for resale were established in accordance with the facts.

Whether use tax on purchases of fixed assets was computed in accordance with the facts.

Whether relief from the negligence penalty is warranted.

Action: 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 be submitted for decision.

**Powerup, Inc., 55778**

7-1-95 to 6-30-98, \$207,129.99 Tax

\$20,713.02 Penalty, Negligence

For Petitioner: No Appearance

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

Action: Board took no action.

**Alan Mitchell Brawer, 89002195380**

1-1-94 to 3-31-97, \$30,770.48 Tax

\$00.00 Penalty, Negligence

For Petitioner: Jean A. Williams, Representative

Ira L. Mishkind

Alan Brawer

For Sales and Use Tax Department: James Kuhl, Hearing Representative

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

Issues: Whether taxable sales should be accepted as reported for the period January 1, 1994 through September 30, 1995.

Whether audited cost of goods sold was established in accordance with the facts.

Whether relief from the interest is warranted.

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 disputed measure of tax before October 1, 1995 be reduced by 75 percent and the remainder of the petition be redetermined as recommended by the Appeals Section.

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**Suong Thi Trinh and Ciang (Giang) Liet Hong, 19549**

7-1-95 to 6-30-98, \$6,532.92 Tax

\$00.00 Penalty, Negligence

For Petitioner: Robert Johnston, CPA  
Ciang Liet Hong

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 evidence supports an increase in the audited costs of exempt food sales.

Whether petitioners' allegation that they relied upon erroneous advice received in a prior audit warrants relief from the tax.

Whether the evidence shows that the audited exempt food markup is inadequate.

Action: 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 be submitted for decision.

**Thelonius Alexander, 48263**

10-1-94 to 9-30-97, \$216,467.28 Tax

\$21,706.18 Penalty, Negligence

For Petitioner: Thelonius Alexander

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 overall gasoline markup of 5.83 percent is excessive.

Whether relief from the 10 percent penalty for negligence 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.

**Vasant Kale, 89002204350**

10-1-94 to 12-31-97, \$25,304.64 Tax

\$00.00 Penalty, Negligence

For Petitioner: Joseph Vinatiery, Attorney  
Vasant Kale

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 audited weighted taxable markups of 25.42 percent and 24.92 percent for both locations combined are excessive.

Whether the evidence supports additional increases in the allowances for ending inventory.

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Action: Upon motion of Mr. Chiang, seconded by Mr. Klehs 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, 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.

The Board recessed at 10:55 a.m. and reconvened at 11:00 a.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

### **FINAL ACTION ON PETITIONS HEARD MAY 9, 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 *Master Protection Corporation, 89000027670*, be redetermined as recommended by the Appeals Section.

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 of *Farla Binder, 89000068610*, be redetermined as recommended by the Appeals Section.

### **BUSINESS TAXES APPEALS HEARINGS**

Mediahippo, Inc., 51603

4-1-95 to 3-31-98, \$144,154.07 Tax

\$14,584.16 Penalty, Negligence

For Petitioner: Waived Appearance

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

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

Issues: Whether unreported taxable sales were established in accordance with the facts.  
Whether portions of the audit period are beyond the statute of limitations.  
Whether petitioner's claim that the auditor's behavior was inappropriate warrants relief from the tax.

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 redetermined as recommended by the Appeals Section.

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Ron Sanchez, 113124

4-1-96 to 12-31-99, \$71,484.98 Tax

\$7,148.49 Penalty, Negligence

For Petitioner: Waived Appearance

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

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

Issues: Whether additional taxable sales of boats were established in accordance with the facts.

Whether the evidence shows that the disallowed interstate sales were valid.

Whether relief from the negligence penalty is warranted.

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 recommended by the Appeals Section.

#### **FINAL ACTION ON PETITIONS HEARD MAY 9, 2002**

Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board reduced the disputed measure of tax by 5 percent in the petition of *Suong Thi Trinh and Ciang (Giang) Liet Hong, 19549*.

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 of *Thelonius Alexander, 48263*, be redetermined as recommended by the Appeals Section.

#### **BUSINESS TAXES APPEALS HEARINGS**

Modesta Ramos, 105598

4-1-97 to 3-31-00, \$96,605.77 Tax

\$24,151.47 Penalty, Fraud

For Petitioner: Waived Appearance

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

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

Issues: Whether audited taxable sale was established in accordance with the facts.

Whether relief from the fraud 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 redetermined as recommended by the Appeals Section.

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The Board recessed at 11:05 a.m. and reconvened at 1:30 p.m. with Mr. Chiang, Mr. Parrish and Ms. Mandel present.

### **BUSINESS TAXES APPEALS HEARINGS**

Fashion Marking Services, Inc., 89002434400

7-1-94 to 6-30-97, \$19,309.38 Tax

For Petitioner: Janet Pass, Representative  
Nelly Martinez

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

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

Issues: Whether relief should be granted because petitioner relied on verbal advice provided by the Board.

Whether the transmittal of diskettes to customers along with paper pattern layouts, qualifies as an exempt transfer of computer programs.

Action: Upon motion of Mr. Parrish, seconded by Ms. Mandel 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, granting 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.

Craft Communications, Inc., 56077, 128623

10-1-96 to 3-31-97, \$00.00 Tax

\$00.00 Penalty, Failure to Timely Pay

4-1-97 to 9-30-99, \$13,778.09 Tax

\$963.68 Penalty, Failure to Timely Pay

For Petitioner: George W. Teats, Jr., CPA  
James Kahill, President

For Sales and Use Tax Department: James Kuhl, Hearing Representative

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

Issues: Whether the audited understatement for the period after December 31, 1997 was excessive.

Whether relief from the penalty for failure to timely pay the final liability is warranted.

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

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**PETITION FOR RELEASE OF SEIZED PROPERTY**

Ahmad Salem Almasad, 162813

For Petitioner:

Ahmad Salem Almasad

Ghazi Hasson, Accountant

For Sales and Use Tax Department:

Blanca Breeze, Tax Counsel

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

Issue: Whether the Investigations Division properly seized the 376 cartons and 20 packs of cigarettes.

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.

The Board recessed at 2:05 p.m. and reconvened at 2:06 p.m. with Mr. Chiang, Mr. Parrish and Ms. Mandel present.

**FINAL ACTION ON PETITION HEARD MAY 9, 2002**

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 of *Craft Communications, Inc., 56077, 128623*, be redetermined as recommended by the Appeals Section.

**FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HEARD  
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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 of *Ahmad Salem Almasad, 162813*, be denied.

The Board adjourned at 2:10 p.m.

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

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