

Friday, June 1, 2007

The Board met at its offices at 450 N Street, Sacramento, at 9:36 a.m., 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.

SALES AND USE TAX APPEALS HEARINGS

Mariano T. Garcia, Jr., 288369 (CH)

1-1-00 to 12-31-02, \$70,800.71 Tax, \$7,080.08 Penalty

For Petitioner: Scott Shoblom, Representative

For Department: Kevin Hanks, Hearing Representative

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

Issues: Whether the Sales and Use Tax Department accurately computed petitioner's taxable sales during the audit period.

Whether the waivers of limitations petitioner executed to extend the statute of limitations for issuance of the notice of determination are valid.

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.

Schilling Robotics, LLC, 295382 (JHF)

10-1-03 to 6-30-04, \$15,097.63 Tax

For Petitioner: Barton McDougal, CPA

For Department: Robert Stipe, Tax Counsel

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

Issue: Whether lease payments by petitioner to its wholly owned subsidiary are subject to tax.

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.

PUBLIC HEARINGS

Timber Harvest Values

Benjamin Tang, Principal Property Appraiser, County Property Tax Division, Property and Special Taxes Department, made introductory remarks regarding the Timber Harvest Values (Exhibit 6.1).

Speakers were invited to address the Board, but there were none.

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 adopted the Timber Harvest Values as recommended by staff.

Exhibits to these minutes are incorporated by reference.

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Proposed Amendments to Regulation 1521, Construction Contracts

Robert Tucker, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed amendments to Sales and Use Tax Regulation 1521, *Construction Contracts*. This regulation is proposed to be amended to provide that photovoltaic cells, solar panels, and solar modules should be considered materials when they function in the same manner as other materials such as roofing shingles, skylights, wall panels or windows, but that other photovoltaic cells, solar panels, and solar modules are accessory to a building and should be considered fixtures. (Exhibit 6.2.)

Speaker: Sue Kateley, Executive Director, California Solar Energy Industries Association

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 deferred consideration of the matter, directing staff to work with industry regarding assembly/installation labor issues.

CHIEF COUNSEL MATTERS**RULEMAKING****Request for Authorization to Publish Proposed Amendment to Cigarette & Tobacco Products Regulation 4703, *Seizures and Forfeitures***

Monica Brisbane, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the request for authorization to publish amendments to Cigarette & Tobacco Products Regulation 4703, *Seizures and Forfeitures*, to clarify that licensed distributors are excluded from seizures of unstamped cigarettes and/or untaxed tobacco products. (Exhibit 6.3.)

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 adopted the changes to the published version of the regulation as recommended by staff.

Petition to Amend Property Tax Rule 462.060, *Change in Ownership – Life Estates and Estates for Years*

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the petition to amend Property Tax Rule 462.060, *Change In Ownership - Life Estates and Estates for Years*. The petition proposes to change current law that the creation of a life estate always results in a change in ownership unless reserved for the transferor or the transferor's spouse. (Exhibit 6.4.)

Speakers: Steve Bennet, CPA, Letwak & Bennet
Thomas Parker, Deputy County Counsel, Sacramento County, on behalf of the Sacramento and Los Angeles County Assessors

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Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board denied the petition.

Petition to Amend Property Tax Rule 140.1, *Requirements*

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the petition to amend Property Tax Rule 140.1, *Requirements*. The petition proposes to change current law which requires all limited partnerships satisfy Rule 140.1 to qualify for the welfare exemption for low income housing properties. (Exhibit 6.5.)

Speakers: Thomas Parker, Deputy County Counsel, Sacramento County, on behalf of the Sacramento and Los Angeles County Assessors
 Mary Lucero-Dorst, Director of Asset Management, East Bay Asian Local Development Corporation
 Dianne J. Spaulding, Executive Director, Non-profit Housing Association of Northern California
 Lenny Goldberg, Executive Director, CTRA
 Natalie Gubb, Attorney, Gubbs & Barshay
 Maria Escobar, Assistant Property Supervisor, Mercy Housing

Action: Upon motion of Ms. Yee, 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 denied the petition and directed staff to work with nonprofit housing communities on an administrative solution to bring back to the Board.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolution extending its best wishes on her retirement and its appreciation for her service to the State Board of Equalization and the State of California (Exhibit 6.6).

Sheila Wilson, Associate Information Systems Analyst, Technology Services Department, Business Integration

Action: Approve the Board Meeting Minutes of March 20, 2007 and April 24-25, 2007.

Action: Approve form BOE-577, *Aircraft Property Statement* (Exhibit 6.7).

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Action: Approve time extensions to Butte, Calaveras, Los Angeles, Madera, Orange, Tehama and Tulare Counties to complete and submit 2007-08 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 (Exhibit 6.8).

BOARD COMMITTEE REPORTS AND ACTIONS

Business Taxes Committee

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report with the reflection of the voting results of each committee action item (Exhibit 6.9).

“Agenda Item 1, Action Item 1, Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel voting no, the Board approved Alternative 1 and authorized publication.

“Agenda Item 2, Action Item 1, Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, the Committee approved Alternative 1.”

Legislative Committee

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 adopted the Legislative Committee report and approved the committee actions therein (Exhibit 6.10).

Customer Services and Administrative Efficiency Committee

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 adopted the Customer Services and Administrative Efficiency Committee report and approved the committee actions therein (Exhibit 6.11).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, provided an update regarding the HdL Companies Request for Location-Specific Reporting of Local Tax and announced that the request was withdrawn (Exhibit 6.12).

Speakers: Fran Mancina, Director of Government Relations, Muniservices

Mr. Hirsig introduced Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Division, who provided an update regarding the Veterans Exemption (Exhibit 6.13).

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Speaker: William Connell, All American Surfdog

Mr. Gilman provided an update regarding the underground storage tank maintenance fee (Exhibit 6.14).

Speaker: Roy E. Crawford, Attorney, Heller Ehrman, LLP

Mr. Gilman reported the status of other issues from the 2007 Taxpayers' Bill of Rights Hearings.

Deputy Director's Reports

Randie Henry, Deputy Director, Sales and Use Tax Department, presented a proposed realignment of the Sales and Use Tax Department (Exhibit 6.15).

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and duly carried, Ms. Yee, Ms. Chu and Ms. Steel voting yes, Mr. Leonard voting no, Ms. Mandel abstaining, the Board approved the realignment as presented and directed staff to report to the Board in six months the successes and issues encountered in this realignment.

Mr. Hirsig introduced Dave Edwards, manager of the headquarters construction project, and Vincent Paul, Industrial Hygienist, employees of the Department of General Services, who provided BOE Headquarters Construction reports regarding the windows and deck repair, and the air quality testing, respectively.

Speaker: Rebecca Landeros, BOE Headquarters Employee

Mr. Hirsig introduced the Interagency Agreement Contract Over \$1 Million (Exhibit 6.16).

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 approved the Interagency Agreement Contract as recommended by staff.

Mr. Hirsig provided an update regarding the Budget Hearings.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JUNE 1, 2007

Mariano T. Garcia, Jr., 288369 (CH)

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 ordered that the petition be redetermined as recommended by the Appeals Division.

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Schilling Robotics, LLC, 295382 (JHF)

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 ordered that the petition be redetermined as recommended by the Appeals Division.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:07 p.m. and reconvened immediately in closed session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 1:28 p.m. and reconvened immediately in open session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

The Board adjourned at 1:29 p.m.

The foregoing minutes are adopted by the Board on July 17, 2007.

Note: The following cases were removed from the calendar prior to the meeting: *City of Brisbane, City of Los Angeles, City of San Diego, City of San Jose, 384183*; and, *Chevron USA, Inc., 165308, 215016, 260466, 260468, 306293, 346981*.