

Thursday, June 21, 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.

SALES AND USE TAX APPEALS HEARINGS

CodeMagic, Inc., 309839 (AC)
4-1-01 to 3-31-04, \$69,786.14 Tax
For Petitioner:

Jack Dahl, Taxpayer
Mark Pinson, Taxpayer

For Department:

Carla Caruso, Tax Counsel

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

Issue: Whether the subject sales were exempt sales in interstate or foreign commerce.

Action: Upon motion of Mr. Leonard, 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, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Sea Level, Inc., 268482 (UT)
8-15-99, \$114,314.00 Tax

For Petitioner:

Cris Wenthur, Attorney

For Department:

Carolee Johnstone, Tax Counsel

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

Issue: Whether the vessel was purchased for use in California.

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.

Lawrence Drew Lippert, 252418 (EH)

Tamara L. Lippert, 252419 (EH)

1-1-99 to 11-12-02, \$343,795.47 Tax, \$19,174.10 Negligence Penalty, \$968.30 Failure to File Penalty

For Petitioner:

Alton G. Burkhalter, Attorney

For Department:

Christine Bisauta, Tax Counsel

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

Issue: Whether petitioners are subject to personal liability as responsible persons for the tax liability incurred by Long Beach Rebar, Inc.

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.

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Aspect Communications Corporation, 249241 (GH)

10-1-00 to 12-31-00, \$804,792.04 Claim for Refund

For Claimant: Kyle O. Sollie, Attorney

For Department: Robert Stipe, Tax Counsel

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

Issues: Whether claimant's charges for additional software licenses sold in connection with sales of prewritten computer programs transferred on tangible media are part of claimant's gross receipts from the sale of the software in tangible form.

Whether claimant's transfer of prewritten software to EDS was made under a technology transfer agreement.

Whether the claim for refund should be granted because imposition of the tax violates the United States and California constitutions.

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 claim be submitted for decision.

Manouchehr Sagart, 99240, 98450 (FH)

1-3-94 to 9-5-94, \$00.00 Tax, \$00.00 Penalty

9-6-94 to 2-28-99, \$8,701.07 Tax, \$256,638.59 Fraud Penalty

Saga Enterprises, Inc., 99242 (EA)

9-6-94 to 2-28-99, \$8,701.07 Tax, \$256,638.59 Fraud Penalty

For Petitioner: Joseph J. Cohen, Representative

Minoos Behboody, Representative

For Department: Tim Treichel, Tax Counsel

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

Issues: Whether petitioners are entitled to an adjustment to the understated taxable sales established for category 4.

Whether the 25 percent penalty for fraud or intent to evade the tax is supported by clear and convincing evidence and whether it was properly assessed against the corporation and against Mr. Sagart as a predecessor.

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.

SC Aviation, LLC, 311627 (UT)

7-21-00, \$68,376.00 Tax, \$00.00 Failure to File Penalty

For Petitioner: Cris Wenthur, Attorney

Steve Campbell, Taxpayer

For Department: Christine Bisauta, Tax Counsel

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

Issues: Whether petitioner has established that the aircraft was located outside California for at least one-half of the time during the six months following its first entry into California after purchase.

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Whether petitioner has established that at least one-half of the flight time during the first six months following entry of the aircraft into California after petitioner's purchase was commercial flight time traveled in interstate commerce.

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.

SPECIAL TAXES APPEALS HEARING

Tri Van Vo, 211895 (ET)

7-1-01 to 7-31-01, \$105,049.02 Tax, \$26,262.26 Fraud Penalty, \$10,504.90 Failure to file Penalty

For Petitioner: John Norman, Attorney

For Department: Tim Treichel, Tax Counsel

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

Issues: Whether petitioner is liable for the determined tax on the distribution of untaxed tobacco products.

Whether the 25 percent penalty for fraud is supported by clear and convincing evidence.

Whether petitioner has established reasonable cause for relief of the failure-to-file penalty.

Action: The Board granted the request for postponement.

SALES AND USE TAX APPEALS HEARING

GT Performance Engineering, LLC, 217894 (EH)

1-1-99 to 12-31-01, \$28,087.55 Tax, \$00.00 Negligence Penalty

For Petitioner: Gary Teaque, Taxpayer

Leon Jaferian, CPA

For Department: Kevin Hanks, Hearing Representative

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

Issues: Whether petitioner has established that the measure of tax should be reduced for exempt sales in interstate commerce, nontaxable sales for resale, or nontaxable repair labor.

Whether the markups used in the audit are excessive.

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.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JUNE 20, 2007

Loren M. Hicks and Victoria E. Hicks, 265749 (UT)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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SALES AND USE TAX APPEALS HEARINGS

Sensation Spas, Inc., 298288 (GH)

7-1-4-to 9-30-04, \$1,117.91 Tax

For Petitioner: Appearance Waived

For Department: Kevin Hanks, Hearing Representative

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

Issue: Whether further adjustments are warranted to the audited measure subject to the ACHC district 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 redetermined as recommended by the Appeals Division.

Autohaus West, LLC, 250370 (EAA)

1-1-00 to 12-31-02, \$63,208.86 Tax, \$00.00 Negligence Penalty

For Petitioner: Appearance Waived

For Department: Carla Caruso, Tax Counsel

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

Issue: Whether the transactions at issue were taxable sales in California.

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.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JUNE 21, 2007

GT Performance Engineering, LLC, 217894 (EH)

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.

Sea Level, Inc., 268482 (UT)

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.

Lawrence Drew Lippert, 252418 (EH)

Tamara L. Lippert, 252419 (EH)

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.

Aspect Communications Corporation, 249241 (GH)

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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Manouchehr Sagart, 99240, 98450 (FH)

Saga Enterprises, Inc., 99242 (EA)

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.

Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board directed staff to amend Regulation 1699 (f) and present it on Chief Counsel Matters for Board consideration.

SC Aviation, LLC, 311627 (UT)

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.

The Board adjourned at 12:40 p.m.

The foregoing minutes are adopted by the Board on August 14, 2007.

Note: The following cases were removed from the calendar prior to the meeting: *Vector Design, Inc., 255265 (AC); Jonathan Francis Knecht, 184846 (AP) and Color DNA, Inc., 255261 (AA); and, Cigars by Chivas, Inc., 334787 (AP), 334876 (ET).*