

WEDNESDAY, JULY 31, 2002

The Board met at its offices at 450 N Street, Sacramento, at 9:50 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**Kia Motors America, Inc., 89002169060**

6-1-93 to 6-30-96, \$72,079.21 Tax

For Petitioner:

Rick Richman, Principal

Marty Dakessian, Tax Manager

Alan Davis, Sales and Use Tax Supervisor

For Sales and Use Tax Department: Randy Ferris, Counsel

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

Issues: Whether petitioner's leases of certain vehicles to its employees were made at arm's length and therefore bona fide leases.

Whether petitioner properly reported the taxable measure of its assigned demonstrators at 1/40th of the purchase price, rather than at 1/40th of the net dealer price of the vehicles.

Whether the sale of parts to Budget Rent-A-Car were nontaxable sales for resale.

(This issue was resolved prior to the hearing.)

Action: Upon motion of Ms. Mandel, 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 submitted for decision.

Avnet, Inc., 89000228820

7-1-91 to 6-30-95, \$34,798.10 Tax

For Petitioner:

No Appearance

For Sales and Use Tax Department: Robert Tucker, Counsel

Action: The Board took no action.

DocuSource, Inc., 36592

1-1-95 to 12-31-97, \$54,342.04 Tax

For Petitioner:

Rick Richman, Principal

Birdie Kopp, CFO

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 is entitled to a tax-paid purchases resold deduction.

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.

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Landmark Insurance Company, 139062

1-1-86 to 12-31-86, \$1.00 or more Claim for Refund

1-1-89 to 12-31-89, \$1.00 or more Claim for Refund

For Claimant: Roxani M. Gillespie, Attorney
 Phillip Isenberg, Attorney
 Timothy Moroney, Associate

For Sales and Use Tax Department: Trecia Nienow, Counsel

For Department of Insurance: Arnold Kessler, Counsel

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

Issues: Whether claimant is entitled to a refund of the penalty.
 Whether claimant is entitled to a refund of the interest.

Action: Mr. Parrish moved to delete the penalty. The motion failed for lack of a second.
 Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Andal absent, the Board ordered that the claim be submitted for decision.

The Board recessed at 11:15 a.m. and reconvened at 11:25 a.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

Bernson, Ltd., 116740

1-1-96 to 3-31-00, \$00.00 Tax

\$19,930.19 Penalty, Fraud

For Petitioner: Dennis Bernson, Owner

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

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

Issue: Whether relief from the fraud 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 submitted for decision.

The Board recessed at 11:30 a.m. and reconvened at 1:35 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

BUSINESS TAXES APPEALS HEARINGS**Lifescan, Inc., 29592, 37314, 48966**

10-1-94 to 12-31-97, \$448,451.46 Tax

For Petitioner: No Appearance

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

Action: The Board took no action.

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Costco Wholesale Membership Co., 132058

12-25-00 to 3-18-01, \$10,000.00 Claim for Refund

For Claimant: No Appearance

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

Action: The Board took no action.

Pedro Munoz Jimenez and Jacinto Munoz Jimenez, 100565

10-1-95 to 9-30-98, \$16,083.19 Tax

\$2,455.49 Penalty, Negligence

For Petitioner: George Ellis, Representative

Reynaldo Mora, Representative

Pedro Jimenez, Taxpayer

Jacinto Jimenez, Taxpayer

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 evidence shows that the estimated unreported retail sales are excessive.

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Chiang, 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 submitted for decision.

PROPERTY TAX MATTERS**2002/03 Private Rail Road Car Tax Rate**

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Andal absent, the Board adopted a rate for the 2002/03 private railroad car tax of 1.072 percent (Exhibit 7.5).

Exhibits to these minutes are incorporated by reference.

Adoption of the 2002 State-Assessed Property Roll

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs and Mr. Parrish voting yes, and Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Andal absent, the Board adopted the 2002 State-Assessed Property Roll (Exhibit 7.6).

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Adoption of the 2002 Private Railroad Car Roll

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Andal absent, the Board adopted the 2002 Private Railroad Car Roll (Exhibit 7.7).

BUSINESS TAXES APPEALS HEARING

Issam Mohamed Aljabal, Mohd Nagi Jarah, and Abdulla Ali Nasher, 131528

1-1-98 to 9-30-00, \$13,514.28 Tax

\$1,348.63 Penalty, Failure to Timely Pay

For Petitioner: Mohammad N. Jarah, Partner

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 pilferage allowance should be increased.

Whether taxpayer's allegation that the audited unreported taxable sales are excessive warrants relief from the tax.

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 finality penalty be deleted.

(Motion expunged.)

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 submitted for decision.

FINAL ACTION ON PETITIONS HEARD JULY 31, 2002

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, Mr. Andal absent, the Board ordered that the petition of *Kia Motors America, Inc.*, 89002169060, be granted as to the disputed measure of tax.

Upon motion of Mr. Klehs, seconded by Ms. Mandel and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Andal absent, the Board ordered that the petition of *DocuSource, Inc.*, 36592, be redetermined as recommended by the Appeals Section.

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Mr. Klehs moved to redetermine as recommended by the Appeals Section in the petition of *Landmark Insurance Company, 139062*. Mr. Parrish offered a substitute motion to remove the finality penalty. The motion failed for lack of a second.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Chiang and Mr. Klehs voting yes, Mr. Parrish voting no, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Andal absent, the Board ordered that the claim for refund be denied as recommended by the Appeals Section.

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 *Bernson, Ltd., 116740*, be redetermined as recommended by the Appeals Section.

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 be reduced by 11 percent in the petition of *Issam Mohamed Aljabal, Mohd Nagi Jarah, and Abdulla Ali Nasher, 131528*.

The Board deferred consideration of *Pedro Munoz Jimenez and Jacinto Munoz Jimenez, 100565*, to the August 1, 2002 meeting.

The Board adjourned at 2:10 p.m.

The foregoing minutes are adopted by the Board on September 12, 2002.

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