

WEDNESDAY, AUGUST 21, 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, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

BUSINESS TAXES APPEALS HEARINGS

Consolidated Electrical Distributors, Inc., 89000254970, 89000254960

10-1-92 to 9-30-95, \$357,870.37 Tax

For Claimant: Janet Pass, Representative
Dave Verbeck, Tax Director

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

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

Issues: Whether the disallowed claimed cash discounts are excludable from gross receipts.

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

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 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.

Las Mananitas, Inc., 89002159030

7-1-94 to 9-15-97, \$15,386.17 Tax

\$00.00 Penalty, Negligence

For Petitioner: Salvatore Osio, Secretary
Ursula Osio, President
Tanya Osio, Vice President

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 is sufficient to show that the audited bar markup is excessive.

Whether the evidence is sufficient to show that the audited cost of goods sold is excessive.

Whether the evidence shows that bank deposits include funds from sources other than sales receipts.

Whether the evidence shows that gross receipts reported on the 1995 federal Income Tax Return included sales tax reimbursement and tips.

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 redetermined with adjustments.

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Charanjit Singh Sihota and Rajprett Kaur Sihota, 89002231870

1-1-94 to 12-31-96, \$2,351.97 Tax

\$1,540.23 Penalty, Negligence

For Petitioner: Claudia Marsh, Representative

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

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

Issues: Whether sufficient documentation has been submitted to prove that lottery purchases are included in taxable cost of goods sold.

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 and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be redetermined with adjustments.

Avi Admony, 83017

10-1-94 to 3-31-98, \$92,152.95 Tax

\$23,038.26 Penalty, Fraud

A.A. Network & Computers Specialists, Inc., 83015

4-1-98 to 9-30-99, \$50,546.30 Tax

\$12,636.60 Penalty, Fraud

For Petitioner: Saul Sobol, CPA

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 audited understatements of reported taxable sales are excessive.

Whether relief from the fraud 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 petitions be submitted for decision.

John Thomas Askew, 63567

1-1-92 to 6-30-98, \$74,349.54 Tax

\$19,778.77 Penalty, Fraud

For Petitioner: John Thomas Askew

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 taxable sales are excessive.

Whether relief from the 25 percent penalty for fraud is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish 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.

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A-1 Printing & Graphics Inc., 47968

10-1-95 to 9-30-98, \$101,900.44 Tax

\$10,199.96 Penalty, Negligence

For Petitioner: Mandeep Dhillon, Consultant
Taki Khan, Taxpayer

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 sufficient evidence has been submitted to support the disallowed claimed sales for resale.

Whether sufficient documentation has been submitted to support the disallowed claimed bad debt deduction.

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be submitted for decision, granting the Department 30 days to review the information provided by the taxpayer, 30 days to the taxpayer to respond to the Department and the Appeals Section 30 days thereafter to return to the Board with a final recommendation.

Vicente Ochoa Cervantes, 105600, 105601

4-1-97 to 6-30-00, \$26,960.42 Tax

\$2,878.20 Penalty, Negligence

4-1-97 to 9-30-00, \$4,358.48 Tax

\$545.46 Penalty, Negligence

For Petitioner: Eddie Cervantes
William Burgos, Representative

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

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

Issues: Whether evidence presented proves that audited taxable purchases are excessive.

Whether relief from the negligence penalty is warranted.

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

The Board recessed at 10:35 a.m. and reconvened at 10:45 a.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

Assigned Seating, Inc., 89000218870, 89000218880

7-1-91 to 12-31-94, \$42,947.53 Tax

\$4,910.15 Penalty, Negligence

7-1-89 to 12-31-90, \$803.14 Tax

\$00.00 Penalty, Failure to File

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For Petitioner: Leslie E. Chayo, Attorney
Edward G. Friedman, CPA

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

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

Issues: Whether the audit staff correctly calculated the tax on jobs where petitioner renovated, repaired, and/or reupholstered or sold auditorium seats.
Whether relief from the penalty for failure to file returns is warranted for 89000218880 only.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish 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.¹

Edward L. Bermudez, 99795

4-1-96 to 12-31-99, \$141,476.13 Tax

\$00.00 Penalty, Negligence

For Petitioner: Marshall W. Taylor, Attorney
John Ralph, Witness
Edward L. Bermudez

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 audit method used to establish audited taxable sales was appropriate under the circumstances.
Whether the evidence shows that the test period used for the Department's shelf test is unrepresentative of the audit period.
Whether the evidence shows that recorded costs of goods sold are overstated.
Whether the evidence shows that the audited markup is excessive.
Whether the evidence establishes that a larger allowance is warranted for shrinkage and breakage.
Whether the evidence supports a reduction for bad debts.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, and Mr. Parrish voting yes, Ms. Mandel abstaining, the Board ordered that the petition be redetermined with adjustments.

Yamaha Motor Corporation U.S.A., 102973, 89000448380

4-1-96 to 9-30-99, \$20,545.10 Tax

10-1-90 to 6-30-94, \$148,091.98 Tax

For Petitioner: David Sniezko, Representative
Dennis Fox, Representative
James Levinson, Representative
Keith McCarty, Division Manager

¹ This case was reopened later in the day.

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For Sales and Use Tax Department: Warren L. Astleford, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues in the petition of 102973:

Whether motorcycles withdrawn from resale inventory and assigned to editors of various motorcycle publications for greater than 12 months were being used for demonstration and display while being held for resale.

Whether motorcycles withdrawn from resale inventory in excess of 12 months for the purpose of being photographed for use in petitioner's catalog were being used for demonstration and display while being held for resale.

Whether the evidence supports a greater credit for use tax erroneously reported on ex-tax purchases of racing parts shipped out of state prior to use.

Alternatively, whether the evidence supports petitioner's claim that the parts were sold in interstate commerce.

Issues in the petition of 89000448380:

Whether "bartered for" transactions should be deleted from the test of taxable gifts because the property, which was shipped out of state, was allegedly transferred to the customer in exchange for advertising.

Whether documentation presented proves that certain property withdrawn from resale inventory and placed into the "loan pool" was used for non-taxable purposes.

Whether petitioner's claim that the Appeals Section failed to review documentation that supports its position that an exempt use was made of the loan pool property warrants relief.

Whether documentation presented proves that golf cart parts sold to Gold Cart Systems, Inc., were for resale.

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 *Yamaha Motor Corporation U.S.A.*, 102973, be redetermined with adjustments.

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 *Yamaha Motor Corporation U.S.A.*, 89000448380, be submitted for decision.

Tobie L. and Dennis A. Holden, 89000348260, 89000348250, 89000348230

1-1-92 to 3-30-02, \$56.27 Tax

4-1-92 to 6-30-92, \$73.35 Tax

7-1-92 to 12-31-94, \$1,783.77 Tax

For Petitioner: Dennis Holden

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 the disputed sales were properly claimed as nontaxable sales for resale.

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Whether the evidence supports that petitioner is providing nontaxable labor to its customers or as an employee.

Whether certain sales qualify for any exemption, including printed sales messages under Revenue and Taxation Code section 6379.5 and California Code of Regulations, Title 18, section 1541.5.

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

The Board recessed at 12:15 p.m. and reconvened at 1:45 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

BUSINESS TAXES APPEALS HEARINGS

Assigned Seating, Inc., 89000218870, 89000218880

7-1-91 to 12-31-94, \$42,947.53 Tax

\$4,910.15 Penalty, Negligence

7-1-89 to 12-31-90, \$803.14 Tax

\$00.00 Penalty, Failure to File

For Petitioner: Leslie E. Chayo, Attorney
Edward G. Friedman, CPA

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

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

Issues: Whether the audit staff correctly calculated the tax on jobs where petitioner renovated, repaired, and/or reupholstered or sold auditorium seats.

Whether relief from the penalty for failure to file returns is warranted for 89000218880 only.

Mr. Klehs moved to take the petition under submission, 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. The motion was seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent.

Khalil Michel Chaoui, Nabil Michel Chaoui, and Samir Chaoui, 116261

1-1-97 to 12-31-99, \$13,521.54 Tax

\$00.00 Penalty, Negligence

For Petitioner: Nabil Chaoui, Partner
Edward Tawil, Representative

For Sales and Use Tax Department: Stephen Smith, Hearing Representative

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

Issues: Whether the evidence establishes that disallowed claimed nontaxable sales for resale are valid.

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Whether petitioner has shown that adjustments to disallowed installation labor charges are warranted.

Whether the evidence establishes that petitioner is entitled to the claimed bad debt deduction.

Whether the evidence establishes that additional deductions for tax paid purchases resold are warranted.

Whether additional adjustments to the reconciliation between recorded and reported taxable measure are warranted.

Whether the negligence penalty should be abated.

Action: Mr. Klehs moved to grant the petition. The motion was seconded by Mr. Andal but failed to carry, Mr. Klehs voting yes, Mr. Chiang, Mr. Andal and Ms. Mandel voting no, Mr. Parrish abstaining.

Mr. Klehs moved to submit the petition for decision. Mr. Parrish made a substitute motion to delete the negligence penalty and submit the remaining issues for decision. 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. 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.

Calico Transport, Inc., 101279, 101321, 101334, 101410, 102042, 102052, 102059, 102063, 102065

1-1-96 to 3-31-98, \$00.00 Tax

For Petitioner: Darlene Ellis, Secretary

For Special Taxes Department: M. Judith Nelson, Tax Counsel

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

Issue: Whether the Board's Fuel Taxes Division's alleged delay in issuing Notices of Determination and alleged confusing information on the diesel fuel tax rate, is sufficient to relieve petitioner from the interest.

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

William F. Donahoe, Inc., 32728, 103281, 32729, 32719, 103282

7-1-93 to 9-30-93, \$574.74 Fee

\$57.47 Penalty, Failure to Timely Pay

10-1-93 to 12-31-93, \$15,856.39 Fee

\$1,585.64 Penalty, Failure to Timely Pay

7-1-96 to 12-31-97, \$16,056.20 Fee

\$1,605.63 Penalty, Failure to Timely Pay

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7-1-92 to 9-30-94, \$2,388.83 Fee
 \$238.87 Penalty, Failure to Timely Pay
 7-1-93 to 12-31-93, \$7,013.90 Fee
 \$701.39 Penalty, Failure to Timely Pay

For Petitioner: William Donahoe, President

For Special Taxes Department: M. Judith Nelson, Tax Counsel

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

Issues: Whether evidence submitted proves that the feepayer was not the owner of the tanks at issue.

Alternatively, whether the lessees are responsible for the fees because the lessees were the operators of the service stations.

Whether the feepayer's claim that it had no knowledge of the tank maintenance fee until it began to sell fuel at the Barstow location in 1997, warrants relief from the fee.

Whether relief from the fee is warranted due to feepayer's assertion that the various operators were tried and convicted of fraud, and that holding feepayer responsible for the fee at issue is unfair.

Whether the feepayer's claim that the State of California seized all the records of the operators, and that the feepayer is unable to determine if the audited gallons are correct, warrants a reduction in the fee.

Whether relief from the 10 percent penalty for failure to timely pay the determination is warranted.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating, the Board ordered that the petitions be submitted for decision.

West Side Apparel Service, Inc., 86852

7-1-96 to 6-30-99, \$14,747.47 Tax
 \$00.00 Penalty, Negligence

For Petitioner: Joseph Boodaie, Representative

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

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

Issues: Whether the evidence shows that certain claimed sales for resale are in fact valid sales for resale.

Whether certain ex-tax purchases of fixed assets were actually purchases of inventory for resale.

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

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Mohammad S. Kashe, 15158, 37009, 89000121120, 89000121110

7-1-92 to 9-30-96, \$300,521.43 Tax

\$00.00 Penalty, Negligence

10-1-96 to 12-31-98, \$5,194.78 Tax

\$00.00 Penalty, Negligence

7-1-97 to 9-30-97, \$10,734.00 Tax

7-1-92 to 9-30-96, \$43,765.00 Claim for Refund

For Petitioner: Moe Kashe

Graham Hoad, Representative

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 Notice of Determination for the period July 1, 1992, through September 30, 1996, was issued within the time period established by statute.

Whether the evidence shows that the audited markups for sales of parts and sales of taxable mini-mart merchandise are excessive.

Whether the evidence supports the audited markup for parts and mini-mart merchandise established in the later audit period.

Whether the audited costs of goods sold were established in accordance with the facts.

Whether the audited allowances for pilferage are sufficient.

Whether the audit should provide an adjustment for self-consumption of taxable merchandise.

Whether estimated gasoline sales were established in accordance with the facts.

Whether relief from the interest is warranted.

Whether adjustments are warranted to the determination issued by the Department's Return Analysis Section for the third quarter 1997.

Whether petitioner has documented overpayments for the earlier audit period.

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

Hassan Jalali and Gholam Hossein Jalali, 89002258660

1-1-93 to 12-31-97, \$68,008.83 Tax

\$00.00 Penalty, Fraud

For Petitioner: Hassan Jalali

Joseph Boodaie, Representative

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 disallowed claimed sales of food products were excessive.

Whether the evidence establishes that the disallowed claimed deductions for nontaxable sales for resale and exempt sales of periodicals were excessive.

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Whether the evidence establishes that the cash payouts were included in the bank deposits.

Whether relief from the fraud penalty is warranted.

Action: Mr. Andal moved to take the matter under submission. The motion was seconded by Mr. Klehs. No vote was taken.

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.

Mr. Klehs moved to redetermine the petition. The motion was seconded by Mr. Andal and duly carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish voting no.

Physiologic Reps, Inc., 99796

10-1-96 to 12-31-99, \$23,194.82 Tax

For Petitioner: No Appearance

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

Action: The Board took no action.

Keith and Kevin Schultz, 66285, 66283, 114641

1-1-92 to 12-31-96, \$7,268.51 Tax

\$726.85 Penalty, Finality

1-1-97 to 3-31-99, \$8,417.57 Tax

\$841.76 Penalty, Finality

1-1-97 to 3-31-99, \$26,479.72 Tax

\$1,790.68 Penalty, Failure to File

For Petitioner: Richard Schultz, Representative

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

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

Issues: Whether petitioner's charges for photography labor were related to sales of tangible personal property and, thus, are includeable as part of petitioner's gross receipts.

Whether relief from the penalty for failure to file returns is warranted.

Whether relief from the finality penalty is warranted.

Whether relief from the interest is warranted.

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

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FINAL ACTION ON PETITION HEARD AUGUST 21, 2002

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 of *Avi Admony, 83017*, and *A.A. Network & Computers Specialists, Inc., 83015*, be redetermined as recommended by the Appeals Section.

BUSINESS TAXES APPEALS HEARING

A&A Pallets, Inc., 57674

7-1-95 to 12-31-98, \$14,380.05 Tax

For Petitioner:

Waived Appearance

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 disallowed untaxed sales are excessive.

Whether unreported taxable sales are excessive.

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 redetermined as recommended by the Appeals Section.

FINAL ACTION ON PETITIONS HEARD AUGUST 21, 2002

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 of *John Thomas Askew, Taxpayer, 63567*, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Vicente Ochoa Cervantes, 105600, 105601*, 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 not participating, the Board ordered that the petition of *Yamaha Motor Corporation U.S.A., 102973, 89000448380*, be redetermined with adjustments.

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 not participating, the Board ordered that the petition of *Tobie L. and Dennis A. Holden, 89000348260, 89000348250, 89000348230*, be redetermined as recommended by the Appeals Section.

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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 abstaining, the Board ordered that the petition of *Khalil Michel Chaoui, Nabil Michel Chaoui, and Samir Chaoui, 116261*, be redetermined as recommended by the Appeals Section.

Mr. Klehs moved to redetermine the petition of *Calico Transport, Inc., 101279, 101321, 101334, 101410, 102042, 102052, 102059, 102063, 102065*. The motion failed for lack of a second.

Upon motion of Mr. Chiang, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs voting no, Ms. Mandel not participating, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Section. The Board directed staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating, the Board ordered that the petitions of *William F. Donahoe, Inc., 32728, 103281, 32729, 32719, 103282*, be redetermined in accordance with the revised recommendation of the Appeals Section.

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 of *West Side Apparel Service, Inc., 86852*, be redetermined in accordance with the revised recommendation of the Appeals Section.

Mr. Klehs moved to redetermine the petition of *Keith and Kevin Schultz, 66285, 66283, 114641*. Mr. Andal made a substitute motion to redetermine the petition solely basing the tax on the negatives and film. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal voting no, Mr. Parrish abstaining, 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 November 13, 2002.