

THURSDAY, OCTOBER 4, 2001

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:10 a.m. with Chairman Parrish, Vice Chairman Chiang and Mr. Klehs present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code Section 7.9.

BUSINESS TAXES APPEALS HEARINGS

A&T Liquor Mart, Inc., SX AA 14-631812; 89000107360
4-1-95 to 3-31-98, \$1,978.08 Tax

For Petitioner: James N. Ananias, Vice President
For Sales and Use Tax Department: Warren L. Astleford, Counsel
Action: The Board took no action.

Santa Monica Cellular, Inc., SR AS 99-229564; 89002157960
7-1-93 to 6-30-96, \$16,962.65 Tax, \$1,797.66 Penalty, Negligence

For Petitioner: Hassan Vahoani, Officer
George Bral, EA
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 measure of tax was 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. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

CTI, SR AB 97-606292; 63095
10-1-92 to 4-15-99, \$382,762.06 Tax, \$00.00 Penalty, Failure to File

For Petitioner: Peter W. Ballas, Representative
Ken Puckett, President
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 made taxable sales of x-ray films.
Whether the evidence is sufficient to show that audited taxable sales are excessive.
Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

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Medical Marketplace, Inc., SR EH 99-533126; 89002296770

10-1-94 to 12-31-97, \$00.00 Tax, \$00.001 Penalty, Failure to Timely Pay

For Petitioner: Joseph E. Mudd, Attorney
Brian Hintergardt, President

For Sales and Use Tax Department: Robert Tucker, Counsel

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

Issue: Whether relief from the interest is warranted.

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

Acute Care Alternative, Inc., SR AA 99-302874; 89002190930

10-1-93 to 12-31-96, \$10,403.91 Tax

For Petitioner: Corazon Licudan, Accounting Manager

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

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

Issue: Whether petitioner has provided sufficient evidence to show that 70 percent of the sales of medical supplies qualify as exempt sales under Medicare Part A and, thus, a reduction in the tax liability is warranted.

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

The Board recessed at 10:30 a.m. and reconvened 11:00 a.m. with Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel present.

Vinotemp International Corp., SR AB 12-732240; 89000053450

4-1-94 to 12-31-97, \$22,253.11 Tax, \$00.00 Penalty, Negligence

For Petitioner: Frances Ravel, President
Donald McVay, Attorney

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

Action: The Board took no action.

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Khaled Idraheem Azzam, SR AB 12-706142; 31674

1-1-95 to 12-31-97, \$254,257.39 Tax, \$63,564.36 Penalty, Fraud

For Petitioner: Dr. Ahmed M. Abdelnaby, Agent

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 costs of goods available for sale have been established in accordance with the facts.

Whether the audited markups are excessive.

Whether the facts support an additional allowance for bad debts.

Whether documentation submitted proves that the claimed sales for resale are valid.

Whether relief from the fraud penalty is warranted.

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

Clayton & Woods Design, Inc., SR EA 14-687594; 89000114450

10-1-93 to 6-30-96, \$5,068.96 Tax

For Petitioner: No Appearance

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

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

Issue: Whether petitioner's supervision charges are nontaxable services rendered in connection with the sale of finished art and engravings.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Klehs and Ms. Mandel voting yes, Mr. Chiang not participating, Mr. Andal absent, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Section.

Daniel J. Genter, SP UT 82-664441; 89001149420

3-31-98, \$67,650.00 Tax

For Petitioner: Victor Charles Anvick, Aviation Tax Specialist

For Sales and Use Tax Department: Robert Tucker, Counsel

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

Issue: Whether the evidence shows that the aircraft was purchased for use outside California.

Action: Mr. Chiang moved to grant the petitioner 30 days to provide additional documentation.

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Mr. Klehs made a substituted motion to redetermine. The motion failed for lack of a second.

Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered 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 for a final recommendation.

Ronald F. Hudson, SY EA 24-693989; 89000448310

8-3-87 to 3-31-88, \$9,423.11 Tax, \$940.31 Penalty, Finality

For Petitioner: Ronald F. Hudson, President

For Sales and Use Tax Department: Bruce Emard, Counsel

Action: The Board took no action.

Gold Prospectors Association, Inc., SR EH 25-830344; 89000578640

7-1-93 to 6-30-96, \$26,231.48 Tax, \$00.00 Penalty, Finality Penalty

For Petitioner: Rick Dickson, COO

Dave Ashwood, Agent

For Sales and Use Tax Department: Sharon Jarvis, Counsel

Action: The Board took no action.

Edward Belzberg, SR AR 99-324403; 89002200630

7-1-93 to 12-31-97, \$27,831.75 Tax, \$6,957.96 Penalty, Fraud

For Petitioner: Janet Pass, 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 additional taxable sales based on the sales journal obtained from petitioner's spouse are excessive.

Whether the audited markup used to establish taxable sales for the period March 1, 1996, through December 31, 1997, is excessive.

Whether relief from the fraud penalty is warranted.

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

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FINAL ACTION ON PETITIONS HEARD OCTOBER 4, 2001

Mr. Parrish moved to increase the mark-up to 17 percent. The motion failed for lack of a second.

Upon motion of Ms. Mandel, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish abstaining, Mr. Andal absent, the Board ordered that the petition of *Santa Monica Cellular, Inc.*, SR AS 99-229564; 89002157960, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the disputed measure of tax be reduced by 40 percent in the petition of *CTI*, SR AB 97-606292.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Medical Marketplace, Inc.*, SR EH 99-533126; 89002296770, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Acute Care Alternative, Inc.*, SR AA 99-302874; 89002190930, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Khaled Idraheem Azzam*, SR AB 12-706142; 31674, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Parrish, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Edward Belzberg*, SR AR 99-324403; 89002200630, be redetermined as recommended by the Appeals Section and reducing the fraud penalty to negligence.

The Board adjourned at 12:15 p.m.

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The foregoing minutes are adopted by the Board on November 29, 2001.