

Thursday, October 4, 2007

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 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

Maranello Investments, LLC, 218340 (UT)

March 29, 2001, \$198,339.00 Tax, \$00.00 Penalty

For Petitioner: Dennis Sarna, CPA

David Weil, Attorney

For Sales and Use Tax Department: Robert Tucker, Tax Counsel

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

Issues: Whether the vessel was purchased for use in this state.

Whether petitioner's use of the vessel qualified for exemption.

The Board recessed at 9:40 a.m. and reconvened at 10:30 a.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Maranello Investments, LLC, 218340 (UT) (Continued)

March 29, 2001, \$198,339.00 Tax, \$00.00 Penalty

For Petitioner: Dennis Sarna, CPA

David Weil, Attorney

For Sales and Use Tax Department: Robert Tucker, Tax Counsel

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

Issues: Whether the vessel was purchased for use in this state.

Whether petitioner's use of the vessel qualified for exemption.

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.

O.P. Shuman and Sons, Inc., 315317 (OH)

7-1-90 to 6-30-98, \$41,331.67 Tax, \$5,555.37 Failure to File Penalty, \$6,054.88 Failure to Timely Pay Determination Penalty, \$15,905.42 Amnesty Interest Penalty

For Petitioner: John H. Carmichael, Attorney

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

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

Issues: Whether petitioner has established that it is not liable as a successor to SKS because it only purchased a portion of the assets held by SKS in its business operations.

Whether petitioner should be relieved of the failure-to-file and finality penalties assessed against SKS.

Action: (Motion expunged.)

Upon 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 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.

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Russell Edward Walker, 252965 (EH)

12-1-01 to 9-30-02, \$79,971.45 Tax, \$1,265.80 Failure to File Penalty

For Petitioner: Bradley Kirk, Attorney

Michael La-Rue Dias, 252967 (EH)

12-1-01 to 9-30-02, \$00.00 Tax, \$00.00 Failure to File Penalty

For Petitioner: No Appearance

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

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

Issues: Whether there is sufficient evidence to sustain the Department's finding that Mr. Walker was a partner in the business.

Whether the partnership is entitled to relief of the failure-to-file penalty.

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.

The Board recessed at 12:10 p.m. and reconvened at 12:15 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Los Angeles PartyWorks, Inc., 144839 (AP)

1-1-96 to 12-31-98, \$101,605.86 Tax, \$13,889.19 Negligence Penalty

For Petitioner: Eric Elkaim, Taxpayer

Jim Fier, Representative

For Sales and Use Tax Department: Robert Tucker, Tax Counsel

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

Issues: Whether petitioner was a leaser of party equipment provided to its customers that its employees may have supervised but did not operate.

Whether petitioner's charges for delivery, assembly, and disassembly are part of its taxable rentals payable from the leases.

Whether the Department has asserted tax on cost and also on rentals payable for the same equipment.

Whether an adjustment is warranted to the audited amount of unrecorded receipts.

Whether an adjustment is warranted to the audited amount of excess tax reimbursement.

Whether an adjustment is warranted for leases of equipment for which petitioner made a timely election to pay tax on cost.

Whether petitioner was negligent.

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 ordered that the petition be returned to the district for a reaudit.

The Board recessed at 12:55 p.m. and reconvened at 1:40 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

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Finn Moller, 288211 (AS)

4-1-00 to 6-30-01, \$149,107.82 Tax, \$47,263.80 Penalties

For Petitioner:

David W. Tredway, Attorney

Finn Moller, Taxpayer

Martin Askgaard, Witness

Howard Rosenblatt, Martin Askgaard's Attorney

For Sales and Use Tax Department:

Robert Stipe, Tax Counsel

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

Issues: Whether petitioner is personally liable for the unpaid liability of Summit Energy Corporation.

Whether the amount of the determination is correct.

Whether petitioner has established reasonable cause for relief of the failure-to-pay penalties.

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.

ABC NJ, Inc., 295979 (EH)

7-1-00 to 9-30-93, \$202,895.24 Tax, \$18,175.38 Negligence Penalty

Bosch Auto Center, Inc., 295978 (EH)

7-1-00 to 9-30-93, \$65,928.70 Tax, \$339.80 Negligence Penalty

For Petitioner:

Juan Guzman, CPA

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether adjustments are warranted to the audited understatements.

Whether petitioners are entitled to additional deductions for bad debts.

Whether petitioners were 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.

SPECIAL TAXES APPEALS HEARING**Revocation Appeal Hearing**

Ghassan Elmalih, 330138 (ET)

August 3, 2005

For Petitioner:

Nolan F. King, Attorney

Ghassan Elmalih, Taxpayer

For Property and Special Taxes Department:

Monica Brisbane, Tax Counsel

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

Issue: Whether appellant's Cigarette and Tobacco Products Retailer's License should be revoked due to the appellant's continued sales of cigarette and tobacco products after his license had been suspended.

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Mr. King requested a new hearing at a later date.

Action: 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 ordered that a new hearing be held at the next Culver City meeting.

The Board recessed at 3:05 p.m. and reconvened at 3:10 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

SPECIAL TAXES APPEALS HEARINGS

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 L. Norman, Attorney

For Property and Special Taxes Department: John Waid, 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 the penalty for the failure to file a return should be relieved.

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.

Onnik Mooradian and Mariette Mooradian, 220157, 220158, 292978, 293031 (MT)

1-1-95 to 2-2-95, \$926.36, \$92.63 Failure to File Penalty

5-5-97 to 6-30-98, \$31,783.19, \$3,178.30 Failure to File Penalty

7-1-96 to 6-30-97, \$9,847.79, \$984.79 Failure to Pay Penalty, \$984.78 Finality Penalty

7-1-01 to 3-31-04, \$67.67, \$5,238.70 Failure to File Penalty, \$10,758.39 Finality Penalty

For Petitioner: Marty Dakessian, Attorney

Onnik Mooradian, Taxpayer

For Property and Special Taxes Department: Robert Tucker, Tax Counsel

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

Issues: Whether petitioners are liable for the full amount of USTM fees assessed in the determinations.

Whether the interest owed on the USTM fees should be relieved.

Whether the 10-percent penalties for failing to timely pay the fees should be relieved.

Whether the 10-percent penalty for failing to file returns should be relieved.

Whether the 10-percent penalties for failing to timely pay the determinations issued

October 22, 2004, should be relieved.

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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FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD OCTOBER 4, 2007

Maranello Investments, LLC, 218340 (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.

Russell Edward Walker, 252965 (EH)

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

Michael La-Rue Dias, 252967 (EH)

Final Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be granted as recommended by the as recommended by the Appeals Division.

Finn Moller, 288211 (AS)

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.

ABC NJ, Inc., 295979 (EH)

Bosch Auto Center, Inc., 295978 (EH)

Final Action: Mr. Leonard moved to delete the penalties, otherwise redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

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

FINAL ACTION ON SPECIAL TAXES APPEALS HEARINGS HELD OCTOBER 4, 2007

Tri Van Vo, 211895 (ET)

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.

Onnik Mooradian and Mariette Mooradian, 220157, 220158, 292978, 293031 (MT)

Final Action: (Motion expunged.)

Mr. Leonard moved to grant the petition as to the Montclair location but redetermine as to the Irwindale location. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

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Ms. Chu moved to redetermine as recommended by the Appeals Division. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard, Ms. Steel and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered the failure-to-pay penalties on the first 3 quarters for the Montclair location be deleted and the remainder be redetermined as recommended by the Appeals Division.

The Board adjourned at 4:55 p.m.

The foregoing minutes are adopted by the Board on February 1, 2008.

Note: The following matters were removed from the calendar prior to the meeting: *Mostafa Vakilian, 254076 (EA); Ameritrans, Inc., 315414, 315417 (KH); Ameriwest, Inc., 281204, 315418 (KH); Tram Anh Thi Duong, 24965, Denton Vacuum, Inc., 145713 (OH); and, Denton Vacuum, LLC, 267792 (OH).*