

WEDNESDAY, OCTOBER 24, 2001

The Board met at its offices at 450 N Street, Sacramento, at 10:45 a.m. Chairman Parrish, Vice Chairman Chiang, Mr. Klehs and Mr. Andal present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code Section 7.9.

CORPORATE FRANCHISE AND INCOME TAXES HEARINGS

Kenneth F. and Glenda J. Bobek, 99490
1996, \$8,295.00 Assessment

For Appellant:

Jerry R. McDonald, Representative
Kenneth F. Bobek

For Franchise Tax Board:

Scott DePeel, Tax Counsel

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

Issue: Whether appellant-husband ceased to be a California resident on September 15, 1996, or on November 15, 1996.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.6)

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and duly carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel voting no, the Board ordered that the action of the Franchise Tax Board be modified.

Oliver D. Gildersleeve, Jr., 102695

1994, \$1,177.00 Assessment

For Appellant:

Oliver D. Gildersleeve, Jr.

For Franchise Tax Board:

Jack Stilwell, Tax Counsel

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

Issue: Whether appellant's loan to his son, admittedly created for personal reasons, may be deducted as a business bad debt.

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

Jerry A. and Eileen S. Bartak, 98A-1156; 89002466400

1994, \$2,282.00 Assessment

For Appellant:

Eileen Bartak

For Franchise Tax Board:

Kathleen Cooke, Tax Counsel

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

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Issue: Whether appellants have shown that money received in return for signing a "covenant not to sue" on any alleged age discrimination claim, should be excluded from gross income as money received on account of personal injury.

Appellant's Exhibit: Letter/Miscellaneous Documents (Exhibit 10.7)

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

Steven G. Dunmore, 88986

1987, \$28,424.00 Assessment

1991, \$59,559.00 Assessment, \$11,911.80 Penalty, Accuracy

1992, \$14,133.00 Assessment, \$ 2,826.60 Penalty, Accuracy

1993, \$81,521.00 Assessment, \$16,304.20 Penalty, Accuracy
\$20,374.50 Penalty, Late Filing

For Appellant: Steven G. Dunmore

For Franchise Tax Board: Cynthia Kent, Tax Counsel

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

Issues: Whether appellant has shown that respondent's determinations of underlying tax, based upon federal audit reports, are incorrect.

Whether appellant has shown that the accuracy-related penalties for the 1991, 1992, and 1993 appeal years should be abated.

Whether appellant has shown that the late filing penalty for the 1993 appeal year should be abated.

Whether appellant has shown that any of respondent's assessments are barred as untimely by the applicable California statute of limitations.

Appellant's Exhibit: Brief (Exhibit 10.8)

Miscellaneous Documents (Exhibit 10.9)

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

Douglas C. Roberts, 104296

1996, \$40.00 Assessment

For Appellant: Douglas C. Roberts

For Franchise Tax Board: Craig Scott, Tax Counsel

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

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Issue: Whether appellant has established that respondent's proposed assessment is erroneous because appellant's income is not subject to California tax laws.

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

The Board recessed at 12:00 p.m. and reconvened at 1:50 p.m. with Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Dr. Connell present.

PROPERTY TAXES HEARINGS, PETITION FOR REASSESSMENT OF UNITARY VALUE

Southern California Edison Company, (148), SAU 01-049, 133642
2001, \$8,727,100,000.00 Value

For Petitioner:

No Appearance

For Property Taxes Department:

Robert Lambert, Counsel

Action: The Board took no action.

PUBLIC HEARINGS

PROPOSED AMENDMENT TO PROPERTY TAX RULE 905, ASSESSMENT ELECTRIC GENERATION FACILITIES

Mr. Parrish announced the continuation of the public hearing held on October 2, 2001, on Property Tax Rule 905, Assessment Electric Generation Facilities.

Larry Augusta, Assistant Chief Counsel, Property Taxes Section, Legal Division, made introductory remarks regarding staffs recommendation on proposed amendment to Property Tax Rule 905.

Action: Dr. Connell moved to adopt the Rule 905 as published with an amendment to the effective date of January 1, 2003. The motion was seconded by Mr. Klehs.

Mr. Parrish ordered that before a vote is taken, the Board would hear public comments.

Speakers:

John H. Knox, Partner, Orrick, Herrington & Sutcliffe LLP,
City of Pittsburg

Mark Pereira, Fire Chief, North Monterey County Fire Protection District

Frank Aiello, Vice Mayor, City of Pittsburg

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Erie O'Dell, City Treasurer, City of Redondo Beach
Susannah Churchill, Energy Advocate, CALPIRG
Barbara Hennessy, City Controller, City of Long Beach
Greg Turner, General Counsel, California Taxpayers' Association
William Greenwood, Fresno County Assessor, CAA
Ed Berends, Legislative Representative, Los Angeles County
Shari Freiderich, City Treasurer, City of Huntington Beach
Mike More, Financial Services Manager, City of Oxnard
Jon Roberts, City Manager, City of Victorville
Lenny Goldberg, Executive Director, California Tax Reform Association
Sally Lyn Zeff, Project Manager, Greystone Environmental Consultants
City of Blyth
Antonia Scattton, Communications Director, Green Capitol
Joe Garuba, Representative, City of Carlsbad
George Hickert, Chief Appraiser, Los Angeles City Assessor
Robert Hendrix, City Manager, City of Morro Bay
Lyle Haynes, Assistant Director of Community Development,
City of Chula Vista
Marc Del Piero, Attorney, North Monterey County Fire Protection District

Ms. Mandel entered the Boardroom on behalf of Dr. Connell in accordance with Government Code section 7.9.

Mr. Andal offered a substitute motion to table the matter for one year. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal voting no, Mr. Parrish abstaining, the Board adopted the Rule 905 with an amendment to the effective date of January 1, 2003 and ordered the changed version be placed in the rulemaking file for 15 days (Exhibit 10.10).

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, and Mr. Andal voting yes, Ms. Mandel abstaining, the Board stated their support of legislation that would allocate the plants that the Board envisioned to be state assessed by situs.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAX HEARINGS

Judy A. Marshall, 102186

1998, \$291.00 Assessment, \$100.00 Penalty, Delinquent Filing
\$ 72.75 Penalty, Notice and Demand
\$ 69.00 Penalty, Filing Enforcement

For Appellant: Judy A. Marshall
For Franchise Tax Board: Christie Mitchell, Tax Counsel

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

Issues: Whether appellant has established that respondent's proposed assessment is erroneous because appellant's income is not subject to California tax laws.

Whether the impositions of the delinquent filing penalties of Revenue and Taxation Code section 19131, and/or the notice and demand penalty of Revenue and Taxation Code section 19133 were proper.

Whether the Board should impose a frivolous appeal penalty.

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

BUSINESS TAXES APPEALS HEARINGS

The Coca Cola Company, SZ OHC 98-040866; 89002095540, 47179

1-1-93 to 12-31-95, \$91,951.12 Tax
1-1-96 to 3-31-96, \$26,485.47 Claim for Refund
4-1-96 to 6-30-96, \$28,701.90 Claim for Refund
7-1-96 to 3-31-97, \$44,046.52 Claim for Refund

For Petitioner: Rolston Dyer, Sales Tax Audit Manager
Theodore Ghiz, Jr., Sales Tax Counsel
Ernest Dronenburg, Representative

For Sales and Use Tax Department: David H. Levine, Counsel

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

Issue: Whether petitioner is the consumer of replacement parts it provides to its customers for use in rental equipment.

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

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CORPORATE FRANCHISE AND INCOME TAXES HEARINGS

Lori M. Langdon, 101136

1998, \$895.00 Assessment, \$223.75 Penalty, Late Filing

For Appellant: Lori M. Langdon

For Franchise Tax Board: Christie Mitchell, Tax Counsel

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

Issues: Whether appellant is subject to California's income tax laws.
Whether respondent properly determined appellant's tax liability.
Whether the late filing penalty should be abated.
Whether appellant has brought a frivolous or groundless position before the Board.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.11)

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

Thomas A. Bruns, 110569

1997, \$616.00 Assessment

For Appellant: No Appearance

For Franchise Tax Board: Craig Scott, Tax Counsel

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

Issue: Whether appellant has shown that he qualifies for head of household filing status when his qualifying dependent child did not live with him for any time during the tax year.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the action of the Franchise Tax Board be sustained.

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SENIOR CITIZENS HOMEOWNER & RENTER ASSISTANCE HEARING

Tonnie Vickers, 102942

2000, \$525.00 Claim for Credit

For Appellant:

No Appearance

For Franchise Tax Board:

Jean Cramer, Supervising Tax Counsel

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

Issue: Whether respondent properly denied appellant's claim for renters' assistance.

Appellant's Exhibit:

Renter Assistance Worksheet 2000
(Exhibit 10.12)

Action: Upon motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the action of the Franchise Tax Board be sustained.

PUBLIC HEARINGS

PROPOSED AMENDMENTS TO PROPERTY TAX RULE 29, POSSESSORY INTERESTS IN TAXABLE GOVERNMENT-OWNED REAL PROPERTY

Mr. Parrish announced the public hearing of Property Tax Rule 29, Possessory Interests in Taxable Government-Owned Real Property.

Larry Augusta, Assistant Chief Counsel, Property Tax Section, Legal Division, reported Rule 29 is proposed to clearly specify how county assessors should implement the provisions of section 11(f) of Article XIII of the California Constitution as to the assessment of taxable possessory interests in taxable local government-owned extraterritorial land. The rule amendment is necessary due to the lack of assessment uniformity among county assessors.

Speakers: David R. Doerr, Chief Tax Consultant, California Taxpayers' Association

Action: Upon the motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted the Rule as published (Exhibit 10.13).

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PROPOSED AMENDMENTS TO PROPERTY TAX RULE 122.5, FIXTURES

Mr. Parrish announced the public hearing of Property Tax Rule 122.5, Fixtures.

Larry Augusta, Assistant Chief Counsel, Property Tax Section, Legal Division reported Rule 122.5 is proposed for amendment to clarify that permanently annexed wind machines are properly classified as fixtures for property tax assessment purposes. The rule amendment is necessary due to the lack of classification and assessment uniformity among county assessors.

Speakers: Thomas Kidwell Madera County Assessor,
California County Assessor's Association
Shirley Batchman, Director of Industry Relations,
California Citrus Mutual
Harold Brockman, Grower

Action: Upon the motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted the Rule as published (Exhibit 10.14).

PROPOSED ADOPTION OF PROPERTY TAX RULE 305.3, APPLICATION FOR EQUALIZATION UNDER REVENUE & TAXATION CODE SECTION 469

Mr. Parrish announced the public hearing of Property Tax Rule 305.3, Application for Equalization under Revenue & Taxation Code section 469.

Larry Augusta, Assistant Chief Counsel, Property Tax Section, Legal Division, reported Rule 305.3 is proposed to be added to interpret and make specific the equalization provisions of Revenue and Taxation Code section 469. The rule is necessary due to the considerable uncertainty regarding the right of an assessee to review, equalization and adjustment of all property at the location of the assessee's profession, trade or business when the result of an audit discloses property subject to escape assessment.

Speakers: Afad Asshd, Chief, Assessment Appeals, Los Angeles County
James Rees, Deputy County Counsel, County of Santa Clara
Eric Haagenson, Chief Appraiser, Los Angeles County Assessor
Thomas Parker, Deputy County Counsel, El Dorado County, CAA

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Greg Turner, General Counsel, CalTax
Richard Dewberry, Attorney, Bewley Lasslebew & Miller
Lawrence Hoeing, Attorney, Pillsbury Winthrop LLP
Joseph Vinatieri, Attorney, Bewley, Lasslebew & Miller
William Harris, Manager State & Local Taxes, Matricom, Inc.
Kurt Gensicke, Principal Appraiser, Los Angeles County Assessor

Action: Upon the motion of Mr. Andal, seconded by Ms. Mandel and duly carried, Mr. Parrish, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs voting no, the Board adopted the proposed language to subsection b(7) as proposed by California Taxpayer's Association.

Upon the motion of Mr. Andal, seconded by Ms. Mandel and duly carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs voting no, the Board approved Issue 3 as endorsed by staff and ordered the changed version be placed in the rulemaking file for 15 days (Exhibit 10.15).

**PROPOSED AMENDEMENTS TO SALES AND USE TAX REGULATION 1620,
INTERSTATE AND FOREIGN COMMERCE**

Mr. Parrish announced the public hearing of Sales and Use Tax Regulation 1620, Interstate and Foreign commerce.

David Levine, Tax Counsel, Business Tax Section, Legal Division, reported Regulation 1620 is proposed to be amended to interpret and make specific Revenue and Taxation Code section 6201. The amendment and adoptions are necessary to treat vessels purchased out-of-state for use in this state in a manner similar to that currently provided for vehicles and aircraft. The potential revenue effect of this amendment is \$8.7 million in payment of claims for refund for taxes paid for the three-year period open to statute. Mr. Levine stated for the record that staff recommended a nonsubstantive change to the rule regarding subsection (b)(3) and (b)(4)(A).

Action: Upon the motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board approve the nonsubstantive change to Regulation 1620 as recommended by staff.

Speakers: David Rennie, Tax Manager, Andersen
Paul Sawasaki, Vice President, Catalina Express
Greg Bombard, President, Catalina Express
Richard Carlsen, Partner, Andersen

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Action: Mr. Andal moved to approve the language submitted by Andersen. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon the motion of Mr. Chiang, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted the changed version of the regulation as recommended by staff (Exhibit 10.16).

PROPOSED AMENDMENTS TO SALE AND USE TAX REGULATION 1668, RESALE CERTIFICATES

Mr. Parrish announced the public hearing of Sales and Use Tax Regulation 1668, Resale Certificates.

David Levine, Senior Tax Counsel, Business Tax Section, Legal Division, reported Regulation 1668 is proposed to be amended to interpret and make specific Revenue and Taxation Code sections 6091 and 6241. The amendment and adoptions are necessary to specify the application of sales and use tax to sales of tangible personal property which is resold either in the normal course of business or without prior use by the seller. Mr. Levine stated as directed by the Board staff has worked with Interested Parties and have a revision to the regulations as published.

Action: Upon the motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted the revision of regulation and ordered the changed version be placed in the rulemaking file for 15 days (Exhibit 10.17).

BUSINESS TAXES APPEALS HEARINGS

Matt Lababedy, SR KH 99-581458-010; 89002316680

1-1-95 to 12-31-97, \$10,501.98 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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Peter L. Kleinert & Kurt Widstrand, SR BH 21-755529; 89000326160
7-1-95 to 6-30-98, \$12,252.36 Tax

For Petitioner: Edward Sarti, Attorney

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issues: Whether petitioner's charges for cabinet design are excludable from gross receipts because petitioner separately states these charges on its sales invoices.

Whether petitioner received misinformation qualifying for relief from the tax under Revenue and Taxation Code section 6596.

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

Basics Etc. Corporation, SR EH 17-710206; 89000204000
10-1-93 to 12-31-96, \$20,749.83 Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: David H. Levine, Counsel

Action: The Board took no action.

Attorney's Diversified Services, SY KH 28-674959; 89000744890
4-1-93 to 12-31-93, \$11,167.45 Tax, \$00.00 Penalty, Negligence
89000744900

1-1-94 to 3-31-96, \$140,713.70 Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: Sharon Jarvis, Counsel

Action: The Board took no action.

Omnitrition International, Inc., SC OHC 30-698369; 89000882520
7-1-93 to 6-30-96, \$1,308,320.12 Tax

For Petitioner: Peter Michaels, Attorney

Scott D. Levine, Attorney

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

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

Issues: Whether petitioner's activities in this state are sufficient for petitioner to be considered a retailer of property sold by its independent marketing associates, pursuant to Revenue and Taxation Code section 6015(b).

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Whether certain of petitioner's sales are exempt from sales and use tax pursuant to Revenue and Taxation Code section 6359 as sales of food products for human consumption.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, 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.

The Board adjourned at 5:50 p.m.

The foregoing minutes are adopted by the Board on December 20, 2001.