

Thursday, July 27, 2017

The Board met at its offices at 1 Civic Center Plaza, Irvine, at 9:08 a.m., with Ms. Harkey, Chairwoman, Mr. Runner, Vice Chair, Ms. Ma and Mr. Horton present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Ms. Ma.

Members discussed disclosure of ex-parte communications, as required by law effect July 1, 2017, and the lack of legal counsel to Members after the reorganization of the Board.

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board agreed to disclose the email from David Gau dated July 25, 2017 with the Franchise Tax Board, the new California Department of Tax and Fee Administration, all interested parties and the public ([Exhibit 7.1](#)).

Exhibits to these minutes are incorporated by reference.

The Board recessed at 10:24 a.m. and reconvened at 11:10 a.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

Members continued the discussion regarding disclosure of ex-parte communications and determined to hear the cases before them, and that decisions on these cases will be deferred to the following day to allow counsel for the departments to respond to the question of whether disclosure of ex-parte communications that may have taken place prior to July 1 are required by the recently enacted law, and if so, would the departments waive such requirement.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Richard R. Betchley and Kellie S. Brunk, 874758
 2005, \$49,275.00 Assessment, \$12,318.75 Late Filing Penalty
 2006, \$25,235.00 Assessment, \$6,288.75 Late Filing Penalty
 2007, \$18,708.00 Assessment, \$4,699.25 Late Filing Penalty
 2008, \$3,901.00 Assessment

For Appellants:

Richard R. Betchley, Taxpayer

For Franchise Tax Board:

Susanne Coakley, Tax Counsel

Adam Susz, Tax Counsel

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

Issues: Whether appellants have substantiated their claimed capital improvements for the purpose of calculating the capital gain on the sale of their residence in the 2005 tax year.

Whether Decata Enterprises, Inc., made bona fide loans or dividend distributions to appellant-husband, its sole shareholder, in the 2006, 2007, and 2008 tax years.

Whether appellants calculated their home mortgage interest deduction correctly for the 2008 tax year.

Whether appellants have shown reasonable cause for the late filing of their tax returns for the 2005, 2006, and 2007 tax years.

Thursday, July 27, 2017

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 7.2](#))

Action: Upon motion of Ms. Stowers, seconded by Mr. Horton and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board submitted the appeal for decision.

Fuscoe Engineering, Inc., 668149

2003, \$7,369.00 Claim for Refund

2004, \$5,414.00 Claim for Refund

2005, \$6,660.00 Claim for Refund

2006, \$53,091.00 Claim for Refund

Eric Armstrong and Nancy Armstrong, 668151

2004, \$9,499.00 Claim for Refund

2005, \$10,157.00 Claim for Refund

2006, \$12,077.00 Claim for Refund

John Olivier and Cynthia Olivier, 668188

2004, \$9,845.00 Claim for Refund

2005, \$13,469.00 Claim for Refund

2006, \$14,686.00 Claim for Refund

Raymond S. Tokihiro and Thu Cuc, 668193

2005, \$8,919.00 Claim for Refund

2006, \$9,789.00 Claim for Refund

Patrick R. Fuscoe and Bonnie K. Fuscoe, 668203

2003, \$97,643.00 Claim for Refund

2004, \$136,848.00 Claim for Refund

2005, \$177,628.00 Claim for Refund

2006, \$192,270.00 Claim for Refund

For Appellants:

Patrick R. Fuscoe, Taxpayer

Annika K. Vanghagen, Attorney For Franchise

Jason Riley, Tax Counsel

Jaclyn Zumaeta, Tax Counsel

Tax Board:

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

Issues: Whether appellants have presented evidence sufficient to establish that Fuscoe conducted activities that constituted qualified research, as defined in Internal Revenue Code (IRC) section 41(d).

If appellants have established that Fuscoe engaged in qualified research, as defined in IRC section 41(d), have appellants met their burden of proving qualified research expenses for the tax years at issue.

Whether appellants have substantiated Fuscoe's fixed-base percentage, as required by IRC section 41(c)(3)(A).

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 7.3](#))

Respondent's Exhibit: Charts ([Exhibit 7.4](#))

Member's Exhibit: Ms. Harkey's Miscellaneous Documents ([Exhibit 7.5](#))

Action: Upon motion of Ms. Stowers, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board submitted the appeal for decision.

Thursday, July 27, 2017

The Board recessed at 3:22 p.m. and reconvened at 4:06 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

Mr. Runner stated that he would not participate in the matter of *Jeffrey Moffatt and Staretta Moffatt, 878764*, and left the Boardroom.

Jeffrey Moffatt and Staretta Moffatt, 878764

2008, \$17,946.00 Assessment

For Appellants:

Jeffrey Moffatt, Taxpayer

For Franchise Tax Board:

Bradley Kragel, Tax Counsel

Roman Johnston, Tax Counsel

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

Issue: Whether appellants are entitled to a loss for a cancelled sale of real property.

Appellant's Exhibit: Letters of Findings ([Exhibit 7.6](#))

Action: Upon motion of Ms. Stowers, seconded by Mr. Horton and unanimously carried, Ms. Harkey, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, Mr. Runner absent and not participating, the Board submitted the appeal for decision.

Mr. Runner returned to the Boardroom.

Victoria Joy Le Beau, 946248

1994, \$14,948.72 Assessment

1995, \$278,096.84 Assessment

1997, \$44,162.09 Assessment

For Appellant:

Victoria Joy Le Beau, Taxpayer

Charles B. Le Beau, Witness

For Franchise Tax Board:

Brad Coutinho, Tax Counsel

Marguerite Mosnier, Tax Counsel

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

Issue: Whether appellant has demonstrated error in the Franchise Tax Board's (FTB or respondent) determination to deny her innocent spouse relief.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 7.7](#))

Action: Upon motion of Ms. Stowers, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board submitted the appeal for decision.

Dmitry Beinus and Larisa Beinus, 987583

2015, \$1,872.99 Claim for Refund

For Appellants:

Carl Hebler, Representative

For Franchise Tax Board:

Maria Brosterhous, Tax Counsel

Natasha Page, Tax Counsel

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

Issue: Whether appellants have demonstrated that they are entitled to a refund of the underpayment of estimated tax penalty.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 7.8](#))

Thursday, July 27, 2017

Action: Upon motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board submitted the appeal for decision.

Keith Wm. Brown, 984954

The Chair deferred the matter to the following day.

Mary E. Dougherty, 902403
2013, \$1,307.00 Claim for Refund
2014, \$745.41 Claim for Refund

For Appellant:

Mary E. Dougherty, Taxpayer
Christopher Donis, Representative

For Franchise Tax Board:

Brad Coutinho, Tax Counsel
Marguerite Mosnier, Tax Counsel

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

Issue: Whether appellant has demonstrated that she is entitled to a refund of the underpayment of estimated tax penalty.

Upon Ms. Dougherty's statement under penalty of perjury, the Franchise Tax Board withdrew its denial of claim for refund, therefore the matter is dismissed.

PUBLIC HEARINGS

Property Taxpayers' Bill of Rights Hearings

Mark Sutter, Senior Specialist Property Appraiser, Taxpayer Rights Advocate Office, made introductory remarks regarding the Property Taxpayers' Bill of Rights hearings. Individuals have the opportunity to present their ideas, concerns, and recommendations regarding legislation, the quality of agency services, and other issues related to the Board's administration of its tax programs, including state and county property tax programs, and any problems identified in the Taxpayers' Rights Advocate's Annual Report ([Exhibit 7.9](#)).

Speakers were invited to address the Board, but there were none.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Gems Unlimited, Inc.*, 727090.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board made the following orders:

Thursday, July 27, 2017

Gems Unlimited, Inc., 727090 (BH)
 04/01/08 to 03/31/11, \$53,563.59 Tax, \$5,356.38 Negligence Penalty
 Action: The Board took no action.

Great Eastern Group, Inc., 783202 (OH)
 05/01/10 to 12/31/12, \$331,381.23 Tax, \$00.00 Penalty
 Action: Redetermine as recommended by the Appeals Division.

Daniel Villarreal and Claudia Villarreal, 861563 (DF)
 07/01/09 to 06/30/12, \$23,902.47 Tax
 Action: Redetermine as recommended by the Appeals Division.

Shafiqul Islam Khan, 709572 (EH)
 04/01/08 to 06/30/09, \$13,147.97 Tax, \$3,068.20 Late Payment/Late Filing Penalty
 Manna Begum Khan, 713048 (EH)
 04/01/08 to 06/30/09, \$13,147.97 Tax, \$3,068.20 Late Payment/Late Filing Penalty
 Action: Redetermine as recommended by the Appeals Division.

N & Y Food Corporation, 1000342 (STF)
 January 19, 2017 Seizure Date, \$136.00 Approximate Value
 Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Mediamate, LLC, 940068*; and, *Steve Moshi and Fiorella Moshi, 942087*.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board made the following orders:

John B. Echols, 916635
 2012, \$2,047.00 Tax, \$511.75 Late Filing Penalty, \$511.75 Demand Penalty, \$78.00 Filing Enforcement Fee
 Action: Sustain the action of the Franchise Tax Board.

933 Gramercy Drive, LLC, 950490
 2013, \$1,517.85 Claim for Refund
 Action: Sustain the action of the Franchise Tax Board.

Wayne J. Ahlstrom, 839878
 2005, \$18,654.57 Assessment
 Action: Sustain the action of the Franchise Tax Board.

Thursday, July 27, 2017

Nancy Brown, 948877

2013, \$309.20 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Scott Daniel Burgner, 905116

2006, \$4,793.00 Assessment

2007, \$1,182.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ross Cavazos, 939889

2012, \$567.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Daniel R. Cheatham, 978330

2011, \$3,302.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Leonardo R. Coquico III, 861078

2012, \$756.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Edward Corn, Sr. and Christine Corn, 866446

2009, \$6,108.00 Claim for Refund

2010, \$23,704.00 Claim for Refund

Edward Corn, Jr. and Barbara Corn, 866447

2008, \$522.00 Claim for Refund

2009, \$11,024.00 Claim for Refund

2010, \$25,331.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Earth Protection Services, Inc., aka VJ2C, Inc., 874099

John M. Chilcott and Virginia I. Chilcott, 874105

2009, \$58,025.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ronald G. Erickson, 942093

2014, \$19,444.48 Claim for Refund

Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

Tom Forrest, 922307

2012, \$6,000.00 LLC Fee, \$800.00 LLC Annual Tax, \$1,500.00 Delinquent Filing Penalty, \$594.00 Late Filing Penalty. \$600.00 LLC Underpayment Penalty, \$16.00 Lien Fee, \$194.00 Collection Cost Recovery Fee

Action: Sustain the action of the Franchise Tax Board.

Thursday, July 27, 2017

Gary A. Fraizer, 940202

2011, \$1,035.00 Tax

Action: Sustain the action of the Franchise Tax Board.

HB Holdings, LLC, 851398

2009, \$727.92 Claim for Refund

2010, \$2,043.59 Claim for Refund

2011, \$1,786.41 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Giorgiana A. Kim, 924857

1996, \$2,086.17 Claim for Refund

1997, \$2,957.79 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Henrik Kostikyan, 946246

2013, \$1,122.57 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

So Sum Lee, 931130

2013, \$2,242.00 Tax, \$560.50 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Pavel Machalek, 930423

2011, \$574.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Marlin Oxnard Properties, LLC, 932771

2014, \$153.33 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Darrin J. Marthens, 861965

2008, \$1,328.00 Claim for Refund

2009, \$8,910.00 Claim for Refund

2010, \$21,077.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Mediamate, LLC, 940068

2011, \$5,400.00 Claim for Refund

Action: The Board took no action.

Steve Moshi and Fiorella Moshi, 942087

2010, \$2,605.00 Tax

Action: The Board took no action.

Thursday, July 27, 2017

Pacific Financial Asset Management, LLC, 945405

2009, \$374.64 Claim for Refund

2010, \$742.49 Claim for Refund

2011, \$750.72 Claim for Refund

2012, \$629.15 Claim for Refund

2013, \$217.07 Claim for Refund

2014, \$142.44 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Peekema Ranch, LLC, 871568

2012, \$2,864.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Kimothy Sampson, 800048

2010, \$1,486.00 Tax, \$371.50 Late Filing Penalty, \$371.50 Demand Penalty, \$82.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board.

Kim E. Stonier and Constance J. Stonier, 930820

2011, \$3,591.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Denice R. Torres, 932814

2012, \$492.95 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Chris Turner, 948408

2013, \$4,311.00 Tax, \$1,077.75 Late Filing Penalty, \$1,077.75 Demand Penalty, \$76.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board.

Charngan Tzou and Sufen Hsieh, 849486

2007, \$19,125.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

Michael E. Wills, 945414

2014, \$670.00 Tax

Action: Sustain the action of the Franchise Tax Board.

George Wright and Catherine Wright, 795254

2007, \$70,698.00 Tax, \$14,139.60 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Thursday, July 27, 2017

Elizabeth J. Yoder, 937784

1991, \$60.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, GRANT-ONE DAY INTEREST RELIEF, CONSENT

With respect to the Sales and Use Tax Matters, Grant-One Day Interest Relief, Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board made the following orders:

Eastern Peak, Inc., 1007861 (AP)

10/01/16 to 12/31/16, \$82.02

Action: Approve the one day interest relief as recommended by staff.

Fox Rent-a-Car, Inc., 1008109 (AS)

10/01/16 to 12/31/16, \$3,175.90

Action: Approve the one day interest relief as recommended by staff.

G. T. Tucker, Inc., 1008364 (EH)

01/01/17 to 01/31/17, \$596.04

Action: Approve the one day interest relief as recommended by staff.

Incredible Entertainment, Inc., 1007875 (KH)

10/01/16 to 12/31/16, \$105.87

Action: Approve the one day interest relief as recommended by staff.

Incredible Entertainment, Inc., 1007876 (RC)

10/01/16 to 12/31/16, \$336.17

Action: Approve the one day interest relief as recommended by staff.

Incredible Concepts, Inc., 1007877 (DF)

10/01/16 to 12/31/16, \$225.50

Action: Approve the one day interest relief as recommended by staff.

Incredible Concepts, Inc., 1007878 (DF)

10/01/16 to 12/31/16, \$149.54

Action: Approve the one day interest relief as recommended by staff.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,
ADJUDICATORY**

Allan Taylor and Suzan Taylor, 718131

2008, \$1,351.00 Tax

Considered by the Board: October 25, 2016

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

Thursday, July 27, 2017

Action: Upon motion of Ms. Ma, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Amanda Gari (Abel) and Albert P. Abel, Jr., 795390

2008, \$1,430.47 Tax

Considered by the Board: July 14, 2016

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Mr. Horton, seconded by Ms. Harkey and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board adopted a decision granting the petition for rehearing.

Michael A. Mills, 879379

2010, \$997.00 Tax, \$199.40 Accuracy-Related Penalty

Considered by the Board: January 25, 2017

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

Action: Upon motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board adopted a decision denying the petition for rehearing.

Dinesh Sawhney and Rashmi Sawhney, 878210

2006, \$65,139.00 Tax, \$16,284.75 Late Filing Penalty

Considered by the Board: January 25, 2017

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

Action: Upon motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board adopted a decision denying the petition for rehearing.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board made the following orders:

Action: Approve the Board Meeting Minutes of May 23-24, 2017 and June 20, 2017.

Action: Acknowledged receipt of report on time extensions for Alpine, Amador, El Dorado, Humboldt, Napa, and San Benito Counties to complete and submit fiscal year 2017-18 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 as recommended by staff ([Exhibit 7.10](#)).

Thursday, July 27, 2017

OTHER ADMINISTRATIVE MATTERS**Executive Director's Report**

The Board deferred this item to Friday, July 28, 2017.

Property Tax Deputy Director's Report

Dean Kinnee, Deputy Director, Property Tax Department, reported that the 2017-18 Private Railroad Car tax rate is set at 1.141 percent in accordance with the computation under the provisions of Revenue and Taxation Code, section 11403 ([Exhibit 7.11](#)).

Dean Kinnee, Deputy Director, Property Tax Department, made introductory remarks regarding the 2017 Private Railroad Car Roll ([Exhibit 7.12](#)).

Action: Upon motion of Mr. Runner, seconded by Mr. Horton and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Mr. Horton voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board adopted the 2017 Private Railroad Car Roll as recommended by staff.

Dean Kinnee, Deputy Director, Property Tax Department, made introductory remarks regarding the 2017 State-Assessed Property Roll ([Exhibit 7.13](#)).

Action: Upon motion of Mr. Runner, seconded by Mr. Horton and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Mr. Horton voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board adopted the 2017 State-Assessed Property Roll as recommended by staff.

Ms. Harkey announced that there were no Closed Session items to discuss, therefore Closed Session was cancelled.

The Board recessed at 7:38 p.m.

The foregoing minutes are adopted by the Board on September 26, 2017.

Note: The following matters were removed from the calendar prior to the meeting: *Ruby P. Baylin, 905708; Frank Cutler, 400347; Andrew Perry and Katharine Perry, 926927; Charles K. Lwanga, 981752; Rhythmic Ascension, LLC, 984387; and, Ranbir Sahni and Rekha Sahni, 981510.*

Friday, July 28, 2017

The Board met at its offices at 1 Civic Center Plaza, Irvine at 9:09 a.m., with Ms. Harkey, Chairwoman, Mr. Runner, Vice Chair, Ms. Ma and Mr. Horton present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

BOARD MEMBER REQUESTED MATTERS

Ms. Harkey presented a resolution to Claude Parrish, Orange County Assessor, in recognition of the Orange County Assessor's office for completing a Supplemental Assessment Policies Survey ([Exhibit 7.14](#)).

Exhibits to these minutes are incorporated by reference.

The Board Members honored John Meffert, City of Avalon Fire Department Captain for his heroic actions following a plane crash on the I-405 freeway on June 30, 2017 ([Exhibit 7.15](#)).

SALES AND USE TAX APPEALS HEARINGS

Marcelino V. Lopez, 855302 (EH)

For Petitioner:

Marcelino Villa Lopez, Taxpayer
Alejandro Ramos, Representative

For Business Tax and Fee Department:

Nenita DeLa Cruz, Hearing Representative

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

Action: The Board postponed this matter to the September 2017 Board meeting in Culver City.

Shawn Victor Bachor, 771334 (EH)

01/01/07 to 12/31/12, \$389,936.19 Tax, \$00.00 Penalty

For Petitioner:

Shawn Bachor, Taxpayer
Harold C. Newman, Representative
Pedro Bachor, Witness

For Business Tax and Fee Department:

Andrew Kwee, Tax Counsel

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

Issue: Whether the unreported fabrication labor costs are taxable.

Robert Tucker, Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, California Department of Tax and Fee Administration (CDTFA), stated for the record that the CDTFA exercises its right to request that the Board not vote on this matter until the CDTFA has had an opportunity to obtain copies of all documents and any evidence of oral communications, if any; and, that the Board should not vote on this matter until the CDTFA has had an opportunity to review such evidence in response.

Members continued the discussion regarding ex-parte communications. Ms. Harkey requested that Mr. Tucker consult with the CDTFA's Chief Counsel regarding how to reconcile the new statute effective July 1, 2017 with today's hearings. Ms. Harkey also

Friday, July 28, 2017

requested Norine Marks, Acting Chief Counsel for BOE (an attorney from the Department of Consumer Affairs) to review the question of whether the requirement to disclose ex-parte communications includes any that may have taken place prior to July 1, 2017.

The Board recessed at 10:12 a.m. and reconvened at 10:53 a.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

Members continued the discussion regarding ex-parte communications. Ms. Harkey directed David Gau, Executive Director, to send a written request to the Governor's office for an Attorney General's formal opinion as to whether the requirement to disclose ex-parte communications includes any that may have taken place prior to July 1, 2017.

Shawn Victor Bachor, 771334 (EH) (Restarted)

01/01/07 to 12/31/12, \$389,936.19 Tax, \$00.00 Penalty

For Petitioner: Shawn Bachor, Taxpayer
Harold C. Newman, Representative
Pedro Bachor, Witness

For Business Tax and Fee Department: Andrew Kwee, Tax Counsel

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

Issue: Whether the unreported fabrication labor costs are taxable.

Action: Upon motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the petition be granted and the tax be redetermined accordingly, and directed the Appeals Bureau to prepare a precedential section 40 summary decision for Board consideration.¹

Tobacco & Gifts, Inc., 759481 (AP)

01/01/10 to 12/31/12, \$83,123.58 Tax, \$8,312.36 Negligence Penalty

For Petitioner: Zhi Min Liu, Taxpayer
William W. Shi, Representative

For Business Tax and Fee Department: Scott Lambert, Hearing Representative

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

Issues: Whether adjustments are warranted to the amount of unreported taxable sales.

Whether adjustments are warranted to the amount of unreported taxable cigarette rebates.

Whether petitioner was negligent.

Action: Upon motion of Ms. Harkey, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the petition be submitted for decision.²

The Board recessed at 1:59 p.m. and reconvened at 2:21 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

¹ The Board rescinded this action later in the day.

² The Board rescinded this action later in the day.

Friday, July 28, 2017

Tobacco & Gifts, Inc., 759481 (AP)

Action: Upon motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board rescinded its prior vote to submit the petition for decision.

Ms. Ma moved that the hearing be continued to a later date, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Bureau 30 days thereafter to review the parties' submissions and provide its recommendation to the Board. The motion failed for lack of a second.

The Board continued the hearing to the September Culver City meeting.

PETITIONS FOR RELEASE OF SEIZED PROPERTY HEARINGS

Adel Naiem Makar, 970549

May 18, 2016 Seizure Date, \$79.10 Approximate Value

For Petitioner: Adel Makar, Taxpayer

For Business Tax and Fee Department: Joshua Aldrich, Tax Counsel

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

Issue: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b).

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the petition for release of seized property be granted.

Al's Market 3, 998641

January 4, 2017 Seizure Date, \$362.00 Approximate Value

For Petitioner: Adel Makar, Taxpayer

For Business Tax and Fee Department: Joshua Aldrich, Tax Counsel

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

Issue: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b).

Action: Upon motion of Ms. Ma, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the petition for release of seized property be granted.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

David Gau, Executive Director, provided a report regarding the status of pending and upcoming organizational issues.

Friday, July 28, 2017

SALES AND USE TAX APPEALS HEARINGS

Shawn Victor Bachor, 771334 (EH)

Action: Upon motion of Mr. Horton, seconded by Ms. Harkey and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board rescinded its prior vote.

Upon motion of Mr. Runner, seconded by Ms. Ma and duly carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton voting no, the Board ordered that the petition be granted and the tax be redetermined accordingly, and directed the Appeals Bureau to prepare a precedential section 40 summary decision for Board consideration.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD JULY 27, 2017

Richard R. Betchley and Kellie S. Brunk, 874758

Final Action: Upon motion of Ms. Stowers, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board sustained the action of the Franchise Tax Board.

Fuscoe Engineering, Inc., 668149

Eric Armstrong and Nancy Armstrong, 668151

John Olivier and Cynthia Olivier, 668188

Raymond S. Tokihiro and Thu Cuc, 668193

Patrick R. Fuscoe and Bonnie K. Fuscoe, 668203

Final Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and duly carried, Ms. Harkey, Mr. Runner and Ms. Ma voting yes, Ms. Stowers voting no, Mr. Horton abstaining, the Board reversed the action of the Franchise Tax Board.

Jeffrey Moffatt and Staretta Moffatt, 878764

Final Action: Upon motion of Ms. Harkey, seconded by Mr. Horton and unanimously carried, Ms. Harkey, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, Mr. Runner not participating, the Board sustained the action of the Franchise Tax Board.

Richard Schotts, Jr., 798666

1999, \$91,277.00 Tax, \$67,275.07 Penalties

2000, \$49,779.00 Tax, \$33,282.79 Penalties

Andrea Schotts, 800099

1999, \$89,585.00 Assessment, \$66,027.98 Penalties

2000, \$48,024.00 Assessment, \$32,109.37 Penalties

For Appellants:

Waived Appearance

For Franchise Tax Board:

Marguerite Mosnier, Tax Counsel

Cynthia Kent, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether appellants have demonstrated error in the Franchise Tax Board's (respondent) proposed assessments of additional tax.

Friday, July 28, 2017

Whether appellant-wife is entitled to the abatement of the late filing penalties.
Whether appellant-wife is entitled to the abatement of the penalties for failure to furnish information.

Whether the Board has jurisdiction to review respondent's assessment of appellant-wife's post-amnesty penalties.

Whether appellant-wife is entitled to relief from community property income allocation pursuant to R&TC section 18534.

Whether the Board should impose a frivolous appeal penalty.

Action: Upon motion of Ms. Stowers, seconded by Mr. Horton and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board sustained the action of the Franchise Tax Board.

Dmitry Beinus and Larisa Beinus, 987583

Final Action: Upon motion of Mr. Horton, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board sustained the action of the Franchise Tax Board.

Keith Wm. Brown, 984954

2011, \$1,460.00 Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

Brad Coutinho, Tax Counsel

Natasha Page, Tax Counsel

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

Issue: Whether appellant has established error in the Franchise Tax Board's proposed assessment.

Action: Upon motion of Mr. Horton, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board sustained the action of the Franchise Tax Board.

Victoria Joy Le Beau, 946248

Final Action: Ms. Harkey moved to reverse the action of the Franchise Tax Board as to the amount of the deficiency, and insure that the lien on the residence is removed. The motion failed for lack of a second.

Upon motion of Ms. Ma, seconded by Ms. Stowers and duly carried, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, Ms. Harkey voting no, the Board sustained the action of the Franchise Tax Board.

The Board adjourned at 4:18 p.m.

The foregoing minutes are adopted by the Board on September 26, 2017.

Note: The following matters were removed from the calendar prior to the meeting: *Philip Colavito, 571453; Muddhouse Coffee, LLC, 704823; H.K. Architectural Supply, 589119; Jeremy Daniel Kintner, 606857; Ray J. Ponek and Mary Ellen Ponek, 818449; and, Belle Du Jour, Inc., 837270.*