

**Preliminary Results**  
**September 2015 Board of Equalization Hearing**

**Corporate Franchise and Personal Income Tax Appeals Hearings**

**Item-B1.** Case #605227 (2003-2005), 841016 (2007-2008) – Ameristar Casinos, Inc. & Subs.

**Amount at Issue:**

<u>Years</u>	<u>Amounts at Issue</u>
2003	\$ 24,825
2004	\$ 69,390
2005	\$107,962
2007	\$ 31,019
2008	\$ 57,310

Total: \$290,506 in Tax

**Issue:** Whether appellant is entitled to a deduction for various “wagering taxes” paid to other states for the years at issue.

**Board Decision: 3-2 to sustain FTB.** Aye: (Horton, Ma, Stowers) Nay: (Harkey, Runner)

**Item-B3.** Case #785086 – John Nafeh and Ursula G. Burger Nafeh

**Amount at Issue:** \$58,481 proposed assessment for 2007.

**Issue:** Whether appellants have shown that their corporation was a “qualified trade or business” under Revenue and Taxation Code (R&TC) section 18152.5, subdivision (e)(3).

**Board Decision: 5-0 to sustain FTB.**

**Sales and Use Tax Appeals Hearings**

**Item-C2** Case #718640 – Alan Levitz

**Amount at Issue:** Claimed refund: \$42,406.72

**Issue:**

1. Whether claimant is personally liable as a responsible person for the unpaid liabilities of Room Source pursuant to Revenue and Taxation Code section 6829.
2. Whether claimant has established reasonable cause sufficient for relieving the late-payment and late prepayment penalties originally assessed against Room Source.

3. Whether claimant has established reasonable cause for relief from the collection cost recovery fee.

**Board Decision: 5-0 to sustain BOE.**

### Public Hearings

**Item-F1** Proposed amendments to Sales and Use Tax Regulation 1505, *Morticians*

**Board Decision: 5-0 to adopt amendments as published.**

**Item-F2** Proposed Amendments to Sales and Use Tax Regulation 1705.1, Innocent Spouse or Registered Domestic Partner Relief from Liability, Special Taxes and Fees Regulation 4903, Innocent Spouse or Registered Domestic Partner Relief from Liability, and Rules for Tax Appeals Regulations 5240, Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief, 5241, Acknowledgement and Review of Requests for Innocent Spouse Relief, and 5242, Requests for Reconsideration by the Board

**Board Decision: 5-0 to adopt amendments as published.**

### Tax Program Nonappearance Matters – Adjudicatory

**Item-H1** Case #597646 – Daren James D’Ambrosio & June Ella D’Ambrosio

Unreported Taxable Sales	\$ 236,558
Proposed Tax Redetermination	\$ 22,557
Interest through 5/31/15	\$ 7,221
10% Negligence Penalty	\$ 1,137
10% Failure to File Penalty	\$ 1,118
<b>Total</b>	<b>\$ 32,034</b>

Unreported Taxable Sales	\$236,558
Proposed Tax	22,557
Interest through 9/30/15	7,672
Failure to File Penalty	1,118
Total	<u>\$ 31,348</u> (\$1,137 Negligence Penalty Removed)

**Issue:**

1. Whether additional adjustments are warranted to the amount of unreported taxable sales

**Board Decision: 5-0 to sustain BOE.** (Negligence Penalty removed – 1<sup>st</sup> time audit)

**Item-H2.1** Case #815463 - C&L Pacific Real Estate

**Amount at issue:** Claim for refund: \$432 (S-corp. late filing penalty)

**Issue:** Has Appellant established reasonable cause for filing its 2011 S-Corp. tax return late, warranting abatement of the penalty?

**Board Decision: 5-0 to sustain FTB.**

**Item-H2.2** Case #807763 – Charlotte Montgomery

**Amount at issue:** Claim for refund: \$6,230.44 (for late payment penalty)

**Issue:** Has Appellant established reasonable cause for failing to pay her 2012 taxes in full on the return due date, warranting abatement of the penalty?

**Board Decision: 5-0 to sustain FTB.**

**Item-H2.3** Case #461570– Thomas E. Rubin

**Amounts at Issue:** Claim for refund \$2,901,733 for the 2000 tax year

**Issue:** Whether to adopt the summary decision, which dismisses the matter on the grounds that the Board lacks jurisdiction to hear this claim for refund, and concludes that FTB properly denied the refund claim.

**Board Decision: 5-0 to adopt summary decision.** (Taxpayer's appeal dismissed)