

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MURIETA SALES CORP.) No. 91R-1356-PD
)

Appearances:

For Appellant: Jennifer Miller Moss
Attorney at Law

For Respondent: Michael Breining
Counsel

OPINION

This appeal is made pursuant to section 26075, subdivision (a),^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Murieta Sales Corp. for refund of interest assessed in connection with assessments of additional franchise tax in the amounts of \$75,109.31, \$3,422.21, and \$523.41 for the income years ended April 30, 1982, 1983, and 1986, respectively.

^{1/} Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the income years in issue.

On November 24, 1986, following a field audit, respondent issued notices of proposed assessment (NPAs) for 1982 and 1983. Appellant protested. Respondent wrote that the assigned hearing officer would contact appellant when her workload permitted. On August 1, 1989, respondent wrote appellant about the issues raised in the protest. After numerous contacts thereafter, the substantive issues were resolved after a protest hearing on March 7, 1990. On July 9, 1990, respondent issued notices of action (NOAs) which revised the NPAs for 1982 and 1983 and also issued an NPA for 1986 as a related adjustment. On July 15, 1990, appellant paid the amount of revised tax indicated on those NOAs and NPA with the understanding that the interest would be billed. On April 1, 1991, respondent issued NPAs for 1982, 1983, and 1986 which assessed appellant "and Ray D. Henderson, assumer and/or transferee." Appellant's representative telephoned respondent about them, and upon being told that those NPAs had been issued in error, appellant's representative asked for a billing for the interest on the taxes that had been paid on July 15, 1990. The respondent's representative told him the amount of that interest then owing, which appellant then paid.

Appellant's position is that the respondent's lengthy delay in actively processing appellant's protest of the NPAs and respondent's delay in issuing an interest billing after payment of the NPAs are delays solely attributable to respondent and constitute ministerial acts of the sort contemplated by section 25901b, subdivision (c)(1), which authorizes respondent to abate interest in cases where the assessment or payment of a tax has been delayed by the failure of one of respondent's employees to perform a ministerial act.

On July 30, 1992, this board decided the Appeal of Philip C. and Ellen Boesner Snell, 92-SBE-023, which held that the Franchise Tax Board's discretion to abate or not to abate interest under section 18688, subdivision (c)(1), of the Personal Income Tax Law is not subject to review. Appellant seeks this board's review of the respondent's discretion to abate interest under the provisions of section 25901b, subdivision (c)(1), of the Bank and Corporation Tax Law. This section is the exact counterpart of section 18688, subdivision (c)(1), which also was drawn from section 6404(e) of the Internal Revenue Code and enacted at the same time (Stats. 1987, ch. 1138). We note that later decisions have followed the authorities cited in Snell (see, e.g., McConnell v. Commissioner, 1992 U.S. Dist. Lexis 20547 (N.D.Cal. 1992)). Since the reasoning set forth in Snell applies with equal force to section 25901b, subdivision (c)(1), we therefore conclude that the Franchise Tax Board's exercise of its discretion to abate or not to abate interest under subdivision (c)(1) of section 25901b is not subject to review.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Murieta Sales Corp. for refund of interest assessed in connection with assessments of additional franchise tax in the amounts of \$75,109.31, \$3,422.21, and \$523.41 for the income years ended April 30, 1982, 1983, and 1986, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 24th day of June, 1993, by the State Board of Equalization, with Board Members Brad Sherman, Matthew K. Fong, Ernest J. Dronenburg, Jr. and Windie Scott present.

Brad Sherman _____, Chairman

Matthew K. Fong _____, Member

Ernest J. Dronenburg, Jr. _____, Member

Windie Scott* _____, Member

_____, Member

*For Gray Davis, per Government Code section 7.9