

Wednesday, January 21, 2009

The Board met at its offices at 450 N Street, Sacramento, at 2:15 p.m., with Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Ms. Mandel stated that Mr. Chiang would not participate at this time in the matter of *Argonaut Group, Inc.*, 287738, in accordance with Government Code section 15626, and left the Boardroom.

Argonaut Group, Inc., 287738
1994, \$52,199.00 Claim for Refund
1995, \$690,951.00 Claim for Refund
1996, \$16,265.00 Claim for Refund
1997, \$884,165.00 Claim for Refund
1998, \$414,238.00 Claim for Refund
1999, \$1,311,083.00 Claim for Refund

For Appellant:

Marty Dakessian, Attorney
Patrick Shannon, Attorney
Walter Hellerstein, Attorney
Roxani M. Gillespie, Attorney

For Franchise Tax Board:

Karen Smith, Tax Counsel
Benjamin F. Miller, Tax Counsel

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

Issue: Whether appellant, a California general corporation with insurance company subsidiaries, may apply Revenue and Taxation Code section 25137 to reduce its California franchise tax.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 1.1)

Action: Ms. Yee moved that the petition be submitted for decision and put over for decision until tomorrow's hearing. The motion failed for lack of a second.

Upon motion of Ms. Steel, seconded by Mr. Leonard and duly carried, Mr. Leonard and Ms. Steel voting yes, Ms. Yee voting no, Ms. Mandel not participating in accordance with Government Code section 15626, Dr. Chu absent, the Board submitted the appeal for decision on the same day.

Ms. Mandel returned to the Boardroom.

Exhibits to these minutes are incorporated by reference.

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Mahnaz Judson, 424321

1998, \$4,352.82 Interest

1999, \$6,870.76 Interest

For Appellant:

Mahnaz Judson-Westerberg, Taxpayer

D. Kent Westerberg, Attorney

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Bruce Langston, Tax Counsel

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

Issues: Whether the Franchise Tax Board issued the Notices of Proposed Assessments within the applicable statute of limitations period.

Whether the Board has jurisdiction to consider whether the final tax assessments are correct, and, if so, whether appellant has demonstrated error in the underlying tax assessments.

Whether the Board has jurisdiction to consider the propriety of the imposition of the late filing penalties and collection cost recovery fee, and, if so, whether appellant has shown reasonable cause to warrant abatement of the late filling penalties and correctly imposed the collection cost recovery fee after proper notice.

Whether respondent abused its discretion in refusing to abate interest.

Whether the Board has jurisdiction to review the Franchise Tax Board's proposed assessment of the post-amnesty penalties, and, if so, whether respondent is estopped from imposing the post-amnesty penalties.

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board submitted the appeal for decision.

John D. Bogdanoff and Janora G. Bogdanoff, 440634

2000, \$15,617.34 Claim for Refund

2001, \$13,612.08 Claim for Refund

2002, \$9,853.07 Claim for Refund

For Appellant:

Janora Bogdanoff, Taxpayer

John Bogdanoff, Taxpayer

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Bruce Langston, Tax Counsel

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

Issue: Whether the statute of limitations bars appellants' claim for refund for 2000, 2001, and 2002.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board submitted the appeal for decision.

Wednesday, January 21, 2009

SALES AND USE TAX APPEALS HEARING

Southcorp Packaging USA, Inc., 224867 (EH)

1-1-99 to 6-30-01, \$486,307.78 Tax

For Petitioner:

Howard J. Barnhorst II, Attorney

For Sales and Use Tax Department:

Robert Tucker, Tax Counsel

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

Issues: Whether petitioner made a taxable retail sale of its non-inventory tangible personal property business assets.

Whether the selling price of the subject assets is overstated in the audit.

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board ordered that the petition be submitted for decision.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD JANUARY 21, 2009

Argonaut Group, Inc., 287738

Final Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and duly carried, Mr. Leonard and Ms. Steel voting yes, Ms. Yee voting no, Ms. Mandel not participating in accordance with Government Code section 87105, Dr. Chu absent, the Board reversed the action of the Franchise Tax Board.

Mahnaz Judson, 424321

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board sustained the action of the Franchise Tax Board.

John D. Bogdanoff and Janora G. Bogdanoff, 440634

Final Action: Ms. Mandel moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Yee. Ms. Mandel withdrew her motion.

The Board postponed this matter for further briefing.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JANUARY 21, 2009

Southcorp Packaging USA, Inc., 224867 (EH)

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

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SALES AND USE TAX APPEALS HEARING

Convenience Acquisition Co. LLC, 236133 (KH)

1-1-00 to 12-31-02, \$318,576.91 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issue: Whether rebate payments received by petitioner from cigarette manufacturers are additional taxable gross receipts related to the taxable sale of cigarettes.

Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, Dr. Chu absent.¹

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board made the following orders:

Harinderpal S. Ahluwalia, 350150 (KH)

1-1-02 to 12-31-04, \$75,489.47 Tax, \$7,548.95 Negligence Penalty, \$7,548.95 Finality Penalty, \$2,426.19 Amnesty Double Negligence Penalty, \$2,426.18 Amnesty Double Finality Penalty, \$2,466.84 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Universal Dental Studio, Inc., 339701 (GH)

4-1-02 to 3-31-05, \$19,825.56 Tax, \$6,042.01 Negligence Penalty, \$1,194.62 Amnesty Negligence Penalty, \$1,177.91 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Rizalde V. Sandoval, 332206 (EH)

7-1-00 to 6-30-03, \$79,288.56 Tax, \$8,932.39 Amnesty Double Negligence Penalty, \$12,049.20 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Amar Singh, 459750 (ET)

February 20, 2008, \$14,956.28 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Youssef A. Salah, 466071 (ET)

July 15, 2008, \$59,816.20 Approximate Value

Action: Determined that staff properly seized the tobacco products.

¹ Additional action was taken the following day, January 22, 2009.

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Khoury and Azar, Inc., 423828 (ET)

August 15, 2007, \$10,268.38 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Gigis Liquor #2, Inc., 466069 (ET)

March 24, 2008, \$40.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Nirbhai Singh and Parmjeet Kaur, 466075 (ET)

June 12, 2008, \$291.00 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: *Maria Theresa Gonzales, 404649; Michael Maurer and Anna G. Maurer, 351807; and, Jose Arnel Viray, 361472.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board made the following orders:

Steven C. Agid, 397339

2003, \$826.00 Assessment

Action: Sustain the modified action of the Franchise Tax Board.

Terri R. Amuwa, 357021

2004, \$949.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Winston Bear Child and Teresita P. Bear Child, 400991

2002, \$1,547.00 Assessment, \$74.98 Post-Amnesty Penalty

Action: Sustain the modified action of the Franchise Tax Board.

Debra J. Berini, 395919

2003, \$713.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Butch Berry, 361529

2004, \$506.00 Assessment, \$126.50 Late Filing Penalty, \$126.50 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,000.00 frivolous appeal penalty.

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John Buergel, 388878

2004, \$9,430.00 Assessment

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Miguel R. Dacones, 362356

2000, \$4,190.00 Assessment

Action: Sustain the action with concession by the Franchise Tax Board.

Jan M. Dixon, 400994

2003, \$2,309.00 Assessment

Action: Sustain the modified action of the Franchise Tax Board.

Daniel Ebenezer and Padmini Ebenezer, 340164

2001, \$10,674.00 Claim for Refund

2002, \$27,864.00 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Maria Theresa Gonzales, 404649

2005, \$345.00 Claim for Refund

Action: The Board took no action.

George Jaresko, 349404

1995, \$14,772.03 Claim for Refund

1997, \$25,643.67 Claim for Refund

1998, \$4,970.23 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Sucheta Kapuria, 288980

1996, \$5,712.00 Assessment, \$1,142.40 Penalty

Action: Sustain the action of the Franchise Tax Board.

Amy C. Ku, 384772

2003, \$2,300.76 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Donna J. Lawell, 381474

2003, \$11,436.87 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

LSI Logic Corporation & Subsidiaries, 402104

1998, \$47,258.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Nancy Lucero, 405939

2005, \$869.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Constance L. Maples, 382846

2003, \$1,778.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Mazen M. Mardini and Hafia Mardini, 393429

1998, \$8,324.00 Tax, \$3,329.60 Accuracy Related Penalty, \$3,494.50 Late Filing Penalty, \$3,687.43 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Michael Maurer and Anna G. Maurer, 351807

2000, \$358.00 Claim for Refund

Action: The Board took no action.

MD Biotech Corp., 398016

2004, \$927.34 Claim fore Refund

Action: Sustain the action of the Franchise Tax Board.

Masoud Molaei and Lesli Molaei, 377126

2002, \$501.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Gregory Teeters, 406026

2005, \$2,626.00 Tax, \$656.50 Late Filing Penalty

Action: Sustain the modified action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Pedro J. Ugarte and Patricia V. Ugarte, 402854

2003, \$1,284.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jose Arnel Viray, 361472

2004, \$823.00 Tax, \$205.75 Failure to Furnish Penalty

Action: The Board took no action.

Alison Buerger, 333132

2003, \$1,555.00 Tax, \$387.50 Penalties, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Jon Maple, 398911

2002, \$10,877.00 Tax, \$2,719.25 Late Filing Penalty, \$2,719.25 Failure to File Penalty, \$659.03 Post-Amnesty Penalty, \$125.00 Filing Enforcement Fee

Action: Deny the petition for rehearing.

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Shawn Mills, 395824

2004, \$2,357.00 Tax, \$1,178.50 Penalties, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Victor Roy, 395839

2004, \$848.00 Tax, \$424.00 Penalties, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Donald B. Russell, 347413

2003, \$236.00 Tax, \$100.00 Late Filing Penalty, \$59.00 Failure to File Penalty, \$120.00 Filing Enforcement Fee, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Ruth Vinson, 384140

2004, \$4,890.00 Tax, \$1,222.50 Penalties, \$500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Ruth Vinson, 384249

2003, \$5,396.00 Tax, \$1,349.00 Penalties, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board made the following orders:

Johnnie Anthony, 391713

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Janyne A. Auston, 399398

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Tanya Black, 387314

2006, \$289.00

Action: Sustain the action of the Franchise Tax Board.

Percy A. Carper, 372957

2006, \$1.00 or more

Action: Reverse the action of the Franchise Tax Board.

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Paul Anthony Dombroski, 379878

2006, \$350.00

Action: Sustain the action of the Franchise Tax Board.

Michael N. Flores, 378244

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Sheila Hamilton, 394325

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Annissha M. Hargrove, 357430

2002, \$327.50

2003, \$332.50

Action: Reverse the action of the Franchise Tax Board.

O. D. Harris, 387264

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Angel Louise Hatfield, 382415

2004, \$347.50

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Rebecca Heredia, 386697

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Ching K. Jee, 378567

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Zandra Victoria Johnson, 389591

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Charles Thomas Jones, 384593

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Steven G. Lee, 387881

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Joseph Lopez, 388328

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Gladys Mastain, 380526

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Shirley Robinson Matthews, 394111

2006, \$1.00 or more

Action: Sustain the action with concession by the Franchise Tax Board.

Doris F. Miller (Deceased), 401189

2006, \$417.00

Action: Sustain the action of the Franchise Tax Board.

Dawn O'Neal, 383516

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

John Si Jong Paik, 390546

2006, \$228.78

Action: Sustain the action of the Franchise Tax Board.

Jacob Ramsey, 387824

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Nancy Schuster, 394497

2006, \$192.50

Action: Sustain the action of the Franchise Tax Board.

Jeannie Smith, 394090

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Leagan Tang, 383475

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Bounma Young, 377254

2006, \$347.00

Action: Sustain the action of the Franchise Tax Board.

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Shavool Zarbakhsh, 374560

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *NEC Business Network Solutions, Inc., 304869 (OH)*, Dr. Chu absent, the Board made the following orders:

Lithographix, Inc., 373226 (AS)

10-1-01 to 9-30-04, \$140,936.74

Action: Approve the redetermination as recommended by staff.

Inland Paperboard & Packaging, Inc., 397940 (OH)

1-1-01 to 12-31-04, \$51,296.73

Action: Approve the redetermination as recommended by staff.

Starbucks Corporation, 459050 (OH)

12-31-01 to 1-2-05, \$168,528.13

Action: Approve the redetermination as recommended by staff.

American School of Aviation, 446983 (UT)

3-2-07 to 3-2-07, \$53,053.00

Action: Approve the redetermination as recommended by staff.

Edison Security Corporation, 342575 (AP)

7-1-00 to 10-31-01, \$138,925.34

Action: Approve the redetermination as recommended by staff.

Lamps Plus, Inc., 467870 (AC)

3-31-08 to 6-29-08, \$75,983.20

Action: Approve the relief of penalty as recommended by staff.

Round Table Development Co., 468139 (CH)

4-1-08 to 6-30-08, \$70,055.30

Action: Approve the relief of penalty as recommended by staff.

Jeromes Furniture Warehouse, Inc., 467205 (FH)

10-1-07 to 12-31-07, \$52,453.10

Action: Approve the relief of penalty as recommended by staff.

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Cardinal Health Solutions, Inc., 467208 (FH)

4-1-08 to 6-15-08, \$128,677.98

Action: Approve the relief of penalty as recommended by staff.

Comverse, Inc., 405479 (OH)

1-1-07 to 3-31-07, \$309,306.00

Action: Approve the denial of claim for refund as recommended by staff.

NEC Business Network Solutions, Inc., 304869 (OH)

7-1-01 to 6-30-02, \$336,840.25

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Edison Security Corporation, 303287 (AP)

7-1-00 to 10-31-01, \$250,000.00

Action: Approve the denial of claim for refund as recommended by staff.

Onquest Engineering, Inc., 418113 (AP)

7-1-06 to 6-30-07, \$67,798.77

Action: Approve the denial of claim for refund as recommended by staff.

Capital One Auto Finance, Inc., 418110 (OH)

4-1-07 to 6-30-08, \$179,909.00

Action: Approve the denial of claim for refund as recommended by staff.

Capital One Auto Finance, Inc., 367336 (OH)

1-1-06 to 3-31-08, \$373,014.00

Action: Approve the denial of claim for refund as recommended by staff.

First Data Technologies, Inc., 424694 (OH)

4-1-07 to 9-30-07, \$144,250.00

Action: Approve the denial of claim for refund as recommended by staff.

Union Leasing Trust, 444322 (OH)

1-1-07 to 12-31-07, \$68,677.79

Action: Approve the denial of claim for refund as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,
CONSENT**

The Board deferred consideration of the following matter: *Affymetrix, Inc., 462490 (GH)*.

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With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Nissan North America, Inc., 457489 (OH)*, Dr. Chu absent, the Board made the following orders:

Plasticorp, 470195 (AS)

1-1-04 to 9-30-06, \$89,081.05

Action: Approve the credit and cancellation as recommended by staff.

Moss Motors, LTD, 468327 (GH)

1-1-05 to 3-31-08, \$66,941.48

Action: Approve the credit and cancellation as recommended by staff.

Chance USA, LLC, 377736 (UT)

5-10-01 to 5-10-01, \$76,919.72

Action: Approve the credit and cancellation as recommended by staff.

WMK Office San Diego, LLC, 468484 (FH)

10-1-06 to 12-31-06, \$62,937.51

Action: Approve the credit and cancellation as recommended by staff.

Neotek Properties of Florida, Inc., 465992 (AS)

4-15-06 to 12-31-06, \$95,720.54

Action: Approve the credit and cancellation as recommended by staff.

Nissan North America, Inc., 457489 (OH)

4-1-05 to 12-31-07, \$1,163,783.95

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Los Angeles Harbor Department, 466255 (EA)

1-1-05 to 12-31-07, \$100,064.63

Action: Approve the refund as recommended by staff.

California Institute of Technology, 315350 (AP)

4-1-02 to 3-31-05, \$401,662.06

Action: Approve the refund as recommended by staff.

McJunkin Corporation, 246365 (OH)

10-1-00 to 6-30-03, \$190,913.85

Action: Approve the refund as recommended by staff.

Levi-Strauss & Company, 331372 (BH)

7-1-01 to 12-31-02, \$133,416.58

Action: Approve the refund as recommended by staff.

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Burlingame Industries, Inc., 464784 (EH)

4-1-04 to 3-31-07, \$98,137.87

Action: Approve the refund as recommended by staff.

Rotolo Chevrolet, Inc., 444516 (EH)

1-1-05 to 12-31-07, \$75,592.66

Action: Approve the refund as recommended by staff.

Traffic Control Service, Inc., 438007 (OH)

1-1-07 to 3-31-07, \$109,276.90

Action: Approve the refund as recommended by staff.

Garden State International Trucks, Inc., 444520 (GH)

10-1-07 to 12-31-07, \$74,148.34

Action: Approve the refund as recommended by staff.

United Aviation Fuels Corporation, 433455 (OH)

7-1-07 to 9-30-07, \$2,361,272.05

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 451253 (KH)

7-11-08 to 7-11-08, \$396,324.00

Action: Approve the refund as recommended by staff.

TiVo, Inc., 445331 (GH)

10-1-03 to 12-31-07, \$460,769.29

Action: Approve the refund as recommended by staff.

Miramax Film Corporation, 465981 (OH)

10-1-99 to 9-30-04, \$509,692.20

Action: Approve the refund as recommended by staff.

Merge Emed, Inc., 423623 (OH)

10-1-05 to 3-31-07, \$66,711.44

Action: Approve the refund as recommended by staff.

Wachovia Dealer Services, Inc., 461704 (EA)

4-1-08 to 6-30-08, \$3,562,014.96

Action: Approve the refund as recommended by staff.

Bmar & Associates, Inc., 359343 (OH)

4-1-03 to 8-31-06, \$134,432.02

Action: Approve the refund as recommended by staff.

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Harbor Distributing, LLC, 459072 (EA)

7-1-07 to 9-30-07, \$169,020.63

Action: Approve the refund as recommended by staff.

Aspen Technology, Inc., 465978 (OH)

4-1-04 to 3-31-07, \$62,582.22

Action: Approve the refund as recommended by staff.

University of San Francisco, 465983 (BH)

7-1-03 to 6-30-06, \$59,024.48

Action: Approve the refund as recommended by staff.

General Petroleum Corporation, 432406 (AA)

7-1-05 to 9-30-07, \$1,205,214.28

Action: Approve the refund as recommended by staff.

Wright Graphics, Inc., 399854 (AC)

1-1-04 to 3-31-08, \$356,988.71

Action: Approve the refund as recommended by staff.

Visa International Services Association, 425404 (BH)

1-1-05 to 12-31-06, \$435,109.34

Action: Approve the refund as recommended by staff.

IXOS Software, Inc., 464521 (BH)

4-1-04 to 3-31-06, \$387,728.16

Action: Approve the refund as recommended by staff.

Bill Cahan & Associates, A California Corporation, 444362 (BH)

1-1-05 to 6-30-06, \$59,071.78

Action: Approve the refund as recommended by staff.

Peyton Cramer Infiniti, 462377 (AS)

4-1-08 to 6-30-08, \$61,104.57

Action: Approve the refund as recommended by staff.

Onquest Engineering, Inc., 418113(AP)

7-1-06 to 6-30-07, \$88,765.54

Action: Approve the refund as recommended by staff.

Capital One Auto Finance, Inc., 418110 (OH)

4-1-07 to 6-30-08, \$1,498,343.85

Action: Approve the refund as recommended by staff.

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Capital One Auto Finance, Inc., 367336 (OH)

1-1-06 to 3-31-08, \$3,245,861.24

Action: Approve the refund as recommended by staff.

Affymetrix, Inc., 462490 (GH)

10-1-03 to 9-30-06, \$2,154,563.17

Action: The Board took no action.

Affymetrix, Inc., 441877 (GH)

10-1-06 to 9-30-07, \$284,372.74

Action: Approve the refund as recommended by staff.

Rancho Santa Fe Thrift & Loan, 462375 (FH)

4-1-08 to 6-30-08, \$56,463.74

Action: Approve the refund as recommended by staff.

Intrans Group, Inc., 466322 (OH)

10-1-03 to 6-30-07, \$782,725.35

Action: Approve the refund as recommended by staff.

Joel Edward Shapiro, 419953 (KH)

1-1-05 to 3-31-08, \$204,186.01

Action: Approve the refund as recommended by staff.

Triton Acceptance Corporation, 461706 (EA)

4-1-06 to 3-31-08, \$139,203.95

Action: Approve the refund as recommended by staff.

Shasta Regional Medical Center, 426876 (KH)

4-1-06 to 6-30-07, \$119,562.04

Action: Approve the refund as recommended by staff.

Bluelinx Corporation, 445930 (OH)

1-1-07 to 3-31-07, \$162,616.09

Action: Approve the refund as recommended by staff.

Drive Financial Services, LP, 340709 (OH)

10-1-02 to 12-31-05, \$1,154,694.86

Action: Approve the refund as recommended by staff.

First Data Technologies, Inc., 466693 (OH)

4-1-07 to 3-31-08, \$89,269.83

Action: Approve the refund as recommended by staff.

Wednesday, January 21, 2009

Kerman AG Resources, Inc., 435150 (KH)

5-1-06 to 3-31-08, \$110,202.05

Action: Approve the refund as recommended by staff.

Volo Holdings Hayward, LLC, 446966 (CH)

12-13-07 to 3-31-08, \$77,476.39

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES AND DENIAL OF RELIEF OF PENALTIES, CONSENT

The Board deferred consideration of the following matter: *Big West of California, LLC, 460290 (MT)*.

With respect to the Special Taxes Matters, Relief of Penalties and Denial of Relief of Penalties, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Dr. Chu absent, the Board made the following orders:

Petro-Diamond Incorporated, 467745 (MT)

7-1-07 to 7-31-07, \$137,284.38

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Big West of California, LLC, 460290 (MT)

8-1-07 to 8-31-07, \$235,786.70

Action: The Board took no action.

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

Ms. Mandel stated that Mr. Chiang would not participate in the matter of *Republic Services Vasco Road, LLC, 466853 (ER)*.

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *Republic Services Vasco Road, LLC, 466853 (ER)*, Dr. Chu absent, the Board made the following orders:

Eisenhower Medical Center, 446764 (EF)

1-1-06 to 12-31-06, \$54,422.58

Action: Approve the refund as recommended by staff.

Wednesday, January 21, 2009

Republic Services Vasco Road, LLC, 466853 (ER)

10-1-06 to 6-30-07, \$75,186.31

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

LEGAL APPEALS MATTERS, ADJUDICATORY

Cindy A. Saito, 339713 (KH)

1-1-01 to 6-30-01, \$17,461.45 Tax, \$2,204.90 Late Payment Penalty, \$2,929.93 Amnesty Interest Penalty

Considered by the Board: December 16, 2008

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division and further ordered that collection action against petitioner remain pending resolution of the appeal of *David H. Johnson*.

Speakers: Bob Cendejas, Attorney, MuniServices LLC
Fran Mancia, MuniServices LLC
Al Koch, Special Tax Counsel, MuniServices

Fran Mancia announced that he would like to withdraw the petition of *Cities of Irvine, San Diego, and Santa Ana, 472928*.

Cities of Anaheim, et al., 254561

4-1-94 to 3-31-09, \$1,703,726.00 Tax

Considered by the Board: November 1, 2005

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and duly carried, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, Dr. Chu absent, the Board ordered that the petition be granted. However, the Board also directed staff to bring interested parties together to clarify under what circumstances multiple sales made pursuant to a requirements contract may be aggregated for purposes of meeting the \$500,000 threshold for direct allocation of use tax under Regulation 1802, subdivision (d)(1).

City of Los Angeles, 472907

9-27-96, \$169,043.00 Tax

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel abstain, Dr. Chu absent, the Board ordered that the petition for hearing be granted.

City of Stockton, 472908

9-28-94, \$361,559.00 Tax

Considered by the Board: Presented for Separate Discussion

Wednesday, January 21, 2009

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel abstain, Dr. Chu absent, the Board ordered that the petition for hearing be granted.

Cities of Los Angeles, San Jose, and Irvine, 472925

6-28-93 and 6-26-97, less than \$1,942,436.00 Tax

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel abstain, Dr. Chu absent, the Board ordered that the petition for hearing be granted.

Cities of Irvine, San Diego, and Santa Ana, 472928

6-28-93, \$239,100.00 Tax

Considered by the Board: Presented for Separate Discussion

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

Action: The Board took no action.

City of Sacramento, 472921

6-26-97, \$363,956.00 Tax

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel abstain, Dr. Chu absent, the Board ordered that the petition for hearing be granted.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

John Stroup, 354089

1999, \$1,363.00 Innocent Spouse Relief Granted

2000, \$2,074.00 Innocent Spouse Relief Granted

Considered by the Board: October 1, 2008

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

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board adopted a decision reversing the action of the Franchise Tax Board in respect to 2000, otherwise sustained the action of the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, ADJUDICATORY

David Silverman, 379230

2006, \$332.00

Considered by the Board: September 12, 2007

Wednesday, January 21, 2009

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board adopted a decision reversing the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY

Fruitridge Printing Lithograph, Inc., 472382

10-1-08 to 12-31-08, \$87,052.17

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board approved the refund as recommended by staff.

Mr. Leonard directed staff to gather the background on the collections process to insure that errors in the collection process do not incur overpayment of funds, therefore resulting in a refund to the taxpayer.

SPECIAL TAXES MATTERS, RELIEF OF INTEREST, ADJUDICATORY

Chevron U.S.A., Inc., 461867 (MT)

1-1-01 to 12-31-01, \$60,680.15

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board approved the relief of interest as recommended by staff.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Audits

Plumas-Sierra Rural Electric Cooperative (176)

2005, \$2,600,000.00 Excessive Assessment

2006, \$500,000.00 Escaped Assessment, \$50,000.00 Penalties, \$120,000.00 In-lieu Interest

2007, \$200,000.00 Excessive Assessment

2008, \$400,000.00 Excessive Assessment

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Dr. Chu absent, the Board adopted the audit escaped and excessive assessments, plus penalties and in-lieu interest, as recommended by staff.

Wednesday, January 21, 2009

Board Roll Changes

2005, 2006, 2007 and 2008 State-Assessed Property Rolls

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Dr. Chu absent, the Board approved corrections to the 2005, 2006, 2007 and 2008 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 1.2).

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board approved the Offers in Compromise of *Alfun, Micale, & Associates, Inc.* as recommended by staff.

The Board adjourned at 5:45 p.m.

The foregoing minutes are adopted by the Board on March 17, 2009.

Note: The following matters were removed from the calendar prior to the meeting: *Jacek Kostyrko and Zofia Kostyrko, 443905; C. V. Starr & Co., 382904; and, MediaNews Group, Inc., 377121.*

Thursday, January 22, 2009

The Board met at its offices at 450 N Street, Sacramento, at 9:35 a.m., with Ms. Yee, Vice Chairwoman, 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

Zenaida Laxamana, Manuel Gurion, Ester Gurion, Linda Gurion 389908 (BH)

4-1-03 to 3-31-06, \$28,792.32 Tax, \$2,879.27 Negligence Penalty

For Petitioner: Manuel Gurion, Taxpayer
Linda Gurion, Taxpayer
Raul S. Picardo, Attorney

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

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

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

Whether petitioner was negligent.

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board ordered that the petition be submitted for decision.

John F. Steele and Gayle Jeannie Steele, 333230 (UT)

9-21-03, \$10,842.60 Tax

For Petitioner: Gary Kimzey, Representative

For Sales and Use Tax Department: Christine Bisauta, Tax Counsel

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

Issues: Whether the purchase and use of the motor home by petitioners is subject to California use tax.

Whether any of the accrued interest should be relieved.

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, 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. Additionally the Board relieved three months of interest.

The Board directed staff to prepare a memorandum explaining the workload process being followed during the time when petitioner filed its petition, as well as an update on the current workload.

Hardial Singh Pannu and Davinder Kaur Pannu, 390331 (GH)

4-1-03 to 3-31-06, \$57,160.94 Tax, \$5,716.14 Negligence Penalty

For Petitioner: Hardial Singh Pannu, Taxpayer
Davinder Kaur Pannu, Taxpayer

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

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

Thursday, January 22, 2009

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

Whether petitioner was negligent.

Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, 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.

PETITION FOR RELEASE OF SEIZED PROPERTY

Avis Corporation, 457948 (ET)

April 8, 2008 Notice of Seizure and Forfeiture

For Petitioner: Subhash Grover, Representative

For Property and Special Taxes Department: Monica Silva, 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. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board ordered that the petition be submitted for decision.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 1.3).

Blanca M. Breeze, Tax Counsel IV, Legal Department, Headquarters

Cynthia Bresnan, Staff Services Manager I, Policy Planning and Workforce
Development Division, Headquarters

Maria Cabrera-Sahagian, Tax Technician II, Fresno Branch Office of the
Sacramento District

Leon W. Clark III, Business Taxes Specialist I, Suisun City Branch Office of the
Santa Rosa District

Craig J. Clauson, District Administrator, San Diego District Office

Richard L. DaPrato, Staff Services Analyst, Disclosure Office, Headquarters

Lucian J. Khan, Tax Counsel IV, Legal Department, Headquarters

Thursday, January 22, 2009

Patricia G. Lucero, Administrative Assistant II, Chief Counsel's Office, Legal Department, Headquarters
Reynaldo D. Obligacion, Business Taxes Specialist III, Legal Department, Headquarters
Jerry S. Pero, Associate Tax Auditor, Sacramento District Office
Terry E. Skeen, Business Taxes Representative, Bakersfield Branch Office

Action: Approve the Board Meeting Minutes of November 12-13, 2008 and November 18, 2008.

Ms. Yee recognized all the retirees for their dedicated service to the Board and congratulated them on their retirement.

Exhibits to these minutes are incorporated by reference.

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Customer Services and Administrative Efficiency Committee

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board approved the Customer Services and Administrative Efficiency Committee report and the actions therein (Exhibit 1.4).

OTHER ADMINISTRATIVE MATTERS

Deputy Directors Reports

David Gau, Deputy Director, Property and Special Taxes Department, provided an update regarding the fiscal year 2009/10 tobacco products rates setting (Exhibit 1.5).

Speaker: Dennis Loper, CA Distributors Association

Mr. Leonard directed staff to contact the Bureau of Labor Statistics and inform them that the Board of Equalization will be using their information as a basis to determine the tax rate.

David Gau, Deputy Director, Property and Special Taxes Department, provided an update regarding the supplemental reporting requirements for nonprofit hospitals (Exhibit 1.6).

Ms. Yee made an introduction and gave her input and suggestions as to the supplemental reporting of nonprofit hospitals.

Speakers: Anne McLeod, Vice President, California Hospital Association
Harry Osborne, Vice President of Government Relations, Alliance of Catholic Healthcare

Thursday, January 22, 2009

Sherreta Lane, Vice President of Finance Policy, California Children's Hospital Association
Kyle Serrette, Director of Organizing, United Nurses Associations of CA, American Federation of State, County and Municipal Employees
Beth Capell, Advocate, SEIU State Council
Michael Bolden, Advocate, American Federation of State, County and Municipal Employees, American Federation of Labor and Congress of Industrial Organizations

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board referred this matter to an interested parties process for further input and to refine the form. The Board would also like to see the supplemental reporting requirements implemented this year. This matter will be brought back in the April 15-16, 2009 hearing.

Elizabeth Houser, Deputy Director, Administration Department, provided a headquarters facility update.

Elizabeth Houser, Deputy Director, Administration Department, provided an update regarding the fiscal year 2008/09 budget.

Mr. Ramon Hirsig, Executive Director, presented his intended course of action to the Board.

Speakers: Bobbi Smith, SEIU Local 1000, District Labor Council 782 President

Elizabeth Houser, Deputy Director, Administration Department, provided an update regarding the fiscal year 2009/10 budget.

Anna Brannen, Chief, Technology Services Division provided an update regarding Digital Board of Equalization.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JANUARY 22, 2009

Zenaida Laxamana, Manuel Gurion, Ester Gurion, Linda Gurion 389908 (BH)

Final Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board ordered that the mark up rate be adjusted to 38 percent and that Manuel Gurion and Linda Gurion be held liable only for specified portions of petitioner's deficiency, otherwise redetermined as recommended by the Appeals Division.

Thursday, January 22, 2009

SALES AND USE TAX APPEALS HEARING

A.B.C Lumber Jack's, Inc., 351536 (EH)

10-1-99 to 12-31-04, \$4,621.28 Tax, \$10,005.27 Amnesty Interest Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Stephen Smith Tax Counsel

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

Issues: Whether petitioner has established that its purchase of a Dell computer was not subject to use tax.

Whether adjustments are warranted to the disallowed exempt sales to Indians.

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

SPECIAL TAXES APPEALS HEARING

Fassel M. Elder and Amal Elder, 272656 (MT)

10-1-00 to 3-5-02, \$18,621.87 Underground Storage Tank Maintenance Fee, \$1,862.19

Negligence Penalty

For Petitioner: No Appearance

For Property and Special Taxes Department: Carolee Johnstone, Tax Counsel

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

Issues: Whether an adjustment should be made to the assessed Underground Storage Tank Maintenance fees.

Whether petitioner was negligent.

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

**FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HELD
JANUARY 22, 2009**

Avis Corporation, 457948 (ET)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent, the Board determined that staff properly seized the tobacco products.

The Board recessed at 12:20 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:30 p.m. and reconvened immediately in closed session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Thursday, January 22, 2009

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e) and 11123(e)(2)(B)(i)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 1:57 p.m. and reconvened immediately in open session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

The Board recessed at 1:57 p.m. and reconvened at 2:01 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

ORGANIZATION OF THE BOARD

Action: Upon motion of Ms. Mandel, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board appointed Ms. Yee Chairwoman and Dr. Chu Vice Chair.

Ms. Yee thanked Dr. Chu for her leadership as Chair this past year and acknowledged that the Board has benefited from having Dr. Chu as the Chair.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JANUARY 21, 2009

Convenience Acquisition Co. LLC, 236133 (KH)

Final Action: Upon motion of Ms. Mandel, seconded by Dr. Chu and duly carried, Ms. Yee, Dr. 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.

The Board adjourned at 2:05 p.m.

The foregoing minutes are adopted by the Board on March 17, 2009.

Note: The following matter was removed from the calendar prior to the meeting: *Standard Register Company, 417837.*