

Wednesday, January 26, 2011

The Board met at its offices at 450 N Street, Sacramento, at 10:04 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chairman, Mr. Runner and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Ms. Yee welcomed Senator George Runner (Ret.) to the Board as its newest Member, representing the Second District.

ORGANIZATION OF THE BOARD

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Ms. Yee, Mr. Horton, Mr. Runner, Ms. Steel and Ms. Mandel voting yes, the Board appointed Mr. Horton as the Board Chairman and Ms. Steel as the Board Vice Chairwoman.

Speaker: Bobbi Smith, Steward and Former President of District Labor Counsel 782 of SEIU Local 1000, and Business Taxes Representative, Centralized Collections Section, Sales and Use Tax Department

The Board recessed at 10:08 a.m. and reconvened at 10:20 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Mr. Horton thanked the Members for their support and confidence in him. He also extended special thanks to Ms. Yee for increasing transparency and accountability of the agency as Chairwoman, and to staff for their hard work and leadership.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Clovus M. Sykes, 529645

2007, \$3,170.00 Tax, \$792.50 Late Filing Penalty, \$792.50 Notice and Demand Penalty

For Appellant: Clovus M. Sykes, Taxpayer

For Franchise Tax Board: Jaclyn Appleby, Tax Counsel

Susan Reyes, Specialist

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

Issues: Whether appellant has demonstrated error in the underlying tax assessment.

Whether appellant has shown reasonable cause for the abatement of the late filing penalty and/or the demand penalty.

Whether the Board can grant relief from the filing enforcement fee.

Whether the Board should impose a frivolous appeal penalty.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 1.1](#))

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

Exhibits to these minutes are incorporated by reference.

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LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Kashmir Singh Khinda, 549135*.

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

Palette of Fine Arts, LLC, 493644, 494018 (CH)

4-15-05 to 3-31-08, \$10,750.87 Tax

Action: Redetermine as recommended by the Appeals Division.

B. R. Cohn Winery, Inc., 468209 (JH)

10-1-04 to 9-30-07, \$33,749.70 Tax

Action: Redetermine as recommended by the Appeals Division.

Shannah Danielle Holt, 505131 (EA)

7-01-05 to 6-30-08, \$ 32,199.76 Tax

Action: Redetermine as recommended by the Appeals Division.

Abdul Qaiyom Karimi, 537946 (ET)

May 20, 2010, \$752.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Kashmir Singh Khinda, 549135 (ET)

April 30, 2010, \$ 6,659.90 Approximate Value

Action: The Board took no action.

Feras Haydaer and Amal M. Haydaer, 536565 (ET)

May 7, 2010, \$965.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Saad Dawood Pattah, 549123 (ET)

June 1, 2010, \$120.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Don Yong Choi, 552562 (ET)

June 14, 2010, \$435.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Feras Mawas, 552298 (ET)

August 19, 2010, \$1,200.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

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

Bruce L. Beck and Rosemary Beck, 522829
2003, \$1,559.00 Tax
2004, \$1,267.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Steven Citron-Pousty, 515093
2005, \$629.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Jeanette L. Dixon, 476764
2006, \$409.00 Tax, \$102.25 Late Filing Penalty, \$102.25 Notice and Demand Penalty, \$122.00 Filing Enforcement Fee
Action: Sustain the modified action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Katherine Fowler, 484362
2005, \$324.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Marcus Graves, 489015
2005, \$621.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Sharon Jeffery, 507725
2005, \$605.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Michael S. Jones, 472934
2006, \$1,253.00 Tax
Action: Sustain the modified action of the Franchise Tax Board.

Roger W. Knipp and Soledad E. Knipp, 473256
2006, \$14,240.00 Tax
Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Randall C. Lam, 521858
2005, \$5,263.00 Tax
Action: Sustain the action of the Franchise Tax Board.

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John R. Mallory, 511485

2003, \$622.00 Assessment, \$37.68 Post-Amnesty Penalty, \$155.50 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Natalya Morozova, 520326

2007, \$1,186.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Toni R. Nettles, 461602

2007, \$576.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Hee K. Park and lee J. Park, 516289

2006, \$12,085.45 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ed Sawyer and Randi Sawyer, 480044

1997, \$405.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Lisa Schulte, 440384

2005, \$1,482.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Alex Scott, 522004

2005, \$669.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Laura J. Seed, 489300

2006 \$718.68 Tax

Action: Sustain the action of the Franchise Tax Board.

Steven S. Stewart and Susan A. Stewart, 508861

2007, \$4,203.70 Late Payment Penalty

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

TLC Investment Club, 495495

2007, \$550.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Wenceslao Torres, Jr., 488872

2006, \$1,571.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Paul Valencia, 495480

2005, \$1,073.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Maurice P. Woods, 492728

2005, \$1,257.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Joseph G. Zagarino and Debbie Zagarino (AKA: Alex Dipilarez), 508824

1995, \$7,016.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jose C. Zambrano and Roxanne L. Zambrano, 505080

2006, \$613.00 Assessment

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

Eric Paul, 461392

2005, \$462.00 Tax, \$115.50 Late Filing Penalty, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

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 Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Los Angeles SMSA, LP, 485969 (OH)*; *Sacramento Valley LTD Partnership, 479526 (OH)*; *Contel Cellular California, Inc., 479517 (OH)*; and, *General Electric Company, 508976 (OH)*; the Board made the following orders:

Dayton Superior Corporation, 512832 (OH)

7-1-05 to 4-18-09, \$269,178.31

Action: Approve the redetermination as recommended by staff.

Los Angeles SMSA, LP, 485969 (OH)

1-1-03 to 12-31-05, \$29,352,952.70

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

Sacramento Valley LTD Partnership, 479526 (OH)

1-1-03 to 12-31-05, \$4,357,797.74

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

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Fiserv Cir, Inc., 522697 (OH)

7-1-05 to 6-30-08, \$198,121.14

Action: Approve the redetermination as recommended by staff.

Contel Cellular California, Inc., 479517 (OH)

7-1-02 to 12-31-05, \$2,360,317.07

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

Clariant Corporation, 523631 (OH)

4-1-04 to 12-31-07, \$224,407.42

Action: Approve the redetermination as recommended by staff.

GTE Mobilnet of California, LP, 479524 (OH)

7-1-02 to 12-31-05, \$13,674,996.13

Action: Approve the redetermination as recommended by staff.

T. A. Kyser Co., Inc., 507423 (OH)

7-1-05 to 12-31-07, \$192,940.70

Action: Approve the redetermination as recommended by staff.

Wilson Industries, LP, 515487 (OH)

1-1-05 to 12-31-07, \$343,124.67

Action: Approve the redetermination as recommended by staff.

Stringer Business Systems, Inc., 491314 (OH)

7-1-04 to 7-31-07, \$260,549.08

Action: Approve the redetermination as recommended by staff.

Siemens Industry, Inc., 551396 (OH)

1-1-10 to 3-31-10, \$261,631.14

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

Agilent Technologies, Inc., 551832 (GH)

1-1-01 to 6-30-05, \$281,674.28

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

Tulare Firestone, Inc., 508978 (KH)

7-1-06 to 6-30-09, \$61,346.75

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

Owens & Minor Distribution, Inc., 390526 (OH)

4-1-02 to 12-31-05, \$443,480.93

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

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General Electric Company, 508976 (OH)

1-1-04 to 12-31-08, \$383,209.84

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

Automotive Funding Group, Inc., 443780 (EA)

4-1-07 to 12-31-09, \$656,225.96

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

Associates Housing Finance, LLC, 301089 (OH)

1-1-00 to 6-30-05, \$1,112,690.84

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

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Verizon Wireless (VAW), LLC, 553324 (OH)*; and, *General Electric Company, 508976 (OH)*; the Board made the following orders:

Color DNA, 373167 (AC)

04-01-03 to 12-31-03, \$124,274.09

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

H. Young Enterprises, Inc., 551838 (BH)

1-1-08 to 6-30-08, \$136,120.89

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

The Thomas Kinkade Company, 552540 (GH)

4-1-06 to 3-31-07, \$353,794.42

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

School Bus Sales of California, LLC, 553264 (OH)

7-1-09 to 9-30-09, \$238,830.00

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

Pomona Valley Community Hospital, LTD, 459032 (AP)

4-1-05 to 6-30-08, \$499,597.79

Action: Approve the refund as recommended by staff.

Regents of the University of California, 444025 (AS)

4-1-05 to 6-30-09, \$1,958,919.18

Action: Approve the refund as recommended by staff.

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Regents of the University of California, 494549 (BH)

10-1-02 to 12-31-05, \$913,999.94

Action: Approve the refund as recommended by staff.

Fireside Bank, 533825 (CH)

1-1-10 to 6-30-10, \$1,693,190.00

Action: Approve the refund as recommended by staff.

Tulare Firestone, Inc., 508978 (KH)

7-1-06 to 6-30-09, \$438,356.03

Action: Approve the refund as recommended by staff.

American Material Management Alliance, Inc., 510556 (EH)

7-1-06 to 12-31-07, \$842,340.79

Action: Approve the refund as recommended by staff.

Novellus Systems, Inc., 451530 (GH)

4-1-05 to 3-31-08, \$335,145.85

Action: Approve the refund as recommended by staff.

Safe Credit Union, 533961 (KH)

1-1-10 to 6-30-10, \$113,017.00

Action: Approve the refund as recommended by staff.

Gen-Probe Sales & Service, Inc., 528278 (FH)

10-1-09 to 12-31-09, \$185,633.00

Action: Approve the refund as recommended by staff.

Prosys Information Systems, 518124 (OH)

7-1-08 to 12-31-08, \$223,045.10

Action: Approve the refund as recommended by staff.

Deutsch LA, Inc., 459078 (AS)

1-1-07 to 9-30-07, \$136,315.49

Action: Approve the refund as recommended by staff.

Wells Fargo Dealer Services, Inc., 531603 (EA)

1-1-10 to 6-30-10, \$3,429,815.00

Action: Approve the refund as recommended by staff.

Nickelodeon Theatres, Inc., 470336 (GH)

7-1-05 to 12-31-08, \$122,068.13

Action: Approve the refund as recommended by staff.

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Daimlerchrysler Services North America, LLC, 447256 (OH)

1-1-02 to 12-31-05, \$5,923,431.35

Action: Approve the refund as recommended by staff.

Ari Fleet LT, 533834 (OH)

7-1-09 to 12-31-09, \$105,001.00

Action: Approve the refund as recommended by staff.

Verizon Wireless (VAW), LLC, 553324 (OH)

7-1-02 to 12-31-05, \$375,498.17

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

Owens & Minor Distribution, Inc., 390526 (OH)

4-1-02 to 12/31/05, \$276,301.02

Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 539494 (OH)

1-1-08 to 12-31-08, \$123,537.53

Action: Approve the refund as recommended by staff.

General Electric Company, 508976 (OH)

1-1-04 to 12-31-08, \$1,226,239.27

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

General Motors Acceptance Corporation, 399915 (OH)

1-1-04 to 12-31-06, \$4,971,192.69

Action: Approve the refund as recommended by staff.

The Sherwin-Williams Company, 487893 (OH)

4-1-04 to 3-31-07, \$313,435.92

Action: Approve the refund as recommended by staff.

All Good Pallets, Inc., 487612 (CH)

1-1-06 to 3-31-10, \$276,693.95

Action: Approve the refund as recommended by staff.

Casework Installations, Inc., 550186 (EH)

10-1-06 to 9-30-09, \$138,228.51

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 531606 (OH)

1-1-10 to 3-31-10, \$1,009,274.00

Action: Approve the refund as recommended by staff.

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Lobel Financial Corporation, 533199 (EA)

1-1-10 to 6-30-10, \$181,726.00

Action: Approve the refund as recommended by staff.

Doppelmayr CTEC, Inc., 479600 (OH)

4-1-06 to 12-31-08, \$115,012.00

Action: Approve the refund as recommended by staff.

Rockwell Automation, Inc., 496563 (OH)

4-1-06 to 12-31-06, \$113,538.28

Action: Approve the refund as recommended by staff.

American River Healthpro Credit Union, 480715 (KH)

4-1-08 to 3-31-09, \$164,987.28

Action: Approve the refund as recommended by staff.

California Coast Credit Union, 534189 (FH)

1-1-10 to 6-30-10, \$120,235.00

Action: Approve the refund as recommended by staff.

Transouth Financial Corporation, 533827 (OH)

1-1-10 to 6-30-10, \$1,010,613.00

Action: Approve the refund as recommended by staff.

Schools Financial Credit Union, 533817 (KH)

7-1-05 to 12-31-09, \$398,237.19

Action: Approve the refund as recommended by staff.

A-L Financial Corporation, 531607 (EA)

1-1-10 to 6-30-10, \$168,825.00

Action: Approve the refund as recommended by staff.

Automotive Funding Group, Inc., 443780 (EA)

4-1-07 to 12-31-09, \$1,336,730.07

Action: Approve the refund as recommended by staff.

Associates Housing Finance, LLC, 301089 (OH)

1-1-00 to 6-30-05, \$54,329.47

Action: Approve the refund as recommended by staff.

Financial Partners Credit Union, 518048 (AA)

7-1-06 to 6-30-08, \$140,996.18

Action: Approve the refund as recommended by staff.

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Satellite Tracking of People, LLC, 522667 (OH)

1-1-08 to 3-31-08, \$653,515.42

Action: Approve the refund as recommended by staff.

Yuasa Yi, Inc., 531035 (OH)

1-1-10 to 3-31-10, \$207,419.00

Action: Approve the refund as recommended by staff.

Wartsila North America, Inc., 533201 (OH)

1-1-10 to 3-31-10, \$114,776.00

Action: Approve the refund as recommended by staff.

PROPERTY TAXES MATTERS, CONSENT

With respect to the Property Taxes Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Petition for Reassessment of Private Railroad Car Tax

Basell USA, Inc. (5875), 550743

2010, \$1,657,359.00 Value

Action: Reduce the 2010 value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

The CIT Group/Capital Finance, Inc. (6260), 550554

2010, \$54,418,755.00 Value

Action: Reduce the 2010 value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

LEGAL APPEALS MATTERS, ADJUDICATORY

Kassem A. Mohamed and Munir Gazem Obaid, 535640 (ET)

May 11, 2010, \$435.00 Approximate Value

Considered by the Board: November 17, 2010

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

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

Bargain Cigarettes 1, 536568 (ET)

May 4, 2010, \$485.00 Approximate Value

Considered by the Board: November 17, 2010

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

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

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

Wayne G. Masten Revocable Inter-Vivos Trust, 472901

2003, \$3,407.25 Claim for Refund

Considered by the Board: May 25, 2010

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

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

Barbara Talalemotu, 475326

2007, \$180.00 Claim for Refund

Considered by the Board: April 13, 2010

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

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

Todd Lutwak, 482917

2005, \$43,295.50 Claim for Refund

Considered by the Board: May 25, 2010

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

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

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

Stars Petroleum, Inc., 547878 (FH)

1-1-05 to 9-30-08, \$1,900,755.14

Considered by the Board: November 17, 2010

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

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the credit and cancellation as recommended by staff.

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TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**PROPERTY TAX MATTERS****Audits**

Telescope Communications, Inc. (7907)

2007, \$490,000.00 Escaped Assessment

2008, \$420,000.00 Escaped Assessment

2009, \$300,000.00 Escaped Assessment

2010, \$770,000.00 Escaped Assessment

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit escaped assessment, as recommended by staff.

Paxio, Inc. (8042)

2007, \$442,000.00 Escaped Assessment, \$44,200.00 Penalties, \$145,860.00 In-lieu Interest

2008, \$694,000.00 Escaped Assessment, \$69,400.00 Penalties, \$166,560.00 In-lieu Interest

2009, \$774,000.00 Escaped Assessment, \$77,400.00 Penalties, \$116,100.00 In-lieu Interest

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

Unitary Escaped Assessments

U.S. South Communications, Inc. (7660)

2008, \$1,460,000.00 Escaped Assessment, \$146,000.00 Penalties

2009, \$1,100,000.00 Escaped Assessment, \$110,000.00 Penalties

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary escaped assessment plus penalties as recommended by staff.

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *2C Optics, Inc.*; *Jonathan S. Jose and City Spas*; *Manouchehr Sagart and Saga Enterprises*; *John Serino and Paramount Auto Parts*; *Kent C. Geyer II*; and, *Domenico Di Donato, Maria Bove and Di Donato International*; as recommended by staff.

The Board recessed at 11:00 a.m. and reconvened at 1:29 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

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SALES AND USE TAX APPEALS HEARINGS

Victor S. Baglio Jr., 473489 (UT)

9-22-07, \$17,632.00 Tax

For Petitioner:

Linda Baglio, Representative

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issue: Whether petitioner's purchase and use of the motor home is subject to California use tax.

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

David Harold Johnson, 451147 (KH)

1-1-01 to 6-30-01, \$9,911.45 Claim for Refund

For Claimant:

David Johnson, Taxpayer

Barbara Halperin, Representative

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

Issues: Whether claimant is personally liable as a responsible person for the unpaid liabilities of Chemtron International, Inc. (Chemtron) for the period January 1, 2001, to June 30, 2001.

Whether Chemtron should be granted relief from the late payment penalties that have been passed through to claimant as a responsible person.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the claim be submitted for decision.

Smoke Rings, Inc., 391126 (AR)

6-29-04 to 9-30-06, \$44,423.03 Tax, \$0.00 Penalty

Rami Michell Darghalli, 402639 (AR)

10-1-02 to 6-28-04, \$116,502.17 Tax, \$0.00 Penalty

Rami Michell Darghalli and Faiz Mohamed Munassar, 404172 (AR)

10-1-02 to 12-31-03, \$55,992.50 TAX, \$0.00 Penalty

For Petitioners:

Rami Michell Darghalli, Taxpayer

Patrick Finnegan, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether petitioner has established that it is entitled to additional allowance for theft loss.

Whether adjustments are warranted to the unreported taxable sales.

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

Wednesday, January 26, 2011

The Board recessed at 2:52 p.m. and reconvened at 3:00 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Kevin E. Jones, 534416

2006, \$965.10 Tax

For Appellant:

For Franchise Tax Board:

Waived Appearance

Sonia Deshmukh, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether the proposed assessment is barred by the statute of limitations.

Whether appellant has demonstrated error in the proposed assessment.

Whether appellant has demonstrated that interest should be abated.

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

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD JANUARY 26, 2011

Clovus M. Sykes, 529645

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JANUARY 26, 2011

Victor S. Baglio Jr., 473489 (UT)

Final Action: Upon motion of Ms. Yee, seconded by Mr. Horton and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

David Harold Johnson, 451147 (KH)

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

Smoke Rings, Inc., 391126 (AR)

Rami Michell Darghalli, 402639 (AR)

Rami Michell Darghalli and Faiz Mohamed Munassar, 404172 (AR)

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

Wednesday, January 26, 2011

The Board recessed at 3:21 p.m.

The foregoing minutes are adopted by the Board on April 27, 2011.

Note: The following matters were removed from the calendar prior to the meeting: *Karl H. Power and Natalie L. Power, 528570; Estate of Eva M. Lindskog (Dec'd), 466455; James Tracy and Therese Tracy, 505057; Juan Manuel Gallardo, 466120 (BH); Gerber Marital Trust (Non-Exempt), 513082; Gerber Marital Trust (Exempt), 513083; and, Gerber Marital Trust (Exempt), 513084.*

Thursday, January 27, 2011

The Board met at its offices at 450 N Street, Sacramento, at 11:18 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARING

William Brett Corbin, 434956 (EA)
4-4-04 to 9-30-04, \$24,075.58 Tax

For Petitioner: William Corbin, Taxpayer
For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether taxpayer is personally liable as a responsible person pursuant to Revenue and Taxation Code section 6829 for the late payment-penalty originally incurred by Network Catalyst, Inc.

Whether taxpayer has established reasonable cause sufficient for relieving the late-payment penalty originally assessed against NCI.

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

PETITION FOR RELEASE OF SEIZED PROPERTY

Jeff & Amy Incorporated, 547450 (ET)
June 16, 2010, \$468.85 Approximate Value

For Petitioner: Mary Mathew, Taxpayer
For Property and Special Taxes Department: Pamela Mash, 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. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

CHIEF COUNSEL MATTERS

RULEMAKING

Petition to Amend Property Tax Rule 462.160, *Change in Ownership – Trusts*

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the petition to amend Property Tax Rule 462.160, *Change in Ownership – Trusts*, which would add examples demonstrating that the termination of a life estate does not result in a change in ownership ([Exhibit 1.2](#)).

Speaker: Stephen Bennett, CPA, Letwak and Bennett

Thursday, January 27, 2011

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board denied the petition as recommended by staff.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 12:06 p.m. and reconvened at 1:32 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

Diane G. Olson, Chief, Board Proceedings Division, read the names of retirees listed below into the record.

With respect to the Administrative Matters, Consent Agenda, upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following order:

Action: Adopt the following resolutions, extending its sincere and grateful appreciation to the retirees for their dedicated service to the State Board of Equalization and to the State of California, their congratulations on each retiree's well-earned retirement, and best wishes to them and their families for continued success, happiness and good health in the years to come ([Exhibit 1.3](#)).

Maria Elisa Chang, Business Taxes Specialist I, Norwalk District Office
Pardip N. Dayaram, Business Taxes Specialist I, Norwalk District Office
Diane R. Fisher, Tax Technician II, San Diego District Office
Fe Marian Gonzales, Business Taxes Compliance Specialist, San Marcos District Office
Ronald (Ron) L. Helm, Associate Tax Auditor, Motor Carrier Office, Special Taxes and Fees Division, Headquarters
Patricia A. Johnson, Tax Technician III, San Diego District Office
Pamela Licon, Staff Information Systems Analyst (Specialist), Compliance and Technology Section, Tax Policy Division, Headquarters.
Alfredo (Al) D. Morales, Supervising Tax Auditor I, Riverside District Office

With respect to the Administrative Matters, Consent Agenda, upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner not participating, the Board made the following order:

Action: Approve the Board Meeting Minutes of September 14-15, 2010 and October 19-21, 2010.

Thursday, January 27, 2011

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**Legislative Committee**

Action: The Board deferred consideration of the Legislative Committee report to the February meeting.

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

Kristine Cazadd, Interim Executive Director, reported that the 2010 Holiday Food Drive has been completed and that the BOE was Number 1 out of all California State agencies this year with over 74,000 pounds raised by the BOE. Mark Sutter, Chair, 2010 Holiday Food Drive, read the names of the Vice Chairs into the record and thanked Kristine Cazadd, Ken Topper and Todd Gilman for their assistance. Jeremy Edwards, Vice Chair, 2010 Holiday Food Drive, provided some highlights of the campaign.

Kristine Cazadd, Interim Executive Director, made introductory remarks regarding the Board of Equalization's *Employee Recognition Award Program*. Cristina Herrera, Manager, and Peter Horton, Staff Information Systems Analyst, Strategic Analysis and Review, External Affairs Department, read the names of the award recipients and their achievements into the record ([Exhibit 1.4](#)).

Mr. Horton, on behalf of the Board, thanked the award recipients for their hard work and dedication.

Chief Counsel's Report

Randy Ferris, Acting Chief Counsel, introduced Randy Silva, Business Taxes Administrator, Investigations Division, Legal Department, who provided an update on the Investigations Division's enforcement against human trafficking. The presentation included new online training and coordinated guidance for BOE staff that may find indications of human trafficking during field calls. The training is available to other taxing agencies on DVD.

Sales and Use Tax Deputy Director's Report

Jeff McGuire, Deputy Director, Sales and Use Tax Department, provided an update on the progress of the Centralized Revenue Opportunity System (CROS) project to replace BOE's tax legacy technology systems, which included a high level time line for some key project milestones, staff's procurement strategy and some potential options for the Board to pursue in that regard ([Exhibit 1.5](#)).

David Gau, Deputy Director, Property and Special Taxes Department, reported the CROS project's administration and described the Steering Committee, Formal Project Team, Project Compact and other planning accomplishments.

Thursday, January 27, 2011

Anna Brannen, Chief Information Officer, Technology Services Department, reported the major activities staff will be undertaking in the near future and presented staff's recommendation regarding procurement for the CROS project.

Action: Ms. Yee moved to seek procurement delegation authority both through communication with the Governor's office and through the Legislature. The motion was seconded by Mr. Horton but no vote was taken.

Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board directed staff to pursue acquisition authority through the legislative process and to send a letter to the Governor requesting that he direct the Department of General Services to delegate acquisition authority to BOE for the CROS Project, as recommended by staff.

Jeff McGuire, Deputy Director, Sales and Use Tax Department, provided an update on the BOE's efforts for enhancing compliance in the motor vehicle industry and on the Consumer Motor Vehicle Recovery Fund (CMVRF) Database. Mr. McGuire and Members discussed initiatives to enhance compliance of the motor vehicle dealer industry, including cooperative efforts with the Department of Motor Vehicles (DMV), internal initiatives using enhanced and timely data from the DMV's CMVRF database and other potential solutions, including sales tax collection in conjunction with DMV registration fees and pre-collecting sales tax from auctioneers.

The Board directed staff to bring forward regular updates on joint initiatives and similar issues in the future so the Members are aware of new activities and accomplishments. Ms. Yee suggested agendaizing such matters for future meetings of the Customer Services and Administrative Efficiency Committee.

Administration Deputy Director's Report

Liz Houser, Deputy Director, Administration Department, provided an update on the Headquarters Remediation Project; an update on the Headquarters annex locations; and, an update on the site search to relocate the San Diego and San Marcos Offices.

Liz Houser, Deputy Director, Administration Department, provided an update on the Governor's 2010/11 and 2011/12 Budget and Union Agreements. The report included information on the impact of the Personal Leave Program 2010 on the Board's revenue collection efforts ([Exhibit 1.6](#)).

Ms. Steel directed staff to provide the Members budget numbers specific to the Statewide Compliance and Outreach Program.

Thursday, January 27, 2011

External Affairs Deputy Director's Report

Anita Gore, Deputy Director, External Affairs Department, provided an update on the 2011 Annual Outreach Plan and Budget, which includes a list of events/seminars and online projects for 2011, and a summary of outreach events and online seminar statistics for the 2010 calendar year ([Exhibit 1.7](#)).

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JANUARY 27, 2011

William Brett Corbin, 434956 (EA)

Final Action: Upon motion of Ms. Yee, seconded by Mr. Horton and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, 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 27, 2011

Jeff & Amy Incorporated, 547450 (ET)

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

Mr. Horton expressed his sympathy for the loss of several individuals and announced that the meeting will adjourn in memory of them at the end of the day.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 3:50 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CLOSED SESSION

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

The Board recessed at 5:17 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Mr. Horton announced the appointments of Christine Demes to the position of Chief, Administrative Support Division, Administration Department; and, Susanne Buehler to the position of Chief, Tax Policy Division, Sales and Use Tax Department.

Mr. Horton stated for the record that the Board concluded its business for this meeting, and that meeting day Friday, January 28, 2011, is therefore cancelled.

Thursday, January 27, 2011

The Board adjourned at 5:19 p.m. in memory of the following:

Chips Yamamoto, Mail Services, Administration Department, who passed away on Sunday, January 23, 2011, and who first started working for the State of California in the Board of Equalization's Cashiers' unit in July of 1996;

Arthur H. (Art) Weichbrodt, 47 year BOE employee, who passed away January 14, 2011, at his home in Rescue, California, at the age of 80 years old, and who worked for the State of California Board of Equalization as a sales tax auditor from 1964 to 1992 when he retired from full-time employment and then continued working for the Board part time as a retired annuitant until July of 2009, and who worked in Internal Security and Audit Division for the last ten years conducting refund audits of various units within the BOE; and,

Margot Anne (Becker) Veal, who passed away on January 8, 2011, and who was the mother of Mr. Horton's wife Yvonne. Margot was married to Benjamin Veal for 53 years. Benjamin passed away in October 2010.

The foregoing minutes are adopted by the Board on April 27, 2011.

Note: The following matter was removed from the calendar prior to the meeting: *Paul Glasson, 482541 (CH)*.