

Tuesday, January 31, 2012

The Board met at its offices at 5901 Green Valley Circle, Culver City at 9:30 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 HEARINGS

Fidelity Asset Management, Inc., 358657 (OH)

7-1-02 to 6-30-05, \$246,357.78 Claim for Refund

For Claimant:

Jim Fier, Representative

Joseph A. Vinatieri, Attorney

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issue: Whether claimant is entitled to a refund of sales tax it paid on leases of tangible personal property to an insurance company.

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.

Vladimir Rodzai, 461627 (AS)

1-4-99 to 6-10-04, \$405,290.19 Tax, \$101,322.65 Fraud Penalty, \$67,038.87 Amnesty Double Fraud Penalty

For Petitioner:

Nate Holden, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issue: Whether petitioner is personally liable as a responsible person for the unpaid liabilities incurred by Frangi's Restaurant, Inc., while the corporation was suspended.

Kevin Hanks, Chief, Headquarters Operations Division, Sales and Use Tax Department, recommended the petition be granted based on new information of a data entry error at the Secretary of State which erroneously stated taxpayer's corporation was suspended.

Action: 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 ordered that the petition be granted and the liabilities canceled.

Frangi's Restaurant, Inc., 433581 (AS)

1-1-98 to 9-30-06, \$177,036.72 Tax, \$191,613.21 Fraud Penalty, \$79,477.77 Amnesty Double Fraud Penalty

For Petitioner:

Nate Holden, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Whether the Department has established fraud by clear and convincing evidence.
Whether relief of the amnesty penalties is warranted.

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Action: 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 ordered that the petition be submitted for decision.

Vincent Millhouse, 434901, 450539 (AS)

1-1-05 to 7-10-06, \$11,383.02 Tax, \$1,138.31 Negligence Penalty

4-1-04 to 12-31-04, \$9,497.00 Tax, \$947.90 Failure to File Penalty, \$928.82 Finality Penalty

Vincent Millhouse and Lisa Denise Smith, 434902 (AS)

7-11-06 to 12-31-06, \$5,819.09 Tax, \$680.91 Negligence Penalty

For Petitioners/Taxpayer: Vincent Millhouse, Taxpayer

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

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

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

Whether petitioners were negligent for the periods January 1, 2005, through July 10, 2006, and July 11, 2006, through December 31, 2006.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner 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.

Glenn Alan Olson and Sheila Olson, 475832 (KH)

7-1-04 to 6-30-07, \$40,612.83 Tax, \$0.00 Penalty

For Petitioner: Glenn Olson, Taxpayer

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.

Whether petitioner is entitled to a reduction in taxable measure for exempt sales to Indians on Indian reservations.

Action: 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 ordered that the petition be submitted for decision.

Team Post-Op, Inc., 447342, 448811(EA)

4-1-03 to 3-31-06, \$64,614.23 Tax

For Petitioner/Claimant: Jeffrey Salamon, Taxpayer

Patrick Leone, Representative

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

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

Issue: Whether petitioner's leases of Game Ready units and sales of Cold Therapy units qualify as exempt transactions.

Action: 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 ordered that the petition be submitted for decision.

The Board recessed at 1:06 p.m. and reconvened at 2:18 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

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Carlos Martin Escobar, 473069 (EH)

1-1-04 to 6-30-07, \$42,277.53 Tax

For Petitioner:

Carlos Escobar, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether adjustments are warranted to the amount of disallowed claimed exempt sales of food.

Whether adjustments are warranted to the understatement of reported taxable sales established on a markup basis.

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.

TJ's Metal Mfg., Inc., 469958 (AA)

1-1-04 to 6-30-07, \$741,331.47 Tax, \$74,133.17 Negligence Penalty

For Petitioner:

Jose A. Gallegos, Taxpayer

Rodrigo F. Dulfo, Representative

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issues: Whether petitioner has established that any of the unreported purchases of fixed assets or supplies are not subject to use tax.

Whether petitioner has established that an adjustment is warranted to the unreported taxable sales.

Whether petitioner has established that an additional adjustment is warranted for unclaimed bad debt deductions.

Whether petitioner was negligent.

Whether interest has been correctly calculated.

Kevin Hanks, Chief, Headquarters Operations Division, Sales and Use Tax Department, recommended that unreported taxable purchases of supplies be reduced to \$25,000 per year.

Action: 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 ordered that the petition be submitted for decision.

Brandi R. Paris, 423064, 491278 (EA)

10-1-02 to 12-31-05, \$51,397.61 Tax

For Petitioner/Claimant:

Brandi Paris, Taxpayer

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether petitioner has established that her sales of aqua therapy pumps were exempt sales of medicines.

Whether petitioner has established that she is entitled to relief of interest.

Whether petitioner is entitled to a refund of any of the amounts paid.

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Action: Upon motion of Ms. Yee, seconded by Mr. Runner 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.

Mohammad Honarkar, 482560 (EA)

10-1-04 to 7-31-05, \$0.00 Tax, \$12,190.60 Late Payment/filing and EFT Penalty, \$1,200.00 Late Prepayment Penalty, \$3,360.90 Failure to File Prepayment Penalty, \$12,670.00 EFT Penalty, \$37.30 Finality Penalties.

For Petitioner: Mohammad Honarkar, Taxpayer

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

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

Issue: Whether relief of penalties is warranted.

Action: 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 ordered that the petition be submitted for decision.

Jeff Block, 447296 (EH)

7-1-06 to 6-30-07, \$3,684.00 Tax, \$368.40 Failure-to-File Penalty

For Petitioner: Jeff Block, Taxpayer

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 amount of unreported sales.

Whether relief of the failure-to-file penalty is warranted.

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.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Karlen Antonyan, 472389 (AC)*; *Jeffrey R. Marshall, 466197 (AS)*; and, *Phillip C. Strickland, 480561 (UT)*.

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

Stromberg Tanks International, 489648 (FH)

1-1-04 to 6-30-07, \$43,317.33 Tax, \$3,422.64 Negligence Penalty, \$909.10 Failure-to-File Penalty

Action: Redetermine as recommended by the Appeals Division.

Karlen Antonyan, 472389 (AC)

11-25-04 to 7-31-07, \$159,275.15 Tax, \$0.00 Penalty

Action: The Board took no action.

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Jeffrey R. Marshall, 466197 (AS)

1-1-04 to 3-14-05, \$35,219.89 Tax, \$4,216.80 Late Payment Penalties, \$841.00 Failure-to-File Penalty, \$841.00 Finality Penalty

Action: The Board took no action.

C.D.H.S. Group, Inc., 506013 (EA)

7-1-05 to 6-30-08, \$98,875.76 Tax, \$9,944.45 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division

Ana Patricia Cambara, 522216 (EA)

4-1-06 to 6-30-09, \$12,486.50 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Tres Hermanos, Inc., 483570 (AA)

4-1-05 to 6-30-08, \$631,773.87 Tax, \$63,177.39 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Revolution Supply Co., Inc., 470538 (EA)

1-1-04 to 12-31-06, \$0.00 Tax, \$3,101.12 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Phillip C. Strickland, 480561 (UT)

5-3-06 to \$5,510.00 Tax

Action: The Board took no action.

HPTV, Inc., 512899 (EA)

4-1-05 to 3-31-08, \$222,679.24 Tax, \$22,267.95 Negligence Penalty, \$22,217.92 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Ramiro Romero Garcia, 520564 (EA)

4-1-06 to 6-30-09, \$11,719.01 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Carl Marantz and Nelly Marantz, 472797 (EA)

4-1-05 to 3-31-08, \$373,105.16 Tax, \$37,310.51 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

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:

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Debrah Barnett, 553219

2006, \$857.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Brian K. Bates, 512076

2008, \$636.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Sasha Esposito, 519276

2007, \$354.00 Proposed Assessment

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

Victor L. Hall and Judith N. Okolie Hall, 534748

2006, \$1,204.00 Tax

Action: Modify the action of the Franchise.

Eufrancio L. Tugaff, 539300

2005, \$696.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Michael Aidan, 522049

2005, \$3,673.00 Tax, \$734.60 accuracy-related Penalty

Action: Deny the petition for rehearing.

Eric B. Davis, 496009

2005, \$3,399.00 Tax, \$849.75 Late Filing Penalty

Mary E. Davis, 512638

2005, \$3,399.00 Tax, \$849.75 Late Filing Penalty

Action: Deny the petition for rehearing.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTY
AND DENIAL OF CLAIM FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalty and Denial of Claim for Refund, 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, the Board made the following orders:

Ralphs Grocery Company, 510404 (AA)

5-27-02 to 5-22-05, \$1,629,588.08

Action: Approve the redetermination as recommended by staff.

Accurel Systems Intl Corp., 509979 (GH)

10-1-05 to 5-1-07, \$177,811.49

Action: Approve the redetermination as recommended by staff.

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Warren E. Munday, 442766 (AC)

4-1-01 to 3-31-04, \$179,492.17

Action: Approve the redetermination as recommended by staff.

Rubbermaid Incorporated, 562925 (OH)

10-1-06 to 9-30-09, \$108,588.46

Action: Approve the redetermination as recommended by staff.

Nextel Systems Corp., 595141 (OH)

10-1-10 to 12-31-10, \$177,164.70

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

Ally Financial, Inc., 492605 (OH)

10-1-06 to 12-31-08, \$1,847,461.00

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. 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 *Barclays Global Investors, NA, 561481 (BH)*, the Board made the following orders:

Queen Beach Printers, Inc., 531309 (EA)

1-1-07 to 12-31-09, \$145,661.87

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 559356 (BH)

1-1-08 to 6-30-10, \$6,090,990.11

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 535862 (BH)

1-1-07 to 12-31-09, \$245,662.72

Action: Approve the refund as recommended by staff.

Jamac Steel, Inc., 569321 (EH)

10-1-09 to 12-31-09, \$135,859.00

Action: Approve the refund as recommended by staff.

BMW of North America, 594792 (OH)

9-23-11 to 9-23-11, \$294,351.00

Action: Approve the refund as recommended by staff.

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Ally Financial, Inc., 492605 (OH)

10-1-06 to 12-31-08, \$7,932,209.33

Action: Approve the refund as recommended by staff.

A-L Financial Corp., 578287 (EA)

4-1-11 to 9-30-11, \$131,137.00

Action: Approve the refund as recommended by staff.

Sun Community Federal Credit Union, 505010 (FH)

4-1-06 to 3-31-09, \$635,881.24

Action: Approve the refund as recommended by staff.

Conagra Foods Pkgd. Foods Co., Inc., 571331 (OH)

1-1-10 to 12-31-10, \$144,213.03

Action: Approve the refund as recommended by staff.

Barclays Global Investors, NA, 561481 (BH)

7-1-07 to 9-30-07, \$202,406.46

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

AMC Mortgage Services, Inc., 588286 (EA)

1-1-07 to 9-30-07, \$450,676.09

Action: Approve the refund as recommended by staff.

Alexander Bouzari, 578643 (AS)

7-14-06 to 6-30-08, \$141,046.02

Action: Approve the refund as recommended by staff.

The Board recessed at 3:47 p.m. and reconvened at 4:03 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JANUARY 31, 2012

Fidelity Asset Management, Inc., 358657 (OH)

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

Frangi's Restaurant, Inc., 433581 (AS)

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.

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Vincent Millhouse, 434901, 450539 (AS)

Vincent Millhouse and Lisa Denise Smith, 434902 (AS)

Final Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered a reduction in the average sales price of trees to \$19.00, an increase in spoilage to 30 percent, an allowance of 10 percent for self consumption by charitable donations, and 50 trees sold for resale. The Board directed staff to inform the taxpayer about the Offer in Compromise Program

Glenn Alan Olson and Sheila Olson, 475832 (KH)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Runner 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. The Board further ordered that the Department be allowed 60 days to investigate whether Ms. Sheila Olson was a partner in the business, before the matter becomes final.

Charlie Lee, 497366, 572712 (AS)

7-1-05 to 6-30-08, \$51,599.70 Tax

3-7-11 to 5-3-11, \$22,500.00 Claim for Refund

For Taxpayer/Claimant: Waived Appearance

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

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

Issue: Whether taxpayer is liable as a successor for the unpaid tax liabilities of A's Royal Petroleum Corporation.

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 no further adjustment be made in the administrative protest and that the claim for refund be denied as recommended by the Appeals Division.

Team Post-Op, Inc., 447342, 448811(EA)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel 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.

Carlos Martin Escobar, 473069 (EH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel 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. The Board directed staff to inform the taxpayer about the Offer in Compromise Program.

TJ's Metal Mfg., Inc., 469958 (AA)

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

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Brandi R. Paris, 423064, 491278 (EA)

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

Mohammad Honarkar, 482560 (EA)

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. The Board directed staff to inform the taxpayer about the Offer in Compromise Program.

Jeff Block, 447296 (EH)

Final Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the allowance for tax-paid purchases resold be increased from 1 percent to 5 percent, and that the petition otherwise be redetermined as recommended by the Appeals Division.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 4:19 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 4:38 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel and Mr. Runner present.

The Board adjourned at 4:40 p.m.

The foregoing minutes are adopted by the Board on May 31, 2012.

Note: The following matters were removed from the calendar prior to the meeting: *East Coast Foods, Inc., 444779 (AS); Sunburst Maintenance Co., Inc., 421808 (AP); D and L Wireless, Inc., 535814 (EA); Kamal Noorzady, 509930 (EH); and, Zoba International Corp., 434591 (EH).*

Wednesday, February 1, 2012

The Board met at its offices at 5901 Green Valley Circle, at 9:32 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 HEARINGS

William Blaine Riggle, 417558, 417559 (FH)
 7-1-01 to 8-31-04, \$1,486,812.21 Tax, \$175,483.58 Late-Payment Return Penalties, \$24,321.98 Late-Prepayment Penalties, \$6,279.60 Payment-Made-After-the-Quarter Penalties, \$55,196.35 EFT Prepayment Penalties, \$3,988.32 Estimated Prepayment Penalty, \$10,789.47 EFT Penalties, \$11,855.37 Amnesty Interest Penalties, \$9.91 Finality Penalty
 4-1-04 to 7-31-04, \$25,040.46 Tax, \$3,391.20 Late-Payment Return Penalty, \$234.75 Late Prepayment Penalty

For Petitioner: William Blaine Riggle, Taxpayer
 Mitchell B. Dubick, Attorney

For Sales and Use Tax Department: Scott Claremon, Tax Counsel

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

Issue: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of 21st Century Oil Corporation and 21st Century Oil-Front Company dba ARCO AM/PM pursuant to Revenue and Taxation Code section 6829.

Action: 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 ordered that the petition be submitted for decision.

America Wood Finishes, Inc., 460325 (AA)
 4-1-03 to 12-31-06, \$0.00 Tax, \$13,869.59 Negligence Penalty

For Petitioner: Jesus J. Mejia, Representative

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

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

Issue: Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner 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.

Massoud Khazaie, 459689 (AR)
 4-1-05 to 3-31-08, \$86,311.64 Tax, \$0.00 Penalty

For Petitioner: Massoud Khazaie, Taxpayer

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

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

Issues: Whether adjustments are warranted to the amount of unreported sales of gasoline.
 Whether relief of interest is warranted.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner 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.

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The Board recessed at 11:32 a.m. and reconvened at 11:42 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Nnadi Linus Udengwu, 515515 (AP)

4-1-05 to 6-30-08, \$197,977.38 Tax, \$19,797.79 Negligence Penalty

For Petitioner: Nnadi Udengwu, Taxpayer
Cosmas Udengwu, Witness

For Sales and Use Department: Scott Lambert, Hearing Representative

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

Issues: Whether petitioner has established that the audited measure of tax liability includes nontaxable sales for resale or exempt sales in foreign commerce.

Whether petitioner was negligent.

Action: 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 ordered a reaudit.

Kimberly Shena Grigsby, 442731 (UT)

8-12-04, \$1,495.00 Tax, \$0.00 Penalty

For Petitioner: Kimberly Grigsby, Taxpayer

For Sales and Use Tax Department: Pamela Mash, Tax Counsel

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

Issues: Whether petitioner's purchase and use of the vehicle is subject to use tax.

Whether relief of interest is warranted.

Action: 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 ordered that the petition be submitted for decision.

The Board recessed at 12:36 p.m. and reconvened at 1:53 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Tho Phuoc Pham, 509278 (AP)

1-1-05 to 2-29-08, \$9,698.38 Tax

For Petitioner: Tom Pham, Representative

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

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

Issue: Whether additional adjustments to audited taxable sales are warranted.

Action: 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 ordered that the petition be submitted for decision.

Marcelo Co., 485816 (EH)

4-1-04 to 6-30-07, \$8,995.61 Tax, \$899.53 Negligence Penalty

For Petitioner: Nate Green, Representative

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

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

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Issues: Whether adjustments are warranted to the amount of unreported sales.
Whether petitioner was negligent.

Action: 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 ordered that the petition be submitted for decision.

Thomas L. White, 476399 (AS)

4-1-02 to 10-31-02, \$12,931.81 Tax, \$297.50 Late Payment Penalty, \$1,765.60 Failure-to-File Penalties, \$1,765.60 Finality Penalty

For Petitioner: Nate Green, Representative
For Sales and Use Tax Department: Erin Dendorfer, Tax Counsel

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

Issues: Whether adjustments are warranted to the amount of unreported taxable sales.
Whether relief of the late payment, failure-to-file, and finality penalties is warranted.

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.

SPECIAL TAXES APPEALS HEARINGS

Eric Anthony Guidice, 380212 (ET)

6-1-00 to 11-30-05, \$113,308.49 Tax, \$8,030.29 Failure-to-File Penalty

For Petitioner: Eric Anthony Guidice, Taxpayer
James Han, Representative

For Property and Special Taxes Department: Pamela Mash, Tax Counsel

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

Issues: Whether petitioner is liable for the tax on his purchases and subsequent distribution of untaxed tobacco products.

Whether relief of the failure-to-file penalty is warranted.

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.

Malvinder Sonny Matharu, 515190 (MT)

7-1-06 to 12-31-08, \$14,065.97 Fees

For Petitioner: Malvinder S. Matharu, Taxpayer
Paiygal S. Matharu, Witness

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

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

Issue: Whether petitioner is liable for the fees assessed.

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.

Wednesday, February 1, 2012

The Board recessed at 4:00 p.m. and reconvened at 4:11 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
FEBRUARY 1, 2012**

John A. Bart, 462215 (EH)

4-1-06 to 6-15-07, \$15,058.17 Tax, \$2,603.80 Late Payment Penalty, \$19.60 Finality Penalty

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Andrew Kwee, Tax Counsel

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

Issue: Whether petitioner is liable as a responsible person for the unpaid liabilities of Premier Billiards and Design pursuant to Revenue and Taxation Code section 6829.

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.

Ms. Mandel requested staff to ensure that all payments are correctly credited.

America Wood Finishes, Inc., 460325 (AA)

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.

Timothy O. Finnerty, 417833 (EH)

7-1-04 to 3-23-05, \$0.00 Tax, \$234.75 Failure to Make Prepayment Penalty, \$2,878.40 Late Payment of Returns Penalty

Timothy O. Finnerty and 21st Century Oil-Front Company, 417777 (EH)

8-24-04 to 7-20-05, \$88,163.33 Claim for Refund

For Petitioner/Claimants: Waived Appearance

For Sales and Use Tax Department: Scott Claremon, Tax Counsel

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

Issues: Whether petitioner has established that a refund is warranted because payments made with personal funds were misapplied to the corporation's past liabilities.

Whether petitioner has established reasonable cause to relieve the penalties incurred by Front that have been passed through to petitioner as a responsible person.

Action: 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 ordered that the petition be redetermined as recommended by the Appeals Division.

Wednesday, February 1, 2012

William Blaine Riggle, 417558, 417559 (FH)

Final 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 ordered that the liabilities owed by 21st Century Oil Company that became due prior to the death of the corporation's president on May 25, 2004, be removed, and that the petition otherwise be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer about the Offer in Compromise Program.

Massoud Khazaie, 459689 (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.

Kimberly Shena Grigsby, 442731 (UT)

Final Action: Ms. Steel moved that the petition be granted. The motion was seconded by Mr. Runner but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that interest be removed, and that the petition otherwise be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer about the Offer in Compromise Program.

Tho Phuoc Pham, 509278 (AP)

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.

Marcelo Co., 485816 (EH)

Final Action: 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 ordered that the petition be redetermined as recommended by the Appeals Division.

Thomas L. White, 476399 (AS)

Final Action: 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 ordered that the petition be redetermined as recommended by the Appeals Division.

FINAL ACTION ON SPECIAL TAXES APPEALS HEARINGS HELD FEBRUARY 1, 2012

Eric Anthony Guidice, 380212 (ET)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Steel 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, allowing the Department 60 days to obtain further information regarding sales by General exchanged or transferred in California.

Wednesday, February 1, 2012

Malvinder Sonny Matharu, 515190 (MT)

Final Action: Upon motion of Mr. Runner, seconded by Ms. Steel 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, 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 parties' submissions and provide its recommendation to the Board.

The Board adjourned at 4:38 p.m.

The foregoing minutes are adopted by the Board on May 31, 2012.

Note: The following matters were removed from the calendar prior to the meeting: *Russell Guerard West, 489130 (UT); Deanna Robinson Interiors, Inc., 519485 (EA); DK Supplies, Inc., 509933 (EA); and, Max Express, Inc., 464061.*

Thursday, February 2, 2012

The Board met at 5901 Green Valley Circle, Culver City at 9:09 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.

2010/2011 EMPLOYEE RECOGNITION AWARD PROGRAM

Mr. Horton made introductory remarks regarding the Board of Equalization's *2010/2011 Employee Recognition Award Program*. The Members thanked recipients from the Southern California and Out of State District Offices for their dedication and commitment to the organization. They congratulated recipients for their outstanding job performance and for being exceptional people who have done an exceptional job for the State of California. Cristina Herrera, Staff Services Manager III, Executive Projects & Services Section, External Affairs Department, read the names of the award recipients and their achievements into the record.

The Board recessed at 9:35 a.m. and reconvened at 9:45 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

ADMINISTRATIVE SESSION

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee January 11, 2012

Action: 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 approved the Legislative Committee report and the actions therein ([Exhibit 2.1](#)).

Exhibits to these minutes are incorporated by reference.

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Jeffrey McGuire, Deputy Director, Sales and Use Tax Department, provided a report on the progress of the CROS project to replace BOE's two current tax legacy technology systems.

Ms. Yee requested staff to continue providing monthly updates.

Sales and Use Tax Deputy Director's Report

Jeffrey McGuire, Deputy Director, Sales and Use Tax Department, provided a report on the Qualified Purchaser Program Procedures.

The Board directed staff to provide a cost benefit analysis for the program.

Thursday, February 2, 2012

The Board recessed at 9:59 a.m. and reconvened at 10:07 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Comcast Cablevision Corporation of California, Taxpayer, and Comcon Production Services I, Inc., Assumer, 424198

1998, \$930,962.00 Tax

1999, \$9,738,793.00 Tax, \$1,544,728.00 Accuracy Penalty

For Appellants:

Larry Smith, Witness

Bill Costello, Witness

John Alchin, Witness

Neal Grabell, Witness

Jon A. Sperring, Representative

Jeffrey A. Friedman, Attorney

For Franchise Tax Board:

Jeffrey Margolis, Tax Counsel

Carl Joseph, Tax Counsel

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

Issues: Whether a payment of \$1.5 billion received by appellant from MediaOne as a termination fee in connection with an Agreement and Plan of Merger (Agreement) between the parties in 1999 constitutes appropriate business income of appellant.

Whether appellant has shown that respondent erroneously concluded that appellant was unitary with QVC, Inc. (QVC) in 1998 and 1999 and subject to combined reporting.

Whether the appellant has shown that respondent erroneously disallowed appellant's dividends received deduction for tax year 1999.

Whether appellant has shown that the accuracy-related penalty for tax year 1999 was not properly imposed.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 2.2](#))

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 2.3](#))

The Board recessed at 12:05 p.m. and reconvened at 12:17 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

The Board recessed at 2:17 p.m. and reconvened at 2:28 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

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.

The Board recessed at 2:40 p.m. and reconvened at 3:29 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Thursday, February 2, 2012

Leo R. Boese, 547667

2007, \$250,206.00 Claim for Refund

For Appellant:

Leo R. Boese, Taxpayer
Jay Larsen, Representative
Victor Kawana, Representative
Ann H. Hodges, Tax Counsel
Bill Hilson, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether appellant has shown respondent erred in denying his claim for refund based upon an asserted qualified small business stock (QSBS) transaction.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 2.4](#))

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 ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

Donald L. Maxted and Jan E. Maxted, 558105

2007, \$96,940.00 Claim for Refund

For Appellants:

Diedre Kruse, Representative
Robert E. James, Witness
Faustino J. Medina, Representative
AnneElise P. Goetz, Attorney
Raul Escatel, Tax Counsel
Bill Hilson, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether appellants have shown that they are entitled to a casualty loss under Internal Revenue Code (IRC) section 165(c)(3).

Action: 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 submitted the appeal for decision.

Citation Development Company, 567630

2003, \$39,145.75 Claim for Refund

For Appellant:

Steve McNulty, Representative
Nancy E. Parker, Tax Counsel
Karen Smith, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether appellant demonstrated reasonable cause to abate the late filing penalty.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 2.5](#))

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

Thursday, February 2, 2012

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD FEBRUARY 2, 2012**

Comcast Cablevision Corporation of California, Taxpayer, and Comcon Production Services I, Inc., Assumer, 424198

Final Action: Mr. Runner moved to reverse the action of the Franchise Tax Board as to the termination fee. The motion was seconded by Ms. Steel but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board sustained the action of the Franchise Tax Board as to the termination fee.

Mr. Runner moved to reverse the action of the Franchise Tax Board in determining that the appellant was unitary with QVC, Inc., in 1998 and 1999 and subject to combined reporting. The motion was seconded by Ms. Steel but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

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 in disallowing the dividends received deduction.

Upon motion of Mr. Runner, seconded by Ms. Steel and duly carried, Mr. Horton, Ms. Steel, Mr. Runner and Ms. Mandel voting yes, Ms. Yee voting no, the Board reversed the action of the Franchise Tax Board as to the accuracy-related penalty on the grounds of reasonable cause and good faith.

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 sustained the action of the Franchise Tax Board in determining that the appellant was unitary with QVC, Inc., in 1998 and 1999 and subject to combined reporting.

Donald L. Maxted and Jan E. Maxted, 558105

Final Action: Upon motion of Mr. Runner, seconded by Ms. Steel and duly carried, Mr. Horton, Ms. Steel, Mr. Runner and Ms. Mandel voting yes, Ms. Yee voting no, the Board reversed the action of the Franchise Tax Board.

Citation Development Company, 567630

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board sustained the action of the Franchise Tax Board.

The Board adjourned at 6:51 p.m.

The foregoing minutes are adopted by the Board on May 31, 2012.

Note: The following matters were removed from the calendar prior to the meeting: *Thomas E. Rubin, 461570; Reginald D. Davis and Rebecca J. Joslin-Davis, 534788; Wilson Montevilla, 550849; Shirley A. Tolela, 522393; Michael Zapara and Gina Zapara, 252128; Applied Companies, 526527; and, Richard H. Levin and Linda D. Levin, 571155.*