

Tuesday, February 3, 2009

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

Raymond David Boyda, 349462 (CH)

1-1-02 to 9-7-04, \$49,651.38 Tax, \$1,134.60 Late Payment Penalty, \$4,771.00 Nonremittance Return Penalty, \$972.60 Failure to File Penalty, \$972.60 Failure to Pay Penalty, \$600.92 Amnesty Interest Penalty

For Appellant:

Raymond David Boyda, Taxpayer

For Sales and Use Tax Department:

Robert Tucker, Tax Counsel

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

Issues: Whether petitioner is liable as a responsible person for tax liabilities incurred by Digital Universe, Inc. from January 1, 2002 to September 7, 2004, while Digital was suspended.

Whether the March 14, 2006 notice of determination issued to petitioner as a responsible person for Digital's unpaid liabilities was timely for the period January 1, 2002 to December 31, 2002.

Whether petitioner's personal liability for Digital's unpaid taxes was discharged in bankruptcy.

Whether the late-payment, failure-to-file, and finality penalties assessed against Digital should be relieved as to petitioner.

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

Yohannes Kahsai, 426226 (GH)

1-1-04 to 12-31-06, \$12,741.71 Tax, \$1,274.19 Penalty

For Appellant:

Yohannes Kahsai, Taxpayer

Amanda Vassigh, Attorney

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether the Sales and Use Tax Department has accurately computed petitioner's taxable sales.

Whether petitioner was negligent.

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

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PUBLIC HEARINGS**Property Taxes - State Assessee's Presentations on Capitalization Rates and Other Factors Affecting Values**

Ken Thompson, Principal Property Appraiser, State Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding the state assessee's presentations on capitalization rates, other factors and procedures affecting 2009-10 property values of California public utilities, railroads and pipelines; and, private railroad car assessee's presentations on factors and procedures affecting 2009-10 taxable values of private railroad cars (Exhibit 2.1).

Speakers: Justin Hyland, Calpine Corporation
Peter W. Hladek, Thomson Property Tax Services
Fred Vance, Calpine Corporation
Peter W. Michaels, Law Offices of Peter Michaels

Mr. Leonard directed staff to include in the summaries the following information: give choices by providing a range or band in the analysis of the cap rate and not just hard numbers; have a comparison band of companies that are regulated versus non regulated and should that be impossible due to lack of data, then it should be stated; and, reflect the entire appeals process so to have one document that includes both positions and their arguments.

Ms. Yee additionally directed staff to have early engagement with the assessee so the summaries are distributed timelier with all attachments.

Exhibits to these minutes are incorporated by reference.

Sales and Use Tax Regulation 1591, *Medicines and Medical Devices*

Robert Tucker, Tax Counsel, Business Taxes Division, Legal Department, made introductory remarks regarding the proposed amendments to clarify the application of tax to sales of interdependent external and internal components of permanently implanted devices (Exhibit 2.2).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Leonard, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendments.

LEGAL APPEALS MATTERS, CONSENT

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

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Michael Richard Luna, 356507 (KH)

1-1-02 to 12-31-04, \$8,688.31 Tax, \$1,066.41 Amnesty Interest Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Bass Industries, Inc., 398659 (OH)

1-1-03 to 12-31-05, \$3,469.22 Tax

Action: Redetermine as recommended by the Appeals Division.

Oasys Telecom, Inc., 325640 (CH)

10-1-01 to 3-31-04, \$42,184.55 Tax, \$238.76 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

DMJ Corporation, 208179 (OH)

1-1-02 to 9-30-02, \$12,591.00 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Bakal Company Limited Partnership, 395917; Royce A. Barrett, 414668; Thomas A. Bladow, 374589; and, Leah Lukrich, 391844.*

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

Frederick Adams, 362547

1997, \$3,778.00 Assessment, \$755.60 Penalty

1998, \$17,417.00 Assessment, \$3,483.40 Penalty

1999, \$24,090.00 Assessment, \$4,818.00 Penalty

Action: Sustain the action of the Franchise Tax Board.

Heidi R. Adams, 421272

2001, \$3,172.38 Assessment

2002, \$25,167.37 Assessment

Action: Reverse the action of the Franchise Tax Board.

Bakal Company Limited Partnership, 395917

2004, \$400.00 Claim for Refund

Action: The Board took no action.

Royce A. Barrett, 414668

1983, \$4,973.00 Tax, \$1,244.00 Late Filing Penalty

1984, \$9,677.00 Tax, \$2,419.25 Late Filing Penalty

Action: The Board took no action.

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Thomas A. Bladow, 374589
2004, \$1,060.00 Assessment
Action: The Board took no action.

Lisel S. Brunson, 423298
2004, \$438.00 Assessment
Action: Sustain the modified action of the Franchise Tax Board.

Glenda R. Ribeiro Carvalho, 395922
2001, \$5,000.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Elizabeth Espinoza, 417818
2006, \$525.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Donald Gilchrist, 283962
1998, \$8,613.82 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Keith E. Karam, 396547
2000, \$9,798.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Leah Lukrich, 391844
2003, \$1,367.00 Assessment
Action: The Board took no action.

Cynthia Majors, 308191
1987, \$7,381.89 Assessment
Action: Sustain the action of the Franchise Tax Board.

Harapanahalli Mallareddy and Sundra Reddy, 395820
2000, \$1,649.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Elnorse McLemore and Kimberly McLemore, 378036
2001, \$85,632.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Freweyni Meles, 300214
1999, \$686.48 Innocent Spouse Relief
Action: Sustain the action of the Franchise Tax Board.

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Polacheck & Associates, Inc., 397157

2005, \$161.83 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Diane M. Reznik, 397972

2003, \$1,076.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Russell M. Rick, 414672

1999, \$2,064.00 Assessment, \$265.94 Post-Amnesty Penalty, \$101.95 Accuracy Related Penalty

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

Laurie Van Den Bosch, 311123

1996, \$15,333.00 Tax, \$11,499.75 Fraud Penalty

1997, \$6,557.00 Tax, \$4,917.75 Fraud Penalty

Action: Sustain the action of the Franchise Tax Board.

Craig A. Cook, 406121

2003, \$5,283.00 Tax, \$1,320.75 Penalties, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Roger Romero, 397740

2002, \$5,485.00 Tax, \$1,371.25 Late Filing Penalty, \$332.33 Post-Amnesty Penalty, \$5,000.00

Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Francelle Vercher, 417995

2005, \$3,146.00 Tax, \$1,573.00 Penalties, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Elmer E. Lawton and Margaret A. Deal, 417832

2003, \$249.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Marla D. Shannon, 424614

2005, \$331.00 Tax, \$100.00 Late Filing Penalty, \$86.50 Notice and Demand Penalty, \$125.00

Filing Enforcement Fee

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

Carrie Jeanne Babcock, 400565

2005, \$2,275.67 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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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 Dr. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Sandra Benham, 378355

2006, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Larisa Eganova, 383257

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Christopher Eggleston, 381608

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Ruben Garcia, 394091

2006, \$349.00

Action: Sustain the action of the Franchise Tax Board.

Olivia Olson, 415851

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Sheila D. Silas, 394097

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Paul Strigari, 399403

2006, \$1,490.00

Action: Sustain the action of the Franchise Tax Board.

Kim Vu, 386857

2006, \$1.00 or more

Action: Dismiss the appeal due to lack of jurisdiction.

Willis Q. Zho, 422903

2005 to 2007, \$470.00

Action: Sustain the action of the Franchise Tax Board.

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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. Steel, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Hines Nurseries, Inc., 355536 (EA)

1-1-02 to 3-31-05, \$207,572.24

Action: Approve the redetermination as recommended by staff.

Fresno Truck Center, 354606 (KH)

1-1-02 to 12-31-04, \$68,960.40

Action: Approve the redetermination as recommended by staff.

County of Los Angeles Auditor, 463990 (AA)

10-1-01 to 6-30-05, \$68,964.24

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

Union Pacific Railroad Company, 467723 (OH)

1-1-99 to 9-30-02, \$463,537.61

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

Lockheed Martin Corporation, 465663 (OH)

1-1-98 to 12-31-00, \$83,028.83

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

Kraft Foods Global, Inc., 443970 (OH)

4-1-04 to 3-31-07, \$50,223.00

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

National Genetics Institute, 378339 (OH)

7-1-03 to 6-30-06, \$59,059.99

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

Janice Anne Lazarof, 357527 (AS)

1-1-02 to 12-31-02, \$747,144.00

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

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**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 Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Hideaki Kikuchi, 468752 (AS)

10-1-03 to 1-31-07, \$62,896.50

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

Fanfare Graphics, Inc., 467398 (AR)

4-1-04 to 8-21-07, \$316,796.24

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

Certified Window Installations, Inc., 468750 (KH)

4-1-07 to 6-30-07, \$81,489.71

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

Harsco Corporation, 399484 (OH)

1-1-04 to 12-31-06, \$75,628.48

Action: Approve the refund as recommended by staff.

Safe Credit Union, 462890 (KH)

1-1-08 to 6-30-08, \$107,935.33

Action: Approve the refund as recommended by staff.

Kent's Oil Service, 382282 (KH)

4-1-04 to 3-31-07, \$471,287.05

Action: Approve the refund as recommended by staff.

The Aerospace Corporation, 388610 (AS)

7-1-03 to 12-31-06, \$85,041.09

Action: Approve the refund as recommended by staff.

Bigge Crane & Rigging Corporation, 461271 (CH)

1-1-05 to 12-31-07, \$241,061.70

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 462177 (OH)

4-1-08 to 6-30-08, \$1,280,958.70

Action: Approve the refund as recommended by staff.

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Lobel Financial Corporation, 462892 (EA)

4-1-08 to 6-30-08, \$89,278.56

Action: Approve the refund as recommended by staff.

Balboa Thrift & Loan Association, 465382 (FH)

4-1-08 to 6-30-08, \$65,987.52

Action: Approve the refund as recommended by staff.

Santana Row Hotel Partners, LP, 468914 (GH)

1-1-04 to 12-31-06, \$70,943.04

Action: Approve the refund as recommended by staff.

Penegon Mission Viejo, Inc., 425720 (EA)

1-1-07 to 3-31-07, \$66,901.34

Action: Approve the refund as recommended by staff.

CIG Financial, 462163 (EA)

10-1-07 to 3-31-08, \$352,160.28

Action: Approve the refund as recommended by staff.

Surefire, LLC, 445329 (EA)

7-1-07 to 12-31-07, \$59,779.07

Action: Approve the refund as recommended by staff.

Medcal Sales, LLC, 459864 (EH)

8-1-05 to 3-31-08, \$72,305.32

Action: Approve the refund as recommended by staff.

Fought & Company, Inc., 426883 (OH)

2-26-07 to 6-30-07, \$139,706.92

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS AND RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Redeterminations and Relief of Penalties, Consent Agenda, upon a single motion of Ms. Steel, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *California State Automobile Association, 432452 (ET)* and *Lincoln National Life Insurance Company, 431910 (ET)* in accordance with Government Code section 7.9, the Board made the following orders:

California State Automobile Association, 432452 (ET)

1-1-02 to 12-31-05, \$574,128.00

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

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Liberty Brands, LLC, 444198 (ET)

1-1-05 to 12-31-05, \$107,276.00

Action: Approve the redetermination as recommended by staff.

Lincoln National Life Insurance Company, 431910 (ET)

10-1-07 to 12-31-07, \$398,672.50

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

**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,
CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *Anheuser-Busch, Inc., 432073 (ET)*; *Heineken USA, Incorporated, 470155 (ET)*; and, *California State Automobile Association, 476067 (ET)* in accordance with Government Code section 7.9, the Board made the following orders:

Peter Allan Larson, 60027 (ET)

1-31-95 to 5-2-99, \$310,773.82

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

Peter A. Larson, Inc., 469942 (ET)

1-1-98 to 12-30-99, \$1,360,273.21

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

Keith A. Larson, 469941 (ET)

1-1-99 to 6-30-99, \$536,654.07

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

JK Larson, Inc., 469955 (ET)

7-1-99 to 12-30-99, \$312,474.22

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

Anheuser-Busch, Inc., 432073 (ET)

11-1-04 to 8-31-07, \$71,346.08

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

Heineken USA, Incorporated, 470155 (ET)

4-1-05 to 3-31-08, \$126,828.15

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

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California State Automobile Association, 476067 (ET)

1-1-02 to 12-31-05, \$773,253.59

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

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

Rocky Terhune, 342184

1985, \$3,402.32 Assessment

Considered by the Board: June 19, 2007

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

Action: Upon motion of Dr. Chu, seconded by Ms. Steel and duly carried, Ms. Yee, Dr. Chu, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, the Board adopted a decision modifying the action of the Franchise Tax Board.

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

RJ Financial, Inc., 338827 (AA)

1-1-98 to 12-31-01, \$673,259.97

Considered by the Board: October 28, 2008

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

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

SPECIAL TAXES MATTERS, REDETERMINATIONS, ADJUDICATORY

Alliant Insurance Services, Inc., 387929 (ET)

1-1-05 to 12-31-05, \$1,275,233.13

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Yee abstaining, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved the redetermination as recommended by staff.

**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,
ADJUDICATORY**

Alliant Insurance Services, Inc., 391200 (ET)

1-1-05 to 12-31-05, \$1,734,317.01

Considered by the Board: Presented for Separate Discussion

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

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Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Yee abstaining, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved the refund as recommended by staff.

LEGAL APPEALS PROPERTY TAX MATTER, ADJUDICATORY

Spaulding Center for Wooden Boats, 403978
2005-2007

Considered by the Board: August 20, 2008

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

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

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Unitary Land Escaped Assessments

Verizon California, Inc. (201)

2007-2008, \$1,292,120.00 Value

AT&T Mobility LLC (2606)

2007-2008, \$677,945.00 Value, \$37,794.50 Penalty

Metro PCS California/Florida, Inc. (2733)

2007-2008, \$306,597.00 Value

OmniPoint Communications, Inc. (2748)

2007-2008, \$572,035.00 Value

2008, \$3,424,324.00 Value, \$342,432.40 Penalty

Royal Street Communications, LLC (2779)

2008, \$83,691.00 Value, \$8,369.10 Penalty

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessments, plus penalties and in-lieu interest, as recommended by staff in *Verizon California, Inc. (201)*; *AT&T Mobility LLC (2606)*; *Metro PCS California/Florida, Inc. (2733)*; and, *Royal Street Communications, LLC (2779)*.

Mr. Leonard moved to adopt the unitary land escaped assessment and abate the penalties in *OmniPoint Communications, Inc. (2748)*. The motion was seconded by Ms. Steel, but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Dr. Chu voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

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Dr. Chu moved to adopt the unitary land escaped assessment, plus penalties and in-lieu interest, as recommended by staff in *OmniPoint Communications, Inc. (2748)*. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Dr. Chu voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board postponed the matter of *OmniPoint Communications, Inc. (2748)*.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, 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 2.3).

Lorene Carter, Information Systems Technician Specialist I, Technology Services Division, Headquarters
Joyce Ann Montiero, Tax Technician III, Centralized Collection Section, Headquarters

Action: Approve the 2009 Timber Advisory Committee membership appointments (Exhibit 2.4).

ADOPTION OF BOARD COMMITTEE REPORT AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the January 21, 2009 Legislative Committee report and the actions therein (Exhibit 2.5).

Committee votes were as follows:

Business Taxes, Sales and Use Taxes, 2009 Legislative Proposals

The matter to amend Revenue and Taxation Code sections 6011 and 6012 was dropped with industry supporters sponsoring their own bill.

A recommendation of support to amend Revenue and Taxation Code section 6018.6 unanimously passed with Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent.

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Business Taxes, Special Taxes, 2009 Legislative Proposals

A recommendation of support to amend Revenue and Taxation Code section 7339 and 60003 duly passed with Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, Dr. Chu absent.

A recommendation to approve the consent agenda unanimously passed with Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu absent. These items are as follow:

Amend Revenue and Taxation Code section 60501 and 60508, and repeal sections 60508.1, 60508.2, 60508.4 and 60509

Add Revenue and Taxation Code section 55041.1

A recommendation of support to amend Revenue and Taxation Code section 60022 and 60023, and add sections 60022.2, 60022.3, 60022.4 and 60023.1 duly passed with Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, Dr. Chu absent.

Business Taxes, Administration, 2009 Legislative Proposals

A recommendation of support to amend Vehicle Code section 1808.4 duly passed with Ms. Yee, Dr. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no.

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, provided a presentation of "BOE of the Future", a long range vision of BOE's optimum housing needs prepared by the Executive Team, which identifies three possible scenarios for future housing of Board of Equalization headquarters staff (Exhibit 2.6).

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

Ms. Yee directed staff to expand its search for locations to include existing high-rise and campus type complexes in the greater downtown area in an effort to reduce costs and to expedite the relocation of the Board of Equalization.

Chief Counsel Report

Ms. Yee expressed her gratitude to Mr. Geoff Way for accommodating the Board of Equalization staff at the Franchise Tax Board location.

Kristine Cazadd, Chief Counsel, introduced Geoff Way, Chief Counsel, Franchise Tax Board (Exhibit 2.7).

The Board postponed this matter to later in the day.

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Deputy Directors Reports

David Gau, Deputy Director, Property and Special Taxes Department, provided an update on the implementation of Flavored Malt Beverage regulations, revenue collected to date, workload, lawsuit, and taxpayer outreach (Exhibit 2.8).

Upon motion of Dr. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Dr. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board directed staff to present a written proposal at the March hearing that establishes a sampling testing program to have at least a sample to see if the products have actually successfully rebutted the presumption and if it identifies compliance problems then it would justify moving forward with a more comprehensive program.

Ms. Yee directed staff to submit the finance letter to the Department of Finance adjusting it only by scaling the resources for the administrative program appropriately based on the revenue currently recognized and to communicate with the Department of Finance that additional information will be provided after the March hearing.

Elizabeth Houser, Deputy Director, Administration Department, provided a facilities update of ongoing headquarter projects.

Elizabeth Houser, Deputy Director, Administration Department, introduced Mr. Ramon Hirsig, Executive Director, who provided his recommendation on how to proceed regarding the Governor's Executive Order S-16-08 State Employee Furlough.

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

Dr. Chu stated that BOE should stay the course of taking a strong stand against the furlough. She believes it is counter productive for the resolution of the state budget. Dr. Chu also stated that to this point there has been no court ruling that has given the Governor authority over the BOE, so the Board will assert its position that the furlough does not apply to BOE employees.

Mr. Leonard stated that he doesn't agree on putting the burden of a 10 percent cut on the employees, but rather the agency can make the cut. He stated that the Board should assert its constitutional authority even if it has to be presented in a court room.

Ms. Yee directed staff to immediately notify the State Controller's Office that the Board does not intend to participate in the furlough program as outlined by the Governor. Additionally, staff was directed to identify cost savings in the agency including requesting ideas from BOE employees.

Elizabeth Houser, Deputy Director, Administration Department, provided an update regarding the Return Processing Efficiencies Project Spring Finance Letter. (Exhibit 2.9).

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Mr. Leonard suggested that staff have a back up plan. He added that this is new money and new staff that is being requested, and so staff needs to assess if this is part of their 10 percent that the Board wants to hold, delay or give back so we know how to make it work more effectively.

Upon motion of Mr. Leonard, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the return processing efficiencies project spring finance letter.

Elizabeth Houser, Deputy Director, Administration Department, provided an update regarding the New Special Taxing Jurisdictions Spring Finance Letter. (Exhibit 2.10).

Upon motion of Mr. Leonard, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the new special taxing jurisdictions spring finance letter.

Elizabeth Houser, Deputy Director, Administration Department, provided an update regarding the Status of the Governor's Budget.

Chief Counsel Report

Kristine Cazadd, Chief Counsel, introduced Geoff Way, Chief Counsel, Franchise Tax Board, who provided a summary of the current and future trends regarding appeals from the Franchise Tax Board (Exhibit 2.11).

ADOPTION OF BOARD COMMITTEE REPORT AND APPROVAL OF COMMITTEE ACTIONS

Business Taxes Committee

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the February 3, 2009 Business Taxes Committee report and the actions therein (Exhibit 2.12).

Committee votes were as follows:

A recommendation of support for alternative 1 of the revisions to Regulation 1668, *Sales for Resale*, was unanimously passed with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 12:27 p.m. and reconvened immediately in closed session with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

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CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e), 11126(e)(2)(B)(i)), and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 12:52 p.m. and reconvened immediately in open session with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD FEBRUARY 3, 2009

Raymond David Boyda, 349462 (CH)

Final Action: Dr. Chu moved to redetermine as recommended by the Appeals Division. The motion was seconded by Ms. Yee but no vote was taken. Ms. Mandel made a substitute motion to abate the amnesty penalty, otherwise redetermine as recommended by the Appeals Division. The substitute motion was seconded by Mr. Leonard and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu and Ms. Yee voting no.

Mr. Leonard directed the Sales and Use Tax Department to work with the Legislative staff on the issue of the corporate officer responsibility when a corporation has been suspended.

Yohannes Kahsai, 426226 (GH)

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

SALES AND USE TAX APPEALS HEARING

Michael D. Midgett, 314399 (KH)

4-1-02 to 3-31-03, \$33,479.00 Tax, \$3,347.90 Late Filing Penalty, \$3,347.90 Failure to Pay Penalty

Michael D. Midgett, Sr., 314453 (KH)

4-1-02 to 3-31-03, \$51,314.00 Tax, \$3,783.50 Late Payment Penalty, \$805.00 Late Filing Penalty, \$133.26 Late Prepayments Penalty, \$3,347.90 Failure to File Penalty, \$3,347.90 Failure to Timely Pay Penalty, \$1,804.75 Amnesty Interest Penalty

For Appellant: Appearance Waived

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

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

Issue: Whether petitioner has established that the assessment against The Sofa Factory, Inc. for the first quarter of 2003 is overstated.

Whether petitioner is personally liable as a responsible person for the unpaid liabilities of The Sofa Factory, Inc.

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

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The Board adjourned at 12:57 p.m.

The foregoing minutes are adopted by the Board on April 15-16, 2009.

Note: The following matters were removed from the calendar prior to the meeting: *Farmers & Merchants Bank of Long Beach, 359062; Syed A. Ali, 400214 (UT); and Craig E. Jackson, 377160.*