

Wednesday, February 25, 2009

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 10:30 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.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING**

Sydell Dublin, 437737

2007, \$1.00 or more

For Claimant:

Sydell Dublin, Taxpayer

For Franchise Tax Board:

Jean Cramer, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issue: Whether the Franchise Tax Board properly denied appellant's claim for property tax assistance.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.13)

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 submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Elias Erazo and Griselda Erazo, 441320

2003, \$12,594.00 Tax, \$2,518.80 Accuracy-Related Penalty

For Appellant:

John S. Reynard, Representative

For Franchise Tax Board:

Craig Scott, Tax Counsel

Jean Cramer, Tax Counsel

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

Issues: Whether appellants have shown error in respondent's proposed assessment.  
Whether the Board has jurisdiction to determine if the assessment was discharged in bankruptcy.

Appellant's Exhibit: Declaration of Elias Erazo (Exhibit 2.14)

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board deferred this matter to the April Sacramento hearing.

Norman C. Turley, 358653

1992, \$43,424.06 Claim for Refund

For Appellant:

Norman Turley, Taxpayer

Meghan Hawley, Representative

For Franchise Tax Board:

Craig Scott, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issues: Whether appellant has shown that the federal assessment has been revised on its merits or is otherwise in error.

Wednesday, February 25, 2009

Whether appellant has shown reasonable cause for the abatement of a late filing penalty.

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 submitted the appeal for decision.

**NASSCO Holdings, Inc., 317434**

1994, \$160,415.00 Assessment

1995, \$53,159.00 Assessment

1999, \$298,538.00 Assessment

2000, \$927,274.00 Assessment

2001, \$567,908.00 Assessment

For Appellant:

Gail A. Morse, Representative

Jon A. Sperring, Representative

James B. Euphrat, Representative

For Franchise Tax Board:

William Gardner, Tax Counsel

Terry Collins, Tax Counsel

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

Issue: Whether appellant is entitled to apply its enterprise zone credits and other credits to reduce alternative minimum tax liability, which would result in no tax owed.

Appellant's Exhibit: Legislative Evolution of 23036(d)(1) and The Solar Energy Credit Table (Exhibit 2.15)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 2.16)

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 submitted the appeal for decision.

The Board recessed at 12:25 p.m. and reconvened at 12:40 p.m. with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**Randolph C. Read, 354399**

2000, \$360,210.00 Tax, \$90,052.50 Notice and Demand Penalty

2001, \$32,227.00 Tax, \$8,056.75 Notice and Demand Penalty

For Appellant:

Randolph C. Read, Taxpayer

Michael C. Cohen, Representative

For Franchise Tax Board:

Terry Collins, Tax Counsel

Craig Scott, Tax Counsel

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

Issues: Whether appellant has demonstrated that he is entitled to the claimed alimony deductions of \$143, 840 and \$286, 084 for the 2000 and 2001 tax years, respectively.

Whether appellant has demonstrated that he is entitled to the claimed business expense deductions of \$167,369 and \$371,600 for the 2000 and 2001 tax years, respectively.

Whether appellant is entitled to relief from the notice and demand penalties for the 2000 and 2001 tax years.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.17)

Wednesday, February 25, 2009

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 submitted the appeal for decision.

Douglas A. Shiepe, 421046

2000, \$5,357.00 Assessment

2001, \$3,487.00 Assessment

2002, \$7,760.00 Assessment

For Appellant:

Douglas Shiepe, Taxpayer

For Franchise Tax Board:

Adam Susz, Tax Counsel

William Gardner, Tax Counsel

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

Issues: Whether appellant has met his burden of proving error in the Franchise Tax Board's determination that appellant is not entitled to a charitable contribution deduction under Internal Revenue Code section 170 for eight single-family homes purportedly donated to the Watts 13 Foundation.

If so, whether appellant properly valued the eight single-family homes transferred to the Foundation.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.18)

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 submitted the appeal for decision.

Casey Miller, 378796

1998, \$6,649.49 Claim for Refund

1999, \$17.00 Claim for Refund

2000, \$53.00 Claim for Refund

2001, \$46.00 Claim for Refund

For Appellant:

Casey Miller, Taxpayer

Gil Yabes, Representative

For Franchise Tax Board:

Jean Cramer, Tax Counsel

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

Issue: Whether appellant's claims for refund are barred by the statute of limitations.

Action: The Board postponed this matter to the April Culver City hearing.

Andrew Benjamin Aames, 414599

2005, \$1,463.00 Assessment

For Appellant:

John Milikowsky, Representative

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Craig Scott, Tax Counsel

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

Issues: Whether appellant has shown error in respondent's proposed assessment.

Whether the transfer of appellant's payment of the proposed assessment amount to partially satisfy appellant's debt with another agency affects the Franchise Tax Board's claim to the proposed assessment amount.

Wednesday, February 25, 2009

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.19)

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 submitted the appeal for decision.

Ms. Yee directed staff to review the provisions of interagency agreements that the Franchise Tax Board has with various agencies to see what the Board can do when a mistake has been made to essentially recapture the funds that weren't properly applied for tax purposes.

Matt Ward, 431775

1999, \$153,305.00 Assessment

2000, \$114,449.00 Assessment

For Appellant:

Matt Ward, Taxpayer

Jeffrey Davine, Representative

For Franchise Tax Board:

Jeanne M. Sibert, Tax Counsel

Terry Collins, Tax Counsel

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

Issues: Whether appellant has shown that his IRA distributions in 1999 and 2000 were transferred in nontaxable transactions to a self-directed IRA and, thus, should not be included in his taxable income.

Whether appellant has proven that the IRA distributions in 1999 and 2000 are not subject to an additional 2.5 percent tax that is otherwise imposed on early distributions.

Whether appellant can claim a deduction in the 2000 tax year for worthless stock.

Appellant's Exhibit: Declaration of Albert Keyack, Esq. (Exhibit 2.20)

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 submitted the appeal for decision.

Haik Arakelian and Alice Arakelian, 442173

2003, \$1,737.00 Assessment

For Appellant:

Ara Hovanesian, Representative

For Franchise Tax Board:

Maria Brosterhous, Tax Counsel

Terry Collins, Tax Counsel

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

Issue: Whether respondent properly disallowed appellants' claimed charitable contribution deduction for 2003.

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 submitted the appeal for decision.

### LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Ga Na Bang U.S.A., Inc., 401792 (AS)*; and, *Zuma ARC, Inc., 466074 (ET)*.

Wednesday, February 25, 2009

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, Ms. Mandel not participating in accordance with Government Code section 87105 in *BP West Coast Products, LLC, 259730 (FH)*, the Board made the following orders:

Northrop Grumman Systems Corporation, 89002094420, 89002094330 (AS)

1-1-92 to 12-31-94, \$402,456.00 Claim for Refund

1-1-95 to 12-31-98, \$536,679.00 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

Tekadi Corporation, 240330, 267386, 311167, 314593 (EA)

1-1-96 to 12-31-02, \$10,420.21 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Ekpenyong Atin and Patrick E. Ekanem, 361152 (EH)

7-1-01 to 6-30-04, \$80,242.31 Tax, \$8,024.23 Finality Penalty, \$2,380.29 Amnesty-Double

Finality Penalty, \$2,558.82 Amnesty Interest Penalty

Catherine Adeola F. Ekanem and Patrick E. Ekanem, 361151 (EH)

7-1-01 to 4-30-04, \$126,832.27 Tax, \$12,683.23 Finality Penalty, \$6,128.82 Amnesty-Double

Finality Penalty, \$6,788.21 Amnesty Interest Penalty

Patrick E. Ekanem, 361153 (EH)

7-1-98 to 2-24-04, \$105,265.60 Tax, \$10,526.56 Finality Penalty, \$8,335.13 Amnesty-Double

Finality Penalty, \$11,511.49 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Ga Na Bang U.S.A., Inc., 401792 (AS)

1-1-03 to 12-31-05, \$199,395.86 Tax, \$19,939.56 Negligence Penalty

Action: The Board took no action.

Amirali Ngormohammed Kassam, 387171 (AR)

1-1-03 to 2-28-06, \$165,749.18 Tax, \$10,157.72 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Deborah A. Smith, 257883 (EA)

12-1-98 to 12-31-01, \$80,565.40 Tax

Action: Redetermine as recommended by the Appeals Division.

BP West Coast Products, LLC, 259730 (FH)

1-1-02 to 12-31-03, Unspecified Claim for Refund

Action: Redetermine as recommended by the Appeals Division. Ms. Mandel not participating in accordance with Government Code section 87105.

Zuma ARC, Inc., 466074 (ET)

May 15, 2008, \$368.47 Approximate Value

Action: The Board took no action.

Wednesday, February 25, 2009

Wadiwala Enterprises, Inc., 469783 (ET)

July 8, 2008, \$1,571.90 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Harjit Dhillon, 472791 (ET)

July 23, 2008, \$617.83 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Yung Chan Shin and Mee Hwha Shin, 469780 (ET)

August 13, 2008, \$122.85 Approximate Value

Action: Determined that staff properly seized the tobacco products.

**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 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:

Rosalinda E. Aviles and Estate of Augustine Y. Aviles (Deceased), 400112

2003, \$10,367.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Terilyn Cooper, 378273

2004, \$1,303.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

John C. Hockin and Leith Brooks Hockin, 395556

2005, \$13,088.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Lee Hsieh, 381180

1998, \$4,303.00 Tax, \$1,075.75 Late Filing Penalty, \$1,309.33 Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Ramiro Martinez, 418264

2005, \$741.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

John Paladin, 405286

2004, \$9,033.94 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Wednesday, February 25, 2009

Papazian-Hirsch Calabasas, LLC, 378055

2004, \$721.24 Claim for Refund

Papazian-Hirsch Pico, LLC, 378752

2004, \$636.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Linda Rapoza and Mark Rapoza, 389841

2003, \$249.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ronald C. Ladrech and Melissa A. Ladrech, 381604

2001, \$29,337.00 Assessment

Auditorium Travel Inn, Inc., 382893

2001, \$65,646.00 Assessment

Action: Deny the petition for rehearing.

Karl Eisenhammer, 429657

2005, \$2,545.00 Tax, \$636.25 Late Filing Penalty

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

Carol Grant, 429678

2005, \$1,844.00 Tax, \$461.00 Late Filing Penalty, \$461.00 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

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

Richard Grant, 429665

2005, \$6,103.00 Tax, \$1,525.75 Late Filing Penalty, \$1,525.75 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

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

Christopher Gyorgy, 427533

2003, \$18,488.00 Tax, \$3,006.50 Late Filing Penalty, \$3,330.50 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Bradley C. Kastelle, 427411

2003, \$1,046.00 Tax, \$261.50 Late Filing Penalty, \$261.50 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

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

Wednesday, February 25, 2009

Eldo Klingenberg, 427408

2005, \$5,043.00 Tax, \$1,260.75 Late Filing Penalty, \$ 1,260.75 Notice and Demand Fee, \$125.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

#### **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:

Nicholas Fujii, 422812

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Renee´ R. Grimes, 426097

2007, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Natalie Turner, 404995

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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

With respect to the Sales and Use Tax Matters, Relief of Penalties and Denials of Claims for Refund, 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, Ms. Mandel not participating in *AECOM Technology Corporation, 414297 (AS)*, in the Board made the following orders:

Bel Air Mart, 470066 (JH)

4-6-08 to 6-28-08, \$51,312.28

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

Hunt & Sons, Inc., 470067 (KH)

4-1-08 to 6-30-08, \$93,829.80

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

Siemens Industrial Turbomachinery, Inc., 472132 (OH)

4-1-07 to 6-15-07, \$169,733.42

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

Wednesday, February 25, 2009

AECOM Technology Corporation, 414297 (AS)

1-1-05 to 6-30-06, \$148,706.20

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating.

Embarcadero Systems Corporation, 460302 (CH)

10-1-03 to 9-30-06, \$210,297.90

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

Dwwrbb, Inc., 462376 (EA)

7-1-07 to 12-31-07, \$177,537.89

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 Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *AECOM Technology Corporation, 414297 (AS)* and in accordance with Government Code section 87105 not participating in *Microsoft Corporation, 440267 (OH)*, the Board made the following orders:

Action Boats, Inc., 470020 (EA)

10-1-06 to 1-31-07, \$593,243.45

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

Farrokh Farrokhi, 470317 (FH)

10-1-03 to 9-30-06, \$63,906.60

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

ESI Acquisition, Inc., 470357 (OH)

10-1-06 to 12-31-07, \$86,582.70

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

USN Television Group, Inc., 470111 (AP)

4-1-06 to 4-23-07, \$128,652.25

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

Cal-Mart Machinery, LLC, 470170 (EH)

1-1-07 to 12-31-07, \$65,448.80

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

Rusnak/Pasadena, 445174 (AP)

7-1-07 to 9-30-07, \$63,504.87

Action: Approve the refund as recommended by staff.

Wednesday, February 25, 2009

Charles Schwab &amp; Company, Inc., 327488 (BH)

1-1-01 to 12-31-05, \$110,995.82

Action: Approve the refund as recommended by staff.

Square D Company, 310896 (OH)

4-1-02 to 12-31-05, \$109,605.71

Action: Approve the refund as recommended by staff.

Starkey Laboratories, Inc., 468964 (OH)

7-1-04 to 6-30-07, \$61,438.63

Action: Approve the refund as recommended by staff.

AECOM Technology Corporation, 414297 (AS)

1-1-05 to 6-30-06, \$51,894.24

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

Hy-Tek Material Handling, Inc., 342170 (OH)

10-1-04 to 6-30-05, \$130,247.39

Action: Approve the refund as recommended by staff.

Best Buy Store, LP, 381950 (OH)

1-1-99 to 12-31-02, \$3,299,715.08

Action: Approve the refund as recommended by staff.

Embarcadero Systems Corporation, 460302 (CH)

10-1-03 to 9-30-06, \$137,805.81

Action: Approve the refund as recommended by staff.

Style Interior Design, Inc., 468974 (EA)

7-1-05 to 3-31-08, \$81,508.92

Action: Approve the refund as recommended by staff.

IGH Solutions, Inc., 427400 (OH)

1-1-07 to 6-30-07, \$57,066.60

Action: Approve the refund as recommended by staff.

Microsoft Corporation, 440267 (OH)

7-1-07 to 9-30-07, \$3,743,536.75

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

Dwwrbb, Inc., 462376 (EA)

7-1-07 to 12-31-07, \$146,891.25

Action: Approve the refund as recommended by staff.

Wednesday, February 25, 2009

Eagle Community Credit Union, 465760 (EA)

4-1-08 to 6-30-08, \$59,317.70

Action: Approve the refund as recommended by staff.

**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 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:

Jin H. Kim, 422527 (MT)

4-22-99 to 7-7-05, \$224,563.39

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

Southern Counties Oil Companies, LP, 404129, 417239, 472815 (MT)

1-1-05 to 12-31-07, \$137,372.43

Action: Approve the refund as recommended by staff.

San Diego Unified Port District, 474644 (EF)

1-1-03 to 12-31-05, \$236,716.72

Action: Approve the refund as recommended by staff.

**FINAL ACTION ON HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE  
CLAIM HEARING HELD FEBRUARY 25, 2009**

Sydell Dublin, 437737

Final 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 sustained the action of the Franchise Tax Board.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD FEBRUARY 25, 2009**

Norman C. Turley, 358653

Final 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 sustained the action of the Franchise Tax Board.

NASSCO Holdings, Inc., 317434

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

Wednesday, February 25, 2009

Randolph C. Read, 354399

Final Action: Upon 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 adopted a decision which included a concession by the Franchise Tax Board.

Douglas A. Shiepe, 421046

Final 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 sustained the action of the Franchise Tax Board.

Andrew Benjamin Aames, 414599

Final Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Dr. Chu, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, the Board adjusted the liability and interest, otherwise sustained the action of the Franchise Tax Board.

Matt Ward, 431775

Final Action: Dr. Chu moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Mandel but no vote was taken.

Ms. Yee made a substitute motion to have the appeal submitted for decision, granting the appellant 30 days to submit supporting documents on the issue of the worthless stocks, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board. The substitute motion was seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

Haik Arakelian and Alice Arakelian, 442173

Final Action: Ms. Steel moved to reverse the action of the Franchise Tax Board. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Dr. Chu, and Ms. Mandel voting no.

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

The Board adjourned at 3:30 p.m.

*The foregoing minutes are adopted by the Board on May 27, 2009.*

Note: The following matters were removed from the calendar prior to the meeting: *Alan Gorg and Gwyndolin Gorg, 401348*; and, *Closed Session*.

Thursday, February 26, 2009

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

Nassim Farjallah Khoury, 333834 (EH)

1-1-02 to 12-31-04, \$0.00 Tax, \$13,027.02 Fraud Penalty, \$462.20 Amnesty Double Fraud Penalty, \$71.06 Amnesty Interest Penalty

For Petitioner:

Nassim Khoury, Taxpayer  
Salma Khoury, Taxpayer's Wife  
Christin Youssef, Translator

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issue: Whether the Sales and Use Tax Department has met its burden of establishing that petitioner's underreporting was due to fraud or intent to evade tax.

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.

### **SPECIAL TAXES APPEALS HEARING**

#### **Revocation Appeal Hearing**

Smoke Rings, Inc., 371854 (ET)

Smoke Rings, Inc., 371860 (ET)

June 19, 2006 Date of Citation

For Petitioner:

Rami Darghalli, Taxpayer  
Stanley L. Friedman, Attorney

For Property and Special Taxes Department: Monica Silva, Tax Counsel

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

Issue: Whether appellant violated Business and Professions Code section 22980.2, subdivision (c), by continuing to sell cigarettes and tobacco products at its Smoke 4 Less #1 and Smoke 4 Less #2 locations during the period the license for each of those locations was suspended, and if so, whether the penalty for those violations should be revocation of appellant's Cigarette and Tobacco Products Retailer's License for each location.

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.

Thursday, February 26, 2009

**SALES AND USE TAX APPEALS HEARINGS**

Los Angeles Partyworks, Inc., 144839 (AP)

1-1-96 to 12-31-98, \$57,296.27 Tax, \$9,458.25 Negligence Penalty

For Petitioner:

Eric Elkaim, Taxpayer

Jim Fier, Representative

For Sales and Use Tax Department:

Bradley Heller, Tax Counsel

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

Issues: Whether petitioner was a leaser of party equipment provided to its customers that its employees may have supervised but did not operate.

Whether petitioner's charges for delivery, assembly, and disassembly are part of its taxable rentals payable from the leases.

Whether the Department has asserted tax on cost and also on rentals payable for the same equipment.

Whether an adjustment is warranted to the audited amount of unrecorded receipts.

Whether an adjustment is warranted to the audited amount of excess tax reimbursement.

Whether an adjustment is warranted for leases of equipment for which petitioner made a timely election to pay tax on cost.

Whether petitioner was negligent.

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

Gilberto Gonzalez Perez, 396030 (AR)

1-1-03 to 6-30-06, \$3,395.03 Tax, \$343.18 Negligence Penalty

For Petitioner:

Gilberto Gonzalez Perez, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether the audited amount of sales established on a markup basis is excessive.

Whether petitioner was negligent.

Action: The Board postponed this matter to the April Culver City meeting.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD  
FEBRUARY 26, 2009**

Nassim Farjallah Khoury, 333834 (EH)

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

Thursday, February 26, 2009

**SALES AND USE TAX APPEALS HEARING**

Carter James Read, 382765 (EH)

10-1-00 to 3-31-01, \$78,240.00 Claim for Refund

For Claimant: Appearance Waived

For Sales and Use Tax Department: Chris Schutz, Tax Counsel

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

Issues: Whether claimant is personally responsible for the tax liability incurred by Warlock for the claim period.

Whether claimant has established that adjustments are warranted to the estimated measure of tax in the compliance assessment performed by the Department.

Whether claimant has established reasonable cause to relieve the penalties originally assessed against Warlock which claimant paid pursuant to the assessment issued to him.

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 claim be partially granted in accordance with the revised recommendation of the Appeals Division.

**FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD  
FEBRUARY 26, 2009**

Smoke Rings, Inc., 371854 (ET)

Smoke Rings, Inc., 371860 (ET)

Final 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 appeal be denied as recommended by the Appeals Division.

The Board recessed at 11:18 a.m. and reconvened at 11:22 a.m. with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang present.

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

**PROPERTY TAX MATTERS**

**Unitary Land Escaped Assessments**

OmniPoint Communications, Inc. (2748)

2007-2008, \$572,035.00 Value

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered to postpone this matter to the May Sacramento hearing. Additionally, staff was directed to communicate with the assessee to obtain a statement under penalty of perjury.

Thursday, February 26, 2009

The Board adjourned at 11:30 a.m.

*The foregoing minutes are adopted by the Board on May 27, 2009.*

Note: The following matters were removed from the calendar prior to the meeting: *Keith Timothy Whitehead, 358966 (EH); Robert Joseph Bachand, 361960, 395866 (AS); and, Francisco R. Coronado, 396753 (EA).*