

Monday, March 16, 2009

The Board met at its offices at 450 N Street, Sacramento, at 9:38 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

Shirley Williams, 436262
2007, \$647.00
For Appellant:
For Franchise Tax Board:

Elijah Keyes, Representative
Lisa Lawson, Hearing Representative
Jean Cramer, 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 3.1)

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 submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Marlene D. Canter, 421269
1998, \$257,848.00 Assessment
1999, \$124,202.00 Assessment
2000, \$80,615.00 Assessment
For Appellant:

Marlene Canter, Taxpayer
Chris Whitney, Representative
Barry Edwards, Representative
Daniel Biedler, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether appellant has shown that respondent erred in using the maximum stated amount payable under appellant’s 1998 installment sale of her business in calculating the interest due under Internal Revenue Code section 453A.

For purposes of calculating the interest under Internal Revenue Code section 453A, whether appellant has shown that respondent erred by not reducing the gain from the sale by payments made by appellant to appellant’s former spouse and former employees.

Appellant’s Exhibit: Miscellaneous Documents (Exhibit 3.2)

Respondent’s Exhibit: Miscellaneous Documents (Exhibit 3.3)

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

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Donald A. Ramirez and Caroline A. Ramirez, 360881

1997, \$9,551.13 Claim for Refund

1998, \$9,172.46 Claim for Refund

1999, \$203.00 Claim for Refund

For Appellant:

Donald Ramirez, Taxpayer

Matthew Staub, Representative

For Franchise Tax Board:

Bruce Langston, Tax Counsel

Craig Scott, Tax Counsel

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

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

Respondent's Exhibit: Miscellaneous Documents (Exhibit 3.4)

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

Mervin L. George, Sr. and Laura Lee George, 443087

2002, \$5,259.00 Tax, \$202.67 Post-Amnesty Penalty

2003, \$5,733.00 Tax

2004, \$6,023.00 Tax

2005, \$6,152.00 Tax

For Appellant:

Mervin L. George, Sr., Taxpayer

Laura Lee George, Taxpayer

For Franchise Tax Board:

Natasha Sherwood Page, Tax Counsel

Terry Collins, Tax Counsel

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

Issue: Whether California may tax the income of appellants, who are Indians residing on a reservation and receiving wage income and retirement income.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.5)

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 submitted the appeal for decision.

A. G. Arellano, 436279

1999, \$299.99 Claim for Refund

2000, \$361.00 Claim for Refund

2001, \$359.00 Claim for Refund

For Appellant:

Valerie Reyes, Representative

For Franchise Tax Board:

Bruce Langston, Tax Counsel

Jean Cramer, Tax Counsel

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

Issues: Whether appellant timely filed claims for refund for the appeal years.

Whether the doctrine of equitable estoppel applies to allow appellants claims for refund.

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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

With respect to the Legal Appeals Matters Consent Agenda, upon a single 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 made the following orders:

Fidel Pena Islas and Mirtha Silva Islas, 334802 (MT)

7-1-97 to 9-30-03, \$49,771.91 Underground Storage Tank Maintenance Fee, \$4,977.21 Failure to Pay Penalty

Action: Redetermine as recommended by the Appeals Division.

Diane Ramey, 406676, (UT)

3-26-04, \$750.00 Tax, \$75.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Janice E. Lawrence, 422967 (KH)

1-1-03 to 12-31-06, \$24,832.25 Tax

Action: Redetermine as recommended by the Appeals Division.

The W.A. Butler Company, 401803 (OH)

10-1-02 to 6-30-05, \$107,006.41 Tax, \$535.37 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Atisha Shanti Paulson, 390598 (GH)

7-1-04 to 3-31-05, \$24,919.00 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

Daya Singh and Sukhjeet Kaur, 466080 (ET)

June 20, 2008, \$633.72 Approximate Value

Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Estate of Georgianna Ward (Deceased)*, 325827, 397042, 416568; and, *Jacek Kostyrko and Zofia Kostyrko*, 443905.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single 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 made the following orders:

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Happy Harbor Marina, Inc., 414932

2004, \$523.25 Late Filing Penalty, \$53.86 Tax Penalty

Action: Sustain the action of the Franchise Tax Board.

Jaime H. Lopez and Irma P. Lopez, 405924

2002, \$17,897.00 Assessment, \$867.50 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Natalie Leesmann, 362705

Floyd Fritz Leesmann, 382536

2002, \$861.00 Innocent Spouse Relief

Action: Sustain the action of the Franchise Tax Board.

Estate of Georgianna Ward (Deceased), 325827, 397042, 416568

2001, \$5,644.00 Assessment

2003, \$11,564.00 Assessment

2004, \$5,082.00 Assessment

Action: The Board took no action.

Jacek Kostyrko and Zofia Kostyrko, 443905

2005, \$2,017.00 Claim for Refund

Action: The Board took no action.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

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

Joyce Canady, 387490

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Rainess Holmes, 425149

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Riando Lewis, 423639

2007, \$320.00

Action: Sustain the action of the Franchise Tax Board.

Anita Penaflo, 414940

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Rubyann F. Perez, 425373

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Fumiko Saito, 422997

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Trudy Unger, 426806

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Vincent J. Garofalo, 426809

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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

The Board deferred consideration of the following matter: *Brentwood Motors, Inc., 445719.*

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties, Denials of Claims for Refund and Denials of Relief of Penalty, Consent Agenda, upon a single motion of Dr. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Steel not participating in *Circle K Stores, Inc., 474482 (OH)*, the Board made the following orders:

Robert Leonard, 444095 (AS)

10-1-04 to 4-9-06, \$175,402.19

Action: Approve the redetermination as recommended by staff.

Learjet, Inc., 424364 (OH)

1-1-03 to 12-31-05, \$126,531.03

Action: Approve the redetermination as recommended by staff.

Color Communications, Inc., 402641 (OH)

1-1-03 to 12-31-05, \$420,416.17

Action: Approve the redetermination as recommended by staff.

Circle K Stores, Inc., 474482 (OH)

5-26-08 to 6-25-08, \$74,622.26

Action: Approve the relief of penalty as recommended by staff. Ms. Steel not participating.

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Robert Ingram, 443313 (EH)

10-1-00 to 3-31-01, \$50,371.30

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

Sprint Spectrum, L.P., 201892 (OH)

10-1-00 to 12-31-02, \$898,681.00

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

Suburban Propane, L.P., 306074 (OH)

7-1-99 to 6-30-02, \$492,799.84

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

Brentwood Motors, Inc., 445719 (CH)

1-1-02 to 3-31-02, \$55,229.80

Action: The Board took no action.

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 Mr. Leonard, 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:

Mark Sawaya, 418583 (FH)

4-1-88 to 3-31-01, \$1,261,806.64

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

DFS SPV, LP, 472906 (OH)

4-1-07 to 6-30-07, \$62,103.00

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

Academy Trading, Inc., 472250 (AS)

4-1-05 to 9-30-05, \$74,354.75

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

Madison/Graham Color Graphics, Inc., 400794 (AA)

1-1-04 to 6-30-07, \$56,947.24

Action: Approve the refund as recommended by staff.

Prince Mobile Homes, Inc., 470070 (EH)

7-1-05 to 6-30-08, \$81,100.34

Action: Approve the refund as recommended by staff.

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Fleet Card Fuels, 406641 (AR)

10-1-05 to 9-30-06, \$147,599.90

Action: Approve the refund as recommended by staff.

The Dot Printer, Inc., 466328 (EA)

1-1-04 to 12-31-06, \$64,046.60

Action: Approve the refund as recommended by staff.

Westamerica Bank, 464301 (JH)

7-1-06 to 9-30-08, \$61,369.43

Action: Approve the refund as recommended by staff.

Cardinal Health 110, Inc., 344853 (OH)

10-1-00 to 3-31-03, \$187,833.55

Action: Approve the refund as recommended by staff.

Medline Industries, Inc., 341178 (OH)

1-1-03 to 12-31-05, \$313,315.76

Action: Approve the refund as recommended by staff.

Vitro Packaging, Inc., 402357 (OH)

7-1-03 to 6-30-05, \$173,565.09

Action: Approve the refund as recommended by staff.

Bestco Electric, Inc., 447878 (KH)

1-1-04 to 12-31-06, \$95,121.65

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 461214 (KH)

8-14-08 to 10-2-08, \$386,327.00

Action: Approve the refund as recommended by staff.

Sprint Spectrum, LP, 201892 (OH)

10-1-00 to 12-31-02, \$1,975,260.42

Action: Approve the refund as recommended by staff.

Pacific Service Credit Union, 430895 (CH)

4-1-05 to 3-31-08, \$308,853.28

Action: Approve the refund as recommended by staff.

Behroz Akbarpour, 435377 (BH)

9-6-02 to 6-30-05, \$61,047.33

Action: Approve the refund as recommended by staff.

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Triad Financial Corporation, 418387 (EA)

4-1-07 to 3-31-08, \$755,810.67

Action: Approve the refund as recommended by staff.

Rafe Federal Credit Union, 443023 (EH)

10-1-04 to 6-30-08, \$123,173.03

Action: Approve the refund as recommended by staff.

The Board recessed at 12:25 p.m. and reconvened at 1:30 p.m. with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

LEGAL APPEALS MATTERS, ADJUDICATORY

Speakers: Fran Mancina, MuniServices, Representing *Cities of Newport Beach and San Jose, 478775*; and, *City of San Mateo, 478818, 478830*
 Robert Cendejas, Attorney, MuniServices, Representing *Cities of Newport Beach and San Jose, 478775*; and, *City of San Mateo, 478818, 478830*
 Albin Koch, Attorney, MuniServices, Representing *Cities of Newport Beach and San Jose, 478775*; and, *City of San Mateo, 478818, 478830*
 Sarwat Mikhail, CPA, Azouz and Mikhail CPA, Representing *Artashes Ambartsumyan, 334788, 335123*

Jamal A. Mahgoub, 356195 (CH)

1-1-02 to 3-19-03, \$3,686.02 Tax, \$0.00 Penalties, \$327.44 Amnesty Interest Penalty

AMT Solutions, Inc., 356197, 392072 (CH)

3-20-03 to 5-31-05, \$3,489.09 Tax, \$0.00 Penalty

3-20-03 to 5-31-05, \$10,000.00 Claim for Refund

Considered by the Board: May 28, 2008

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

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

Artashes Ambartsumyan, 334788 (EH)

5-24-03 to 9-30-04, \$4,282.43 Tax

Artashes Ambartsumyan, 335123 (EH)

5-24-03 to 9-30-04, \$14,714.84 Tax

Considered by the Board: October 29, 2008

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

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, subject to review of the new documentation, be redetermined as recommended by the Appeals Division.

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Danny Kangsok Kim, 386898 (EA)

4-1-03 to 3-31-06, \$15,200.66 Tax, \$0.00 Penalty

Considered by the Board: August 7, 2008

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

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 redetermined as recommended by the Appeals Division.

Cities of Newport Beach and San Jose, 478775

7-1-92 to present, \$3,065,000.00 Tax

Considered by the Board: Presented for Separate Discussion

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 for hearing be denied.

City of San Mateo, 478814

10-1-92 to 9-1-96, \$1,209,285.00 Tax

Considered by the Board: Presented for Separate Discussion

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 for hearing be denied.

City of San Mateo, 478830

4-1-96 to 3-1-99, \$1,895,127.00 Tax

Considered by the Board: Presented for Separate Discussion

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Dr. Chu, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition for hearing be denied.

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

Craig E. Jackson, 377160

2004, \$667.00 Assessment

Considered by the Board: February 3, 2009

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

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

Personal Selling Power, Inc., 380557

2003, \$800.00 Claim for Refund, \$108.05 Penalties and Fees

Considered by the Board: December 16, 2008

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, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

John Cirino and Sepideh Cirino, 361476

2001, \$45,078.00 Tax

Considered by the Board: December 16, 2008

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

Action: Upon motion of Dr. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Dr. Chu, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board adopted a decision denying the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, ADJUDICATORY

Stephanie D. Brown, 345106

2005, \$347.50

Considered by the Board: February 27, 2007

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

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 adopted a decision sustaining the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, RELIEF OF PENALTIES, ADJUDICATORY

L&W Supply Corporation, 461148 (EA)

4-1-08 to 4-30-08, \$57,125.12

Considered by the Board: November 12, 2008

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

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

Sally Beauty Supply, LLC, 461139 (OH)

11-1-07 to 11-30-07, \$58,500.12

Considered by the Board: November 12, 2008

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

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

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

UPS Oasis Supply Corporation, 340492 (OH)
10-1-01 to 3-31-07, \$3,442,844.86

Considered by the Board: December 16, 2008

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

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 approved the refund as recommended by staff.

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

Ducor Telephone Company (228)

2006, \$30,000.00 Escaped Assessment

2007, \$20,000.00 Escaped Assessment

2008, \$320,000.00 Excessive Assessment

Action: Upon motion of Mr. Leonard, seconded by Dr. Chu 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 audit escaped and excessive assessments, as recommended by staff.

Kerman Telephone Company (246)

2005, \$100,000.00 Excessive Assessment

2006, \$0.00 Escaped Assessment

2007, \$100,000.00 Excessive Assessment

2008, \$200,000.00 Excessive Assessment

Action: Upon motion of Mr. Leonard, seconded by Dr. Chu 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 audit escaped and excessive assessments, as recommended by staff.

Omnipoint Communications, Inc. (2748)

2005, \$199,300,000.00 Escaped Assessment, \$65,769,000.00 In-Lieu of Interest

2006, \$201,600,000.00 Escaped Assessment, \$48,384,000.00 In-Lieu of Interest

2007, \$103,300,000.00 Escaped Assessment, \$15,495,000.00 In-Lieu of Interest

Action: Upon motion of Mr. Leonard, seconded by Dr. Chu 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 audit escaped assessment, plus in-lieu interest, as recommended by staff.

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Private Railroad Car Tax Refund

M & C Railcar Leasing, LLC (6223)

2008, \$789.03

Greenfield Logistics, LLC (6369)

2008, \$374.38

Action: Upon motion of Mr. Leonard, seconded by Dr. Chu 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 granted the petition for refund of the private railroad car tax as recommended by staff.

OFFERS-IN-COMPROMISE RECOMMENDATIONS

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 approved the Offers in Compromise of *Kenneth W. Park* as recommended by staff.

SALES AND USE TAX APPEALS HEARINGS

Sandisk Corporation, 208950, 225448, 312943 (GH)

10-1-99 to 3-31-00, \$158,327.97 Tax

4-1-00 to 12-31-01, \$456,221.06 Tax

10-1-99 to 12-31-01, \$614,549.03 Claim for Refund

For Petitioner:

Richard B. Taylor, CPA

Phuong Nguyen, CPA

Robert Hirt, Representative

Mary Mendes, 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 has established that adjustments are warranted to the measure of inventory withdrawals subject to use tax.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered staff to review the additional documentation presented today and bring the matter back for a future hearing.

Shirley Everett-Dicko and Donald Ray White, 342570 (CH)

10-1-02 to 9-30-05, \$2,133.17 Tax, \$3,940.43 Negligence Penalty

For Petitioner:

Shirley Everett-Dicko, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether an additional reduction to unreported taxable sales is warranted to account for days that the business was allegedly closed.

Whether petitioner was negligent.

Whether a portion of the interest that has accrued should be relieved.

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

PUBLIC HEARINGS

Proposed Amendments to Sales and Use Tax Regulation 1502, *Computers, Programs, and Data Processing*

Robert Lambert, Assistant Chief Counsel, Legal Affairs Division, Legal Department, made introductory remarks regarding the proposed amendments to clarify the definition of a computer program. (Exhibit 3.6.)

Speakers: 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 as recommended by staff.

FINAL ACTION ON HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING HELD MARCH 16, 2009

Shirley Williams, 436262

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 MARCH 16, 2009

Marlene D. Canter, 421269

Final Action: Ms. Yee moved to: (1) reverse the action of the Franchise Tax Board on issue number one and rule instead in favor of the Appellant for the use of the fair market value method; and (2) sustain the Franchise Tax Board on issue number two, disallowing the payments to the key employees. The motion was seconded by Dr. Chu but no vote was taken.

The Board directed staff to develop a table that schedules out the components to show what the effects would be for each of the years.

The Board postponed this matter for decision to March 17, 2009.

Donald A. Ramirez and Caroline A. Ramirez, 360881

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

Mervin L. George, Sr. and Laura Lee George, 443087

Final Action: (Motion expunged.)

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A. G. Arellano, 436279

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.

The Board adjourned at 3:03 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: *Peter M. Bucklin and Joan Bucklin, 450416; County of Sacramento, 478775; City of Long Beach, 478776; City of Santa Fe Springs, 478777; and, City of Larkspur, 478816.*

Tuesday, March 17, 2009

The Board met at its offices at 450 N Street, Sacramento, 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.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD MARCH 16, 2009

Marlene D. Canter, 421269

Appeals Exhibit: Schedule 2B - Appellant's Exhibit E Modified (Exhibit 3.7)

Final Action: Ms. Mandel moved to: (1) put the original reporting of the transaction on the installment sale method; (2) rule in favor of appellant with respect to the use of the fair market value method for calculating IRC section 453A interest and allowing the payments to Lee Canter and the key officers; and, (3) noting that the Franchise Tax Board is limited to the total tax liability set forth on the NPA. The motion was seconded by Mr. Leonard but no vote was taken.

The Board directed staff to obtain additional information from the parties and return with schedules detailing the tax effect and the 453A interest charge under two different scenarios to the April Sacramento meeting.

Exhibits to these minutes are incorporated by reference.

Mervin L. George, Sr. and Laura Lee George, 443087

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that its previous motion to sustain the Franchise Tax Board be expunged.

Upon motion of Ms. Mandel, seconded by Dr. Chu and duly carried, Ms. Yee, Dr. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the Franchise Tax Board confirm and verify that the rental property amount is excluded from the final notice, otherwise sustain the action of the Franchise Tax Board.

SALES AND USE TAX APPEALS HEARING

Richard Dean Jensen, 414211 (KH)

1-1-99 to 12-31-00, \$2,610.58 Interest, \$10,468.95 Penalties

For Petitioner: Richard Dean Jensen, Taxpayer
Nina V. Jensen, Taxpayer

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

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

Issues: Whether petitioner should be able to relieved of the interest that accrued from May 21, 2001, to June 12, 2006, on Jensen & Almond's tax liability for the period January 1, 1999, to January 31, 1999.

Whether petitioner has established reasonable cause to relieve the late-payment, late-prepayment, failure-to-file, finality, and EFT penalties originally assessed against Jensen & Almond.

David Levine, Tax Counsel, Appeals Division, stated for the record that the Sales and Use Tax Department has made an adjustment to relieve the \$2,610.58 of interest.

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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.

SPECIAL TAXES APPEALS HEARINGS

Azad Amiri and Nassrin Amiri, 313034 (MT)

10-1-00 to 12-31-03, \$22,497.76 Underground Storage Tank Maintenance Fee, \$2,249.77 Finality Penalty

For Petitioner: Azad Amiri, Taxpayer
Richard Stoll, Attorney

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

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

Issues: Whether fee payers have established that they did not own the underground storage tanks, and therefore are not liable for the underground storage tank maintenance fees.

Whether fee payers have established reasonable cause to relieve the finality 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 ordered that the petition be submitted for decision.

R & R Greene Living Trust, 221089 (MT)

1-1-95 to 12-31-02, \$406,577.94 Underground Storage Tank Maintenance Fee, \$40,657.79 Failure to Pay Penalty

For Petitioner: Robert Greene, Taxpayer
Rhea Greene, Taxpayer
Roy E. Crawford, Attorney

For Property and Special Taxes Department: Stephen Smith, Tax Counsel

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

Issues: Whether petitioner has established that it is entitled to relief from the fee liability because it allegedly relied on the Board's failure to advise it during a prior audit that it was required to pay underground storage tank maintenance fees.

Whether petitioner has established that the three-year statute of limitations should apply in this case.

Whether petitioner has established reasonable cause to relieve the failure to pay penalty.

Whether the interest owed on the underground storage tank maintenance fees should be relieved.

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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CHIEF COUNSEL MATTERS

PROPERTY TAX

Board Consideration of Findings and Decisions

Golden State Water Company (101), 457748
2008, \$504,700,000.00 Unitary Value

Action: Upon motion of Ms. Mandel, seconded by Dr. Chu and duly carried, Ms. Yee, Dr. Chu, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board approved the findings and decision as recommended by staff.

SureWest Telephone (294), 457483
2008, \$150,800,000.00 Unitary Value

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, the Board approved the findings and decision as recommended by staff.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative 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:

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 3.8).

Michele H. (Mickie) Stuckey, Chief of the Environment Fees Division, Property and Special Taxes Department
Roberto (Bob) L. Thome, Business Taxes Specialist I, West Covina District Office
James B. Van Gundy, Business Taxes Specialist I, Excise Taxes Division, Property and Special Taxes Department

Action: Approve the Board Meeting Minutes of December 16-17, 2008 and January 21-22, 2009.

Action: Approve the Board meeting date change of the Board/Assessors' meeting from October 14 (Shell Beach) to August 12 (Squaw Valley) (Exhibit 3.9).

Action: Approve the proposed revisions to Compliance Policy and Procedures Manual Chapter 8, Consumer Use Tax (Exhibit 3.10).

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Action: Approve the proposed revisions to Audit Manual section 0611.15, Interstate Deliveries from California Stocks (Exhibit 3.11).

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Customer Services and Administrative Efficiency Committee

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report (Exhibit 3.12).

OTHER ADMINISTRATIVE MATTERS

Deputy Directors Reports

David Gau, Deputy Director, Property and Special Taxes Department provided an update regarding Flavored Malt Beverage Regulations implementation, and the proposed Product Testing Plan. Additionally a report regarding the Finance Letter #3 which establishes a limited-term position and funding for contract laboratory services to perform workload to implement Flavored Malt Beverage Regulations was given (Exhibit 3.13).

Speaker: James B. Butler, Executive Director, California Council on Alcohol Problems

Action: 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 approved the Finance Letter #3.

Elizabeth Houser, Deputy Director, Administration Department, provided a facilities update regarding ongoing headquarters projects and the site search to re-locate Board of Equalization employees (Exhibit 3.14).

Mr. Leonard thanked staff for their hard work and noted that this will result in a better work situation for employees of the Board of Equalization.

Elizabeth Houser, Deputy Director, Administration Department, provided a budget update on 2008/09 and 2009/10 fiscal years.

The Board recessed at 12:18 p.m. and reconvened at 1:30 p.m. with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

PUBLIC HEARINGS

Business Taxpayers' Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Department, made introductory remarks regarding the Business Taxpayers' Bill of Rights hearings. (Exhibit 3.15.)

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Speakers: Michael Warnken, Representing William M. Connell
William M. Connell, All American Surf Dog

Property Taxpayers' Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Department, made introductory remarks regarding the Property Taxpayers' Bill of Rights hearings.

Speaker: Gay R. Schroeder, Place County Resident

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD MARCH 17, 2009

Richard Dean Jensen, 414211 (KH)

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 petition be redetermined with adjustments as recommended by the Appeals Division. Additionally the Board encouraged the taxpayer to participate in the offers in compromise program.

FINAL ACTION ON SPECIAL TAXES APPEALS HEARINGS HELD MARCH 17, 2009

Azad Amiri and Nassrin Amiri, 313034 (MT)

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 petition be redetermined as recommended by the Appeals Division.

R & R Greene Living Trust, 221089 (MT)

Final Action: Ms. Steel moved that the petition be redetermined as recommended by the Appeals Division in the issue of the underground storage tank fee, and abate the failure to pay penalty and interest for the period of January 1, 2002 to May 5, 2003. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee and Ms. Mandel voting no.

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

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 2:00 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) and 11126(e)(2)(B)(i)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 3:15 p.m. and reconvened immediately in open session with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

The Board adjourned at 3:15 p.m.

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

Note: The following matter was removed from the calendar prior to the meeting: *Fiscal Year 2009/10 Tobacco Products Rate Setting.*