

**Wednesday, March 19, 2008**

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, 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**

Advanced Aviation, LLC, 314063, 314064 (UT)

April 20, 2004, \$74,471.00 Tax, \$11,572.10 Failure to File Penalty

July 3, 2003, \$74,250.00 Tax, \$7,425.00 Failure to File Penalty

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Carla Caruso, Tax Counsel

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

Issues: Whether petitioner has submitted sufficient evidence to prove that the 1980 Beechcraft was purchased for resale, and that the actual purchase price for the 1981 Cessna was \$500,000.

Whether petitioner is entitled to relief from the penalty for failure to file returns.

Jeff Angeja, Tax Counsel, Appeals Division, Legal Department, announced a revised recommendation that would reduce the measure of tax to \$807,988.00 for the aircraft associated with case ID 314063.

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

### **LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matters: Atlantic Richfield Company, 348075, 158211, 167993 (MT); BP West Coast Products, LLC, 216210, 264250, 307637, 349423 (MT); *BP Products North America, Inc., 306843 (MT)*; *Onnik Mooradian and Mariette Mooradian, 220157, 220158, 292978, 293031 (MT)*; *Phillip N. Cutler, 377150 (AC)*; and, *Doris Lydia Cutler, 380705, 381147 (AC)*.

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

Atlantic Richfield Company, 348075, 158211, 167993 (MT)

1998, \$2,182,414.79 Claim for Refund

1999, \$2,108,009.50 Claim for Refund

2001, \$3,385,304.58 Fee

BP West Coast Products, LLC, 216210, 264250, 307637, 349423 (MT)

2002, \$3,799,831.67 Fee

2003, \$3,454,392.43 Fee

2004, \$3,523,283.18 Fee

2005, \$3,646,660.15 Fee

BP Products North America, Inc., 306843 (MT)

2004, \$23.30 Fee

Action: The Board took no action.

Wednesday, March 19, 2008

Onnik Mooradian and Mariette Mooradian, 220157, 220158, 292978, 293031 (MT)

1-1-95 to 2-2-95, \$926.36 Fee, \$0.00 Penalty

5-5-97 to 6-30-98, \$31,783.19 Fee, \$0.00 Penalty

7-1-96 to 6-30-97, \$9,847.79 Fee, \$984.78 Penalty

7-1-01 to 3-31-04, \$67.67 Fee, \$15,997.09 Penalty

Action: The Board took no action.

Robert Ingram, 260330 (EHC)

10-1-00 to 3-31-01, \$29,660.00 Tax, \$1,093.00 Penalty

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

Center for Bio-Ethical Reform, 271792 (UT)

July 23, 2003, \$13,119.00 Tax

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

Phillip N. Cutler, 377150 (AC)

7-1-03 to 12-31-03, \$10,736.00 Tax, \$1,073.60 Failure to File Penalty

Action: The Board took no action.

Doris Lydia Cutler, 380705, 381147 (AC)

4-1-05 to 9-30-06, \$19,464.00 Tax, \$3,226.20 Failure to File Penalty

10-1-04 to 9-30-06, \$22,429.00 Claim for Refund, \$4,119.90 Penalty

Action: The Board took no action.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Boyd Holdings, 362328*.

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

The Kivelstadt Family Trust, 391391

2001, \$15,086.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Eduardo A. Manubay and Ivonah O. Manubay, 340464

1998, \$18,904.91 Claim for Refund of Late Payment Penalty

Action: Sustain the action of the Franchise Tax Board.

Pacific Canopy, Inc., 345419

1998, \$2,000.00 Claim for Refund

1999, \$2,000.00 Claim for Refund

2000, \$2,000.00 Claim for Refund

2001, \$2,000.00 Claim for Refund

2002, \$2,000.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Wednesday, March 19, 2008

Berlinda Tolbert, 378537

1999, \$550.00 Tax, \$220.00 Accuracy Penalty, \$146.01 Post-Amnesty Penalty

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

Karen J. Hodsdon, 383402

2004, \$124.00 Tax, \$100.00 Penalty, \$2,500.00 Frivolous Penalty

Action: Deny the petition for rehearing.

Boyd Holdings, 362328

1999, \$101,587.00 Claim for Refund

2000, \$154,708.00 Claim for Refund

2002, \$30,553.00 Claim for Refund

Action: The Board took no action.

Bradley Kastle, 349312

2000, \$12,114.00 Tax, \$3,028.50 Late Filing Penalty, \$3,028.50 Notice and Demand Penalty,

\$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Iceffine King, 360721

1989, \$945.44 Claim for Refund

Action: Deny the petition for rehearing.

Jimmy Lui, 374768, 378419, 383325

1999, \$2,347.00 Tax, \$1,143.09 Penalty, \$500.00 Frivolous Penalty

2002, \$2,016.00 Tax, \$1,130.15 Penalty, \$500.00 Frivolous Penalty

2004, \$1,512.00 Tax, \$756.00 Penalty, \$500.00 Frivolous Penalty

Action: Deny the petition for rehearing.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Sajjad Riyaz, 349075.*

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

Biagio A. Diritto, 388674

2006, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Ruben V. Reyes, 356860

2005, \$313.76

Action: Sustain the action of the Franchise Tax Board.

Wednesday, March 19, 2008

Epifania A. Grio, 378392

2006, \$347.50

Action: Deny the petition for rehearing.

Sajjad Riyaz, 349075

2004, \$300.00

2005, \$300.00

Action: The Board took no action.

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

The Board deferred consideration of the following matter: *PCS Leasing Company, L.P., 431274 (OHA)*.

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

TGT Enterprises, Inc., 270403 (FHB)

7-1-00 to 6-30-03, \$122,811.93

Action: Approve the redetermination as recommended by staff.

Glencore, Ltd., 391658 (OHB)

4-1-02 to 3-31-05, \$87,209.62

Action: Approve the redetermination as recommended by staff.

Arts Des Provinces De France, Inc., 404160 (OHB)

7-1-03 to 6-30-06, \$112,095.47

Action: Approve the redetermination as recommended by staff.

Terex Corporation, 431273 (OHA)

4-1-07 to 6-30-07, \$55,676.80

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

PCS Leasing Company, L.P., 431274 (OHA)

1-1-07 to 3-31-07, \$59,230.00

Action: The Board took no action.

NTT America, Inc., 420053 (OHB)

1-1-07 to 3-31-07, \$62,646.00

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

Wednesday, March 19, 2008

Automotive Funding Group, Inc., 335887 (EA)

1-1-04 to 9-30-05, \$181,384.57

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

Sprint Communications Company, LP 344618 (OHA)

10-1-01 to 9-30-04, \$94,841.17

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

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Citigroup Global Markets, Inc., 387740 (OHB)*; Ms. Mandel not participating in *Abbott Laboratories, Inc., 425161 (OHA)*; the Board made the following orders:

Mechanics Tool &amp; Supply Company, 432085 (CH)

1-1-02 to 5-30-02, \$70,742.32

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

Calpaco Papers, Inc., 403452 (EH)

1-1-05 to 12-31-06, \$90,959.39

Action: Approve the refund as recommended by staff.

Inamed Medical Product Corporation, 267193 (GH)

1-1-01 to 3-31-04, \$546,545.21

Action: Approve the refund as recommended by staff.

Lennox Hearth Products, Inc., 396359 (EA)

4-1-06 to 9-30-06, \$202,726.97

Action: Approve the refund as recommended by staff.

The Copley Press, Inc., 420665 (FH)

4-1-07 to 6-30-07, \$79,398.96

Action: Approve the refund as recommended by staff.

Professional Hospital Supply, Inc., 401441 (EH)

1-1-05 to 12-31-06, \$130,507.89

Action: Approve the refund as recommended by staff.

Anheuser-Busch, Inc., 329569 (OHA)

1-1-01 to 12-31-03, \$216,192.72

Action: Approve the refund as recommended by staff.

Wednesday, March 19, 2008

Citigroup Global Markets, Inc., 387740 (OHB)

10-1-05 to 12-31-05, \$120,103.54

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

Abbott Laboratories, Inc., 425161 (OHA)

1-1-01 to 12-31-03, \$553,603.30

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

San Diego Metro Credit Union, 416162 (FH)

4-1-02 to 6-30-05, \$397,525.39

Action: Approve the refund as recommended by staff.

Point Loma Credit Union, 401542 (FH)

1-1-07 to 6-30-07, \$64,909.32

Action: Approve the refund as recommended by staff.

Long Beach Acceptance Corporation, 420985 (EA)

1-1-07 to 3-31-07, \$178,918.59

Action: Approve the refund as recommended by staff.

Sonic-Saturn of Silicon Valley, Inc., 381275 (GH)

4-1-04 to 9-30-06, \$50,611.78

Action: Approve the refund as recommended by staff.

Automotive Funding Group, Inc., 335887 (EA)

1-1-04 to 9-30-05, \$397,150.58

Action: Approve the refund as recommended by staff.

AT Plastics, Inc., 334826 (OH)

7-1-96 to 12-31-04, \$247,033.31

Action: Approve the refund as recommended by staff.

Sprint Communications Company, LP, 344618 (OHA)

10-1-01 to 9-30-04, \$200,547.36

Action: Approve the refund as recommended by staff.

Edwards Federal Credit Union, 401256 (ARH)

1-1-03 to 3-31-06, \$236,961.63

Action: Approve the refund as recommended by staff.

Eagle Community Credit Union, 421811 (EAA)

4-1-06 to 6-30-07, \$132,646.74

Action: Approve the refund as recommended by staff.

Wednesday, March 19, 2008

First Financial Credit Union, 416065 (AP)

10-1-05 to 12-31-06, \$139,119.39

Action: Approve the refund as recommended by staff.

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

Louis E. Cook and Nancy L. Cook, 258746

1994, \$732.00 Assessment

Considered by the Board: November 14, 2007

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

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

Dana B. Fisher Sr. (Deceased) and A. Elizabeth Fisher, 346236

1981, \$210,057.00 Claim for Refund

Considered by the Board: October 23, 2007

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

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

### **LEGAL APPEALS MATTERS, ADJUDICATORY**

Shahrokh Matin, 308003 (CH)

1-1-01 to 12-31-03, \$61,686.99 Tax, \$6,168.95 Penalty

Considered by the Board: September 11, 2007

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

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

O.P. Schuman & Sons, Inc., 315317 (OHB)

7-1-90 to 6-30-98, \$41,331.67 Tax, \$0.00 Penalty

Considered by the Board: October 4, 2007

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

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

Shoreline Helicopters, LLC, 297719 (UT)

December 28, 2001, \$52,150.00 Tax

Considered by the Board: October 3, 2007

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

Wednesday, March 19, 2008

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

**The Auto Store of Merced, Inc., 168200 (KH)**

7-1-98 to 6-30-01, \$937,289.23 Tax, \$93,728.95 Penalty

Considered by the Board: October 24, 2007

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

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

**David Jay Sanfield, 332013 (AC)**

10-1-96 to 9-30-99, \$0.00 Tax, \$0.00 Penalty

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

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

**Finn Moller, 288211 (AS)**

4-1-00 to 6-30-01, \$149,107.82 Tax, \$47,263.80 Penalties

Considered by the Board: October 4, 2007

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

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

**Smiland Paint Company, 52753, 135675, 139295, 165511, 214982, 259644, 306866, 346955 (MT)**

1997, \$35,996.00 Fee Assessment

1998, \$37,784.00 Fee Assessment

1999, \$40,963.00 Fee Assessment

2001, \$38,284.00 Fee Assessment

2002, \$46,314.00 Fee Assessment

2003, \$46,967.00 Fee Assessment

Considered by the Board: February 27, 2008

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

**Wednesday, March 19, 2008**

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee 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.

Ock Ja Cho Lee, 357034 (AS)

4-1-03 to 9-30-04, \$7,702.03 Tax

Seung Suk Lee, 357033 (AS)

10-1-04 to 4-10-06, \$36,136.16 Tax

Considered by the Board: February 26, 2008

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee 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.

Don Ricardo's Restaurant, Inc., 42025 (AP)

4-1-95 to 12-31-96, \$37,111.60 Tax, \$3,711.16 Penalty

Padrino's, Inc., 42029 (AC)

4-1-95 to 3-31-98, \$179,168.19 Tax, \$17,916.81 Penalty

Considered by the Board: February 27, 2008

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

Action: Ms. Yee moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Dr. Chu but failed to carry, Dr. Chu and Ms. Yee voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating.

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

### **PROPERTY TAX MATTERS**

#### **Audits**

Arrival Communications, Inc. (2391)

2004, \$500,000.00 Escaped Assessment, \$50,000.00 Penalties, \$165,000.00 In-lieu Interest

2005, \$370,000.00 Escaped Assessment, \$37,000.00 Penalties, \$88,800.00 In-lieu Interest

2006, \$1,260,000.00 Escaped Assessment, \$126,000.00 Penalties, \$189,000.00 In-lieu Interest

2007, \$150,000.00 Excessive Assessment

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, 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, plus penalties and in-lieu interest, as recommended by staff.

Virgin Mobile USA, LLC (2767)

2004, \$1,920,000.00 Escaped Assessment, \$192,000.00 Penalties, \$633,600.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, 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 penalties and in-lieu interest, as recommended by staff.

Wednesday, March 19, 2008

**Verizon Select Services, Inc. (7503)**

2006, \$1,320,000.00 Escaped Assessment, \$132,000.00 Penalties, \$198,000.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, 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 penalties and in-lieu interest, as recommended by staff.

**Time Warner Telecom of California, L.P. (7522)**

2003, \$9,420,000.00 Escaped Assessment, \$285,000.00 Penalties, \$1,197,000.00 In-lieu Interest

2004, \$9,335,700.00 Excessive Assessment

2005, \$4,935,000.00 Excessive Assessment

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, 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, plus penalties and in-lieu interest, as recommended by staff.

**Evercom Systems, Inc. (7580)**

2004, \$624,000.00 Escaped Assessment, \$62,400.00 Penalties, \$205,920.00 In-lieu Interest

2005, \$541,000.00 Escaped Assessment, \$54,100.00 Penalties, \$129,840.00 In-lieu Interest

2006, \$755,000.00 Escaped Assessment, \$75,500.00 Penalties, \$113,250.00 In-lieu Interest

2007, \$168,000.00 Escaped Assessment, \$16,800.00 Penalties, \$10,080.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, 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 assessments, plus penalties and in-lieu interest, as recommended by staff.

**BT Americas, Inc. (7758)**

2004, \$5,850,000.00 Escaped Assessment, \$585,000.00 Penalties, \$1,930,500.00 In-lieu Interest

2005, \$211,000.00 Escaped Assessment, \$21,100.00 Penalties, \$50,640.00 In-lieu Interest

2006, \$150,000.00 Escaped Assessment, \$15,000.00 Penalties, \$22,500.00 In-lieu Interest

2007, \$622,000.00 Escaped Assessment, \$62,200.00 Penalties, \$37,320.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, 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 penalties and in-lieu interest, as recommended by staff.

**Unitary Escaped Assessments****Bell Atlantic Communications, Inc. (8071)**

2007, \$501,000.00 Escaped Assessment, \$50,100.00 Late Filing Penalty

**Pay-Less Cellular (2683)**

2006, \$680,000.00 Escaped Assessment, \$68,000.00 Late Filing Penalty

2007, \$1,380,000.00 Escaped Assessment, \$138,000.00 Late Filing Penalty

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

Wednesday, March 19, 2008

**Unitary Land Escaped Assessments**

AT&amp;T Mobility, LLC (2606)

2004-2007, \$9,071,186.00 Value

Metro PCS California/Florida (2733)

2006, \$287,431.00 Value

Fisher Wireless Services, Inc. (2760)

2004-2006, \$277,497.00 Value

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, 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 assessment as recommended by staff.

**OFFERS-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Nancy Sandy Nenejian* as recommended by staff.

**CHIEF COUNSEL MATTERS****RULEMAKING CHIEF COUNSEL MATTERS*****Petition for Amendment of Property Tax Rule 140.1, Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties***

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the petition for amendment of Property Tax Rule 140.1, *Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties*, and staff's recommended administrative changes in the treatment of limited partnerships with a sole non profit general partner acting as a managing general partner. (Exhibit 3.2.)

Speakers: Lenny Goldberg, California Tax Reform Association, representing Nonprofit Housing Association of Northern California

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved administrative changes in the treatment of Property Tax Rule 140.1 as recommended by staff.

Exhibits to these minutes are incorporated by reference.

Wednesday, March 19, 2008

**Petition for Amendment of Property Tax Rule 462.001, *Change in Ownership – General***

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the petition for amendment of Property Tax Rule 462.001, *Change in Ownership – General*, requiring that assessors calculate the value of a transferred interest in real property and compare it to fee value to determine if a change in ownership has occurred. (Exhibit 3.3.)

Speakers: Thomas Parker, Deputy County Counsel of Sacramento County, representing Sacramento County Assessor Kenneth D. Stieger and the California Assessors' Association  
David R. Doerr, Chief Tax Consultant, California Taxpayers' Association

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board denied the petition for amendment of Property Tax Rule 462.001 as recommended by staff.

**Alcoholic Beverage Tax Flavored Malt Beverages: Regulation 2558, *Distilled Spirits*; Regulation 2559, *Presumption – Distilled Spirits*; Regulation 2559.1; *Rebuttable Presumption – Distilled Spirits*; Regulation 2559.3, *Internet List*; and Regulation 2559.5, *Correct Classification***

Monica Brisbane, Tax Counsel, Business Taxes Division, Legal Department, made introductory remarks regarding the proposed revised language to Alcoholic Beverage Tax Flavored Malt Beverages: Regulation 2558, *Distilled Spirits*; Regulation 2559, *Presumption – Distilled Spirits*; Regulation 2559.1; *Rebuttable Presumption – Distilled Spirits*; Regulation 2559.3, *Internet List*; and, Regulation 2559.5, *Correct Classification*; and staff's recommendation that Formal Issue Paper No. 07-007 and its exhibits, be identified as a document relied upon and made available to the public, upon request, for 15 days. (Exhibit 3.4.)

Speakers: Fred Jones, Advocate, California Council on Alcohol Problems, and Alcapops and Youth Coalition  
Gene Livingston, Attorney, Greenberg Traurig for Miller Brewing Company

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the operative date be changed from July 1, 2008 to October 1, 2008, approved revised language to text of regulations, and ordered that Formal Issue Paper No. 07-007 be included in the rulemaking file.

Wednesday, March 19, 2008

## **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 10:15 a.m. and reconvened immediately in closed session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

## **CLOSED SESSION**

The Board met to discuss pending litigation (Gov. Code § 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 10:45 a.m. and reconvened immediately in open session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

The Board recessed at 10:46 a.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

## **CHIEF COUNSEL MATTERS**

### **PROPERTY TAX CHIEF COUNSEL MATTERS**

#### **Consideration of Policy Change – Opinion on Welfare Exemption “Community Benefit Test” under Revenue and Taxation Code section 214**

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff’s revised estimate of potential revenue impact of an expanded interpretation of the "community benefit test" under Revenue and Taxation Code section 214 for purposes of the welfare exemption. (Exhibit 3.5.)

Speakers: Thomas Parker, Deputy County Counsel of Sacramento County, representing Sacramento County Assessor Kenneth D. Stieger and the California Assessors’ Association  
Joel Butler, Yolo County Assessor  
Richard Kiy, President and CEO, International Community Foundation San Diego, California  
Ronald Coca, Supervisor Assessment Services, San Diego County Assessor’s Office

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered no change to current policy.

### **Status Report on Cable Television Property Assessment Issues**

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, provided a status report on cable television property assessment issues. (Exhibit 3.6.)

Wednesday, March 19, 2008

Speakers: Thomas Parker, Deputy County Counsel of Sacramento County, representing Sacramento County Assessor Kenneth D. Stieger  
Jeffrey Sinsheimer, Counsel, Coblente, Patch, Duffy & Bass on behalf of the California Cable and Telecommunications Association

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board directed staff to present a draft Letter to Assessors to the Board at the April Sacramento Board Meeting.

### **State Assessee Property Tax Appeals 2008 Procedures**

Carole Ruwart, Tax Counsel, Business Tax Division, Legal Department, made introductory remarks regarding staff's request for guidance on procedures to be used with respect to State assessee petitions filed in 2008. (Exhibit 3.7.)

The Board directed staff to provide options for the treatment of late submissions pertaining to property tax appeals at the April Board Meeting.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders: 1) make no change to the Rules for Tax Appeals as to the appeals conference, but staff is to provide a list of property tax appeals with a complexity analysis at the earliest opportunity; 2) the Tax and Fee Programs Division is to provide support and representation to Valuation Division staff throughout the entire appeal process; 3) add an appraiser to the Appeals Division on an as-needed basis; and, 4) hearing summaries are to provide more definite recommendations.

### **Board Consideration of Findings and Decisions**

Covad Communications Company (7706), 414850

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

Golden State Water Company (101), 414767

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating, the Board approved the Findings and Decision as recommended by staff.

Lodi Gas Storage, LLC (198), 414766

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

01 Communications, Inc. (7791), 388338

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating, the Board approved the Findings and Decision as recommended by staff.

**Wednesday, March 19, 2008**

Telscape Communications, Inc. (7907), 414762

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating, the Board approved the Findings and Decision as recommended by staff.

Verizon Wireless (2512), 405333

Sacramento Valley LP (2513), 405373

Los Angeles SMSA Ltd (2532), 405374

Fresno MSA LP (2552), 405375

GTE of California LP (2559), 405376

GTE Mobilnet of Santa Barbara (2627), 405377

Cellco Partnership (2667), 405378

California RSA #4 (2669), 405379

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and duly carried, Dr. Chu, Ms. Yee and Mr. Leonard voting yes, Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 87105, the Board approved the Findings and Decision as recommended by staff.

#### **OTHER CHIEF COUNSEL MATTERS**

#### **Discussion of Board Hearing Procedures for Briefing, Submitting Evidence, and Requesting Clarification**

The Board discussed procedures under the Rules for Tax Appeals relating to requests for and submission of additional briefing and evidence for Board hearings. (Exhibit 3.8.)

#### **ADMINISTRATIVE SESSION**

##### **ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, 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 3.9.)

Yvonne Szymanski, Tax Technician I, Consumer Use Tax Section, Sales and Use Tax Department, Headquarters

Patricia S. Hatcher-Jones, Staff Services Manager I, Operations Section, Property and Special Taxes Department, Headquarters

Action: Approve the 2007-2008 Superior Accomplishment Award Program Nominees. (Exhibit 3.10.)

Wednesday, March 19, 2008

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

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Legislative Committee report and the actions therein. (Exhibit 3.11.)

Committee vote was as follows:

A recommendation of support for AB 3009 Sales Tax: Consumer: Itinerant Vendors (Brownley) and sponsor unanimously passed with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

**Customer Services and Administrative Efficiency Committee**

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

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

Ramon Hirsig, Executive Director, suggested the Board close this meeting in honor of the loss of two Board of Equalization employees. The Board expressed its appreciation for their service to the State Board of Equalization and the State of California and offered their condolences to their families.

Mr. Hirsig introduced Charlene Yount, Chief, Administrative Support Division, Administrative Department, who provided a report on paperwork reduction and environmental stewardship at the Board of Equalization. (Exhibit 3.13.)

Mr. Hirsig introduced Elizabeth Houser, Deputy Director, Administration Department, who provided an update regarding the headquarters building remediation.

**Deputy Director's Report**

Randie Henry, Deputy Director, Sales and Use Tax Department, and David Gau, Deputy Director, Property and Special Taxes Department, provided an update on the Security Deposits Program and discussed the recommendation made by Board Member Steel. (Exhibit 3.14.)

The Board referred the matter to the Customer Services and Administrative Efficiency Committee and directed staff to provide regular progress reports.

Wednesday, March 19, 2008

Ms. Henry provided an update on a tax gap proposal for outsourcing collections of specified in-state account receivables. (Exhibit 3.15.)

Speakers: Hellan Roth Dowden, Lobbyist for SEIU Local 1000  
Bobbi Smith, Business Taxes Representative, Centralized Collections Section,  
Sales and Use Tax Department, and President-Elect DLC 782 of SEIU  
Local 1000  
Johan Klehs, representative, Linebarger Goggan Blair & Sampson

The Board directed staff to provide an update on this matter at the May Sacramento Board Meeting.

David Gau, Deputy Director, Property and Special Taxes Department, and Lynn Bartolo, Chief, Excise Taxes Division, Property and Special Taxes Department, provided an update on the Cigarette and Tobacco Products Retailer License. (Exhibit 3.16.)

Elizabeth Houser, Deputy Director, Administration Department provided an update on the proposed Fiscal Year 2008-2009 budget. (Exhibit 3.17.)

Anna Brannen, Chief Information Officer, Technology Services Division, provided an update on the Board of Equalization information technology activities. (Exhibit 3.18.)

The Board adjourned at 5:20 p.m. in memory of the following: Rosebud S. Pulido, Word Processing Technician in the Return Analysis Division, Sales and Use Tax Department, served the Board for 14 years and passed away on October 17, 2007; and, Stanley Wayne Townsend, Tax Technician in the Local Revenue Allocation Unit, Sales and Use Tax Department, served the Board for 22 years and passed away on February 13, 2008.

*The foregoing minutes are adopted by the Board on May 29, 2008.*

Note: The following matters were removed from the calendar prior to the meeting: *Eulipia, Inc., 300130 (GH); Los Gatos Restaurants, Inc., 299490 (GH); Stephen Charles Borkenhagen, 302079 (GH); Star Crest Products of California, Inc., 424691; and, Petition for Adoption of Proposed Property Tax Rule 145, Hospitals – Qualifying Organizations for the Welfare Exemption.*