

Tuesday, March 20, 2012

The Board met at its offices at 450 N Street, Sacramento, at 1:50 p.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Ali Amidy and Guiti Nahavandi, 524954

2004, \$111,346.00 Tax, \$19,911.40 Accuracy-Related Penalty

For Appellant:	Ali Amidy, Taxpayer
For Franchise Tax Board:	Raul Escatel, Tax Counsel
	Bill Hilson, Tax Counsel

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

Issues: Whether respondent correctly determined that appellants failed to provide sufficient documentation to establish their cost basis in United Food Enterprises, Inc. (UFE) for purposes of calculating their claimed long-term capital loss from the sale of their share of UFE in 2004.

Whether the accuracy-related penalty was properly imposed and whether appellants have shown reasonable cause for abatement of the penalty.

Whether the imposition of interest should be waived.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 3.1](#))

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

Exhibits to these minutes are incorporated by reference.

Tim Barth and Teri Barth, 562294

2008, \$951.75 Claim for Refund

For Appellant:	Tim Barth, Taxpayer
	Elizabeth Crockett, Representative
For Franchise Tax Board:	Kristen Magers, Tax Counsel
	Karen Smith, Tax Counsel

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

Issue: Whether appellants have established reasonable cause for the abatement of the notice and demand (demand) penalty.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 3.2](#))

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

Tuesday, March 20, 2012

Michael John Klemp, 568733
2003, \$4,296.00 Claim for Refund
For Appellant:
For Franchise Tax Board:

Michael Klemp, Taxpayer
Ted Tourian, Tax Counsel
Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether respondent properly determined appellant's claim for refund are barred by the statute of limitations.
Appellant's Exhibit: Miscellaneous Documents ([Exhibit 3.3](#))
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

SALES AND USE TAX APPEALS HEARINGS

David A. Bartel, 518470 (KH)
7-1-07 to 12-20-07, \$196,982.00 Tax, \$600.00 Failure to File Penalty, \$19,698.20 Late Payment Penalty
For Petitioner:

David A. Bartel, Taxpayer
Abe Golomb, Representative
R. Todd Luoma, Attorney

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of Tracy Chevrolet, Inc. pursuant to Revenue and Taxation Code section 6829.

Whether the payment from escrow, which was applied to Tracy Chevrolet's liabilities for 3Q07, should have been applied to liabilities for 4Q07.

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

A-Plus Storage Containers, Inc., 511088, 511095 (KH)
7-1-09 to 7-31-09, \$9,750.82 Tax
7-1-08 to 6-30-09, \$2,615.00 Tax

For Petitioner:

Nick Koretoff, Taxpayer
Robert S. Swanton, Representative

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issue: Whether the sales at issue qualify for the partial exemption from tax for sales of farm equipment.

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

Tuesday, March 20, 2012

Jamshid Parivash, 494295 (GH)

7-21-04 to 1-31-05, \$15,084.28 Tax, \$1,252.02 Late Payment Penalty, \$512.80 Failure-to-File Penalty

For Taxpayer: Jamshid Parivash, Taxpayer

For Sales and Use Tax Department: Erin Dendorfer, Tax Counsel

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

Issue: Whether taxpayer is personally liable as a responsible person for the unpaid liabilities incurred by JPS Homes II, Inc. during the period when the corporation was suspended.

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

Mohammad K. Abukhdair, 518237 (KH)

7-1-05 to 6-30-08, \$21,902.63 Tax, \$2,218.18 Negligence Penalty, \$2,217.76 Finality Penalty

For Taxpayer: Mohammad Abukhdair, Taxpayer

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

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

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

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

Proposed Amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

Bradley Heller, Tax Counsel IV, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments updating the way the Board annually estimates consumers' use tax liabilities ([Exhibit 3.4](#)).

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

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel voting no, Mr. Runner not participating, the Board adopted the proposed amendments to regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, as recommended by staff.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *4th St. Saloon, CA L.P., 509271 (JH)*; and, *Capital City Restaurants, Inc., 522640 (KH)*.

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

Tuesday, March 20, 2012

4th St. Saloon, CA L.P., 509271 (JH)

10-1-04 to 9-30-07, \$35,917.02 Tax, \$3,628.00 Negligence Penalty

Action: The Board took no action.

Saras Wati Rodriguez, 519802 (CH)

1-1-03 to 9-30-09, \$11,570.17 Tax

Action: Redetermine as recommended by the Appeals Division.

Capital City Restaurants, Inc., 522640 (KH)

4-1-06 to 12-31-08, \$285,451.98 Tax, \$0.00 Penalty

Action: The Board took no action.

A-1 Trading, Inc., 513826 (GH)

7-1-05 to 6-30-08, \$57,048.74 Tax, \$5,704.91 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Meadow Maid Market, Inc., 596806 (ET)

10-14-11, \$354.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Noreen Khan and Mohammad Raja Riaz, 597385 (ET)

10-6-11, \$49.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Juan Javier Alvarez, 595292 (ET)

10-7-11, \$93.50 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Asmat A. Nooreldin, 596321 (ET)

10-25-11, \$980.82 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Apollo's Men's Salon & Spa, LLC, 597386 (ET)

11-16-11, \$100.34 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 matter: *Daniel Gutierrez, 529506.*

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

George Ainsworth and Leah Elliot, 574380

2005, \$37,227.00 Tax, \$8,760.60 Late Filing Penalty

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

Tuesday, March 20, 2012

Michael Hull, 575417

1998, \$5,395.00 Tax, \$1,079.00 Accuracy Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Tim Booher, 552539

2008, \$942.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Michael J. Carolan, 528938

2004, \$2,388.00 Tax, \$597.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Matthew A. Cooper, 556482

2005, \$1,227.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Malcolm Farnsworth, 568602

2005, \$1,842.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Edward G. Gassman, 547004

1997, \$1,870.35 Assessment

Action: Sustain the action of the Franchise Tax Board.

Robyn J. Gordon, 553500

2004, \$1,662.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

John W. Greer, 556232

2007, \$16.95 Assessment

Action: Modify the action of the Franchise Tax Board.

Daniel Gutierrez, 529506

2004, \$2,617.88 Claim for Refund

Action: The Board took no action.

John Lange, 559258

2007, \$318.00 Tax, \$79.50 Late Filing Penalty, \$176.75 Notice and Demand Penalty

2008, \$439.00 Tax, \$109.75 Late Filing Penalty, \$269.25 Notice and Demand Penalty

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

Robyn Minner, 511279

2000, \$3,793.84 Innocent Spouse Relief Amount, \$1,938.60 Penalty/Fees

2002, \$291.63 Innocent Spouse Relief Amount, \$100.00 Late Filing Penalty, \$14.48 Post-Amnesty Penalty

2005, \$2,597.41 Innocent Spouse Relief Amount, \$344.25 Late Filing Penalty, \$351.75 Demand Penalty

2006, \$162.38 Innocent Spouse Relief Amount, \$25.52 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Tuesday, March 20, 2012

Victor Morales-Laimon, 552236

2008, \$1,579.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Regina L. Ray, 551179

2007, \$935.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Denise Robinson, 528683

2009, \$435.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jeremy Sanchez, 554024

2007, \$847.00 Assessment

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

Hewlett Packard Company, Inc., 599700 (OH)

10-1-10 to 12-31-10, \$743,772.20

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

Pacific Community Credit Union, 594019 (EA)

1-1-07 to 3-31-11, \$135,367.44

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 Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Amgen, Inc.*, 595475, the Board made the following orders:

Robert Clark Thornton, 571620 (AP)

6-7-05 to 6-30-06, \$214,476.10

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

Jay Stacy, 597923 (AP)

7-1-06 to 5-30-07, \$223,618.46

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

Tuesday, March 20, 2012

Amgen, Inc., 595475 (AR)

1-1-05 to 6-30-11, \$1,262,835.85

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

Blower Dempsay Corporation, 561900 (EA)

10-1-07 to 12-31-10, \$270,960.52

Action: Approve the refund as recommended by staff.

Metropolitan Finance, LLC, 588257 (AP)

4-1-11 to 6-30-11, \$104,172.00

Action: Approve the refund as recommended by staff.

Harley-Davidson Credit Corporation, 557535 (OH)

7-1-10 to 12-31-10, \$836,380.00

Action: Approve the refund as recommended by staff.

Pacific Community Credit Union, 594019 (EA)

1-1-07 to 3-31-11, \$354,248.43

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATION, CONSENT

(Motion expunged on March 21, 2012.)

LEGAL APPEALS MATTER, ADJUDICATORY

Hung Van Pham, 486918 (BH)

1-1-05 to 9-14-06, \$37,864.00 Tax, \$4,772.65 Negligence Penalty

Considered by the Board: February 28, 2012

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

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition for rehearing be granted.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTER, ADJUDICATORY

Tae G. Mok and Gyum S. Mok, 472910

2003, \$6,054.00 Tax, \$1,210.80 Accuracy-Related Penalty

2004, \$1,967.00 Tax, \$393.40 Accuracy-Related Penalty

Considered by the Board: February 28, 2012

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

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board adopted a decision sustaining the action with concessions by the Franchise Tax Board.

Tuesday, March 20, 2012

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

OFFER-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offer in Compromise Recommendations of *Jason Gilbert Duenas and Jennifer Rae Duenas* as recommended by staff.

LOCAL TAX REALLOCATION MATTERS

City of Santa Clara, 436735

1-1-04 to 6-30-10, \$2,426,418.00

Considered by the Board: Appearance Waived

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

The Board adjourned at 6:17 p.m.

The foregoing minutes are adopted by the Board on June 27, 2012.

Note: The following matters were removed from the calendar prior to the meeting: *Angela Leiva, 514980 (CH) and Angela Leiva and Abundio Hernandez, 514979 (CH)*; and, *James Michael Duggan, 441787 (UT)*.

Wednesday, March 21, 2012

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SPECIAL PRESENTATIONS

Mr. Horton extended his appreciation for all the hard work Kenneth W. Topper, Chief, Acquisitions Branch, Administrative Support Division, has given not only to the Board of Equalization but to the people of California. Mr. Horton recognized the significant impact Kenneth had on everyone in a professional perspective and personal perspective throughout his service.

Ms. Yee stated that Kenneth is a man who has devoted his life to public service and has shown that through all of his accomplishments. His positive nature that he brings to work has touched all of those who have worked with him. Ms. Yee wished him well in his much deserved retirement.

On behalf of the Board, Ms. Yee presented to Kenneth W. Topper a Board resolution extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California.

Mr. Runner thanked Kenneth for all the support he and his staff received when making the transition to a Member. He believes Kenneth will be truly missed.

Ms. Mandel stated that she will miss Kenneth. She agrees that his positive nature always brightens up a room.

Ms. Steel thanked Kenneth and agreed that he has always had a positive behavior and spirit, and that he will be missed.

Mr. Topper thanked the Members for their incredible acknowledgements and their kindness throughout his service with the State Board of Equalization. Mr. Topper recognized that his accomplishments were not done alone, but with skilled and talented individuals at the Board. He thanked all the wonderful people he had a chance to work with and encouraged everyone to keep a positive outlook in what they do as it does make a difference.

Mr. Horton continued by acknowledging two additional retirees, Diane G. Olson, Chief, Board Proceedings Division, and Caroline Cabias, Chief, Financial Management Division. He thanked them for all their support they have provided and all the hard work they have done. He thanked Diane for the education and guidance she provided him. He thanked Caroline for her guidance and uplifting spirit.

Ms. Yee thanked Diane for the support she has given to the Board and to her office and admired the flexibility and composure she always showed. Ms. Yee recognized Caroline for her knowledge and said she always felt reassured knowing the Board's budget was in good hands.

Ms. Steel explained how both Diane and Caroline are great assets to the Board and thanked both for all their hard work.

Wednesday, March 21, 2012

Mr. Runner expressed his appreciation to both Diane and Caroline for their support in his transition to Member of the Board. He told them both how they are great examples of the skill set and level of professionalism the Board staff has.

Ms. Mandel thanked Caroline for always being helpful and thanked Diane for her support, assistance and friendship throughout the years.

Ms. Olson thanked the Board Members for their kind words and thanked them for the opportunity they gave her years ago when she was chosen for her position. She especially thanked Ms. Yee and her office for the support they offered in the transition to Chief. Lastly she thanked Joann Richmond, Supervisor, Workload Planning Section, Board Proceedings Division, for being so supportive and for mentoring her through all her years of service with the BOE.

Ms. Cabias thanked the Board Members for allowing her to serve all these years. She thanked her staff and recognized all the support she received from her coworkers and partners in the Administration Department and throughout the BOE.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD MARCH 20, 2012

Ali Amidy and Guiti Nahavandi, 524954

Final Action: Upon motion of Mr. Runner, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

Tim Barth and Teri Barth, 562294

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

Michael John Klemp, 568733

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MARCH 20, 2012

David A. Bartel, 518470 (KH)

Final Action: Ms. Steel moved that the petition be redetermined to show that petitioner is only personally liable for the unpaid liabilities of the fourth quarter of 2007 and to apply the payment from escrow to the fourth quarter instead of the third quarter of 2007. The motion was seconded by Mr. Runner but failed to carry, Ms Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Wednesday, March 21, 2012

Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise Program.

A-Plus Storage Containers, Inc., 511088, 511095 (KH)

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

Jamshid Parivash, 494295 (GH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that no adjustment be made in the administrative protest as recommended by the Appeals Division.

Mohammad K. Abukhdair, 518237 (KH)

David Levine, Tax Counsel IV, Appeals Division, Legal Department, advised of the revised recommendation of the Appeals Division to relieve the finality penalty if the tax due is paid within 30 days of the notice of the Board's decision.

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

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

SALES AND USE TAX APPEALS HEARINGS

Lynnette Marie Shaw, 507974 (JH)

10-1-05 to 6-30-08, \$332,564.32 Tax, \$0.00 Penalty

For Petitioner:

Lynnette Marie Shaw, Taxpayer

Rachel J. Sater, Attorney

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

Issues: Whether petitioner's sales of medical marijuana qualify as exempt sales of medicine.

Whether petitioner is entitled to relief based on reliance on written advice from the Board.

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

Wednesday, March 21, 2012

Trimark Raygal, Inc., 257881 (EA)

4-1-00 to 3-31-03, \$106,887.72 Tax, \$15,395.49 Amnesty Interest Penalty

For Petitioner:

Dirk Hallett, Representative

Dave Rennie, Representative

Dennis Fox, Representative

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issues: Whether petitioner has collected excess tax reimbursement that it must either refund to its customers or pay to the state.

Whether relief of the amnesty interest penalty is warranted.

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

SPECIAL TAXES MATTERS, REDETERMINATION, CONSENT

With respect to the Special Taxes Matters, Redetermination, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered its previous motion rescinded and expunged.

The Board deferred consideration of the following matter: *Big West of California, LLC, 567166 (MT)*.

Big West of California, LLC, 567166 (MT)

1-1-10 to 12-31-10, \$418,453.08

Action: The Board took no action

SALES AND USE TAX APPEALS HEARING

Edwards, Inc., 522933 (KH)

10-1-05 to 12-31-08, \$59,176.18 Tax, \$5,917.63 Negligence Penalty

For Petitioner:

Edward Mondragon, Taxpayer

Fernando Mondragon, Taxpayer

Matthew D. Miller, Attorney

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether further adjustments are warranted to unreported taxable sales.

Whether petitioner was negligent.

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

The Board recessed at 12:30 p.m. and reconvened at 1:40 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Wednesday, March 21, 2012

CHIEF COUNSEL MATTERS

RULEMAKING

Petition to Amend Property Tax Rule 462.040, *Change in Ownership—Joint Tenancies*

Richard Moon, Tax Counsel IV, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the petition to amend and add examples to Property Tax Rule 462.040, *Change in Ownership – Joint Tenancies*, with regards to original transferor status ([Exhibit 3.5](#)).

Speakers: Barbara Edginton, Assessment Manager, San Luis Obispo County Assessor's Office
Richard Benson, Marin County Assessor/Recorder/ Clerk
Joel Butler, Yolo County Assessor

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that an interested parties process be commenced to consider the requested amendments to Property Tax Rule 462.040, *Change in Ownership – Joint Tenancies*, as recommended by staff.

Exhibits to these minutes are incorporated by reference.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

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

Action: Adopt the following resolution, extending its sincere and grateful appreciation to the retiree for her dedicated service to the State Board of Equalization and to the State of California, their congratulations on the retiree's well-earned retirement, and best wishes to her and her family for continued success, happiness and good health in the years to come ([Exhibit 3.6](#)).

Eileen Frutos (Amendment), Business Taxes Representative, Ventura District Office

Action: Approve the Board Meeting Minutes of January 11, 2012.

Action: Approve the 2012 Timber Advisory Committee Membership appointments ([Exhibit 3.7](#)).

Wednesday, March 21, 2012

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Customer Services and Administrative Efficiency Committee

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report and the actions therein ([Exhibit 3.8](#)).

Business Taxes Committee

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein ([Exhibit 3.9](#)).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Kristine Cazadd, Executive Director, introduced Brock Wimberley, Manager, Internal Audit Division, who provided an overview of the Internal Audit Division's accomplishments and 2012 plans.

Eric Steen, CROS Project Director, provided a report on the progress of the CROS project which will replace BOE's two current tax legacy technology systems.

Mr. Horton directed staff to provide Members the opportunity to review the brochures before they are released to the public.

Administration Deputy Director's Report

Liz Houser, Deputy Director, Administration Department, provided an update on the headquarters facilities.

Liz Houser, Deputy Director, Administration Department, provided an update on the San Diego facility ([Exhibit 3.10](#)).

Liz Houser, Deputy Director, Administration Department, provided an update on the Governor's 2012/13 budget.

Technology Deputy Director's Report

Brenda Fleming, Chief Information Officer and Deputy Director, Technology Services Department, provided an overview of the IT Boot Camp; developing and strengthening core IT competencies ([Exhibit 3.11](#)).

Brenda Fleming, Chief Information Officer and Deputy Director, Technology Services Department, provided an overview of key business and tax issues, technologies, and strategies involved in combating cybercrime ([see Exhibit 3.11](#)).

The Board recessed at 2:26 p.m. and reconvened at 2:50 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Wednesday, March 21, 2012

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

Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Legislative Committee report and the actions therein ([Exhibit 3.12](#)).

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 2:54 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 3:26 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Liz Houser, Deputy Director, Administration Department, announced the appointments of Randy Ferris to the position of Chief Counsel; Joann Richmond to the position of Chief, Board Proceedings Division; and, Edna Murphy to the position of Chief, Financial Management Division.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
MARCH 21, 2012**

Lynnette Marie Shaw, 507974 (JH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the liability for the period October 1, 2005 to March 1, 2007 be relieved and that the petition otherwise be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise Program.

Trimark Raygal, Inc., 257881 (EA)

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

Upon motion of Ms. Steel, seconded by Mr. Runner and duly carried, Ms. Steel, Mr. Runner and Ms. Mandel voting yes, Mr. Horton and Ms. Yee voting no, the Board ordered that the petition be granted and the tax be redetermined accordingly.

Wednesday, March 21, 2012

Edwards, Inc., 522933 (KH)

Final Action: Ms. Steel moved that the Department recalculate the tax for 2007 with the bank deposits instead of the income tax report, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Runner but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

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

The Board adjourned at 3:33 p.m.

The foregoing minutes are adopted by the Board on June 27, 2012.

Note: The following matter was removed from the calendar prior to the meeting: *California Children and Families First Trust Fund.*