

Wednesday, April 15, 2009

The Board met at its offices at 450 N Street, Sacramento, at 10:00 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.

SPECIAL PRESENTATION

Ms. Yee stated that she enjoyed working with Michele H. (Mickie) Stuckey and extended to her the Board's best wishes on her retirement and its appreciation for her service to the Board of Equalization and the State of California.

Ms. Stuckey thanked all the staff she's worked with over the years.

Mr. Leonard thanked Ms. Stuckey for all her hard work and wished her the best.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Nemat Maleksalehi and Maryam Maleksalehi, 395817

2001, \$115,870.00 Claim for Refund

For Appellant:

Nemat Maleksalehi, Taxpayer
Barzin Barry Sabahat, Attorney

For Franchise Tax Board:

Raul Escatel, Tax Counsel
Terry Collins, Tax Counsel

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

Issue: Whether appellants have shown that they are entitled to deduct certain payments that they made in connection with a plea bargain with the federal government.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 4.1)

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

Exhibits to these minutes are incorporated by reference.

David E. Houtz, 389846

2002, \$452.21 Claim for Refund

For Appellant:

Pilar Garcia, 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 this Board has jurisdiction to waive the post-amnesty penalty imposed by respondent.

Whether appellant has met the statutory requirements for abatement of interest.

Appellant's Exhibit: Case Outline (Exhibit 4.2)

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.

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SALES AND USE TAX APPEALS HEARING

Shahrokh Matin, 379882 (CH)

10-1-04 to 12-31-05, \$5,201.86 Claim for Refund

For Claimant: Shahrokh Matin, Taxpayer

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

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

Issue: Whether claimant has made duplicate payments of the same tax liabilities.

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.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Ravi Singh Sekhon, 329684.*

With respect to the Legal Appeals 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:

Ravi Singh Sekhon, 329684 (ET)

7-1-01 to 2-29-04, \$55,537.00 Tax, \$0.00 Penalty

Action: The Board took no action.

Tal Rubin, 360275 (AC)

1-1-03 to 3-31-03, \$8,322.00 Tax, \$882.20 Late payment Penalty

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

Larry M. Stenshoel, 260717, 298896, 89000147300, 89000147320 (GH)

10-1-96 to 7-7-98, \$0.00 Tax, \$80,737.77 Fraud Penalty, \$8,477.84 Failure to File Penalty

7-1-97 to 3-11-98, \$0.00 Tax, \$61,392.26 Fraud Penalty

4-1-92 to 12-31-94, \$101,618.42 Claim for Refund

10-1-96 to 3-31-97, \$0.00 Tax, \$27,067.87 Fraud Penalty, \$8,271.70 Failure to File Penalty

4-1-97 to 6-30-97, \$0.00 Tax, \$22,013.06 Fraud Penalty, \$8,805.23 Failure to File Penalty

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

Lloyd R. Jensen, Sr., and Wilma L. Jensen, 349155 (UT)

October 29, 2002, \$19,409.48, \$0.00 Penalty

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

Ranjit Singh Gill, 431263 (KH)

5-1-04 to 5-31-07, \$48,497.21 Tax

Action: Redetermine as recommended by the Appeals Division.

Gill's Food Mart, Inc., 473743 (ET)

October 8, 2008, \$250.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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Dirhem Hezam Saleh Hasan, 474008 (ET)
October 15, 2008, \$115.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Sayed Nasrat Naseemi, 474024 (ET)
August 13, 2008, \$978.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Amanjot Singh, 469814 (ET)
August 19, 2008, \$2,088.75 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Adellita Adel Kurdi, 473757 (ET)
October 8, 2008, \$1,248.73 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Mohammad Yunus, 472790 (ET)
August 27, 2008, \$931.49 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Joe Alkakos, 474588 (ET)
September 30, 2008, \$409.00 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: *Frank Cutler, 400347.*

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

Camille E. Atkinson, 406120
2005, \$4,648.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Brian K. Bates and Gerlyn N. Singson-Bates, 423110
2003, \$1,261.00 Claim for Refund
2004, \$6,885.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Santiago O. Carrera, 414596
2003, \$750.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

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Kris Christianson and Carolyn Christianson, 395923

2001, \$560.00 Tax, \$46.81 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Florence Colston and John D. Colston, 424353

1998, \$961.00 Tax, \$384.40 Accuracy Penalty, \$327.50 Post-Amnesty Penalty

Action: Sustain the modified action of the Franchise Tax Board.

Marlene L. Davis, 431493

2004, \$607.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jules De Vigne, 395926

2000, \$3,520.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Kasey D. Ellison, 440364

2003, \$714.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Michael Feely and Janet Feely, 424286

2003, \$7,349.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Douglas W. Fritts, 417835

2004, \$264.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Bart M. Hackley, Jr., and Sally R. Hackley, 328955

1998, \$4,068.00 Assessment

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

Virginia M. Harp, 405941

2002, \$510.00 Tax, \$33.83 Amnesty Penalty

Action: Modify the action of the Franchise Tax Board.

Caroline S. Hieber, 414958

2005, \$1,086.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Kenneth P. Hopfensperger and Catherine C. Klein-Hopfensperger, 424338

2004, \$2,539.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Courtney Kennedy, 405921

2003, \$340.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Thomas Lang, 362362

Phyllis M. Lang, 380410

2001, \$2,006.38 Innocent Spouse Relief Granted

Action: Sustain the action of the Franchise Tax Board.

Kim Lebo, 434776

2003, \$5,720.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Peter J. McIntyre and Kathryn R. McIntyre (Deceased), 405586

2001, \$554.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Abraham G. Medina, Sr., and Yolanda R. Medina, 418272

1998, \$4,632.00 Tax, \$1,127.55 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Nettie Becker Escrow, Inc., 418269

2005, \$787.52 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Amber E. Powell, 429328

2005, \$394.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Guanqi Rao, 399806

2005, \$546.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Robert Russell and Jill Russell, 424188

2003, \$4,653.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

James C. Schmidt and Pamela K. Schmidt, 378042

2004, \$988.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Juan Verduzco, Jr., 431766

2003, \$252.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Robin Wright, 421004

2003, \$452.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Cindy M. Yeley, 426248

2003, \$1,097.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jose R. Angeles, 400667

2005, \$373.00 Assessment

Action: Deny the petition for rehearing.

David Grossman, 377155

2004, \$3,454.00 Tax, \$1,847.00 Penalties, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Larry Mazur, 377123

2002, \$356.00 Assessment

Action: Deny the petition for rehearing.

Stanley E. Newton and Eunice A. Newton, 424090

2003, \$176.00 Assessment

Action: Deny the petition for rehearing.

Marc Pretscher, 414671

2001, \$15,009.00 Tax, \$3,752.25 Late Filing Penalty, \$1,568.41 Post-Amnesty Penalty,
\$1,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

John H. Vories, 389158

1992, \$2,007.45 Claim for Refund

1993, \$4,234.20 Claim for Refund

1994, \$1,874.55 Claim for Refund

1995, \$7,087.83 Claim for Refund

1996, \$7,073.83 Claim for Refund

1997, \$158.83 Claim for Refund

1998, \$158.83 Claim for Refund

1999, \$158.83 Claim for Refund

2000, \$292.32 Claim for Refund

2001, \$416.94 Claim for Refund

2002, \$416.94 Claim for Refund

2003, \$327.18 Claim for Refund

2004, \$613.03 Claim for Refund

2005, \$2,389.40 Claim for Refund

\$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

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Fred Kennedy, 388647

2002, \$2,537.00 Tax, \$634.25 Late Filing Penalty, \$153.71 Proposed Post-Amnesty Penalty

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

Frank Cutler, 400347

1998, \$200,182.00 Assessment

1999, \$804,948.00 Assessment

2000, \$764,141.00 Assessment

Action: The Board took no action.

Lippard Associates, Inc. and Sussex Financial Enterprises, Inc., 402128

2002, \$134,239.55 Assessment

Action: Sustain the action of the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matter: *Catherine H. Ung, 423820.*

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

Rochelle A. Anderson, 424048

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Tari Bowen-James, 406890

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Robert Brown, 422992

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Claude Henry Espinoza, 426672

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Leon Jackson III, 383479

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Mary J. Kearbey, 436157

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Fedir Kornatyi, 420326

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Julie Meadows, 398218

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Bhupendra N. Patel, 406622

2004, \$282.20

Action: Sustain the action of the Franchise Tax Board.

Tellzenia Sanders, 387184

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Susan Ann Singh-Bonaparte, 400106

2005, \$340.00

Action: Modify the action of the Franchise Tax Board.

Ngoc Thi Tran, 332740

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

T. T. Tran, 423825

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Catherine H. Ung, 423820

2007, \$347.50

Action: The Board took no action.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

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Louis and Company, 353897 (EA)

4-1-02 to 3-31-05, \$110,649.31

Action: Approve the redetermination as recommended by staff.

Recreational Equipment, Inc., 476932 (OH)

3-30-08 to 6-28-08, \$188,888.80

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

Big 5 Corp., 424989 (AS)

6-30-03 to 7-2-06, \$100,000.00

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

S.T.U.B. Satertainment USA, Inc., 425727 (EH)

1-1-05 to 6-30-07, \$78,521.15

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

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

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

CSI Leasing, Inc., 450470 (OH)

1-1-04 to 12-31-06, \$105,816.13

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

Maureen Cunningham, 308949 (BH)

10-1-03 to 12-31-03, \$109,588.07

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

Thermo Keytek, LLC, 475188 (OH)

7-1-06 to 12-31-07, \$182,455.83

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

Betts Spring Company, 462175 (KH)

4-1-08 to 6-30-08, \$50,073.71

Action: Approve the refund as recommended by staff.

Star Crest Products of California, Inc., 424691 (EH)

1-1-01 to 6-30-04, \$893,350.12

Action: Approve the refund as recommended by staff.

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Star Crest Products of California, Inc., 475797 (EH)

7-1-96 to 12-31-00, \$1,027,534.12

Action: Approve the refund as recommended by staff.

El Pollo Loco, Inc., 475337 (EA)

1-1-04 to 12-31-06, \$50,483.26

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 468426 (KH)

7-1-08 to 9-30-08, \$455,053.74

Action: Approve the refund as recommended by staff.

Ace Hardware Corporation, 465399 (OH)

7-1-05 to 9-30-08, \$64,346.77

Action: Approve the refund as recommended by staff.

The Eggo Company, 441080 (OH)

10-1-06 to 12-31-06, \$83,018.96

Action: Approve the refund as recommended by staff.

21st Century Insurance Company, 415444 (AC)

4-1-04 to 6-30-06, \$469,417.17

Action: Approve the refund as recommended by staff.

Chrysler, LLC, 449274 (OH)

6-4-08 to 9-19-08, \$547,933.71

Action: Approve the refund as recommended by staff.

Vertis, Inc., 441874 (OH)

4-1-05 to 12-31-07, \$99,553.94

Action: Approve the refund as recommended by staff.

Webcraft, LLC, 431110 (OH)

4-1-04 to 3-31-08, \$84,256.05

Action: Approve the refund as recommended by staff.

California Culinary Academy, LLC, 475348 (OH)

1-1-02 to 9-30-06, \$76,923.07

Action: Approve the refund as recommended by staff.

MetroPCS Wireless, Inc., 474396 (OH)

7-1-04 to 9-30-04, \$196,954.73

Action: Approve the refund as recommended by staff.

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Pacific Clay Products, 465397 (EH)

7-1-05 to 6-30-08, \$202,899.39

Action: Approve the refund as recommended by staff.

Air Products & Chemicals, Inc., 447948 (OH)

10-1-00 to 12-31-05, \$373,264.52

Action: Approve the refund as recommended by staff.

Cricket Press, Inc., 423266 (AA)

7-1-04 to 6-30-07, \$231,159.14

Action: Approve the refund as recommended by staff.

Credit One Corporation, 420963 (EA)

1-1-05 to 3-31-07, \$185,501.37

Action: Approve the refund as recommended by staff.

Inovant, LLC, 457629 (BH)

10-1-06 to 9-30-08, \$1,015,516.95

Action: Approve the refund as recommended by staff.

Volcano Corporation, 473676 (KH)

7-21-03 to 6-30-06, \$400,361.46

Action: Approve the refund as recommended by staff.

A-L Financial, Corporation, 468417 (EA)

7-1-08 to 9-30-08, \$196,103.28

Action: Approve the refund as recommended by staff.

Kern County Employees Federal Credit Union, 465398 (AR)

4-1-07 to 6-30-08, \$103,656.18

Action: Approve the refund as recommended by staff.

Harlow's Kitchen Concepts, Inc., 465504 (EH)

7-1-05 to 6-30-08, \$64,521.53

Action: Approve the refund as recommended by staff.

Initiate Systems, Inc., 462178 (OH)

2-15-06 to 3-31-06, \$98,363.87

Action: Approve the refund as recommended by staff.

Coban Research & Technologies, Inc., 466556 (OH)

4-1-08 to 6-30-08, \$67,698.05

Action: Approve the refund as recommended by staff.

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C & T Welding, Inc., 474547 (KH)

1-1-06 to 3-31-08, \$101,416.67

Action: Approve the refund as recommended by staff.

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

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Dr. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Kaiser Air, Inc., 442523*, the Board made the following orders:

Atlantic Richfield Company, 466759 (MT)

3-1-06 to 3-31-06, \$69,370.80

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

Kaiser Air, Inc., 442523 (MT)

3-1-05 to 1-31-08, \$52,204.34

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

Heraeus Metal Processing, Inc., 475623 (EF)

12-4-07 to 12-4-07, \$52,741.12

Action: Approve the refund as recommended by staff.

LEGAL APPEALS MATTERS, ADJUDICATORY

Sun Ja Song, 469789 (ET)

September 17, 2008, \$29.47 Approximate Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Dr. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board determined that staff properly seized the tobacco products.

Yun Hyang Swensen and Juventino Avendano Meraz, 467973 (ET)

June 23, 2008, \$177.50 Approximate Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Dr. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board determined that staff properly seized the tobacco products.

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

Thomas A. Bladow, 374589

2004, \$1,060.00 Assessment

Considered by the Board: February 3, 2009

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

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

Marlene D. Canter, 421269

1998, \$257,848.00 Assessment

1999, \$124,202.00 Assessment

2000, \$80,615.00 Assessment

Considered by the Board: March 16, 2009

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and duly carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu voting no, the Board reversed the action of the Franchise Tax Board as to issue number one for appellant's use of the fair market value method and allowed the payments to Lee Canter, the key officers, and the bankers fees, otherwise sustain the action of the Franchise Tax Board.

Elias Erazo and Griselda Erazo, 441320

2003, \$12,594.00 Assessment, \$2,518.80 Accuracy Related Penalty

Considered by the Board: February 25, 2009

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

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 adopted a decision which included a concession by the action of the Franchise Tax Board.

Maria Theresa Gonzales, 404649

2005, \$345.00 Claim for Refund

Considered by the Board: January 21, 2009

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

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

Michael Maurer and Anna G. Maurer, 351807

2000, \$358.00 Claim for Refund

Considered by the Board: January 21, 2009

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

Action: Mr. Leonard moved to adopt a decision reversing the action of the Franchise Tax Board. The motion was seconded by Ms. Steel but no vote was taken.

The Board postponed this matter to later in the day.

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Jose Arnel Viray, 361472

2004, \$823.00 Tax, \$205.75 Penalty for Failure to Furnish

Considered by the Board: January 21, 2009

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

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

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTER,
ADJUDICATORY**

John V. Dawson, 387778

2006, \$347.50

Considered by the Board: November 14, 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, CREDITS, CANCELLATIONS AND REFUNDS,
ADJUDICATORY**

Affymetrix, Inc., 462490 (GH)

10-1-03 to 9-30-06, \$2,164,220.71

Considered by the Board: January 21, 2009

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

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

Phong Thanh Nguyen, 483115 (GH)

1-1-05 to 2-25-08, \$140,574.19

Considered by the Board: Presented for Separate Discussion

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 approved the refund as recommended by staff.

SPECIAL TAXES MATTERS, DENIAL OF CLAIM FOR REFUND, ADJUDICATORY

Tesoro Refining, Marketing, and Supply Company, 441539 (MT)

1-1-02 to 12-31-06, \$3,627,958.20

Considered by the Board: Presented for Separate Discussion

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

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Action: Upon motion of 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 approved the denial of claim for refund as recommended by staff.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Audits

MetroPCS California, LLC (2733)

2005, \$4,800,000.00 Escaped Assessment, \$480,000.00 Penalties, \$1,584,000.00 In-lieu Interest

2006, \$1,400,000.00 Excessive Assessment

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

Royal Street Communications, LLC (2779)

2006, \$1,590,000.00 Escaped Assessment, \$159,000.00 Penalties, \$381,600.00 In-lieu Interest

2007, \$100,000.00 Escaped Assessment, \$10,000.00 Penalties, \$15,000.00 In-lieu Interest

2008, \$200,000.00 Escaped Assessment, \$20,000.00 Penalties, \$12,000.00 In-lieu Interest

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

Board Roll Changes

2006, 2007 and 2008 Board Rolls of State-Assessed Property

Action: Upon motion of Dr. Chu, seconded by Ms. Steel 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 approved corrections to the 2006, 2007 and 2008 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 4.3).

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Dr. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Andrew Lau* and *Chuan Ling Huang and Zi Hua Li*, as recommended by staff.

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

Wednesday, April 15, 2009

SALES AND USE TAX APPEALS HEARINGS

Joel Sanchez, 356200 (KH)

4-4-97 to 3-31-04, \$36,280.51 Tax, \$19,804.27 Fraud Penalty, \$6,460.01 Amnesty Double Fraud Penalty, \$7,921.69 Finality Penalty, \$2,583.99 Amnesty Double Finality Penalty, \$2,951.01 Amnesty Interest Penalty

For Petitioner:

Joel Sanchez, Taxpayer
Peter Holtz, CPA

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether taxpayer has established that reductions to the understated taxable sales established using a bank deposit analysis is warranted.

Whether the 25-percent penalty for fraud or intent to evade is supported by clear and convincing evidence.

Whether relief from the penalty for failing to timely pay the determination is warranted.

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.

Gurminder Singh Parmar, 400369 (KH)

4-1-03 to 3-31-06, \$58,596.09 Tax, \$5,859.65 Negligence Penalty

For Petitioner:

Gurminder Singh Parmar, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Whether petitioner was negligent.

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

The Board recessed at 2:35 p.m. and reconvened at 3:05 p.m. with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

PUBLIC HEARINGS

Property Taxes – State Assessee Presentations on the Valuation of State-Assessed Properties

Ken Thompson, Principal Property Appraiser, Valuation Division, Property and Special Taxes Department, made introductory remarks regarding the state assessee's presentations on the valuation of state-assessed properties.

Speakers:

Peter Michaels, Law Office of Peter Michaels
State Assessed Gas/Electric, Intercounty Pipeline, Telephone and Railroad Companies

Wednesday, April 15, 2009

CHIEF COUNSEL MATTERS**RULEMAKING****Section 100 Changes to Regulations**

Bradley Heller, Tax Counsel, Legal Department, made introductory remarks regarding the proposed revisions to clarify the partial exemption for sales and purchases of specified property under specified conditions extended to the additional one-percent sales and use tax, operative April 1, 2009 to Sales and Use Tax Regulations: 1532, *Teleproduction or Other Postproduction Service Equipment*; 1533.1, *Farm Equipment and Machinery*; 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*; 1534, *Timber Harvesting Equipment and Machinery*; and, 1535, *Racehorse Breeding Stock* (Exhibit 4.4).

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 approved the proposed revisions.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Approval of the proposed revisions to Compliance Policy and Procedures Manual Chapter 1, General; Chapter 2, Registration; Chapter 3, Account Maintenance; and, Chapter 7, Collections.*

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 4.5).

Shirley Johnson, Senior Information Systems Analyst, Technology Services
Division, Headquarters
Robert J. Stipe, Tax Counsel IV, Litigation Division, Legal Department,
Headquarters
Robert L. Buntjer, Administrator of the Return Analysis and Allocation Section,
Headquarters
Theresa (Terré) Castaneda, Office Services Supervisor II, Administration
Department, Headquarters
James K. Tang, Business Taxes Specialist I, Norwalk Investigations Division
Office

Action: Approve the Board Meeting Minutes of February 3, 2009 and February 17, 2009.

Wednesday, April 15, 2009

OTHER ADMINISTRATIVE MATTERS

Deputy Directors Report

Lisa Thompson, Principal Property Appraiser, Property and Special Taxes Department, provided an update regarding the Board's staff meeting with interested parties regarding the proposed form BOE-278-H, *Supplemental Reporting Form – Organizational Clearance Certificate Holders Nonprofit Hospital Organizations* (Exhibit 4.6).

Speakers: Anne McLeod, Vice President Finance Policy, California Hospital Association
 Patricia Lynch, Kaiser Permanente
 Andreanna Ksidakis, Vice President and Deputy General Counsel, Sutter Health
 Sherreta Lane, Vice President Finance Policy, California Children's Hospital Association
 Fred Main, Manatt Phelps & Phillips, Cedars-Sinai Hospital
 Harry Osborne, Alliance of Catholic Health Care
 Robert R. Rubin, Attorney, McDonough Holland & Allen, California Hospital Association
 Kyle Serrette, Director, United Nurses Association of California
 Jimmy Gomez, United Nurses Association of California
 Michael Bolden, Advocate, American Federation of State, County and Municipal Employees, American Federation of Labor and Congress of Industrial Organizations

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 adopted the proposed form BOE-278-H.

Executive Director's Report

Ramon Hirsig, Executive Director, introduced Elizabeth Houser, Deputy Director, Administration Department, who provided a status update on the on-going projects at headquarters.

Ramon Hirsig, introduced, Will Semmes, Chief Deputy Director, Real Estate and Management, Department of General Services, who introduced his staff that was present and available to answer any questions. Doug Button, Deputy Director, Real Estate, Department of General Services, gave a summary of the LaCroix Davis Report. Michael Polkabila, Certified Industrial Hygienist, Biomax Environmental, introduced himself and gave a summary of his responsibility on this project.

Speakers: Bobbi Smith, President DLC 782, SEIU Local 1000
 Deanna Payne, Staff Information Systems Analyst, Board of Equalization

Wednesday, April 15, 2009

Elizabeth Houser, Deputy Director, Administration Department, provided an update on the site search. Ramon Hirsig, Executive Director, presented to the Board of Equalization an award for the 2008 State Employee's Food Drive. Mr. Hirsig and Ms. Yee presented awards to the co-chairs Amber Van Alstyne and Laura SooHoo; and to the top contributors the Technology Services Division and the Irvine District Office.

Ms. Yee thanked Amber and Laura for their coordinated efforts. She stated that the Board of Equalization has made remarkable contributions and she is proud to be part of this organization.

Randie Henry, Deputy Director, Sales and Use Tax Department, thanked all the field offices for their contributions and especially thanked the committee chairs of the Irvine District Office for their generosity and support of the entire office.

Anna Brannan, Chief, Technology Services Division, acknowledged her staff for their contributions and support.

Deputy Directors Reports

David Gau, Deputy Director, Property and Special Taxes Department, provided introductory remarks regarding Issue Paper 09-001, *Data Source for the Calculation of the Annual Tobacco Products Tax Rate* and the determination of the fiscal year 2009-10 tobacco products tax rate (Exhibit 4.7).

Speaker: Dennis Loper, CA Distributors Association

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved Issue Paper 09-001 and the fiscal year 2009/10 tobacco products tax rate.

Elizabeth Houser, Deputy Director, Administration Department, provided a 2008/09 and 2009/10 budget update. She also provided an update on the Governor's Executive Order S-16-08, State Employee Furlough.

Anna Brannen, Chief, Technology Services Division, made a presentation on the Board's long-term information technology strategic plan, titled "*The 2020 Plan: Roadmap to the Future*".

Speaker: Edward Threlkeld, SEIU 1000 DLC 782

Wednesday, April 15, 2009

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

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Legislative Committee report and the actions therein (Exhibit 4.8).

Committee votes were as follows:

A motion to adopt the proposed amendments to AB 347 duly passed with Ms. Yee, Dr. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no.

A recommendation of support for AB 1265, AB 1523 and AB 809 unanimously passed with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

Property Tax Committee

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Property Tax Committee report and the actions therein (Exhibit 4.9).

Committee votes were as follows:

A recommendation to adopt Issue Paper 09-002 unanimously passed with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

A recommendation to adopt Issue Paper 09-003 unanimously passed with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD APRIL 15, 2009

Nemat Maleksalehi and Maryam Maleksalehi, 395817

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

David E. Houtz, 389846

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

Wednesday, April 15, 2009

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD APRIL 15, 2009

Shahrokh Matin, 379882 (CH)

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.

Gurminder Singh Parmar, 400369 (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 as recommended by the Appeals Division.

Joel Sanchez, 356200 (KH)

Final Action: Mr. Leonard moved to reduce the fraud penalty to negligence, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Dr. Chu and Ms. Mandel voting no.

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTER, ADJUDICATORY

Michael Maurer and Anna G. Maurer, 351807 (continued)

2000, \$358.00 Claim for Refund

Considered by the Board: January 21, 2009

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

Action: Upon motion of Ms. Mandel, 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 adopted a decision sustaining the action of the Franchise Tax Board.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 4:35 p.m. and reconvened immediately in closed session with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

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

The Board recessed at 5:40 p.m. and reconvened immediately in open session with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Wednesday, April 15, 2009

Mr. Hirsig announced the appointment of Ken Thompson to the position of Chief, State-Assessed Properties Division, Property and Special Taxes Department.

The Board adjourned at 5:43 p.m.

The foregoing minutes are adopted by the Board on July 21, 2009.

Note: The following matters were removed from the calendar prior to the meeting: *Board Resolution for Headquarters Facility; John Hugo, 209495; and, Linda S. Williams, 313247.*