

Tuesday, April 28, 2009

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Ms. Yee, Chairwoman, Dr. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

BG Star Productions, Inc., 268579

1998, \$112,394.00 Assessment

1999, \$62,250.00 Assessment

Billy Wayne Blanks and Gayle H. Blanks, 268581

1998, \$663,038.00 Assessment

1999, \$987,125.00 Assessment

For Appellant:

Thomas Henning, Attorney

Glenn Bystrom, Representative

For Franchise Tax Board:

Bill Hilson, Tax Counsel

David Gemmingen, Tax Counsel

Maria Panilla, Program Specialist

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

Issues: Whether the installment sale of the exclusive rights to market and sell "Tae Bo" took place in 1998 or 1999.

What is the appropriate method to value the deferred obligation and what is the value of the deferred obligation.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 4.10)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 4.11)

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.

Cecile R. Miguel-Ruiz, 414379

2003, \$10,222.00 Assessment, \$2,555.50 Failure to Furnish Penalty

For Appellant:

Keith A. Shibou, Representative

For Franchise Tax Board:

Judy Hirano, Tax Counsel

William Hilson, Tax Counsel

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

Issues: Whether appellant resided in Indian country during the year at issue so that her reservation-sourced income is not subject to California tax.

Whether appellant's reservation-sourced income is exempt from California tax even if she did not live on reservation land during 2003.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 4.12)

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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Frances Cummings and Thomas Cummings, 437596

2003, \$7,113.00 Assessment

2004, \$6,973.00 Assessment

For Appellant:

Keith A. Shibou, Representative

For Franchise Tax Board:

Judy Hirano, Tax Counsel

Bill Hilson, Tax Counsel

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

Issue: Whether California may tax appellant's per capita Indian gaming distribution.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 4.13)

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

A.C.K. Masonry Corporation, 417778

1993 to 2006, \$21,931.92 Assessment

For Appellant:

Eric Divine, Representative

Virginia Kellner, Witness

Bruce Kellner, Witness

For Franchise Tax Board:

Jean Cramer, Tax Counsel

Craig Scott, Tax Counsel

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

Issues: Whether appellant has shown that the minimum franchise tax for taxable years ending 12/31/1994 through 12/31/2006 should be refunded.

Whether appellant has shown that the late filing penalties imposed for taxable years ending 12/31/1994 through 12/31/2005 should be abated.

Whether appellant has shown that the estimated tax penalties imposed for taxable years ending 12/31/1994 through 12/31/2006 should be abated.

Whether respondent properly determined not to abate interest for each of the taxable years listed above under Revenue and Taxation Code (R&TC) section 19104, subdivision (a), or section 19112.

Whether the Board has jurisdiction over the post-amnesty penalty imposed for taxable years ending 12/31/1994 through 12/31/2002.

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.

Harry Cho, 449340

2005, \$504.15 Claim for Refund

2006, \$1,118.00 Assessment

For Appellant:

Harry Cho, Taxpayer

For Franchise Tax Board:

Jean Cramer, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issue: Whether appellant has established that he qualifies for head of household (HOH) filing status for tax years 2005 and 2006.

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Appellant's Exhibit: Miscellaneous Document (Exhibit 4.14)

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.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

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

Sameer Arora, 432978

2006, \$154.95 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Daniel Chismire, 374599

2002, \$3,301.00 Assessment

2003, \$2,567.00 Assessment

Action: Modify the action of the Franchise Tax Board.

Matthew Esselstrom, 443957

2003, \$1,734.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Bruce Hernandez, 439812

2004, \$1,794.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jonathan B. Ryder, 399882

2003, \$15,231.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Elke L. Coffey, 333143

2000, \$7,721.62 Claim for Refund

Action: Deny the petition for rehearing.

Robert Doyle, 446892

2005, \$4,159.00 Tax, \$1,039.75 Late Filing Penalty

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

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Bill Hamlin, 443354

2005, \$1,133.00 Tax, \$283.25 Late Filing Penalty, \$283.25 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

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

Benjamin Killen, 443341

2005, \$1,381.00 Tax, \$345.25 Late Filing Penalty, \$345.25 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

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

Dan Pickell, 429756

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

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

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matter: *Latoya Vivian*, 388336.

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

Sarnieh Amirian, 441575

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Ragaa Attallah, 424028

2007, \$289.58

Action: Sustain the action of the Franchise Tax Board.

Patricia Bell, 444216

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Tim O. Bell, 445629

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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L. P. Bonham, 425110

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Jorge G. Chuc, 394371

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Marcelino M. Escobedo, 424055

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Judy Parrino, 422646

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Beverly Reyes, 427288

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Regina L. Smith, 425174

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Joshua A. Timmons, 420381

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Latoya Vivian, 388336

2006, \$265.00

Action: The Board took no action.

Denise Williams, 422782

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

**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 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:

Tuesday, April 28, 2009

Trace Energy Services, Inc., 478813 (AR)

3-18-04 to 12-31-04, \$75,401.50

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

EDS Information Services, LLC, 478687 (OH)

1-1-01 to 6-30-05, \$124,688.81

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

Asfour Ventures, Inc., 361149 (AC)

1-1-01 to 12-31-03, \$362,551.68

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

Innovative Displayworks, Inc., 478772 (AP)

1-1-08 to 9-30-08, \$52,920.70

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

Lithographix, Inc., 367230 (AS)

4-1-06 to 6-30-06, \$238,453.41

Action: Approve the refund as recommended by staff.

Sanyo North America Corporation, 475112 (AC)

10-01-07 to 6-30-08, \$78,525.02

Action: Approve the refund as recommended by staff.

Washington Mutual Bank FA, 435118 (OH)

1-1-03 to 12-31-07, \$136,343.33

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 476854 (KH)

11-03-08 to 1-7-09, \$382,107.00

Action: Approve the refund as recommended by staff.

Galletti & Sons, Inc., 468979 (UT)

7-31-08 to 7-31-08, \$58,219.36

Action: Approve the refund as recommended by staff.

Federated Western Properties, Inc., 435528 (OH)

1-1-04 to 12-31-04, \$164,922.22

Action: Approve the refund as recommended by staff.

Asfour Ventures, Inc., 477022 (AC)

1-1-01 to 12-31-03, \$143,695.30

Action: Approve the refund as recommended by staff.

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Levi, Ray & Shoup, Inc., 467825 (OH)

7-1-05 to 9-30-05, \$63,475.86

Action: Approve the refund as recommended by staff.

Los Angeles Times Communications, 332040 (AA)

7-1-00 to 6-30-06, \$2,474,714.33

Action: Approve the refund as recommended by staff.

Ameron International Corporation, 465759 (EH)

7-1-05 to 9-30-05, \$413,887.80

Action: Approve the refund as recommended by staff.

Premier America Credit Union, 438028 (AC)

4-1-07 to 3-31-08, \$61,454.78

Action: Approve the refund as recommended by staff.

Triad Financial Corporation, 462893 (EA)

4-1-08 to 6-30-08, \$505,618.75

Action: Approve the refund as recommended by staff.

Hearst Business Media Corporation, 450269 (OH)

4-1-05 to 3-31-08, \$70,285.60

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 Ms. Steel, seconded by Dr. Chu and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following order:

Metropolitan Life Insurance Company, 478938 (ET)

1-1-07 to 12-31-07, \$2,533,559.39

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

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

North Central Distributing, Inc., 476456 (KH)

7-1-05 to 6-30-08, \$51,259.23

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

The Board recessed at 11:55 a.m. and reconvened at 1:30 p.m. with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

George Dadanian and Barbara Dadanian, 263345

1983, \$5,902.71 Assessment

1984, \$6,197.00 Assessment

For Appellant:

Jesus J. Mejia, Representative

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Jean Cramer, Tax Counsel

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

Issue: Whether the proposed assessments, which are based on federal adjustments, are barred by the statute of limitations.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 4.15)

Diane Ewing, Tax Counsel, Franchise Tax Board, announced that the proposed assessment amount for the 1984 year was revised to \$3,862.00.

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.

Suzanne Weber, 336613

2002, \$594.09 Claim for Refund

For Appellant:

Suzanne T. Weber, Taxpayer

For Franchise Tax Board:

Craig Scott, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issues: Whether respondent properly determined not to abate interest for 2002.

Whether respondent properly imposed the collection cost recovery fee for 2002.

Whether this Board has jurisdiction over the Amnesty Penalty imposed for 2002.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 4.16)

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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Kathy Marshall, 444048

1995, \$6,694.80 Accuracy Related Penalty, \$11,033.14 Post-Amnesty Penalty

For Appellant: Kathy Marshall, Taxpayer

For Franchise Tax Board: Craig Scott, Tax Counsel
Jozel Brunett, Tax Counsel

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

Appellant's Exhibit: Miscellaneous Documents (Exhibit 4.17)

Issues: Whether appellant has demonstrated that the accuracy-related penalty should be abated.

Whether respondent properly determined not to abate interest.

Whether the Board has jurisdiction to abate any portion of the post-amnesty penalty.

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

Gerald V. Dicker and Patricia R. Dicker, 448036

2006, \$28,153.04 Assessment

For Appellant: Marietes Macaraya, Representative

For Franchise Tax Board: Diane Ewing, Tax Counsel
Craig Scott, Tax Counsel

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

Issue: Whether appellants have demonstrated that the late payment of tax penalty should be abated for reasonable cause.

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.

Sheldon Sherman and Sandra Coulls, 406056

1998, \$3,783.00 Tax, \$920.88 Penalties

1999, \$1,653.00 Tax, \$6,274.13 Penalties

2000, \$377.00 Tax, \$157.82 Penalties

For Appellant: Sheldon Sherman, Taxpayer

For Franchise Tax Board: John Milikowsky, Representative
Craig Scott, Tax Counsel
Jozel Brunett, Tax Counsel

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

Issues: Whether the Board has jurisdiction to review the Franchise Tax Board's (FTB or respondent) failure to abate interest and, if so, whether the FTB abused its discretion in refusing to abate interest.

Whether the Board has jurisdiction to review the FTB's proposed assessment of the post-amnesty penalties and, if so, whether respondent is estopped from imposing the post-amnesty penalties.

Craig Scott, Tax Counsel, Franchise Tax Board, stated for the record that the 2000 assessment and the 1999 late payment penalty have been relieved.

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

PUBLIC HEARINGS

Business Taxpayers' Bill of Rights Hearings

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

Speakers: William M. Connell, Owner, All American Surf Dog
Omar Pineda, Owner, Mini Market Deli (Exhibit 4.18.)
Marty Dakessian, Lawyer, Akerman Senterfitt, LLP (Exhibit 4.19.)

Mr. Gilman read into the record a letter submitted from Abe Golomb, Sales Tax Reduction Specialists (Exhibit 4.20).

Property Taxpayers' Bill of Rights Hearings

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

Speaker: Sheryl Smith, Los Angeles County Resident
Francisco Wilson, Los Angeles County Resident

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD APRIL 28, 2009

BG Star Productions, Inc., 268579

Billy Wayne Blanks and Gayle H. Blanks, 268581

Final Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the fair market value method as recommended by the Franchise Tax Board, modified to remove the \$11,666,667 amount paid in 1999 but erroneously included in Franchise Tax Board's appraisal of the deferred obligation, and established that the installment sale took place in 1999.

Cecile R. Miguel-Ruiz, 414379

Final Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board on the basis of abstention.

Frances Cummings and Thomas Cummings, 437596

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

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A.C.K. Masonry Corporation, 417778

Final 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 sustained the action of the Franchise Tax Board.

Harry Cho, 449340

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

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Ibrahim A. Alarrabiyyat and Bassam Ahmed Quran, 362789 (EH); Cheryl's Fashion Art, Inc., 335122 (AC);* and, *Eric John Estelle, 342275, 342276 (GH).*

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

Andrew J. Laspino, 393823 (GH)

Patricia M. Laspino, 393822 (GH)

5-1-98 to 12-31-99, \$6,749.00 Tax, \$690.31 Penalties

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

R.C.P. Block & Brick, Inc., 283573, 283514 (FH)

1-1-01 to 12-31-03, \$5,102.20 Tax

Action: Reduce the measure of tax, otherwise deny the petition for rehearing as recommended by the Appeals Division.

Louis Molina, 395475 (EH)

10-1-01 to 9-30-04, \$258,393.72 Tax, \$25,839.42 Negligence Penalty, \$14,009.38 Amnesty Negligence Penalty, \$14,878.75 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Ibrahim A. Alarrabiyyat and Bassam Ahmed Quran, 362789 (EH)

7-1-01 to 12-31-05, \$513,397.63 Tax, \$51,339.82 Negligence Penalty, \$21,189.98 Amnesty Double Negligence Penalty, \$19,240.19 Amnesty Interest Penalty

Action: The Board took no action.

Acey Decy Equipment Company, 396269 (AC)

1-1-03 to 12-31-05, \$30,544.39 Tax

Action: Redetermine as recommended by the Appeals Division.

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Cheryl's Fashion Art, Inc., 335122 (AC)
10-1-01 to 12-31-04, \$16,072.47 Tax, \$1,711.17 Negligence Penalty, \$655.70 Amnesty Double
Negligence Penalty, \$860.68 Amnesty Interest Penalty
Action: The Board took no action.

Eric John Estelle, 342275, 342276 (GH)
4-1-02 to 2-2-05, \$34,574.74 Tax
Action: The Board took no action.

Liss-Challenge Plumbing, Inc., 425116 (AS)
7-1-00 to 12-31-04, \$0.00 Tax, \$440.91 Amnesty Interest Penalty
Action: Redetermine as recommended by the Appeals Division.

Zafar Ahmed, 474020 (ET)
September 29, 2008, \$283.50 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Ibrahim Diab, 469781 (ET)
August 28, 2008, \$483.63 Approximate Value
Action: Determined that staff properly seized the tobacco products.

L. A. International Corporation, 466070 (ET)
March 26, 2008, \$6,952.62 Approximate Value
Action: Determined that staff properly seized the tobacco products.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD APRIL 28, 2009

George Dadanian and Barbara Dadanian, 263345
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 adopted a decision to sustain the action of the Franchise Tax Board which included a concession by the Franchise Tax Board to revise the assessment amount for the 1984 year to \$3,862.00.

Suzanne Weber, 336613
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.

Kathy Marshall, 444048
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.

Tuesday, April 28, 2009

Gerald V. Dicker and Patricia R. Dicker, 448036

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

Sheldon Sherman and Sandra Coulles, 406056

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 adopted a decision to sustained the action of the Franchise Tax Board which included a concession by the Franchise Tax Board to relieve the 2000 assessment and the 1999 late payment penalty.

The Board adjourned at 4:56 p.m.

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

Note: The following matter was removed from the calendar prior to the meeting: *Closed Session.*

Wednesday, April 29, 2009

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Ms. Yee, Chairwoman, Dr. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Casey Miller, 378796

1998, \$6,694.49 Claim for Refund

1999, \$17.00 Claim for Refund

2000, \$53.00 Claim for Refund

2001, \$46.00 Claim for Refund

For Appellant:

Casey Miller, Taxpayer

Gilbert Yabes, Representative

For Franchise Tax Board:

Jean Cramer, Tax Counsel

Jozel Brunett, Tax Counsel

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

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

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.

Roger Anderson and Maren Olson Anderson, 421282

1997, \$1,040.00 Claim for Refund

1998, \$3,257.00 Claim for Refund

1999, \$2,210.00 Claim for Refund

2000, \$2,540.00 Claim for Refund

2001, \$2,495.00 Claim for Refund

For Appellant:

Jaclyn Appleby, Representative

For Franchise Tax Board:

Craig Scott, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issue: Whether respondent's assessments are barred under the principles of equitable estoppel.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 4.21)

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

Exhibits to these minutes are incorporated by reference.

Wednesday, April 29, 2009

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Asuncion P. Hamoy, 437618
2007, \$347.50

For Petitioner: No Appearance
For Franchise Tax Board: Lisa Lawson, Hearing Representative
Jean Cramer, Tax Counsel

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

Issue: Whether respondent properly denied appellant's claim for property tax assistance.

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Daniel L. Mahnke, 430934
2004, \$434.00 Tax, \$108.50 Late Filing Penalty, \$ 108.50 Notice and Demand Penalty, \$120.00 Filing Enforcement Cost Recovery Fee

For Appellant: Daniel Mahnke, Taxpayer
For Franchise Tax Board: Jozel Brunett, Tax Counsel
Jean Cramer, Tax Counsel

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

Issues: Whether appellant has demonstrated error in the underlying tax assessment.
Whether appellant has shown reasonable cause for abatement of penalties.
Whether the filing enforcement cost recovery fee should be abated.
Whether the Board should impose a frivolous appeal penalty.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 4.22)

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

SALES AND USE TAX APPEALS HEARING

D.R. Systems, Inc, 381450 (FH)
4/1/02 to 12/31/05, \$283,410.80 Claim for Refund

For Claimant: Scott Savary, Attorney
Charles Zuckerman, Representative
For Sales and Use Tax Department: Chris Schutz, Tax Counsel

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

Issue: Whether claimant's January 7, 2005, letter is a claim for refund that covers the period April 1, 2002, through September 30, 2002.

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

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**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD APRIL 29, 2009**

Casey Miller, 378796

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

Roger Anderson and Maren Olson Anderson, 421282

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

The Board recessed at 11:32 a.m. and reconvened at 1:30 p.m. with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Roger Anderson and Maren Olson Anderson, 421282

Final Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel abstaining, the Board directed staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.

SALES AND USE TAX APPEALS HEARINGS

Jerry Pena, 384853, 426907 (EH)

7-1-01 to 12-31-04, \$101,833.08 Tax, \$4,000.76 Amnesty Interest Penalty

For Claimant: No Appearance

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

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

Issue: Whether audited unreported taxable sales are excessive.

Action: The Board postponed this matter.

Ms. Mandel left the Boardroom.

A Realty Publications, Inc., 343231, 373181, 379332, 391653 (EH)

7-1-01 to 12-31-04, \$0.00 Tax, \$11,570.65 Negligence Penalty, \$5,320.56 Amnesty Double-Negligence Penalty, \$6,071.47 Amnesty Interest Penalty

1-1-05 to 3-31-06, \$0.00 Tax, \$5,482.50 Negligence Penalty

4-1-06 to 6-30-06, \$0.00 Tax, \$1,430.00 Negligence Penalty

7-1-06 to 9-30-06, \$0.00 Tax, \$1,354.50 Negligence Penalty

For Petitioner: Paul Shimoff, Attorney
Conner Wallmark, Witness
Cindy Hall, Witness

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

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution to Mr. Chiang was disclosed. Mr. Chiang did not participate in this hearing in

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accordance with Government Code Section 15626. No other disqualifying contributions were disclosed.

Issue: Whether petitioner was negligent.

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel absent and not participating in accordance with Government Code section 15626, the Board ordered that the petition be submitted for decision.

Ms. Mandel returned to the Boardroom.

Francisco R. Coronado, 396753 (EA)

7-1-03 to 6-30-06, \$6,167.35 Tax, \$1,167.54 Negligence Penalty

For Petitioner: Francisco Coronado, Taxpayer
Scott Kron, Attorney

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

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

Issues: Whether adjustments are warranted to the disallowed claimed exempt sales in foreign commerce or claimed nontaxable sales for resale.
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.

Gilberto Gonzalez Perez, 396030 (AR)

01/01/03 – 06/30/06, \$3,395.03 Tax, \$343.18 Negligence Penalty

For Petitioner: Gilberto Gonzalez Perez, Taxpayer
Gursharan S. Grewal, Representative

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

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

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

Action: 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.

Dr. Chu left the Boardroom.

Woodland Hill Car Wash, Inc, 299486 (AC)

Bhupinder Singh Mac, 299487(AC)

10-1-01 to 9-30-04, \$1,722.31 Tax

For Petitioner: Bhupinder S. Mac, Taxpayer
Poonam Gahlawat, Representative
Moti Balyan, Witness

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

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution to Dr. Chu was disclosed. Dr. Chu did not participate in this hearing in accordance with Government Code Section 15626. No other disqualifying contributions were disclosed.

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Issues: Whether payments received by petitioner from cigarette manufacturers were rebate payments that were additional taxable gross receipts.

Whether petitioner received and relied on misinformation qualifying for relief under Revenue and Taxation Code section 6596.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu not participating in accordance with Government Code section 15626, the Board ordered that the petition be submitted for decision.

Dr. Chu returned to the Boardroom.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD APRIL 29, 2009

D.R. Systems, Inc, 381450 (FH)

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

A Realty Publications, Inc., 343231, 373181, 379332, 391653 (EH)

Final Action: Dr. Chu moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Dr. Chu voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 15626.

Francisco R. Coronado, 396753 (EA)

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

SALES AND USE TAX APPEALS HEARING

Team Toysport America Limited, 333473 (AS)

1-1-00 to 12-31-03, \$39,869.74 Tax, \$3,987.00 Negligence Penalty, \$3,987.00 Amnesty Double Negligence Penalty, \$6,082.55 Amnesty Interest Penalty

For Petitioner: Appearance Waived

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

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

Issues: Whether any adjustments are warranted to the audited measure of tax due.

Whether the Department has established that petitioner's deficiency is due to negligence or intentional disregard for the Sales and Use Tax Law.

Whether petitioner is entitled to relief from interest due to unreasonable delay by Board staff.

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

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FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD APRIL 29, 2009

Gilberto Gonzalez Perez, 396030 (AR)

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.

Woodland Hill Car Wash, Inc, 299486 (AC)

Bhupinder Singh Mac, 299487(AC)

Final Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, Dr. Chu not participating in accordance with Government Code section 15626.

The Board adjourned at 4:00 p.m.

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

Thursday, April 30, 2009

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Ms. Yee, Chairwoman, Dr. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Grant Mason Thiem, Jr., 343755, 343756 (FH)

1-1-94 to 6-30-99, \$779.26 Tax, \$2,571.80 Late Payment Penalty, \$77.93 Finality Penalty, \$341.00 Amnesty Interest Penalty

7-1-00 to 12-31-00, \$6,688.00 Tax, \$2,081.00 Late Payment Penalty, \$1,817.80 Finality Penalty, \$7,751.20 Amnesty Interest Penalty

For Petitioner:

Grant Thiem, Taxpayer

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

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

Issues: Whether petitioner is personally liable for the unpaid liabilities of Thiem Graphics, Inc. (SR FHB 25-755047) as a responsible person during portions of the period January 1, 1994, through June 30, 1999, pursuant to Revenue and Taxation Code section 6829 and for the period July 1, 2000, through December 31, 2000, pursuant to California Code of Regulations, title 18, section (Regulation) 1702.6.

Whether the Notice of Decision's were timely issued with respect to the liability asserted under section 6829 and Regulation 1702.6.

Whether petitioner's personal liabilities under section 6829 and Regulation 1702.6 were discharged in his Chapter 7 bankruptcy.

Whether petitioner has established that Thiem Graphics, Inc. should be granted relief from the late-payment and finality penalties that have been passed through to petitioner as a responsible person.

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.

Robert Joseph Bachand, 361960, 395866 (AS)

3-1-04 to 9-30-04, \$3,300.00 Tax, \$0.00 Penalty

9-30-04, \$0.00 Tax

For Petitioner:

Rita Miller, Representative

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

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

Issues: Whether petitioner is liable as a successor.

Whether adjustments are warranted to the selling price of the fixtures and equipment.

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.

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Liborio C. Rodriguez, 401817 (AS)

1-1-03 to 6-15-06, \$0.00 Tax, \$23,275.35 Negligence Penalty

For Petitioner: Joyce Rebhun, Attorney

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

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

Issue: 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.

Gary Becker Company, Inc., 387047 (EA)

1-1-02 to 6-30-05, \$30,979.55 Tax

For Petitioner: Patrick Leone, Representative

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

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

Issue: Whether the amount of audited taxable sales included nontaxable cash discounts.

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.

On Line Auto Group, Inc., 353083 (FH)

7-1-01 to 6-30-04, \$18,035.26 Tax

For Petitioner: Mashallan Afshar, Enrolled Agent

For Sales and Use Tax Department: Christine Bisauta, Tax Counsel

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

Issues: Whether petitioner has proven that certain sales were nontaxable sales for resale or exempt sales in interstate or foreign commerce.

Whether relief should be granted based on petitioner's allegation that it received and relied upon misinformation in a prior audit.

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.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD APRIL 30, 2009

Grant Mason Thiem, Jr., 343755, 343756 (FH)

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

Thursday, April 30, 2009

Robert Joseph Bachand, 361960, 395866 (AS)

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.

Liborio C. Rodriguez, 401817 (AS)

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.

Gary Becker Company, Inc., 387047 (EA)

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.

On Line Auto Group, Inc., 353083 (FH)

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.

The Board adjourned at 11:10 a.m.

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

Note: The following matter was removed from the calendar prior to the meeting: *William G. Morschauer, 225366, 255762, 341121 (AP).*