

Tuesday, July 21, 2009

The Board met at its offices at 450 N Street, Sacramento, at 9:34 a.m., with Ms. Yee, Chairwoman, Mr. Leonard, Ms. Steel and Mr. Shea present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Ms. Yee welcomed Mr. Shea to the Board as Acting Board Member.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Rochelle M. Dorfler, 306426

1988, \$11,867.00 Assessment

1989, \$61,066.00 Assessment

1990, \$120.00 Assessment

For Appellant:

Rochelle Dorfler, Taxpayer

Henry Veit, Attorney

For Franchise Tax Board:

Mark McEvelly, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issues: Whether appellant timely filed a request for innocent spouse relief pursuant to Revenue and Taxation Code (R&TC) section 18533, subdivision (b)(1)(E).

Whether R&TC section 18533, subdivision (e)(3)(B), bars the Board from reaching the merits of appellant's claim for innocent spouse relief, because the Board already determined that appellant is not entitled to relief in a prior proceeding for the same taxable years.

If the Board is not barred from reaching the merits of appellant's claim, whether appellant has demonstrated that she is entitled to innocent spouse relief.

Appellant's Exhibit: Miscellaneous Document (Exhibit 7.1)

The Franchise Tax Board conceded the issue of whether appellant timely filed a request for innocent spouse relief.

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

Exhibits to these minutes are incorporated by reference.

PUBLIC COMMENT

Speaker: Joseph P. Galasso, Jr., Attorney, representing *Vidco Express, Inc.*, 378528

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Ajay Ranchhod, 449283

2005 to 2006, \$10,170.65 Claim for Refund

For Appellant:

Ajay Ranchhod, Taxpayer

For Franchise Tax Board:

Jane Perez, Tax Counsel

Karen Smith, Tax Counsel

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

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Issues: Whether appellant has shown that he had “reasonable cause” for the late payment of tax.

Whether respondent properly imposed a penalty for underpayment of estimated tax.

Whether appellant has shown that the interest at issue should be abated.

Appellant’s Exhibit: Miscellaneous Documents (Exhibit 7.2)

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

Ms. Steel introduced interns in the audience who work with her office: Seong Joon Oh (June), Joowon Lee (Luke) and Simon Kwak

John Hugo, 209495

Linda S. Williams, 313247

2000, \$1,451.81 Amount of Relief Granted

For Appellant:

Linda S. Williams, Taxpayer

For Franchise Tax Board:

Mark McEvelly, Tax Counsel

Kathleen Cooke, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed in the matter of *John Hugo, 209495*; the Members noted that their records disclosed no contributions from this taxpayer, his agent or participants. No contributions were disclosed in the matter of *Linda S. Williams, 313247*.

Issue: Whether appellant John Hugo has shown that respondent erred when it determined that appellant Linda Williams was entitled to innocent spouse relief for the 2000 tax year.

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.¹

SALES AND USE TAX APPEALS HEARING

On Sports, Inc., 334978 (KH)

7-1-00 to 9-30-03, \$53,314.59 Tax, \$0.00 Penalty

For Petitioner:

Steven Kayson, Taxpayer

Lyle A. Downey, Representative

For Sales and Use Tax Department:

Christine Bisauta, Tax Counsel

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

Issues: Whether taxpayer has established that sales made to Knotty Team Sports were sales for resale.

Whether taxpayer’s sales to nonprofit youth sport organizations were sales for resale.

¹ The Board rescinded this action later in the day.

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

LEGAL APPEALS MATTERS, CONSENT

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

Chacko A. Thomas, 421109 (KH)
7-01-03 to 6-30-06, \$15,917.81 Tax, \$6,067.21 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Haik Arakelian and Alice Arakelian, 442173*.

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

Gracia AlexanderRares, 450430
2003, \$969.50 Claim for Refund
2004, \$1,162.07 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

David Altman, 442780
2006, \$978.68 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Amanda Andreasen, 441067
2002, \$378.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Wilmer P. Arias, 400110
2005, \$750.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Juan Perez Babauta, Sr., 423974
2005, \$1,383.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

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Tamatha Booker, 332377

1995 to 1998, \$42,236.33 Claim for Innocent Spouse Relief

Action: Sustain the action of the Franchise Tax Board.

Pamela Brookwell, 330695

Kenneth Brookwell, 330137

1999 to 2001, \$153,799.57 Claim for Innocent Spouse Relief

Action: Sustain the action of the Franchise Tax Board.

Robert R. Frunz, 439537

2003, \$9,042.48 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Bryan Hall, 378091

2001, \$8,806.00 Tax, \$532.92 Post-Amnesty Penalty

2002, \$11,286.00 Tax, \$43,495.00 Post-Amnesty Penalty

2003, \$6,585.00 Tax

Action: Modified the action of the Franchise Tax Board for tax year 2003, otherwise sustain the action of the Franchise Tax Board for tax years 2001 and 2002.

Luat T. Ly, 443343

2004, \$4,650.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Vielka Macia, 449285

2005, \$1,051.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Thomas B. McCleary and Jill E. Fallick, 374681

2000, \$32,570.00 Assessment, \$8,142.50 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Marithza Barzey McFadden, 401100

1997, \$1,292.50 Late Filing Penalty, \$1,399.03 Post-Amnesty Penalty, \$3,395.13 Interest

Action: Sustain the action of the Franchise Tax Board.

Novartis Vaccines and Diagnostics, Inc., 397618

1998, \$1,898,625.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jose P. Rimando, 422588

2005, \$1,464.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Guy E. Shannon, 439839

2005, \$714.00 Tax, \$178.50 Late Filing Penalty, \$277.25 Notice and Demand Penalty, \$122.00 Filing Enforcement Fee

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

Henry Ting, 418000

2000, \$7,551.00 Tax, \$1,018.54 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Haik Arakelian and Alice Arakelian, 442173

2003, \$1,636.00 Assessment

Action: The Board took no action.

Karl Eisenhammer, 429657

2005, \$2,545.00 Tax, \$636.25 Late Filing Penalty, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Carol Grant, 429678

2005, \$1,844.00 Tax, \$461.00 Late Filing Penalty, \$461.00 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Richard Grant, 429665

2005, \$6,103.00 Tax, \$1,525.75 Late Filing Penalty, \$1,525.75 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Christopher Gyorgy, 427533

2003, \$18,488.00 Tax, \$3,006.50 Late Filing Penalty, \$3,330.50 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee, \$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Eldo Klingenberg, 427408

2005, \$5,043.00 Tax, \$1,260.75 Late Filing Penalty, \$1,260.75 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee, \$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Marla D. Shannon, 424614

2005, \$331.00 Tax, \$100.00 Late Filing Penalty, \$86.50 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

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Brenda Galvin, 446061

2005, \$1,788.00 Tax, \$447.00 Late Filing Penalty, \$447.00 Notice and Demand Penalty, \$122.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board.

Darla Kay Marsh, 462002

2004, \$555.74 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

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

Damecia Brown, 442782

2007, \$1.00

Action: Sustain the action of the Franchise Tax Board.

David Centeno, 425545

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Angela Dunlap, 432134

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Joanne E. Hendershott, 426794

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Alicia Hernandez, 424201

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Eldon Douglas Hower, 422816

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Debbie Jackson, 437797

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Lan Nguyen, 423669

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

H. P. Orr, 426309

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Pamela J. Rose, 470191

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Sandra Royals, 422921

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Florencio Silva, Jr., 427077

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Theresa M. Ubben, 432800

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Abdullahi Warsame, 437912

2007, \$347.50

Action: Reverse the action of the Franchise Tax Board, with respondent directed to pay appellant \$27.29 in Renter Assistance for the 2007 claim year.

Suk Nam Yoon, 431584

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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 Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Canon Anelva Corporation, 487485*; the Board made the following orders:

Primedia Specialty Group, Inc., 325642 (AS)

10-01-00 to 09-30-03, \$54,887.01

Action: Approve the redetermination as recommended by staff.

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Luminentoic, Inc., 458984 (AC)

04-01-04 to 12-31-07, \$52,401.03

Action: Approve the redetermination as recommended by staff.

Spiniello Companies, 488402 (AP)

01-01-00 to 12-31-07, \$2,718,991.80

Action: Approve the redetermination as recommended by staff.

Canon Anelva Corporation, 487485 (GH)

10-01-08 to 12-31-08, \$66,200.40

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

7-Eleven, Inc., 308510 (FH)

01-01-02 to 12-31-04, \$102,471.67

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

Chassis Systems, Inc., 382281 (OH)

04-01-06 to 06-30-06, \$74,002.00

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

Ford Motor Credit Company, 245530 (OH)

01-01-03 to 06-30-03, \$133,790.90

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

Panta Systems, Inc., 459964 (GH)

10-01-07 to 12-31-07, \$65,779.00

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

Quest Sales and Services, Inc., 467966 (OH)

01-01-05 to 12-30-06, \$58,293.00

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

Angel Ivan San Jose, 221377 (AS)

10-01-99 to 12-31-02, \$93,648.06

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

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Telco Food Products, Inc., 487695 (EH)

01-01-04 to 06-30-07, \$57,740.96

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

Effective Engineering, Inc., 485669 (AC)

07-01-01 to 06-30-05, \$72,992.48

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

Modulus Video, Inc., 486788 (GH)

10-01-07 to 12-31-07, \$72,852.44

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

Sikder Group, Inc. III, 486256 (AR)

01-01-08 to 06-30-08, \$150,823.53

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

Spiniello Companies, 463921 (AP)

01-01-99 to 12-31-99, \$1,470,357.97

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

Universal Film Exchanges, Inc., 479023 (AC)

01-01-96 to 04-30-02, \$1,112,001.32

Action: Approve the refund as recommended by staff.

Universal City Studios, Inc., 479020 (AC)

01-01-96 to 04-30-02, \$18,936,545.62

Action: Approve the refund as recommended by staff.

A. Daigger and Company, Inc., 469760 (OH)

07-01-08 to 09-30-08, \$255,377.06

Action: Approve the refund as recommended by staff.

Foster Poultry Farms, 440266 (KH)

12-29-02 to 12-31-05, \$57,540.29

Action: Approve the refund as recommended by staff.

Chiron Diagnostics Corp., 487731 (OH)

07-01-95 to 03-31-99, \$205,588.87

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 485775 (KH)

05-22-07 to 01-16-09, \$290,137.00

Action: Approve the refund as recommended by staff.

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Fortinet, Inc., 484724 (GH)

07-01-02 to 09-30-05, \$61,076.99

Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 466863 (OH)

10-01-06 to 06-30-08, \$53,556.38

Action: Approve the refund as recommended by staff.

Touchstar Software Corporation, 474065 (OH)

04-01-08 to 09-30-08, \$53,589.05

Action: Approve the refund as recommended by staff.

Travis Credit Union, 450709 (JH)

10-01-06 to 12-31-08, \$1,437,245.74

Action: Approve the refund as recommended by staff.

Long Beach Acceptance Corporation, 478140 (EA)

10-01-08 to 12-31-08, \$891,795.79

Action: Approve the refund as recommended by staff.

A-L Financial Corporation, 477191 (EA)

10-01-08 to 12-31-08, \$201,285.72

Action: Approve the refund as recommended by staff.

Members 1st Credit Union, 473244 (KH)

01-01-05 to 12-31-08, \$169,157.52

Action: Approve the refund as recommended by staff.

Heritage Community Credit Union, 473374 (KH)

07-01-08 to 12-31-08, \$72,732.74

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

Constellation Wines U.S., Inc., 401031 (ET)

11-01-04 to 07-31-07, \$412,306.97

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

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LEGAL APPEALS MATTERS, ADJUDICATORY**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

Considered by the Board: Hearing Notice Sent – No Response

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

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

Ibrahim A. Alarrabiyat 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

Considered by the Board: Hearing Notice Sent – No Response

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Shea and duly carried, Ms. Yee, Mr. Shea 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.

Eric John Estelle, 342275, 342276 (GH)

4-1-02 to 2-02-05, \$21,486.90 Tax

4-1-02 to 2-02-05, \$13,087.84 Tax

Considered by the Board: Hearing Notice Sent – No Response

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Shea and duly carried, Ms. Yee, Mr. Shea 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.

B & R Industries, Inc., 254513 (EA)

10-1-97 to 8-12-00, \$400,000.00 Successor Liability

Considered by the Board: July 17, 2007

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, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board ordered that the petition be granted as recommended by the Appeals Division.

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City of Compton, 469256

1-1-95 to 8-31-03, \$335,248.00 Tax

Considered by the Board: Presented for Separate Discussion

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

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

John D. Bogdanoff and Janora G. Bogdanoff, 440634

2000, \$15,617.34 Claim for Refund

2001, \$13,612.08 Claim for Refund

2002, \$9,853.07 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 sustain the action of the Franchise Tax Board and direct 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. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Mr. Shea voting no, Ms. Mandel abstaining.

Mr. Shea moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Yee. Mr. Shea withdrew his motion.

The Board deferred consideration of the matter to later in the day.

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

James Cato, Jr., 426289

2007, \$386.00

Considered by the Board: June 30, 2009

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

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

SALES AND USE TAX MATTERS, REDETERMINATION, ADJUDICATORY

Catherine S. Weinberger, 270408 (AP)

4-1-01 to 11-30-03, \$247,664.10

Considered by the Board: February 27, 2008

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

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

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Unitary Escaped Assessment

Verizon California, Inc. (201)
2008, \$24,354,028.00 Full Value

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

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Mr. Shea and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Parvis P. Tousian; Frederik J. Nel; Ronald W. Stewart; Richard & Charlene Busch; C & J Vantage Leasing Co.; Yee Sook Kim; Bruce S. Coe & Glen Coe Pizza;* and, *Richard Austin;* as recommended by staff.

CHIEF COUNSEL MATTERS

RULEMAKING

Proposed Amendments to Sales and Use Tax Regulation 1620, *Interstate and Foreign Commerce*

Bradley Heller, Tax Counsel, Legal Department, made introductory remarks regarding the proposed section 100 changes to correct a reference error in subdivision (b)(2)(A). (Exhibit 7.3.)

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board adopted the proposed amendments to Sales and Use Tax Regulation 1620, *Interstate and Foreign Commerce*.

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

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SALES AND USE TAX APPEALS HEARINGS

Ocean Palace, Inc., 425058 (GH)

10-1-03 to 9-30-06, \$35,942.70 Tax, \$0.00 Negligence Penalty

For Petitioner: Peter K. Chau, Taxpayer
Yvonne L. Chau, Taxpayer

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

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

Issue: Whether additional adjustment are warranted.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board ordered that the petition be returned to the district for a reaudit.

Krishna Devi, Nazar Ram, and Amar Singh, 341721 (CH)

1-01-02 to 12-31-04, \$61,047.71 Tax, \$6,077.47 Negligence Penalty, \$1,826.49 Amnesty Double Negligence Penalty

For Petitioner: Krishna Devi, Taxpayer
Nazar Ram, Taxpayer
Ashok B. Agarwal, CPA

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 rebates received from cigarette manufactures is excessive.

Whether the audited amount of unreported taxable sales is excessive.

Whether petitioner was negligent.

Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Local Tax Reallocation Hearing

City of Sacramento, 472921

1-1-96 to 6-30-96, \$245,798.00 Amount

For Petitioner: Eric Myers, Representative
Janis Varney, Representative

For Sales and Use Tax Department: Carole Ruwart, Tax Counsel

Issues: Whether petitioner is statutorily barred from obtaining a redistribution.

Whether the local tax from a construction contract of \$5,000,000 or more should be distributed directly to petitioner.

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

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PETITION FOR RELEASE OF SEIZED PROPERTY

Wafaa About Qassim, 484200 (ET)

December 3, 2008 Notice of Seizure and Forfeiture, \$223.00 Approximate Value

For Petitioner: Nabil Krayem, Spouse
Ralph Ramirez, Witness

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

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

Issue: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b).

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

The Board recessed at 4:00 p.m. and reconvened at 4:04 p.m. with Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel present.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea 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 7.4.)

Malene Evans, Staff Information Systems Analyst, Specialist, Technology Services Division

Peter C. Gaffney, Business Taxes Specialist II, Operations Section, Property and Special Taxes Department

Robert R. Geniella, Business Taxes Compliance Specialist, Return Analysis Unit, Sales and Use Tax Department

Kathryn A. Hernandez, Tax Technician III, Return Analysis Unit, Sales and Use Tax Department

Kenneth Rumenapp, Business Taxes Specialist I, Petitions Section, Sales and Use Tax Department

Action: Approve the Board Meeting Minutes of April 15, 2009; April 28-30, 2009; and, May 27, 2009.

Action: Adopt the property tax forms as presented by staff. (Exhibit 7.5.)

Tuesday, July 21, 2009

Geoff Lyle, Supervising Tax Auditor, Business Taxes Committee & Training Section, Sales and Use Tax Department, made introductory remarks regarding the proposed revisions to Compliance Policy and Procedures Manual Chapters 1, 2 and 3, and major rewrite of Chapter 7, to update the guidance provided and incorporate new policy and procedures.

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

Action: Approve the proposed revisions to Compliance Policy and Procedures Manual Chapter 1, *General*; Chapter 2, *Registration*; Chapter 3, *Account Maintenance*; and, Chapter 7, *Collections*. (Exhibit 7.6.)

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, provided a report regarding time extensions to Alpine, Amador, Colusa, Inyo, Napa, Plumas and San Benito Counties to complete and submit the 2009-10 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155. (Exhibit 7.7.)

Ramon Hirsig, Executive Director, made introductory remarks regarding the question of whether the BOE may accept State-issued registered warrants as payment of tax and fee liabilities. (Exhibit 7.8.)

Speaker: Michele Pielsticker, General Counsel, California Taxpayers' Association

The Board directed staff to accept registered warrants issued by the State of California and to codify such specific authority for transparency going forward.

Deputy Directors Reports

David Gau, Deputy Director, Property and Special Taxes Department, introduced Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, who provided staff's recommendation for the tax rate to be applied in 2009-10 to the value of private railroad cars.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Shea voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2009-10 private railroad car tax rate of 1.097 percent as recommended by staff. (Exhibit 7.9).

Tuesday, July 21, 2009

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Shea voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2009 Private Railroad Car Roll.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Shea voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2009 State-Assessed Property Roll.

Liz Houser, Deputy Director, Administration Department, made introductory remarks regarding renewal of the contract over \$1 million with the Department of Technology Services (DTS) that provides multiple data processing services.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board approved the DTS contract renewal. In addition, staff was directed to review DTS's cost-accounting explanation and how DTS plans to implement the furlough relative to their budget. (Exhibit 7.10.)

Liz Houser, Deputy Director, Administration Department, provided an update regarding on the on-going projects at 450 N Street and the site search.

Speaker: Bobbi Smith, Business Taxes Representative, Centralized Collections Section, Sales and Use Tax Department, and President-of DLC 782 of SEIU Local 1000

The Board directed staff to invite STANTEC to a future Board meeting and to follow-up with DGS on when a definitive date will be provided for obtaining elevator repair bids.

Liz Houser, Deputy Director, Administration Department, provided information regarding the Governor's 2009/10 Budget, Governor's Executive Orders S-13-09 and S-16-08 State Employee Furlough, and statewide layoffs.

The Board directed staff to draft a formal letter from the Board with regard to BOE taking the 3-day furlough, comparing the impact of the 2009/10 Budget Reduction on Revenues and Services.

Liz Houser, Deputy Director, Administration Department, provided a high level overview of the 2010/11 Budget Concepts: *BOE Facilities Master Plan; Sales and Use Tax 1 Percent Rate Increase Ramp; Increase Revenue through Agricultural Inspection Station Tax Leads; and, Continuation of Fuel Taxes Compliance and IFTA Leads.* (Exhibit 7.11.)

Ms. Yee directed staff to factor-in the 2009/10 budget impact.

Mr. Shea directed staff to provide the timing lag between appropriation in the budget and when the increased revenue would be expected.

Tuesday, July 21, 2009

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD JULY 21, 2009

John Hugo, 209495

Linda S. Williams, 313247

Final Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board rescinded its prior vote.

Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board dismissed Mr. Hugo's appeal for lack of jurisdiction; the Franchise Tax Board's grant of relief to Ms. Williams is accordingly unchanged.

Rochelle M. Dorfler, 306426

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Frank Cutler, 400347

1998, \$200,182.00 Assessment

1999, \$804,948.00 Assessment

2000, \$764,141.00 Assessment

For Appellant:

Appearance Waived

For Franchise Tax Board:

Ann Hodges, Tax Counsel

William Hilson, Tax Counsel

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

Issues: Whether the Board has jurisdiction to consider the constitutionality of Revenue and Taxation Code (R&TC) sections 18038.5 and 18152.5.

Whether, if the Board has such jurisdiction, those statutes violate the "dormant commerce clause" of the United States Constitution.

Whether appellant is entitled to defer or reduce gain from the sale of stock under those statutes if they are unconstitutional.

Whether R&TC section 18152.5, subdivisions (c)(2)(A) and (e)(9), should be applied as written.

Whether appellant has shown that he was issued stock in SRS Lab before August 10, 1993, for purposes of R&TC section 18152.5, subdivision (c)(1).

Whether appellant has shown that, during "substantially all" of his holding period for the SRS Lab stock, SRS Lab was a C corporation.

Whether that stock was C corporation stock on the date of issuance.

Whether appellant has shown that respondent mistakenly determined that US Web did not satisfy the "substantially all" test of R&TC section 18152.5, subdivision (c)(2)(A).

Tuesday, July 21, 2009

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

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD JULY 21, 2009

Ajay Ranchhod, 449283

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea 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 JULY 21, 2009

On Sports, Inc., 334978 (KH)

Final Action: Ms. Steel moved to grant the petition as to sales to Knotty Team Sports and the documented transaction to Adidas, otherwise redetermine as recommended by the Appeals Division. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Mr. Shea and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

City of Sacramento, 472921

Final Action: Upon motion of Mr. Shea, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board ordered that the petition be denied on the substantive issue.

FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HELD JULY 21, 2009

Wafaa Abou Qassim, Inc., 484200 (ET)

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

Tuesday, July 21, 2009

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

John D. Bogdanoff and Janora G. Bogdanoff, 440634 (Continued)

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

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 5:15 p.m. and reconvened immediately in closed session with Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss settlements (Rev. & Tax. Code §§ 7093.5, 9271, 30459.1, 32471, 40211, 41171, 43522, 45867, 46622, 50156.11, 55332, and 60636), pending litigation (Gov. Code § 11126(e)) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 6:15 p.m. and reconvened immediately in open session with Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel present.

The Board adjourned at 6:18 p.m.

The foregoing minutes are adopted by the Board on November 19, 2009.

Note: The following matters were removed from the calendar prior to the meeting: *Kil Hwan Chang and Myong Jo Chang, 474045; Yong Kun Kim and Ok Nyo Kim, 474047; Vidco Express, Inc., 378528; and, Approval of proposed Revisions to Compliance Policy and Procedures Manual Chapter 9, Miscellaneous.*