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The Board met at its offices at 450 N Street, Sacramento, at 10:00 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 announced that on behalf of the Board she sends her regrets to those affected by the wild fires throughout the state of California.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Thomas G. Haas, 447747
2002, $1,291.00 Tax, $62.58 Post-Amnesty Penalty

For Appellant:	Tom Haas, Taxpayer
	Eric Tetrault, Representative
For Franchise Tax Board:	Delinda Tamagni, Tax Counsel
	Karen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether respondent properly imposed a 2.5 percent tax on appellant's early distribution from a qualified retirement fund.

Whether appellant's tax liability for the appeal year should be treated as having been discharged in bankruptcy.

Whether the Board has jurisdiction over the post-amnesty penalty.

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

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 submitted the appeal for decision.

Mr. Leonard requested that the Franchise Tax Board advise the bankruptcy court of pending protests on tax claims that are not yet final.

Paul Katchadourian, 451078
1999, $6,232.59 Claim for Refund
2000, $544.75 Claim for Refund
2002, $9,139.64 Claim for Refund

For Appellant:	Paul Katchadourian, Taxpayer
	Chris Cook, Representative
For Franchise Tax Board:	Delinda Tamagni, Tax Counsel
	Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant's claims for refund are barred by the applicable statute of limitations.
Appellant’s Exhibit: Miscellaneous Documents (Exhibit 8.3)
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 submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

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PUBLIC HEARINGS

Approval of Proposed Amendments to Sales and Use Tax Regulation 5237, *Board Approval Required for refunds,* and, Sales and Use Tax Regulation 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*

Bradley Heller, Tax Counsel, Legal Department, made introductory remarks regarding the proposed amendments to Regulations 5237 and 5266 to clarify staff's authority to grant or deny certain refunds. (Exhibit 8.4.)

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

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 approved the regulation with revisions and referred the regulation to the 15-day file for additional notice and comment.

Mr. Leonard requested staff to research the origin of the requirement to notice the public of refunds and to compare this requirement to that of other agencies.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single 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 made the following orders:

Fouad Mohammed Zamzami, 425054 (CH)
10-1-03 to 9-30-06, $22.526.64 Tax, $2,252.65 Penalty
Action: Redetermine as recommended by the Appeals Division.

Process Construction, Inc., 350404 (KH)
4-1-02 to 12-31-04, $2,544.93 Tax
Action: Redetermine as recommended by the Appeals Division.

Gary L. Smith and Michael L. Smith, 379795, 382294, 421897 (KH)
7-1-01 to 6-30-04 $176,924.18 Tax, $0.00 Penalty
Action: Redetermine as recommended by the Appeals Division.

Phuoc Huu Do, 488197 (ET)
December 30, 2008, $6,178.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Sital Singh Dosanjh, 488771 (ET)
December 24, 2008, $3,005.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *David H. Ward, 450986*.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single 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 made the following orders:

Salvador Arevalo, 421278
2005, $360.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Lawrence M. Atencio, 459823
2006, $548.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Sherry L. Beamer, 449296
2006, $1,134.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Donovan D. Bolton, 423962
2003, $407.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Gladys Brooker, 423274
2005, $435.00 Claim for Refund
2006, $375.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Chandra Dwivedi, 442522
2004, $3,257.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Stanley Firestone and Maxine N. Firestone, 416529
2005, $8,616.96 Late Payment Penalty, $259.77 Underpayment of Estimated Tax Penalty, $3,614.99 Interest
Action: Sustain the action of the Franchise Tax Board.

David Fudge, 419989
2001, $3,131.38 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

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Dawn Galdes, 446029
2005, $366.00 Tax, $100.00 Late Filing Penalty, $228.25 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.

Darlene Hurtado, 417822
2006, $360.00 Claim for Refund
Action: Modify the action of the Franchise Tax Board.

Dimitri Komatitsch, 447643
2001, $1,939.72 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Flora Nwandei, 400662
1995, $5,712.00 Claim for Refund
1996, $8,328.00 Claim for Refund
1997, $7,852.00 Claim for Refund
1998, $7,537.00 Claim for Refund
1999, $4,569.00 Claim for Refund
2000, $7,169.00 Claim for Refund
2001, $6,026.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Aldo Oceguera, 414677
2005, $313.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Bruce G. Rossiter, 393432
1998, $11,102.00 Tax, $4,440.80 Accuracy Related Penalty, $3,783.51 Post-Amnesty Penalty
Action: Modify the action of the Franchise Tax Board.

Yolanda G. Saucedo, 421010
2005, $516.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Paul Kenneth Schadler, 450116
2000, $1,958.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Judith Y. Serra, 421018
2006, $525.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

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Brian Simmerman, 431686
2005, $1,156.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Marian M. Snyder, 430738
2005, $1,333.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Kevin Sorenson and Maria Sorenson, 450972
2003, $994.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

David H. Ward, 450986
2004, $11,849.00 Assessment
Action: The Board took no action.

Lippard Associates, Inc., and Sussex Financial Enterprises, 402128
2002, $134,239.55 Assessment
Action: Deny the petition for rehearing.

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

Mikie L. Bell, 426503
2007, $1.00 or more
Action: Sustain the action of the Franchise Tax Board.

Silvestre Campos Ortiz, 473089
2007, $347.50
Action: Sustain the action of the Franchise Tax Board.

Glenna Delgado, 422944
2007, $347.50
Action: Sustain the action of the Franchise Tax Board.

C. Diep, 424027
2007, $347.50
Action: Sustain the action of the Franchise Tax Board.

Jacqueline Earl (Deceased), 429721
2007, $347.00
Action: Sustain the action of the Franchise Tax Board.

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Johnny Finister, 426233
2007, $1.00 or more
Action: Sustain the action of the Franchise Tax Board.

Jennifer R. Fragoso, 443868
2005, $1.00 or more
Action: Sustain the action of the Franchise Tax Board.

Reginald Dean Franklin, 423003
2007, $1.00 or more
Action: Sustain the action of the Franchise Tax Board.

Lloyd N. Garrison (Deceased), 438003
2007, $112.50
Action: Sustain the action of the Franchise Tax Board.

Thuy Van Hoang, 425140
2007, $347.50
Action: Sustain the action of the Franchise Tax Board.

Ollie Mae Holliday, 426912
2007, $347.50
Action: Sustain the action of the Franchise Tax Board.

Nicole Rebecca Hornung, 458659
2005, $1.00 or more
Action: Sustain the action of the Franchise Tax Board.

Eugene Olin Jackson, 458951
2007, $1.00 or more
Action: Sustain the action of the Franchise Tax Board.

Carolyn Sims Kenyon, 425162
2007, $347.50
Action: Sustain the action of the Franchise Tax Board.

Nery Larios, 445863
2006, $1.00 or more
Action: Sustain the action of the Franchise Tax Board.

Albert McCowen, 427186
2007, $345.00
Action: Sustain the modified action of the Franchise Tax Board.

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Lafayette Medlock, Jr., 463766
2007, $347.50
Action: Sustain the action of the Franchise Tax Board.

Amir Milani, 444282
2006, $1.00 or more
Action: Sustain the action of the Franchise Tax Board.

Luis Perez, 432303
2007, $347.50
Action: Sustain the action of the Franchise Tax Board.

Nicki Phillips, 472849
2007, $1.00 or more
Action: Sustain the action of the Franchise Tax Board.

Rene Rivas, 444497
2005, $1.00 or more
2006, $1.00 or more
Action: Sustain the action of the Franchise Tax Board.

Chandar Sudhakar, 441569
2007, $1.00 or more
Action: Sustain the action of the Franchise Tax Board.

Vladimir Vorontsov, 423019
2007, $347.50
Action: Sustain the action of the Franchise Tax Board.

Martha Jean Washington, 458769
2007, $347.00
Action: Sustain the action of the Franchise Tax Board.

C.D. Waters-Brown, 397109
2006, $1.00 or more
Action: Sustain the action of the Franchise Tax Board.

David M. Wendell, 436555
2007, $347.00
Action: Sustain the action of the Franchise Tax Board.

Verna Lee Wicks, 450040
2006, $347.50
Action: Sustain the action of the Franchise Tax Board.

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Wei Kang Wu, 437709
2007, $1.00 or more
Action: Sustain the action of the Franchise Tax Board.

Cindy Brito Ybarra, 463697
2006, $347.00
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 Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, with Ms. Mandel not participating in *Simplehuman, LLC, 470293 (AS)*; and in accordance with Government Code section 87105 not participating in *Google Technology, Inc., 330698 (GH);* the Board made the following orders:

Bonhams & Butterfields Auctioneers Corporation, 402646 (BH)
1-1-03 to 12-31-05, $309,362.64
Action: Approve the redetermination as recommended by staff.

Miller Brewing Company, 433700 (EA)
7-1-98 to 6-30-02, $825,912.43
Action: Approve the redetermination as recommended by staff.

Siemens Energy & Automation, Inc., 391636 (OH)
1-1-00 to 6-30-03, $14,200,967.43
Action: Approve the redetermination as recommended by staff.

Hassan Kazemini, 416859 (JH)
4-1-04 to 12-31-06, $121,425.11
Action: Approve the redetermination as recommended by staff.

Max Leroy Kistler, 406214 (KH)
1-1-04 to 6-15-06, $53,291.00
Action: Approve the redetermination as recommended by staff.

Mario Joseph Lucchese, 459479 (AC)
7-1-04 to 12-31-07, $76,395.95
Action: Approve the redetermination as recommended by staff.

Critical Path, Inc., 381895 (BH)
4-1-02 to 3-31-06, $887,501.04
Action: Approve the redetermination as recommended by staff.

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Thermo Fisher Scientific (Asheville), LLC, 458014 (OH)
1-1-03 to 12-31-05, $326,926.41
Action: Approve the redetermination as recommended by staff.

All States Glass Centers, Inc., 459922 (CH)
4-1-05 to 3-31-08, $96,347.51
Action: Approve the redetermination as recommended by staff.

Simplehuman, LLC, 470293 (AS)
4-1-04 to 3-31-07, $156,454.08
Action: Approve the redetermination as recommended by staff. Ms. Mandel not participating.

First Hospital Products, Inc., 300404 (OH)
10-1-96 to 12-31-01, $73,680.02
Action: Approve the redetermination as recommended by staff.

Whirlpool Corporation, 426187 (OH)
10-1-99 to 12-31-03, $1,137,899.51
Action: Approve the redetermination as recommended by staff.

Business Intl' So. California, 168218 (EA)
7-1-95 to 12-31-98, $208,524.52
Action: Approve the redetermination as recommended by staff.

Chandy K. Philip, 479514 (BH)
7-1-05 to 6-30-08, $53,531.89
Action: Approve the redetermination as recommended by staff.

BMC Software Distribution, Inc., 469159 (OH)
4-1-04 to 3-31-07, $731,724.50
Action: Approve the redetermination as recommended by staff.

Marco Display Specialists, LP, 314488 (OH)
3-1-97 to 12-31-03, $134,698.82
Action: Approve the redetermination as recommended by staff.

Jerry C. Pak, 469461 (EA)
5-24-05 to 3-31-08, $666,786.22
Action: Approve the redetermination as recommended by staff.

Navegante Charters, LLC, 342929 (FH)
10-1-99 to 6-30-00, $78,480.27
Action: Approve the redetermination as recommended by staff.

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Sun Automation, Inc., 426741 (OH)
4-1-00 to 6-30-06, $443,412.84
Action: Approve the redetermination as recommended by staff.

Hermes-Beverly Hills, 491468 (OH)
10-1-08 to 12-31-08, $73,379.50
Action: Approve the relief of penalty as recommended by staff.

Houghton Mifflin Harcourt Publishing Company, 489295 (OH)
10-1-08 to 12-31-08, $85,132.00
Action: Approve the relief of penalty as recommended by staff.

Chanel, Inc., 491203 (OH)
10-1-08 to 12-31-08, $63,004.50
Action: Approve the relief of penalty as recommended by staff.

Honeywell, Inc., 490189 (OH)
10-1-98 to 6-30-02, $232,455.56
Action: Approve the relief of penalty as recommended by staff.

Genentech, Inc., 381947 (BH)
4-1-06 to 6-30-06, $295,000.00
Action: Approve the denial of claim for refund as recommended by staff.

Nektar Therapeutics, 484899 (BH)
7-1-05 to 6-30-08, $166,831.98
Action: Approve the denial of claim for refund as recommended by staff.

Triumph Actuation Systems-Valencia, 442336 (AR)
1-1-04 to 12-31-06, $113,462.51
Action: Approve the denial of claim for refund as recommended by staff.

Iherb, Inc., 484916 (AP)
7-1-05 to 9-30-08, $50,922.12
Action: Approve the denial of claim for refund as recommended by staff.

Sierra Central Credit Union, 491799 (KH)
1-1-05 to 12-31-07, $96,405.85
Action: Approve the denial of claim for refund as recommended by staff.

Hitachi Global Storage Tech, Inc., 486661 (GH)
10-1-03 to 12-31-06, $203,160.72
Action: Approve the denial of claim for refund as recommended by staff.

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Google Technology, Inc., 330698 (GH)
1-1-03 to 8-31-03, $72,074.37
Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

American Auto Financing, Inc., 420729 (EA)
1-1-06 to 12-31-07, $115,002.40
Action: Approve the denial of claim for refund as recommended by staff.

TCG International, Inc., 447118 (EA)
1-1-06 to 12-31-08, $486,352.50
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 Mr. Leonard 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 *Autodesk, Inc., 489580 (JH);* and, *Google Technology, Inc., 330698 (GH);* the Board made the following orders:

Crown Chevrolet, 490303 (CH)
1-1-08 to 3-31-08, $72,324.00
Action: Approve the credit and cancellation as recommended by staff.

Sunland Ford, Inc., 490319 (EH)
7-1-04 to 6-30-07, $603,001.40
Action: Approve the credit and cancellation as recommended by staff.

ABC-NACO, Inc., 491818 (OH)
7-1-98 to 12-31-98, $63,026.93
Action: Approve the credit and cancellation as recommended by staff.

Phillystran, Inc., 491645 (OH)
1-1-99 to 12-31-05, $101,096.94
Action: Approve the credit and cancellation as recommended by staff.

Veeco Compound Semiconductor, Inc., 489815 (OH)
4-1-08 to 6-30-08, $60,979.90
Action: Approve the credit and cancellation as recommended by staff.

Bunzl Distribution Northeast, LLC, 489786 (OH)
1-1-08 to 3-31-08, $69,290.39
Action: Approve the credit and cancellation as recommended by staff.

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Golden Mini Mart, Inc., 491555 (AA)
4-1-08 to 6-30-08, $68,331.00
Action: Approve the credit and cancellation as recommended by staff.

City of Los Angeles-Controller, 489991 (AA)
10-1-02 to 3-31-06, $114,046.07
Action: Approve the refund as recommended by staff.

Studio Image, Inc., 332534 (AC)
7-1-02 to 9-30-05, $430,265.37
Action: Approve the refund as recommended by staff.

Mid State Bank, 441799 (GH)
7-1-04 to 6-30-07, $120,969.80
Action: Approve the refund as recommended by staff.

Michael John Bishop, 491712 (GH)
4-1-04 to 3-31-07, $52,813.08
Action: Approve the refund as recommended by staff.

Monster Cable Products, Inc., 442167 (BH)
1-1-05 to 3-31-08, $69,836.81
Action: Approve the refund as recommended by staff.

Thoratec Laboratories Corporation, 430573 (CH)
1-1-05 to 6-30-07, $754,675.44
Action: Approve the refund as recommended by staff.

Golden Star Technology, Inc., 490158 (AA)
10-1-04 to 9-30-07, $72,217.87
Action: Approve the refund as recommended by staff.

Primary Color Systems Corp., 450705 (EA)
1-1-06 to 12-31-08, $190,340.41
Action: Approve the refund as recommended by staff.

Autodesk, Inc., 489580 (JH)
7-1-04 to 12-31-07, $136,760.77
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

The Golden 1 Credit Union, 478766 (KH)
10-1-08 to 12-31-08, $433,126.55
Action: Approve the refund as recommended by staff.

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Krones, Inc.,335831 (OH)
7-1-03 to 9-30-05, $360,705.76
Action: Approve the refund as recommended by staff.

Itron, Inc., 373824 (OH)
10-1-05 to 12-31-05, $57,863.53
Action: Approve the refund as recommended by staff.

Sabre, Inc., 489039 (OH)
10-1-04 to 9-30-07, $95,738.27
Action: Approve the refund as recommended by staff.

Ontrack Data International, Inc., 474784 (OH)
1-1-08 to 9-30-08, $54,533.01
Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 488587 (OH)
4-25-08 to 10-29-08, $709,989.64
Action: Approve the refund as recommended by staff.

Farmers Insurance Group, 381012 (AS)
7-1-03 to 12-31-06, $420,458.89
Action: Approve the refund as recommended by staff.

Kimberly-Clark Worldwide, Inc., 472033 (OH)
7-1-02 to 6-30-05, $87,114.60
Action: Approve the refund as recommended by staff.

SFS 39, Inc., 478129 (BH)
7-1-08 to 9-30-08, $143,363.68
Action: Approve the refund as recommended by staff.

Sunquest Information Systems, Inc., 468408 (OH)
7-1-07 to 9-30-07, $246,820.39
Action: Approve the refund as recommended by staff.

MP Totalcare Medical, Inc., 434324 (AA)
10-1-04 to 9-30-06, $142,459.64
Action: Approve the refund as recommended by staff.

Jay, LLC, 489665 (KH)
4-1-06 to 6-30-06, $164,605.25
Action: Approve the refund as recommended by staff.

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Three Man Corporation, 483477 (FH)
7-1-05 to 3-31-08, $63,737.08
Action: Approve the refund as recommended by staff.

Zappos.com, Inc., 461146 (EH)
7-1-05 to 9-30-06, $201,628.78
Action: Approve the refund as recommended by staff.

Nektar Therapeutics, 484899 (BH)
7-1-05 to 6-30-08, $180,881.64
Action: Approve the refund as recommended by staff.

Intergraph Public Safety, Inc., 346714 (OH)
1-1-03 to 12-31-05, $132,889.10
Action: Approve the refund as recommended by staff.

Sonus Networks, Inc., 354143 (OH)
4-1-02 to 3-31-05, $97,552.27
Action: Approve the refund as recommended by staff.

Universal Electronics, Inc., 489438 (EA)
1-1-05 to 12-31-07, $503,091.71
Action: Approve the refund as recommended by staff.

Pilot Travel Centers, LLC, 361683 (OH)
4-1-03 to 3-31-06, $956,418.98
Action: Approve the refund as recommended by staff.

ASD Specialty Healthcare, Inc., 379043 (OH)
10-1-05 to 12-31-06, $897,995.25
Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 460061 (OH)
4-1-05 to 9-30-06, $78,477.72
Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 479859 (OH)
10-1-07 to 12-31-08, $80,786.69
Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 396948 (OH)
10-1-04 to 9-30-06, $137,591.97
Action: Approve the refund as recommended by staff.

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Iherb, Inc., 484916 (AP)
7-1-05 to 9-30-08, $151,762.71
Action: Approve the refund as recommended by staff.

Raley's, 451328 (JH)
9-18-05 to 9-20-08, $119,169.30
Action: Approve the refund as recommended by staff.

Palm, Inc., 435693 (GH)
10-1-04 to 3-31-08, $416,571.92
Action: Approve the refund as recommended by staff.

Vision Advertising, Inc., 351521 (AS)
1-1-03 to 3-31-06, $686,584.98
Action: Approve the refund as recommended by staff.

Sierra Central Credit Union, 444791 (KH)
1-1-05 to 9-30-08, $169,390.80
Action: Approve the refund as recommended by staff.

BJ's Restaurants, Inc., 474062 (EA)
10-1-06 to 6-30-08, $101,221.15
Action: Approve the refund as recommended by staff.

Wescom Credit Union, 484394 (AP)
10-1-08 to 3-31-09, $160,693.39
Action: Approve the refund as recommended by staff.

Kemiron Pacific, Inc., 312755 (OH)
4-1-02 to 3-31-05, $86,770.62
Action: Approve the refund as recommended by staff.

Communications & Power Industries, Inc., 477156 (GH)
1-1-04 to 3-31-07, $105,390.32
Action: Approve the refund as recommended by staff.

Movie Theatre Exhibition & Consulting Serv., Inc., 458752 (JH)
4-1-05 to 6-30-08, $80,270.09
Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 478141 (OH)
10-1-08 to 12-31-08, $1,615,050.72
Action: Approve the refund as recommended by staff.

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USE Credit Union, 415290 (FH)
4-1-07 to 6-30-08, $115,904.28
Action: Approve the refund as recommended by staff.

Colgin Partners, LLC, 470344 (JH)
1-1-06 to 9-30-08, $293,220.36
Action: Approve the refund as recommended by staff.

Top Auto Finance, Inc., 405476 (AC)
1-1-06 to 3-31-07, $114,207.27
Action: Approve the refund as recommended by staff.

Hitachi Global Storage Tech, Inc., 486661 (GH)
10-1-03 to 12-31-06, $1,616,885.97
Action: Approve the refund as recommended by staff.

Transouth Financial Corporation, 382295 (OH)
10-1-04 to 6-30-05, $317,388.69
Action: Approve the refund as recommended by staff.

Google Technology, Inc., 330698 (GH)
1-1-03 to 8-31-03, $246,961.12
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Michael Anthony Management, Inc., 458809 (KH)
1-1-06 to 3-31-08, $211,427.09
Action: Approve the refund as recommended by staff.

Community Trust Credit Union, 441561 (KH)
4-1-05 to 9-30-08, $121,716.65
Action: Approve the refund as recommended by staff.

American Auto Financing, Inc., 420729 (EA)
1-1-06 to 12-31-07, $86,978.74
Action: Approve the refund as recommended by staff.

Premier Truss, LLC, 467809 (EH)
10-1-05 to 12-31-08, $113,296.01
Action: Approve the refund as recommended by staff.

Kern Schools Federal Credit Union, 479368 (AR)
10-1-07 to 3-31-08, $57,291.44
Action: Approve the refund as recommended by staff.

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Linc Government Services, LLC, 474063 (OH)
9-1-06 to 12-31-07, $54,102.07
Action: Approve the refund as recommended by staff.

TFC Enterprises, Inc., 432571 (EA)
1-1-02 to 12-31-08, $494,673.18
Action: Approve the refund as recommended by staff.

Intertec Systems, LLC, 470338 (OH)
1-1-08 to 3-31-08, $260,660.34
Action: Approve the refund as recommended by staff.

United Local Credit Union, 447428 (KH)
1-1-05 to 6-30-08, $74,475.79
Action: Approve the refund as recommended by staff.

The American Bottling Company, 488219 (OH)
1-1-09 to 3-31-09, $1,130,445.64
Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Special Taxes 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 7.9 in *California Automobile Ins. Co., 343341 (ET); California Automobile Ins. Co., 343346 (ET); Nationwide Life Insurance Company, 491851 (ET); Safeco Insurance Company of America, 488239 (ET)*; and, *Delos Insurance Company, 474955 (ET);* the Board made the following orders:

First Student, Inc., 128513,129941, 293173 (MT)
7-1-98 to 6-30-01, $231,374.25
Action: Approve the redetermination as recommended by staff.

First Student, Inc., 331267, 343391, 343394, 344611, 353993 (MT)
10-1-02 to 6-30-05, $64,246.47
Action: Approve the redetermination as recommended by staff.

California Automobile Ins. Co., 343341 (ET)
1-1-02 to 12-31-02, $223,761.00
Action: Approve the redetermination as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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California Automobile Ins. Co., 343346 (ET)
1-1-01 to 12-31-01, $142,352.00
Action: Approve the redetermination as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Nationwide Life Insurance Company, 491851 (ET)
4-1-08 to 6-30-08, $217,029.70
Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Safeco Insurance Company of America, 488239 (ET)
7-1-08 to 9-30-08, $312,081.10
Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Delos Insurance Company, 474955 (ET)
4-1-08 to 6-30-08, $73,252.90
Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

McLane/Suneast, Inc., 493016 (ET)
3-1-09 to 3-31-09, $60,533.00
Action: Approve the relief of penalty as recommended by staff.

Karabetian Import and Export, Inc., 406850 (ET)
1-1-03 to 12-31-05, $64,644.64
Action: Approve the denial of claim for 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 Mr. Leonard, seconded by Mr. Shea and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, Ms. Steel not participating in *Conocophillips Company, 449676 (MT);* Ms. Mandel not participating in accordance with Government Code section 7.9 in *Sierra Tobacco Distributing, LLC, 213041 (MT); Conocophillips Company, 449676 (MT); SCPIE Indemnity Company, 166080 (ET); Fosters Wine Estates Americas Co., 380190 (ET);* and, *Diageo North America, Inc., 448267 (ET)*; the Board made the following orders:

Sierra Tobacco Distributing, LLC, 213041 (MT)
1-1-02 to 12-31-02, $572,552.02
Action: Approve the credit and cancellation as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Monday, August 31, 2009

Sierra Tobacco Distributing, LLC, 213043 (MT)
9-1-01 to 12-31-02, $82,089.75
Action: Approve the credit and cancellation as recommended by staff.

Conocophillips Company, 449676 (MT)
12-1-03 to 12-31-03, $195,232.55
Action: Approve the refund as recommended by staff. Ms. Steel not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

First Student, Inc., 353990 (MT)
7-1-01 to 6-30-02, $74,950.46
Action: Approve the refund as recommended by staff.

SCPIE Indemnity Company, 166080 (ET)
1-1-97 to 1-1-00, $564,692.95
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Fosters Wine Estates Americas Co., 380190 (ET)
11-1-05 to 9-30-08, $254,542.15
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

McLane/Suneast, Inc., 387439 (ET)
1-17-07 to 1-17-07, $147,395.26
Action: Approve the refund as recommended by staff.

McLane/Suneast, Inc., 395023 (ET)
3-20-07 to 3-20-07, $51,600.15
Action: Approve the refund as recommended by staff.

McLane/Suneast, Inc., 422650 (ET)
10-12-07 to 10-12-07, $63,043.71
Action: Approve the refund as recommended by staff.

McLane/Suneast, Inc., 434600 (ET)
1-29-08 to 1-29-08, $64,277.54
Action: Approve the refund as recommended by staff.

Diageo North America, Inc., 448267 (ET)
5-1-05 to 8-31-08, $114,534.62
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Monday, August 31, 2009

LEGAL APPEALS MATTERS, ADJUDICATORY

Vishwa Rup Lakhanpal, 100564, 234649 (AR)
7-1-96 to 9-30-99, $43,049.55 Tax, $0.00 Negligence Penalty, $9,893.88 Amnesty Interest Penalty
Considered by the Board: August 7, 2008
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Mr. Shea, seconded by Ms. Yee 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 for rehearing be denied. The Board directed staff to inform the petitioner of the Offer in Compromise Program.

Nijjar Brothers Trucking, Inc., 258549 (MT)
4-1-99 to 12-31-01, $0.00 Tax, $4,526.75 Negligence Penalty
NB Trucking, Inc., 284086 (MT)
11-5-01 to 12-31-02, $0.00 Tax, $2,394.83 Negligence Penalty
Considered by the Board: Hearing Notice Sent – No Response
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
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 ordered to abate interest for one year to the extent allowable under law, otherwise that the petitions be redetermined as recommended by the Appeals Division.

Conco Paint Company, 57628, 77681, 151419, 165485, 214933, 89000961230, 89000961240, 89000961250, 89000961260 (MT)
1993, $42,155.01 Fee
1994, $80,451.98 Fee, $8,045.20 Penalty
1995, $147,843.96 Fee, $14,784.40 Penalty
1996, $128,294.48 Fee
1997, $126,616.44 Fee
1998, $113,456.91 Fee
1999, $99,966.49 Fee, $9,996.65 Penalty
2001, $10,413.37 Fee
2002, $12,616.37 Fee
Considered by the Board: Hearing Notice Sent – No Response
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Mr. Shea, seconded by Ms. Mandel 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.

Donald Edward Wood, 397151 (AA)
7-1-01 to 8-31-04, $37,308.26 Tax, $3,730.88 Negligence Penalty, $1,962.14 Amnesty Double Negligence Penalty, $3,730.83 Finality Penalty, $1,962.14 Amnesty Double Finality Penalty, $103.82 Failure to Make Prepayment Penalty, $1,838.11 Amnesty Interest Penalty
Considered by the Board: Hearing Notice Sent – No Response

Monday, August 31, 2009

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
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 redetermined as recommended by the Appeals Division.

Arco Terminal Services Corp, 310137 (MT)
7-1-98 to 12-31-01, $155,842.76 Fees
Considered by the Board: Hearing Notice Sent – Appearance Waived
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Mr. Shea 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 Mr. Shea voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 87105.
The Board postponed this matter to the next day.

Ron Sanchez, 283578 (EH)
4-1-00 to 3-31-03, $4,589.48 Tax, $0.00 Penalty
Considered by the Board: October 3, 2007
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
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 redetermined as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Leah Lukrich, 391844
2003, $1,367.00 Assessment
Considered by the Board: February 3, 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, Mr. Shea 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.

Matt Ward, 431775
1999, $153,305.00 Assessment
2000, $114,449.00 Assessment
Considered by the Board: February 25, 2009
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Speaker: Jeff Davine, Attorney, Mitchell Silberberg & Knupp LLP, speaking on behalf of *Matt Ward, 431775*
Jeanne Sibert, Tax Counsel, on behalf of the Franchise Tax Board

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

Monday, August 31, 2009

NASSCO Holdings, Inc., 317434
1994, $160,415.00 Assessment
1995, $53,159.00 Assessment
1999, $298,538.00 Assessment
2000, $927,274.00 Assessment
2001, $567,908.00 Assessment
Considered by the Board: February 25, 2009
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
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 denying the petition for rehearing.

Upon motion of Mr. Shea, seconded by Ms. Steel and duly carried, Mr. Leonard, Ms. Steel and Mr. Shea voting yes, Ms. Mandel voting no, Ms. Yee abstaining, the Board ordered the appeal be submitted for written opinion. The Board's decision on this matter shall not become final until the matter is brought back to the Board for adoption of the proposed opinion.

Robin Nottingham Reid, 467218
2006, $ 436.00 Claim for Refund
Considered by the Board: Hearing Notice Sent – No Response
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
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 adopted a decision sustaining the modified action of the Franchise Tax Board.

SALES AND USE TAX MATTER, DENIAL OF RELIEF OF PENALTY, ADJUDICATORY

Brentwood Motors, Inc., 445719 (CH)
1-1-02 to 3-31-02, $55,229.80
Considered by the Board: March 16, 2009
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Ms. Steel moved to grant the relief of penalty. 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 Mr. Shea, seconded by Ms. Mandel and duly carried, Ms. Yee, Mr. Shea and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the denial of relief of penalty as recommended by staff.

Monday, August 31, 2009

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

OFFERS-IN-COMPROMISE RECOMMENDATIONS

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 Offers in Compromise of *Digby Industries, Inc; Ricky D. Wilson;* and, *Roberto Shakiba;* as recommended by staff.

CHIEF COUNSEL MATTERS

OTHER CHIEF COUNSEL MATTERS

Grotenhuis (Respondent) v. *County of Santa Barbara (Appellant),* 2nd District Court of Appeal No. B212264 Santa Barbara Superior Court No. 1244393

Robert Lambert, Assistant Chief Counsel, Litigation Division, Legal Department, introduced Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, who made an introduction requesting approval to file an amicus curiae brief on a question involving the applicability of Revenue and Taxation Code section 69.5 to corporations. (Exhibit 8.5.)

Action: Upon motion of Mr. Shea, seconded by Ms. Mandel and duly carried, Ms. Yee, Mr. Shea and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the request to file an amicus curiae brief.

The Board recessed at 12:01 p.m. and reconvened at 1:30 p.m. with Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

Local Tax Reallocation Hearings

City of Union City, 469296
10-1-96 to 9-30-09, $1,607,500.00 Tax

For Petitioner:	Eric Myers, Representative
	Janis Varney, Representative
	Richard Digre, Finance Director
For Sales and Use Tax Department:	Carole Ruwart, Tax Counsel

Issue: Whether the local tax from the sales negotiated outside California and delivered by the Union City location should be reallocated 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.

Monday, August 31, 2009

City of Pomona and Town of Los Gatos, 469261

Speakers: Judy Skousen, Assitant City Attorney, Palmdale Redevelopment Agency
Mark Mulkerin, Deputy City Attorney, City of Industry
Jim DeBoo, Chief Legislative Representative, City of Los Angeles

7-1-93 to 12-31-07, $9,539,000.00
10-1-93 to 12-31-07, $146,630.00

For Petitioner City of Pomona:	Eric Myers, Representative Fran Mancia, Representative Linda Lowry, Representative
For Petitioner Town of Los Gatos:	Fran Mancia, Representative Stephen Conway, Representative
For Affected Jurisdictions: Cities of Alhambra, Arcadia, Burbank, Carson, Commerce, Covina, Culver City, Glendale, Glendora, Industry, Inglewood, Lakewood, Lancaster, Monrovia, Montebello, Paramount, Redondo Beach, Santa Monica, Signal Hill, South Gate, West Covina, West Hollywood, Whittier	Robin Sturdivant, Representative Matt Hinderliter, Representative
For Affected Jurisdictions: Cities of Beverly Hills, Hawthorne, La Mirada, Norwalk, Pasadena, and Palmdale Redevelopment Agency	Mitchell E. Abbott, Attorney
For Sales and Use Tax Department:	Carole Ruwart, Tax Counsel

Issue: Whether the warehouse rule as explained in California Code of Regulations, title 18, section (Regulation) 1802, subdivision (c), applies prior to October 1, 1993.
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, ADJUDICATORY

Arco Terminal Services Corp, 310137 (MT) (Continued)
Action: The Board deferred consideration of this matter to the next day.

Monday, August 31, 2009

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTER, ADJUDICATORY

Matt Ward, 431775 (Continued)
1999, $153,305.00 Assessment
2000, $114,449.00 Assessment
Considered by the Board: February 25, 2009
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
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 allowing a worthless stock deduction in the amount of $969,904.00 for the 2000 tax year, otherwise sustaining the action of the Franchise Tax Board.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD AUGUST 31, 2009

Thomas G. Haas, 447747
Final Action: Upon motion of Mr. Shea, seconded by Ms. Mandel and duly carried, Ms. Yee, Mr. Shea and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered to abate interest for the period of August 16, 2006 to January 8, 2008, otherwise sustained the action of the Franchise Tax Board.

Paul Katchadourian, 451078
Final Action: Upon motion of Mr. Shea, seconded by Ms. Mandel and duly carried, Ms. Yee, Mr. Leonard, Mr. Shea and Ms. Mandel voting yes, Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD AUGUST 31, 2009

City of Union City, 469296
Final Action: Upon motion of Mr. Shea, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Leonard, Mr. Shea and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that a portion of the local tax be reallocated indirectly to petitioner through the Alameda countywide pool as recommended by the Appeals Division.

City of Pomona and Town of Los Gatos, 469261
Final Action: The Board postponed this matter to the next day.

The Board adjourned at 3:40 p.m.

The foregoing minutes are adopted by the Board on December 16, 2009.

Note: The following matters were removed from the calendar prior to the meeting: *Eddie Tobias, 440644;* and, *Rosendin Electric, Inc., 358879.*

Tuesday, September 1, 2009

The Board met at its offices at 450 N Street, Sacramento, at 9:35 a.m., with Ms. Yee, Chairwoman, Mr. Shea, Mr. Leonard and Ms. Steel present, Mr. Chivaro present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Arco Terminal Services Corp, 310137 (MT) (continued)
7-1-98 to 12-31-01, $155,842.76 Fees
Considered by the Board: Hearing Notice Sent – Appearance Waived
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Mr. Shea seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Shea and Mr. Chivaro voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Mr. Leonard directed staff to research taxable products blended with non-taxable products to determine how widespread this is among refineries and fuel mixers.

Mr. Chivaro left the Boardroom and Ms. Mandel entered on behalf of Mr. Chiang in accordance with Government Code section 7.9.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD AUGUST 31, 2009

City of Pomona and Town of Los Gatos, 469261

David H. Levine, Tax Counsel, Appeals Division, Legal Department, stated that the parties in this matter are negotiating a settlement.

Final Action: The Board deferred consideration of this matter.

SALES AND USE TAX APPEALS HEARINGS

Werther International, Inc., 290751 (OH)
10-1-00 to 9-30-03, $8,346.20 Tax
For Petitioner: Kurt Lieber, Taxpayer
For Department: Chris Schutz, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether petitioner was a retailer engaged in business in California for the audit period October 1, 2000, through September 30, 2003.

Whether petitioner has provided sufficient evidence to prove that the remaining disputed transactions were sales for resale.

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 and directed staff to review the petitioner's travel records.

Tuesday, September 1, 2009

James Bass Smith, 353126 (UT)
12-4-03, $13,600.00 Tax
For Petitioner: James Bass Smith, Taxpayer
Kai Mickey, Representative
For Department: Andrew Kwee, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether petitioner has established that his use of the subject vessel qualified for the exemption for commercial deep sea fishing.
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.

James M. Heim, 379939 (CH)
10-1-00 to 6-30-01, $0.00 Tax, $27,007.15 Interest, 38,949.88 Penalties
For Petitioner: James M. Heim, Taxpayer
For Department: Andrew Kwee, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of Basis, Inc (SR CH 21-741252) (Basis) for the period October 1, 2000, through June 30, 2001 (4Q00, 1Q01, and 2Q01).
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 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.

SPECIAL TAXES APPEALS HEARING

Sukhwant S. Sekhon and Amarjit K.Sekhon, 491719 (ET)
April 7, 2009 $619.84 Approximate Value
For Petitioner: Sukhwant S. Sekhon, Taxpayer
Amarjit K. Sekhon, Taxpayer
For Department: Monica Silva, 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. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel voting yes, the Board deferred consideration of the matter to the October Sacramento meeting to allow time for staff to contact cigarette distributor, McCain, regarding UPC packaging and tracking codes.

Tuesday, September 1, 2009

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 9.1.)

Grace Garcia, Business Taxes Compliance Specialist, San Marcos Branch Office
Philip G. Gonzales, Business Taxes Compliance Specialist, San Marcos Branch Office
Richard L. Hess, Supervising Tax Auditor III, Irvine District Office, Irvine District Office
Cheryl Hronec, Business Taxes Representative, Environmental Fees Division, Property and Special Taxes Department
Christopher C. Lu, Associate Tax Auditor, West Covina District Office
David Pidal, Supervising Tax Auditor II, Riverside District Office
Sue Scheib, Supervising Tax Auditor II, San Diego District Office
Adela S. Spangler, Associate Tax Auditor, San Diego District Office
Robert L. Thompson, Business Taxes Specialist II, Internal Security and Audit Division, Executive Department
Lucia M. Vargas, Tax Technician III, Return Analysis Unit
Lee James Watkins, Business Taxes Specialist I, Sacramento District Office

Action: Continue the current Revenue and Taxation Code, section 6355, coins and bullion bulk sale exemption threshold of $1,500, as recommended by staff. (Exhibit 9.2.)

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 2010 Board Workload Plan, Calendar A. (Exhibit 9.3.)

Exhibits to these minutes are incorporated by reference.

Ms. Yee directed staff to prepare a cost analysis of conducting meetings in Culver City compared to meetings in Sacramento.

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee

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 approved the Legislative Committee report and the actions therein. (Exhibit 9.4.)

Tuesday, September 1, 2009

Customer Services and Administrative Efficiency Committee

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 approved the Customer Services and Administrative Efficiency Committee.

Ms. Mandel noted for the record that had the issue of discontinuing all in-person seminars been put to a vote today, she would have abstained from that vote, and urged staff to provide outreach to permit holders who would not have access to the virtual seminars or to locations where the links to the seminars would be available. (Exhibit 9.5.)

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, provided information regarding the revised 2009-10 Budget signed on July 28, 2009. The 2009-10 Budget includes statewide unallocated reductions and trailer bills that will impact the Board of Equalization. Mr. Hirsig reported that the BOE took immediate steps to reduce the personal services expenditures, which included a strict hiring freeze, elimination or reduction of overtime, reduction in training, reduced travel, reduced operating expense, and canceling or suspension of nonessential contracts. Mr. Hirsig reported that over 1,200 employees are participating in the BOE's voluntary leave prograMs.

Mr. Hirsig described a plan to begin the State Restriction of Appointment (SROA) process, which is the first step that would give BOE the flexibility to address its budget shortfall if the need for savings through layoffs occurs. This plan will be submitted to the Department of Personnel Administration this week and takes into consideration BOE employees with up to 24 months of State service, which could potentially impact 800 to 1,100 employees.

Mr. Leonard thanked Mr. Hirsig for preparing options, and for providing BOE employees with the information they will need should layoffs become necessary. Ms. Yee echoed Mr. Leonard's comments and thanked the BOE employees who are participating in the voluntary employee leave programs for their support.

Deputy Directors Reports

Liz Houser, Deputy Director, Administration Department, provided a facilities update regarding the on-going projects at the 450 N Street building. Ms. Houser also presented the 2010/11 draft budget change proposals (BCP) for approval. (Exhibit 9.6.)

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 BCP *BOE Headquarters Facilities – Placeholder.*

Tuesday, September 1, 2009

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 approved the BCP *San Diego District Office Facility.*

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 approved the BCP *Ramp Down—Temporary 1.0 Percent State Sales and Use Tax Rate Increase*

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 approved the BCP *Increase Revenue through Agricultural Inspection Station Tax Leads.*

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 approved the BCP *Ensuring Fuel Tax Compliance.*

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 approved the BCP *Budget Restoration – Placeholder.*

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD SEPTEMBER 1, 2009

Werther International, Inc., 290751 (OH)

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 redetermined as recommended by the Appeals Division.

Ms. Mandel directed staff to make clear to the petitioner the basis of the Board's decision. Also, when preparing a case where the petitioner has been before the Board previously, the conference holder is to review that prior case.

James Bass Smith, 353126 (UT)

Final 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 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.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:25 p.m. and reconvened immediately in closed session with Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Shea and Ms. Mandel present.

Tuesday, September 1, 2009

CLOSED SESSION

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

The Board recessed at 1:40 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 1:42 p.m.

The foregoing minutes are adopted by the Board on December 16, 2009.