

Tuesday, October 6, 2009

The Board met at its offices at 450 N Street, Sacramento, at 11:00 a.m., with Ms. Yee, Chairwoman, Mr. Leonard, Ms. Steel and Mr. Horton, present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Ms. Yee welcomed Mr. Horton to the Board of Equalization.

### **ELECTION OF THE VICE CHAIR**

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel, Mr. Horton and Ms. Mandel voting yes, the Board elected Mr. Horton to Vice Chair.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Barbara Bladen Porter, 424104  
1994, \$ 81,053.37 Amount of Relief Requested

For Appellant:

William E. Taggart, Jr., Attorney

For Franchise Tax Board:

Mark McEvelly, Tax Counsel

Kathleen Cooke, Tax Counsel

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

Issues: Whether appellant is barred by the doctrine of res judicata from seeking innocent spouse relief.

Alternatively, if res judicata doesn't apply, whether appellant has demonstrated that she is entitled to innocent spouse relief.

Respondent's Exhibit: Miscellaneous Documents (Exhibit 10.1)

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

Exhibits to these minutes are incorporated by reference.

### **LEGAL APPEALS MATTERS, CONSENT**

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Steel not participating in accordance with Government Code section 87105 in *S & F Southwest Partners, Inc.*, 353096; Ms. Mandel not participating in accordance with Government Code section 87105 in *Bed Bath & Beyond of California*, 383885; the Board made the following orders:

Bed Bath & Beyond of California, 383885 (OH)

1-1-99 to 12-31-03, \$24,978.00 Amnesty-Interest Penalty

Action: Redetermine as recommended by the Appeals Division. Ms. Mandel not participating in accordance with Government Code section 87105.

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Mariano T. Garcia, Jr., 380589 (CH)

7-1-03 to 12-31-03, \$27,195.89 Tax, \$2,719.59 Penalty

Action: Redetermine as recommended by the Appeals Division

Thomas Leon Smith, 417529 (KH)

7-1-03 to 3-31-07, \$7,400.39 Tax, \$740.03 Penalties

Action: Redetermine as recommended by the Appeals Division.

S &amp; F Southwest Partners, Inc., 353096 (OH)

1-1-02 to 12-31-04, \$26,190.84 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division. Ms. Steel not participating in accordance with Government Code section 87105.

Howell's Liquor, Inc., 491676 (ET)

October 30, 2008, \$249.78 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Lovely Enterprises, Inc., 488784 (ET)

September 11, 2008, \$89.82 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Frank H. Bliss, 488831 (ET)

January 26, 2009, \$615.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Joe Aprim, Adam Aprim, and Albert Aprim, 496354 (ET)

April 9, 2009, \$10,505.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Patrick In Oh, 491660 (ET)

March 4, 2009, \$89.69 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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

The Board deferred consideration of the following matters: *Michael D. Charles, 439490, 440947*; and, *Roland Leroy Reese, 393407*.

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

Ruth L. Briggs, 478623

2003, \$22,799.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Michael D. Charles, 439490, 440947

2004, \$4,235.00 Tax, \$1,058.75 Late Filing Penalty, \$1,058.75 Notice and Demand Penalty

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

\$122.00 Filing Enforcement Fee

Action: The Board took no action.

Michelangelo Curiel-Mendoza, 449291

2007, \$810.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Timothy Gallagher, 435045, 441101

2004, \$15,295.00 Tax, \$3,823.75 Late Filing Penalty, \$3,823.75 Notice and Demand Penalty,

\$125.00 Filing Enforcement Fee

2005, \$29,955.00 Tax, \$7,488.75 Late Filing Penalty, \$7,488.75 Notice and Demand Penalty,

\$122.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500 frivolous appeal penalty.

Stephen A. Hewko, 431671, 440747

2004, \$10,563.00 Tax, \$2,640.75 Late Filing Penalty

2005, \$6,531.00 Tax, \$1,632.75 Late Filing Penalty

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

Alireza Khoshkholgh, 405940

2005, \$1,234.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ercely Laram, 447786

2006, \$960.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Richard J. Lindholtz, 468080

2007, \$653.24 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Terry W. Oesau, 429327

2005, \$1,146.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

OPS Research and Development, 461571

2005, \$224,958.83 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Charles D. Restivo, 440389

1997, \$1,340.92 Interest, \$428.35 Post-Amnesty Penalty

1998, \$4,379.43 Interest, \$1,344.96 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Sue A. Sabenorio and Allan R. Sabenorio, 445997

2004, \$7,004.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Linda Stewart, 417989

2001, \$3,575.80 Tax, \$298.93 post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Douglas A. Tate, 461169

2004, \$508.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Marc H. Williamson, 439484

2005, \$7,633.00 Tax

2006, \$7,593.00 Tax

Action: Sustain the action of the Franchise Tax Board.

John Aaron Zornes, Jr., 417984

2002, \$2,153.00 Assessment

Action: Modify the action of the Franchise Tax Board.

Roland Leroy Reese, 393407

2003, \$3,194.00 Tax, \$798.50 Late Filing Penalty, \$825.75 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee

Action: The Board took no action.

Pamela Burton, 464472

2007, \$960.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Sandra Anderson Rosco, 432995

2005, \$420.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Stanislaw Czaja, 460689

2006, \$153.51 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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

David Baptist, 449812

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Annette Bradley, 433753

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

David Chey, 447852

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Jimmy Horn, 426098

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Bert Morgan, 443261

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Betty Ogletree, 443103

2007, \$372.00

Action: Sustain the action of the Franchise Tax Board.

Brenda Smith-Buani (Deceased), 423706

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Jasmine Thompson, 443062

2006, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Elda Triantafilio, 445821

2005, \$320.00

2006, \$320.00

Action: Sustain the action of the Franchise Tax Board.

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Issa H. Parsia, 422647

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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

With respect to the Sales and Use Tax Matters, Relief of Penalties, Denials of Claims for Refund and Denials of Relief of Penalties, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Steel not participating in accordance with Government Code section 87105 in *Convenience Retailers, LLC, 495098*; the Board made the following orders:

Oracle USA, Inc., 495092 (CH)

1-1-09 to 3-31-09, \$52,957.70

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

Convenience Retailers, LLC, 495098 (OH)

1-1-09 to 6-15-09, \$215,767.70

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

Teradata US, Inc., 441087 (OH)

10-1-07 to 3-31-08, \$161,299.64

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

Alpha Shirt Company, 495104 (OH)

7-1-99 to 6-30-02, \$59,927.03

Action: Approve the denial of relief of penalty 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 Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Sony Electronics, Inc., 446970*; the Board made the following orders:

Concord Kitchens, Inc., 494763 (OH)

10-1-07 to 3-31-08, \$116,839.76

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

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San Lorenzo Floor Covering, Inc., 469762 (GH)

1-1-06 to 3-31-08, \$142,741.23

Action: Approve the refund as recommended by staff.

Los Robles Regional Med Center, 468145 (AR)

7-1-05 to 3-31-08, \$167,698.99

Action: Approve the refund as recommended by staff.

Accelrys, Inc., 459611 (FH)

10-1-05 to 12-31-06, \$55,957.84

Action: Approve the refund as recommended by staff.

Riverside Community Hospital, 468148 (EH)

7-1-05 to 3-31-08, \$161,023.28

Action: Approve the refund as recommended by staff.

Rohr, Inc., 493295 (OH)

1-1-02 to 12-31-07, \$52,990.06

Action: Approve the refund as recommended by staff.

Alpha Dyno Nobel, 475935 (KH)

1-1-07 to 9-30-08, \$151,841.15

Action: Approve the refund as recommended by staff.

Sony Electronics, Inc., 446970 (OH)

7-1-06 to 3-31-08, \$107,827.81

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

Sprint Spectrum, LP, 424231 (OH)

10-1-02 to 12-31-06, \$719,188.79

Action: Approve the refund as recommended by staff.

Bystronic, Inc., 493322 (OH)

10-1-08 to 12-31-08, \$54,987.96

Action: Approve the refund as recommended by staff.

Comverse, Inc., 474782 (OH)

7-1-06 to 6-30-07, \$87,291.89

Action: Approve the refund as recommended by staff.

Perot Systems Hltcr Serv Corp, 443782 (OH)

4-1-07 to 6-30-07, \$79,124.96

Action: Approve the refund as recommended by staff.

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Wachovia Dealer Services, Inc., 479371 (EA)  
10-1-08 to 12-31-08, \$5,162,444.85  
Action: Approve the refund as recommended by staff.

Southern Leasing, LLC, 492684 (OH)  
4-1-05 to 3-31-08, \$380,326.00  
Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 470266 (OH)  
10-1-05 to 9-30-08, \$381,493.49  
Action: Approve the refund as recommended by staff.

Robertshaw Controls Company, 433711 (OH)  
7-1-06 to 12-31-06, \$91,752.04  
Action: Approve the refund as recommended by staff.

Trader Joe's Company, 444965 (AP)  
1-1-05 to 12-31-07, \$202,731.19  
Action: Approve the refund as recommended by staff.

Point Loma Credit Union, 480616 (FH)  
10-1-08 to 3-31-09, \$73,526.56  
Action: Approve the refund as recommended by staff.

Rent-A-Center West, Inc., 460520 (OH)  
4-1-05 to 6-30-08, \$66,596.04  
Action: Approve the refund as recommended by staff.

Triad Financial Corporation, 494567 (EA)  
4-1-08 to 6-30-08, \$107,434.07  
Action: Approve the refund as recommended by staff.

Lockheed Employ. Services, Inc., 403418 (AC)  
7-1-06 to 9-30-07, \$74,544.24  
Action: Approve the refund as recommended by staff.

Teradata US, Inc., 441087 (OH)  
10-1-07 to 3-31-08, \$144,505.36  
Action: Approve the refund as recommended by staff.

Teradata Operations, Inc., 442488 (OH)  
10-1-07 to 12-31-07, \$244,953.93  
Action: Approve the refund as recommended by staff.

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

Royce A. Barrett, 414668

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

Patricia A. McKasy, 449289

2004, \$1,781.00 Assessment

Considered by the Board: June 30, 2009

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board and directed staff to refer the appellant to the Offer in Compromise program.

Haik Arakelian and Alice Arakelian, 442173

2003, \$1,636.00 Assessment

Considered by the Board: July 21, 2009

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

Action: Upon motion of Mr. Horton, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision granting the petition for rehearing.

Vidco Express, Inc., 378528

1997, \$252,281.84 Assessment

Considered by the Board: May 13, 2008

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board adopted a decision denying the petition for rehearing.

Ana M. Moore and Mitchell Moore, 281619

1998, \$2,377.00 Assessment

Considered by the Board: August 5, 2008

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

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

Guip V. Nguyen, 431698

2007, \$1.00 or more

Considered by the Board: September 22, 2009

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

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

**OFFERS-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *James E. Jackson; Bahram Behmanesh and Darlene H. Behmanesh*; and, *Juan Cobian Ruesga/Ruesga, Inc.*; as recommended by staff.

**CHIEF COUNSEL MATTERS****RULEMAKING****Adoption of Proposed Amendments to Rules for Tax Appeals Regulation 5237, Board Approval Required for Refunds over \$50,000, and Rules for Tax Appeals Regulation 5266, Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings**

Bradley Heller, Tax Counsel, Legal Department, made introductory remarks. The revised versions of the proposed amendments make Regulations 5237 and 5266 consistent with the current delegation of authority to staff to grant or deny refunds. Mr. Heller also discussed the public record requirement with respect to Regulations 5237 and 5266. (Exhibit 10.2.)

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the proposed amendments to Regulations 5237 and 5266 as published.

**OTHER CHIEF COUNSEL MATTERS*****Loeffler v. Target Corp.*, California Supreme Court Case No. S173972**

Ms. Mandel stated that she would not participate in this matter in accordance with Government Code section 87105 and left the Boardroom.

Robert Lambert, Assistant Chief Counsel, Litigation Division, Legal Department, made introductory remarks regarding the request for approval to file an amicus brief in the Supreme Court review of *Loeffler v. Target Corp.*, California Supreme Court Case No. S173972. (Exhibit 10.3.)

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Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel and voting yes, Ms. Mandel absent and not participating in accordance with Government Code section 87105, the Board approved the request.

The Board recessed at 12:23 p.m. and reconvened at 1:35 p.m. with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel present.

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

Royce A. Barrett, 414668

1983, \$4,973.00 Tax, \$1,244.00 Late Filing Penalty

1984, \$9,677.00 Tax, \$2,419.25 Late Filing Penalty

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 Mr. Horton and duly carried, Ms. Yee, Mr. Horton 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.

### **SALES AND USE TAX APPEALS HEARING**

Ali K. Amidy, Rita M. Belus and Fred James Belus, 309684 (CH)

Ali K. Amidy, 309681 (CH)

4-01-01 to 4-16-04, \$185,897.88 Tax, \$18,589.82 Negligence Penalty

4-17-04 to 5-24-04. \$13,826.84 Tax, \$1,382.69 Negligence Penalty

For Petitioner: Ali Amidy, Taxpayer

Steven J. Packey, Attorney

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

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

Issues: Whether additional adjustments are warranted.

Whether petitioner Amidy has established that the sale of fixtures, furniture, and equipment is not taxable.

Whether petitioners were negligent.

Whether petitioners are entitled to relief from interest due to unreasonable delay by Board staff.

David H. Levine, Counsel, Appeals Division, Legal Department, announced a revised recommendation that would reduce partner Rita M. Belus' tax liability to approximately \$156,019 tax, plus interest and penalties, rather than the amount the Department asserts against the remaining partners.

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

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**ADMINISTRATIVE SESSION****ADMINISTRATIVE MATTERS, CONSENT**

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

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California. (Exhibit 10.4.)

Miguel (Mike) R. Cordero, Business Taxes Representative, West Covina District Office

Willard Lee Smith, Supervising Tax Auditor II and Certified Public Accountant, West Covina District Office

Bernard (Tom) Stickler, Business Taxes Specialist I, San Diego District Office

Action: Approve the Board Meeting Minutes of June 9, 2009 and June 30-July 1, 2009.

Action: Adopt the 2010 Hazardous Substances Program Fees and Occupational Lead Poisoning Prevention Fee as recommended by staff. (Exhibit 10.5.)

Action: Adopt the 2009-10 Emergency Telephone Users Surcharge Rate of 0.50 percent and publish the rate in these Board meeting minutes. (Exhibit 10.6.)

Action: Approve the prepayment rate of sales tax on motor vehicle fuel, diesel fuel and jet fuel as recommend by staff. (Exhibit 10.7.)

**ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS****Property Tax Committee**

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Property Tax Committee report and the actions therein. (Exhibit 10.8.)

Committee votes were as follows:

The following recommendation unanimously passed with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes: authorize publication of amendments to Property Tax Rule 192, *Mandatory Audits*, Property Tax Rule 193, *Scope of Audit*, and Property Tax Rule 371, *Significant Assessment Problems* as presented in Issue Paper 09-004.

**Customer Services and Administrative Efficiency Committee**

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

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**OTHER ADMINISTRATIVE MATTERS****Deputy Directors Reports**

David Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding cigarette tax stamp contract procurement efforts, and requested Board concurrence of a Non-Competitively Bid Contract with SICPA Product Security, LLC, to continue providing their services for a specified period beyond December 31, 2009. (Exhibit 10.9.)

Speaker: Dennis Loper, Representing the California Distributors Association

Mr. Leonard requested staff to: recognize and factor-in Board-mandates on distributors in any future bid document or negotiations so costs are fully amortized; provide some of the covert features to distributors so they can help the retailers identify counterfeiters more easily without BOE's involvement; and, explore under what terms the contract could be extended.

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

Liz Houser, Deputy Director, Administration Department, provided an update on the Headquarters Remediation Project, including the activated swing space moves within the building. Ms. Houser introduced Timothy Bow, Chief, Building and Property Management, Department of General Services, to present findings from the Stantec Infrastructure Study and the planned course of action.

The Board directed staff to provide the total cost of Headquarters building projects to date.

Liz Houser, Deputy Director, Administration Department, reported that the Department of General Services submitted a BCP to request a budget augmentation to correct the Stantec Infrastructure Study priority one building deficiencies at the 450 N Street Building. Ms. Houser and presented a corresponding draft 2010/11 Budget Change Proposal (BCP) to address the potential of a rent increase.

Action: Upon motion of Ms. Yee seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the BCP *450 N Street Building Deficiencies (Companion to DGS BCP)* but ordered staff to tie the proposal to the implementation of AB 151. (Exhibit 10.10.)

Liz Houser, Deputy Director, Administration Department, provided an update on the site selection; and, introduced Patrick Foster and James Koerner of the Department of General Services to request Board approval to finalize the lease for the selected sites of the International Fuel Tax Agreement and Headquarters annex location.

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

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

Anna Brannen, Deputy Director, Technology Services Division, provided an overview of the Board of Equalization's three year technology plan for fiscal years 2008-2012, which supports the Board's long term strategic technology vision. (Exhibit 10.11.)

#### **ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**

##### **Customer Services and Administrative Efficiency Committee**

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report and the actions therein. (Exhibit 10.12.)

#### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD OCTOBER 6, 2009**

Barbara Bladen Porter, 424104

Final Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel abstaining, the Board sustained the action of the Franchise Tax Board, finding that the appellant is barred by the doctrine of res judicata from seeking innocent spouse relief.

Mr. Leonard directed staff to add a disclaimer to its form to clarify that waiving appearance does not mean that the taxpayer did not participate in the process.

#### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD OCTOBER 6, 2009**

Ali K. Amidy, Rita M. Belus and Fred James Belus, 309684 (CH)

Ali K. Amidy, 309681 (CH)

Final Action: Ms. Steel moved that the petition be redetermined in accordance with the revised recommendation of the Appeals Division and to direct staff to check on the proper crediting and application of the payments. The motion was seconded by Ms. Yee. Ms. Steel amended her motion to delete the negligence penalty. The amended motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Mr. Horton and Ms. Mandel voting no.

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Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division. The Board further directed that the Sales and Use Tax Department ensure that all payments made towards this liability be properly credited against it, and that the Department investigate whether there remain funds held in escrow related to this liability.

Ms. Steel requested information that would clarify the difference between negligence and fraud penalties and how staff determines which one to impose.

#### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 4:49 p.m. and reconvened immediately in closed session with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel present.

#### **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 6:22 p.m. and reconvened immediately in open session with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel present.

The Board adjourned at 6:23 p.m.

*The foregoing minutes are adopted by the Board on January 27, 2010.*

Note: The following matters were removed from the calendar prior to the meeting: *Noli J. Lozada and Maria Impang-Lozada, 297237; Woodland Hills Car Wash, Inc., 299486 (AC); Bhupinder Singh Mac, 299487 (AC); Sukhwant S. Sekhon and Amarjit K. Sekhon, 491719 (ET); and, Big West of California, LLC, 460290 (MT).*