Tuesday, July 24, 2012

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:47 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Mr. Horton expressed his sadness for the tragic shooting at a movie theater in Aurora, Colorado, on Friday, July 20, 2012, and observed a moment of silence.

Mr. Horton recognized BOE's internship program and introduced the participants in the audience. In Ms. Steel's office: Mark Kim, Eric Yoon and Theresa Vu. In the Culver City District Office: Jade Ferguson, Sunshine Bolton and intern trainer Donna Perez.

PENDING APPROVAL

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

David Du Tran and Thuyen Thi Tran, 547815
2003, $32,584.00 Tax, $8,146.00 Penalty
2004, $78,102.00 Tax, $0.00 Penalty

For Appellants:	David Du Tran, Taxpayer
	Kim Le, Representative
For Franchise Tax Board:	Sonia Deshmukh, Tax Counsel
	Michael Cornez, Tax Counsel

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

Issue: Whether the monetary transfers from Vanco, Inc., to Vanco Trading, Inc., may be considered shareholder loans from appellants to their S corporation for purposes of increasing their basis in corporate indebtedness.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 7.1)
Respondent's Exhibit: Miscellaneous Documents (Exhibit 7.2)

Anthony Epolite, Tax Counsel IV, Appeals Division, Legal Department, stated for the record that the Franchise Tax Board has agreed to abate the late filing penalty for 2003 and the late payment penalty for 2003.

Action: Upon motion of Ms. Steel seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the Franchise Tax Board 30 days with additional time if needed to review additional information, the appellant 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

Exhibits to these minutes are incorporated by reference.

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PENDING APPROVAL

William Justice and Lisa Blinderman, 573575
2005, $7,871.00 Claim for Refund
2006, $8,086.00 Claim for Refund
2007, $6,521.00 Claim for Refund
2008, $7,571.00 Claim for Refund
Michael L. Panek and Tracy Panek, 585508
2009, $4,361.00 Claim for Refund
David Sterling, 585513 +
2007, $5,243.00 Claim for Refund
Mark Cronin and Lois Cronin, 586117
2007, $1,216.00 Claim for Refund
2009, $2,799.00 Claim for Refund

For Appellants: Rodney Guarino, Representative
For Franchise Tax Board: Shail Shah, Tax Counsel
Maria Brosterhous, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether portions of amounts received as salary by appellant are excludable from gross income under Internal Revenue Code section 104(a)(1).
Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Manik R. Bose and Devika Bose, 574066
2001, $632.00 Claim for Refund
2002, $525.00 Claim for Refund

For Appellants: Manik R. Bose, Taxpayer
Erica Brinitzer, Representative
For Franchise Tax Board: Nancy Parker, Tax Counsel
Karen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether respondent properly determined appellants' claims for refund are barred by the statute of limitations.
Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 11:27a.m. and reconvened at 11:39 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel.

Tuesday, July 24, 2012

Daniel R. Marcotte, 589131
2006, $31,470.00 Assessment

For Appellant:	Daniel R. Marcotte, Taxpayer
	Chris McDowell, Witness
For Franchise Tax Board:	Kristen Kane, Tax Counsel
	Natasha Page, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant resided on the reservation during the year at issue so that his reservation-sourced income is not subject to California tax.
Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

The Board recessed at 12:22 p.m. and reconvened at 1:52 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel.

Robert C. Johnson and Ruby B. Johnson, 574843
2007, $1,012.00 Assessment

For Appellants:	Robert Johnson, Taxpayer
	Ruby Johnson, Taxpayer
	Alex Zynan, Representative
For Franchise Tax Board:	Natasha Page, Tax Counsel
	Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether California may tax appellant-wife's wage income received from a non-tribal employer located on her tribe's reservation while she resided on the reservation.
Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Will C. Jamison and Lynette P. Jamison, 576614

Lou Ambrose, Tax Counsel IV, Appeals Division, Legal Department, stated for the record that appellant conceded the tax and penalties and that the matter is therefore dismissed.

Irene C. Tritz, 592022
2006, $19,353.00 Tax

For Appellant:	Irene Tritz, Taxpayer
For Franchise Tax Board:	Raul Escatel, Tax Counsel
	Bill Hilson, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant has shown that respondent erred by not allowing damages awarded pursuant to a settlement agreement to be excluded from her taxable income.
Appellant's Exhibit: Miscellaneous Documents (Exhibit 7.3)

PENDING APPROVAL

Tuesday, July 24, 2012

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

Levern Staples, 589098
2007, $497.00 Assessment
For Appellant: Levern Staples, Taxpayer
For Franchise Tax Board: Nancy Parker, Tax Counsel
Karen Smith, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant has established error in respondent's proposed assessment, which is based on information from the Internal Revenue Service.
Appellant's Exhibit: Miscellaneous Documents (Exhibit 7.4)
Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Saad Dawood Pattah, 479619 (FH); Annand Nadir Sliuman, 475771 (FH);* and, *Sharon E. Melamed, 516151 (AS).*

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

P.D.S., Inc., 512220 (EA)
7-1-04 to 6-30-07, $75,382.55 Tax, $13,788.14 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Steve William Nolan, 523275 (EH)
4-1-06 to 9-30-09, $129,376.86 Tax, $0.00 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Sevan Derohanian, 530164 (AC)
9-6-07 to 12-31-09, $644,366.63 Tax, $161,091.70 Fraud Penalty, $64,436.66 Finality Penalty
Action: Redetermine as recommended by the Appeals Division.

Saad Dawood Pattah, 479619 (FH)
Annand Nadir Sliuman, 475771 (FH)
Action: The Board took no action.

Ram Milo, 491197 (AS)
1-1-05 to 12-31-07, $0.00 Tax, $16,287.50 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

PENDING APPROVAL

Tuesday, July 24, 2012

PENDING APPROVAL

Mark Garduno, 358093, 418990 (EA)
12-31-96 to 12-31-99, $10,582.45 Tax, $1,058.24 Late Filing Penalty, $3,127.96 Amnesty Interest Penalty
1-1-96 to 12-31-96, $5,033.00 Tax, $503.30 Amnesty Interest Penalty
Action: Redetermine as recommended by the Appeals Division.

Legend Labels & Card Printing, Inc., 521219 (FH)
10-1-04 to 12-31-07, $114,796.78 Tax
Action: Redetermine as recommended by the Appeals Division.

Cathy L. Rowland Cooley, 547366 (UT)
7-5-07, $1,574.00 Tax, $157.40 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Nicola's Nightclub, Inc., 528280, 528699 (AA)
10-1-05 to 9-30-08, $191,826.52 Tax, $19,307.90 Negligence Penalty, $19,221.75 Finality Penalty
Action: Redetermine as recommended by the Appeals Division.

Ben A.B.F., Inc., 533735 (AP)
4-1-05 to 3-31-08, $189,391.12 Tax, $18,939.13 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

V.91, Inc., 529709 (EH)
7-1-05 to 6-30-08, $45,926.70 Tax, $4,592.67 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Godwin Emonena Abodoh, 528671 (EH)
10-1-06 to 9-30-09, $7,178.55 Tax
Action: Redetermine as recommended by the Appeals Division.

Keith Robert Smith, 461729, 483158 (FH)
1-1-03 to 12-31-05, $66,986.23, $0.00 Penalty
Action: Redetermine as recommended by the Appeals Division.

HD Media, Inc., 491768 (AP)
2-1-03 to 7-6-06, $378,489.47 Tax, $38,201.49 Finality Penalty
Action: Redetermine as recommended by the Appeals Division.

AAF Business Corporation, 530437 (AS)
10-1-04 to 8-30-06, $198,107.85 Tax
Action: Redetermine as recommended by the Appeals Division.

Sharon E. Melamed, 516151 (AS)
Action: The Board took no action.

Tuesday, July 24, 2012

Quick Trip, Inc., 493394 (FH)
4-1-05 to 6-30-08, $59,639.85 Tax
Action: Redetermine as recommended by the Appeals Division.

Asanti Fine Jewellers, LTD., 441235 (AP)
1-1-03 to 12-31-05, $303,952.23 Tax, $38,200.23 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Rubidoux Enterprises, Inc., 549959, 573163 (EH)
4-1-07 to 6-30-10, $159,847.40 Tax, $15,984.75 Negligence Penalty, $15,984.74 Finality Penalty
Action: Redetermine as recommended by the Appeals Division.

All Out Of, Inc., 533725 (EH)
10-1-04 to 3-31-07, $89,296.64 Tax, $8,929.71 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Raza Mahmud, 528594, 528659 (AA)
1-1-06 to 12-31-08, $45,359.21 Tax, 44,535.90 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Union Station Venture One Corp., 512063, 515151 (AA)
1-1-06 to 6-30-06, $18,323.09 Tax
7-1-06 to 12-31-08, $80,284.77 Tax
Action: Redetermine as recommended by the Appeals Division.

TJ Fresh Baja Grill, 521238 (EH)
6-1-07 to 6-30-08, $24,896.74 Tax, $9,958.69 Penalty for Tax Reimbursement Collected and Not Remitted

Ramon De Lao and Elvia O. De Lao, 521437 (EH)
7-1-07 to 1-31-09, $362,876.02 Tax, $145,150.41 Penalty for Tax Reimbursement Collected and Not Remitted

Ramon De Lao and Martha E. Hernandez, 521056 (EH)
7-1-07 to 1-31-09, $55,911.01 Tax, $22,364.40 Penalty for Tax Reimbursement Collected and Not Remitted

Javier Orozco Mendoza and Ramon De Lao, 521059 (EH)
1-1-06 to 6-30-07, $790,482.12 Tax, $102,986.06 Section 6597 Penalty, $133,254.26 Fraud Penalty

Javier Orozco Mendoza and Ramon De Lao, 521057 (EH)
1-1-06 to 6-30-07, $88,588.51 Tax, $10,614.94 section 6597 Penalty, $15,512.80 Fraud Penalty

Javier Orozco Mendoza, Ramon De Lao and Martha E. Hernandez, 521058 (EH)
6-10-06 to 6-30-07, $49,376.20 Tax, $9,345.67 Section 6597 Penalty, $6,503.01 Fraud Penalty

Javier Orozco Mendoza and Ana R. Mendoza, 521438 (EH)
5-1-07 to 12-31-08, $365,629.95 Tax, $146,251.98 Penalty for Tax Reimbursement Collected and Not Remitted
Action: Redetermine as recommended by the Appeals Division.

PENDING APPROVAL

Tuesday, July 24, 2012

Gabriel Ocampo, 525172 (EA)
7-1-06 to 6-30-09, $12,240.90 Tax
Action: Redetermine as recommended by the Appeals Division.

Manjeet Singh Bedi, 607229 (ET)
January 31, 2012, $219.45 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Raj Kamal Narayan and Maya Wati Narayan, 608497 (ET)
March 2, 2012, $400.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

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

Robert L. Blair and Cheryl L. Blair, 520199, 523715
2002, $31,138.00 Tax, $7,784.50 Late Filing Penalty, $2,490.38 Post-Amnesty Penalty, $12,455.20 Accuracy-Related Penalty
2003, $175,718.00 Tax, $35,143.60 Accuracy-Related Penalty
2004, $11,378.00 Tax, $2,275.60 Accuracy-Related Penalty
2005, $23,800.00 Tax, $4,760.00 Accuracy-Related Penalty
Action: Sustain the action of the Franchise Tax Board.

Cleanright Enterprise, Inc., 563988
2007, $387.26 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Rodney L. Davis, 569025
2001, $484.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

John M. Fleischman (Deceased), 557364
2007, $998.74 Claim for Refund
Action: Modify the action with concession of the Franchise Tax Board to abate the late filing penalty and related interest, otherwise sustain the action of the Franchise Tax Board.

James A. Gregoline, 554339
2008, $8,558.00 Tax, $2,139.50 Late Filing Penalty, $2,828.00 Notice and Demand Penalty
Action: Sustain the action of the Franchise Tax Board and impose a $750.00 frivolous appeal penalty.

PENDING APPROVAL

Tuesday, July 24, 2012

Judith L. Heavens, 552473
2008, $354.00 Tax, $100.00 Late Filing Penalty, $149.25 Demand Penalty, $113.00 Filing Enforcement Fee
Action: Sustain the action of the Franchise Tax Board and impose a $750.00 frivolous appeal penalty.

Nasser Nouri and Azadeh Sadatshirazi, 556547
2005, $3,524.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Don Patino, 547510
2007, $1,654.00 Tax, $413.50 Late Filing Penalty
Action: Sustain the action of the Franchise Tax Board and impose a $1,000.00 frivolous appeal penalty.

Tsegie G. Woldezghi, 511615
2007, $285.00 Tax
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. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Panasonic Corp. of North America, 575617 (OH)
10-1-04 to 3-31-08, $2,330,748.72
Action: Approve the redetermination as recommended by staff.

Castle B., Inc., 535063 (KH)
10-1-05 to 9-30-08, $437,791.58
Action: Approve the redetermination as recommended by staff.

Univar USA, Inc., 608558 (OH)
10-1-11 to 12-31-11, $132,351.60
Action: Approve the relief of penalty as recommended by staff.

Carmax Auto Superstores California, LLC, 608088 (OH)
11-1-11 to 11-30-11, $414,000.00
Action: Approve the relief of penalty as recommended by staff.

Mainline Information Systems, Inc., 475407 (OH)
4-1-08 to 6-30-08, $189,738.00
Action: Approve the denial of claim for refund as recommended by staff.

PENDING APPROVAL

Tuesday, July 24, 2012

Mullen Bros., Inc., 496732 (AC)
4-1-08 to 3-31-10, $54,322.52
Action: Approve the denial of claim for refund as recommended by staff.

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

The Board deferred consideration of the following matter: *Roberto Difranchesco, 352493 (EH).*

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

Avica Technology Corp., 562453 (AS)
10-1-04 to 3-31-05, $115,234.81
Action: Approve the credit and cancellation as recommended by staff.

Numero Uno, Inc., 576371 (AP)
4-1-07 to 3-31-10, $134,503.20
Action: Approve the credit and cancellation as recommended by staff.

Roberto Difranchesco, 352493 (EH)
1-1-89 to 5-31-91, $414,221.54
Action: The Board took no action.

Business Incentives, Inc., 529362 (OH)
1-1-07 to 12-31-10, $3,517,604.47
Action: Approve the refund as recommended by staff.

Key Information Systems, Inc., 588593 (AC)
1-1-08 to 12-31-08, $118,996.38
Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 589784 (OH)
4-1-09 to 6-30-11, $132,723.00
Action: Approve the refund as recommended by staff.

Valley Power Systems, Inc., 606757 (AP)
10-1-09 to 12-31-09, $102,214.44
Action: Approve the refund as recommended by staff.

Travis Credit Union, 594918 (JH)
7-1-11 to 12-31-11, $164,703.00
Action: Approve the refund as recommended by staff.

PENDING APPROVAL

Tuesday, July 24, 2012

Directv, Inc., 334361 (AS)
10-1-00 to 12-31-05, $6,675,939.60
Action: Approve the refund as recommended by staff.

United Healthcare Services, Inc., 531491 (OH)
1-1-07 to 12-31-07, $172,607.02
Action: Approve the refund as recommended by staff.

Mullen Bros., Inc., 496732 (AC)
4-1-08 to 3-31-10, $448,803.19
Action: Approve the refund as recommended by staff.

Infor Global Solutions (MI), Inc., 578286 (OH)
4-1-08 to 6-30-11, $147,899.86
Action: Approve the refund as recommended by staff.

Financial Partners Credit Union, 594103 (AA)
7-1-08 to 3-31-10, $267,177.00
Action: Approve the refund as recommended by staff.

Navteq North America, LLC, 607036 (OH)
4-1-08 to 6-30-11, $1,169,992.88
Action: Approve the refund as recommended by staff.

Parsons RCI, Inc., 572037 (OH)
7-1-09 to 9-30-09, $223,644.00
Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTY, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following order:

J and K Tobacco Corporation, 424171 (ET)
3-1-04 to 12-31-05, $3,004,914.00
Action: Approve the relief of penalty 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 Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

PENDING APPROVAL

Tuesday, July 24, 2012

CFJ Properties, 568815 (MT)
9-1-09 to 10-31-09, $141,389.28
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Tesoro Refining and Marketing Co., 567152 (MT)
1-1-11 to 1-31-11, $1,779,120.00
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board recessed at 3:09 p.m. and reconvened at 3:17 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD JULY 24, 2012

William Justice and Lisa Blinderman, 573575
Michael L. Panek and Tracy Panek, 585508
David Sterling, 585513
Mark Cronin and Lois Cronin, 586117
Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Manik R. Bose and Devika Bose, 574066
Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Robert C. Johnson and Ruby B. Johnson, 574843
Final Action: Mr. Runner moved to reverse the action of the Franchise Tax Board. The motion was seconded by Ms. Steel but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Mr. Horton and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board deferred the matter to a later date.

Irene C. Tritz, 592022
Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

PENDING APPROVAL

Tuesday, July 24, 2012

Ruby Jeffery, 595546
2009, $1,390.00 Assessment
For Appellant: Appearance Waived
For Franchise Tax Board: Jaclyn Appleby, Tax Counsel
Diane Ewing, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant has demonstrated that she is entitled to head of household (HOH) filing status in the 2009 tax year.
Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Levern Staples, 589098
Final Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

The Board recessed at 3:28 p.m.

The foregoing minutes are adopted by the Board on December 19, 2012.

Note: The following matters were removed from the calendar prior to the meeting: *JK Group, LLC, 448306; Yolanda Molina and Alejandro Molina, 553853;* and, *Shin P. Yang and Connie L. Deng, 589501.*

PENDING APPROVAL

Wednesday, July 25, 2012

The Board met at its offices at 5901 Green Valley Circle, Culver City at 9:37 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Randeep Singh Dhillon, 485664 (AR)
4-1-02 to 6-30-07, $0.00 Tax, $107,715.06 Fraud Penalty, $710.69 Amnesty Double Fraud Penalty
Beale Monterey Enterprises, Inc., 485668 (AR)
1-7-06 to 6-30-07, $0.00 Tax, $35,854.74 Fraud Penalty
Sam Sambee Enterprises, Inc., 485729 (AR)
6-1-06 to 6-30-07, $0.00 Tax, $48,180.83 Fraud Penalty
For Petitioners: Randeep Dhillon, Taxpayer
For Sales and Use Tax Department: Scott Lambert, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: Disqualifying contributions were disclosed to Ms. Yee and Mr. Runner. No other disqualifying contributions were disclosed.
Issues: Whether the understatements were the result of fraud or intent to evade the tax.
Whether relief of the amnesty penalties is warranted.
Action: The Board granted the petitioner's request for postponement to the October Culver City meeting.

Tarun Maitra, Soma Prasad, Partha Sarathi Sinha and Basudha Sinha, 473027 (AA)
10-01-04 to 7-11-07, $87,947.69 Tax, $8,925.76 Negligence Penalty
For Petitioners: Tarun Maitra, Taxpayer
Soma Prasad, Taxpayer
Partha Sinha, Taxpayer
Basudha Sinha, Taxpayer
For Sales and Use Tax Department: Scott Lambert, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether adjustments are warranted to the understatement of reported taxable sales.
Whether the audited amount of tax-paid purchases resold should be increased.
Whether petitioner was negligent.
Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 11:12 a.m. and reconvened at 11:26 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

PENDING APPROVAL

Wednesday, July 25, 2012

PENDING APPROVAL

Juana Maria Olmos, 496090 (AC)
4-1-06 to 3-31-09, $ 12,450.33 Tax, $1,297.29 Negligence Penalty
For Petitioner: Claudia Paz, Representative
For Sales and Use Tax Department: Scott Lambert, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether adjustments are warranted to unreported sales.
Whether petitioner was negligent.
Action: The Board deferred the hearing as requested by the Department.

Bas Food Services, Inc., 507142 (EA)
1-1-06 to 12-31-08, $19,907.94 Tax
For Petitioner: Patrick Leone, Representative
Ruben Martinez, Witness
For Sales and Use Tax Department: Marc Alviso, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether adjustments are warranted to the unreported taxable sales.
Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Karlen Antonyan, 472389 (AC)
11-25-04 to 7-31-07, $159,275.15 Tax, $0.00 Penalty
For Taxpayer: Karlen Antonyan, Taxpayer
For Sales and Use Tax Department: Andrew Kwee, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether taxpayer is liable as a successor for the unpaid sales and use tax liability of Ali Zarringhalam
Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 12:24 p.m. and reconvened at 1:49 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

PUBLIC COMMENT

Speaker: John Francis Kelly, Owner, *Kelly's Tux Shop*, and California Resident (Exhibit 7.5)

The Board referred the matter of how staff treats cigars relative to the revised provisions of the Jenkins Act (15 U.S.C. 375 – 378) to the Business Tax Committee.

Ms. Yee requested a review of how staff is doing relative to the larger implementations of the Jenkins Act.

Exhibits to these minutes are incorporated by reference.

Wednesday, July 25, 2012

Richard J. Robledo and Gloria M. Robledo, 483571 (KH)
9-21-03, $9,768.10 Tax, $0.00 Failure to File Penalty
For Petitioners: Richard J. Robledo, Taxpayer
Gloria M. Robledo, Taxpayer
Alex Buzas, Representative
For Sales and Use Tax Department: Erin Dendorfer, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether petitioners' purchase and use of the subject motor home is subject to California use tax.
Whether relief of interest is warranted.
Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be granted.

Elite Cert' Auto Service & Tires, Inc., 550595 (EA)
7-1-06 to 6-30-09, $34,105.88
For Petitioner: Robbie Kelterer, Taxpayer
Michelle Kelterer, Witness
Jerry Taylor, Representative
For Sales and Use Tax Department: Marc Alviso, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether adjustments are warranted to the unreported taxable sales.
Whether adjustments are warranted to the unreported cost of self-consumed supplies.
Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner 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 parties' submissions and provide its recommendation to the Board; or reaudit only if the Department deems necessary.

CHIEF COUNSEL MATTERS

OTHER CHIEF COUNSEL MATTERS

Resolution Conferring Powers on the Executive Director

Randy Ferris, Chief Counsel, Legal Department, made introductory remarks and requested the Board's adoption of a resolution conferring powers on the Executive Director (Exhibit 7.6).

The Board recessed at 3:05 p.m. and reconvened at 3:13 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the resolution as presented.

PENDING APPROVAL

Wednesday, July 25, 2012

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

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

Action: Adopt the resolution in memoriam of Jan K. Ishii, beloved father and husband, and BOE retiree, extending its sincere and heartfelt sympathy to his family (Exhibit 7.7).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Eric Steen, CROS Project Director, provided a report regarding progress on the CROS project to replace BOE's two current tax legacy technology systems. Mr. Steen reported that the Request for Information (RFI) was released to the vender community; and, that the draft Request for Proposal (RFP) will be submitted to the Department of General Services and to the California Technology Agency today.

Property and Special Taxes Deputy Director's Report

David Gau, Deputy Director, Property and Special Taxes Department, introduced Robert Ingentito, Acting Chief, Legislative and Research Division. Mr. Gau provided staff's recommendations and introductory remarks for: the tax rate to be applied in 2012/13 to the value of private railroad cars; the 2012 Private Railroad Car Roll; and, the 2012 State-Assessed Property Roll.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2012/13 private railroad car tax rate of $1.108 as recommended by staff (Exhibit 7.8).

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2012 Private Railroad Car Roll as recommended by staff (Exhibit 7.9).

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2012 State-Assessed Property Roll as recommended by staff (Exhibit 7.10).

David Gau, Deputy Director, Property and Special Taxes Department, provided an update on the Fire Prevention Fee Program implementation (Exhibit 7.11).

Ms. Steel requested staff to report how Cal Fire will handle notice of the new fee to owners of rental properties.

PENDING APPROVAL

Wednesday, July 25, 2012

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JULY 25, 2012

Tarun Maitra, Soma Prasad, Partha Sarathi Sinha and Basudha Sinha, 473027 (AA)
Final Action: Ms. Steel moved to remove the negligence penalty, reduce the self consumption to 4 percent, reduce the mark-up in the category of cigarettes to 15 percent, and to adjust the reported taxable sales accordingly. The motion was seconded by Mr. Runner. Ms. Steel amended the motion to reduce the self consumption to 4 percent, reduce the mark-up in the category of cigarettes to 15 percent, and to adjust the reported taxable sales accordingly. The amended motion was seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes.

The Board directed staff to inform the taxpayer of the Offer in Compromise Program.

Bas Food Services, Inc., 507142 (EA)
Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Karlen Antonyan, 472389 (AC)
Final Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that no further adjustment be made in the administrative protest as recommended by the Appeals Division, and that staff continue their investigation and collection activity on the predecessor. The Board directed staff to inform the taxpayer of the Offer in Compromise Program.

Imad Elias Mahli and Elias Niman Mahli, 531323 (EH)
5-1-07 to 7-31-08, $33,499.08 Tax, $3,445.40 Negligence Penalty
For Petitioners: Waived Appearance
For Sales and Use Tax Department: Scott Lambert, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether adjustments are warranted to the unreported taxable sales.
Whether petitioner was negligent.

David Levine, Tax Counsel IV, Appeals Division, Legal Department, advised of the revised recommendation of the Appeals Division to reduce the measure of deficiency by $23,792.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

PENDING APPROVAL

Wednesday, July 25, 2012

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 3:46 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 3:49 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

The Board recessed at 3:50 p.m.

The foregoing minutes are adopted by the Board on December 19, 2012.

Note: The following matters were removed from the calendar prior to the meeting: *Macradij Sarkis Yacoubian, 508838 (AC);* and, *AF Services, LLC, 527382, 577082 (AS).*

PENDING APPROVAL

Thursday, July 26, 2012

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:33 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Daniel Wallace and Grisel M. Wallace, 420232 (UT)
12-12-03, $4,966 Interest
For Petitioners: Daniel Wallace, Taxpayer
For Sales and Use Tax Department: Pamela Mash, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether relief of interest is warranted.
Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Phillip C. Strickland, 480561 (UT)
5-3-06, $5,510.00 Tax
For Petitioner: Phillip C. Strickland, Taxpayer
For Sales and Use Tax Department: Andrew Kwee, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether petitioner's purchase and use of the vessel is exempt from tax because the vessel was used primarily in commercial deep sea fishing.
Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Gateway Auto Center, Inc., 437262 (AS)
1-1-03 to 9-30-05, $64,676.73 Tax, $6,467.66 Negligence Penalty.
For Petitioner: Dean Alkalla, Representative
Irene P. Tse, Attorney
For Sales and Use Tax Department: Scott Lambert, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether adjustments are warranted to the unreported sales based on an analysis of bank deposits.

Whether the deficiency measure should be reduced to account for additional taxable sales reported on amended returns.

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

The Board recessed at 11:00 a.m. and reconvened at 11:15 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

PENDING APPROVAL

Thursday, July 26, 2012

DKL Intertrading, Inc., 436179 (AP)
7-1-03 to 6-30-06, $12,591.72 Tax
For Petitioner: Hyung S. Lee, Taxpayer
Kil Y. Lee, Taxpayer
For Sales and Use Tax Department: Andrew Kwee, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether adjustments are warranted to the disallowed claimed nontaxable sales for resale.

David Levine, Tax Counsel IV, Appeals Division, Legal Department, advised of the revised recommendation of the Appeals Division to reduce the measure of deficiency by $54,972.

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

The Board recessed at 12:23 p.m. and reconvened at 12:32 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JULY 26, 2012

Phillip C. Strickland, 480561 (UT)
Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise Program.

Daniel Wallace and Grisel M. Wallace, 420232 (UT)
Final Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Gateway Auto Center, Inc., 437262 (AS)

David Levine, Tax Counsel IV, Appeals Division, Legal Department, stated for the record that the Department recommends an adjustment to the interest of $11,985.48.

Final Action: Mr. Runner moved to adjust for credit deposits reflected in total deposits and adopt stipulated credit interest. The motion was seconded by Ms. Steel but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

PENDING APPROVAL

Thursday, July 26, 2012

DKL Intertrading, Inc., 436179 (AP)

David Levine, Tax Counsel IV, Appeals Division, Legal Department, stated for the record that the Department recommends an adjustment in the measure from $97,653 to $71,070.

Final Action: Upon motion of Ms. Steel, seconded by Mr. Runner and duly carried, Mr. Horton, Ms. Steel, Mr. Runner and Ms. Mandel voting yes, Ms. Yee voting no, the Board ordered that the liability be reduced by 50 percent, and that the petition otherwise be redetermined as recommended by the Appeals Division.

The Board adjourned at 1:02 p.m. in memory of Jan K. Ishii, beloved father and husband and BOE retiree, who passed away on Sunday, July 1, 2012, at age 76, and who started working for the Board of Equalization in 1963 as a Tax Auditor in Los Angeles and retired from his role as a manager on March 1, 1999.

The foregoing minutes are adopted by the Board on December 19, 2012.

Note: The following matters were removed from the calendar prior to the meeting: *Deanna Robinson Interiors, Inc., 519485 (EA); Francis Stephan Ghosal, 445460, 464724, 468127 (FH); Max Express, Inc., 464061 (AA); Blue Baroness, LLC, 519591 (UT); Jerry Pena, 478061 (EH); Joaquin E. Hernandez, 523684 (AA);* and, *Richard Festo Bwogi, 514577 (AS).*

PENDING APPROVAL