

Tuesday, September 22, 2009

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:40 a.m., with Ms. Yee, Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Ms. Yee congratulated Mr. Horton on becoming the Board's newest Member.

Mr. Leonard requested that the Board receive a copy of the Legal Department's opinion pertaining to when there is a vacant seat on the Board of Equalization.

### HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARINGS

Asuncion P. Hamoy, 437618

2007, \$347.50

For Claimant:

For Franchise Tax Board:

Asuncion P. Hamoy, Taxpayer

Karen Smith, Tax Counsel

Bruce Langston, Tax Counsel

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

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

Appellant's Exhibit: Miscellaneous Document (Exhibit 9.7)

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

Exhibits to these minutes are incorporated by reference.

Mr. Leonard requested that staff provide available landlord information of the property in question on future homeowner and renter property tax assistance appeals. Additionally, staff was requested to provide clarification on possessory interest taxes to the taxpayer.

Elaine M. Nichols, 458679

2007, \$347.50

For Claimant:

For Franchise Tax Board:

Elaine M. Nichols, Taxpayer

Jaclyn Appleby, Representative

Karen Smith, Tax Counsel

Bruce Langston, Tax Counsel

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

Issues: Whether respondent properly denied appellant's 2007 claim for property tax assistance.

Whether appellant is entitled to renter assistance for 2007 under the doctrine of collateral estoppel based on assistance granted for the 2003 claim year.

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

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### CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Takashi Watanabe and Marcia Watanabe, 461159

2003, \$11,904.00 Tax, \$2,670.39 Interest

For Appellant:

Marcia Watanabe, Taxpayer

Stephen G. McKee, Attorney

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether attorney's fees awarded to appellant-wife as part of an arbitration award are excluded from California gross income?

Whether appellants may have attorney's fees included in their California adjusted gross income that have already been reported by their attorney as part of his California adjusted gross income.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 9.8)

Action: The Board continued the matter to the afternoon session to allow staff to review new documents.

The Board recessed at 11:05 a.m. and reconvened at 11:10 a.m. with Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Loren Zelmer, 426246

2005, \$332.28 Late Payment Penalty, \$126.00 Collection Cost Recovery Fee, \$84.90 Paid

Interest

For Appellant:

Jaclyn Appleby, Representative

For Franchise Tax Board:

Karen Smith, Tax Counsel

Bruce Langston, Tax Counsel

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

Issues: Whether respondent abused its discretion in its determination not to abate and refund paid interest of \$84.90.

Whether the collection cost recovery fee (\$126.00) can be abated and refunded.

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

### LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Michael Donovan Thompson, 381893.*

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

Michael Donovan Thompson, 381893 (AR)

Action: The Board took no action.

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Liberty Balloons Wholesale, Inc., 434590 (EH)

4-1-04 to 3-31-07, \$21,984.94 Tax

Action: Redetermine as recommended by the Appeals Division.

Rachel Erica Mitchell and David Edward Mitchell, 443228 (EA)

1-1-04 to 9-30-07, \$7,890.10 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

O'Harley's, Inc., 379328 (FH)

10-1-02 to 9-30-05, \$5,894.03 Tax

Action: Redetermine as recommended by the Appeals Division.

21<sup>st</sup> Century Tile & Stone, 293083 (AC)

4-1-00 to 3-31-03, \$22,916.30 Tax

Action: Redetermine as recommended by the Appeals Division.

Intuitive Race Products, Inc., 417992 (EA)

10-1-03 to 10-20-06, \$6,311.68 Tax, \$631.13 Penalty

Action: Redetermine as recommended by the Appeals Division.

Basem Samir Salama, 491674 (ET)

March 18, 2009, \$891.50 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Edwin Ching Lin and Sylvia S. Wu, 488752 (ET)

January 27, 2009, \$ 117.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

SSB Brothers, Inc., 488825 (ET)

December 29, 2008, \$562.61 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Robert Anthony Rascon and Amar Daroch, 491597 (ET)

March 13, 2009, \$55.00 Approximate Value

Robert Anthony Rascon and Amar Daroch, 494258 (ET)

March 12, 2009, \$ 240.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Michelle Choi, 488184 (ET)

October 23, 2008, \$139.50 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Ki Bong Jung and Dong Soon Bae, 488808 (ET)

January 28, 2009, \$1,144.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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Ahmed Obad Al-Ali, 491642 (ET)  
February 10, 20009, \$616.01 Approximate Value  
Action: Determined that staff properly seized the tobacco products.

Malek Sail Abousamra, 488804 (ET)  
November 25, 2008, \$520.55 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: *David M. Gallegos, 390980; Terry Jones, 420950; David L. McKibbin and Sherri L. McKibbin, 340534; Gregory E. Mudwilder and Patricia A. Mudwilder, 444049; Rene L. Reyes, 424121; Mervin L. George, Sr. and Laura Lee George, 443087; Marc Pretscher, 441638; and, Marc Pretscher, 444263.*

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

John Acierno and Luanne Acierno, 431414  
2006, \$ 4,538.44 Claim for Refund  
Action: Sustain the action of the Franchise Tax Board.

Nathan Anderson, 406126  
2005, \$697.00 Tax, 348.50 Penalties  
Action: Sustain the action of the Franchise Tax Board and impose a frivolous appeal penalty in the amount of \$750.00.

Sean Ballow, 432903  
2004, \$ 227 Assessment  
Action: Sustain the action of the Franchise Tax Board.

William Bernard and Darla Bernard, 423968  
2003, \$ 3,149 Tax  
Action: Sustain the action of the Franchise Tax Board.

Charles H. Bond, 468891  
2006, \$4,373.00 Tax, \$1,093.25 Late Filing Penalty, \$1,477.25 Notice and Demand Penalty  
Action: Sustain the action of the Franchise Tax Board and impose a frivolous appeal penalty in the amount of \$5,000.

Stanley Brumer, 401755  
2005, \$1,318.16 Claim for Refund  
Action: Sustain the action of the Franchise Tax Board.

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Lennette Camera, 351786

2001, \$ 1,442.00 Assessment

Action: Reserve the action of the Franchise Tax Board and grant appellant complete innocent spouse relief from joint and several liability for the amount at issue.

Debra Carson, 441272

2002, \$ 1,593.00 Claim for Refund

2003, 1,179.00 Claim for Refund

2004, \$1,417.00 Claim for Refund

2005, \$1,432.00 Claim for Refund

Action: Modify respondent's action to reflect the abatement of the \$1,417 notice and demand penalty for 2004 as conceded by respondent; in all other respects, sustain the action of the Franchise Tax Board.

Roger J. Cartwright and Cindy S. Cartwright, 439461

2003, \$692.00 Tax, \$162.29 Interest

Action: Sustain the action of the Franchise Tax Board.

James Roy Chandler, Jr., 439446

2005, \$1,544.25 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Phillip A. Conwell, Jr., 400992

1994, \$247.58 Late Payment of Tax, \$ 272.75 Failure to furnish information, \$933.87 Amnesty, \$2,671.78 Interest

1996, \$79.68 Late Payment of Tax, \$283.25 Failure to furnish information, \$1,001.49 Amnesty, \$2,310.34 Interest

1997, \$585.50 Delinquent Filing, \$1,111.25 Demand, \$595.88 Amnesty, \$ 2,605.54 Interest

2000, \$788.96 Late Payment of Tax Penalty, \$884.97 Interest

2001, \$30.34 Late Payment of Tax Penalty, \$21.06 Interest

2002, \$58.26 Amnesty Penalty, \$195.31 Interest

Action: Sustain the action of the Franchise Tax Board.

Brian S. Davis and Shannon S. Smith, 451046

2005, \$ 30,123.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Hilary J. De Puy and Andrew J. McUsic, 422243

2003, \$279.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Nasser Deljoo, 406109

2004, \$4,278.32 Assessment of Interest

Action: Sustain the action of the Franchise Tax Board.

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Amy Garcia Des Jardins, 393601

2003, \$704 Assessment

Action: Sustain the action of the Franchise Tax Board.

Peter Desoto, 415505

2001, \$6,501.00 Claim for Refund

Sarah W. Guthrie, 416505

2001, \$6,501.00 Claim for Refund

Jay K. Poppleton, 420323

2001, \$6,501.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jorge M. Domingo, 431507

2005, \$1,323.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Eclipse Solutions, Inc., 417834

2003, \$34,108.45 Assessment

2004, \$23,125.46 Assessment

Action: Sustain the action of the Franchise Tax Board.

El Metate Foods, Inc., 427498

2002, \$3,342.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

David M. Gallegos, 390980

Action: The Board took no action.

Maria Gallo, 424330

2003, \$476.00 Assessment, 97.89 Interest

Action: Sustain the action of the Franchise Tax Board.

Jose A. Garcia, 424680

2005, \$594.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Gustavo Gonzalez, 421040

2003, \$541.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Samar Hazzan, 435046

2001, \$2,872.00 Tax, \$1,484.93 Penalties

Action: Modify the action of the Franchise Tax Board.

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Milaina I. Hernandez, 416506

2006, \$1,251.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michael Leroy Hopkins, 402152

2001, \$3,197.35 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Tom Horsley, 349127

1999, \$645.12 Claim for Refund

2000, \$104.41 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Helen Jackson and F. Fritschle, and B. Fritschle, 431855

2005, \$150.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ulf K. Jensen, M.D., 395548

1997, \$9,285.00 Tax, \$2,321.25 Late Filing Penalty

Action: Modify the action of the Franchise Tax Board.

Terry Jones, 420950

Action: The Board took no action.

Brock Kruzic, 424322

2005, \$1,429.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Carlos Kultemberg, 419986

2005, \$1,464.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Danielle Ledesma-O'Gorman and George O'Gorman, 426815

2004, \$764.88 Assessment

Action: Sustain the action of the Franchise Tax Board.

Arturo G. Lopez, 439520

2006, \$935.00 Assessment

Action: Modify the action of the Franchise Tax Board.

Jesus Lujan and Ivania Lujan, 420949

2006, \$750.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

David L. McKibbin and Sherri L. McKibbin, 340534

Action: The Board took no action.

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Gregory E. Mudwilder and Patricia A. Mudwilder, 444049

Action: The Board took no action.

Mary Ognar-Murphy, 424067

1992, \$128.88 Assessment

Action: Modify the action of the Franchise Tax Board.

Darrell Parker, 424172

2003, \$434.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Damon P. Quinby, 414378

2005, \$910.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Erendira Ramirez, 429357

2005, \$525.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Edmund Joseph Regan II, 429332

2000 and 2001, \$3,455.69 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Rene L. Reyes, 424121

Action: The Board took no action.

Taising K. Rodriguez, 422556

2005, \$1,451.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Rufino Sim, 383400

2000, \$1 or more Claim for Refund

2001, \$1 or more Claim for Refund

Action: Sustain the Franchise Tax Board's revised determination to refund one-half of the overpayment to appellant for 2000 and 2001.

David Socher and Tamsen Socher, 430635

2003, \$576.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Alexander G. Tzoumas, 431756

2004, \$1,858.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ada L. Unruh, 361477

2003, \$3,358.00 Assessment, \$839.50 Penalty

Action: Modify the action of the Franchise Tax Board to reflect the concessions and impose a frivolous appeal penalty in the amount of \$750.00.

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Liam Z. Wang Trust, 417775

1993, \$161.85 Abatement of Interest

1994, \$246.53 Abatement of Interest

Action: Sustain the action of the Franchise Tax Board.

Bette E. Watts, 417863

2004, \$2,430.24 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Harry Cho, 449340

2005, \$504.15 Claim for Refund

2006, \$1,188.00 Assessment

Action: Deny the petition for rehearing.

Robert Doyle, 446892

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

Action: Deny the petition for rehearing.

Mervin L. George, Sr. and Laura Lee George, 443087

Action: The Board took no action.

Bill Hamlin, 443354

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

Action: Deny the petition for rehearing.

Benjamin Killen, 443341

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

Action: Deny the petition for rehearing.

Dan Pickell, 429756

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

Action: Deny the petition for rehearing.

Leonard Magness, 441637

2003, \$835.00 Tax, \$208.75 Late Filing Penalty, \$772.25 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a frivolous appeal penalty in the amount of \$5,000.00.

Shawn Mills, 441635

2003, \$10,504.00 Tax, \$2,626.00 Late Filing Penalty, \$2,626.00 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

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

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Steven Olmos, 441632

2004, \$2,691.00 Tax, \$672.75 Late Filing Penalty, \$672.75 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a frivolous appeal penalty in the amount of \$5,000.00.

Marc Pretscher, 441638

Action: The Board took no action.

Marc Pretscher, 444263

Action: The Board took no action.

Marianne Pretscher-Johnson, 440770

2005, \$7,005.00 Tax, \$1,751.25 Late Filing Penalty, \$1,751.25 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a frivolous appeal penalty in the amount of \$1,000.00.

Marianne Pretscher-Johnson, 444214

2004, \$1,320.00 Tax, \$330.00 Late Filing Penalty, \$330.00 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a frivolous appeal penalty in the amount of \$1,500.00.

Roger Romero, 444040

2005, \$1,065.00 Tax, \$266.25 Late Filing Penalty, \$1,621.00 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a frivolous appeal penalty in the amount of \$5,000.00.

Rodney Walker, 461172

2004, \$1,734.00 Tax, \$433.50 Late Filing Penalty

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

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

The Board deferred consideration of the following matters: *Harold Gayles, 394688; Melva M. Johnson, 443872; and, Giup V. Nguyen, 431698.*

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

Selma Allen, 431675

2007, \$340.00

Action: Sustain the action of the Franchise Tax Board.

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Consolacion V. Astromono, 475482

2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Charles E. Brink, 447845

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Delwin Burleson, 463860

2006, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Mark Chizhik, 426974

2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Virginia B. De Leon, 433756

2007, \$347.50

Action: Sustain the Franchise Tax Board's partial denial of assistance.

Ronald J. De Roo, 416834

2005, \$1 or more

Conrad Gonzales, 416839

2005, \$1 or more

Ronald I. Richards, 416852

2005, \$1 or more

Cleve Frazier, 416894

2005, \$1 or more

Action: Reverse the action of the Franchise Tax Board.

Harold Gayles, 394688

Action: The Board took no action.

Ramon G. Gonzales, 426802

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

John Gordon, 444279

2007, \$432.00

Action: Sustain the action of the Franchise Tax Board.

Jimmy Paul Green, Sr., 443890

2006, \$375.00

Action: Sustain the action of the Franchise Tax Board.

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Taffy L. Holly, 436712  
2007, \$47.50

Action: Sustain the action of the Franchise Tax Board.

Jimmy Lee Horn, 423627  
2007, \$320.00

Ollie Mae Horn, 422841  
2007, \$347.50

Action: Sustain the action of the Franchise Tax Board as to Jimmy Horn, but reverse as to Ollie Mae Horn in the amount of \$250.

Gabriel Jacobo, 425155  
2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Joe N. Jennings, 447850  
2005, \$327.00

Action: Sustain the action of the Franchise Tax Board.

Melva M. Johnson, 443872  
Action: The Board took no action.

Alma Lee Jones, 426099  
2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Dixie Ann Jones, 432229  
2007, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Rosemarie Kelly, 472596  
2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Connie McCormack, 480585  
2007, \$1,972.03

Action: Sustain the action of the Franchise Tax Board.

Lorine Menefee, 447964  
2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Giup V. Nguyen, 431698

Action: The Board took no action.

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Timothy Patton, 423934

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Thanh Van Pham, 433987

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Mary Reid, 463953

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Jasper Scott, 444429

2006, \$1 or more

Action: Modify the action of the Franchise Tax Board and direct respondent to pay appellant \$27.71 in assistance for 2006 claim year.

Larry Shlansky, 398220

2005, \$1 or more

2006, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Patricia Sinogui, 426569

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Gloria Vasquez, 423674

2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Kevin Wain, 394366

2006, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Virginia Walker, 463670

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Hynek Tony Washington, 425199

2007, \$347.50

Action: Reverse the action of the Franchise Tax Board in the amount of \$202.71, but sustain as to the remaining \$144.79.

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

The Board deferred consideration of the following matter: *General Petroleum Corporation, 493595*.

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Computer Associates International, Inc., 433591*, Mr. Horton absent, the Board made the following orders:

**Computer Associates International, Inc., 433591 (OH)**

1-1-02 to 6-30-05, \$307,385.46

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

**TXI Operations, LP, 330843 (OH)**

10-8-01 to 10-31-01, \$63,897.43

Action: Approve the redetermination as recommended by staff.

**Circa 1925, Inc., 334784 (AS)**

4-1-01 to 3-31-04, \$97,222.55

Action: Approve the redetermination as recommended by staff.

**Ultramar, Inc., 379967 (OH)**

7-1-96 to 6-30-99, \$350,207.97

Action: Approve the redetermination as recommended by staff.

**The Boc Group, Inc., 463603 (OH)**

7-1-03 to 6-30-06, \$68,784.50

Action: Approve the redetermination as recommended by staff.

**FusionStorm, 285784 (OH)**

4-1-99 to 3-31-02, \$1,233,116.85

Action: Approve the redetermination as recommended by staff.

**Broadvision, Inc., 245622 (BH)**

7-1-99 to 6-30-02, \$136,257.13

Action: Approve the redetermination as recommended by staff.

**C4 Holdings, Inc., 458636 (KH)**

7-1-01 to 6-30-05, \$441,888.90

Action: Approve the redetermination as recommended by staff.

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M.D. Hydraulics, Inc., 434899 (AP)

4-1-04 to 3-31-07, \$191,818.00

Action: Approve the redetermination as recommended by staff.

Gucci America, Inc., 493589 (OH)

10-1-08 to 12-31-08, \$115,485.20

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

General Petroleum Corporation, 493595 (AA)

Action: The Board took no action.

Fleet Card Fuels, 492113 (AR)

4-1-05 to 6-30-08, \$202,514.97

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

Morgan Stanley Capital Group, Inc., 491765 (OH)

10-1-04 to 9-30-07, \$490,850.64

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

Capital One Auto Finance, Inc., 481112 (OH)

10-1-08 to 3-31-09, \$345,910.00

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

Siemens One, Inc., 434372 (OH)

1-1-05 to 3-31-07, \$234,774.48

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 matters: *Artoor Keshish-Moses, 493010; Unico Replacement Parts, Inc., 244216; Associated Process Controls, 244205; and, Alfred Conhagen, Inc. of California, 261656.*

Ms. Mandel stated for the record that Mr. Chiang would not participate in *Franklin Capital Corporation, 437373.*

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *General Electric International, Inc., 344762; and, National Broadcasting Company, Inc., 272628; Ms. Mandel not participating in Franklin Capital Corporation, 437373; Mr. Horton absent, the Board made the following orders:*

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King's Western Wear, Inc., 492887 (AC)

1-1-08 to 6-30-08, \$56,210.76

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

King's Western Wear, Inc., 492888 (AC)

7-1-08 to 12-31-08, \$54,564.03

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

Artoor Keshish-Moses, 493010 (AC)

Action: The Board took no action.

Synchronex, 373172 (GH)

7-1-02 to 6-30-05, \$91,267.99

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

Bowne of Los Angeles, Inc., 389573 (AS)

10-1-03 to 3-31-08, \$1,078,763.30

Action: Approve the refund as recommended by staff.

Nissan North America, Inc., 479493 (OH)

4-1-06 to 5-31-08, \$476,936.84

Action: Approve the refund as recommended by staff.

Unico Replacement Parts, Inc., 244216 (JH)

Action: The Board took no action.

Pentair Pool Products, Inc., 435155 (OH)

1-1-05 to 12-31-07, \$106,290.91

Action: Approve the refund as recommended by staff.

Wei West, 467804 (OH)

1-1-08 to 6-30-08, \$77,472.63

Action: Approve the refund as recommended by staff.

Primary Resources, Inc., 448948 (AS)

10-1-05 to 12-31-06, \$119,721.91

Action: Approve the refund as recommended by staff.

Sulzer Pumps (US), Inc., 426429 (OH)

10-1-06 to 3-31-07, \$93,830.76

Action: Approve the refund as recommended by staff.

Fireside Bank, 480713 (CH)

10-1-08 to 3-31-09, \$4,591,625.67

Action: Approve the refund as recommended by staff.

**Note: These minutes are not final until Board approved.**

Tuesday, September 22, 2009

Associated Process Controls, 244205 (CH)

Action: The Board took no action.

Alfred Conhagen, Inc. of California, 261656 (JH)

Action: The Board took no action.

Fleet Card Fuels, 492113 (AR)

4-1-05 to 6-30-08, \$66,720.47

Action: Approve the refund as recommended by staff.

County of San Bernardino Attn.Aud, 491253 (EH)

10-1-04 to 9-30-07, \$294,613.27

Action: Approve the refund as recommended by staff.

Hawthorne Machinery Co., 434178 (FH)

4-1-07 to 6-30-07, \$465,074.71

Action: Approve the refund as recommended by staff.

San Luis Obispo County Farm Supply Co., 477962 (GH)

4-1-08 to 6-30-08, \$69,950.27

Action: Approve the refund as recommended by staff.

Runyon Saltzman &amp; Einhorn, Inc., 481115 (KH)

7-1-08 to 9-30-08, \$110,411.70

Action: Approve the refund as recommended by staff.

Hudson Products Corporation, 482554 (OH)

7-1-07 to 3-31-08, \$209,395.22

Action: Approve the refund as recommended by staff.

Ethan Allen Retail, Inc., 491678 (OH)

10-1-03 to 6-30-07, \$163,163.79

Action: Approve the refund as recommended by staff.

Made2Manage Systems, Inc., 472113 (OH)

7-1-08 to 9-30-08, \$171,956.20

Action: Approve the refund as recommended by staff.

Ford Motor Company, 492563 (OH)

5-28-08 to 1-21-09, \$449,321.49

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 492015 (KH)

4-3-09 to 6-8-09, \$345,094.00

Action: Approve the refund as recommended by staff.

**Note: These minutes are not final until Board approved.**

Tuesday, September 22, 2009

21<sup>st</sup> Century Insurance Company, 415444 (AC)

4-1-04 to 6-30-06, \$64,880.91

Action: Approve the refund as recommended by staff.

Waste Mgmt Collection Recycling, Inc., 447670 (UT)

1-16-07 to 7-24-07, \$52,212.78

Action: Approve the refund as recommended by staff.

AT&T Solutions, Inc., 472122 (OH)

7-1-97 to 3-31-05, \$78,259.80

Action: Approve the refund as recommended by staff.

General Electric International, Inc., 344762 (OH)

4-1-99 to 3-31-03, \$2,033,912.13

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

Komo Machine, Inc., 467805 (OH)

4-1-08 to 9-30-08, \$82,680.09

Action: Approve the refund as recommended by staff.

Morgan Stanley Capital Group, Inc., 491765 (OH)

10-1-04 to 9-30-07, \$1,037,696.55

Action: Approve the refund as recommended by staff.

ARI Fleet, LT, 482556 (OH)

10-1-08 to 12-31-08, \$117,962.38

Action: Approve the refund as recommended by staff.

Santiago Communities, Inc., 474060 (EH)

10-1-05 to 9-30-08, \$136,816.70

Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 468179 (OH)

1-1-06 to 6-30-08, \$58,807.60

Action: Approve the refund as recommended by staff.

H & H Catering, LP, 478767 (AS)

4-1-06 to 6-30-06, \$228,956.93

Action: Approve the refund as recommended by staff.

Muddy Water's Coffeehouse, Inc., 459647 (BH)

1-1-05 to 12-31-07, \$63,717.51

Action: Approve the refund as recommended by staff.

**Note: These minutes are not final until Board approved.**

Tuesday, September 22, 2009

San Diego Gas &amp; Electric Co., 238528 (FH)

7-1-99 to 12-31-05, \$1,198,578.22

Action: Approve the refund as recommended by staff.

National Broadcasting Company, Inc., 272628 (AC)

1-1-99 to 12-31-05, \$184,697.01

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

Girish Patel, 466553 (AR)

10-1-05 to 9-30-08, \$180,414.21

Action: Approve the refund as recommended by staff.

Convergent Media Systems Corporation, 492457 (OH)

10-1-07 to 12-31-07, \$52,967.62

Action: Approve the refund as recommended by staff.

Spectrum Communications Cabling Services, Inc., 488754 (EH)

10-1-05 to 9-30-08, \$95,113.09

Action: Approve the refund as recommended by staff.

Schawk Holdings, Inc., 360147 (AA)

4-1-03 to 12-31-05, \$1,875,810.90

Action: Approve the refund as recommended by staff.

Arcadia Financial, LTD, 478415 (OH)

10-1-08 to 12-31-08, \$595,628.56

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 482550 (EA)

10-1-08 to 3-31-09, \$229,460.04

Action: Approve the refund as recommended by staff.

Household Automotive Finance Corporation, 425873 (FH)

1-1-05 to 12-31-07, \$10,179,943.01

Action: Approve the refund as recommended by staff.

Balboa Thrift &amp; Loan Association, 480343 (FH)

10-1-08 to 3-31-09, \$159,567.90

Action: Approve the refund as recommended by staff.

Capital One Auto Finance, Inc., 481112 (OH)

10-1-08 to 3-31-09, \$2,814,165.71

Action: Approve the refund as recommended by staff.

**Note: These minutes are not final until Board approved.**

Tuesday, September 22, 2009

Transouth Financial Corporation, 480349 (OH)  
10-1-08 to 12-31-08, \$1,319,716.75  
Action: Approve the refund as recommended by staff.

Wadsworth Glass, Inc., 488756 (CH)  
4-1-05 to 12-31-08, \$58,554.57  
Action: Approve the refund as recommended by staff.

Discount DME, LLC, 460972 (EA)  
7-1-05 to 3-31-08, \$131,874.58  
Action: Approve the refund as recommended by staff.

Siemens One, Inc., 493840 (OH)  
7-1-07 to 9-30-07, \$194,713.13  
Action: Approve the refund as recommended by staff.

Marukome U.S.A., Inc., 459967 (EA)  
1-1-07 to 12-31-07, \$141,536.08  
Action: Approve the refund as recommended by staff.

Schawk USA, Inc., 394849 (OH)  
1-1-06 to 12-31-06, \$563,391.10  
Action: Approve the refund as recommended by staff.

Valero California Retail Company, 478770 (OH)  
10-1-08 to 12-31-08, \$318,060.60  
Action: Approve the refund as recommended by staff.

Franklin Capital Corporation, 437373 (OH)  
10-1-04 to 12-31-08, \$646,661.16  
Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

### **SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT**

The Board deferred consideration of the following matters: *Life Insurance Company of North America, 468866 (ET)*, and, *Connecticut General Life Ins. Co., 468867 (ET)*.

Life Insurance Company of North America, 468866 (ET)  
Action: The Board took no action.

Connecticut General Life Ins. Co., 468867 (ET)  
Action: The Board took no action.

**Note: These minutes are not final until Board approved.**

Tuesday, September 22, 2009

**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,  
CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Horton absent, the Board made the following order:

The Wine Group, LLC, 461816 (ET)  
6-1-08 to 1-31-09, \$142,161.77

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

**ADMINISTRATIVE SESSION**

**ADMINISTRATIVE MATTERS, CONSENT**

David Gau, Deputy Director, Property and Special Taxes Department, was available to answer questions regarding the diesel fuel tax rate for interstate users for calendar year 2010.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Mr. Horton absent, the Board approved the diesel fuel tax rate for interstate users of \$0.373 per gallon for calendar year 2010 as recommended by staff. (Exhibit 9.9.)

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Takashi Watanabe and Marcia Watanabe, 461159 (continued)

2003, \$11,904.00 Tax, \$2,670.39 Interest

For Appellant:

Marcia Watanabe, Taxpayer

Stephen G. McKee, Attorney

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Karen Smith, Tax Counsel

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

The Board recessed at 11:33 a.m. and reconvened at 1:30 p.m. with Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Tuesday, September 22, 2009

Joe L. Santos, 445970  
2003, \$1,914.00 Assessment  
For Appellant:

Joe L. Santos, Taxpayer  
Clarissa Conde, Representative  
Bruce Langston, Tax Counsel  
Karen Smith, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issues: Whether appellant has shown error in the Franchise Tax Board's proposed assessment, which is based on a federal adjustment.

Whether the Franchise Tax board abused its discretion in denying abatement of interest on the proposed assessment.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 9.10)

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

Mr. Leonard suggested that the Franchise Tax Board and the Board of Equalization set standards of reasonable workload time.

Ms. Yee directed staff to make sure that it publicly makes the taxpayers aware that interest continues to accrue.

Andra R. Sachs, 446027  
2000, \$688,300.00 Tax, 50,379.30 Post Amnesty Penalty  
For Appellant:

Andra Sachs, Taxpayer  
Walter Weiss, Attorney  
Bradford Sachs, Witness  
Lesley Summers, Witness  
Christopher Haskins, Tax Counsel  
Ronald Hofsdal, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issue: Whether appellant was a California resident at the time she received the proceeds from her sale of \$9,000,000 worth of Flashcom stock on the apparent February 11, 2000 sale date.  
Respondent's Exhibit: Appellant Schedule D, Federal Tax Return for Tax Year 2000 (Exhibit 9.11)

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Mr. Horton absent, the Board ordered that the appeal be submitted for decision, granting the appellant 60 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board.

Tuesday, September 22, 2009

Prudential Commercial Leasing, Inc., 468875

1999, \$13,577.62 Assessment

2000, \$5,617.82 Assessment

2001, \$4,788.19 Assessment

For Appellant:

Ji Sung Kim, Representative

Michael Y. Yi, Attorney

For Franchise Tax Board:

Bruce Langston, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether the Franchise Tax Board abused its discretion by not abating interest on appellant's assessments for the years ended 1999, 2000 and 2001.

Whether this Board has jurisdiction to consider the penalties.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 9,12)

Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Mr. Horton absent, the Board ordered that the appeal be submitted for decision, granting the Franchise Tax Board 30 days to provide its explanation of the Federal adjustment computation, the appellant 30 days to respond, and the Appeals Division 30 days thereafter to review the Franchise Tax Board's explanation, the appellant's response and provide its recommendation to the Board.

**FINAL ACTION ON HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARINGS HELD SEPTEMBER 22, 2009**

Asuncion P. Hamoy, 437618

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

Elaine M. Nichols, 458679

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

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD SEPTEMBER 22, 2009**

Takashi Watanabe and Marcia Watanabe, 461159

Final Action: Ms. Mandel moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, Mr. Horton absent.

Loren Zelmer, 426246

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

**Note: These minutes are not final until Board approved.**

Tuesday, September 22, 2009

Joe L. Santos, 445970

Final Action: Mr. Leonard moved to abate the interest for the period May 2007 thru January 2008, otherwise sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Ms. Mandel voting no, Mr. Horton absent.

The Board adjourned at 3:57 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: *Donald R. Diamond and Joan B. Diamond, 441030; Frank A. Aries and Mary Lou Aries, 464475; Alfred J. Alvarez and Maria S. Alvarez, 435082;* and, closed session discussion on personnel matters (Gov. Code § 11126(a)).

Wednesday, September 23, 2009

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

### SALES AND USE TAX APPEALS HEARINGS

Select Office Solutions, Inc., 187460, 345451 (AP)

4-1-98 to 3-31-01, \$474,194.06 Tax, \$0.00 Penalty

1-1-02 to 6-30-05, \$271,445.42 Tax

For Petitioner

Frank J. Mendicina, Taxpayer

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether amounts itemized in internal invoices as buyout income but which were included as tax in invoices to purchasers constitute excess tax reimbursement.

Whether petitioner collected excess tax reimbursement on the amounts itemized in its internal invoice as setup and connect.

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

James Williams, 376621 (UT)

June 19, 2001, \$32,397.37 Claim for Refund

For Claimant:

James D. Williams, Taxpayer

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issues: Whether claimant has establish that his purchase and use of a motor home is not subject to use tax.

Whether relief from the penalties for failure to file a return and failure to timely pay the determination or petition for redetermination is warranted.

Action: The Board continued the matter to the afternoon session to allow claimant to provide a receipt.

Tom Dworkin Associates, 341727 (AC)

10-1-01 to 9-30-04, \$5,374.06 Tax, \$4,425.85 Penalties

For Petitioner:

Mark Englander, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether petitioner has established that additional adjustments are warranted for disallowed netted interstate commerce sales.

Whether petitioner was negligent.

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

**Wednesday, September 23, 2009**

The Board recessed at 10:54 a.m. and reconvened at 1:30 p.m. with Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**Chad Kimo Kukahiko, 334779 (AS)**

7-1-03 to 9-30-04, \$52,615.71 Tax, \$11,373.50 Late Payment Penalty

For Petitioner:

Chad Kimo Kukahiko, Taxpayer

Erin Baker, Witness

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issues: Whether petitioner is liable as a responsible person under Revenue and Taxation Code section 6829 for Mustard & Trollope, Inc.'s liabilities.

Whether petitioner has established reasonable cause to relieve the late payment penalties assessed against M&T.

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

**Liberty Supplies Company, Inc., 405242 (AA)**

7-1-01 to 9-30-04, \$44,581.32 Tax

For Petitioner:

Ira Frankel, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether any adjustments are warranted to the measure of disallowed claimed sales for resale.

Mr. Lambert, Hearing Representative, Sales and Use Tax Department, stated for the record the Department's concession related to N & N Enterprises.

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

The Board recessed at 2:55 p.m. and reconvened at 3:00 p.m. with Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**Elufa Corporation, 350440 (AA)**

10-1-01 to 9-30-04, \$1,596.46 Tax, \$0.00 Penalty

For Petitioner:

Jimmy Kha, Taxpayer

James Twanmoh, CPA

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether further adjustments are warranted to the amount of disallowed claimed sales for resale.

Whether interest should be relieved.

**Wednesday, September 23, 2009**

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

Jerry Pena, 384853, 426907 (EH)

Action: The Board postponed the matter.

Gi Joyn Yoo and Kyung Ae Yoo, 390865 (AS)

4-1-03 to 3-31-06, \$51,636.09 Tax

For Petitioner:

Waived Appearance

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issue: Whether petitioner has established that the amount of its audited taxable sales is overstated.

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

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
SEPTEMBER 23, 2009**

Select Office Solutions, Inc., 187460, 345451 (AP)

Final Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, Mr. Horton absent.

Ms. Yee moved that the petition be redetermined as recommended by the Appeals Division and to direct staff to offer petitioner an extended payment plan and to inform the petitioner of the Offer in Compromise Program. The motion was seconded by Ms. Mandel but failed to carry, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, Mr. Horton absent.

James Williams, 376621 (UT) (continued)

David H. Levine, Counsel, Legal Appeals Division, Legal Department, stated for the record that Mr. Williams provided additional evidence via facsimile and that the Department is now in agreement on the matter.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Mr. Horton absent, the Board ordered that the claim for refund be granted.

Tom Dworkin Associates, 341727 (AC)

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

Wednesday, September 23, 2009

**SALES AND USE TAX APPEALS HEARING**

James Stephen Mustard, 336696 (AS)

7-1-03 to 6-30-05, \$\$85,531.30 Tax, \$16,615.15

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Andrew Kwee, Tax Counsel

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

Issues: Whether petitioner is liable as a responsible person under Revenue and Taxation Code section 6829 for Mustard & Trollope, Inc.'s (M&T) liabilities.

Whether petitioner has established reasonable cause to relieve the penalties assessed against M&T.

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

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
SEPTEMBER 23, 2009**

Chad Kimo Kukahiko, 334779 (AS)

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

Liberty Supplies Company, Inc., 405242 (AA)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Mr. Horton absent, the Board ordered an adjustment for the Department's concession related to N & N Enterprises, otherwise that the petition be redetermined as recommended by the Appeals Division.

Elufa Corporation, 350440 (AA)

Final Action: Ms. Steel moved to grant the petition. The motion failed for lack of a second.

Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, Mr. Horton absent.

The Board adjourned at 3:50 p.m.

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

Note: The following matter was removed from the calendar prior to the meeting: *L & S Restaurant, Inc., 425516.*

**Note: These minutes are not final until Board approved.**