

Tuesday, October 25, 2011

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 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.

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

Eddie C. Davis and Cynthia L. Davis, 538607  
2005, \$183,534.00 Assessment

For Appellant:

Jonathan L. Allen, Attorney

For Franchise Tax Board:

Maria Brosterhous, Tax Counsel

Natasha Page, Tax Counsel

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

Issue: Whether respondent properly determined appellants' 2005 California-source income resulting from the exercise of nonqualified stock options (NQSOs).

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.

Robert A. Kidwell, 530913

1998, \$6,600.94 Claim for Refund

2001, \$2,217.71 Claim for Refund

2002, \$1,616.31 Claim for Refund

2003, \$1,373.16 Claim for Refund

For Appellant:

Robert A. Kidwell, Taxpayer

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issue: Whether the statute of limitations bars appellant's claims for refund.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 10.5](#))

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.

Ms. Steel requested the Franchise Tax Board to provide the 1999 study on mortgages vs. income.

Exhibits to these minutes are incorporated by reference.

Matthew Heller, 554452

2007, \$180.00 Late Filing Penalty Claim for Refund, \$2,012.25 Failure to File Upon Demand Penalty Claim for Refund

For Appellant:

Jerry J. Kurlak, Representative

For Franchise Tax Board:

Shail Shah, Tax Counsel

Karen Smith, Tax Counsel

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

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Issues: Whether appellant has shown reasonable cause for abatement of the late filing penalty.

Whether appellant has demonstrated reasonable cause for the abatement of the failure to file upon demand penalty.

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 submitted the appeal for decision.

Kevin M. Kelly and Gretchen L. Kelly, 539558

2004, \$8,906.00 Tax

2005, \$6,371.00 Tax

2006, \$10,838.00 Tax, \$2,167.60 Accuracy-Related Penalty

For Appellant:

Kevin Kelly, Taxpayer

Gretchen Kelly, Taxpayer

Joyce Rebhun, Attorney

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issues: Whether appellants have shown that the determination of the Franchise Tax Board (FTB or respondent) based on federal audit reports are incorrect.

Whether appellants have shown that the accuracy-related penalty imposed against appellants for 2006 should be abated.

Whether appellants have shown that interest assessed against appellants should be abated.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 10.6](#))

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 11:06 a.m. and reconvened at 11:21 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

## LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Robin Gillies, 318325*.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Runner, 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:

Juana Maria Olmos, 496090 (AC)

4-1-06 to 3-31-09, \$12,450.33 Tax, \$1,297.29 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

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Robin Gillies, 318325 (AS)

1-1-98 to 12-31-10, \$156,968.13 Tax, \$15,696.81 Finality Penalties, \$432.10 Failure-to-Pay Penalties

Action: The Board took no action.

Riedel Communications, Inc., 391639 (AC)

1-1-03 to 12-31-05, \$0.00 Tax, \$3,949.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Kalms, Inc., 496984 (EA)

1-1-05 to 12-31-07, \$18,487.42 Tax

Action: Redetermine as recommended by the Appeals Division.

Francesco Manco, 486368 (AC)

7-1-05 to 6-30-08, \$15,618.04 Tax, \$1,561.80 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Collective Aviation, LLC, 406039 (UT)

July 17, 2006, \$15,621.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Jose Antonio Reyes, 491553 (EH)

2-15-06 to 12-31-07, \$3,340.36 Tax, \$334.05 Finality Penalty

Jose Antonio Reyes, 491554 (EH)

10-1-04 to 3-10-08, \$11,904.37 Tax, \$1,190.44 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Kars &amp; Wheels Plus, Inc., 513118 (AA)

4-1-05 to 3-31-08 \$293,990.52 Tax, \$29,399.10 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Rebhya Abdeljawad, 440516 (EH)

7-30-03 to 3-31-07, \$64,707.38 Tax, \$6,857.89 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Thomas Tung Tran, 487713 (EH)

1-1-05 to 12-31-07, \$11,217.12 Tax, \$1,121.71 Finality Penalty

Action: No adjustments in the administrative protest as recommended by the Appeals Division.

Ahmed Z. Dafaallah, 486042 (EA)

1-1-05 to 9-30-06, 6,733.34 Late Payment of Returns Penalty, \$420.00 Late Payment of a Prepayment Penalty, \$284.84 Finality Penalties

Action: Redetermine as recommended by the Appeals Division.

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Ray J. Ponek and Mary Ellen Ponek, 434985 (UT)

10-4-06, \$1,705.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Ben Lahlou, 489450 (EH)

1-1-05 to 12-31-07, \$252,154.69 Tax, \$25,215.51 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Chief Red Cloud, LLC, 450619 (EA)

7-1-04 to 6-30-07, \$183,504.48 Tax, \$18,350.46 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Hassan Yeganeh Amirhamzeh, 485914 (AC)

1-1-05 to 1-15-08, \$150,332.97 Tax, \$15,033.34 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

My Enterprises, LLC, 489605 (AS)

10-1-05 to 9-30-08, \$0.00 Tax, \$1,461.12 Negligence Penalty, \$1,461.06 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

G & J Automotive, Inc., 521548 (AA)

3-20-07 to 6-30-09, \$37,826.86 Tax, \$3,031.45 Negligence Penalty, \$751.28 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Rolando M. Bulatao, 435837 (AC)

1-1-04 to 3-14-07, \$27,420.72 Tax, \$2,742.07 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

CLC Data Systems, Inc., 173625, 206055 (AP)

4-1-99 to 3-31-02, \$1,024.91 Tax

Action: Deny the claim for refund and redetermine as recommended by the Appeals Division.

Rene Nelson Khajha, Suren Ambarchyan and Henri Minassian 423538 (ET)

2-1-02 to 4-30-02, \$1,487,700.00 Tax, \$371,925.00 Fraud Penalty, \$148,770.00 Failure to File Penalty

Rene Nelson Khajha, 423539 (ET)

5-1-02 to 5-31-02, \$469,800.00 Tax, \$117,450.00 Fraud Penalty, \$46,980.00 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

James Albert Bradley, 531391 (EH)

1-1-96 to 9-30-96, \$42,144.00 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

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Bill B. Tea, 577825 (ET)

May 23, 2011, \$225.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Sharanjeet Sokhi, 575880 (ET)

May 5, 2011, \$412.83 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Rab Nawaz Tarar and Najma Rani Ali, 578413 (ET)

June 18, 2011, \$945.67 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Glenoak Corporation, 577005 (ET)

May 11, 2011, \$1,734.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Bhupinder Singh, 578417 (ET)

June 23, 2011, \$ 273.83 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 matter: *William Trevithick, 531169.*

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:

Ronald H. Davis, 549264

2007, \$6,799.67 Tax, \$1,699.92 Late Filing Penalty

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

Raymond Edward List, 487082

2004, \$1,517.00 Claim for Refund

2005, \$17,577.50 Claim for Refund, \$528.40 Claim for Refund

2006, \$33,068.75 Claim for Refund

Action: Modify the denial of the appellant's claim for refund for the 2004 tax year, as conceded by the FTB on appeal, to grant appellant a refund of \$1,517.00, plus interest, and sustain the action of the Franchise Tax Board for the 2005 and 2006 tax years.

4837 Beverly Boulevard, LLC, 524173

2007, \$4,056.34 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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American Air Liquide, Inc., 506790

2002, \$346,422.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jeffrey Browder, 534155

2006, \$5,072.00 Tax

Action: Modify the action of the Franchise Tax Board, pursuant to respondent's recalculated assessment of \$4, 528.00, plus applicable interest.

Hyun J. Choe and Chung S. Choe, 526539

2003, \$72,404.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Jessica Y. Espinoza, 529422

2007, \$794.00 Assessment

Action: Sustain the action of the Franchise Tax Board, as modified by its concessions on appeal, to allow the dependent exemption credit in the amount of \$294.00.

Peter Evans and Allison Leigh Evans, 522620

2002, \$840.40 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Travis Fields, 519297

2008, \$780.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Sidney Grapey, 533570

2005, \$1,133.00 Assessment, \$226.60 Penalty

Action: Sustain the action of the Franchise Tax Board.

Hamilton Sundstrand Corporation, 474163

1999, \$689,962.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michael S. Harris and Michelle H. Harris, 512549

2005, \$1,729.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Bobbie Henry, 535592

2007, \$857.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jose Hernandez, 522368

2007, \$758.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Howard I. Katz and Ann L. Katz, 523741

2006, \$1,042.00 Assessment

Action: Reverse the action of the Franchise Tax Board.

Michael L. Lopez and Eudora M. Lopez, 518195

2006, \$945.00 Tax

Action: Sustain the action of the Franchise Tax Board as modified by its concessions, which reduce the additional tax to \$364.00.

Barbie Lucas, 521085

2006, \$9,727.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Patrick L. Martinez, 514199

2004, \$1,248.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Joan Oakes, 518119

2000, \$7,159.62 Tax

2005, \$558.97 Tax

2006, \$1,622.46 Tax

Action: Sustain the action of the Franchise Tax Board.

Sani Panhwar and Surriya Panhwar, 526808

2004, \$25,862.00 Tax

2005, \$9,949.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Eiko Polk, 497550

2004, \$752.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Claudia A. Rangel, 512908

2008, \$840.00 Claim for Refund

Action: Modify the action of the Franchise Tax Board to allow appellant a CDC credit/refund of \$518.00 based on \$3,700.00 of qualified expenses. Otherwise, respondent's denial of appellant's claim for refund for tax year 2008 is sustained.

Abhijit Shanbhag, 536421

2007, \$2,493.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Herman Simandjuntak and Julia Simandjuntak, 529545

2006, \$3,804.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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William Trevithick, 531169  
1988, \$66,564.49 Claim for Refund  
Action: The Board took no action.

Mark Wilcox, 526984  
2005, \$736.00 Tax  
Action: Sustain the action of the Franchise Tax Board.

Zamora Sod Farm, 487206  
2003, \$68,986.05 Tax  
Richard Leeds and Elaine Leeds, 487208  
2002, \$4,863.00 Tax, \$187.41 Post-Amnesty Penalty  
M.D. Marshall and Carol A. Marshall, 487209  
2002, \$8,848.00 Tax, \$405.54 Post-Amnesty Penalty  
Action: Sustain the action of the Franchise Tax Board.

Michael Reznitsky, 552490  
2007, \$37,389.00 Tax  
Action: Deny the petition for rehearing.

Mrudula Trivedi and Ramnik Trivedi, 480045  
1992, \$6,802.00 Tax, \$1,216.40 Accuracy-Related Penalty  
Action: Deny the petition for rehearing.

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

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Runner, 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:

Niro Atomizer, Inc., 547202 (OH)  
10-1-04 to 9-30-07, \$153,239.47  
Action: Approve the redetermination as recommended by staff.

Tellabs Operations, Inc., 547655 (OH)  
4-1-05 to 3-31-08, \$953,041.46  
Action: Approve the redetermination as recommended by staff.

Dynergy Moss Landing, LLC, 515824 (GH)  
10-1-05 to 12-31-05, \$144,489.38  
Action: Approve the redetermination as recommended by staff.

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Intervision Systems Technology, Inc., 482302 (GH)

1-1-04 to 12-31-06 \$473,929.55

Action: Approve the redetermination as recommended by staff.

Mission Hospital Regional Medical Center, 550485 (EA)

7-1-09 to 9-30-09, \$436,618.00

Action: Approve the redetermination as recommended by staff.

Imagecraft Productions, Inc., 496133 (AC)

4-1-04 to 3-31-07, \$678,647.00

Action: Approve the redetermination as recommended by staff.

Frank Tuan Pham, 532740 (CH)

7-1-06 to 6-30-09, \$151,960.20

Action: Approve the redetermination as recommended by staff.

Scotsman Mfg. Co., Inc., 379587 (OH)

7-1-03 to 12-31-06, \$1,197,816.74

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

Harley-Davidson Credit Corp., 461555 (OH)

10-1-05 to 12-31-09, \$539,400.73

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

Echostar Satellite, LLC, 575489 (OH)

4-1-06 to 3-31-08, \$652,486.47

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

New Albertsons, Inc., 377868 (OH)

6-2-06 to 6-30-06, \$217,605.00

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

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Wal-Mart Leasing, Inc., 573638*; and, *Broadcom Corporation, 468911*; the Board made the following orders:

Integrated Manufacturing Technologies, Inc., 550509 (OH)

1-1-06 to 12-31-08, \$709,918.15

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

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9-25-05 to 12-27-08, \$266,524.03

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

Six Pups, Inc., 576676 (EH)

1-1-07 to 12-31-09, \$100,475.38

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

Deluxe Laboratories, Inc., 576446 (AS)

1-1-04 to 12-31-07, \$765,804.44

Action: Approve the refund as recommended by staff.

Scotsman Mfg. Co., Inc., 379587 (OH)

7-1-03 to 12-31-06, \$2,802,183.26

Action: Approve the refund as recommended by staff.

Toshiba International Corp., 559365 (OH)

1-1-10 to 3-31-10, \$234,721.00

Action: Approve the refund as recommended by staff.

Abbott Cardiovascular Systems, Inc., 567275 (GH)

1-1-09 to 12-31-10, \$348,942.50

Action: Approve the refund as recommended by staff.

Gallo Glass Company, 574455 (KH)

1-1-06 to 12-31-08, \$334,329.15

Action: Approve the refund as recommended by staff.

Black & Decker U.S., Inc., 493302 (EH)

4-1-06 to 3-31-09, \$539,134.98

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 576605 (KH)

3-23-11 to 7-1-11, \$371,193.00

Action: Approve the refund as recommended by staff.

Bemusic, Inc., 575215 (OH)

7-1-07 to 12-31-08, \$762,683.81

Action: Approve the refund as recommended by staff.

Ciba Specialty Chemicals Corp., 553632 (OH)

1-1-06 to 12-31-09, \$154,499.62

Action: Approve the refund as recommended by staff.

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Wal-Mart Leasing, Inc., 573638 (OH)

1-1-06 to 3-31-10, \$588,472.98

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

Blue Coat Systems, Inc., 562724 (GH)

4-1-07 to 3-31-10, \$111,019.27

Action: Approve the refund as recommended by staff.

Intuitive Surgical, Inc., 557992 (GH)

1-1-10 to 3-31-10, \$162,045.00

Action: Approve the refund as recommended by staff.

Magnolia Hi-Fi, Inc., 559080 (OH)

1-1-04 to 1-5-08, \$1,208,396.29

Action: Approve the refund as recommended by staff.

California Broadcast Center, LLC, 316478 (AA)

7-1-00 to 12-31-05, \$363,012.34

Action: Approve the refund as recommended by staff.

San Diego Gas & Electric Co., 487851 (FH)

1-1-06 to 9-30-09, \$271,819.86

Action: Approve the refund as recommended by staff.

Monarch Industries, Inc., 423622 (OH)

7-1-06 to 9-30-06, \$114,011.53

Action: Approve the refund as recommended by staff.

Broadcom Corporation, 468911 (EA)

4-1-02 to 12-31-06, \$939,880.26

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

Arrowhead Central Credit Union, 567195 (EH)

7-1-10 to 3-31-11, \$619,435.00

Action: Approve the refund as recommended by staff.

Quest Diagnostics Incorporated, 522903 (OH)

4-1-06 to 12-31-07, \$114,200.36

Action: Approve the refund as recommended by staff.

Kinecta Federal Credit Union, 576692 (AS)

1-1-07 to 12-31-09, \$876,913.40

Action: Approve the refund as recommended by staff.

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Black &amp; Veatch Construction, Inc., 557986 (OH)

7-1-09 to 12-31-09, \$111,688.00

Action: Approve the refund as recommended by staff.

Quest Diagnostics Clinical Labs, 505725 (OH)

4-1-06 to 12-31-07, \$239,368.69

Action: Approve refund as recommended by staff.

Harley–Davidson Credit Corp., 461555 (OH)

10-1-05 to 12-31-09, \$2,493,923.54

Action: Approve the refund as recommended by staff.

Echostar Satellite, LLC, 575489 (OH)

4-1-06 to 3-31-08, \$428,827.79

Action: Approve the refund as recommended by staff.

New Albertsons, Inc., 487418 (OH)

6-2-06 to 12-31-08, \$958,000.82

Action: Approve the refund as recommended by staff.

American Stores Company, LLC, 422010 (OH)

6-2-06 to 6-30-09, \$428,291.87

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, REDETERMINATION, CONSENT**

With respect to the Special Taxes Matters, Redetermination, 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:

Omnipoint Communications, Inc., 475330 (ET)

8-1-05 to 11-30-07, \$139,198.70

Action: Approve the redetermination as recommended by staff.

**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE****OFFER IN COMPROMISE RECOMMENDATIONS**

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 approved the Offer in Compromise recommendations of *Meher Garabed Chekerdeman; Forest Restaurant Supply, Inc.; Yvonne Yichen Lu;* and, *Fernando Villareal and Maria Villareal;* as recommended by staff.

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**CHIEF COUNSEL MATTERS****OTHER CHIEF COUNSEL MATTERS****Resolution Conferring Powers on the Executive Director**

David Gau, Acting Chief Counsel, requested the Board's adoption of a resolution conferring powers on the Executive Director ([Exhibit 10.7](#)).

Action: Mr. Runner moved to adopt the resolution as presented. The motion was seconded by Ms. Steel but no vote was taken.

Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the resolution with an amendment to subdivision (a)(2) as shown here in underscore: obtain approval of the Board Member, at the Member's discretion, in whose District in which appointments are located for all District personnel appointments.

Ms. Mandel stated for the record that State Controller John Chiang looks forward to working with the Board on selecting and appointing a permanent, long-term Executive Director.

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

With respect to the Administrative Matters, 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:

Action: Adopt the Emergency Telephone Users Surcharge Rate of 0.50 percent for calendar year 2012 and publish the rate in these Board meeting minutes ([Exhibit 10.8](#)).

**OTHER ADMINISTRATIVE MATTERS****Executive Director's Report**

David Gau, Deputy Director, Property and Special Taxes Department, provided an update on the progress of the CROS project to replace BOE's two current tax legacy technology systems ([Exhibit 10.9](#)).

Mr. Gau introduced Eric Steen, CROS Project Director, who provided additional information.

Ms. Yee requested staff to consolidate information relative to the CROS Project to a single location on the Board's website.

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**Administration Deputy Director's Report**

Liz Houser, Deputy Director, Administration Department, presented the 2012/13 Draft Budget Change Proposal (BCP) *AB 155 Use Tax Nexus*, for approval ([Exhibit 10.10](#)).

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 approved BCP *AB 155 Use Tax Nexus*, as recommended by staff.

Ms. Yee requested staff to revisit California's relationship to the Streamline Sales Tax Project (SSTP) for a Legislative Committee discussion, and to continue to monitor the Federal Legislation that is moving forward.

Mr. Horton directed staff to consider strategies for keeping the Board informed on matters when the need is not consistent with scheduled Board Meetings, and directed staff to report to the Board on this specific matter prior to its December Board Meeting.

Liz Houser, Deputy Director, Administration Department, reported the status of the Fire Prevention Fee (ABx-1 29) and the plan to cover needed resources for this fiscal year.

Mr. Horton directed staff to report to the Board the administration's plans relative to the permanency of funding the resources needed to administer the Fire Prevention Fee program.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD OCTOBER 25, 2011**

Eddie C. Davis and Cynthia L. Davis, 538607

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.

Robert A. Kidwell, 530913

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 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.

Matthew Heller, 554452

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.

Kevin M. Kelly and Gretchen L. Kelly, 539558

Final Action: 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 sustained the action of the Franchise Tax Board.

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

Tuesday, October 25, 2011

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 12:09 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 1:01 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 1:02 p.m. in memory of Mark Leones, Associate Tax Auditor, Irvine Office, who passed away October 16, 2011 at the age of 28, and who had been with BOE for 5 years, since April 3, 2006.

*The foregoing minutes are adopted by the Board on January 1, 2012.*

Note: The following matters were removed from the calendar prior to the meeting: *Alan R. Young and Lisa E. Young, 554473; Lester Young and Beverly Young, 554480; and, Richard A. Gaeto and Colleen P. Gaeto, 550369.*

Wednesday, October 26, 2011

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 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.

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

Ronald N. Frazar and Jane A. Frazar, 494349

2005, \$231,226.00 Assessment

2006, \$236,238.00 Assessment

For Appellant:

Marilyn Barrett, Attorney

For Franchise Tax Board:

Natasha Page, Tax Counsel

Maria Brosterhous, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution to Ms. Yee was disclosed; Board Proceedings Division was notified that the contribution was returned. No other contributions were disclosed.

Issue: Whether respondent properly determined that nonresident appellants were subject to income tax on installment income from a sale of stock that occurred in California in a prior year when appellants were residents of California.

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.

Dennis A. Conforto and Bonny J. Conforto, 522443, 528754

2001, \$53,661.00 Assessment

2003, \$28,733.00 Claim for Refund

For Appellant:

Dennis A. Conforto, Taxpayer

Paul W. Rowe, Attorney

For Franchise Tax Board:

Raul Escatel, Tax Counsel

Bill Hilson, Tax Counsel

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

Issues: Whether appellants have shown that their shares of stock in Shop A-Z.com Inc. (Shop A-Z.com) became worthless in 2001.

Whether appellants are entitled to carry over to 2003 a portion of the capital loss that they allegedly experienced as the result of their Shop A-Z.com stock becoming worthless in 2001.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 10.11](#))

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.

Exhibits to these minutes are incorporated by reference.

Wednesday, October 26, 2011

Cort R. Schultz and Margaret Krinsky, 556764

2006, \$2,470.75 Claim for Refund

2007, \$3,037.50 Claim for Refund

For Appellant:

Cort Schultz, Taxpayer

For Franchise Tax Board:

Anjali Balasingham, Tax Counsel

Karen Smith, Tax Counsel

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

Issue: Whether appellants have established reasonable cause for the abatement of the notice and demand penalty.

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 12:04 p.m. and reconvened at 1:42 p.m. with Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel.

Marie R. Sanders, 522825

2007, \$1,555.21 Claim for Refund

For Appellant:

Marie Sanders, Taxpayer

Herbert Lo, Representative

For Franchise Tax Board:

Karen Smith, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issues: Whether appellant was provided with proper notice and demand (demand).

Whether appellant has shown reasonable cause for a refund of the demand penalty.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 10.12](#))

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

Pluria W. Marshall, Jr., 533146

2007, \$5,582.25 Claim for Refund

For Appellant:

Pluria W. Marshall, Jr., Taxpayer

Clyde A. Young, Representative

For Franchise Tax Board:

Anjali Balasingham, Tax Counsel

Karen Smith, Tax Counsel

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

Issue: Whether appellant has shown reasonable cause for the abatement of the demand penalty.

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

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

Wednesday, October 26, 2011

William Bowes, 559983

2008, \$1,600.00 Assessment, \$400.00 Late Filing Penalty, \$400.00 Notice and Demand Penalty, \$100.00 Filing Enforcement Fee

For Appellant:

William Bowes, Taxpayer

John Laszloffy, Witness

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issues: Whether appellant has demonstrated any error in the proposed assessment issued by respondent.

Whether appellant has established reasonable cause for the abatement of the late filing penalty.

Whether appellant has established reasonable cause for the abatement of the notice and demand penalty.

Whether appellant has shown that the filing enforcement fee should be abated.

Whether the Board should impose a frivolous appeal penalty under Revenue and Taxation Code (R&TC) section 19714.

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

The Board recessed at 3:07 p.m.

*The foregoing minutes are adopted by the Board on January 11, 2012.*

Note: The following matters were removed from the calendar prior to the meeting: *Estate of Sylvia Jane Lukoff (Dec'd), 528898; Reginald D. Davis and Rebecca J. Joslin-Davis, 534788; Roger E. Grodin and Carrol A. Grodin, 507716; and, Wilson Montevilla, 550849.*

Thursday, October 27, 2011

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

Mr. Horton thanked staff for providing Ms. Steel with video of the Wednesday, October 26, 2011 afternoon session. Mr. Horton stated that those cases, as well as today's case, will be considered at the beginning of the meeting the following day.

### SALES AND USE TAX APPEALS HEARINGS

RC Marketing, Inc., 377842, 461615 (EH)

4-1-04 to 6-30-07, \$5,798.05 Tax

7-1-03 to 12-31-05, \$4,921 Claim for Refund

For Petitioner/Claimant:

Regnor Hastings, Taxpayer

Viola Hastings, Bookkeeper

Cary Huxsoll, Tax Counsel

For Sales and Use Tax Department:

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

Issues: Whether adjustments are warranted to the unreported sales of wall beds and disallowed claimed nontaxable labor.

Whether adjustments are warranted to the disallowed claimed deductions for sales tax included for the sales of wall bed kits without installation.

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

The Board recessed at 10:44 a.m.

*The foregoing minutes are adopted by the Board on December 14, 2011.*

Note: The following matters were removed from the calendar prior to the meeting: *Randeep Singh Dhillon, 485664 (AR); Beale Monterey Enterprises, Inc., 485668 (AR); Sam Sambee Enterprises, Inc., 485729 (AR); Magdi Shawki Mahfouz, 488819 (AA); America Wood Finishes, Inc., 460325 (AA); Kamal Noorzady, 509930 (EH); Trimark Raygal, Inc., 257881 (EA); Interfab Corp., 488767 (EA); Tarun Maitra, Soma Prasad, Partha Sarathi Sinha and Basudha Sinha, 473027 (AA); Zoba International Corp., 434591 (EH); Nabil W. Waniss, 491575 (EA); and, Donald G. Sheridan and Judith C. Sheridan, 486394 (UT).*

Friday, October 28, 2011

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:31 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

Asmaa I. Shalaby, 489020 (AS)

1-1-05 to 12-31-07, \$0.00 Tax, \$8,386.49 Negligence Penalty

For Petitioner:

Rasheed Ali, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issue: 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.

Hye Ock Im, 435812 (AA)

7-1-03 to 6-30-06, \$8,569.19 Tax, \$0.00 Penalty

Pyung Soon Im, 446413 (AA)

7-1-04 to 6-30-06, \$5,720.96 Tax, \$0.00 Penalty

For Petitioner/Taxpayer:

Pyung Soon Im, Taxpayer

Hye Ock Im, Taxpayer

Marvin Im, Representative

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issues: Whether further adjustments are warranted to the audited measure of unreported fabrication labor for making dresses.

Whether further adjustments are warranted to the audited measure of unreported fabrication labor for alterations to new clothes.

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 11:14 a.m. and reconvened at 11:27 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Housewares International, Inc., 464830 (AA)

10-1-04 to 9-30-07, \$0.00 Tax

For Petitioner:

Elias Aziz Lavi, Representative

Melanie Balagtas, Representative

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 cost of samples withdrawn from inventory is overstated.

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

Friday, October 28, 2011

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.

**Shantilli, LLC, 434838 (UT)**

12-22-05, \$9,536.00 Tax

For Petitioner:

Brett Hoffman, Taxpayer

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

Issue: Whether petitioner's purchase of a motor home is subject to use tax.

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 ordered that the petition be submitted for decision.

The Board recessed at 12:02 p.m. and reconvened at 1:15 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

**Juan B. Garibo, 513023 (AS)**

10-1-02 to 6-30-07, \$37,112.16 Tax, \$18,556.11 Knowingly Operating Without a Permit Penalty

For Petitioner:

Juan B. Garibo, Taxpayer

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

Issues: Whether any adjustments are warranted to the audited measure.

Whether the Department has met its burden of establishing that petitioner knowingly operated without a seller's permit for the purpose of evading taxes.

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.

**Karen Lee Miller and Lawrence Joseph Miller, 461286 (AA)**

4-1-04 to 6-30-05, \$15,527.93 Tax, \$1,607.44 Negligence Penalty

**Lawrence Joseph Miller and Cliff William Miller, 461281 (AA)**

7-1-05 to 3-31-07, \$30,295.77 Tax, \$3,100.69 Negligence Penalty

For Petitioners:

Bentley M. Soo Hoo, Attorney

Gordon Tong Quan, Representative

James K. Soo Hoo, Witness

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether further adjustments are warranted.

Whether petitioners are negligent.

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 ordered that the petition be submitted for decision.

Friday, October 28, 2011

Armenak Lakisyan, 486896 (AC)

7-1-05 to 6-30-08, \$16,179.39 Tax

For Petitioner:

Meher Der Ohanessian, Representative

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

Issue: Whether disallowed claimed nontaxable labor charges were nontaxable.

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 1:55 p.m. and reconvened at 2:00 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 OCTOBER 26, 2011**

Ronald N. Frazar and Jane A. Frazar, 494349

Final Action: 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 sustained the action of the Franchise Tax Board.

Dennis A. Conforto and Bonny J. Conforto, 522443, 528754

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 sustained the action of the Franchise Tax Board.

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

Vista Pacific Townhomes Association, Inc., 522642

12-31-07, \$7,058.76 Claim for Refund

For Appellant:

Waived Appearance

For Franchise Tax Board:

Anjali Balasingham, Tax Counsel

Karen Smith, Tax Counsel

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

Issue: Whether appellant has demonstrated the late payment penalty should have been abated by the Franchise Tax Board (FTB or respondent) due to reasonable cause.

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.

Friday, October 28, 2011

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD OCTOBER 26, 2011**

Cort R. Schultz and Margaret Krinsky, 556764

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 which included a concession by the Franchise Tax Board.

Marie R. Sanders, 522825

Final Action: 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 sustained the action of the Franchise Tax Board.

Pluria W. Marshall, Jr., 533146

Final Action: Ms. Yee moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Mandel. Mr. Runner made a substitute motion to abate the penalty. The substitute 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.

Ms. Yee moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Mandel but no vote was taken.

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

William Bowes, 559983

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 and imposed a \$750.00 frivolous appeal penalty.

**FINAL ACTION ON SALES AND USE TAX APPEAL HEARING HELD  
OCTOBER 27, 2011**

RC Marketing, Inc., 377842, 461615 (EH)

Final Action: Ms. Steel moved to grant the petition. The motion was seconded by Mr. Runner. Ms. Steel withdrew her motion.

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 determination of whether the disputed contracts were for furnishing and installing materials or fixtures be based on 75 percent of the jobsite labor as installation and 25 percent of the jobsite labor as fabrication, and that the petition otherwise be redetermined as recommended by the Appeals Division.

Friday, October 28, 2011

**SALES AND USE TAX APPEALS HEARING**

HFAS, Inc., 335691 (EH)

12-1-02 to 9-30-03, \$0.00 Tax, \$3,089.10 Negligence Penalty, \$390.68 Double Negligence Penalty

Thomas Earl Symonds, 335692 (EH)

4-1-00 to 11-30-02, \$78,454.85 Tax, \$15,752.53 Negligence Penalty, \$15,752.53 Double 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 the error ratio computed by the Department for recorded but unreported taxable sales is representative of the errors by Mr. Thomas Earl Symonds during the audit period of his sole proprietorship.

Whether the Department made a clerical error in computing the amount of Mr. Symonds' unrecorded vehicle sales.

Whether the Department has properly computed the error ratio for disallowed sales for resale.

Whether a greater allowance for bad debts is warranted.

Whether petitioners were negligent.

Whether relief of the amnesty penalties 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 redetermined as recommended by the Appeals Division.

**FINAL ACTION ON SALES AND USE TAX APPEAL HEARING HELD  
OCTOBER 28, 2011**

Hye Ock Im, 435812 (AA)

Pyung Soon Im, 446413 (AA)

Final Action: Mr. Horton moved 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. Ms. Steel made a substitute motion to adjust the tax to \$3,000.00, and that the petition otherwise be granted. The motion was seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes.

Ms. Steel requested staff to provide alteration shops with the outreach that was provided to dry cleaners.

Asmaa I. Shalaby, 489020 (AS)

Final Action: 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 as recommended by the Appeals Division. Ms. Steel requested staff to inform the petitioner of the Offer in Compromise program.

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

Friday, October 28, 2011

**SALES AND USE TAX APPEALS HEARING**

Ifeanyi Obiekea, 462256 (AS)

4-1-05 to 4-30-08, \$6,183.71 Tax, \$0.00 Penalty

For Petitioner: No Appearance

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

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

Issue: Whether adjustments are warranted to the computed amount of unreported sales.

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 ordered that the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
OCTOBER 28, 2011**

Housewares International, Inc., 464830 (AA)

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 ordered that the petition be redetermined as recommended by the Appeals Division.

Shantilli, LLC, 434838 (UT)

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 ordered that the petition be redetermined as recommended by the Appeals Division.

**SALES AND USE TAX APPEALS HEARING**

Michael Joseph Pompura, 473931 (EH)

7-1-07 to 12-31-07, \$85,897.84 Tax, \$14,117.90 Late Payment Penalty, \$300.00 Late Payment of a Pre-Payment Penalty

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Erin Dendorfer, Tax Counsel

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

Issues: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of M&amp;M Ultimate Auto Center, Inc. (M&amp;M) pursuant to Revenue and Taxation Code section 6829.

Whether the penalties originally assessed against M&amp;M should be relieved.

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 ordered that the petition be redetermined as recommended by the Appeals Division.

Friday, October 28, 2011

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
OCTOBER 28, 2011**

Juan B. Garibo, 513023 (AS)

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 ordered that the petition be redetermined as recommended by the Appeals Division.

Karen Lee Miller and Lawrence Joseph Miller, 461286 (AA)

Lawrence Joseph Miller and Cliff William Miller, 461281 (AA)

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 ordered that the petition be redetermined as recommended by the Appeals Division.

Armenak Lakisyan, 486896 (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 the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARING HELD OCTOBER 26, 2011**

Pluria W. Marshall, Jr., 533146 (Continued)

Final Action: 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 sustained the action of the Franchise Tax Board.

The Board adjourned at 2:44 p.m. in memory of Connie Ockhee Cheong, mother of Member Steel.

*The foregoing minutes are adopted by the Board on December 15, 2011.*

Note: The following matters were removed from the calendar prior to the meeting: *Frangi's Restaurant, Inc., 433581 (AS)*; *Vladimir Rodzai, 461627 (AS)*; and, *Eric Anthony Guidice, 380212*.