

Tuesday, November 16, 2010

The Board met at its offices at 450 N Street, Sacramento, at 11:46 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CHIEF COUNSEL MATTERS

RULEMAKING

Proposed Amendments to Regulation 1584, *Membership Fees*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding section 100 changes to Regulation 1584, *Membership Fees*, that would adjust the threshold for the nominal amount of membership fees to \$55 effective January 1, 2011, to reflect changes in the California Consumer Price Index ([Exhibit 11.1](#)).

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to Regulation 1584, *Membership Fees*, as recommended by staff.

Mr. Horton directed staff to report back to him as to whether the pending changes to the definition of “nominal amount” in Regulation 1584, *Membership Fees*, will shift the burden of taxation, or increase or decrease the sales and use tax base.

Exhibits to these minutes are incorporated by reference.

Proposed Amendments to Regulation 1533.1, *Farm Equipment and Machinery*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding section 100 changes to Regulation 1533.1, *Farm Equipment and Machinery*, that would correct a cross-referencing error currently found in subdivision (b)(5) ([Exhibit 11.2](#)).

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to Sales and Use Tax Regulation 1533.1, *Farm Equipment and Machinery*, as recommended by staff.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Property and Special Taxes Deputy Director's Report

David Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding the determination of the effect of Proposition 10 on cigarette and tobacco products consumption ([Exhibit 11.3](#)).

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Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approve the backfill determination of \$20.2 million for fiscal year 2009-10 for the effects of Proposition 10 on cigarette and tobacco products consumption as recommended by staff.

Administration Deputy Director's Report

Liz Houser, Deputy Director, Administration Department, provided an update on the Headquarters Remediation Project; and, an update on the Headquarters annex locations.

Liz Houser, Deputy Director, Administration Department, provided an update on the Governor's 2010/11 Budget and pending Budget Change Proposals (BCPs) for the 2011/12 fiscal year.

The Board directed staff to separately track *Enhancing Tax Compliance Budget Change Proposal* revenues from other collections for the purpose of evaluating BOE's performance going forward.

Liz Houser, Deputy Director, Administration Department, provided information regarding employee compensation items in the 2010/11 Budget, tentative Union Agreements, Governor's Executive Order S-12-10, State Employee Furlough, and layoffs.

The Board recessed at 12:16 p.m. and reconvened at 2:03 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Mr. Chiang present.

ANNUAL BOARD MEETING WITH COUNTY ASSESSORS

Ms. Yee opened the annual meeting of the Board and county assessors required under section 15607 of the Government Code to discuss administrative issues related to assessment and taxation laws and to promote uniformity in tax procedural matters throughout the State. Ms. Yee welcomed the county assessors to the meeting on behalf of the Board. Ms. Yee welcomed Senator George Runner, BOE's Second District Member Elect, who was in the audience.

Opening Remarks by California Assessors' Association

Honorable Ron Thomsen, President, California Assessors' Association (CAA), made opening remarks on behalf of the CAA. Mr. Thomsen thanked the Members for their cooperation and interest in property taxes and discussed some of the highlights of 2010, which included the publishing of 13 County Assessment Practices Surveys, Assessors' Handbook Section 401, *Change in Ownership*, and 58 Letters to County Assessors; training and additional funding to CAA's education committee; continued collaborative work on the Legal Entity Ownership Program; changes to the *Preliminary Change in Ownership Report*; *Change in Ownership Statement*; guidelines for sustaining additional obsolescence for personal property and fixtures; statewide standardized reporting codes; and, responses to county assessors' requests for legal opinions on a variety of property assessment issues. Mr. Thomsen commended county

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assessors throughout California for meeting the challenges of major increases in workload relative to market value declines while experiencing budgeting and staffing level decreases. Mr. Thomsen requested the Board's support of increased funding for county assessors throughout California to handle these increases.

Honorable Doug Wacker, President Elect, CAA, made additional opening remarks. Expressed his sincere appreciation to Ms. Yee for her willingness to communicate with the county assessors that she represents and encouraged all the county assessors and their respective Board Members to do the same in the coming year. Mr. Wacker thanked David Gau, Deputy Director, Property and Special Taxes Department, Dean Kinnee, Chief, County-Assessed Properties Division, Property and Special Taxes Department, and their dedicated staff for the support they have given to the county assessors and stated that he looks forward to working with them in the coming year as President of the CAA.

Greetings and Introductory Remarks by each Board Member

Mr. Chiang welcomed all the county assessors to the annual meeting with the Board. Mr. Chiang encouraged the county assessors to contact his office in the coming year with any issues he can help with as he looks forward to a very important and thoughtful partnership.

Ms. Alby expressed her appreciation for the wonderful job and great things the county assessors have been doing for the State of California. Ms. Alby introduced Thomas Hudson and Susan Blake who have served as Property Tax Counsel for her office. Ms. Alby welcomed Senator George Runner, BOE's Second District Member Elect, and Senator Runner's incoming Chief Deputy Sean Wallentine, who were both in the audience.

Ms. Steel congratulated two new county assessors and the returning county assessors on the recent election and expressed her pleasure in having worked with all of them as Chair of the Property Tax Committee. Ms. Steel stated that she hopes that the updated guidelines and adopted handbooks will be helpful to the county assessors. Ms. Steel encouraged the county assessors to bring any recommendations or questions to her office and stated that she looks forward to working with them in the coming year. Ms. Steel congratulated Senator Runner on his election to Member of the Board of Equalization, Second District.

Ms. Yee acknowledged the four retiring county assessors in her district with many complementary remarks: Linda Hill, Humboldt County; Joan C. Thayer, Marin County; Warren Slocum, San Mateo County; and, Deanna Bradford, Trinity County. Ms. Yee stated that staff at the Board stands ready to continue to work very closely with the county assessors. Ms. Yee thanked David Gau, Deputy Director, Property and Special Taxes Department, and his staff, as well the Legal Department, for continuing to provide guidance and for keeping the open-door policy.

Mr. Horton noted consensus among the Members of the Board to be supportive of the county assessors' efforts to have additional staffing. Mr. Horton recognized the significance of the responsibility of each county assessor individually and collectively. Mr. Horton stated that he had the opportunity to work with many of the county assessors in the legislative process and

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that he is looking forward to working with them in this capacity. He stated that he looks forward to meeting the challenges before them and to the extent he can personally be helpful, count on him to be there. Mr. Horton introduced his districts only county assessor, John R. Noguez, Los Angeles County.

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

Updates from the Board

David J. Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding the afternoon's agenda and stated that the county assessors will be invited to join Members during the breakout sessions after today's presentations. Mr. Gau reported the recent personnel changes and facility changes. Mr. Gau announced the retirement of Mitchell Cari, Principal Property Appraiser, Timber Tax Section, County-Assessed Properties Division, Property and Special Taxes Department, who began his career with the BOE in 1977, and extended his best wishes to Mr. Cari on his retirements.

Margaret Shedd, Legislative Counsel, Legislative & Research Division, introduced a report on *Recently Enacted Property Tax Legislation* ([Exhibit 11.4](#)).

Ms. Shedd discussed the following issues related to disaster relief: base year value transfers; homeowners' exemption retention; and, state reimbursement revenue loss.

Rose Marie Kinnee, Property Tax Legislative Analyst, Legislative & Research Division, discussed the following issues: State assessed power plants, revenue allocation; commercial air carriers and certificated aircraft assessments; possessory interests, Long Beach Court House; Disabled Veterans' Exemption, delayed disability ratings; Williamson Act contracts; possessory interests, military housing; CAA Omnibus Bill; and, BOE Omnibus Bill.

Mr. Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, discussed some highlights regarding significant property tax legal opinions, issues, and litigation ([Exhibit 11.5](#)).

Dean Kinnee, Chief, County-Assessed Properties Division, Property and Special Taxes Department, discussed property tax interested parties projects. Current projects include Assessors' Handbook Section 504, *Assessment of Personal Property and Fixtures*, Possessory Interests Usage Report, Guidelines on Training & Certification. Possible future projects include Guidelines on the Effect of Sales or Use Taxes in the Valuation of Aircraft; and, Assessors' Handbook Section 410, *Assessment of Newly Constructed Property*. Mr. Kinnee discussed Internet appraisal training topics including eLearning, WebEx, self-study sessions and self-paced online learning sessions. Mr. Kinnee also discussed the forms revision process, forms compliant with the Americans with Disabilities Act, and multiple Change in Ownership Statements.

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Ms. Yee invited county assessors to discuss any pending needs for translated forms. Phil Ting, San Francisco County Assessor, reported that he would like to offer all documentation in various languages and that he looks forward to working with staff with respect to translating forms. Ms. Yee directed staff to follow up on getting the process formalized.

David J. Gau, Deputy Director, Property and Special Taxes Department, announced that upon adjournment, the breakout sessions with Members and their respective county assessors will commence at various locations.

Ms. Mandel, on behalf of Mr. Chiang, invited the county assessors to contact his office with any information or issues they would like to discuss.

Ms. Yee solicited any issues or comments from the county assessors but there were none.

The Board adjourned at 3:14 p.m.

The foregoing minutes are adopted by the Board on February 23, 2011.

Note: The following matter was removed from the calendar prior to the meeting: *Cbeyond Communications, LLC (8049), 538673.*

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The Board met at its offices at 450 N Street, Sacramento, at 9:31 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Charles P. Franklin, 417829

2000, \$96,210.00 Assessment, \$7,579.38 Post-Amnesty Penalty

For Appellant:

Charles P. Franklin, Taxpayer

Gregory George, Witness

Eric M. Anderson, Representative

Amanda Horst, Representative

Daniel Biedler, Tax Counsel

Ann Hodges, Tax Counsel

For Franchise Tax Board:

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

Issues: Whether appellant has shown that the \$1 million note he owed to Prefix Venture Partners, LLC (Prefix) is includible in his basis in Prefix for the 2000 tax year.

Whether Endeavor Information Systems, Inc. (Endeavor) satisfied the active business requirement test for qualified small business stock under Revenue and Taxation Code (R&TC) section 18152.5.

Whether appellant met the five-year holding period for qualified small business stock (the Endeavor stock) required under R&TC section 18152.5, subdivision (a), commencing on March 16-17, 1995, or on June 23, 1995.

Whether the Board may consider if the active business requirement test for qualified small business stock under R&TC section 18152.5, subdivision (d), is unconstitutional under the U.S. Commerce Clause.

Whether the Board has jurisdiction to review the post-amnesty penalty in this appeal.

Appellant's Exhibit: Declaration of Gregory George ([Exhibit 11.6](#))

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board. The Board specifically requested documentation related to the recourse/nonrecourse and holding period arguments.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 10:44 a.m. and reconvened at 10:55 a.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

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LEGAL APPEALS MATTERS, ADJUDICATORY

Skiers Quest, Inc., 361773 (JH)

10-1-05 to 12-5-05, \$11,749.00 Tax, \$1,174.90 Failure to File

Considered by the Board: Hearing Notice Sent – No Response

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

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

Macromedia, Inc., 461946 (BH)

7-1-03 to 12-31-05, \$225,461.14 Tax

Considered by the Board: March 24, 2010

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

Action: Mr. Horton moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Mandel. Mr. Horton withdrew the motion. The Board deferred the matter for further review.

Woodland Hills Car Wash, Inc., 299486 (AC)

10-1-01 to 9-30-04, \$1,722.31 Tax

Bhupinder Singh Mac, 299487 (AC)

10-1-01 to 9-30-04, \$32,219.09 Tax

Considered by the Board: April 29, 2009

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

Speaker: Moti Balyan, Witness, speaking on behalf of *Bhupinder Singh Mac, 299487*

Action: Upon motion of Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board deferred consideration of this matter to later in the day.

Jason R. Pridmore, 421508 (UT)

March 2, 2005, \$23,991.00 Tax

Considered by the Board: June 18, 2010

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

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

Maherali, Inc., 343758 (KH)

4-1-02 to 3-31-05, \$9,786.62 Tax, \$00.00 Negligence and Amnesty Double Negligence Penalty

Considered by the Board: June 17, 2010

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

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

Mas N Zul, Inc., 434597 (AR)

4-1-04 to 3-31-07, \$26,044.74 Tax

Considered by the Board: June 18, 2010

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

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

D&H Service Station Corporation, 435924 (EA)

4-1-04 to 3-31-07, \$40,962.39 Tax, \$17,694.63 Negligence Penalty

Considered by the Board: June 17, 2010

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

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

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

Kil Hwan Chang and Myong Jo Chang, 474045 (ET)

September 24, 2008, \$145.00 Approximate Value

Considered by the Board: September 14, 2010

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Thomas A. Leonardini and Karen M. Leonardini, 449478

2001, \$32,541 Claim for Refund

2002, \$51,940 Claim for Refund

2003, \$30,705 Claim for Refund

2004, \$27,759 Claim for Refund

Considered by the Board: April 13, 2010

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

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

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Daniel C. Lorti, 521843

2004, \$24,244.00 Claim for Refund

2005, \$18,403.00 Claim for Refund

2006, \$10,256.00 Claim for Refund

2007, \$10,679.00 Claim for Refund

Considered by the Board: November 17, 2010

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

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

Shiro Shiozawa, 468726

2006, \$8,417.00 Tax, \$2,104.25 Late Filing Penalty, \$2,104.25 Notice and Demand Penalty

Considered by the Board: January 26, 2010

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision dismissing the appeal for lack of jurisdiction and imposed a \$1,000.00 frivolous appeal penalty.

Leonard Shlain (Deceased) and Ina Gyemant, 485102

2007, \$960.94 Claim for Refund

Considered by the Board: September 14, 2010

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Bruce Culver and Donna Turner Culver, 480448

2004, \$ 875,336.00 Claim for Refund

Considered by the Board: February 23, 2010

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

Speaker: Glenn A. Smith, Attorney, speaking on behalf of *Bruce Culver and Donna Turner Culver, 480448*

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board deferred consideration of this matter to later in the day.

Donald A. Wattson and Christine A. Wattson, 446005

2001, \$273,149.00 Tax, \$54,629.80 Accuracy-Related Penalty

Considered by the Board: August 24, 2010

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

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

NASSCO Holdings, Inc., 317434

1994, \$160,415.00 Assessment

1995, \$53,159.00 Assessment

1999, \$298,538.00 Assessment

2000, \$927,274.00 Assessment

2001, \$567,908.00 Assessment

Considered by the Board: Formal Opinion

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

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

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

Carrolandia #1 Auto Sales, Inc., 547284 (AS)

7-1-01 to 6-30-03, \$142,512.65

Considered by the Board: August 6, 2008

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

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

California Coast Credit Union, 465442 (FH)

1-1-07 to 9-30-09, \$614,983.65

Considered by the Board: August 24, 2010

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

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

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Audit

NTT America, Inc. (7732)

2007 to 2008, \$21,500,000.00 Excessive Assessment, (\$4,837,500.00) In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit unitary excessive assessment, plus excessive in-lieu interest, as recommended by staff.

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Unitary Land Escaped Assessments**AT&T Mobility, LLC (2606)**

2007 to 2009, \$421,516.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment, plus 10 percent penalty and interest, as recommended by staff.

MetroPCS California, LLC (2733)

2009, \$159,054.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment, plus 10 percent penalty and interest, as recommended by staff.

Cricket Communications, Inc. (2762)

2009, \$58,742.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment, plus 10 percent penalty and interest, as recommended by staff.

Unitary Escaped Assessments**Audeamus, LLC (7824)**

2008, \$826,000.00 Escaped Assessment, \$82,600.00 Penalty, \$148,680.00 In-lieu Interest

2009, \$2,320,000.00 Escaped Assessment, \$232,000.00 Penalty, \$208,800.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary escaped assessment plus penalties and in-lieu interest, as recommended by staff.

Nationwide Telecom, Inc. (8026)

2010, \$55,100.00 Escaped Assessment, \$5,510.00 Penalty, \$60,610.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary escaped assessment plus penalties and in-lieu interest, as recommended by staff.

Ekit.Com, Inc., (8102)

2009, \$80,500.00 Escaped Assessment, \$8,050.00 Penalty, \$7,245.00 In-lieu Interest

2010, \$91,500.00 Escaped Assessment, \$9,150.00 Penalty

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary escaped assessment plus penalties and in-lieu interest, as recommended by staff.

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Bandwidth.com CLEC, LLC (8122)

2010, \$1,130,000.00 Escaped Assessment, \$113,000.00 Penalty

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary escaped assessment plus penalty, as recommended by staff.

Board Roll Changes

2007, 2008, 2009, and 2010 State-Assessed Property Rolls

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and voting yes, Ms. Steel not participating in accordance with Government Code section 87105, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2007, 2008, 2009 and 2010 Board Rolls of State-Assessed Property as recommended by staff ([Exhibit 11.7](#)).

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Douglas Newton and Discount Office Furniture; Anna Fuentes; Jeries Izhaq and Nemeh Zarou; Terrance C. La Torre and Eproson Enterprises; John A. Paquette; Lou Gaydos*; and, *Michael Varnes Surfside Motors/PME Motors, LLC*; as recommended by staff.

LOCAL TAX REALLOCATION

Speaker: Robin Sturdivant, Local Government Advocate, The HdL Companies,
Representing 177 Affected Jurisdictions

Cities of Alameda, Anaheim, Brea, Camarillo, Campbell, Concord, Corona, Culver City, Cypress, Danville, El Monte, El Segundo, Escondido, Foster City, Fresno, Fullerton, Hayward, Irvine, La Palma, Larkspur, Long Beach, Los Angeles, Los Gatos, Manhattan Beach, Martinez, Milpitas, Monterey, Napa, Newport Beach, Ontario, Orange, Palo Alto, Pomona, Redwood City, Riverside, Roseville, Sacramento, San Bernardino, San Bruno, San Clemente, San Diego, San Jose, San Leandro, San Mateo, San Ramon, Santa Ana, Santa Clara, Santa Fe Springs, Santa Monica, South San Francisco, Thousand Oaks, Torrance, Tustin, Union City, Vallejo, Ventura, Walnut Creek, and County of Sacramento

490756, 490756, 491066, 491123, 491130, 491166, 491167, 491169, 491171, 491172, 491174, 491353, 491356, 491495, 491503, 491820, 491826, 491847, 491863, 491867, 491884, 491888, 491901, 491902, 491905, 491952, 491953, 491982, 491986, 491997, 492012, 492013, 492032, 492035, 492038, 492062, 492064, 492079, 492080, 492081, 492086, 492087, 492326, 492328, 492388, 492448, 492901, 492902, 492903, 492906, 492910, 492920, 492924, 492928, 492941, 492943, 493062, 493064, 493065, 493066, 493070, 493073, 493228, 493229, 493233, 493234, 493239, 493242, 493252, 493280,

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493281, 493284, 493290, 493291, 493294, 493317, 493318, 493320, 493331, 493333, 493336, 493340, 493741, 493750, 493754, 493755, 493909, 493910, 493914, 493915, 493919, 494296, 494302, 494327, 494329, 494353, 494354, 494356, 494357, 494368, 494375, 494376, 494405, 494409, 494424, 494428, 494447, 494449, 494455, 494457, 494462, 494463, 494469, 494479, 494480, 494481, 494628, 494630, 495086, 495093, 495100, 495121, 495123, 495128, 495129, 495140, 495143, 495145, 495146, 495147, 495148, 495186, 495187, 495193, 495195, 495282, 495283, 495286, 495287, 495297, 495301, 495304, 495307, 495308, 495310, 495312, 495313, 495318, 495319, 495321, 495728, 495729, 495730, 495731, 495732, 495747, 495748, 495750, 495751, 495752, 495760, 495761, 495763, 495764, 495767, 495768, 495771, 495772, 495773, 495776, 495782, 495783, 495788, 495790, 496025, 496031, 496062, 496064, 496067, 496071, 496085, 496094, 496106, 496107, 496108, 496111, 496307, 496309, 496311, 496313, 496314, 496953, 496954, 496977, 496978, 497008, 497012, 497016, 497017, 497018, 497030, 497035, 497040, 497045, 497046, 497047, 497084, 497085, 497086, 497408, 497409, 497433, 497438, 497448, 497525, 497529, 497530, 497534, 497536, 497538, 497548, 497576, 497583, 497596, 497600, 497609, 497610, 497612, 497613, 497882, 497887, 498091, 504695, 504698, 504704, 505094, 505108, 505110, 505152, 505160, 505162, 505164, 505166, 505170, 505172, 505200, 505202, 505253, 505254, 505259, 505404, 505874, 505892, 506092, 506107, 506113, 506114, 506116, 506117, 506118, 506372, 506373, 506376, 506377, 506389, 506394, 506403, 506409, 506424, 506456, 506457, 506475, 506476, 506477, 506478, 506575, 506653, 506654, 506658, 506659, 506661, 507054, 507055, 507078, 507079, 507080, 507283, 507740, 507741, 507742, 508851, 508855, 508860, 508865, 508869, 508917, 508919, 508921, 508924, 508926, 508927, 508928, 509208, 509468, 509469, 509470, 509540, 509560, 509576, 509579, 509580, 509582, 509692, 509693, 509694, 509866, 509869, 509870, 509871, 509872, 510074, 510079, 510080, 510231, 510234, 510256, 510257, 510262, 510272, 510274, 510275, 510276, 510277, 510298, 510408, 510409, 510483, 510484, 510485, 510486, 510487, 510617, 510618, 510623, 510624, 510625, 510626, 510627, 510628, 510629, 510683, 510685, 510766, 510767, 510768

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

Cities of Alameda, Anaheim, Belmont, Berkeley, Beverly Hills, Brea, Calabasas, Campbell, Carlsbad, Concord, Culver City, Cupertino, Cypress, El Segundo, Emeryville, Escondido, Foster City, Fresno, Fullerton, Hayward, Irvine, La Palma, Los Angeles, Manhattan Beach, Manteca, Milpitas, Modesto, Newport Beach, Oceanside, Ontario, Orange, Petaluma Pomona, Redwood City, Riverside, Roseville, Sacramento, San Bernardino, San Bruno, San Diego, San Jose, San Leandro, San Mateo, San Ramon, Santa Ana, Santa Barbara, Santa Clara, Santa Fe Springs, Santa Monica, Saratoga, Torrance, Tustin, Ventura, Walnut Creek, West Sacramento, And County of Sacramento

489424, 491102, 491105, 491112, 491119, 491827, 491830, 491870, 491955, 491961, 492010, 492019, 492020, 492022, 492023, 492042, 492045, 492065, 492071, 492076, 492077, 492078, 492082, 492083, 492085, 492088, 492116, 492324, 492382, 492383, 492385, 492386, 492937, 492939, 493231, 493232, 493287, 493288, 493289, 493296,

Note: These minutes are not final until Board approved.

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493298, 493588, 493849, 493850, 493869, 493870, 493871, 493872, 493935, 494319, 494355, 494385, 494387, 494417, 494420, 494421, 494422, 494425, 494443, 494444, 494446, 494452, 494465, 494466, 494484, 494487, 495077, 495103, 495112, 495125, 495127, 495135, 495136, 495183, 495189, 495191, 495290, 495292, 495293, 495744, 495745, 495754, 495889, 495895, 495898, 495919, 495930, 495935, 495941, 495954, 495979, 495982, 495987, 496007, 496010, 496014, 496015, 496016, 496021, 496040, 496053, 496055, 496058, 496061, 496087, 496088, 496095, 496096, 496097, 496098, 496099, 496305, 496318, 496319, 496391, 496392, 496394, 496398, 496962, 496963, 496975, 497028, 497033, 497121, 497126, 497133, 497134, 497138, 497139, 497140, 497141, 497237, 497532, 504628, 504633, 504635, 504714, 504762, 504766, 504776, 504777, 504784, 504788, 504791, 504802, 504803, 504804, 504807, 505051, 505052, 505056, 505069, 505096, 505098, 505099, 505100, 505128, 505196, 505261, 505407, 505857, 505858, 505859, 505860, 505867, 505868, 505882, 505885, 505904, 505905, 506093, 506099, 506101, 506310, 506312, 506313, 506314, 506315, 506360, 506382, 506393, 506397, 506401, 506472, 506595, 506598, 506601, 506602, 506627, 506633, 506641, 506645, 506985, 506988, 506989, 506990, 506993, 506994, 506995, 506996, 506998, 507060, 507061, 507066, 507072, 507082, 507083, 507084, 507085, 507086, 507087, 507088, 508887, 508904, 508905, 508933, 508934, 508935, 509327, 509328, 509539, 509589, 509590, 509592, 509593, 509594, 509678, 509691, 509832, 509834, 509845, 509846, 509864, 509876, 509877, 510057, 510078, 510081, 510082, 510083, 510084, 510086, 510087, 510088, 510089, 510109, 510111, 510113, 510130, 510131, 510134, 510135, 510136, 510167, 510300, 510304, 510306, 510308, 510310, 510607, 510613, 510614, 510616, 510619, 510620, 510630, 510740, 510747, 510749, 510750, 510751, 510754, 510775, 510776, 510777

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

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Bargain Cigarettes 1, 536568 (ET)*; and, *Kassem A. Mohamed and Munir Gazem Obaid, 535640 (ET)*.

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

Crenshaw Motors, Inc., 356203 (AS)

1-1-02 to 12-31-04, \$2,828.87 Tax, \$00.00 Finality and Double Interest Finality Penalties

Raymond Simmons, 415283 (AS)

1-1-02 to 12-31-06, \$2,828.87 Tax, \$00.00 Finality and Double Interest Finality Penalties

Action: Redetermine as recommended by the Appeals Division.

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Wednesday, November 17, 2010

Selim & Dabbas Import & Export, Inc., 293078 (GH)

10-1-96 to 9-30-99, \$2,760.48 Tax

Action: Redetermine as recommended by the Appeals Division.

Hemraj C. Singh, 468198 (KH)

4-1-05 to 2-28-06, \$22,159.61 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Chris M. Lamoreaux, 328782 (KH)

Jason Wayne Lamoreaux, 328794 (KH)

4-1-03 to 7-31-04, \$100,858.12 Tax, \$19,778.78 Penalties

Action: Redetermine as recommended by the Appeals Division.

Eel River Fuels, Inc., 511249 (JH)

1-1-05 to 12-31-07, \$00.00 Tax, \$68,074.38 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Club Havana Premium Cigars, LLC, 535644 (ET)

April 8, 2010, \$12,198.11 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Bargain Cigarettes 1, 536568 (ET)

May 4, 2010, \$485.00 Approximate Value

Action: The Board took no action.

Kassem A. Mohamed and Munir Gazem Obaid, 535640 (ET)

May 11, 2010, \$435.00 Approximate Value

Action: The Board took no action.

William Lloyd Thomas and William Lloyd Thomas, Jr., 536515 (ET)

April 7, 2010, \$466.83 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Dhruba Shrestha and Bhagabati Shrestha, 534761 (ET)

February 17, 2010, \$91.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Jing Shen, 424037 (EA)

8-29-96 to 12-31-00, \$5,360.90 Tax, \$536.10 Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Wednesday, November 17, 2010

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Todd Lutwak, 482917.*

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

B&B Plastics Recyclers, Inc., 519228

2005, \$464,653.00 Assessment

Action: Sustain the action with concession by the Franchise Tax Board.

Elizabeth R. Cawthon, 513543

2006, \$195.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ronald Cooper, 490242

2004, \$2,705.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Richard Cunningham and Claudia Cunningham, 443294

2004, \$979.00 Assessment

Action: Sustain the action with concession by the Franchise Tax Board.

Jay B. Johnson, 495667

2005, \$1,809.00 Tax, \$361.80 Accuracy-Related Penalty

Action: Modify the action of the Franchise Tax Board.

Saeed Kazmi and Farheen Kazmi, 483699

2001, \$46,090.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Lionel Kolker, 483687

2006, \$2,867.00 Tax, \$716.75 Late Filing Penalty, \$716.75 Notice and Demand Penalty

Action: Sustain the action with concession by the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Thomas Lenny and Joanne Lenny, 506426

2001, \$51,759.00 Tax, \$3,009.74 Proposed Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Dolores Onate, 505821

2005, \$815.00 Assessment

Action: Sustain the action with concession by the Franchise Tax Board.

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Rio Doce, Limited, 402204

1999, \$333,099.00 Assessment

2000, \$236,261.13 Assessment

2001, \$41,037.74 Assessment

Action: Sustain the action of the Franchise Tax Board.

Norman Schaffer, 497533

2005, \$207.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Mark Taylor, 513353

2007, \$1,454.00 Tax, \$363.50 Late Filing Penalty, \$363.50 Notice and Demand Penalty

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

Gregory Van Der Meer, 491602

2007, \$1,472.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Alison Buerger, 486887

2006, \$1,337.00 Tax, \$334.25 Late Filing Penalty, \$334.25 Notice and Demand Penalty,

\$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Todd Lutwak, 482917

2005, \$43,295.50 Claim for Refund

Action: The Board took no action.

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

Ms. Mandel stated that Mr. Chiang would not participate in the matters of *Ralphs Grocery Company, 548069; Food 4 Less of California, Inc., 548071; and, Alpha Beta Company, 548072.*

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties/Interest and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *Ralphs Grocery Company, 548069; Food 4 Less of California, Inc., 548071; and, Alpha Beta Company, 548072;* the Board made the following orders:

Arrow Enterprise Computing Solutions, Inc., 355537 (OH)

1-1-01 to 12-31-03, \$105,189.91

Action: Approve the redetermination as recommended by staff.

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Daniel Bradley Woods, 514077 (GH)

7-1-05 to 3-31-09, \$149,037.30

Action: Approve the redetermination as recommended by staff.

Logicalis, Inc., 526567 (OH)

10-1-06 to 12-31-06, \$700,680.75

Action: Approve the redetermination as recommended by staff.

Mohawk Carpet Distribution, LP, 489131 (OH)

7-1-03 to 6-30-06, \$549,733.89

Action: Approve the redetermination as recommended by staff.

Ralphs Grocery Company, 548069 (AA)

5-23-10 to 6-19-10, \$519,600.00

Action: Approve the relief of penalty/interest as recommended by staff. Ms. Mandel not participating.

Food 4 Less of California, Inc., 548071 (AA)

5-23-10 to 6-19-10, \$142,860.00

Action: Approve the relief of penalty/interest as recommended by staff. Ms. Mandel not participating.

Henry Schein, Inc., 547253 (OH)

1-1-10 to 3-31-10, \$202,510.30

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

Alpha Beta Company, 548072 (AA)

5-23-10 to 6-19-10, \$128,940.00

Action: Approve the relief of penalty/interest as recommended by staff. Ms. Mandel not participating.

Harcourt Assessment, Inc., 495403 (OH)

4-1-03 to 1-31-08, \$214,875.70

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

Hollywood Entertainment Corporation, 488216 (OH)

1-1-06 to 9-30-07, \$769,083.49

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

Rapid-Turn, Inc., 316067 (AC)

9-1-96 to 6-30-00, \$111,515.54

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

Home Shopping, LP, 435158 (OH)

1-1-06 to 12-31-08, \$63,450.68

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

Note: These minutes are not final until Board approved.

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FMW Graphics, Inc., 510854 (AR)

8-22-07 to 6-30-09, \$236,965.03

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

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

The Board deferred consideration of the following matter: *Stars Petroleum, Inc.*, 547878 (FH).

Ms. Mandel stated that Mr. Chiang would not participate in *Charter Communications Entertainment II, LP*, 539061; and, *Hollywood Park Racing Association, LLC*, 536715.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Alby, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Mr. Horton not participating in *E & J Gallo Winery*, 546751; and, *Hollywood Park Racing Association, LLC*, 536715; Ms. Steel not participating in *Tyco Thermal Controls, LLC*, 479384; Ms. Mandel not participating in *Charter Communications Entertainment II, LP*, 539061; and, *Hollywood Park Racing Association, LLC*, 536715; Ms. Mandel not participating in accordance with Government Code section 87105 in *General Electric International, Inc.*, 534856; and, *Tyco Thermal Controls, LLC*, 479384; the Board made the following orders:

D'Anna Yacht Center, Inc., 522295 (CH)

4-1-05 to 12-31-06, \$954,241.89

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

Jose Fikes, 373175 (EH)

2-25-04 to 11-12-04, \$104,326.51

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

Derek Michael Fretheim, 535358 (EA)

1-1-04 to 1-31-07, \$111,046.35

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

Traci Lyn Fretheim, 535359 (EA)

1-1-04 to 1-31-07, \$111,046.35

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

Charter Communications Entertainment II, LP, 539061 (OH)

1-1-06 3-26-09, \$269,039.42

Action: Approve the credit and cancellation as recommended by staff. Ms. Mandel not participating.

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Stars Petroleum, Inc., 547878 (FH)

1-1-05 to 9-30-08, \$1,900,755.14

Action: The Board took no action.

Chevron U.S.A., Inc., 522981 (BH)

1-1-03 to 12-31-08, \$226,247.46

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 537374 (BH)

10-1-06 to 12-31-08, \$126,024.62

Action: Approve the refund as recommended by staff.

Sun Microsystems Federal, Inc., 548145 (BH)

10-1-98 to 12-31-02, \$909,333.57

Action: Approve the refund as recommended by staff.

E & J Gallo Winery, 546751 (KH)

4-1-06 to 3-31-09, \$111,591.74

Action: Approve the refund as recommended by staff. Mr. Horton not participating.

Planechee 1, LLC, 506603 (UT)

9-21-06 to 9-21-06, \$381,941.74

Action: Approve the refund as recommended by staff.

Wilbur-Ellis Air, LLC, 532988 (UT)

3-16-07, \$141,871.00

Action: Approve the refund as recommended by staff.

General Electric International, Inc., 534856 (OH)

4-1-05 to 6-30-07, \$545,525.08

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

Origin, LLC, 392155 (AC)

1-1-03 to 3-31-07, \$738,487.40

Action: Approve the refund as recommended by staff.

Country Suites-Ontario Mills, LP, 537078 (EH)

4-1-06 to 12-31-09, \$106,772.08

Action: Approve the refund as recommended by staff.

Country Suites-Corona West, 537079 (EH)

4-1-06 to 12-31-09, \$107,276.97

Action: Approve the refund as recommended by staff.

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Seimens Energy, Inc., 549263 (OH)

4-1-06 to 12-31-08, \$376,322.61

Action: Approve the refund as recommended by staff.

Solectron Corp., 548146 (GH)

1-1-02 to 12-31-04, \$1,849,277.87

Action: Approve the refund as recommended by staff.

Grizzard Advertising Incorporated, 538409 (OH)

7-1-05 to 12-31-09, \$883,202.57

Action: Approve the refund as recommended by staff.

Banc of America Leasing & Capital, 513730 (OH)

1-1-08 to 12-31-09, \$210,542.18

Action: Approve the refund as recommended by staff.

Tyco Thermal Controls, LLC, 479384 (BH)

1-1-06 to 3-31-09, \$212,817.67

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

Harcourt Assessment, Inc., 495403 (OH)

4-1-03 to 1-31-08, \$429,488.86

Action: Approve the refund as recommended by staff.

Sierra Central Credit Union, 524178 (KH)

10-1-08 to 9-30-09, \$189,323.20

Action: Approve the refund as recommended by staff.

Sacramento Credit Union, 524301 (KH)

4-1-08 to 12-31-09, \$106,785.63

Action: Approve the refund as recommended by staff.

Universal Fuels, Inc., 520563 (OH)

1-1-07 to 12-31-08, \$127,254.34

Action: Approve the refund as recommended by staff.

Verisign, Inc., 478406 (GH)

10-1-05 to 9-30-08, \$1,090,395.74

Action: Approve the refund as recommended by staff.

Rapid-Turn, Inc., 316067 (AC)

9-1-96 to 6-30-00, \$63,885.85

Action: Approve the refund as recommended by staff.

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Arcadia Financial, Ltd, 522925 (OH)

10-1-09 to 3-31-10, \$423,662.00

Action: Approve the refund as recommended by staff.

GC Air, LLC, 536830 (OH)

1-1-07 to 6-30-08, \$147,654.09

Action: Approve the refund as recommended by staff.

Sonic-Calabasas A., Inc., 483993 (AC)

4-1-06 to 12-31-08, \$108,427.98

Action: Approve the refund as recommended by staff.

Home Shopping, LP, 435158 (OH)

1-1-06 to 12-31-08, \$381,893.01

Action: Approve the refund as recommended by staff.

The Trizetto Group, Inc., 539507 (EA)

1-1-09 to 12-31-09, \$369,788.67

Action: Approve the refund as recommended by staff.

Infinera Corporation, 547388 (GH)

4-1-07 to 9-30-09, \$180,782.66

Action: Approve the refund as recommended by staff.

Triton Acceptance Corporation, 497109 (EA)

4-1-07 to 3-31-08, \$104,831.90

Action: Approve the refund as recommended by staff.

DSI Video Systems, LLC, 476666 (OH)

10-1-05 to 9-30-08, \$520,127.54

Action: Approve the refund as recommended by staff.

Hollywood Park Racing Association, LLC, 536715 (AS)

4-1-06 to 9-30-09, \$181,516.03

Action: Approve the refund as recommended by staff. Mr. Horton and Ms. Mandel not participating.

Kern Schools Federal Credit Union, 518685 (AR)

4-1-08 to 12-31-09, \$539,176.00

Action: Approve the refund as recommended by staff.

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Wednesday, November 17, 2010

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT

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

Sequoia Insurance Company, 522483 (ET)
4-1-09 to 12-31-09, \$110,638.80

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

PROPERTY TAXES MATTERS, CONSENT

With respect to the Property Taxes Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Petitions for Reassessment of Unitary Value

Sierra Pacific Power Company (0146), 538065
2010, \$199,800,000.00 Unitary Value

Action: Reduce the 2010 Board-adopted value from \$199,800,000.00 to \$187,700,000.00 as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Mountain Utilities, LLC (0185), 538245
2010, \$3,760,000.00 Unitary Value

Action: Reduce the 2010 Board-adopted unitary value from \$3,760,000.00 to \$3,410,000.00 as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Orange Grove Energy, L.P. (1155), 537372
2010, \$98,600,000.00 Unitary Value

Action: Reduce the 2010 Board-adopted unitary value from \$98,600,000.00 to \$89,200,000.00 as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Qwest Communications Corporation (2463), 538252
2010, \$169,400,000.00 Unitary Value

Action: Reduce the 2010 Board-adopted unitary value from \$169,400,000.00 to \$150,900,000.00 as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Wednesday, November 17, 2010

Sprint PCS, L.P. (2720), 538242

2010, \$1,303,400,000.00 Unitary Value

Action: Reduce the 2010 Board-adopted unitary value from \$1,303,400,000.00 to \$1,180,000,000.00 as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petitions for Reassessment and Penalty Abatement on Unitary Value

TelMex USA, LLC (7866), 538062

2010, \$17,300,000.00 Unitary Value, \$1,730,000.00 Penalty

Action: Reduce the Board-adopted unitary value from \$17,300,000.00 to \$12,800,000.00 and approve the penalty abatement as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petition for Penalty Abatement on Unitary Escape Assessment

Helio, LLC (2774), 538853

2007, \$140,000.00 Penalty

2008, \$100,000.00 Penalty

Action: Approve the penalty abatements on 2007 and 2008 unitary escape assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board recessed at 11:55 p.m. and reconvened at 1:30 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

John Douglas Bailey, 382279 (CH)

7-1-98 to 6-28-01, \$38,496.78 Tax, 30,451.64 Late Payment Penalty, \$46.30 Finality Penalty
For Petitioner:

Charles R. Billings, Attorney

Katherine Kruss, Witness

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether taxpayer is personally liable as a responsible person for the unpaid liabilities of Sable Technologies, Inc. (Sable) pursuant to Revenue and Taxation Code section 6829.

Whether adjustments are warranted to the tax liability assessed against Sable for the 1Q01.

Whether taxpayer has established reasonable cause sufficient for relieving the late-payment and finality penalties originally assessed against Sable.

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

Note: These minutes are not final until Board approved.

Wednesday, November 17, 2010

Mark Dieter Hanf, 449688 (CH)

4-1-04 to 5-3-05, \$162,484.47 Tax, \$19,249.10 Late Payment Penalty

For Petitioner: Mark Hanf, Taxpayer

For Sales and Use Tax Department: Scott Claremon, 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 Delta Pacific Yachts, Inc. pursuant to Revenue and Taxation Code section 6829.

Whether petitioner has established reasonable cause sufficient for relieving the late-payment penalties originally assessed against Delta.

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

Five Friends, 472975 (JH)

10-1-04 to 9-30-07, \$64,595.29 Tax

For Petitioner: John Roscoe, Representative

Ned Roscoe, Representative

For Sales and Use Tax Department: Chris Schutz, Tax Counsel

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

Issue: Whether the cigarette rebates at issue constitute taxable gross receipts.

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

Rong Gin, Inc., 448665 (GH)

1-1-04 to 12-31-06, \$11,715.55 Tax, \$1,171.61 Negligence Penalty

For Petitioner: Lu Chein Chen, Taxpayer

John C. Liu, Representative

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

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

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

Whether petitioner was negligent.

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

Lavjinder Singh, 415065 (GH)

7-1-05 to 9-30-05, \$21,950.00 Tax, \$3,141.60 Late Payment Penalty

For Petitioner: Lavjinder Singh, Taxpayer

Manpreet Sandhu, 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 personally liable as a responsible person for the unpaid liabilities of S & V, Inc. (S & V), for the period July 1, 2005, through September 30, 2005.

Note: These minutes are not final until Board approved.

Wednesday, November 17, 2010

Whether petitioner has established reasonable cause sufficient to relieve the penalties for late payment of returns originally assessed against S & V for the period July 1, 2005, through September 30, 2005.

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

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD NOVEMBER 17, 2010

John Douglas Bailey, 382279 (CH)

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

The Board deferred consideration of *Mark Dieter Hanf, 449688 (CH)*; *Five Friends, 472975 (JH)*; and, *Rong Gin, Inc., 448665 (GH)*; to the following day to allow Ms. Yee an opportunity to review the webcast before voting.

Lavjinder Singh, 415065 (GH)

Final Action: Upon motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division and directed staff to inform the taxpayer of the Offer in Compromise Program.

LEGAL APPEALS MATTERS, ADJUDICATORY

Woodland Hills Car Wash, Inc., 299486 (AC) (continued)

Bhupinder Singh Mac, 299487 (AC)

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Bruce Culver and Donna Turner Culver, 480448 (continued)

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

The Board adjourned at 3:21 p.m.

The foregoing minutes are adopted by the Board on February 23, 2011.

Note: The following matters were removed from the calendar prior to the meeting: *Rambus, Inc., 512010*; and, *James Tracy and Therese Tracy, 505057*.

Note: These minutes are not final until Board approved.

Tuesday, November 18, 2010

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

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
NOVEMBER 17, 2010**

Mark Dieter Hanf, 449688 (CH)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division and directed staff to inform the taxpayer of the Offer in Compromise Program and other sources of assistance.

Five Friends, 472975 (JH)

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

Rong Gin, Inc., 448665 (GH)

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Frank J. Vigil, 402865

2000, \$245,677.00 Assessment

For Appellant:

Frank Vigil, Taxpayer

For Franchise Tax Board:

Ron Hofsdal, Tax Counsel

Teresa Wignall, Tax Counsel

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

Issues: Whether appellant changed his domicile or residency (or both) from California to Florida during 2000 and, if so, when.

Whether the Board has jurisdiction to review the post-amnesty penalty under Revenue & Taxation Code section 19777.5 in the context of this deficiency appeal.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 11.8](#))

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

Exhibits to these minutes are incorporated by reference.

The Board recessed at 10:52 a.m. and reconvened at 11:16 a.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Note: These minutes are not final until Board approved.

Tuesday, November 18, 2010

SALES AND USE TAX APPEALS HEARING

John Ray James Ford, 436515 (JH)

6-12-01 to 8-31-01, \$39,325.00 Tax, \$1,383.50 Late Payment Penalty, \$3,932.50 Failure to File Penalty, \$3,932.50 Finality Penalty, \$5,751.34 Amnesty Interest Penalty

For Petitioner: John Ford, Taxpayer

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

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

Issues: Whether taxpayer is personally liable as a responsible person for the unpaid liabilities of Niles Nissan, dba Performance Nissan, pursuant to Revenue and Taxation Code section 6829.

Whether the late-payment, failure-to-file, finality, and amnesty interest penalties assessed against Niles Nissan should be relieved.

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

SPECIAL TAXES APPEALS HEARING

Mark S. Harris, 382766, 382767 (ET)

10-1-02 to 12-31-03, \$3,624.76 Tax, \$00.00 Penalties

1-1-04 to 4-30-06, \$12,834.25 Tax, \$4,400.37 Penalties

For Petitioner: Mark S. Harris, Taxpayer

For Property and Special Taxes Department: Pam Mash, Tax Counsel

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

Issues: Whether relief of the tax, interest, and penalties is warranted because applicant's failure to report the tobacco products distribution taxes was the result of his reliance on allegedly erroneous oral advice from the Board.

Whether relief of the failure-to-file penalties assessed in the JNOD and NOD is warranted.

Whether the penalty for failure to obtain a distributor's license assessed for the period January 1, 2004, to April 30, 2006, should be waived.

Whether relief of the finality penalty assessed for the period January 1, 2004, through April 30, 2006, is warranted.

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

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

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

Note: These minutes are not final until Board approved.

Tuesday, November 18, 2010

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California ([Exhibit 11.9](#)).

Mitchell Cari, Principal Property Appraiser, Timber Tax Section, County-Assessed Properties Division, Property and Special Taxes Department
Rachael Garza, Staff Services Manager I, Health and Safety Section, Human Resources Division
David A. Harley, Business Taxes Specialist I, Audit Examination Branch, Special Taxes and Fees Division, Property and Special Taxes Department
September Hope, Associate Information Systems Analyst (Specialist), Technology Services Department
Fe-Therese Juarez, Technician II, San Diego Office
Karen L. Knowles, Business Taxes Compliance Specialist, Centralized Collection Section, Sales and Use Tax Department
Melissa Lewis, Senior Programmer Analyst (Specialist), Technology Services Department
Dave Love, Systems Software Specialist III (Technical), Technology Services Department
Monica Merritt, Senior Programmer Analyst (Specialist), Technology Services Department
Robin Sangmaster, Information Systems Technician (Specialist) I, Technology Services Department
Gary A. Vanderzanden, Business Taxes Specialist I, Internal Security and Audit Division, Executive Department
Alex Viripaeff, Supervising Tax Auditor II, San Francisco Office

Action: Approve the Board Meeting Minutes of July 13-15 and August 24-25, 2010.

Action: Approve publication of January 2011 Assessors' Handbook Section 531, *Residential Building Costs* ([Exhibit 11.10](#)).

Action: Approve publication of January 2011 Assessors' Handbook Section 534, *Rural Building Costs* ([Exhibit 11.11](#)).

Action: Approve publication of January 2011 Assessors' Handbook Section 581, *Equipment and Fixtures Index, Percent Good and Valuation Factors* ([Exhibit 11.12](#)).

Action: Approve proposed revisions to Audit Manual Chapter 4, General Audit Procedures ([Exhibit 11.13](#)).

Action: Approve the 2011 Timberland Production Zone Values as recommended by staff ([Exhibit 11.14](#)).

Tuesday, November 18, 2010

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**Business Taxes Committee**

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein ([Exhibit 11.15](#)).

Committee vote was as follows:

Upon motion of Ms. Yee, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, the Board approved an interested parties process to discuss the need for rulemaking to clarify the alcoholic beverage tax treatment for wine-based products containing distilled alcohol. The process is to begin before the end of this year and is to come back to the committee in February 2011.

Legislative Committee

Action: The Board deferred consideration of the Legislative Committee report to a later date.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD NOVEMBER 18, 2010

Frank J. Vigil, 402865

Final Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board deferred consideration of the matter to December 2010.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD NOVEMBER 18, 2010

John Ray James Ford, 436515 (JH)

Final Action: Upon motion of Ms. Steel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the failure-to-file penalty imposed for the third quarter 2001 be relieved provided the taxpayer provides, within 30 days, evidence establishing that the documents needed to complete the return for that quarter were seized by creditors of Niles Nissan prior to October 31, 2001, and were thus not available to the taxpayer for use in preparing the third quarter 2001 return prior to its due date. The Board otherwise ordered the petition be redetermined as recommended by the Appeals Division, and that the amnesty interest penalty be relieved if taxpayer pays the tax and interest due within 30 days of the notice of the Board's decision, or within that period enters into an installment payment agreement to pay such amounts within 13 months and successfully completes that agreement. The Board also directed staff to inform the taxpayer of the Offer in Compromise Program.

Note: These minutes are not final until Board approved.

Tuesday, November 18, 2010

**FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD
NOVEMBER 18, 2010**

Mark S. Harris, 382766, 382767 (ET)

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

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 12:51 p.m. and reconvened immediately in closed session with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

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

The Board recessed at 3:19 p.m. and reconvened immediately in open session with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

The Board adjourned at 3:20 p.m.

The foregoing minutes are adopted by the Board on February 23, 2011.

Note: The following matters were removed from the calendar prior to the meeting: *R-Tek Communications, Inc., 461499 (KH); Greg L. Moylan, 403554, 479953 (JH); and, David Anthony Miramontez, 402645, 492370 (JH).*