

Tuesday, February 22, 2011

The Board met at its offices at 450 N Street, Sacramento, at 10:00 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.

SPECIAL PRESENTATION

Report from Geoffrey Way, Chief Counsel, Franchise Tax Board

Geoff Way, Chief Counsel, Franchise Tax Board, provided a summary of the current and future trends regarding appeals from the Franchise Tax Board ([Exhibit 2.1](#)).

Ms. Yee extended an invitation to Mr. Way to brief the Members, in writing or in person, on the Voluntary Compliance Initiative II (VCI II) 2010 Legislation, AB 2498, as it relates to how the Franchise Tax Board will utilize its own resources going forward and how it will affect the Board's workload.

Ms. Yee inquired if the Franchise Tax Board could conceivably subject some of the research and development (R&D) cases to a resolution similar to the treasury function. Ms. Yee acknowledged that a similar resolution might not be possible since the Board has only decided a limited number of R&D cases and the facts of the cases vary.

Exhibits to these minutes are incorporated by reference.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Tito J. Guerrero, 526822

1995, \$1,946.80 Claim for Refund

For Appellant:

Tito J. Guerrero, Taxpayer

Jeff Johnston, Representative

For Franchise Tax Board:

Marguerite Mosnier, Tax Counsel

Jane Perez, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issues: Whether respondent properly notified appellant of the proposed assessment by sending the notice to his last known address after appellant was incarcerated.

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

Whether appellant has shown that interest should be abated.

Whether the collection cost recovery fee and/or lien fee can be abated.

Whether the amnesty penalty can be abated.

Whether the Board has jurisdiction to consider appellant's constitutional/due process arguments.

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.

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

Noel C. McDermott and Lynnet C. McDermott, 506915
2007, \$6,759.50 Claim for Refund

For Appellant:

Noel C. McDermott, Taxpayer

Jeff Johnston, Representative

For Franchise Tax Board:

Nancy Parker, Tax Counsel

Jane Perez, Tax Counsel

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

Issues: Whether appellants have shown the late filing penalty should be abated based on reasonable cause reliance on their certified public accountant.

Whether appellants have shown that the estimated tax penalty should be abated.

Anthony Epolite, Tax Counsel, Appeals Division, stated for the record that the second issue has been resolved. Therefore, the Franchise Tax Board eliminated the estimated tax penalty and reduced the late filing penalty to \$5,009.50.

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.

PUBLIC HEARINGS

Property Taxes - State Assessee's Presentations on Capitalization Rates and Other Factors Affecting Values

Ken Thompson, Chief, State-Assessed Properties Division, Property and Special Taxes Department made introductory remarks regarding 1) the State assessee's presentations on capitalization rates and other factors and procedures affecting 2011-12 property values of California public utilities, railroads and pipelines; and, 2) private railroad car assessee's presentations on factors and procedures affecting 2011-12 taxable values of private railroad cars.

Speakers: Peter W. Michaels, Attorney, Law Offices of Peter Michaels
Lenny Goldberg, California Tax Reform Association

The Board recessed at 11:45 a.m. and reconvened at 1:30 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

PUBLIC COMMENTS

Ms. Mandel stated for the record that Mr. Chiang would not participate in *Felix Lin and Betty Lin, 477812; Linus Upson, 477856; and, Rafael Weinstein, 477868*; and left the Boardroom.

Ms. Yee stated for the record that she would not participate in *Felix Lin and Betty Lin, 477812; Linus Upson, 477856; and, Rafael Weinstein, 477868*; and left the Boardroom.

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Speaker: Felix Lin, Taxpayer, made public comments regarding *Felix Lin and Betty Lin, 477812* ([Exhibit 2.2](#))

Ms. Yee and Ms. Mandel returned to the Boardroom.

Speaker: Marilyn Barrett, Attorney, made public comments regarding *Ronald N. Frazar and Jane A. Frazar, 494349*

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single 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 orders:

Mark Anthony Thomas, 478998 (AS)

10-1-03 to 3-31-04, \$14,517.15 Tax, \$1,452.20 Failure to File Penalty, \$1,451.72 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Nabil Ahmed Moflehi, 551051 (ET)

June 15, 2010, \$380.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Malcolm Export Import, Inc., 552294 (ET)

June 29, 2010, \$1,348.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Gladys Lillian Martinez, 461496 (KH)

10-1-05 to 6-20-06, \$6,610.36 Tax, \$00.00 Penalties

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

Gaston A. Alvarez, 434595 (EH)

1-1-05 to 3-31-06, \$23,174.21 Tax, \$5,570.90 Late Payment Penalty

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. 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 orders:

Richard C. Allmon and Dorothy R. Allmon, 485906

2001, \$15,054.00 Tax

2002, \$4,159.00 Tax

2003, \$5,700.00 Tax

Action: Modify the action of the Franchise Tax Board.

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John W. Batchan, Jr., 520206

2004, \$11,500.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Maryann R. Burden, 469778

2006, \$1,499.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Anthony Castillo and Leticia Barreto Castillo, 529570

2005, \$1,698.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Colby Cline, 520363

2005, \$45,799.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Joseph Eckhardt and Suzanne Eckhardt, 525093

2007, \$5,243.25 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Warren T. Greene and Julia E. Greene, 492607

2005, \$3,246.00 Tax

Action: Sustain the action of the Franchise Tax Board.

John B. Isaac and Briana A. Isaac, 491198

2003, \$1,478.00 Assessment

2004, \$1,877.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Legend Plus Enterprise, LLC, 486026

2005, \$800.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Nhut T. Ngo, 525217

2002, \$1,962.37 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ezequiel Orozco, 461569

2007, \$690.00 Claim for Refund

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

Danny (Rene) C. Ortega, 484999

2004, \$408.00 Claim for Refund

2005, \$408.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Neil Rabara, 524790

2006, \$308.95 Assessment

Action: Sustain the action of the Franchise Tax Board.

Neil Salem, 48720

2004, \$4,156.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ronna L. Sandner and Stephen Sandner, 533150

2004, \$5,766.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Total Claims Management, Inc., 486474

2006, \$30,962.10 Assessment, \$7,740.52 Late Filing Penalty, \$7,740.52 Notice and Demand Penalty, \$203.00 Filing Enforcement Cost Recovery Fee

Action: Modify the action with concessions by the Franchise Tax Board.

Lori Tirk, 528575

2004, \$758.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Estate of Virginia Walker (Deceased), 479852

1999, \$4,453.91 Claim for Refund

2000, \$4,748.36 Claim for Refund

2001, \$8,234.30 Claim for Refund

2002, \$4,977.51 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Dera R. Williams, 508846

2003, \$530.00 Assessment, \$123.75 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Ronald R. Diamond and Elaine Diamond, 472937

2003, \$606.54 Claim for Refund

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 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:

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Donn A. Tice, 462519 (CH)

4-1-97 to 9-30-00, \$207,001.16

Action: Approve the redetermination as recommended by staff.

Calko Steel, Inc., 484692 (AS)

1-1-05 to 3-31-06, \$995,192.00

Action: Approve the redetermination as recommended by staff.

Exxon Mobil Marine Limited, 524917 (OH)

1-1-05 to 12-31-07, \$366,377.30

Action: Approve the redetermination as recommended by staff.

Information Global Solutions (MI), Inc., 490225 (OH)

7-1-04 to 9-30-08, \$3,175,161.87

Action: Approve the redetermination as recommended by staff.

Rafinity, Inc., 434740 (AS)

7-1-99 to 6-30-02, \$229,693.00

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

O.S.C. & Associates, Inc., 537071 (CH)

10-1-06 to 6-30-09, \$184,893.32

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

Star Financial Services, 487195 (AP)

10-1-08 to 3-31-09, \$123,289.00

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

Credit One Corporation, 458808 (EA)

4-1-07 to 3-31-09, \$275,487.31

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 Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Mr. Horton not participating in *Genentech, Inc., 528628 (BH)*; Ms. Yee not participating in *Fidessa Corporation, 489183 (OH)*; the Board made the following orders:

L.A. Unified School District, 554301 (AS)

7-1-05 to 12-31-09, \$371,063.91

Action: Approve the refund as recommended by staff.

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Electro Rent Corporation, 522662 (AC)

10-1-06 to 12-31-09, \$136,006.17

Action: Approve the refund as recommended by staff.

LBS Financial Credit Union, 534644 (EA)

1-1-10 to 6-30-10, \$478,107.00

Action: Approve the refund as recommended by staff.

Dako North America, Inc., 553991 (GH)

1-1-07 to 9-30-08, \$588,969.21

Action: Approve the refund as recommended by staff.

Genentech, Inc., 528628 (BH)

4-1-09 to 12-31-09, \$1,318,537.98

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

Albertson's, Inc., 436824 (OH)

2-4-05 to 6-1-06, \$501,429.90

Action: Approve the refund as recommended by staff.

Albertson's, Inc., 353619 (OH)

4-30-04 to 2-3-05, \$2,032,646.32

Action: Approve the refund as recommended by staff.

American Multi-Cinema, Inc., 495405 (OH)

4-1-06 to 3-31-09, \$106,523.82

Action: Approve the refund as recommended by staff.

Roscoe Steel & Culvert Co., 527067 (OH)

10-1-08 to 12-31-09, \$129,498.01

Action: Approve the refund as recommended by staff.

American Drug Stores, Inc., 425738 (OH)

7-30-04 to 9-30-07, \$221,870.33

Action: Approve the refund as recommended by staff.

Sprint Spectrum Equipment Co., LP, 530406 (OH)

1-1-07 to 3-31-07, \$1,017,033.44

Action: Approve the refund as recommended by staff.

Cox PCS Assets, LLC, 478703 (OH)

4-1-07 to 6-30-07, \$3,184,548.02

Action: Approve the refund as recommended by staff.

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FAA Beverly Hills, Inc., 480210 (AS)

1-1-06 to 12-31-08, \$285,438.90

Action: Approve the refund as recommended by staff.

Lucky Stores, Inc., 436826 (OH)

7-30-04 to 9-30-07, \$768,510.75

Action: Approve the refund as recommended by staff.

Bausch & Lomb Incorporated, 439758 (OH)

7-1-02 to 12-31-05, \$267,473.33

Action: Approve the refund as recommended by staff.

Travis Credit Union, 535382 (JH)

1-1-10 to 3-31-10, \$209,556.00

Action: Approve the refund as recommended by staff.

Schawk Holdings, Inc., 351354 (AA)

1-1-03 to 13-31-05, \$380,764.69

Action: Approve the refund as recommended by staff.

Credit One Corporation, 458808 (EA)

4-1-07 to 3-31-09, \$303,345.61

Action: Approve the refund as recommended by staff.

Fidessa Corporation, 489183 (OH)

7-1-05 to 13-31-07, \$600,613.38

Action: Approve the refund as recommended by staff. Ms. Yee not participating.

Kern County Employees Federal Credit Union, 530374 (AR)

7-1-09 to 12-31-09, \$185,346.00

Action: Approve the refund as recommended by staff.

1st United Services Credit Union, 533824 (CH)

1-1-10 to 6-30-10, \$101,233.00

Action: Approve the refund as recommended by staff.

Sai Long Beach B, Inc., 509239 (AA)

7-30-07 to 12-31-09, \$104,212.60

Action: Approve the refund as recommended by staff.

Carmax Business Services, LLC, 508789 (OH)

4-1-06 to 6-30-09, \$664,045.88

Action: Approve the refund as recommended by staff.

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SPECIAL TAXES MATTERS, REDETERMINATION AND RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Redetermination and Relief of Penalties, 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, Mr. Horton and Ms. Mandel not participating in accordance with Government Code section 87105 in *CVS Pharmacy, Inc., 552697 (ET)*; the Board made the following orders:

Exxonmobil Oil Corporation, 490128 (MT)

1-1-03 to 12-31-05, \$204,739.80

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

CVS Pharmacy, Inc., 552697 (ET)

8-1-10 to 8-31-10, \$186,322.70

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

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Runner 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 7.9 in *John Hancock Life Insurance Co. (USA), 552165 (ET)*; the Board made the following orders:

Penske Truck Leasing Co., L.P., 486591 (MT)

1-1-06 to 12-31-07, \$109,326.48

Action: Approve the refund as recommended by staff.

Equilon Enterprises, LLC, 513961 (MT)

1-1-06 to 12-31-08, \$2,356,929.71

Action: Approve the refund as recommended by staff.

John Hancock Life Insurance Co. (USA), 552165 (ET)

1-1-08 to 12-31-08, \$1,495,692.26

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

LEGAL APPEALS MATTERS, ADJUDICATORY

Pedotti Livestock, 484288 (UT)

May 13, 2007, \$2,069.00 Tax, \$0.00 Failure to File Penalty

Considered by the Board: September 14, 2010

Note: These minutes are not final until Board approved.

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

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.

Ismail Ahmad Karajah, 534141 (ET)

February 10, 2010, \$ 78.00 Approximate Value

Considered by the Board: September 15, 2010

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

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 determined that staff properly seized the tobacco products.

The Auto Store of Merced, Inc., 478614, 476975 (KH)

10-1-02 to 6-30-06, \$203,745.33 Tax, \$20,374.52 Negligence Penalty

10-1-04 to 6-30-06, \$29,488.40 Tax, \$2,948.83 Negligence Penalty

Sana Sadeddin, 476973 (KH)

10-1-04 to 6-30-06, \$29,488.40 Tax, \$2,948.83 Negligence Penalty

Considered by the Board: September 14, 2010

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

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.

Gwang Hyun Song and Keum Joo Song, 433708 (AP)

7-1-03 to 6-30-06, \$52,386.02 Tax, \$5,238.62 Negligence Penalty

Considered by the Board: October 20, 2010

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

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 and directed staff to work with the taxpayer on a payment plan.

NCMG, Inc., 386871 (CH)

1-1-03 to 12-31-05, \$23,385.68 Tax

Considered by the Board: July 14, 2010

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

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.

Oracle Corporation, 217113 (BH)

1-1-96 to 12-31-98, \$387,588.64 Tax, \$328,673.64 Negligence Penalty

Considered by the Board: July 14, 2010

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

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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.

Lynne Marie Gallagher and Francis Xavier Gallagher, 459368 (BH)

7-1-03 to 6-26-06, \$0.00 Balance Protested

Considered by the Board: August 25, 2010

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

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.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Adele J. Fasano, 474165

2007, \$1,095.44 Claim for Refund

Considered by the Board: May 28, 2009

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

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

Felix Lin and Betty Lin, 477812

2003, \$78,878.00 Assessment

Linus Upson, 477856

2003, \$67,595.00 Assessment

Rafael Weinstein, 477868

2003, \$40,846.00 Assessment

Considered by the Board: July 13, 2010

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

Action: Upon motion of Ms. Steel, seconded by Mr. Runner and duly carried, Ms. Steel and Mr. Runner voting yes, Mr. Horton voting no, Ms. Yee and Ms. Mandel absent and not participating, the Board adopted a decision reversing the action of the Franchise Tax Board.

Ronald N. Frazar and Jane A. Frazar, 494349

2005, \$231,226 Assessment

2006, \$236,238 Assessment

Considered by the Board: June 16, 2010

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

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

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

SAP America, Inc., 346056 (OH)

10-1-02 to 12-31-03, \$98,606.89

Considered by the Board: January 27, 2010

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

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

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**PROPERTY TAX MATTERS****Audit**

Southwest Gas Corporation, (152)

2007-2010, \$1,400,000.00 Excessive Assessment, \$276,000.00 In-lieu Interest

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

Unitary Land Escaped Assessments

Trans Bay Cable, LLC, (119)

2007-2010, \$19,340,597.00 Value

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

Los Angeles SMSA Ltd. Partnership (2532)

2008-2010, \$729,318.00 Value

Cellco Partnership (2559)

2007-2010, \$713,277.00 Value

AT&T Mobility, LLC (2606)

2010, \$1,677,573.00 Value

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

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Board Roll Changes

2010 State-Assessed Property Roll

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved a correction to the 2010 Board Roll of State-Assessed Property as recommended by staff ([Exhibit 2.3](#)).

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *GHC & C, Inc; Ai Molatore;* and, *Charan Singh Sijher* as recommended by staff.

CHIEF COUNSEL MATTERS**RULEMAKING****Proposed Amendments to Regulation 6001, General Provisions**

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the staff request for authorization to publish proposed amendments to update appendices A and B to Regulation 6001 containing the Board's conflict of interest code ([Exhibit 2.4](#)).

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 authorized publication of amendments to Regulation 6001, *General Provisions*, as requested by staff.

PROPERTY TAX**Board Consideration of Findings and Decisions**

Golden State Water Company (101), 496057
2005, \$18,620,000.00 Unitary Excessive Assessment
2006, \$19,220,000.00 Unitary Excessive Assessment
2007, \$18,860,000.00 Unitary Excessive Assessment
2008, \$5,512,000.00 Unitary Escaped Assessment

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 Findings and Decision as recommended by staff.

Golden State Water Company (101), 538248
2010, \$538,900,000 Unitary Value

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 Findings and Decision as recommended by staff.

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SALES AND USE TAX APPEALS HEARINGS

Berkeley Patients Group, Inc., 426761(CH)

7-1-04 to 6-30-07, \$4,477,185.00 Tax

For Petitioner:

Eric J. Coffill, Representative

Timothy D. Schick, Witness

For Sales and Use Tax Department:

Bradley Heller, Tax Counsel

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

Issues: Whether petitioner's sales of marijuana qualify as exempt sales of medicine.

Whether petitioner has established that the Board should be stopped from collecting the amount due pursuant to the doctrine of equitable estoppel.

Whether petitioner has established reasonable cause sufficient to relieve the interest.

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.

Greg L. Moylan, 403554, 479953 (JH)

4-1-05 to 9-30-05, \$115,933.41 Tax, \$15,550.60 Penalty

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

For Petitioner:

Greg Moylan, 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 Skier's Quest, Inc. (SR JH 97-277702) pursuant to Revenue and Taxation Code section 6829.

Whether an adjustment is warranted to the amount of unreported sales for 4Q05.

Whether petitioner has established reasonable cause sufficient for relieving the late-payment and failure-to-file penalties originally assessed against Skier's Quest.

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.

David Anthony Miramontez, 402645, 492370 (JH)

4-1-05 to 9-30-05, \$115,933.41 Tax, \$15,550.60 Penalty

10-1-05 to 12-5-05. \$11,749.00 Tax, \$1,174.90 Penalty

For Petitioner:

David Miramontez, 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 is personally liable as a responsible person for the unpaid liabilities of Skier's Quest, Inc., pursuant to Revenue and Taxation Code 6829.

Whether an adjustment is warranted to the amount of unreported sales for 4Q05.

Whether petitioner has established reasonable cause sufficient for relieving the late-payment and failure-to-file penalties originally assessed against Skier's Quest.

Tuesday, February 22, 2011

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 3:55 p.m. and reconvened at 4:06 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 FEBRUARY 22, 2011

Tito J. Guerrero, 526822

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

Upon motion of 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.

Noel C. McDermott and Lynnet C. McDermott, 506915

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 with concessions by the Franchise Tax Board.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD FEBRUARY 22, 2011

Berkeley Patients Group, Inc., 426761(CH)

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 and directed staff to work with the taxpayer with respect to the Offer in Compromise Program.

Greg L. Moylan, 403554, 479953 (JH)

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

David Anthony Miramontez, 402645, 492370 (JH)

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

Tuesday, February 22, 2011

SALES AND USE TAX APPEALS HEARINGS

Harjap Singh, 467932 (CH)

4-1-04 to 3-31-07, \$86,021.73 Tax, \$17,231.22 Penalty

For Petitioner: Waived Appearance

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

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

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

Whether adjustments are warranted to the disallowed amount of claimed sales tax prepayments to fuel vendors.

Whether taxpayer was negligent.

Whether relief of the finality penalty is warranted.

Action: Ms. Steel moved to allow an additional 1 percent for self consumption and an additional 1 percent for pilferage, and that the petition otherwise be redetermined as recommended by the Appeals Division. Ms. Steel withdrew her motion.

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

Classique Raphy's A California Corporation, 468141 (AC)

1-1-05 to 12-31-07, \$22,423.38 Tax, \$0.00 Penalty

For Petitioner: Waived Appearance

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

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

Issues: Whether adjustments are warranted to the disallowed claimed exempt sales of food.

Whether adjustments are warranted to the unreported sales determined by an analysis of bank deposits.

David H. Levine, Tax Counsel, Appeals Division, Legal Department, advised of the revised recommendation of the Appeals Division to reduce the tax liability to \$20,336.83.

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

The Board adjourned at 4:40 p.m.

*The foregoing minutes are adopted by the Board on April 27, 2011.*Note: The following matters were removed from the calendar prior to the meeting: *James Tracy and Therese Tracy, 505057*; and, *R-Tek Communications, Inc, 461499 (KH)*.**Note: These minutes are not final until Board approved.**

Wednesday, February 23, 2011

The Board met at its offices at 450 N Street, Sacramento, at 10:19 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.

SPECIAL PRESENTATIONS

Presentation of Retirement Resolution to Gilbert Haas

Mr. Horton, on behalf of the Board, presented to Gilbert Haas, Jr., Chief, Investigations and Special Operations Division, Legal Department, a retirement resolution, extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California. Diane Olson, Chief, Board Proceedings Division, read the resolution into the record. Members made complementary remarks regarding their experiences with Mr. Haas and his exceptional work with the Board of Equalization, describing him as dedicated and responsive, and wished him well in his retirement. Mr. Haas thanked the Members and then thanked his colleges and his staff.

Presentation of Retirement Resolution to Margaret Pennington

Mr. Runner, on behalf of the Board, presented to Margaret Pennington, Tax Consultant Expert II, Second District Board Member's Office, a retirement resolution, extending its sincere and grateful appreciation for her dedicated service to the State Board of Equalization and the State of California. Diane Olson, Chief, Board Proceedings Division, read the resolution into the record. Members made complementary remarks regarding their experiences with Ms. Pennington and her exceptional work with the Board of Equalization, describing her as a rock star, and wished her well in her retirement. Mr. Runner introduced Ms. Pennington's family members who were in the audience, Rachel, Mariah and Kent, and Natalie who had been in the office earlier. Ms. Pennington thanked the Members and then thanked her colleagues and her family for their support.

SALES AND USE TAX APPEALS HEARINGS

Richard Caldron, 422927 (KH)

Caldron's Jewelers Inc., 418580 (KH)

7-1-01 to 9-30-05, \$18,332.50 Tax, \$4,196.17 Negligence Penalty, \$1,833.26 Amnesty Double Negligence Penalty, \$4,196.14 Finality Penalty, \$1,833.25 Amnesty Double Finality Penalty, \$2,038.45 Amnesty Interest Penalty

For Petitioners:

Cyril Lawrence, Attorney

Abe Golomb, Representative

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issues: Whether the Notice of Determinations (NODs) were timely issued for the period July 1, 2001 through December 31, 2002.

Whether Caldron's was negligent.

Whether relief from the penalty for failure to timely pay the NOD should be denied.

Note: These minutes are not final until Board approved.

Wednesday, February 23, 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.

Guaranty RV, Inc, 391657 (EH)

4-1-01 to 3-31-05, \$3,603,034.55 Tax, \$363,474.81 Negligence Penalty, \$142,756.98 Amnesty Double Negligence Penalty

For Petitioner:

Ed Morgan, Taxpayer
 Jesse McClellan, Representative
 Dan Davis, Representative
 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 disallowed claimed nontaxable sales.
 Whether an adjustment is warranted for tax-paid purchases resold of gasoline and diesel sold with RV's.
 Whether adjustments are warranted to the audited amount of purchases subject to use tax.

Whether petitioner was negligent.

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

The Board recessed at 1:06 p.m. and reconvened at 1:45 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Granite Business Solutions, Inc., 492239 (KH)

7-1-05 to 6-30-08, \$10,917.70 Tax, \$00.00 Finality Penalty

For Petitioner:

Robert Johnson, Taxpayer
 Paul Dhanota, Taxpayer
 Monita Cloty, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issue: Whether adjustments are warranted to the disallowed claimed exempt sales to Indian casinos.

David H. Levine, Counsel, Appeals Division, Legal Department, advised of the revised recommendation of the Appeals Division to accept a sale for \$36,446 as an exempt sale."

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.

Wednesday, February 23, 2011

PETITIONS FOR RELEASE OF SEIZED PROPERTY

Roger Jacob Nehme, 552300 (ET)

July 20, 2010, \$11,920.83 Approximate Value

For Petitioner: Roger Jacob Nehme, Taxpayer

For Sales and Use Tax Department: Stephen Smith, Tax Counsel

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

Issue: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b).

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.

Vinay Vohra and Vikram Vohra, 553888 (ET)

August 19, 2010, \$180.00 Approximate Value

For Petitioner: Vinay Vohra, Taxpayer

Vikram Vohra, Taxpayer

For Sales and Use Tax Department:

Pamela Mash, Tax Counsel

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

Issue: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b).

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.

Kashmir Singh Khinda, 536518 (ET)

April 30, 2010, \$895.20 Approximate Value

For Petitioner: Kashmir S. Khinda, Taxpayer

For Sales and Use Tax Department: Pamela Mash, Tax Counsel

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

Issue: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b).

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.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

Diane G. Olson, Chief, Board Proceedings Division, read the names of retirees listed below into the record.

With respect to the Administrative 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 order:

Note: These minutes are not final until Board approved.

Wednesday, February 23, 2011

Action: Adopt the following resolutions, extending its sincere and grateful appreciation to the retirees for their dedicated service to the State Board of Equalization and to the State of California, their congratulations on each retiree's well-earned retirement, and best wishes to them and their families for continued success, happiness and good health in the years to come ([Exhibit 2.5](#)).

Corinne A. Allen, Associate Tax Auditor, Bakersfield District Office
 Teresa G. Campbell, Tax Technician III, Ventura District Office
 Gilbert Haas, Jr., Chief, Investigations and Special Operations Division,
 Headquarters
 Frank K. Hemeng, Business Taxes Specialist I, Out-of-State District Office
 Sylvia N. Le, Supervising Tax Auditor I, Culver City District Office
 James R. Mitchell, Business Taxes Representative, Bakersfield District Office
 Bruce E. Nelson, Associate Tax Auditor, Bakersfield District Office
 Margaret Pennington, Tax Consultant Expert II for Second District Board
 Member, George Runner, Headquarters
 Arlene B. Reed, Business Taxes Specialist I, Chicago Out-of-State District
 Office
 Laraine C. Sliwoski, Business Taxes Specialist I, Ventura District Office
 Gary R. Wolferman, Supervising Tax Auditor II, Chicago Out-of-State District
 Office
 Lane Yoshiyama, Business Taxes Specialist I, Norwalk District Office
 Stephen C. Young, Supervising Tax Auditor II, Out-of-State Chicago District
 Office

With respect to the Administrative 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 order:

Action: Approve the Board Meeting Minutes of November 16-18, 2010.

With respect to the Administrative 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:

Action: Approve the 2011 Timber Advisory Committee appointments as recommended by staff ([Exhibit 2.6](#)).

Action: Approve the proposed revisions to Audit Manual Chapter 1, General Information as recommended by staff ([Exhibit 2.7](#)).

Exhibits to these minutes are incorporated by reference.

Wednesday, February 23, 2011

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee January 27, 2011

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Legislative Committee report and the actions therein ([Exhibit 2.8](#)).

Legislative Committee February 23, 2011

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Legislative Committee report and the actions therein ([Exhibit 2.9](#)).

Business Taxes Committee February 23, 2011

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein ([Exhibit 2.10](#)).

Property Tax Committee February 23, 2011

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Property Tax Committee report and the actions therein ([Exhibit 2.11](#)).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Kristine Cazadd, Interim Executive Director, introduced Todd Gilman, Taxpayer Rights Advocate, who provided an update regarding the Taxpayers' Rights Advocate's 2009/10 Property and Business Taxes Annual Report, including a presentation of Annual Report highlighting Taxpayers' Rights Advocate Office accomplishments, involvement in projects, current issues, and examples of cases illustrating services provided ([Exhibit 2.12](#)).

Chief Counsel Report

Randy Ferris, Acting Chief Counsel, introduced Jeff Vest, Assistant Chief Counsel, Appeals Division, and Amy Kelly, Counsel, Appeals Division, who provided an update describing the successful implementation of the new Southern California Appeals and Settlement Unit.

The Board recessed at 3:10 p.m. and reconvened at 3:18 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Note: These minutes are not final until Board approved.

Wednesday, February 23, 2011

Sales and Use Tax Deputy Directors Report

Jeff McGuire, Deputy Director, Sales and Use Tax Department, and David Gau, Deputy Director, Property and Special Taxes Department, provided an update on the progress of the Centralized Revenue Opportunity System (CROS) project to replace BOE's tax legacy technology systems ([Exhibit 2.13](#)).

Mr. Runner directed staff to provide a matrix of: 1) what the Department of General Services would normally be involved in; 2) what their involvement is in the limited agreement; and, 3) what level of delegation BOE would want in regards to the CROS project.

Mr. Horton directed staff to provide the Members with a report containing more comprehensive cost analysis and anticipated revenue to be generated from the CROS project for discussion at the next Board Meeting.

Ms. Yee directed staff to add this item on every meeting agenda in both Sacramento and Culver City until project completion in the interest of transparency.

Ms. Yee directed staff to develop a timeline to determine appropriate benchmarks leading up to the contract and for the duration of the project.

Property and Special Taxes Deputy Director's Report

David Gau, Deputy Director, Property and Special Taxes Department, introduced Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, who made introductory remarks regarding the Fuel Tax Swap--excise tax rate setting for motor vehicle fuel (MVF) ([Exhibit 2.14](#)).

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 set the excise tax rate on MVF for the period July 1, 2011 through June 30, 2012 at \$0.357 per gallon as recommended by staff.

Administration Deputy Director's Report

Liz Houser, Deputy Director, Administration Department, provided a facilities update on the Headquarters Remediation Project and an update on the site search to relocate the San Diego and San Marcos Offices.

Liz Houser, Deputy Director, Administration Department, provided an update on the Governor's 2010/11 and 2011/12 Budget and pending Union Agreements.

Mr. Runner directed staff to update the Members on FIRM at the March Board Meeting.

Wednesday, February 23, 2011

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
FEBRUARY 23, 2011**

Richard Caldron, 422927 (KH)

Caldron's Jewelers Inc., 418580 (KH)

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

Guaranty RV, Inc, 391657 (EH)

Final Action: Upon motion of Mr. Runner, seconded by Ms. Mandel and duly carried, Ms. Steel, Mr. Runner and Ms. Mandel voting yes, Mr. Horton and Ms. Yee voting no, the Board ordered that the petition be granted as to the Oregon sales.

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

Granite Business Solutions, Inc, 492239 (KH)

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 in accordance with the revised recommendation of the Appeals Division.

SPECIAL TAXES APPEALS HEARING

Sahand Enterprises, Inc., 440941 (MT)

1-28-05 to 3-31-07, \$37,073.00 Claim for Refund

For Claimant: Waived Appearance

For Sales and Use Tax Department: Carolee Johnstone, Tax Counsel

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

Issue: Whether claimant is entitled to a refund of the Underground Storage Tank (UST) fees that it paid based on its assertion that it did not own the UST's and thus paid the fees in error.

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 claim be denied as recommended by the Appeals Division.

**FINAL ACTION ON PETITIONS FOR RELEASE OF SEIZED PROPERTY HELD
FEBRUARY 23, 2011**

Roger Jacob Nehme, 552300 (ET)

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 determined that staff properly seized the tobacco products.

Note: These minutes are not final until Board approved.

Wednesday, February 23, 2011

Vinay Vohra and Vikram Vohra, 553888 (ET)

Final Action: Ms. Steel moved that the petition be granted. The motion was seconded by Mr. Runner but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

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

Kashmir Singh Khinda, 536518 (ET)

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 determined that staff properly seized the tobacco products.

Mr. Horton expressed his sympathy for the loss of Brian Hutchison and announced that the meeting will adjourn in memory of him at the end of the day.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 4:45 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 pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 4:55 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Mr. Horton announced the appointment of Amy Kelly to the position of Assistant Chief Counsel, Settlement and Taxpayer Services Division, Legal Department.

Diane G. Olson, Chief, Board Proceedings Division, stated for the record that the Board concluded its business for this meeting, and that meeting day Thursday, February 24, 2011, is therefore cancelled.

The Board adjourned at 4:56 p.m. in memory of Brian Hutchison, Office Services Supervisor, Mail Services, Administration Department, who passed away suddenly today and who had 29 years of State service and had worked for the BOE since 2000.

The foregoing minutes are adopted by the Board on April 27, 2011.

Note: These minutes are not final until Board approved.