

Tuesday, March 22, 2011

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

### CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Pacific Southwest Container, Inc., 473587

Donald J. Mayol, 474114

John Mayol and Tami Mayol, 474120

James Mayol and Birgitt Mayol, 474107

Lois M. Mayol, 474108

1999, \$274,935.00 Claim for Refund

2000, \$479,056.00 Claim for Refund

2001, \$385,215.00 Claim for Refund

For Appellant:

Reed Schreiter, Attorney

Jon A. Sperring, Attorney

Kendall B. Fox, Attorney

Jason Riley, Tax Counsel

Ann Hodges, Tax Counsel

William Hilson, Tax Counsel

Mike Halahan, Audit Credit Specialist

For Franchise Tax Board:

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

Issues: Whether appellants have presented evidence sufficient to establish that appellant Pacific Southwest Container, Inc. (PSC) conducted activities that constituted "qualified research" as defined in the Internal Revenue Code (IRC) section 41.

If appellants have established that PSC engaged in "qualified research" as defined in IRC section 41(d), whether appellants have met their burden of proving "qualified research expenses" and the claimed research and development (R&D) tax credit under IRC section 41 for the tax years at issue.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 3.1](#))

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.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 11:49 a.m. and reconvened at 12:00 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

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Robert M. Newell, Jr. and Judith A. Newell, 506927

2007, \$3,532.00 Claim for Refund

For Appellant:

Robert M. Newell, Jr., Taxpayer

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Karen Smith, Tax Counsel

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

Issue: Whether appellants have shown the late filing penalty imposed by respondent should be abated.

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.

The Board recessed at 12:08 p.m. and reconvened at 1:32 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Jimmy A. Prince, 535124

1997, \$1,854.00 Tax, \$2,156.76 Amnesty, Accuracy-Related, and Late Filing Penalties

1998, \$20,539.00 Tax, \$15,215.20 Amnesty and Accuracy-Related Penalties

1999, \$13,986.00 Tax, \$9,307.51 Amnesty and Accuracy-Related Penalties

For Appellant:

Jimmy Prince, Taxpayer

For Franchise Tax Board:

Karen Smith, Tax Counsel

Nancy E. Parker, Tax Counsel

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

Issues: Whether the proposed assessments are barred by the statute of limitations.

Whether appellant has established error in the proposed assessments, which are based on federal determinations.

Whether the Board has jurisdiction to determine whether appellant's tax liabilities for 1997, 1998, or 1999 have been discharged in bankruptcy.

Whether the Board has jurisdiction to abate the amnesty penalties.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the Franchise Tax Board 60 days, plus 30 days extension if needed, to examine and respond to additional documents, the appellant 30 days to reply, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

**LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Graphics Concept, Inc., 444651.*

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:

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

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Graphics Concept, Inc., 444651 (AP)

10-1-03 to 7-31-07, \$71,145.20 Tax, \$7,114.57 Negligence Penalty

Action: The Board took no action.

Robert John Delava, 446676 (AC)

7-1-04 to 12-31-05, \$910.64 Tax

West Printing and Graphics, Inc., 446675 (AC)

1-1-06 to 6-30-07, \$759.41 Tax

Action: Redetermine as recommended by the Appeals Division.

Best Remodeling Solutions, Inc., 417566 (EA)

10-20-03 to 12-31-04, \$24,455.60 Tax, \$2,445.60 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

7250 Entertainment Group, LLC, 466183 (AS)

7-1-04 to 6-30-07, \$363,565.10 Tax, \$36,351.51 Penalty

Action: Redetermine as recommended by the Appeals Division.

Silverise Corporation, 430525 (EA)

1-18-05 to 4-30-07, \$79,477.57 Tax, \$7,947.76 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Walid Abdo Al-Tawil, 460687, 460961 (FH)

10-1-03 to 12-31-06, \$12,691.62 Tax, \$1,275.78 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Theresa Marie Christopher, 445288 (GH)

7-1-04 to 6-30-07, \$20,375.86 Tax, \$2,037.60 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

David Villanueva Cabal, 472370 (FH)

4-1-05 to 9-30-05, \$30,055.00 Tax, \$3,005.00 Late Payment Penalty

Action: Redetermine as recommended by the Appeals Division.

Robert Chang Soung, 462258 (GH)

7-1-06 to 4-16-07, \$4,029.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Piara Singh and Surinder Kaur, 434022 (ET)

November 2, 2007 Date of Citation

Action: Deny the appeal as recommended by the Appeals Division.

Harjap Singh, 554455 (ET)

September 15, 2010, \$7.25 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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Andrew Khun, Ly Kheng-Ky Lao, David Odom and Chhay Pang Ving, 554460 (ET)  
 August 25, 2010, \$132.00 Approximate Value  
 Action: Determined that staff properly seized the tobacco products.

LA Tobacco Wholesale Corporation, 556258 (ET)  
 August 4, 2010, \$79,125.80 Approximated Value  
 Action: Determined that staff properly seized the tobacco products.

Ednader, Inc., 553886 (ET)  
 July 12, 2010, \$221.00 Approximate Value  
 Action: Determined that staff properly seized the tobacco products.

Song's Enterprises, Inc., 554458 (ET)  
 August 25, 2010, \$258.00 Approximate Value  
 Action: Determined that staff properly seized the tobacco products.

Eel River Fuels, Inc., 511249 (JH)  
 1-1-05 to 12-31-07, \$0.00 Tax, \$68,074.38 Penalty  
 Action: Deny the petition for rehearing as recommended by the Appeals Division.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Tae G. Mok and Gyum S. Mok, 472910.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single 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 made the following orders:

Jerry Anthony Alarcon, 539071  
 2005, \$2,473.00 Assessment  
 Action: Sustain the modified action of the Franchise Tax Board.

Auto Theft R.F. Systems, LLC, 336033  
 1995, \$2,670.52 Claim for Refund  
 1996, \$4,013.83 Claim for Refund  
 2000, \$1,093.93 Claim for Refund  
 2001, \$665.62 Claim for Refund  
 2002, \$573.73 Claim for Refund  
 2003, \$429.00 Claim for Refund  
 Action: Sustain the modified action of the Franchise Tax Board.

Ayana Clark, 496060  
 2005, \$902.00 Assessment  
 Action: Sustain the action of the Franchise Tax Board.

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Isaac B. Coker, 487486

2005, \$66.85 Claim for Refund

2006, \$441.70 Claim for Refund

Action: Sustain the modified action of the Franchise Tax Board.

James H. Cornell and Martha E. Cornell, 506809

2005, \$21,955.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Howard R. Edge, 473075

2006, \$983.00 Assessment, \$247.75 Late Filing Penalty, \$340.25 Demand Penalty

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

Danny Frink and Katrina G. Kincaid, 539594

2006, \$5,195.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Larry Gaab and Estate of Anna M. Gaab (Dec'd), 513550

2005, \$3,933.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Michael C. Kelley, 435101

2002, \$18,201.00 Tax, \$701.44 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Simon Leung, 491072

2005, \$1,096.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Nathaniel M. Llana, 487075

2007, \$1,371.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Mid-State Bancshares, 461574

2001, \$635,790.00 Assessment

2002, \$331,773.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Tae G. Mok and Gyum S. Mok, 472910

2003, \$6,054.00 Tax, \$1,210.80 Accuracy-Related Penalty

2004, \$1,967.00 Tax, \$393.40 Accuracy-Related Penalty

Action: The Board took no action.

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Jesse Ramirez, 468619

2006, \$864.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Mireya Rivas-Barrera, 546588

2006, \$1,357.64 Assessment

Action: Sustain the action of the Franchise Tax Board.

Roy E. Tuckman, 472789

2006, \$971.00 Tax

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

Kamal K. Varma and Shubhra S. Varma, 468747

2004, \$1,583.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Deborah Wolfe, 506878

2005, \$703.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Maureen T. Scarbery and Brian E. Scarbery, 480106

1999, \$162.00 Tax, \$140.83 Penalties

2000, \$2,446.00 Tax, \$2,098.70 Penalties

2001, \$4,516.00 Tax, \$3,755.78 Penalties

2002, \$4,956.00 Tax, \$3,717.00 Penalties

Action: Deny the petition for rehearing.

James N. Smith, 510914

1992, \$841.98 Claim for Refund

Action: Deny the petition for rehearing.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Denials of Claims for Refund and Denials of Relief of Penalties, Consent Agenda, upon a single motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Mr. Horton not participating in accordance with Government Code section 87105 in *Applied Materials, Inc., 482471*; and, *Applied Materials, Inc., 489365*; the Board made the following orders:

Applied Materials, Inc., 482471 (OH)

4-1-05 to 12-31-05, \$724,387.69

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

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Applied Materials, Inc., 489365 (OH)

1-1-06 to 12-31-06, \$1,550,922.17

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

Do It Best Corp., 436171 (OH)

10-1-03 to 9-30-06, \$618,710.07

Action: Approve the redetermination as recommended by staff.

Bowe Bell + Howell Company, 506596 (OH)

7-1-99 to 6-30-02, \$276,393.77

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

Kirk Negrete, Inc., 557414 (EH)

7-1-06 to 6-30-09, \$164,254.19

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

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

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

The Leather Factory, Inc., 556842 (AA)

10-1-06 to 3-31-06, \$245,430.76

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

Graphic Distributors, 557428 (AP)

10-1-06 to 3-31-07, \$329,656.85

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

Williams Lea, Inc., 215298 (OH)

11-1-96 to 6-30-98, \$201,391.77

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

St. John Knits, Inc., 531230 (EA)

4-1-06 to 3-31-09, \$101,588.60

Action: Approve the refund as recommended by staff.

S.L. Fusco, Inc., 557515 (AA)

4-1-10 to 3-30-10, \$173,025.00

Action: Approve the refund as recommended by staff.

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ACCO Engineered Systems, Inc., 539353 (AC)

7-01-07 to 6-30-09, \$171,521.88

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 554502 (BH)

1-01-03 to 9-30-06, \$405,243.98

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 156080 (BH)

1-1-96 to 9-30-01, \$1,091,674.18

Action: Approve the refund as recommended by staff.

Resource Management and Control Systems, Inc., 522666 (AS)

10-1-06 to 12-31-09, \$120,622.94

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 554766 (KH)

8-30-10 to 11-12-10, \$208,311.00

Action: Approve the refund as recommended by staff.

Fair Oaks Finance, LLC, 514492 (UT)

10-11-02 to 10-26-06, \$1,114,425.41

Action: Approve the refund as recommended by staff.

General Instrument Corporation, 427398 (OH)

10-1-04 to 9-30-06, \$209,756.25

Action: Approve the refund as recommended by staff.

Comverse, Inc., 513292 (OH)

1-1-06 to 6-30-09, \$152,018.77

Action: Approve the refund as recommended by staff.

Telocity, Inc., 518433 (GH)

1-1-00 to 3-31-00, \$396,082.50

Action: Approve the refund as recommended by staff.

Good Samaritan Hospital, LP, 468149 (GH)

7-1-05 to 3-31-08, \$424,588.43

Action: Approve the refund as recommended by staff.

Banc of America Leasing &amp; Capital, 546340 (OH)

1-1-05 to 12-31-07, \$639,920.43

Action: Approve the refund as recommended by staff.

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Xerox Corporation, 553996 (OH)

10-1-03 to 6-30-07, \$4,445,778.79

Action: Approve the refund as recommended by staff.

Ford Motor Credit Company, 522661 (OH)

4-1-09 to 9-30-09, \$272,249.00

Action: Approve the refund as recommended by staff.

Point Financial, Inc., 490955 (OH)

4-1-06 to 12-31-08, \$211,019.96

Action: Approve the refund as recommended by staff.

ATK Services, Inc., 515284 (AR)

7-1-06 to 9-30-09, \$560,284.28

Action: Approve the refund as recommended by staff.

Balboa Thrift &amp; Loan Association, 536032 (FH)

1-1-10 to 6-30-10, \$181,740.00

Action: Approve the refund as recommended by staff.

Villa Amorosa, 556672 (JH)

4-1-08 to 3-31-10, \$120,828.56

Action: Approve the refund as recommended by staff.

Darley Stud Management, LLC, 535383 (OH)

1-1-08 to 12-31-08, \$931,700.00

Action: Approve the refund as recommended by staff.

Pileco, Inc., 531602 (OH)

10-1-08 to 12-31-08, \$192,841.75

Action: Approve the refund as recommended by staff.

Faith Com, Inc., 485616 (AA)

2-19-08 to 3-31-10, \$161,189.66

Action: Approve the refund as recommended by staff.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Aurelio Serrano and Haidee Serrano, 519860

2005, \$11,958.00 Tax

For Appellant:

Haidee Serrano, Taxpayer

Amber Bridges, Representative

For Franchise Tax Board:

Jane Perez, Tax Counsel

Suzanne Small, Tax Counsel

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

Issue: Whether appellants have demonstrated error in the assessment.

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Appellant's Exhibit: Miscellaneous Documents ([Exhibit 3.2](#))

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.

Patrick T. Mead and Melissa A. Mead, 520063

2006, \$5,973.25 Claim for Refund

2007, \$7,815.50 Claim for Refund

For Appellant:

Patrick Mead, Taxpayer

Amber Bridges, Representative

For Franchise Tax Board:

Nancy E. Parker, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issue: Whether the demand penalties should be abated based on a showing of reasonable cause for appellants' failure to respond to respondent's Demand for Tax Return.

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.

Marna M. Skaar, 520443

2006, \$1,585.01 Claim for Refund

For Appellant:

Melinda Skaar, Representative

For Franchise Tax Board:

Jane Perez, Tax Counsel

Karen Smith, Tax Counsel

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

Issue: Whether appellant has shown that she is entitled to abatement of interest.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 3.3](#))

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.

## OTHER ADMINISTRATIVE MATTERS

### Deputy Directors Reports

Jeff McGuire, Deputy Director, Sales and Use Tax Department, made introductory remarks and introduced David Gau, Deputy Director, Property and Special Taxes Department, who provided an update on the progress of the Centralized Revenue Opportunity System (CROS) project to replace BOE's two current tax legacy technology systems to reduce the compliance burden for tax and fee payers and improve business program efficiencies ([Exhibit 3.4](#)).

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and duly carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner voting no, the Board directed staff to submit the Feasibility Study Report (FSR) to the Department of Finance, the Office of the Chief Information Officer, and the Legislative Analyst's Office by March 25, 2011.

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Upon motion of Ms. Yee, seconded by Mr. Horton and duly carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner voting no, the Board directed staff to transmit the letter to the Legislature informing them of the project and the Board's request for acquisition delegation authority.

Jeff McGuire, Deputy Director, Sales and Use Tax Department, presented an issue paper on the Financial Institution Record Match (FIRM) Proposal and whether BOE should become part of the Franchise Tax Board's proposed legislation on FIRM ([Exhibit 3.5](#)).

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 approved Alternative 1, to pursue legislation that would require the banking industry to provide the required bank account information to the FTB and BOE, as recommended by staff.

#### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD MARCH 22, 2011**

Pacific Southwest Container, Inc., 473587

Donald J. Mayol, 474114

John Mayol and Tami Mayol, 474120

James Mayol and Birgitt Mayol, 474107

Lois M. Mayol, 474108

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

Robert M. Newell, Jr. and Judith A. Newell, 506927

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

Aurelio Serrano and Haidee Serrano, 519860

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

Patrick T. Mead and Melissa A. Mead, 520063

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board sustained the action of the Franchise Tax Board.

Tuesday, March 22, 2011

Marna M. Skaar, 520443

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board sustained the action of the Franchise Tax Board.

### CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Michael Calderon, 523035

2007, \$1,494.00 Tax, \$373.50 Late Filing Penalty, \$373.50 Demand Penalty

Steven Ertelt, 527234

2007, \$4,472.00 Tax, \$1,118.00 Late Filing Penalty, \$1,118.00 Demand Penalty, \$119.00 Filing Enforcement Fee

Steven Olmos, 518961

2007, \$6,267.00 Tax, \$1,566.75 Late Filing Penalty, \$1,566.75 Demand Penalty

Demeris Parks, 524781

2007, \$4,166.00 Tax, \$1,041.50 Late Filing Penalty, \$1,041.50 Demand Penalty, \$113.00 Filing Enforcement Fee

For Appellant:

Appearance Waived

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether appellant has demonstrated error in his or her respective tax assessment.

If a notice of demand penalty (demand penalty) and/or a late filing penalty was imposed by the FTB in a particular appeal, whether there is reasonable cause for appellant's failure to file upon the FTB's demand and/or failure to file a timely return.

If a filing enforcement fee was imposed by the FTB in a particular appeal, whether we can grant relief from the filing enforcement fee.

Whether the Board should impose a frivolous appeal penalty on a particular appellant.

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 sustained the action of the Franchise Tax Board and imposed frivolous appeal penalties in the amounts as follows: \$750.00 for *Michael Calderon, 523035*; \$750.00 for *Steven Ertelt, 527234*; \$5,000.00 for *Steven Olmos, 518961*; and, \$2,500.00 for *Demeris Parks, 524781*.

Ms. Mandel introduced interns of the Controller's Los Angeles office, Vincent Ciccone and Vivian Wang.

### ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 3:59 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Tuesday, March 22, 2011

**CLOSED SESSION**

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

The Board recessed at 4:06 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

The Board recessed at 4:07 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: *Franklin Casco, Jr., 512009; Thomas Najarian and Tamar Najarian, 522166; The Harry J. and Margaret L. Heimer Community Property Marital Trust, 51970; Sales and Use Tax Deputy Director's Report on Contract over \$1 Million for Use Tax Gap Pilot Project.*

**Wednesday, March 23, 2011**

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

### **SALES AND USE TAX APPEALS HEARINGS**

**Marwa Ahmad Harb, 401718 (AS)**

1-1-01 to 6-30-04, \$606,434.12 Tax, \$219,684.92 Penalties

For Petitioner:

Jim Speed, Representative

Howard L. Hoffenberg, Attorney

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, pursuant to Revenue and Taxation Code section 6829, for the unpaid liabilities of A-1 M & M Enterprise, Inc.

Whether adjustments are warranted to the understatement of reported taxable sales established in the audit of the period January 1, 2001, through December 31, 2004.

Whether A-1 was negligent.

Whether taxpayer has established reasonable cause sufficient for relieving the finality penalty originally assessed against A-1, which was also included in the determination to taxpayer.

Whether taxpayer has established reasonable cause to relieve the amnesty double negligence penalty, the amnesty double finality penalty, and the amnesty interest penalty assessed against A-1, which were also included in the determination issued to taxpayer.

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.

**Tom Young Chung, 470308 (AA)**

1-1-05 to 12-31-07, \$227,623.61 Tax, \$22,762.36 Negligence Penalty

For Petitioner:

Tom Chung, Taxpayer

Mel Mitchell, Attorney

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Whether petitioner was negligent.

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

Wednesday, March 23, 2011

Jack Nadel, Inc., 382431 (AS)  
7-1-02 to 9-30-05, \$79,638.68 Tax  
For Petitioner:

Robert Kritzler, Representative  
Chatnee Aram, Representative  
Manuel A. Almeida, Representative  
Andrew Kwee, Tax Counsel

For Sales and Use Tax Department:

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

Issue: Whether adjustments are warranted to the amount of disallowed deductions intended to recover amounts of tax overpaid in prior periods.

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.

Earth-N-Ware, Inc., 459938 (EA)  
1-1-05 to 12-31-07, \$329,749.98 Tax, \$32,975.02 Negligence Penalty  
For Petitioner:

Gerald Newton, Taxpayer  
Scott Kauffman, Attorney  
Cary Huxsoll, Tax Counsel

For Sales and Use Tax Department:

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

Issues: Whether the claimed exempt sales in interstate commerce were properly disallowed.

Whether adjustments are warranted to the unreported cigarette rebates.

Whether petitioner was negligent.

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.

The Board recessed at 12:14 p.m. and reconvened at 1:32 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Wareforce Corp., 442311 (EA)  
4-1-03 to 3-31-07, \$141,076.70 Tax  
For Petitioner:

Ferdinand Alfajora, Representative  
Scott Lambert, Hearing Representative

For Sales and Use Tax Department:

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

Issue: Whether adjustments are warranted to the amount of disallowed claimed nontaxable sales based on a stratified statistical sample.

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, March 23, 2011

Li Fang Ye, 478046 (AP)

7-1-03 to 6-30-04, \$36,175.00 Tax, \$1,044.70 Late Payment Penalty, \$2,572.80 Failure to File Penalty, \$2,572.80 Finality Penalty

For Petitioner:

Li Fang Ye, Taxpayer

Johnny Shih, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of China King Media (USA), Inc. (China King) for the period July 1, 2003 through June, 30, 2004.

Whether petitioner has established reasonable cause to relieve the penalties imposed on China King.

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.

Eritech International, Inc., 469541 (AC)

7-1-04 to 3-31-08, \$107,190.79 Tax, \$10,719.11 Penalty

For Petitioner:

Ali Khoshkhoo, 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 audited amounts of disallowed claimed nontaxable sales, unreported sales, or unreported excess district tax reimbursement.

Whether petitioner was negligent.

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

Jill Jan, 406775 (FH)

Deborah S. Weber, 406773 (FH)

1-1-00 to 12-31-00, \$21,213.00 Tax, \$2,282.97 Penalties

For Petitioners:

Jill Jan, Taxpayer

Kendrick Jan, Attorney

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 NCompass Systems, Inc. (NCompass) for the period January 1, 2000, through December 31, 2000.

Whether the Notice of Determination (NOD) issued to petitioner was timely.

Whether petitioner has established reasonable cause to relieve the penalties imposed on NCompass.

*Additional issue in petition of 406775:*

Whether petitioner's liability as a responsible person has been discharged as a result of her personal bankruptcy.

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.

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

Wednesday, March 23, 2011

The Board recessed at 3:55 p.m. and reconvened at 4:04 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Melody Arya Husaini and Bahram Arya Husaini, 415086 (AC)  
 Char Fasl Cuisine Restaurant, Inc., 418856 (AC)  
 Char Fasl Restaurant, Inc., 418861 (AC)  
 Bahram Arya Husaini, 418864 (AC)  
 Melody Arya Husaini, 418867 (AC)  
 4-1-03 to 6-30-06, \$0.00 Tax, \$28,904.71 Fraud Penalty  
 9-9-05 to 6-30-06, \$0.00 Tax, \$14,575.02 Fraud Penalty  
 4-1-03 to 11-30-05, \$0.00 Tax, \$17,235.72 Fraud Penalty

For Petitioners:

Melody Husaini, Taxpayer

Bahram Arya Husaini, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issue: Whether the understatement was the result of fraud or intent to evade the tax.

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

7 Bay Truck Station, Inc., 484942 (AA)

Aris Manukian, 484943 (AA)

1-1-05 to 13-31-07, \$26,088.09 Tax

For Petitioners:

Haig Keledjian, Attorney

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

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

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

Melody Arya Husaini and Bahram Arya Husaini, 415086 (AC)

Chra Fasl Cusine Resturant, Inc., 418856 (AC)

Char Fasl Restaurant, Inc., 418861 (AC)

Bahram Arya Husaini, 418864 (AC)

Melody Arya Husaini, 418867 (AC)

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

Wednesday, March 23, 2011

Jack Nadel, Inc., 382431 (AS)

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

Tom Young Chung, 470308 (AA)

Final Action: Ms. Steel moved to grant the petition. 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.

Mr. Runner moved that the negligence penalty be removed and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion failed for lack of a second.

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

Marwa Ahmad Harb, 401718 (AS)

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

Earth-N-Ware, Inc., 459938 (EA)

Final Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond (including its findings with respect to its attempts to contact petitioner's customer, B&T Services), and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

Wareforce Corp., 442311 (EA)

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.

Li Fang Ye, 478046 (AP)

Final Action: Ms. Steel moved to grant the petition. 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 duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the finality penalty be relieved if, within 30 days of the Notice of Redetermination, petitioner pays the full amount of tax remaining due under the Notice of Determination issued to China King Media (USA), Inc., on December 21, 2004, and that the petition otherwise be redetermined as recommended by the Appeals Division.

Wednesday, March 23, 2011

Eritech International, Inc., 469541 (AC)

Final Action: Ms. Yee moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Mandel but no vote was taken.

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 returned to the district for a reaudit.

Deborah S. Weber, 406773 (FH)

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

Jill Jan, 406775 (FH)

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

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

7 Bay Truck Station, Inc., 484942 (AA)

Aris Manukian, 484943 (AA)

Final Action: Ms. Steel moved that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board. Ms. Steel withdrew her motion.

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

The Board recessed at 5:31 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: *Shantilli, LLC, 434838 (UT)*; and, *Beach City Market, Inc., 466431 (FH)*.

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

Thursday, March 24, 2011

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

### SALES AND USE TAX APPEALS HEARINGS

Russell C. Robbins, Sr., 479532 (EH)

Russell Charles Robbins, Jr., 485670 (EH)

11-1-05 to 2-28-06, \$11,429.00 Tax, \$404.30 Late Payment Penalty, \$360.40 Late Filing Penalty, \$738.60 Failure to File Penalty, \$738.60 Finality Penalties

For Petitioners:

Russell C. Robbins, Sr., Taxpayer

For Sales and Use Tax Department:

Stephen Smith, 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 WWYL Enterprises, LCC (WWYL) for the period November 1, 2005, through February 28, 2006.

Whether petitioner has established reasonable cause sufficient for relieving the penalties for late payment of returns, failure to file returns, and failure to timely pay the determinations originally assessed against WWYL.

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.

Mr. Horton directed staff to provide guidance to taxpayers, within the BOE's jurisdiction, as to when a debt is a proposed liability as opposed to an actual debt.

Ms. Yee directed staff to prepare outreach material regarding bankruptcy with respect to the timing of the notice of determination and final determination.

Ms. Mandel directed staff to meet with the Bankruptcy Bar to improve communication on this subject.

Marc Laidler, 358821 (AS)

4-1-99 to 9-30-03, \$106,342.68 Tax, \$12,231.05 Failure to File and Finality Penalties

Raul Becerril, 358820 (AS)

4-1-99 to 3-31-02, \$106,342.68 Tax, \$11,791.53 Finality Penalty

Constantina Susie Frial, 360058 (AS)

4-1-99 to 9-30-03, \$106,342.68 Tax, \$12,231.05 Failure to File and Finality Penalties

James J. Brennan, 358974 (AS)

7-1-03 to 9-30-03, \$0.00 Tax, \$439.52 Penalties

For Petitioners:

Marc Laidler, Taxpayer

Brian Shanaghan, Representative

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

*Issue in petitions of 358821, 358820, and 360058:*

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

Thursday, March 24, 2011

Whether the disputed liability of 310 Motoring Inc. (3MI) is excessive or resulted from disallowed claimed exempt sales for which no sales tax reimbursement was collected.

*Issue in petitions of 358821 and 360058:*

Whether reasonable cause has been established to relieve the finality penalty and the penalty for failure to file a return incurred by 3MI.

*Issue in petition of 358820:*

Whether reasonable cause has been established to relieve the finality penalty incurred by 3MI.

*Issue in petition of 358974:*

Whether reasonable cause has been established to relieve the penalty for failure to file a return, originally assessed against 3MI, for which petitioner is being held liable as a responsible person.

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.

**Nikyar Hossein, 443193 (EH)**

1-1-04 to 10-31-06, \$17,803.65 Tax, \$2,305.66 Negligence Penalty

For Petitioner:

Hossein Nikyar, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Whether petitioner was negligent.

David Levine, Tax Counsel, Appeals Division, Legal Department, stated for the record that the petitioner does not concur in any amounts. (The tax as determined and proposed to be redetermined is \$62,120.48.)

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.

**Lisa Marie Bagot, 435016 (FH)**

1-1-96 to 6-30-02, \$18,986.42 Tax, \$4,501.46 Penalty

For Petitioner:

Lisa Bagot, Taxpayer

For Sales and Use Tax Department:

Pamela Mash, Tax Counsel

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

Issues: Whether taxpayer is personally liable as a reasonable person for the unpaid liabilities of Blue Cape International, Inc. (Blue Cape) for the period January 1, 1996 through June 30, 2002.

Whether taxpayer has established that the liabilities established in the audit for the period October 1, 1999 through June 30, 2002, were overstated.

Whether Blue Cape was negligent.

Whether taxpayer has established reasonable cause to relieve the late-payment, late-payment of return, and finality penalties assessed against Blue Cape.

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

Thursday, March 24, 2011

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.

Shady Kathem Muhammad, 404603 (EH)  
10-1-03 to 9-18-06, \$21,803.74 Tax, \$2,571.38

For Petitioner:

Shady Kathem Muhammad, Taxpayer  
Bradley L. Hogan, 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 audited amount of unreported sales.  
Whether petitioner was negligent.

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

Francis Ramo Newcomer, 416900 (AS)

7-1-05 to 6-30-06, \$6,957.46 Tax, \$2,624.86 Late Payment Penalty, \$74.10 Finality Penalty

For Petitioner:

Francis Ramo Newcomer, Taxpayer  
Aaron Gurrola, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether petitioner has established that the measure of tax for second quarter of 2006 is overstated.

Whether Residence should be granted relief from the late payment and finality penalties that have been passed through to petitioner as a responsible person.

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.

John D. Wright, 445514 (UT)

November 1, 2004, \$34,875.00 Tax

For Petitioner:

John D. Wright, Taxpayer  
Cris John Wenthur, Attorney

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

Issue: Whether petitioner's purchase and use of the vessel is excluded from use tax.

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

The Board recessed at 2:12 p.m. and reconvened at 2:31 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Thursday, March 24, 2011

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
MARCH 24, 2011**

Russell C. Robbins, Sr., 479532 (EH)  
Russell Charles Robbins, Jr., 485670 (EH)

David Levine, Tax Counsel, Appeals Division, Legal Department, advised of the revised recommendation of the Appeals Division that the finality penalties be relieved if, within 30 days of the Notice of Redetermination, petitioner pays the full amount of tax due under the Notice of Determination issued to WWYL Enterprises, LLC for the first quarter 2006 and that the other penalties be relieved without condition.

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 in accordance with the revised recommendation of the Appeals Division.

Marc Laidler, 358821 (AS)  
Raul Becerril, 358820 (AS)  
Constantina Susie Frial, 360058 (AS)  
James J. Brennan, 358974 (AS)

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

Nikyar Hossein, 443193 (EH)

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.

Lisa Marie Bagot, 435016 (FH)

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

**SALES AND USE TAX APPEALS HEARING**

PYPK Production, Inc., 441163 (AA)

7-1-04 to 6-30-07, \$51,524.46 Tax, \$5,197.50 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 unreported taxable sales.

Whether petitioner was negligent.

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

Thursday, March 24, 2011

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

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
MARCH 24, 2011**

Shady Kathem Muhammad, 404603 (EH)

Final Action: Ms. Steel moved that the negligence penalty be relieved and that the petition otherwise be redetermined as recommended by the Appeals Division. 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. 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 and directed staff to work with the taxpayer with respect to payment plan options and the Offer in Compromise Program.

Francis Ramo Newcomer, 416900 (AS)

Final 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 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.

John D. Wright, 445514 (UT)

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

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

The Board adjourned at 2:47 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: *Boris Khodzhoian, 405900 (AP); RC Marketing, Inc., 377824, 461615; Mowafak Waw, 444794 (ET).*

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