

Tuesday, March 23, 2010

The Board met at its offices at 450 N Street, Sacramento, at 1:34 p.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

The Board welcomed Ms. Alby to the Board as Acting Member.

SPECIAL PRESENTATION

Special Presentation of Board Resolution to Honorable Bill Leonard

On behalf of the Board, Ms. Yee presented a Board resolution to Bill Leonard, Member, Second District, extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California. Members made complementary remarks regarding their experiences with Mr. Leonard and his exceptional work on the Board of Equalization, and congratulated him on his appointment to Secretary of the State and Consumer Services Agency and wished him well in his new position. Mr. Leonard thanked the Members and his former staff. ([Exhibit 3.1.](#))

Exhibits to these minutes are incorporated by reference.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Granite Rock Company, 420038
 Bruce W. Woolpert and Rose Ann Woolpert, 420171
 Bruce G. Woolpert and Mary E. Woolpert, 420181
 Stephen G. Woolpert and Elizabeth M. Woolpert, 420221
 Arthur Woolpert, 420187
 Marianne Woolpert, 420219
 Joseph Woolpert, 420222
 Melissa E. Woolpert, 420223
 1995, \$72,173.00 Claim for Refund

For Appellant:

Bruce W. Woolpert, Taxpayer
 David Colker, Attorney

For Franchise Tax Board:

Daniel Biedler, Tax Counsel
 Terry Collins, Tax Counsel

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

Issues: Whether appellant's mining activity ended at the point at which it stockpiled crushed, unwashed rock in stockpiles for sale to the public, so that the 2.5 mile conveyor belt at issue was used after appellant's asphalt manufacturing began (a qualified activity for purposes of the Manufacturer's Investment Credit (MIC)); or whether the mining activity ended later, at the point at which the crushed and unwashed rock was washed and transported briefly by rail to appellant's hot plant, so that the 2.5 mile conveyor belt was used as part of its mining activity (which is not a qualified activity)?

Assuming appellant's mining activity ended at the point the crushed, unwashed rock was stockpiled for sale to the public, so that the 2.5 mile conveyor belt was used after

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asphalt manufacturing began, was its undisputed use removing decanted fines (waste) to the embankment area part of the asphalt manufacturing process, and thus eligible for the MIC?

Whether the claims for refund include costs incurred before the January 1, 1994, effective date of the MIC?

Amy Kelly, Counsel, Legal Appeals Division, Legal Department, stated for the record that the parties are in agreement as to the third issue: whether the claims for refund include costs incurred before the January 1, 1994, effective date of the MIC.

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

Walter B. Elcock and Laura K. Elcock, 474172
2003, \$87,209.00 Claim for Refund, \$21,802.25 Penalty
2004, \$15,282.00 Claim for Refund, \$3,820.000 Penalty
2005, \$28,585.00 Claim for Refund
2006, \$89,822.00 Claim for Refund

For Appellant:

William E. Taggart, Jr., Attorney

For Franchise Tax Board:

Terry Collins, Tax Counsel

Natasha Page, Tax Counsel

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

Issues: Whether respondent's allocation methodology to source California income from the exercise of nonqualified stock options (NQSO(s)) received from appellant-husband's employer was proper.

Whether respondent's allocation methodology to source California income from the vesting of restricted stock grants received from appellant-husband's employer was proper.

Whether appellants have shown reasonable cause to support the abatement of late filing penalties for 2003 or 2004.

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

The Board recessed at 3:49 p.m. and reconvened at 4:01 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Clovus M. Sykes, 492696, 492702
2001, \$2,686.00 Tax, \$1,623.68 Penalty
2004, \$2,831.00 Tax, \$707.75 Penalty

For Appellant:

Clovus M. Sykes, Taxpayer

For Franchise Tax Board:

Jane Perez, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether appellant has demonstrated error in the underlying tax assessment.

Whether appellant has shown reasonable cause for the abatement of penalties.

Whether the Board should impose a frivolous appeal penalty.

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

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

PUBLIC HEARINGS

Proposed Adoption of Regulation 1698.5, *Audit Procedures*

Robert Tucker, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's recommendation to adopt additional changes to the original text of proposed Sales and Use Tax Regulation 1698.5, *Audit Procedures*, pursuant to Government Code section 11346.8. ([Exhibit 3.3.](#))

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, the Board approved further changes to the published version of Regulation 1698.5 and ordered that the changed version be placed in the rulemaking file for 15 days.

Proposed Amendments to Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*

Carolee Johnstone, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding the proposed amendments to Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, and related cross-referencing regulations, to prescribe the requirements for obtaining innocent spouse relief from specified taxes and fees. ([Exhibit 3.4.](#))

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Steel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board adopted the amendments to Regulation 4903 and related cross-referencing regulations as published.

LEGAL APPEALS MATTERS, CONSENT

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

Liberty Supplies Company, Inc., 405242 (AA)

7-1-01 to 9-30-04, \$42,836.05 Tax

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

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James Anthony DiPinto, 445553 (KH)

7-1-06 to 10-12-07, \$22,258.34 Tax, \$4,759.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

David L. Wallace, 289815 (EH)

Kris L. Wallace, 442751 (EH)

August 29, 2001, \$00.00 Tax, \$4,360.00 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Steve and Vickie Marriott, 442732 (UT)

November 11, 2004, \$4,166.25 Tax

Action: Redetermine as recommended by the Appeals Division.

Mohammed Ali Khasksar Fard, 417571, 417575 (AC)

Alexe's State Jewelry, Inc., 417573 (AC)

11-12-04 to 3-31-06, \$62,151.42 Tax, \$6,215.13 Negligence Penalty

1-1-03 to 11-11-04, \$170,655.50 Tax, \$17,065.57 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Costa Mike Tannous, 340508 (BH)

1-1-97 to 12-31-99, \$8,563.32 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Jimmy Bui, 515505 (ET)

September 9, 2009 Seizure Date, \$595.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Charles Rehmati and Seema Ruzgani, 519676 (ET)

October 12, 2009 Seizure Date, \$420.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Loren Berk, 483646

2002, \$7,330.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Timothy W. Casarez, 476761

2005, \$668.00 Assessment

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

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Daniel P. Chiara and Lauren A. Chiara, 442174

2004, \$3,342.00 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Dwayne Daniels, 440108

2005, \$599.00 Tax, \$149.75 Late Filing Penalty, \$1,158.50 Notice and Demand Penalty, \$122.00 Filing Enforcement Fee

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

Gloria D. Dickerson, 439517

2005, \$986.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Earnmax Mortgage Corporation, 478143

2005, \$200.00 Notice and Demand Penalty, \$305.00 Filing Enforcement Recovery Fee

Action: Sustain the action of the Franchise Tax Board.

Bruce A. Freedline, 405927

2003, \$1,395.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Joyce A. Miller, 382018

2002, \$26,439.00 Tax, \$8,106.58 Penalties

Action: Sustain the action of the Franchise Tax Board.

William J. O'Connell III, 426210

2000, \$624.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Richard Ortega, 441636

2005, \$1,989.50 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board.

Rahm (Ron) Rowhani, 461572

2004, \$316.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ruth Scherfenberg, 421723

1999, \$1,207.00 Tax, \$301.75 Late Filing Penalty, \$286.11 Post-Amnesty Penalty

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

Melanti L. Siau, 445995

2005, \$909.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Kurt Sondgroth, 447175

2004, \$10,562.13 Innocent Spouse Relief

Action: Sustain the action of the Franchise Tax Board.

Gregory Teeters, 467152

2006, \$2,589.00 Tax, \$647.25 Late Filing Penalty, \$875.00 Notice and Demand Penalty, \$500.00 Frivolous Return Penalty

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

Charles H. Bond, 468891

2006, \$3,666.00 Tax, \$916.50 Late Filing Penalty, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Shawn Mills, 441635

2003, \$10,504.00 Tax, \$2,626.00 Late Filing Penalty, \$2,626.00 Notice and Demand Penalty, \$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Steve Olmos, 441632

2004, \$2,691.00 Tax, \$672.75 Late Filing Penalty, \$672.75 Notice and Demand Policy, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Barbara Bladen Porter, 424104

1994, \$81,053.37 Innocent Spouse Relief

Action: Deny the petition for rehearing.

Marianne Pretscher-Johnson, 440770

2005, \$7,005.00 Tax, \$1,751.25 Late Filing Penalty, \$1,751.25 Notice and Demand Penalty, \$1,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Marianne Pretscher-Johnson, 444214

2004, \$1,304.00 Tax, \$326.00 Late Filing Penalty, \$1,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Rodney Walker, 461172

2004, \$1,734.00 Tax, \$433.50 Late Filing Penalty, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Frank Martin, 489367

2004, \$19,409.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

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

Stephen M. Aldridge, 443881

2006, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Reana Anderson, 449809

2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Rebecca S. Brannan, 443295

2007, \$341.00

Action: Sustain the action of the Franchise Tax Board.

Doris N. Cintron, 445341

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Betty Lou Erickson (Deceased), 436159

2007, \$50.00

Action: Sustain the action of the Franchise Tax Board.

Patricia J. Fanning, 458631

2007, \$394.40

Action: Sustain the action of the Franchise Tax Board.

Susie Jaeger, 445919

2006, \$472.60

Action: Sustain the action of the Franchise Tax Board.

Ok Hee Joe, 423625

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Inger Keith, 426788

2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Guadalupe G. Magos, 426137

2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

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Rita L. Miles, 441577

2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Carmen Z. Peralta, 442527

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Keochoi Phothiwat, 427285

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Jane W. Power, 473090

2006, \$384.20

Action: Sustain the action of the Franchise Tax Board.

Seyedeh Razavian, 448040

2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Ronnie Vallet, 450602

2007, \$332.50

Action: Sustain the action of the Franchise Tax Board.

Ruenn Shyan Wang, 437614

2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Jo Anne Wilkinson, 473129

2007, \$312.50

Action: Sustain the action of the Franchise Tax Board.

Laura R. Williams, 424267

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

A. Woods, 443186

2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

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

The Board deferred consideration of the following matter: *Federal Express Corporation, 196286*.

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Fisher Scientific Co., LLC, 461618*; the Board made the following orders:

A & A Ready Mixed Concrete, Inc., 488770 (EA)

7-1-05 to 6-30-08, \$209,273.28

Action: Approve the redetermination as recommended by staff.

International Business Machines Corp., 447655 (OH)

1-1-99 to 12-31-02, \$229,618.72

Action: Approve the redetermination as recommended by staff.

Alonso Munoz, 418695 (EH)

7-1-98 to 9-30-02, \$149,649.92

Action: Approve the redetermination as recommended by staff.

Brian J. Mills, 461965 (EA)

10-1-97 to 8-12-00, \$1036,814.98

Action: Approve the redetermination as recommended by staff.

Fisher Scientific Co., LLC, 461618 (OH)

10-1-02 to 9-30-05, \$840,250.44

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

De Lage Landen Operational Services, LLC, 479496 (OH)

4-1-01 to 12-31-05, \$669,655.04

Action: Approve the redetermination as recommended by staff.

Silicon Graphics Federal, Inc., 379232 (CH)

1-1-03 to 3-31-06, \$164,875.86

Action: Approve the redetermination as recommended by staff.

Haskel International, Inc., 491363 (AC)

10-1-03 to 12-31-06, \$69,230.87

Action: Approve the redetermination as recommended by staff.

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MSC-Medical Services Company, Inc., 466101 (OH)

10-1-97 to 3-31-06, \$931,842.65

Action: Approve the redetermination as recommended by staff.

Foot Locker Retail, Inc., 519428 (OH)

8-2-09 to 8-29-09, \$127,093.32

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

Save Mart Supermarkets, 519429 (KH)

3-30-09 to 6-28-09, \$337,811.70

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

LBS Financial Credit Union, 451329 (EA)

1-1-06 to 9-30-08, \$174,624.09

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

Business Objects Americas, 358658 (GH)

4-1-03 to 9-30-06, \$123,863.00

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

The Permanente Medical Group, Inc., 350183 (CH)

1-1-03 to 12-31-05, \$75,725.92

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

Federal Express Corporation, 196286 (OH)

1-1-97 to 12-31-00, \$1,570,140.00

Action: The Board took no action.

Merillat Corporation, 415509 (OH)

1-1-05 to 3-31-07, \$109,158.77

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

Proquire, LLC, 436405 (OH)

7-1-04 to 3-31-06, \$114,109.11

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

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Buena Vista Home Video, 435365*; the Board made the following orders:

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Kenneth D. Durrett, 443768 (OH)

7-1-99 to 2-28-01, \$324,180.56

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

Donna M. Stennis, 433474 (AS)

7-1-96 to 10-4-99, \$453,377.26

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

Lynton D. Adams, 520058 (EA)

10-1-97 to 8-12-00, \$167,848.58

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

Icon International, LLC, 432523 (AS)

1-2-02 to 12-31-06, \$278,198.26

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

Hoop Retail Stores, LLC, 512296 (OH)

3-26-08 to 4-30-08, \$1,349,592.48

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

Maisie Yolanda Ott, 461734 (JH)

5-1-05 to 9-30-07, \$173,524.42

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

Buena Vista Home Video, 435365 (OH)

10-1-99 to 12-31-05, \$1,916,597.60

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

LBS Financial Credit Union, 451329 (EA)

1-1-06 to 9-30-08, \$636,089.79

Action: Approve the refund as recommended by staff.

The Permanente Medical Group, Inc., 350183 (CH)

1-1-03 to 12-31-05, \$483,085.33

Action: Approve the refund as recommended by staff.

The Regents of the University of California, 403162 (FH)

1-1-04 to 12-31-06, \$1,529,785.56

Action: Approve the refund as recommended by staff.

Merillat Corporation, 415509 (OH)

1-1-05 to 3-31-07, \$154,251.99

Action: Approve the refund as recommended by staff.

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Kokusai Semiconductor Equipment Corp., 491298 (GH)

1-1-09 to 3-31-09, \$106,534.94

Action: Approve the refund as recommended by staff.

GPS Consumer Direct, Inc., 400648 (OH)

1-1-04 to 6-30-04, \$100,826.36

Action: Approve the refund as recommended by staff.

Abraxis Bioscience, Inc., 437844 (OH)

1-1-05 to 12-31-06, \$106,121.31

Action: Approve the refund as recommended by staff.

Southern California Gas Company, 205208 (AA)

7-1-99 to 12-31-05, \$112,288.10

Action: Approve the refund as recommended by staff.

Kaiser Foundation Hospitals, 350184 (CH)

1-1-03 to 12-31-05, \$1,713,015.62

Action: Approve the refund as recommended by staff.

Solectron USA, Inc., 518869 (GH)

1-1-02 to 12-31-03, \$266,592.71

Action: Approve the refund as recommended by staff.

Kinecta Federal Credit Union, 491464 (AS)

4-1-06 to 3-31-09, \$288,274.05

Action: Approve the refund as recommended by staff.

Regal Cinemas, Inc., 479026 (OH)

7-1-05 to 6-30-08, \$112,181.56

Action: Approve the refund as recommended by staff.

Pacific Service Credit Union, 494550 (CH)

10-1-08 to 12-31-08, \$145,544.00

Action: Approve the refund as recommended by staff.

Applied Minds, Inc., 510504 (AC)

8-1-03 to 6-30-07, \$279,404.94

Action: Approve the refund as recommended by staff.

GPS Services, Inc., 400434 (BH)

2-1-04 to 6-30-04, \$840,190.95

Action: Approve the refund as recommended by staff.

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Flynn, Sabatino and Day, Inc., 443998 (AS)

1-1-05 to 12-31-07, \$144,088.47

Action: Approve the refund as recommended by staff.

Veeco Process Equipment, Inc., 485606 (OH)

10-1-08 to 12-31-08, \$266,200.00

Action: Approve the refund as recommended by staff.

Drive Financial Services, LP, 462795 (OH)

1-1-06 to 12-31-06, \$676,093.20

Action: Approve the refund as recommended by staff.

Southside Financial Group, LLC, 481114 (OH)

10-1-07 to 3-31-09, \$357,338.37

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS, CONSENT

With respect to the Special Taxes Matters, Redeterminations, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *MBIA Insurance Corporation, 111737*; and, *MBIA Insurance Corporation, 307815*; the Board made the following orders:

Laidlaw Transit Services, Inc., 303428 (MT)

1-1-99 to 6-30-02, \$333,246.92

Action: Approve the redetermination as recommended by staff.

MBIA Insurance Corporation, 111737 (ET)

1-1-96 to 12-31-99, \$826,754.00

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

MBIA Insurance Corporation, 307815 (ET)

1-1-00 to 12-31-02, \$266,923.55

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

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. Steel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *The Wine Group, LLC*, the Board made the following orders:

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Laidlaw Transit Services, Inc., 332585 (MT)

7-1-02 to 6-30-05, \$155,651.74

Action: Approve the refund as recommended by staff.

IPC (USA), Inc., 379280, 432708 (MT)

5-1-06 to 7-31-06, \$448,907.61

Action: Approve the refund as recommended by staff.

The Wine Group, LLC, 493582 (ET)

3-1-09 to 7-31-09, \$813,865.08

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

LEGAL APPEALS MATTERS, ADJUDICATORY

James M. Heim, 379939 (CH)

10-1-00 to 6-30-01, \$0.00 Tax, \$27,007.15 Interest, \$38,949.88 Penalties

Considered by the Board: September 1, 2009

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

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

James Bass Smith, 353126 (UT)

December 4, 2003, \$13,600.00 Tax

Considered by the Board: September 1, 2009

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

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

Ms. Mandel stated for the record that Mr. Chiang would not participate in the matter of *Surinder Singh, 506263*; and left the Boardroom.

Surinder Singh, 506263 (ET)

May 27, 2009, \$561.25 Approximate Value

Considered by the Board: December 15, 2009

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

Action: Upon motion of Mr. Horton, seconded by Ms. Alby and duly carried, Ms. Yee, Mr. Horton and Ms. Alby voting yes, Ms. Steel voting no, Ms. Mandel absent and not participating, the Board determined that staff properly seized the tobacco products.

Ms. Mandel returned to the Boardroom.

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**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,
ADJUDICATORY**

Michael D. Charles, 439490, 440947

2004, \$4,235.00 Tax, \$1,058.75 Late Filing Penalty, \$1,058.75 Notice and Demand Penalty
2005, \$5,043.00 Tax, \$1,260.75 Late Filing Penalty, \$1,260.75 Notice and Demand Penalty,
\$122.00 Filing Enforcement Fee

Considered by the Board: October 6, 2009

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

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried,
Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board adopted a
decision sustaining the action of the Franchise Tax Board and imposed frivolous appeal penalties
in the amounts of \$375.00 for 2004 and \$375.00 for 2005 as recommended by staff.

Fernando Gutierrez, 449484

2006, \$560.00 Claim for Refund

Considered by the Board: June 30, 2009

Contribution Disclosures pursuant to Government Code section 15626: No contribution
disclosure forms were filed. The Members noted that their records disclosed no contributions
from this taxpayer, his agent or participants.Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried,
Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board adopted a
decision modifying the action as conceded by the Franchise Tax Board by a refund in the amount
of \$271.00, in accordance with staff's revised recommendation.

David L. McKibbin and Sherri L. McKibbin, 340534

2002, \$934.00 Assessment

Considered by the Board: September 22, 2009

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

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

Prudential Commercial Leasing, Inc., 468875

1999, \$13,577.62 Assessment

2000, \$5,617.82 Assessment

2001, \$4,788.19 Assessment

Considered by the Board: September 22, 2009

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

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

Tuesday, March 23, 2010

Andra R. Sachs, 446027

2000, \$688,300.00 Tax

Considered by the Board: September 22, 2009

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

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

SALES AND USE TAX MATTERS, DENIAL RELIEF OF PENALTIES, ADJUDICATORY

Thermo Keytek, LLC, 494632 (OH)

7-1-06 to 12-31-07, \$94,145.40

Considered by the Board: December 15, 2009

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

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

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

Ultramar, Inc., 486928

7-1-99 to 12-31-06, \$2,867,125.23

Considered by the Board: Presented for Separate Discussion

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

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

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Audits

Southern California Gas Company, (149)

2005, \$17,300,000.00 Escaped Assessment, \$7,266,000.00 In-lieu Interest

2006, \$10,700,000.00 Escaped Assessment, \$3,531,000.00 In-lieu Interest

2007, \$11,300,000.00 Escaped Assessment, \$2,712,000.00 In-lieu Interest

2008, \$15,200,000.00 Escaped Assessment, \$2,280,000.00 In-lieu Interest

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

Note: These minutes are not final until Board approved.

Tuesday, March 23, 2010

ABS-CBN Telecom North America, Inc., (7581)

2006, \$133,000.00 Escaped Assessment

2007, \$158,000.00 Escaped Assessment

2008, \$164,000.00 Escaped Assessment

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

Telmex USA, LLC, (7866)

2006, \$12,600,000.00 Escaped Assessment, \$1,260,000.00 Penalties, \$4,158,000.00 In-lieu Interest

2007, \$19,600,000.00 Escaped Assessment, \$1,960,000.00 Penalties, \$4,704,000.00 In-lieu Interest

2008, \$100,000.00 Escaped Assessment, \$10,000.00 Penalties, \$15,000.00 In-lieu Interest

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

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Jeff Parsons and Robin Parsons; J.R. Brewski's, Inc.; Thomas Dodson and Linda Dodson; Richard Walton and Matrix Communications, LLC; Cupid's Garden Bridal Boutique, Inc.; Blair Wilkes and Lynnette Wilkes;* and, *John Herrera;* as recommended by staff.

LOCAL TAX REALLOCATION MATTERS

City of Union City, 469296

10-1-96 to 9-30-09, \$1,607,500.00 Estimated Amount in Dispute

Considered by the Board: August 31, 2009

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

Tuesday, March 23, 2010

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD MARCH 23, 2010

Granite Rock Company, 420038
 Bruce W. Woolpert and Rose Ann Woolpert, 420171
 Bruce G. Woolpert and Mary E. Woolpert, 420181
 Stephen G. Woolpert and Elizabeth M. Woolpert, 420221
 Arthur Woolpert, 420187
 Marianne Woolpert, 420219
 Joseph Woolpert, 420222
 Melissa E. Woolpert, 420223

Final Action: Upon motion of Ms. Steel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board reversed the action of the Franchise Tax Board.¹

Walter B. Elcock and Laura K. Elcock, 474172

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Kenneth Pillay, 487771

2003, \$9,260.26 Tax, \$2,315.24 Late Penalty, 6,793.25 Notice and Demand Penalty

For Appellant: No Appearance

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 shown that respondent's proposed assessment is barred by the statute of limitations.

Whether appellant has shown error in respondent's determination of his underlying tax for 2003.

Whether appellant has shown the late filing penalty and the notice and demand penalty imposed by respondent should be abated.

Whether a frivolous appeal penalty should be imposed

Respondent's Exhibit: Letter from Kenneth Hall, CPA to FTB ([Exhibit 3.5](#))

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

¹ Additional discussion on this matter took place later in the day.

Tuesday, March 23, 2010

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD MARCH 23, 2010**

Clovus M. Sykes, 492696, 492702

Amy Kelly, Counsel, Legal Appeals Division, Legal Department, stated for the record that the Franchise Tax Board reduced the tax for 2001 and 2004 and conceded the demand penalty.

Final Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board modified the action of the Franchise Tax Board as conceded and imposed a \$375.00 frivolous appeal penalty for each tax year on appeal.

Granite Rock Company, 420038
Bruce W. Woolpert and Rose Ann Woolpert, 420171
Bruce G. Woolpert and Mary E. Woolpert, 420181
Stephen G. Woolpert and Elizabeth M. Woolpert, 420221
Arthur Woolpert, 420187
Marianne Woolpert, 420219
Joseph Woolpert, 420222
Melissa E. Woolpert, 420223

The Board discussed the appropriateness of a Formal Opinion on this matter but no further action was taken.

The Board adjourned at 5:00 p.m.

The foregoing minutes are adopted by the Board on May 26, 2010.

Wednesday, March 24, 2010

The Board met at its offices at 450 N Street, Sacramento, at 10:59 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Macromedia, Inc., 461946 (BH)
7-1-03 to 12-31-05, \$225,461.14 Tax
For Petitioner:

Sonja Johnson, Representative
Purva Samant, Representative
Tran Nguyen, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing

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

Issues: Whether adjustments are warranted to the disallowed claimed nontaxable and netted sales.

Whether adjustments are warranted to the audited amount of recorded, but not reported, taxable sales.

Whether adjustments are warranted to the understated amount of ex-tax purchases subject to use tax.

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

Douglas Brent Dunbar, Zaid Rahmani, and Irina Rasuli, 295401 (CH)

10-1-96 to 9-30-99, \$3,595.55 Successor Liability

Smoker's Paradise, LLC, 295398, 378099, (GH)

10-1-96 to 12-31-03, \$5,768.63 Successor Liability, \$3,750.00 Claim for Refund

Douglas Brent Dunbar and Zaid Rahmani, 304043, 378109 (CH)

10-1-96 to 1-31-04, \$8,866.15 Successor Liability, \$350.00 Claim for Refund

Cheaper Cigarette, Douglas Brent Dunbar, Mansoor Rahmani, Tariq Rasuli and Zaid Rahmani, 296295 (JH)

10-1-96 to 3-31-04, \$11,764.87 Successor Liability

Cigarettes "R" Cheaper, Zaid Rahmani, Tariq Mohammed Rasuli and Monsoor Rahmani, 296294 (JH)

10-1-96 to 3-31-04, \$9,556.22 Successor Liability, \$500.00 Claim for Refund

Cigarette Center, LLC, 295400, 378108 (CH)

10-1-96 to 9-30-99, \$5,721.30 Successor Liability, \$3,000.00 Claim for Refund

For Petitioners/Claimants: Douglas Dunbar, Taxpayer

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

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

Issue: Whether taxpayer is liable as a successor for the unpaid liabilities of Cigarettes Cheaper (SR JHF 99-793094).

Additional issue in petitions of 296295 and 296294:

Whether taxpayer should be relieved of the late-payment penalties imposed against the predecessor that were passed through to taxpayer as part of the successor liability.

Note: These minutes are not final until Board approved.

Wednesday, March 24, 2010

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

The Board recessed at 12:49 p.m. and reconvened at 1:36 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

TestOut Corporation, 400769, 400658 (OH)

1-1-03 to 12-31-05, \$45,482.23 Tax, \$105,602.00 Claim for Refund

For Petitioner/Claimant: Steve Young, Attorney

For Sales and Use Tax Department: Bradley Heller, Tax Counsel

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

Issue: Whether petitioner was required to collect and report use tax to the Board because it held a Certificate of Registration–Use Tax.

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

James Fishman, 355538 (CH)

1-1-96 to 12-31-98, \$8,248.64 Tax, \$934.50 Finality Penalty

For Petitioner: James Fishman, Taxpayer

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 pursuant to Revenue and Taxation Code section 6829 for a portion of the unpaid liabilities of Unmanned Solutions, Inc. (USI), seller's permit SR CH 26-736854, for the period January 1, 1996, through December 31, 1998.

Whether petitioner has established that USI should be granted relief from the finality penalty that has been passed through to petitioner as a responsible person.

Whether the NOD was timely issued to petitioner.

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

Sukrita Sanahi, 436874 (EA)

5-1-04 to 12-31-06, \$10,698.91 Tax, \$1,098.34 negligence Penalty

For Petitioner: Sukrita Sanahi, Taxpayer

Sham Sunder, Witness

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

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

Issues: Whether further adjustments are warranted to the audited understatement of reported sales.

Whether petitioner was negligent.

Wednesday, March 24, 2010

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

Winntech Digital Systems, Inc., 353092, 416075, 416073 (OH)

1-1-96 to 6-30-04, \$00.00 Tax, \$24,032.34 Penalty

7-1-04 to 12-31-06, \$00.00 Tax, \$2,415.40 Penalty

1-1-07 to 3-31-07, \$00.00 Tax, \$59.80 Penalty

For Petitioner: Joseph D. Prelogar, Representative

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

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

Issues: Whether relief of the failure-to-file penalties is warranted.

Whether relief from the finality penalties are warranted.

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

Ms. Yee directed staff to confer with the petitioner regarding the remaining interest in dispute.

Edward A. Foster, 424872 (CH)

7-1-04 to 6-30-05, \$00.00 Tax, \$1,936.20 Penalty

For Petitioner: Edward A. Foster, Taxpayer

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

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

Issues: Whether relief is warranted from the late-payment and finality penalties originally assessed against the corporation.

Whether relief of interest is warranted.

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

The Board recessed at 4:08 p.m. and reconvened at 4:15 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MARCH 24, 2010

Winntech Digital Systems, Inc., 353092, 416075, 416073 (OH)

Scott Lambert, Hearing Representative, Sales and Use Tax Department, stated for the record that staff explained the interest computation to the petitioner and will continue the discussion the following day and will make any changes if necessary.

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

Wednesday, March 24, 2010

Macromedia, Inc., 461946 (BH)

Final Action: Ms. Steel moved to find that the sales to CSU Long Beach are exempt, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Alby. Ms. Steel withdrew her motion.

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

Douglas Brent Dunbar, Zaid Rahmani, and Irina Rasuli, 295401 (CH)

Smoker's Paradise, LLC, 295398, 378099, (GH)

Douglas Brent Dunbar and Zaid Rahmani, 304043, 378109 (CH)

Cheaper Cigarette, Douglas Brent Dunbar, Mansoor Rahmani, Tariq Rasuli and Zaid Rahmani, 296295 (JH)

Cigarettes "R" Cheaper, Zaid Rahmani, Tariq Mohammed Rasuli and Monsoor Rahmani, 296294 (JH)

Cigarette Center, LLC, 295400, 378108 (CH)

David H. Levine, Tax Counsel, Appeals Division, Legal Department, reported staff's revised recommendation to grant taxpayer's claim for refund in Case ID 296294 in the amount of \$500.00.

Final Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that no further adjustments be made in the administrative protests and that the claims for refund be denied, except that the Board ordered the claim for refund in Case ID 296294 be granted in the amount of \$500, in accordance with the revised recommendation of the Appeals Division.

TestOut Corporation, 400769, 400658 (OH)

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

James Fishman, 355538 (CH)

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

Sukrita Sanahi, 436874 (EA)

Final Action: Ms. Steel moved to apply an error rate of 125 percent for 2004, and that the petition otherwise be redetermined as recommended by the Appeals Division, and to direct staff to inform the petitioner of the Offer in Compromise Program. The motion was seconded by Ms. Alby but failed to carry, Ms. Alby and Ms. Steel voting yes, Ms. Yee, Mr. Horton and Ms. Mandel voting no.

Wednesday, March 24, 2010

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

Winntech Digital Systems, Inc., 353092, 416075, 416073 (OH)

Final Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the determination be redetermined without further adjustments, that the finalities penalties be deleted, and that the administrative protests otherwise be adjusted as recommended by the Appeals Division, and directed staff to discuss payment options with the taxpayer.

Edward A. Foster, 424872 (CH)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that no adjustments be made in the administrative protest as recommended by the Appeals Division, and directed staff to discuss payment options with the taxpayer.

The Board adjourned at 4:38 p.m.

The foregoing minutes are adopted by the Board on May 26, 2010.

Thursday, March 25, 2010

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Kenneth Richard McLeod, 435025, 504922 (KH)

1-1-95 to 6-30-00, \$121,048.88 Tax, \$00.00 Penalty, \$16,465.81 Claim for Refund

For Petitioner/Claimant:

Kenneth Richard McLeod, Taxpayer

Kenneth Roy McLeod, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issue: Whether taxpayer is liable for the unpaid tax-related liabilities of the predecessor, Kenneth Roy McLeod.

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

The Board recessed at 10:31 a.m. and reconvened at 10:41 a.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Rebecca Ann Scherz, 416659 (CH)

Eric Brian Scherz, 401795 (CH)

4-1-03 to 4-15-04, \$00.00 Tax, \$9,902.42 Penalty

For Petitioner:

Eric B. Scherz, Taxpayer

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issues: Whether taxpayer is personally liable as a responsible person under Revenue and Taxation Code section 6829 for the unpaid liabilities of Ask Us First! LLC (SR CH 97-713214).

Whether relief of the late-payment penalties originally assessed against AUF is warranted.

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

PETITION FOR RELEASE OF SEIZED PROPERTY

DFC Gas & Wine, LLC, 513008 (ET)

August 13, 2009, \$595.001 Approximate Value

For Petitioner:

Harpreet Dhaliwal, Taxpayer

For Property and Special Taxes Department

Stephen Smith, Tax Counsel

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

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

Thursday, March 25, 2010

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

CHIEF COUNSEL MATTERS

RULEMAKING

Section 100 Changes

Sales and Use Tax Regulation 1525.7, *Rural Investment Tax Exemption*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to repeal Regulation 1525.7 based on the repeal of Revenue and Taxation Code section 6378.1 by its own terms effective January 1, 2006. ([Exhibit 3.6.](#))

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board authorized the repeal of Regulation 1525.7 as recommended by staff.

Exhibits to these minutes are incorporated by reference.

Sales and Use Tax Regulation 1584, *Membership Fees*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to delete obsolete reference to the operative date of January 1, 1996. ([Exhibit 3.7.](#))

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

Sales and Use Tax Regulation 1602.5, *Reporting Methods for Grocers*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to update the tax rates used in the example included in the regulation. ([Exhibit 3.8.](#))

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board authorized the amendment of examples in the regulation as recommended by staff.

Thursday, March 25, 2010

Sales and Use Tax Regulation 1700, *Reimbursement for Sales Tax*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to update the tax rates used in the examples included in the regulation. ([Exhibit 3.9.](#))

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board authorized the amendment of examples in the regulation as recommended by staff.

OTHER CHIEF COUNSEL MATTERS**Request for Resolution Concerning Coverage for BOE Volunteers**

Sharon Brady Silva, Tax Counsel, Lisa Fien, Chief, Human Resources Division, presented staff's request for Board adoption of a resolution regarding workers' compensation coverage for volunteers performing services to the agency in order to ensure compliance with the requirements of Labor Code section 3363.5. ([Exhibit 3.10.](#))

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

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

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

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California. ([Exhibit 3.11.](#))

Sandra Kay Ellerson, Tax Technician III, Out-of-State Sacramento Office, Sales and Use Tax Department

Harold J. Scott, Business Tax Compliance Supervisor, Return Analysis Unit, Sales and Use Tax Department

Elena A. Shroyer, Tax Technician III, Out-of-State Sacramento Office, Sales and Use Tax Department

Luis Torres, Business Taxes Specialist I, Can Nuys Office

Edward Toussaint, Business Taxes Representative, Culver City Office

Estelita B. Velasquez, Tax Technician III, San Diego Office

Brenda Ward, Associate Personnel Analyst, Human Resources Division

Thursday, March 25, 2010

Action: Adopt a resolution to Honorable Rick Auerbach, Los Angeles County Assessor, extending its best wishes on his retirement and its appreciation for his service to the citizens of Los Angeles County. (Exhibit 3.12.)

Action: Approve the Board Meeting Minutes of November 17-19, 2009, December 15-16, 2009, January 26-27, 2010, and, February 23-24, 2010.

Action: Approve 2010 Timber Advisory Committee appointments. (Exhibit 3.13.)

Action: Approve revisions to Audit Manual Chapter 4, *General Audit Procedures*. (Exhibit 3.14.)

Action: Approve revisions to Audit Manual Chapter 10, *Occasional Sales - Sales of a Business*. (Exhibit 3.15.)

Members made complementary remarks regarding their experiences with Honorable Rick Auerbach, Los Angeles County Assessor, thanked him for his diligent work for the State of California, and wished him well in his retirement.

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee

Action: The Board deferred consideration of the Legislative Committee report to the April meeting.

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, provided an update on the Board's 2010-2015 Strategic Plan.

Ms. Yee directed staff to consult with each Board Member's office regarding external stakeholders.

Mr. Hirsig introduced Anita Gore, Deputy Director, External Affairs Department, and Anna Brannen, Chief Information Officer, Technology Services Division, who provided updates on video streaming Culver City Board Meetings and the conferencing technologies pilot project. (Exhibit 3.16.)

Mr. Hirsig introduced David Gau, Deputy Director, Property and Special Taxes Department, who provided an update on the proposal to reorganize the Special Taxes Divisions along functional lines. (Exhibit 3.17.)

Sales and Use Tax Deputy Director's Report

Randie L. Henry, Deputy Director, Sales and Use Tax Department, provided an update on the unapplied remittances project in response to Members' request for the number of unapplied remittances refunded without credit interest. (Exhibit 3.18.)

Note: These minutes are not final until Board approved.

Thursday, March 25, 2010

Ms. Steel directed staff to provide her office with a copy of the notification letter that will be sent to taxpayers with unapplied remittances.

The Board directed staff to provide procedures for returning these payments made in error, with the Legal Department's review, for the Board's consideration at the April 2010 Board Meeting.

Administration Deputy Director's Report

Christine Demes, Acting Chief, Administrative Support Division, Administration Department, made introductory remarks regarding staff's request for approval of the contract over \$1 million, Microsoft licenses, which would upgrade prior versions of Office to Office 2007. [\(Exhibit 3.19.\)](#)

Ms. Mandel stated for the record that she would not participate in this matter and left the Boardroom.

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel absent and not participating, the Board approved the Microsoft licenses contract as recommended by staff.

Ms. Mandel returned to the Boardroom.

Christine Demes, Acting Chief, Administrative Support Division, Administration Department, provided an update on the Headquarters Remediation Project and made introductory remarks regarding the 2009 State Agency Recognition Award (SARA), the Governor's Bronze Award to the Acquisitions Branch for increasing its participation in the State's Small Business and Disabled Veteran Business Enterprise programs.

Members made complementary remarks regarding staff of the Acquisitions Branch and expressed their appreciation for staff's excellent work.

The Board recessed at 12:36 p.m. and reconvened at 12:43 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MARCH 25, 2010

Kenneth Richard McLeod, 435025, 504922 (KH)

Final Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, the Board ordered that no further adjustments be made in the administrative protest and that the claim for refund be denied as recommended by the Appeals Division, and directed staff to inform the petitioner of the Offer in Compromise Program.

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Rebecca Ann Scherz, 416659 (CH)

Eric Brian Scherz, 401795 (CH)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined without adjustment and no adjustments be made in the administrative protest as recommended by the Appeals Division.

FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HELD MARCH 25, 2010

DFC Gas & Wine, LLC, 513008 (ET)

Final Action: Upon motion of Ms. Alby, seconded by Ms. Mandel and duly carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Mandel voting yes, Ms. Steel voting no, the Board determined that staff properly seized the tobacco products.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 12:57 p.m. and reconvened immediately in closed session with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

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

The Board recessed at 1:41 p.m. and reconvened immediately in open session with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

The Board adjourned at 1:42 p.m.

The foregoing minutes are adopted by the Board on May 26, 2010.

Note: The following matters were removed from the calendar prior to the meeting: portions of the Administration Deputy Director's Report (purchase of some SharePoint licenses; activated swing space moves; Headquarters annex; and, 2009/10 and 2010/11 budget update, furlough plan and layoffs).