Tuesday, April 13, 2010

The Board met at its offices at 450 N Street, Sacramento, at 9:38 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Thomas A. Leonardini and Karen M. Leonardini, 449478
2001, $32,541.00 Claim for Refund
2002, $51,940.00 Claim for Refund
2003, $30,705.00 Claim for Refund
2004, $27,759.00 Claim for Refund

For Appellant: Thomas A. Leonardini, Taxpayer
Michael A. Thompson, Attorney

For Franchise Tax Board: Jason Riley, Tax Counsel
Bill Hilson, Tax Counsel

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

Issues: Whether appellants have presented evidence sufficient to demonstrate that their activities constituted "qualified research" as defined in Internal Revenue Code (IRC) section 41.

Whether appellants have met their burden of proving qualified expenses for purposes of the research and development tax credit under Revenue and Taxation Code section 23609 for the tax years at issue.

Whether appellant-husband's wages were "unreasonable under the circumstances", so as to disqualify them as expenses under IRC section 174.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 4.1)

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.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 11:14 a.m. and reconvened at 11:19 a.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Harvinder Singh Pahal and Satvinder Kaur, 487053
2004, $4,120.00 Assessment

For Appellant: Matt Staub, Representative

For Franchise Tax Board: Jozel Brunett, Tax Counsel
Todd Bailey, Tax Counsel

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

Issues: Whether the Board has jurisdiction to determine that appellants' tax liability for 2004 has been discharged in bankruptcy.

Whether respondent should be estopped from assessing the proposed tax and/or related interest pursuant to the doctrine of equitable estoppel.

Whether, in the alternative, appellants have shown that respondent's proposed assessment is erroneous.

PENDING APPROVAL

Tuesday, April 13, 2010

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 appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals 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:

Steven John Biondi, 403194 (KH)
1-1-02 to 12-31-05, $211,435.58 Tax, $45,001.49 Penalty
Action: Redetermine as recommended by the Appeals Division.

Peter Alden Sartin, 473188 (AP)
12-23-06 to 12-31-06, $2,926.28 Tax
Action: Redetermine as recommended by the Appeals Division.

Kent Gene Miller, 415553 (KH)
10-1-03 to 4-30-06, $16,213.60 Tax
Action: Redetermine as recommended by the Appeals Division.

Hamed Akbarzadeh, 514215 (ET)
August 21, 2009, $2,421.68 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Ayman Hassan Shehadeh Odeh & Omar Mohammed Odeh, 513466 (ET)
August 18, 2009, $203.00
Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Sylvia Bellew (Deceased) Philip K. Lee (Trustee), 459746;* and, *Barbara Talalemotu, 475326.*

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:

Erika Bejarano, 472938
2006, $433.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

PENDING APPROVAL

Tuesday, April 13, 2010

Dominga P. Belen, 449318
1998, $2,687.00 Assessment, $654.09 Post-Amnesty Penalty
1999, $2,045.00 Assessment, $387.80 Post-Amnesty Penalty
Action: Sustain the action of the Franchise Tax Board.

Sylvia Bellew (Deceased) Philip K. Lee (Trustee), 459746
2006, $5,519.00 Claim for Refund
Action: The Board took no action.

Anup Bhowmik, 444144
2002, $2,016.00 Tax, $943.20 Penalty
2003, $2,363.00 Tax, $472.60 Accuracy-Related Penalty
2004, $1,340.00 Tax, $268.00 Accuracy-Related Penalty
Action: Modify the action of the Franchise Tax Board.

Eugene Cobb & Jacqueline Cobb, 450391
2006, $6,254.02 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Michael Denapoli & Rie Y. Denapoli, 479519
2007, $250.25 Late Payment Penalty, $71.34 Underpayment of Estimated Tax Penalty
Action: Sustain the action of the Franchise Tax Board.

Glen A. Dierckman, 478532
1999, $495.00 Tax, $93.87 Post-Amnesty Penalty
Action: Sustain the action of the Franchise Tax Board.

John J. Hyland & Monica M. Hyland, 460067
2005, $4,270.00 Claim for Refund
2006, $1,401.76 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Han Suk Kim, 464310
2005, $345.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Colin Macnab & Caroline Macnab, 440891
2005, $17,768.75 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Daniel L. Mahnke, 473875
2005, $92.00 Tax, $92.00 Late Filing Penalty, $23 Notice and Demand Penalty
Action: Sustain the modified action of the Franchise Tax Board and impose a $5,000.00 frivolous appeal penalty.

PENDING APPROVAL

Tuesday, April 13, 2010

Nick A. Marquez, 444652
2005, $1,170.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Betty Mattson, 483784
1998, $245.00 Claim for Refund
Action: Dismissed for lack of jurisdiction.

Serban Porumbescu & Mihaela Porumbescu, 379542
1999, $12,388.00 Tax, $1,649.95 Accuracy-Related Penalty
Action: Sustain the action of the Franchise Tax Board.

Darrell L. Rich, 462017
2005, $8,690.00 Tax, $2,172.50 Late Filing Penalty, $2,172.50 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.

Barbara Talalemotu, 475326
2007, $180.00 Claim for Refund
Action: The Board took no action.

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 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:

Jibari Fite, 426725
2007, $1 or more
Action: Sustain the action of the Franchise Tax Board.

Theresa Hibpshman, 405006
2005, $1 or more
Action: Sustain the action of the Franchise Tax Board.

Arthur King, 463769
2007, $347.50
Action: Sustain the action of the Franchise Tax Board.

Daisy Wachsmuth, 475485
2007, $1 or more
Action: Sustain the action of the Franchise Tax Board.

PENDING APPROVAL

Tuesday, April 13, 2010

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

The Board deferred consideration of the following matters: *Federal Express Corporation, 332384;* and, *Oracle Corporation, 316909*.

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 Mr. Horton, 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 *Canon U.S.A., Inc., 432709;* and, *Charles Schwab & Co., Inc., 465764*; the Board made the following orders:

AAA Restaurant Fire Control, Inc., 493649 (CH)
7-1-05 to 3-31-08, $328,688.18
Action: Approve the redetermination as recommended by staff.

Canon U.S.A., Inc., 432709 (OH)
10-1-01 to 9-30-05, $337,392.40
Action: Approve the redetermination as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Peerless Manufacturing Co., 491320 (OH)
1-1-04 to 12-31-06, $260,357.75
Action: Approve the redetermination as recommended by staff.

Océ Financial Services, Inc., 473623 (OH)
1-1-04 to 12-31-06, $341,784.71
Action: Approve the redetermination as recommended by staff.

Gamestop, Inc., 521631 (OH)
7-1-09 to 9-30-09, $440,886.50
Action: Approve the relief of penalty/interest as recommended by staff.

Charles Schwab & Co., Inc., 465764 (BH)
1-1-02 to 12-31-06, $161,164.47
Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Federal Express Corporation, 332384 (OH)
7-1-01 to 12-31-02, $665,421.00
Action: The Board took no action.

Oracle Corporation, 316909 (BH)
4-1-02 to 6-30-02, $136,067.32
Action: The Board took no action.

PENDING APPROVAL

Tuesday, April 13, 2010

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

The Board deferred consideration of the following matters: *Wells Fargo Auto Finance, Inc., 421052; Visterra Credit Union, 484299; Wachovia Dealer Services, Inc., 492529; Sequoia Voting Systems, Inc., 484622;* and, *American Airlines, Inc., 256349.*

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. 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 87105 in *Home Depot USA, Inc., 521498; Target Corporation, 506509; Charles Schwab & Company, Inc., 465764; Intel Corporation, 434861;* and, *The Walt Disney Company, 435359;* the Board made the following orders:

Home Depot USA, Inc., 521498 (OH)
1-1-07 to 9-30-07, $15,131,690.06
Action: Approve the credit and cancellation as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Target Corporation, 506509 (OH)
7-1-03 to 12-31-06, $198,150.73
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Southern California Graphics Corp., 288540 (AS)
7-1-01 to 12-31-07, $764,261.73
Action: Approve the refund as recommended by staff.

The Gap Stores, Inc., 351102 (BH)
1-1-03 to 12-31-04, $1,036,639.26
Action: Approve the refund as recommended by staff.

Wells Fargo Auto Finance, Inc., 421052 (BH)
1-1-06 to 12-31-06, $342,165.32
Action: The Board took no action.

Charles Schwab & Company, Inc., 465764 (BH)
1-1-02 to 12-31-06, $161,359.09
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Hub Distributing, Inc., 507726 (EH)
4-1-06 to 12-31-06, $151,601.26
Action: Approve the refund as recommended by staff.

PENDING APPROVAL

Tuesday, April 13, 2010

Westside Building-Material Corp., 486325 (EA)
7-1-07 to 12-31-08, $136,444.46
Action: Approve the refund as recommended by staff.

Los Angeles SMSA,Limited Partnership, 294952 (OH)
10-1-01 to 3-31-02, $297,843.73
Action: Approve the refund as recommended by staff.

San Diego Unified School District, 483864 (FH)
1-1-06 to 6-30-08, $355,211.37
Action: Approve the refund as recommended by staff.

Professional Hospital Supply, Inc., 482802 (EH)
1-1-06 to 6-30-08, $234,672.99
Action: Approve the refund as recommended by staff.

Philips Semiconductors, Inc., 518172 (GH)
10-1-03 to 9-30-06, $373,212.90
Action: Approve the refund as recommended by staff.

Safe Credit Union, 506176 (KH)
1-1-09 to 6-30-09, $167,696.20
Action: Approve the refund as recommended by staff.

Kent's Oil Service, 444347 (KH)
4-1-07 to 12-31-07, $750,423.08
Action: Approve the refund as recommended by staff.

Solarcom, Inc., 426878 (OH)
4-1-06 to 3-31-07, $164,765.27
Action: Approve the refund as recommended by staff.

Cerner Corporation, 461707 (OH)
7-1-05 to 12-31-07, $858,908.38
Action: Approve the refund as recommended by staff.

Merrill Corporation, 448408 (OH)
10-1-02 to 9-30-05, $213,450.19
Action: Approve the refund as recommended by staff.

Rockwell Collins, Inc., 361940 (OH)
4-1-03 to 6-30-06, $402,090.04
Action: Approve the refund as recommended by staff.

PENDING APPROVAL

Tuesday, April 13, 2010

Oxford Instruments America, Inc., 467824 (OH)
10-1-05 to 12-31-05, $159,086.96
Action: Approve the refund as recommended by staff.

Intel Corporation, 434861 (GH)
10-1-04 to 12-31-04, $588,454.58
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Royal Plywood Company, LLC, 491594 (AA)
4-1-06 to 3-31-09, $274,462.72
Action: Approve the refund as recommended by staff.

Visterra Credit Union, 484299 (EH)
1-1-06 to 6-30-09, $582,992.81
Action: The Board took no action.

Wachovia Dealer Services, Inc., 492529 (EA)
1-1-09 to 3-31-09, $4,481,163.58
Action: The Board took no action.

Marvell Semiconductor, Inc., 356711 (GH)
4-1-03 to 6-30-06, $1,947,952.89
Action: Approve the refund as recommended by staff.

AT&T Wireless Service of California, LLC, 514947 (OH)
7-1-03 to 9-30-03, $1,043,504.74
Action: Approve the refund as recommended by staff.

Livingston Volkswagon, Inc., 523041 (AC)
7-1-09 to 12-31-09, $226,046.00
Action: Approve the refund as recommended by staff.

Sequoia Voting Systems, Inc., 484622 (CH)
4-1-08 to 12-31-08, $156,813.34
Action: The Board took no action.

International Business Machine Corp., 384571 (OH)
1-1-04 to 12-31-06, $2,807,152.33
Action: Approve the refund as recommended by staff.

American Airlines, Inc., 256349 (OH)
1-1-01 to 12-31-04, $777,687.55
Action: The Board took no action.

PENDING APPROVAL

Tuesday, April 13, 2010

The Walt Disney Company, 435359 (OH)
10-1-99 to 12-31-05, $487,360.77
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Wescom Credit Union, 509162 (AP)
4-1-09 to 6-30-09, $111,181.00
Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 504694 (EA)
4-1-09 to 9-30-09, $175,687.00
Action: Approve the refund as recommended by staff.

Balboa Thrift & Loan Association, 504699 (FH)
4-1-09 to 6-30-09, $100,207.00
Action: Approve the refund as recommended by staff.

Rancho Santa Fe Thrift & Loan, 489459 (FH)
1-1-09 to 6-30-09, $168,671.82
Action: Approve the refund as recommended by staff.

Triad Financial Corporation, 470368 (EA)
7-1-08 to 12-31-08, $1,090,825.65
Action: Approve the refund as recommended by staff.

Door Solutions, Inc., 484293 (AR)
4-1-06 to 9-30-08, $109,836.14
Action: Approve the refund as recommended by staff.

ACC Consumer Finance, LLC, 478134 (FH)
1-1-07 to 6-30-09, $736,927.30
Action: Approve the refund as recommended by staff.

The New York Times Sales, Inc., 493299 (OH)
7-1-08 to 9-30-08, $120,019.70
Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT

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

PENDING APPROVAL

Tuesday, April 13, 2010

Government Employees Insurance Company, 519523 (ET)
10-1-09 to 12-31-09, $101,226.40
Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Geico Indemnity Company, 519524 (ET)
10-1-09 to 12-31-09, $105,257.70
Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Geico General Insurance Company, 519529 (ET)
10-1-09 to 12-31-09, $210,467.40
Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

SPECIAL TAXES MATTERS, DENIAL OF RELIEF OF PENALTY, ADJUDICATORY

Kern Oil & Refining Company, 467744 (MT)
8-1-06 to 8-31-06, $97,500.00
Considered by the Board: January 26, 2010
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Speaker: Robert Winchester, CFO, Kern Oil & Refining Company
Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board deferred consideration of the matter to later in the day.

LEGAL APPEALS MATTERS, ADJUDICATORY

Travel Traders Hotel Stores, Inc., 514222 (ET)
August 19, 2009, $339.83 Approximate Value
Considered by the Board: January 26, 2010
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Terry Jones, 420950
2003, $386.00 Assessment
Considered by the Board: September 22, 2009
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

PENDING APPROVAL

Tuesday, April 13, 2010

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, REDETERMINATIONS, ADJUDICATORY

Ms. Mandel stated that she would not participate in the matter of *Bodybuilding.com, LLC, 467307*, in accordance with Government Code section 87105, and left the Boardroom.

Bodybuilding.com, LLC, 467307 (OH)
7-1-06 to 12-31-07, $96,238.84
Considered by the Board: December 15, 2009
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
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 absent and not participating in accordance with Government Code section 87105, the Board approved the redetermination as recommended by staff.

Ms. Mandel returned to the Boardroom.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Unitary Escaped Assessments

AT&T Mobility, LLC (2606)
2006-2009, $541,194.00 Full Value
OmniPoint Communications, Inc. (2748)
2007-2009, $325,652.00 Full Value
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 unitary escaped assessment, plus penalty and interest, as recommended by staff.

The Board recessed at 11:50 a.m. and reconvened at 1:33 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARING

Allyn F. Taylor and Georgetta Taylor, 465848 (KH)
March 19, 2004, $6,559.56 Tax, $655.96 Penalty
For Petitioner: Allyn F. Taylor, Taxpayer
For Sales and Use Tax Department: Andrew Kwee, Tax Counsel

PENDING APPROVAL

Tuesday, April 13, 2010

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether petitioner purchased the subject motor home for use in California.
Whether relief of the failure-to-file penalty is 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 petition be submitted for decision.

PROPERTY TAXES HEARING

Welfare Exemption Claims

Alliance Member Services, Inc., 472460
2006-2009
Nonprofits' Insurance Alliance of California, 472465
2008-2009
For Petitioner: Pamela Davis, Taxpayer
Barbara Goode, Attorney
For Property and Special Taxes Department: Andrew Jacobson, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether petitioners Alliance Member Services, Inc., and Nonprofits' Insurance Alliance of California have established that respondent County-Assessed Properties Division erred in its determination that petitioners do not qualify for organizational clearance certificates because petitioners are not organized and operated exclusively for charitable purposes pursuant to Revenue and Taxation Code section 214.
Action: Upon motion of Ms. Mandel, 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 ordered that the petition be submitted for decision.

The Board recessed at 3:16 p.m. and reconvened at 3:23 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

PUBLIC HEARINGS

Property Taxes – State Assessees Presentations on the Valuation of State-Assessed Properties

Ken Thompson, Chief, State-Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding the state assessees' presentations on the valuation of state-assessed properties.

Speakers: Peter Michaels, Law Office of Peter Michaels, representing State-assessed gas/electric, intercounty pipeline, telephone and railroad companies
Richard Wiley, Law Office of Richard Wiley, representing Sprint PCS

PENDING APPROVAL

Tuesday, April 13, 2010

Business Taxpayers' Bill of Rights

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers' Bill of Rights hearings. Individuals have the opportunity to present their ideas, concerns, and recommendations regarding legislation, the quality of agency services, and other issues related to the Board's administration of its tax programs, including sales and use taxes, environmental fees, fuel taxes, and excise taxes, and any problems identified in the Taxpayers' Rights Advocate's Annual Report. Mr. Gilman entered into the record documents submitted by individuals. (Exhibit 4.2.)

Speakers: Lynn Freer, EA, President, Spidell Publishing, Inc.
Gina Rodriquez, Sacramento Editor, Spidell Publishing, Inc.
William M. Connell, Military Veteran and owner of All American Surf Dog

Ms. Yee directed Mr. Gilman to allow more time for constituents to participate in the Taxpayers' Bill of Rights Hearings by not scheduling them close to the tax-filing deadline of April 15.

Ms. Yee directed Executive staff to have more engagement with professional organizations, establish relationships to further enable communication.

The Board directed staff to respond to the forthcoming formal request for technical assistance from the speakers.

The Board directed staff to agendize the referenced legislative proposals for discussion at the Legislative Committee Meeting.

The Board recessed at 4:08 p.m. and reconvened at 4:17 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Property Taxpayers' Bill of Rights

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Property Taxpayers' Bill of Rights hearings. Individuals have the opportunity to present their ideas, concerns, and recommendations regarding legislation, the quality of agency services, and other issues related to the Board's administration of its tax programs, including state and county property tax programs, and any problems identified in the Taxpayers' Rights Advocate's Annual Report.

Speakers: Joseph C. Kelly, Taxpayer
Mary Alice Stoffel, Taxpayer

PENDING APPROVAL

Tuesday, April 13, 2010

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative 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:

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 4.3.)

Khoi Nguyen, Business Taxes Specialist I, Sacramento District Office, Sales and Use Tax Department
Mohan K. Pai, Associate Tax Auditor, New York Area Office, Out-of-State District
Dhirendra M. Patel, Associate Tax Auditor, New York Area Office, Out-of-State District
Arturo P. Salbilla, Associate Tax Auditor, Chicago Area Office, Out-of-State District
Raymond J. Saltzman, Business Taxes Specialist I, Chicago Area Office, Out-of-State District
Sid Zigelman, Supervising Tax Auditor – Acting Business Taxes Administrator III, Legal Department/Investigations and Special Operations Branch

Action: Approve the staff recommendation to readjust the rate, effective July 1, 2010, at which prepayment of sales tax is to be made for sales of motor vehicle fuel. (Exhibit 4.4.)

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee of March 24, 2010

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 Legislative Committee report and the actions therein. (Exhibit 4.5.)

Property Tax Committee of April 13, 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 approved the Property Tax Committee report and the actions therein. (Exhibit 4.6.)

PENDING APPROVAL

Tuesday, April 13, 2010

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, introduced Randie Henry, Deputy Director, Sales and Use Tax Department, who provided an analysis of out-of state offices, including a report on the operating cost information regarding the Houston, Chicago, and New York Out-of-State offices. (Exhibit 4.7.)

Ramon Hirsig, Executive Director, provided a report on time extensions to Monterey and Sacramento Counties to complete and submit the 2010/11 local assessment rolls, pursuant to Revenue and Taxation Code section 155. (Exhibit 4.8.)

Sales and Use Tax Deputy Director's Report

Randie L. Henry, Deputy Director, Sales and Use Tax Department, introduced Dario Romano, Business Taxes Administrator, Return Analysis & Allocation Section, Sales and Use Tax Department, who provided an update on the procedures for addressing certain aged unapplied remittances. (Exhibit 4.9.)

Ms. Steel directed staff to provide her office with a copy of the revised notifications before they are sent to taxpayers with unapplied remittances. In addition, staff is to provide the Board with a timeline for returning remittances to taxpayers.

Administration Deputy Director's Report

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

Liz Houser, Deputy Director, Administration Department, provided information regarding the Governor's 2009/10 and 2010/11 Budget, Governor's Executive Order S-16-08 State Employee Furlough, and layoffs; and, an update on the Governor's 2010/11 budget as it relates to the Board.

SPECIAL TAXES MATTERS, DENIAL OF RELIEF OF PENALTY, ADJUDICATORY

Kern Oil & Refining Company, 467744 (MT) (continued)

Action: Mr. Horton moved to approve the denial of relief of penalty as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Mr. Horton voting yes, Ms. Alby and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

PENDING APPROVAL

Tuesday, April 13, 2010

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD APRIL 13, 2010

Thomas A. Leonardini and Karen M. Leonardini, 449478
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 appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board. The Board directed staff to prepare the further briefing letter to the parties considering the Franchise Tax Board's previous requests for documentation and requesting any substitute documentation specific to the wine industry.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD APRIL 13, 2010

Allyn F. Taylor and Georgetta Taylor, 465848 (KH)
Final 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.

SALES AND USE TAX APPEALS HEARING

Neal O'Gilvy and Deanne O'Gilvy, 434977 (UT)
March 25, 2005, $14,796.00 Tax, $1,479.60 Penalty
For Petitioner: Appearance Waived
For Sales and Use Tax Department: Christine Bisauta, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether petitioners' purchase and use of the motor home is subject to use tax.
Whether there is reasonable cause for relief from the failure-to-file penalty.
Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

FINAL ACTION ON PROPERTY TAXES HEARING HELD APRIL 13, 2010

Alliance Member Services, Inc., 472460
Nonprofits' Insurance Alliance of California, 472465
Final Action: Ms. Steel moved that the petition be granted. The motion was seconded by Ms. Alby but failed to carry, Ms. Alby and Ms. Steel voting yes, Ms. Yee, Mr. Horton and Ms. Mandel voting no.

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

PENDING APPROVAL

Tuesday, April 13, 2010

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 5:52 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 6:15 p.m. and reconvened immediately in open session with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Ms. Yee stated for the record that the Board concluded its business for this meeting, and that meeting day Wednesday, April 14, 2010, is therefore cancelled.

The Board adjourned at 6:17 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: *Sally M. Gordon, 349938 (JH); Gordon's Restaurants, Inc., 349939 (JH); Joseph Peter Frumenti, 437274 (CH); Jaswant S. Sra, 437185 (UT);* and, *Revenue generation concepts for possible inclusion in the Governor's Fiscal Year 2010-11 Budget.*

PENDING APPROVAL