

Tuesday, May 24, 2011

The Board met at its offices at 450 N Street, Sacramento, at 10:00 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Royal Housing, Inc., 484677  
2003, \$76,647.00 Assessment  
For Appellant:

Donald L. Feurzeig, Attorney  
Michael M. Stein, Witness  
David Gemmingen, Tax Counsel  
Bill Gardner, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issues: Whether the gain on the sale of appellant's assets is subject to built-in gains (BIG) tax pursuant to Revenue and Taxation Code section 23809, and if so, what is the proper valuation of the assets for purposes of calculating BIG tax.

Whether appellant's built-in gains were properly limited with respect to the taxable income and the net unrealized built-in gain limitations.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 5.1](#))

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 5.2](#))

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

Exhibits to these minutes are incorporated by reference.

Estate of Eva M. Lindskog (Dec'd), 466455  
2002, \$175,063.00 Tax, \$7,869.44 Penalty

For Appellant:

William Shine, Representative  
Daniel Biedler, Tax Counsel  
Bill Hilson, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issue: Whether appellant has shown that respondent erred by treating transfers from appellant's wholly-owned corporation as taxable distributions in respect of stock rather than as loans.

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

Michael Reznitsky, 552490

2007, \$37,389.00 Tax, \$7,477.80 Accuracy Related Penalty

For Appellant:

Michael Reznitsky, Taxpayer  
Anjali Balasingham, Tax Counsel  
Bill Gardner, Tax Counsel

For Franchise Tax Board:

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

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Issue: Whether appellant has shown that respondent erred by not allowing damages awarded pursuant to a settlement agreement to be excluded from his taxable income.  
 Appellant's Exhibit: Page from the 1040 Quickfinder Handbook ([Exhibit 5.3](#))  
 Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Dennis E. Maddix and Martha Maddix, 552996

2007, \$1,025.00 Assessment

For Appellant:

Dennis Maddix, Taxpayer  
 Wes Huffman, Representative  
 Bill Gardner, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether appellants have shown respondent erred in its proposed assessment on distributions from an Individual Retirement Account (IRA) that appellants inherited from a nonresident of California.

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

The Board recessed at 12:41 p.m. and reconvened at 1:40 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang present.

### **BOARD MEMBER ANNUAL PHOTOGRAPH**

The annual Board photograph was taken of Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang.

### **PROPERTY TAX MATTER**

#### **STATE ASSESSED PROPERTIES VALUE SETTING**

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

#### **Electric Generation Facilities**

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2011, be as follows:

1100	AES Alamos, LLC	226,400,000
1101	AES Redondo Beach, LLC	163,500,000
1102	AES Huntington Beach, LLC	72,600,000
1103	Dynegy Moss Landing, LLC	620,200,000
1104	Dynegy Morro Bay, LLC	51,500,000

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1105	Dynegy Oakland, LLC	2,660,000
1106	Cabrillo Power I LLC	127,700,000
1107	Cabrillo Power II LLC	9,670,000
1108	GenOn Potrero, LLC	26,000,000
1109	GenOn Delta, LLC	85,500,000
1110	El Segundo Power LLC	32,500,000
1111	Long Beach Generation LLC	74,500,000
1112	La Paloma Generating Company, LLC	433,700,000
1113	GenOn Energy West, LP - Coolwater	14,300,000
1114	Genon Energy West, LP - Mandalay	66,300,000
1115	Genon Energy West, LP - Ormond Beach	37,800,000
1116	Genon Energy West, LP - Etiwanda	53,800,000
1117	Genon Energy West, LP - Ellwood	4,710,000
1118	Dynegy South Bay, LLC	100,000
1122	GWF Energy, LLC - Hanford	42,200,000
1123	GWF Energy, LLC - Henrietta	43,500,000
1124	GWF Energy, LLC - Tracy	68,600,000
1126	Elk Hills Power, LLC	312,700,000
1127	High Desert Power Trust 2000-A	323,700,000
1128	Delta Energy Center, LLC	424,100,000
1129	Gilroy Energy Center, LLC	75,400,000
1131	Pastoria Energy Facility, LLC	433,700,000
1132	Calpine Construction Finance Company, LP	201,100,000
1133	Metcalf Energy Center, LLC	324,800,000
1134	Otay Mesa Generating Company, LLC	424,700,000
1136	Blythe Energy, LLC	234,200,000
1137	Sunrise Power Company, LLC	331,400,000
1141	Indigo Generation LLC	63,900,000
1142	Larkspur Energy LLC	43,800,000
1143	Los Esteros Critical Energy Facility, LLC	83,300,000
1145	Harbor Cogeneration Company, LLC	6,300,000
1146	AES Placerita, Inc.	442,000
1148	Inland Empire Energy Center, LLC	811,400,000
1149	Caithness Blythe II, LLC	608,000
1150	Tesla Power Plant	3,630,000
1151	Russell City Energy Company, LLC	7,170,000
1152	Panoche Energy Center, LLC	325,000,000
1153	Starwood Power-Midway, LLC	87,400,000
1154	Bicent (California) Malburg, LLC	88,500,000
1155	Orange Grove Energy, L.P.	80,700,000
1156	Avenal Power Center, LLC	1,480,000
1157	GenOn Marsh Landing, LLC	3,510,000
1158	El Segundo Energy Center LLC	28,100,000

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**Energy Companies**

Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the market value (including penalty if applicable) to be used in the assessment of unitary property of the following listed companies as of January 1, 2011, be as follows:

101	Golden State Water Company	562,900,000
103	Anza Electric Cooperative, Inc.	15,400,000
104	Central Valley Gas Storage, LLC	863,000
106	PacifiCorp	192,400,000
119	Trans Bay Cable LLC	531,000,000
121	Gill Ranch Storage, LLC	222,400,000
125	Terra-Gen Dixie Valley, LLC	4,378,000
135	Pacific Gas & Electric Company	22,170,000,000
141	San Diego Gas & Electric Company	5,892,800,000
146	Sierra Pacific Power Company	85,900,000
148	Southern California Edison Company	17,083,200,000
149	Southern California Gas Company	3,477,300,000
152	Southwest Gas Corporation	207,400,000
153	Transwestern Pipeline Company	608,000
156	Atlantic Path 15, LLC	131,500,000
160	Valley Electric Association, Inc.	82,800
163	California Pacific Electric Company, LLC	127,400,000
173	Surprise Valley Electrification Corp.	14,200,000
176	Plumas-Sierra Rural Electric Cooperative	70,600,000
180	North Baja Pipeline, LLC	89,000,000
185	Mountain Utilities, LLC	1,540,000
187	Mojave Pipeline Company	46,500,000
188	Kern River Gas Transmission Company	276,800,000
189	Standard Pacific Gas Line, Inc.	22,700,000
190	Tuscarora Gas Transmission Company	68,600,000
191	Arizona Public Service Company	2,410,000
192	Alpine Natural Gas Operating Company No. One LLC	1,920,000
193	Southwest Transmission Cooperative, Inc.	126,500
194	West Coast Gas Company, Inc.	702,000
195	Wild Goose Storage, LLC	235,300,000
196	Questar Southern Trails Pipeline Company	16,800,000
197	El Paso Natural Gas Company	73,700,000
198	Lodi Gas Storage, LLC	294,500,000

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**Pipeline Companies**

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, Ms. Steel not participating in accordance with Government Code section 87105 in 465, *Plains Pipeline, LP*; 467, *ConocoPhillips Company*; 480, *ConocoPhillips Pipe Line Company*; 486, *Pacific Pipeline System, LLC*, and, 488, *Plains West Coast Terminals, LLC*; the Board ordered that the market value (including penalty if applicable) to be used in the assessment of unitary property of the following listed companies as of January 1, 2011, be as follows:

402	CALNEV Pipe Line LLC	82,600,000
406	CPN Pipeline Company dba Calpine Pittsburg, Inc.	12,200,000
407	Valero Refining Company - California	693,000
409	West Coast Pipe Lines	193,100,000
410	Homestake Mining Company of California	70,800
412	Kings County Canal Company	898,000
428	CPN Pipeline Company	23,600,000
429	Chevron U.S.A., Inc.	30,700,000
432	Equilon Enterprises LLC	186,100,000
435	Natomas Central Mutual Water Company	144,100
461	SFPP, L.P.	328,500,000
462	ARCO Midcon LLC	1,260,000
464	Ventura Pipeline System	4,301,000
465	Plains Pipeline, LP	17,000,000
467	ConocoPhillips Company	405,000
468	Shell California Pipeline Company LLC	5,680,000
469	San Ardo Pipeline Company	16,500,000
475	Searles Valley Minerals Operations Inc.	4,300,000
476	Chevron USA, Inc.	7,710,000
478	California Gas Gathering, Inc.	44,400
479	Chevron Pipeline Company	111,320,000
480	ConocoPhillips Pipe Line Company	47,400,000
484	Calpine Pipeline Corporation	6,090,000
486	Pacific Pipeline System, LLC	47,500,000
488	Plains West Coast Terminals, LLC	5,780,000
489	Venoco, Inc.	5,940,000
490	Crimson California Pipeline, L.P.	11,880,000
491	SMF Pipeline	4,670,000

**Railroad Companies**

Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the market value (including penalty if applicable) to be used in the assessment of unitary property of the following listed companies as of January 1, 2011, be as follows:

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802	Central Oregon & Pacific Railroad	2,560,000
804	BNSF Railway Company	1,202,800,000
808	West Isle Line, Inc.	261,000
810	California Northern Railroad	23,300,000
812	Ventura County Railroad	2,880,000
813	Pacific Harbor Lines	20,700,000
815	Mendocino Railway	1,680,000
817	Tulare Valley Railroad	412,500
818	Central California Traction Company	6,630,000
819	Carrizo Gorge Railway, Inc.	31,790
822	Pacific Sun Railroad, L.L.C.	710,000
834	Lake County Railroad	601,700
839	Oakland Terminal Railway Company	99,800
843	Union Pacific Railroad Company	1,391,500,000
850	Modesto & Empire Traction Company	30,200,000
857	Richmond Pacific Railroad Corporation	996,000
865	San Diego & Imperial Valley Railroad Co. Inc.	7,380,000
869	Coast Belle Railroad Company	882,200
878	Stockton Terminal and Eastern Railroad	3,080,000
882	Trona Railway Co.	15,200,000
883	McCloud Railway Company	1,110,000
889	Yreka Western Railroad Co.	656,250
894	Napa Valley Wine Train, Inc.	22,800,000
896	Santa Cruz Big Trees & Pacific Railway Co.	2,959,000
897	San Joaquin Valley Railroad Company	9,240,000
898	Sierra Northern Railway	1,800,000
899	Arizona & California Railroad	1,450,000

### Radio Telephone and Paging Companies

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the market value (including penalty if applicable) to be used in the assessment of unitary property of the following listed companies as of January 1, 2011, be as follows:

3002	American Messaging Services, LLC	734,000
3005	Mobilephone of Humboldt, Inc.	47,500
3039	Fresno Mobile Radio, Inc.	338,000
3052	Vincent Communications, Inc.	49,500
3362	Madera Radio Dispatch, Inc.	454,000
3430	USA Mobility Wireless, Inc	2,910,000
3432	Point Telesystems, LLC	6,600
3434	James R. McKeown	40,040
3435	ST Network Services, LLC	341,000
3436	ST Messaging, LLC	30,500

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**Interexchange Telephone Companies**

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the market value (including penalty if applicable) to be used in the assessment of unitary property of the following listed companies as of January 1, 2011, be as follows:

2014	Sprint Communications Company, L.P.	255,000,000
2043	Pac-West Telecomm, Inc.	7,733,000
2054	Spacenet, Inc.	20,500
2099	Smart City Networks LP	662,000
2207	Global Crossing Telecommunications, Inc.	28,300,000
2274	MCI Communications Services, Inc.	397,000,000
2275	SES Americom, Inc.	347,000
2310	AT&T Communications	587,400,000
2366	Value-Added Communications, Inc.	11,000
2368	Globe Wireless, LLC	923,000
2372	MCI Metro Access Transmission Services, LLC	160,300,000
2376	Working Assets Funding Service, Inc.	630,000
2383	Matrix Telecom, Inc.	322,000
2416	NOS Communications, Inc.	1,390,000
2430	Electric Lightwave, LLC	29,800,000
2437	Dialink Corporation	15,300
2443	National Comtel Network, Inc.	6,380
2463	Qwest Communications Company LLC	145,900,000
2470	Cincinnati Bell Any Distance, Inc.	6,200
7503	Verizon Select Services, Inc.	11,900,000
7512	Frontier Communications of America, Inc.	5,430,000
7516	Cybernet Communications Inc.	352,000
7522	tw telecom of california l.p.	163,200,000
7536	Global Crossing North American Networks, Inc.	6,970,000
7538	Tremcom International, Inc.	68,750
7544	Telswitch, Inc.	20,300
7560	XO Communications Services, Inc.	94,100,000
7571	Network Enhanced Technologies, Inc.	144,000
7580	Securus Technologies, Inc.	669,000
7581	ABS-CBN Telecom North America, Inc.	224,400
7621	SES Americom California, Inc.	3,460,000
7623	Verizon Enterprise Solutions LLC	184,000
7625	TCast Communications, Inc.	294,800
7631	Worldnet Communications Services Inc.	6,500
7632	Business Discount Plan, Inc.	18,000
7636	Network Telephone Services, Inc.	1,880,000
7638	Integrated Telemangement Services, Inc.	85,000
7640	Cox California Telecom, LLC	114,290,000
7645	Communications Brokers & Consultants, Inc.	2,200

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7660	U.S. South Communications, Inc.	2,530,000
7686	Primus Telecommunications, Inc.	339,000
7690	CCT Telecommunications, Inc.	38,100
7699	Legacy Long Distance International, Inc.	166,100
7705	Sierra Telephone Long Distance	2,800
7706	Covad Communications Company	29,100,000
7707	SureWest Long Distance	3,400
7732	NTT America, Inc.	19,900,000
7735	Pacific Centrex Services, Inc./TGEC,LLC	87,625
7740	TRI-M Communications, Inc.	173,000
7756	Centergistic Solutions, Inc.	8,690
7757	U.S. TelePacific Corp.	100,800,000
7758	BT Americas Inc.	10,400,000
7761	Level 3 Communications, LLC	350,100,000
7766	KDDI America, Inc.	4,570,000
7769	Airnex Communications, Inc.	60,390
7778	Zayo Bandwidth, LLC	978,000
7779	360networks (USA) inc.	7,260,000
7781	KT America, Inc.	12,800
7791	O1 Communications, Inc.	1,540,000
7792	Point To Point, Inc.	417,000
7799	Wilshire Connection, LLC	1,190,000
7800	New Edge Networks	453,000
7811	Public Communications Services, Inc.	1,276,000
7813	Advanced Telecom, Inc.	1,310,000
7814	PAETEC Communications, Inc.	11,700,000
7824	Audeamus, LLC	3,220,000
7832	Astound Broadband LLC	64,500,000
7834	Pannon Telecom, Inc.	41,470
7837	AboveNet Communications, Inc.	67,700,000
7845	San Carlos Telecom, Inc.	73,040
7846	The Telephone Connection Local Services, LLC	34,100
7852	Telstra Incorporated	1,040,000
7866	Telmex USA, LLC	10,200,000
7871	Verizon Online LLC	165,200,000
7872	Infotech Telecommunications & Network, Inc.	9,900
7876	Total Call International, Inc.	734,800
7880	Quick-Tel, Inc.	5,800
7894	Ponderosa Cablevision	599,000
7899	RGT Utilities of California, Inc.	4,500
7902	Zone Telecom, Inc.	1,760,000
7907	Telscape Communications, Inc.	3,480,000
7910	CBC Broadband Holdings, LLC	8,520,000
7912	Americom Government Services, Inc.	621,000
7913	VCOM Solutions, Inc.	260,000

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7914	McLeodUSA Telecommunications Services, Inc.	814,000
7916	Peak Communications, Inc.	17,900
7934	Telecom House Inc.	100,320
7938	McBlue Telecom, Inc.	15,500
7940	Consumer Telcom, Inc.	25,200
7945	ZTG, Inc.	22,660
7948	Vizada, Inc.	5,920,000
7949	Call America, Inc.	200,000
7950	ATMC, Inc.	6,710
7951	SWB Communications Services, Inc.	538,000
7952	Advanced Tel, Inc.	22,500
7953	Openpop.com, Inc.	383,000
7955	Enhanced Communications Network, Inc.	121,000
7956	Telespan Communications, LLC	53,200
7959	Airespring, Inc.	650,000
7960	CallTower, Inc.	2,600,000
7961	SureWest Televideo	148,200,000
7964	Aries Network, Inc.	2,300
7967	New World Telecom International, Inc.	12,600
7969	Intelsat Global Service Corporation	13,800,000
7972	Reliance Globalcom Services, Inc.	11,500,000
7973	Alliance Payphone, Inc.	134,000
7978	Legent Communications Corporation	54,900
7980	Teledata Solutions, Inc.	965,800
7981	Leading Edge Communications, LLC	613,000
7982	NextG Networks Of California, Inc.	107,900,000
7985	inContact, Inc.	1,910,000
7988	Global Tel*Link Corporation	4,760,000
7990	CMTel (USA) LLC	1,570,000
7992	NobelTel, LLC	52,200
7993	Clear World Communications Corporation	93,500
7994	Utility Telephone, Inc.	1,560,000
7995	IP Networks, Inc.	14,900,000
7996	RuralWest - Western Rural Broadband, Inc.	256,300
7997	Edison Carrier Solutions	68,200,000
7998	Norcast Communications Corporation	156,000
7999	Purple Language Services	6,260,000
8002	Neutral Tandem - California, LLC	5,420,000
8003	Creative Interconnect Communications, LLC	1,460,000
8004	Greenfield Communications, Inc.	974,600
8005	Cable and Wireless Americas Operations, Inc.	785,000
8006	Lucky Communications, Inc.	39,270
8010	A+ Wireless, Inc.	1,100
8011	DelTel, Inc.	5,100
8012	RB Communications, Inc.	48,000

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8015	China Telecom (Americas) Corporation	2,870,000
8017	Locus Telecommunications, Inc.	344,000
8018	Telewest, Inc.	1,870
8022	Allstate Communications, Inc.	231,000
8023	One Phone, Inc.	307,000
8024	TC Telephone, LLC	7,500
8026	Nationwide Telecom, Inc.	102,410
8027	Blue Casa Communications, Inc.	321,000
8029	IPC Network Services, Inc.	269,000
8031	Backbone Communications, Inc.	141,000
8032	BCE Nexxia Corporation	273,000
8033	Telecom Consultants Inc.	2,250
8037	CA-CLEC LLC	6,570,000
8038	Telespan Carrier Access, LLC	80,500
8040	Mission Telecom, Inc.	7,100
8041	DMR Communications, Inc.	125,000
8042	Paxio, Inc.	856,000
8044	Intermetro Communications, Inc.	624,800
8046	HyperCube, LLC	1,900,000
8047	Syniverse Technologies, Inc.	4,900
8048	Bright House Networks Information Services (California), LLC	220,000
8049	Cbeyond Communications, LLC	18,800,000
8051	Inteltrace, Inc.	524,000
8057	Vertex Telecom, Inc.	663,000
8061	Charter Fiberlink CA-CCO, LLC	19,800,000
8062	Ezequiel Guido	1,300
8063	Time Warner Cable Information Services (California), LLC	89,500,000
8065	Connectto Communications, Inc.	295,900
8066	Niztelecom, Inc.	62,040
8067	Sunesys, LLC	121,700,000
8068	North County Communications Corp	153,750
8071	Verizon Long Distance LLC	234,000
8072	Cypress Communications Operating Co., Inc.	284,000
8074	Silv Communication, Inc.	57,800
8075	Trans National Communications International, Inc.	150,000
8076	OPEX Communications, Inc.	211,200
8077	NewPath Networks, LLC	12,200,000
8078	U.S. Telecom Long Distance, Inc.	85,100
8079	Cal-Ore Communications, Inc.	428,000
8080	Ymax Communications Corporation	132,000
8081	Sonic Telecom, LLC	2,510,000
8082	WTI Communications, Inc	48,400
8083	Network Expert Group, Inc.	45,500
8084	T-Netix Telecommunications Services, Inc	32,200
8085	Cosmobridge America, Inc.	11,900

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8086	Associated Network Partners, Inc.	58,300
8087	Verosity Technology Partners, LLC	327,000
8088	Janaslani Enterprises, LLC	4,400
8089	Conterra Ultra Broadband LLC	1,410,000
8090	Telecommunication Systems, Inc.	6,650,000
8091	Roadway Communications, Inc.	139,000
8092	Global Telecom LLC	19,580
8093	Extenet Systems (California) LLC	27,400,000
8094	Trillion Partners, Inc.	1,243,000
8096	Octagon Networks, Inc	101,420
8097	Reunion Communications, Inc.	12,600
8098	Allcom Telink Corporation	962,500
8099	Race Telecomm	457,600
8100	Dial Long Distance, Inc.	5,830
8101	FastBlue Communications, Inc.	3,300
8102	Ekit.Com, Inc.	96,100
8103	LiveTV Airfone, Inc.	115,000
8104	Transpac Telecom, Inc.	8,100
8105	Marlink, Inc.	413,000
8106	Raw Bandwidth Telecom, Inc.	174,000
8107	Convergence Systems	58,740
8108	Radical System Solutions, Inc.	50,490
8109	Peerless Network of California LLC	1,590,000
8110	Viscom International, Inc.	1,650
8111	First Communications, LLC	509,000
8112	Mosaic Networx, LLC	4,840
8113	Callcatchers, Inc.	772,000
8114	Sunycell, Inc.	4,730
8115	&TV Communications, Inc.	1,782,000
8116	PC Landing, Inc.	10,800,000
8117	Syniverse ICX Corporation	8,240,000
8118	IntelePeer, Inc.	2,470,000
8119	Express Telecommunications Network, Inc.	4,840
8120	TELUS Communications Inc.	1,510,000
8121	Certain Communications Corporation	7,800
8122	Bandwidth.com CLEC, LLC	897,600
8123	Blue Rooster Telecom, Inc.	51,100
8124	Impact Telecom, Inc.	100,650
8125	IXC Holdings, Inc.	4,700,000
8126	Broadview Networks, Inc.	20,300
8127	Zayo Enterprise Networks, LLC	17,300
8128	Talton Communications, Inc.	38,720
8129	Wide Voice, LLC	328,900

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8130	United Telecom, Inc.	44,330
8131	Pacific Lightwave	83,600
8132	Calpop.Com, Inc.	1,936,000

### Wireless Telephone Companies

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the market value (including penalty if applicable) to be used in the assessment of unitary property of the following listed companies as of January 1, 2011, be as follows:

2532	Los Angeles SMSA Ltd., Partnership	917,600,000
2552	Fresno MSA Limited Partnership	84,700,000
2559	Cellco Partnership	1,136,700,000
2602	Digital Communications Network, Inc.	67,540
2605	Nova Cellular West, Inc.	26,400
2606	AT&T Mobility LLC	1,965,900,000
2658	Intouch America, Inc.	81,625
2668	California RSA No. 3 Limited Partnership	12,400,000
2669	California RSA #4 Partnership	12,600,000
2671	California Rural Service Area #1, Inc.	32,600,000
2681	Everything Wireless, LLC	256,000
2683	Pay-Less Cellular, Inc.	2,728,000
2687	SLO Cellular, Inc.	874,000
2720	Sprint Telephony PCS, L.P.	1,059,000,000
2733	MetroPCS Communications	481,200,000
2748	T-Mobile West Corporation	1,341,500,000
2760	Fisher Wireless Services, Inc.	1,690,000
2762	Crickit Communications, Inc.	176,000,000
2772	Globalstar USA, LLC	1,960,000
2773	Accessible Wireless, LLC	667,000
2775	Nextlink Wireless, Inc.	2,750,000
2778	Movida Communications, Inc.	4,625
2782	Velocita Wireless, LLC	16,900
2783	Flat West Wireless, LLC	408,100
2784	Greatcall, Inc.	2,470,000
2785	Public Wireless, Inc.	291,500
2786	Simple Mobile, LLC	90,500

### Local Exchange Telephone Companies

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2011, be as follows:

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

Tuesday, May 24, 2011

201	Verizon California, Inc.	3,407,900,000
202	CenturyTel of Eastern Oregon, Inc.	57,600
203	Frontier Communications of the Southwest, Inc.	8,650,000
205	Ponderosa Telephone Co., The	32,400,000
209	Pinnacles Telephone Co.	967,000
210	Calaveras Telephone Company	13,100,000
228	Ducor Telephone Company	6,530,000
235	Foresthill Telephone Co.	16,100,000
239	Hornitos Telephone Company	1,130,000
240	Happy Valley Telephone Company	1,420,000
246	Kerman Telephone Co.	21,400,000
279	Pacific Bell Telephone Company	7,907,800,000
284	Citizens Telecommunications Company of California, Inc.	103,400,000
286	Sierra Telephone Company, Inc.	44,600,000
294	SureWest Telephone	144,700,000
301	Siskiyou Telephone Company, The	45,200,000
320	Frontier Communications West Coast, Inc.	8,310,000
327	Volcano Telephone Company	23,800,000
328	Cal-Ore Telephone Co.	7,810,000
330	Winterhaven Telephone Company	1,280,000

The Board recessed at 1:55 p.m. and reconvened at 1:57 p.m. with Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

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

Orasure Technologies, Inc., 334390 (OH)

10-1-01 to 12-31-04, \$66,882.00 Claim for Refund

For Claimant:

Norman Jung, Representative

Steve Oldroyd, Representative

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

Issue: Whether claimant is entitled to a refund for taxes paid with respect to sales of certain HIV test kits.

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

Parminder Kaur Walia and Surenderpal Singh Walia, 489616 (CH)

1-1-05 to 7-31-07, \$24,412.18 Tax

For Petitioners:

Surenderpal S. Walia, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Tuesday, May 24, 2011

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

Whether any portion of the accrued interest should be relieved due to unreasonable delay by the Department.

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

The Board recessed at 3:44 p.m. and reconvened at 3:48 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD, MAY 24, 2011**

Royal Housing, Inc., 484677

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

Ms. Yee moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Mandel for purposes of discussion. Mr. Runner made a substitute motion to reduce the assessment to \$40,000. The substitute motion was seconded by Ms. Steel. Mr. Runner subsequently withdrew his substitute motion.

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

Ms. Yee directed staff to create a timeline that would help determine the value in future cases similar to *Royal Housing, Inc., 484677*, where the value is related to sequences of multiple events.

Estate of Eva M. Linkskog (Dec'd), 466455

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

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

Michael Reznitsky, 552490

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the accuracy-related penalty be removed as conceded by the Franchise Tax Board, otherwise sustained the action of the Franchise Tax Board.

**Tuesday, May 24, 2011**

Dennis E. Maddix and Martha Maddix, 552996

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

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

Orasure Technologies, Inc., 334390 (OH)

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

Parminder Kaur Walia and Surenderpal Singh Walia, 489616 (CH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that no further adjustment be made in the administrative protest as recommended by the Appeals Division.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 4:32 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

**CLOSED SESSION**

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

The Board recessed at 5:42 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

The Board recessed at 5:43 p.m.

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

Note: The following matter was removed from the calendar prior to the meeting: *Kamleshwar C. Gunsagar and Anita Gunsagar, 484764*; and, *Morgan Garnett, 491096*.

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

**Wednesday, May 25, 2011**

The Board met at its offices at 450 N Street, Sacramento, at 9:33 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

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

**Brent Bolthouse, 470152 (AS)**

7-1-00 to 9-30-02, \$39,025.65 Tax, \$2,963.60 Late Filing or Late Payment Penalty, \$5,467.60 Failure to File Penalty, \$4,517.34 Finality Penalty

For Petitioner: Abe Golomb, Representative

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

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

Issues: Whether taxpayer is personally liable as a responsible person for the unpaid liabilities of The Coffee House, LLC, pursuant to Revenue and Taxation Code section 6829.

Whether taxpayer has established reasonable cause sufficient for relieving the late-filing, late payment, failure-to-file, and finality penalties originally assessed against the LLC.

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

**Andrea J. Russo, 402580 (GH)**

4-1-03 to 3-31-06, \$23,103.38 Tax

For Petitioner: Andrea J. Russo, Taxpayer

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

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

Issue: Whether additional adjustments are warranted to the audited bar sales established by markup.

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

### **SPECIAL TAXES APPEALS HEARING**

**Nghia Ngoc Nguyen, 331258 (ET)**

8-1-02 to 8-31-02, \$10,622.33 Tax, \$1,062.23 Negligence Penalty

**Nghia Ngoc Nguyen, 333770, 351779 (ET)**

9-1-02 to 5-31-03, \$38,378.16 Tax, \$3,837.82 Failure to File Penalty

6-4-03 to 7-31-05, \$133,523.85 Tax, \$13,352.39 Finality Penalty

For Petitioner: Nghia Ngoc Nguyen, Taxpayer

Tommy Le, Witness

Tuan Nguyen, Witness

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

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

Issues: Whether petitioner is liable for excise tax on the distribution of untaxed tobacco products that he purchased from out-of-state manufacturers, including those distributions for which he claimed a foreign commerce exemption.

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

Wednesday, May 25, 2011

Whether petitioner was negligent for the periods August 1, 2002, through August 31, 2002, and June 4, 2003, to July 31, 2005.

Whether relief of the failure-to-file penalty or the finality penalty are warranted.

Action: Upon motion of Ms. Mandel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petitions and administrative protest be submitted for decision and directed staff to confer with the taxpayer.

## PUBLIC HEARINGS

### Timber Harvest Values

Benjamin Tang, Principal Property Appraiser, Timber Tax Section, County Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding the timber harvest values in accordance with Revenue and Taxation Code section 38204(a), which requires that the Board estimate the immediate harvest values of, and adopt schedules for each species or sub classification of timber harvested between July 1 and December 31, 2011 on or before June 30, 2011 ([Exhibit 5.4](#)).

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

The Members joined Mr. Runner in thanking staff and the industry for their hard work and for coming together to make this a fair process in these difficult times.

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

Exhibits to these minutes are incorporated by reference.

### **Proposed Amendments to Regulation 1533.2, *Diesel Fuel Used in Farming Activities of Food Processing*, and Regulation 1598, *Motor Vehicle and Aircraft Fuels***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed amendments to Sales and Use Tax Regulation 1533.2, *Diesel Fuel Used in Farming Activities of Food Processing* and Regulation 1598, *Motor Vehicle and Aircraft Fuels*, which would incorporate provisions of the fuel tax swap (Stats. 2010, ch. 11) ([Exhibit 5.5](#)).

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

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board referred the revised text of the proposed amendments to both regulations to the 15-day file for additional notice and public comment as recommended by staff.

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

Wednesday, May 25, 2011

**Proposed Adoption of Regulation 2558.1, Wine**

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed adoption of Alcoholic Beverage Tax Regulation 2558.1, *Wine*, which clarifies that for purposes of the Alcoholic Beverage Tax Law (RTC § 32001 et seq.) wine, as defined by Business and Professions Code (BPC) section 23007, does not include any alcoholic beverage containing 0.5 percent or more alcohol by volume obtained from the distillation of fermented agricultural products other than from the particular agricultural product or products of which the wine is made and establishes January 1, 2012, as the prospective date for compliance with the clarified definition of wine ([Exhibit 5.6](#)).

Speaker: Paul Kronenberg, President, Family Winemakers of California

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board adopted Regulation 2558.1, *Wine*, as recommended by staff.

**Proposed Amendments to Regulation 6001, General Provisions**

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed amendments to the Board's Conflict of Interest Code Regulation 6001, *General Provisions*, appendices A and B. The proposed amendments update the designated positions listed in appendix A, the disclosure categories assigned to the designated positions listed in appendix A, and the disclosure categories described in appendix B. The proposed amendments are necessary due to changes in the Board's internal structure, the addition of new Board positions and the elimination of some previously designated positions, and changes in the duties assigned to some existing Board positions ([Exhibit 5.7](#)).

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

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the amendments to Regulation 6001, *General Provisions*, appendices A and B, as recommended by staff.

**LEGAL APPEALS MATTERS, CONSENT**

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

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

The C.I.T. Group/Equipment Financing, Inc., 457742, 557442 (OH)  
4-1-02 to 3-31-05, \$594,600.00 Tax

Action: Redetermine as recommended by the Appeals Division.

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

Wednesday, May 25, 2011

Haug North America Ltd. Ptn., 469426 (OH)

4-1-99 to 12-31-07, \$41,326.26 Tax, \$475.12 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Shirley A. Dicko, 470331 (CH)

7-1-01 to 12-24-04, \$160,892.49 Tax, \$13,883.19 Negligence Penalties, \$2,391.28 Amnesty

Interest Penalty, \$2,916.08 Late-Payment Penalties, \$142.50 Late-Payment Penalty, \$1,179.00

Failure-to-File Penalty, \$15,057.16 Finality Penalties

Action: Redetermine as recommended by the Appeals Division.

Graphics Concept, Inc., 444651 (AP)

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

Action: The Board took no action.

Seth Mayer Lukash, 485883 (OH)

1-1-01 to 2-11-02, \$10,696.61 Tax, \$29.50 EFT Penalty, \$1,214.00 Late Payment Penalty,

\$1,858.04 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

We Fix Macs, Inc., 390866 (GH)

4-1-02 to 3-31-05, \$49,973.63 Tax, \$4,997.39 Negligence Penalty, \$1,741.80 Amnesty Double

Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Nasco Investments, Inc., 558568 (ET)

October 7, 2010, \$324.74 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Pismo Smoke Shop, Inc., 560469 (ET)

October 26, 2010, \$989.37 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Chi Linh Do, 558598 (ET)

August 5, 2010, \$905.50 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Sugarpie's Stash, L.L.C., 556236 (ET)

August 27, 2010, \$48,127.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Ashishkumar Kailashchandra Thanki and Shitalben Ashishkumar Thanki, 562658 (ET)

November 19, 2010, \$1,443.81 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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Wednesday, May 25, 2011

Jason Lee, 563804 (ET)

December 14, 2010 \$220.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Kohanoff, Inc., 559926 (ET)

November 17, 2010, \$804.30 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Woo Sik Kim, 562673 (ET)

December 14, 2010, \$16,821.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Mohamed Abdo Gubary and Hamood A. Mosleh, 560452 (ET)

December 15, 2010, \$31.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Kenneth Kreisel, 470151 (AC)

10-1-00 to 2-27-07, \$18,041.47 Tax, \$346.50 Failure to File Penalty, \$1,334.91 Finality Penalty, \$1,092.11 Late Payment Penalty, \$830.27 Late Filing Penalty, \$1,247.47 Amnesty Interest Penalty, \$943.41 Amnesty Double Finality Penalty

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

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

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

Bhupinder Singh Mac, 299487 (AC)

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

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

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

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

Daren M. Chody and Nici Melotto-Chody, 414594

2001, \$23,438.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Randal Jung, 538640

2003, \$6,479.00 Tax, \$100 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Renee Amaradio, 550135

2006, \$5,634.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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

Wednesday, May 25, 2011

Lilia P. Belong, 491184

2007, \$868.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Kevin Berg and Francine Berg, 550693

2006, \$1,717.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Brandon Bett, 529486

2006, \$1,234.00 Assessment

Action: Sustain the modified action of the Franchise Tax Board to allow for the withholding credit of \$240.77.

Alison Buerger, 536228

2007, \$434.00 Tax, \$108.50 Late Filing Penalty, \$108.50 Notice and Demand Penalty, \$113.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Forrest Bustamante and Estela C. Bustamante, 533589

1993, \$3,225.00 Tax, \$895.50 Late Filing Penalty, \$3,491.77 Post Amnesty Penalty, \$1,302.00 Accuracy Penalty

Action: Sustain the action of the Franchise Tax Board.

Buttonwood Farm, 496486

2006, \$1,024.92 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Wei Chen, 534661

2005, \$516.00 Refund Denial

2006, \$69.00 Refund Denial

2007, \$258.00 Refund Denial

2008, \$774.00 Refund Denial

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

William J. Christie and Terri Randolph Christie, 514417

2006, \$4,067.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Crescent Dixon Plaza, LLC, 533422

2008, \$679.66 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Sara K. Crossett, 516193

2006, \$11,398.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Wednesday, May 25, 2011

Pamela DaCosta, 551757

2005, \$2,978.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Michael D. Doris, 510608

2005, \$537.00 Tax, \$107.40 Accuracy-Related Penalty

Action: Modify the action of the Franchise Tax Board.

Ado Dossou, 539710

2006, \$2,480.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Fidencio Garcia and Maria Garcia, 518408

2007, \$465.80 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jack S. Kannry and Joyce F. Kannry, 490556

2004, \$616.00 Tax

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

Guadalupe Ramirez Lopez, 535599

2009, \$375.00 Claim for Refund

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

Julia Morales, 535436

2003, \$816.00 Claim for Refund

2005, \$930.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Thomas Van Parys, 505066

2005, \$731.00 Tax

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

Gay Ribisi, 527154

2005, \$990.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Donald Stanners and Elizabeth Stanners, 495508

2007, \$3,272.83 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

John C. Sweeney, 522162

2006, \$3,237.00 Assessment

Action: Modify the action of the Franchise Tax Board.

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

Wednesday, May 25, 2011

Armando Rios Torres, 510917

2003, \$2,093.00 Tax, \$481.18 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Mrudula Trivedi and Ramnik Trivedi, 480045

1992, \$6,082.00 Tax, \$1,216.40 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Monica Vigil, 479856, 479857

2004, \$268.55 Claim for Refund

2007, \$280.87 Claim for Refund

Action: Reverse the action of the Franchise Tax Board.

Joseph J. Whitfield, 489503

1998, \$1,677.00 Tax, \$408.23 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Elisabeth Bossingham, 486595

2000, \$6,480.00 Tax, \$1,620.00 Penalties

2001, \$13,117.00 Tax, \$3,279.25 Penalties

2002, \$10,031.00 Tax, \$2,507.75 Penalties

2003, \$11,399.00 Tax, \$2,849.75 Penalties

2004, \$11,198.00 Tax, \$2,799.50 Penalties

2005, \$9,211.00 Tax, \$2,302.75 Penalties

Action: Deny the petition for rehearing.

Hank Feenstra and Catherine Feenstra, 464316

2001, \$14,041.00 Claim for Refund

2002, \$22,838.00 Claim for Refund

2003, \$14,842.00 Claim for Refund

2004, \$29,463.00 Claim for Refund

Action: Deny the petition for rehearing.

Thomas A. Leonardini and Karen M. Leonardini, 449478

2001, \$32,541 Claim for Refund

2002, \$51,940 Claim for Refund

2003, \$30,705 Claim for Refund

2004, \$27,759 Claim for Refund

Action: Deny the petition for rehearing.

Shiro Shiozawa, 468726

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

\$1,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

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

Wednesday, May 25, 2011

Mark Taylor, 513353

2007, \$1,454.00 Tax, \$363.50 Late Filing Penalty, \$363.50 Notice and Demand Penalty, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Paulette Thompson, 383553

2004, \$3,843.00 Tax, \$2,486.75 Penalties, \$1,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Brent C. Welling and Viki Lee Welling, 348029

1998, \$188,585.00 Assessment, \$47,146.00 Late Filing Penalty, \$47,146.00 Failure to Furnish Penalty

1999, \$39,636.00 Assessment, \$9,909.00 Late Filing Penalty, \$9,909.00 Failure to Furnish Penalty

2000, \$192,559.00 Assessment, \$48,140.00 Late Filing Penalty, \$48,140.00 Failure to Furnish Penalty

Action: Deny the petition for rehearing.

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

(Motion Expunged.)

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

(Motion Expunged.)

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

Valero Marketing and Supply Co., 556529 (MT)

12-1-08 to 12-31-08, \$291,482.50

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

**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. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Penn Mutual Life Insurance Co.*, 557693, the Board made the following orders:

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

Wednesday, May 25, 2011

Nella Oil Company, LLC, 491248 (MT)

1-1-06 to 9-30-08, \$333,624.30

Action: Approve the refund as recommended by staff.

Penn Mutual Life Insurance Co., 557693 (ET)

1-1-05 to 12-31-09, \$661,990.55

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

**LEGAL APPEALS MATTERS, ADJUDICATORY**

R-Tek Communications, Inc., 461499 (KH)

2-5-04 to 6-30-06, \$51,661.51 Tax, \$1,037.06 Failure to File Penalty

Considered by the Board: Presented for Separate Discussion

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

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

Charlie Viet Nguyen, 367213 (GH)

10-1-02 to 5-22-06, \$57,627.15 Tax, \$5,804.27 Negligence Penalty, \$471.36 Amnesty Double Negligence Penalty

Considered by the Board: Presented for Separate Discussion

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

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

Front Page Communications, Inc., 361961 (AA)

4-1-01 to 12-31-04, \$98,947.06 Tax

Considered by the Board: December 15, 2010

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

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

Antique Portraiture, Inc., 351260, 374301 (AA)

10-1-01 to 9-30-04, \$54,041.61 Tax, \$5,404.25 Negligence Penalty

10-1-01 to 12-31-02, \$12,769 Claim for Refund

Considered by the Board: October 20, 2010

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

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

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

Wednesday, May 25, 2011

Macromedia, Inc., 461946 (BH)

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

Considered by the Board: March 24, 2010

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

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

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

C.V. Starr & Co., 382904, 439479, 509390

1999, \$1,998.58 Assessment

2001, \$4,849.00 Assessment

2003, \$118,395.00 Assessment

Medianews Group, Inc., 377121

2001, \$122,327.00 Assessment

Considered by the Board: January 21, 2009

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

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

John J. Skillings, 515852

2005, \$2,910.00 Assessment

Considered by the Board: October 19, 2010

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision modifying the action of the Franchise Tax Board, as conceded, by revising appellant's 2005 tax liability from \$2,910 to \$995, but otherwise sustaining the action of the Franchise Tax Board.

### **SALES AND USE TAX MATTERS, DENIALS OF CLAIMS FOR REFUND, ADJUDICATORY**

Drive Financial Services, LP, 462795 (OH)

1-1-06 to 12-31-06, \$399,441.28

Considered by the Board: March 23, 2010

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

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

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

Wednesday, May 25, 2011

Santander Consumer USA, Inc., 462799 (OH)

1-1-07 to 6-30-09 \$1,651,095.76

Considered by the Board: September 14, 2010

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

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

### **SALES AND USE TAX MATTERS, REFUND, ADJUDICATORY**

Kaiser Foundation Hospitals, 350184 (CH)

1-1-03 to 12-31-05, \$694,732.55

Considered by the Board: March 23, 2010

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

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

### **PROPERTY TAX MATTERS**

#### **Audits**

Atlantic Path 15, LLC (156)

2007, \$1,700,000.00 Excessive Assessment

2008, \$1,500,000.00 Excessive Assessment

2009, \$1,100,000.00 Excessive Assessment

2010, \$500,000.00 Excessive Assessment

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

Intelsat Global Service Corporation (7969)

2007, \$400,000.00 Escaped Assessment, \$132,000.00 In-lieu Interest

2008, \$300,000.00 Excessive Assessment

2009, \$5,280,000.00 Escaped Assessment, \$792,000.00 In-lieu Interest

2010, \$6,280,000.00 Escaped Assessment, \$376,800.00 In-lieu Interest

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

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

Wednesday, May 25, 2011

**China Telecom (Americas) Corporation (8015)**

2007, \$3,340,000.00 Escaped Assessment, \$334,000.00 Penalties, \$1,102,200.00 In-lieu Interest  
2008, \$290,000.00 Excessive Assessment  
2009, \$460,000.00 Excessive Assessment  
2010, \$310,000.00 Excessive Assessment

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

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

2010, \$693,229.00 Value

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

**MetroPCS Communications (2733)**

2007-2010, \$557,314.00 Value

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

**T-Mobile West Corporation (2748)**

2010, \$1,015,864.00 Value

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

**Board Roll Change****2010 State-Assessed Property Roll**

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved the correction to the 2001 Board Roll of State-Assessed Property as recommended by staff ([Exhibit 5.8](#)).

Wednesday, May 25, 2011

**OFFERS-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Shinma Kusala and Starlite Design & Display Corporation; Rosemary Coleman, James Coleman and Unipac Distributors, Inc.; Karim Maredia; Mohammad Hossain Motavasseli; Kenny R. Kirk; Myoung O. Kim; Tony Ing; and, James Donald Hammer and Hammer's Ski & Marine, Inc.*, as recommended by staff.

**CHIEF COUNSEL MATTERS****RULEMAKING****Sales and Use Tax Regulation 1507, *Technology Transfer Agreements***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made remarks regarding request for authorization to make a Rule 100 change to conform Sales and Use Tax Regulation 1507 to a recently published opinion from the Court of Appeal ([Exhibit 5.9](#)).

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the section 100 change as recommended by staff.

**ADMINISTRATIVE SESSION****ADMINISTRATIVE MATTERS, CONSENT**

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

Action: Adopt the following resolutions, extending its sincere and grateful appreciation to the retirees for their dedicated service to the State Board of Equalization and to the State of California, their congratulations on each retiree's well-earned retirement, and best wishes to them and their families for continued success, happiness and good health in the years to come ([Exhibit 5.10](#)).

Andres Alberto, Jr., Business Taxes Specialist I, San Francisco Office  
Gwen Eales, Legal Secretary, Appeals Division, Legal Department, Headquarters  
Lynn E. Kelts, Office Assistant II (Typing), Out-of-State Sacramento Office  
Chester Kwok, Business Taxes Specialist I, San Francisco Office  
Dave Love, Systems Software Specialist III (Technical), Technology Services  
Department, Headquarters  
Beverly J. Moore, Associate Tax Auditor, Headquarters  
Raymond White, Mailing Machines Operator II, Mail Services Unit,  
Administration Department, Headquarters

Wednesday, May 25, 2011

Geoff Lyle, Manager, Business Taxes Committee & Training Section, Tax Policy Division, Sales and Use Tax Department, made introductory remarks regarding proposed revisions to Audit Manual Chapter 13, *Statistical Sampling*, to update various sections, remove obsolete information, and incorporate current sampling techniques and procedures ([Exhibit 5.11](#)).

Speakers: Gus Rivera, Tax Manager, Co-Chair, Tax Policy Committee, Intel Corporation  
Ricardo Rodriguez, U.S. Sales and Use Tax Manager, Intel Corporation

Action: The Board deferred consideration of the proposed revisions to Audit Manual Chapter 13, *Statistical Sampling*, to allow additional time for public inspection and comment on recent revisions as requested by staff.

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

Action: Adopt the 4-R Act Equalization Ratio for 2011/12 ([Exhibit 5.12](#)).

Action: Adopt Property Tax Forms as presented by staff ([Exhibit 5.13](#)).

#### **OTHER ADMINISTRATIVE MATTERS**

##### **Executive Director's Report**

Kristine Cazadd, Interim Executive Director, provided a report on time extensions to El Dorado, Mariposa, Modoc, Monterey, Sierra and Yuba Counties to complete and submit 2010/11 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 ([Exhibit 5.14](#)).

Ms. Cazadd introduced David Gau, Deputy Director, Property and Special Taxes Department, who provided a progress update on the CROS project to replace BOE's two current tax legacy technology systems ([Exhibit 5.15](#)).

##### **Chief Counsel's Report**

Amy Kelly, Assistant Chief Counsel, Settlement and Taxpayer Services Division, Legal Department, who presented an overview of the Open Business Program and how open businesses' offers to compromise tax or fee liability are evaluated.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon motion of Mr. Horton and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered its previous motion rescinded and expunged.

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

Wednesday, May 25, 2011

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. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Mr. Horton not participating in accordance with Government Code section 87105 in *Hewlett-Packard Financial Service, 505265*; and, *Comcast IP Services, LLC, 563891*; Ms. Mandel not participating in *Hewlett-Packard Financial Service, 505265*; Ms. Mandel not participating in accordance with Government Code section 87105 in *Comcast IP Services, LLC, 563891*; and, *Nissan Motor Acceptance Corp., 484203*; the Board made the following orders:

DRC Leasing, 482543 (AC)

10-1-05 to 6-30-06, \$646,883.13

Action: Approve the redetermination as recommended by staff.

Hewlett-Packard Financial Service, 505265 (OH)

10-1-01 to 12-31-06, \$8,387,757.16

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

Riaz Alimohammed Surti, 360216 (AA)

7-1-01 to 2-28-05, \$552,294.30

Action: Approve the redetermination as recommended by staff.

Stars Planet, Inc., 426786 (AS)

7-1-04 to 6-30-07, \$417,595.22

Action: Approve the redetermination as recommended by staff.

Crave Enterprises, Inc., 360217 (AA)

7-1-01 to 2-28-05, \$233,028.75

Action: Approve the redetermination as recommended by staff.

Comcast IP Services, LLC, 563891 (OH)

7-1-06 to 6-30-09, \$867,551.25

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

Nissan Motor Acceptance Corp., 484203 (OH)

7-1-07 to 3-31-09, \$2,679,310.21

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

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

Wednesday, May 25, 2011

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refund, Consent Agenda, upon motion of Mr. Horton and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered its previous motion rescinded and expunged.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Mr. Horton not participating in accordance with Government Code section 87105 in *Chevron U.S.A., Inc., 550782*; and, *Los Angeles Federal Credit Union, 520459*; Ms. Mandel not participating in *Nissan Motor Acceptance Corp., 484203*; Ms. Mandel not participating in accordance with Government Code section 87105 in *Pacific Life Insurance Company, 476230*; the Board made the following orders:

Dennis E. Schriber, 418952 (JH)

4-1-05 to 9-30-05, \$189,869.87

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

Community Flavor, LLC, 562173 (CH)

1-1-05 to 12-31-07, \$720,166.34

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

Jackie Voong, 562995 (KH)

1-1-06 to 12-31-08, \$198,522.20

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

Uriel Maldonado, 556723 (GH)

1-1-07 to 12-31-07, \$160,888.33

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

Madison/Graham Color Graphics, Inc., 487186 (AA)

1-1-06 to 3-31-08, \$192,370.09

Action: Approve the refund as recommended by staff.

Nissan Motor Acceptance Corp., 484203 (OH)

7-1-07 to 3-31-09, \$5,647,440.94

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

California Closet Company, Inc., 563947 (JH)

1-1-02 to 9-30-04, \$175,671.76

Action: Approve the refund as recommended by staff.

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

Wednesday, May 25, 2011

Chevron U.S.A., Inc., 550782 (BH)

1-1-03 to 12-31-07, \$226,892.90

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

Office Club, Inc., 561884 (OH)

1-1-01 to 6-30-04, \$354,502.97

Action: Approve the refund as recommended by staff.

Office Club, Inc., 473184 (OH)

10-1-04 to 6-30-05, \$222,109.14

Action: Approve the refund as recommended by staff.

Fountain Valley Regional Hospital &amp; Medical Center, 512766 (EA)

7-1-06 to 12-31-09, \$313,476.44

Action: Approve the refund as recommended by staff.

Escondido Motors, 522713 (FH)

10-1-06 to 12-16-07, \$472,410.44

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 551281 (KH)

4-1-10 to 9-30-10, \$454,030.00

Action: Approve the refund as recommended by staff.

Pacific Life Insurance Company, 476230 (EA)

10-1-05 to 12-31-08, \$373,463.40

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

Fowler Marketing International, LLC, 537222 (UT)

11-3-09 to 11-3-09, \$225,018.22

Action: Approve the refund as recommended by staff.

Bravo Design, Inc., 487821 (AC)

7-1-05 to 3-31-10, \$420,150.77

Action: Approve the refund as recommended by staff.

Owens &amp; Minor Distribution, Inc., 554447 (OH)

10-1-08 to 6-30-10, \$175,530.76

Action: Approve the refund as recommended by staff.

Moore Business Forms, Inc., 488610 (OH)

4-1-06 to 12-31-08, \$120,816.56

Action: Approve the refund as recommended by staff.

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Wednesday, May 25, 2011

Resmed Corp., 563293 (FH)

10-1-05 to 12-31-09, \$102,356.10

Action: Approve the refund as recommended by staff.

Travis Credit Union, 557546 (JH)

7-1-10 to 12-31-10, \$298,656.00

Action: Approve the refund as recommended by staff.

Travis Credit Union, 551277 (JH)

4-1-10 to 6-30-10, \$150,665.00

Action: Approve the refund as recommended by staff.

Elekta, Inc., 537236 (OH)

1-1-08 to 9-30-08, \$384,482.96

Action: Approve the refund as recommended by staff.

Ancillary Management Solution, 562014 (OH)

1-1-10 to 12-31-10, \$191,527.00

Action: Approve the refund as recommended by staff.

Michaels Stores Procurement Co., 513411 (OH)

1-1-04 to 9-30-06, \$149,880.60

Action: Approve the refund as recommended by staff.

H &amp; S Oil, LLC, 534533 (KH)

11-11-07 to 12-31-09, \$105,826.85

Action: Approve the refund as recommended by staff.

GPI CA-DMII, Inc., 523148 (FH)

12-17-07 to 3-31-10, \$571,762.04

Action: Approve the refund as recommended by staff.

Los Angeles Federal Credit Union, 520459 (AP)

4-1-06 to 12-31-09, \$182,431.15

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

Wednesday, May 25, 2011

**ADMINISTRATIVE SESSION****OTHER ADMINISTRATIVE MATTERS****Sales and Use Tax Deputy Director's Report**

Jeffrey McGuire, Deputy Director, Sales and Use Tax Department, provided a presentation on the Sales and Use Tax Department's programs, including discussion of data, accomplishments and progress on developing proposed steps to address continuing issues. Mr. McGuire reported that the E-Filing Transition Project won the 2011 Best of California Green IT Award.

Ms. Yee directed staff to incorporate SCOP into ongoing compliance activities of the agency, rather than seeking separate funding for it as a special program.

Mr. Runner directed staff to report at a late-summer Board meeting on the penalty and interest reprieve program that was in effect approximately 10 years ago. The report should include the reasons the program failed and some parameters that might make it successful.

Mr. Horton directed staff to address concerns, as discussed by Mr. Runner, at the upcoming stakeholders meetings as follows. 1) Regarding *Use Tax Registration of Service Providers* (Form ABX4-18), which requires qualified purchasers to register and report use tax directly to BOE if gross receipts of \$100,000 are received, examine the appropriateness of the threshold versus a higher amount or other types of focus groups. 2) Examine the feasibility of bundling certain uncollectable accounts receivable into marketable paper. 3) Analyze the various groups that make up the tax gap to identify BOE's education outreach targets.

**Property and Sales Taxes Deputy Director's Report**

David Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding the revised form BOE-502-P, *Possessory Interests Annual Usage Report*, and the related proposed Letter to Assessors ([Exhibit 5.16](#)).

Speakers: Mike Jacob, Vice President, Pacific Merchant Shipping Association  
Michelle Jones, Senior Director, Tax Policy, Time Warner Cable  
Gina Rodriguez, Vice President, State Tax Policy, CalTax,  
also on behalf of Mira Guertin, Policy Analyst, CalChamber  
James W. Ewert, General Counsel, California Newspaper Publishers Association

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted revised form BOE-502-P and approved the related proposed Letter to Assessors as presented by staff.

Wednesday, May 25, 2011

**Administration Deputy Director's Report**

Liz Houser, Deputy Director, Administration Department, made introductory remarks regarding the contract over \$1 million with the Department of Motor Vehicles for the collection of sales, use and/or special taxes pertaining to vehicles and undocumented vessels ([Exhibit 5.17](#)).

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

Ms. Yee requested a report on improvements being made by Department of Motor Vehicles to facilitate better collections.

Liz Houser, Deputy Director, Administration Department, provided information regarding pending Union Agreements and reported that there are no updates on the Governor's 2010/11 and 2011/12 Budgets at this time.

The Board directed staff to immediately draft information to the Legislative leaders regarding the affects of the various scenarios related to extending the 1 percent sales tax and how BOE will communicate the outcome of the scenarios to taxpayers and retailers. The memo should comment without prejudice on the following scenarios 1) no extension, 2) extension by an act of the Legislature, and 3) extension question put to the voters.

Liz Houser, Deputy Director, Administration Department, presented concepts for Board direction, or approval to develop into Budget Change Proposals for possible inclusion in the Governor's Fiscal Year 2012/13 Budget: 1) Headquarters Facility Consolidation and 2) Permanent Establishment – Natural Gas Public Purpose Programs Surcharge ([Exhibit 5.18](#)).

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
MAY 25, 2011**

Brent Bolthouse, 470152 (AS)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that no adjustment be made in the administrative protest as recommended by the Appeals Division.

Ms. Steel directed staff to provide: 1) guidelines for successor liability versus responsible party; and, 2) the collection priority of who is responsible and the typical actions that made them the responsible party.

Andrea J. Russo, 402580 (GH)

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

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

Wednesday, May 25, 2011

**FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD, MAY 25, 2011**

Nghia Ngoc Nguyen, 331258 (ET)

Nghia Ngoc Nguyen, 333770, 351779 (ET)

Final Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that with respect to petitioner's flights to Vietnam during the period April 1, 2004, through April 15, 2005 (case ID 351779), the two "free" pieces of baggage per flight plus each piece of baggage for which petitioner paid a charge as excess baggage be regarded as 70 pounds of tobacco products exported to Vietnam, and otherwise no further adjustment be made in the administrative protest and that the petitions be redetermined as recommended by the Appeals Division.

The Board adjourned at 1:40 p.m.

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

Note: The following matters were removed from the calendar prior to the meeting: *Charles P. Franklin, 417829*; and, Approve the Board Meeting Minutes of April 26-27, 2011.