

Tuesday June 15, 2010

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Annabell M. Palmer, 467214
2003, \$279,523.00 Assessment
For Appellant:
For Franchise Tax Board:

William Swearinger, Attorney
Irina Krasavtseva, Tax Counsel
Michael Cornez, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether the Franchise Tax Board properly disallowed a claimed theft deduction on appellant's return for tax year 2003.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 6.1](#))

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 are incorporated by reference.

Steven A. McMahon, 479981
2000, \$15,421.29 Claim for Refund
2001, \$14,395.06 Claim for Refund
For Appellant:
For Franchise Tax Board:

Steven A. McMahon, Taxpayer
Suzanne Small, Tax Counsel
Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant's claims for refund are barred by the statute of limitations.

Appellant's Exhibit: Appellant's Statement ([Exhibit 6.2](#))

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

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

Action: This matter was postponed to the October 2010 meeting.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *David Bergstein, 425117.*

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:

Note: These minutes are not final until Board approved.

Tuesday June 15, 2010

Public Grocers, Inc., 392338 (AP)

10-1-03 to 6-19-06, \$202,933.82 Tax, \$5,144.19 Failure to File Penalty, \$15,561.71 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Universal Management Systems, Inc., 440630 (EA)

7-1-04 to 6-30-07, \$56,724.28 Tax, \$5,457.48 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

L & A Wholesale Corporation, 473951 (AC)

7-1-04 to 12-31-07, \$228,638.36 Tax, \$22,863.83 Negligence Penalty

Alberto Leonardo Cidron and Liliana M. Cidron, 473952 (AC)

1-1-04 to 6-30-04, \$30,919.02 Tax, \$3,091.90 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Osman I. Elbiali, 466864 (AA)

1-1-05 to 8-30-07, \$154,570.29 Tax, \$15,457.06 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Black on Black Motorcars, Inc., 415010 (AS)

10-1-03 to 12-31-03, \$362,505.00 Tax, \$36,250.50 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Eric Miller Schwartzkopf, 330848, 415263 (AS)

7-1-00 to 12-31-04, \$18,489.29 Tax, \$35,407.71 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Donald Goff, 414981 (EH)

2-25-04 to 11-12-04, \$75,012.77 Tax, \$7,501.30 Failure to File Penalty, \$7,501.28 Failure to Timely Pay Penalty

Action: Redetermine as recommended by the Appeals Division.

Alford Label, Inc., 421082 (EA)

1-1-02 to 3-31-05, \$40,834.69 Tax

Action: Redetermine as recommended by the Appeals Division.

David Bergstein, 425117 (AS)

10-1-03 to 9-30-04, \$11,898.00 Tax, \$8,405.10 Penalties

Action: The Board took no action.

Gerry Garvin, 407123 (AS)

10-1-04 to 9-12-05, \$4,527.10 Failure to File Returns, \$4,527.10 Failure to Timely Pay

Action: Redetermine as recommended by the Appeals Division.

Tuesday June 15, 2010

Michael Anthony Migliaro, 472805 (EA)

1-1-01 to 8-31-04, \$26,618.61 Tax, \$5,598.57 Penalties

Eirik Coel Orman, 479330 (EA)

1-1-01 to 8-31-04, \$26,618.61 Tax, \$5,598.57 Penalties

Action: Redetermine as recommended by the Appeals Division.

T. M. O., Inc., 396038 (AP)

10-1-02 to 9-30-05, \$19,305.18 Tax, \$1,970.42 Negligence Penalty, \$156.41 Amnesty Double Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Lidia Lopez, 426825 (AP)

1-1-03 to 12-31-06, \$19,878.55 Tax, \$1,987.85 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Stone International, Inc., 416295 (AR)

7-1-03 to 6-30-06, \$357,706.46 Tax

Action: Redetermine as recommended by the Appeals Division.

Sycamore Caterers, Inc., 272349 (AA)

7-1-00 to 6-30-03, \$46,021.77 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Lifestyle Custom Cycles, LLC, 426169 (EA)

10-1-03 to 9-30-06, \$4,200.93 Tax

Action: Redetermine as recommended by the Appeals Division.

Kenneth Jon Sciallo, 393820 (GH)

7-1-03 to 9-30-06, \$19,020.95 Tax, \$969.86 Negligence Penalty, \$932.24 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Tariq H. Alsamaan DDS, LLC, 524510 (ET)

November 18, 2009, \$344.68 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Ajay Singh, 521294 (ET)

October 14, 2009, \$826.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Ajay Singh, 521287 (ET)

October 14, 2009, \$2,920.91 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Iraj Safapour, 524515 (ET)

September 12, 2009, \$65.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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Tuesday June 15, 2010

Dave's Investments, Inc., 524512 (ET)
November 18, 2009, \$232.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Joe L. Santos, 445970.*

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

Jason Evers, 485897
2007, \$928.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Frederick M. Fox, 468764
2006, \$1,817.00 Tax, \$454.25 Late Filing Penalty
Action: Sustain the modified action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Kurt M. Geib and Laura A. Geib, 449379
2005, \$1,398.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Gilbert Butler Trust 1985 FBO Melissa Butler, 489488
2007, \$14,261.21 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Hatfield 4060 Pike Lane Partnership, 402143
2005, \$400.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Andrew Hawkins, 439471
2006, \$1,050.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Yoong S. Lee and Sook Hyun Lee, 449399
2001, \$40,589.00 Tax, \$2,456.34 Post-Amnesty Penalty
2002, \$71,675.00 Tax, \$3,474.23 Post-Amnesty Penalty
Action: Sustain the action of the Franchise Tax Board.

Oakwood Capital, LLC, 467798
2006, \$1,500.00 Late Filing Penalty, \$200.00 Partnership Filing Penalty
Action: Sustain the action of the Franchise Tax Board.

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Tuesday June 15, 2010

Olatunde Okesola, 444261

2006, \$241.00 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Debbie A. Pasillas, 462005

2002, \$254.00 Claim for Refund

2003, \$330.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Eddie J. Perkins, 444207

2005, \$1,157.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Colin Hugh Reynolds, 479956

2006, \$2,430.00 Tax, \$607.50 Late Filing Penalty, \$607.50 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.

Daniel A. Sandoval, 483611

2005, \$572.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Julie A. Smedley, 461163

2004, \$730.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Nancie Smith and Estate of Harold F. Smith (Deceased), 475413

2005, \$108.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Joel S. Timmons, 483614

2005, \$1,698.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Eugene A. Villanueva, 450969

2003, \$728.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Brett Welker, 445971

2005, \$1,277.00 Tax, \$319.25 Penalty

Action: Sustain the action of the Franchise Tax Board.

Xinghui Wu, 488871

2007, \$1,577.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Tuesday June 15, 2010

Adalberto Barrios, 433000

2004, \$1,225.00 Claim for Refund

Action: Deny the petition for rehearing.

Richard Courtney, 400993

2002, \$1,076.00 Tax, \$269.00 Late Filing Penalty, \$281.75 Notice and Demand Penalty, \$65.19 Post Amnesty Penalty, \$125.00 Filing Enforcement Fee

Action: Deny the petition for rehearing.

Joe L. Santos, 445970

2003, \$1,914.00 Tax

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

Jane Benjamin (Deceased), 450051

2007, \$207.50

Action: Sustain the action of the Franchise Tax Board.

Douglas A. Cantlin, 437578

2007, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Leanna Denham, 436625

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Armando R. Gaytan, Jr., 436732

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Diane Herman, 426308

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Anneli Hitchcock, 463834

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Georgiana Johnson (Deceased) 431636

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Tuesday June 15, 2010

David Jones, 458664

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Mari Kalpakchian, 443305

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Incarnation Klawitter, 426668

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Spring Lewis, 447802

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Suzanne Mirzoyan, 431250

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Charlotte Ann Moore, 443296

2007, \$347.00

Action: Sustain the action of the Franchise Tax Board.

William Nolan, 422587

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Marguerite H. Piarulli, 442461

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Terrance L. Pullum, 448037

2006, \$312.00

Action: Sustain the action of the Franchise Tax Board.

Guadalupe Ramirez, 420374

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Shanah Robinson, 449936

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Bennie Smith, 443291

2006, \$351.00

Action: Sustain the action of the Franchise Tax Board.

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Tuesday June 15, 2010

William Strong, 450010

2006, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Joyce J. Thomas, 426208

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Jorge Tobar, 403203

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Milton H. Velasco, 470247

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Denise I. Welch, 425212

2007, \$320.00

Action: Sustain the action of the Franchise Tax Board.

Linyao Xie, 437910

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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

With respect to the Sales and Use Tax Matters, Redeterminations, and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 *Google, Inc., 415249*; in the Board made the following orders:

Pericom Semiconductor Corp., 513065 (GH)

10-1-05 to 9-30-08, \$265,059.09

Action: Approve the redetermination as recommended by staff.

Cloudshield Technologies, Inc., 402952 (GH)

1-1-01 to 6-30-04, \$135,970.89

Action: Approve the redetermination as recommended by staff.

California RSA #4, LP, 479525 (OH)

7-1-02 to 12-31-05, \$353,766.45

Action: Approve the redetermination as recommended by staff.

Container Options, 514078 (EH)

7-1-04 to 3-31-09, \$152,671.90

Action: Approve the redetermination as recommended by staff.

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Tuesday June 15, 2010

Castle Knights Aviation, Inc., 435738 (KH)

7-1-04 to 12-31-07, \$159,740.00

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

Google, Inc., 415249 (GH)

4-1-06 to 9-30-06, \$124,797.00

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

SALES AND USE TAX MATTERS, REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Refunds, 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. Steel not participating in accordance with Government Code section 87105 in *Tyco Electronics Corporation, 523851*; and, *Starbucks Corporation, 525347*; Ms. Mandel not participating in accordance with Government Code section 87105 in *Tyco Electronics Corporation, 523851*; and, *ABC, Inc., 435368*; the Board made the following orders:

Fireside Bank, 511344 (CH)

4-1-09 to 12-31-09, \$5,610,669.00

Action: Approve the refund as recommended by staff.

T. F. N. Architectural Signage, Inc., 520347 (EA)

1-1-05 to 12-31-08, \$258,023.40

Action: Approve the refund as recommended by staff.

American Material Mgt. Alliance, Inc., 474056 (EH)

7-1-06 to 6-30-08, \$247,723.03

Action: Approve the refund as recommended by staff.

NEC Electronics America, Inc., 425396 (GH)

7-1-04 to 9-30-07, \$234,488.22

Action: Approve the refund as recommended by staff.

Tyco Electronics Corporation, 523851 (OH)

1-1-06 to 12-31-08, \$183,921.30

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

Ivy Hill Corporation, 399623 (OH)

10-1-02 to 12-31-06, \$1,763,377.21

Action: Approve the refund as recommended by staff.

Starbucks Corporation, 525347 (OH)

7-4-05 to 6-29-08, \$786,552.83

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

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Tuesday June 15, 2010

Banc of America Leasing & Capital, LLC, 519320 (OH)

10-1-99 to 9-30-02, \$670,411.84

Action: Approve the refund as recommended by staff.

Wachovia Dealer Services, Inc., 510890 (EA)

4-1-09 to 6-30-09, \$3,132,531.00

Action: Approve the refund as recommended by staff.

Los Angeles Times Communications, 504740 (AA)

7-1-06 to 6-30-08, \$550,933.90

Action: Approve the refund as recommended by staff.

Webcraft, LLC, 480146 (OH)

10-1-05 to 9-30-08, \$589,345.60

Action: Approve the refund as recommended by staff.

ABC, Inc., 435368 (OH)

10-1-99 to 12-31-05, \$102,709.03

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

Mueller Nicholls, Inc., 447882 (CH)

4-1-05 to 12-31-07, \$165,437.05

Action: Approve the refund as recommended by staff.

United Auto Credit Corporation, 512646 (EA)

4-1-09 to 12-31-09, \$194,202.00

Action: Approve the refund as recommended by staff.

Pacific Marine Credit Union, 422583 (FH)

1-1-05 to 3-31-05, \$308,701.43

Action: Approve the refund as recommended by staff.

Bombardier Mass Transit Corp., 481254 (AA)

4-1-05 to 3-31-08, \$107,014.71

Action: Approve the refund as recommended by staff.

Carco Group, Inc., 437204 (OH)

6-1-04 to 12-31-08, \$254,268.77

Action: Approve the refund as recommended by staff.

Pacific Capital Bank N. A., 491587 (GH)

1-1-09 to 3-31-09, \$170,887.34

Action: Approve the refund as recommended by staff.

1st United Services Credit Union, 509150 (CH)

4-1-09 to 9-30-09, \$180,910.00

Action: Approve the refund as recommended by staff.

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Tuesday June 15, 2010

First City Credit Union, 450747 (AA)

4-1-06 to 12-31-08, \$138,049.70

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS, CONSENT

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

Progressive Casualty Insurance Co., 254100 (ET)

1-1-02 to 12-31-02, \$761,444.77

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

Progressive Choice Insur. Co., 250602 (ET)

1-1-02 to 12-31-02, \$222,417.00

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

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by 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:

Progressive Marathon Ins. Company, 250596 (ET)

1-1-02 to 12-31-02, \$407,567.65

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

National Continental Ins. Company., 250604 (ET)

1-1-02 to 12-31-02, \$140,596.83

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

Progressive West Insurance Company, 252225 (ET)

1-1-02 to 12-31-02, \$680,627.66

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

21st Century Insurance Company, 153478 (ET)

1-1-97 to 12-31-00, \$2,387,713.04

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

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Tuesday June 15, 2010

The Board recessed at 10:53 a.m. and reconvened at 1:33 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

John Harold Kraft, 446023
2003, \$7,634.40 Assessment
2004, \$7,024.80 Assessment
For Appellant:
For Franchise Tax Board:

John Kraft, Taxpayer
Karen Smith, Tax Counsel
Jozel Brunett, Tax Counsel

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

Issues: Whether appellant has shown that the federal adjustments, upon which the proposed deficiency assessments are based, are erroneous.

Whether appellant has established reasonable cause for abatement of the accuracy-related penalties.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 6.3](#))

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

The Board recessed at 2:04 p.m. and reconvened at 2:34 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

LaVona D. Shellmire, 510915
2004, \$3,770.00 Assessment
For Appellant:
For Franchise Tax Board:

LaVona Shellmire, Taxpayer
Karen Smith, Tax Counsel
Jozel Brunett, Tax Counsel

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

Issue: Whether appellant has demonstrated any error in respondent's assessment of tax based on a federal adjustment.

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 submitted the appeal 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 further directed the appellant to provide a copy of any notice from the IRS in this matter to the Appeals Division and the Franchise Tax Board.

Tuesday June 15, 2010

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD JUNE 15, 2010**

Annabell M. Palmer, 467214

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

Upon motion of Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board rescinded its previous motion to grant the appeal and deferred consideration of the matter to the following day.¹

Steven A. McMahon, 479981

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

John Harold Kraft, 446023

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

The Board recessed at 3:01 p.m. and reconvened at 3:33 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

PUBLIC HEARINGS**Business Taxpayers' Bill of Rights Hearings**

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers' Bill of Rights Hearings.

Mr. Gilman read into the record a letter submitted from Abe Golomb, Sales Tax Reduction Specialists. ([Exhibit 6.4](#))

Speakers: Tom Dworkin, Tom Dworkin Associates
William M. Connell, Military Veteran and owner of All American Surf Dog
([Exhibit 6.5](#))

Regarding Mr. Dworkin's presentation, Mr. Horton directed staff to educate the public relative to how tax applies to transactions such as Mr. Dworkin's.

Ms. Yee stated that she believes Taxpayer Bill of Rights Hearings should be used to work on the agency's larger policy issues and internal procedural issues and not limit the scope of discussions to individual examples. Ms. Yee then directed Mr. Gilman to do the following:

¹ See page 144 of these minutes.

Tuesday June 15, 2010

1) Regarding Mr. Dworkin's presentation: provide Members with historical context relative to the laws and regulations related to Mr. Dworkin's issues.

2) Regarding Mr. Connell's presentation: investigate the feasibility of pursuing subsequent legislation that would make existing legislation enacted per SB 809 (stats. 2009) retroactive; provide assistance regarding how to file a claim with the California Victim Compensation and Government Claims Board; provide assistance regarding information about federal economic stimulus funds available to veterans; provide information on financial assistance available through the California Department of Veterans Affairs; and, to be a single point of contact for pursuing any other opportunities for Mr. Connell and similarly situated veterans to access any available assistance.

3) Regarding Mr. Golomb's submission: work with Sales and Use Tax Department staff to develop higher level consistent guidance to BOE District staff related to the current economic downturn relative to consideration of taxpayers' requests for payment plans that does not necessarily require a "one size fits all" approach, but might include a checklist of factors to consider.

Ms. Alby made complementary remarks and thanked Mr. Gilman and his staff for their exceptional work.

Property Taxpayers' Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Property Taxpayers' Bill of Rights Hearings.

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

The Board adjourned at 4:24 p.m.

The foregoing minutes are adopted by the Board on September 15, 2010.

Note: The following matters were removed from the calendar prior to the meeting: *Charles E. Grays II, 464314; Harold T. Riggs, Jr., 449373, 474423, 504746; Edmund (Chad) Siva (Deceased), 384247, 390860, 401330, 401331, 481024; Wayne L. Hause and Kelly R. Hause, 467603; and, Steven T. Waltner and Sarah V. Waltner, 468742.*

Wednesday, June 16, 2010

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:33 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.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD JUNE 15, 2010

Annabell M. Palmer, 467214 (continued)

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Ronald N. Frazar and Jane A. Frazar, 494349

2005, \$231,226 Assessment

2006, \$236,238 Assessment

For Appellant:

Marilyn Barrett, Attorney

Tom Perlowski, Representative

For Franchise Tax Board:

Natasha Page, Tax Counsel

Terry Collins, Tax Counsel

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

Issue: Whether respondent properly determined that nonresident appellants were subject to income tax on installment income from a sale of stock and real property that occurred in California in a prior year when appellants were residents of California.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 6.6](#))

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

Exhibits are incorporated by reference.

David Lail and Karen Lail, 439458

2000, \$227,024.00 Tax, \$17,024.00 Post-Amnesty Penalty

For Appellant:

David Lail, Taxpayer

Christopher Manes, Attorney

Michael Davis, Witness

For Franchise Tax Board:

Natasha Page, Tax Counsel

Terry Collins, Tax Counsel

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

Issues: Whether income in the amount of approximately \$8.8 million received by appellants in 2000 should be classified as wages or royalties.

Whether the Board has jurisdiction to abate the post-amnesty penalty.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 6.7](#))

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.

Note: These minutes are not final until Board approved.

Wednesday, June 16, 2010

Elisabeth Bossingham, 486595

2000, \$6,480.00 Tax, \$1,620.00 Late Filing Penalty
 2001, \$13,117.00 Tax, \$3,279.25 Late Filing Penalty
 2002, \$10,031.00 Tax, \$2,507.75 Late Filing Penalty
 2003, \$11,399.00 Tax, \$2,849.75 Late Filing Penalty
 2004, \$11,198.00 Tax, \$2,799.50 Late Filing Penalty
 2005, \$9,211.00, Tax, \$2,302.75 Late Filing Penalty

For Appellant:

Brett Bossingham, Representative

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Jozel Brunett, Tax Counsel

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

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

Whether appellant has shown reasonable cause for abatement of the late filing penalties imposed for each of the appeal years.

Whether the Board should impose a frivolous appeal penalty.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 6.8](#))

Respondent's Exhibit: Internal Revenue Service Wage and Income Transcripts for the 2000-2005 tax years ([Exhibit 6.9](#))

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.

The Board recessed at 11:45 a.m. and reconvened at 1:33 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Hendrika Bouwmeester, 490302

2006, \$975 Claim for Refund

For Appellant:

Peter Kwok, Representative

For Franchise Tax Board:

Karen Smith, Tax Counsel

Jean Cramer, Tax Counsel

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

Issue: Whether appellant has shown the late filing penalty imposed by respondent should be abated.

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.

Richard J. Epping and Lisa R. Epping, 483846

Action: This matter was dismissed.

Robert M. Miller, 449286

2000, \$4,291.69 Assessment

For Appellant:

Robert M. Miller, Taxpayer

Alexander Yen, Representative

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Jean Cramer, Tax Counsel

Note: These minutes are not final until Board approved.

Wednesday, June 16, 2010

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

Issue: Whether appellant's claim for refund is barred by the statute of limitations.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 6.10](#))

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.

Clinton T. Bookmyer, 492771

2007, \$1,160.00 Assessment

For Appellant:

Clint Bookmyer, Taxpayer
Peter Kwok, Representative
Jean Cramer, Tax Counsel
Jozel Brunett, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether appellant is entitled to head of household filing status for 2007.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 6.11](#))

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Steel and Ms. Mandel voting yes, Ms. Alby abstaining, the Board submitted the appeal for decision and deferred consideration of the matter with direction to the Franchise Tax Board to work with appellant to determine if relevant court documentation or records can be obtained and direction to the Appeals Division to track the matter and bring it back to the Board.

SPECIAL ANNOUNCEMENT

Ms. Yee, on behalf of the Board, extended congratulations and best wishes to Jean Cramer, Tax Counsel, Franchise Tax Board, on her retirement, and expressed appreciation for her service before the Board of Equalization and to the State of California.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Gary Laub, 468084

2000, \$5,816.00 Claim for Refund

For Appellant:

Gary Laub, Taxpayer
Peymon Mottahedeh, Representative
Suzanne Small, Tax Counsel
Karen Smith, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether appellant's claim for refund is barred by the statute of limitations.

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.

Wednesday, June 16, 2010

Armadillo Trading Co., Inc., 488037

2002, \$18,299.17 Tax, \$4,574.79 Late Filing Penalty

For Appellant:

Edward Ferrer, Taxpayer

Dudley M. Lang, Attorney

For Franchise Tax Board:

Sean Sullivan, Tax Counsel

Ron Hofsdal, Tax Counsel

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

Issue: Whether appellant has satisfied its burden of proving that the debts at issue became worthless in 2002.

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.

Rick Burningham, 469765

2006, \$2,655.00 Tax, \$663.75 Late Filing Penalty, \$1,202.75 Demand Penalty

Arturo Cueva, 487046

2006, \$1,329.00 Tax, \$332.25 Late Filing Penalty, \$332.25 Demand Penalty

Karl Eisenhammer, 476721

2006, \$4,978.00 Tax, \$1,244.50 Late Filing Penalty, \$1,845.25 Demand Penalty

Randolph Frodsham, 474115

2006, \$2,774.00 Tax, \$693.50 Late Filing Penalty, \$693.50 Demand Penalty

Carol Grant, 487068

2006, \$1,681.00 Tax, \$420.25 Late Filing Penalty, \$420.25 Demand Penalty

Richard Grant, 487065

2006, \$5,881.00 Tax, \$1,470.25 Late Filing Penalty, \$1,470.25 Demand Penalty

Christopher Gyorgy, 476765

2005, \$10,554.00 Tax, \$2,638.50 Late Filing Penalty, \$3,547.00 Demand Penalty

Demeris Parks, 476896, 482907

2004, \$3,445.00 Tax, \$861.25 Late Filing Penalty, \$861.25 Demand Penalty

2006, \$3,760.00 Tax, \$940.00 Late Filing Penalty, \$940.00 Demand Penalty

Dan Pickell, 477221, 487503, 488194, 488195, 488196

2002, \$9,745.00 Tax, \$2,436.25 Late Filing Penalty, \$590.44 Proposed Post-Amnesty Penalty

2006, \$5,434.00 Tax, \$1,358.50 Late Filing Penalty, \$1,358.50 Demand Penalty

2000, \$11,438.00 Tax, \$2,859.50 Late Filing Penalty, \$3,141.00 Demand Penalty, \$1,928.57

Proposed Post-Amnesty Penalty

2001, \$13,496.00 Tax, \$3,374.00 Late Filing Penalty, \$3,374.00 Demand Penalty, \$1,410.30

Proposed Post-Amnesty Penalty

2003, \$12,849.00 Tax, \$3,212.25 Late Filing Penalty, \$3,212.25 Demand Penalty

Jintau Two, 480043

2006, \$12,762.00 Tax, \$3,190.50 Late Filing Penalty, \$3,190.50 Demand Penalty

Anthony Wiest, 482498

2006, \$9,433 Tax, \$2,358.25 Late Filing Penalty, \$2,358.25 Demand Penalty

For Appellants:

Peymon Mottahedeh, Representative

Marci Kline, Representative

Note: These minutes are not final until Board approved.

Wednesday, June 16, 2010

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether an appellant has demonstrated error in his or her respective tax assessment(s).

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

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

Whether the Board has jurisdiction to consider any post-amnesty penalties.

Whether the Board should impose a frivolous appeal penalty (or penalties) on a particular appellant.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 6.12](#))

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

The Board recessed at 3:51 p.m. and reconvened at 4:09 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARING

Jing Shen, 424037 (EA)

8-26-96 to 12-31-00, \$16,496.87 Tax, \$3,387.04 Penalty

For Petitioner: John O. Kent, Attorney

For Sales and Use Tax Department: Chris Schutz, Tax Counsel

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

Issues: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of Nettrue Communications, Inc. (Nettrue).

Whether the penalties assessed against Nettrue that were carried over and imposed against petitioner should be deleted.

Whether interest should be relieved.

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

The Board recessed at 4:58 p.m. and reconvened at 5:06 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Wednesday, June 16, 2010

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD JUNE 16, 2010**

Ronald N. Frazar and Jane A. Frazar, 494349

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

David Lail and Karen Lail, 439458

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

Elisabeth Bossingham, 486595

Final Action: Upon motion of Ms. Alby, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$1,500.00 frivolous appeal penalty to be apportioned equally among the years on appeal.

Hendrika Bouwmeester, 490302

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

Robert M. Miller, 449286

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

Gary Laub, 468084

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

Armadillo Trading Co., Inc., 488037

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

Wednesday, June 16, 2010

Rick Burningham, 469765
Arturo Cueva, 487046
Karl Eisenhammer, 476721
Randolph Frodsham, 474115
Carol Grant, 487068
Richard Grant, 487065
Christopher Gyorgy, 476765
Demeris Parks, 476896, 482907
Dan Pickell, 477221, 487503, 488194, 488195, 488196
Jintau Two, 480043
Anthony Wiest, 482498

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board sustained the actions of the Franchise Tax Board with concessions and imposed frivolous appeal penalties as recommended by staff. Those frivolous appeal penalties are as follows: *Rick Burningham, 469765, \$5,000; Arturo Cueva, 487046, \$5,000; Karl Eisenhammer, 476721, \$2,500; Randolph Frodsham, 474115, \$750; Carol Grant, 487068, \$5,000; Richard Grant, 487065, \$5,000; Christopher Gyorgy, 476765, \$5,000; Demeris Parks, 482907 and 476896, \$375 each; Dan Pickell, 477221, 487503, 488194, 488195 and 488196, \$500 each; Jintau Two, 480043, \$5,000; and, Anthony Wiest, 482498, \$750.*

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
JUNE 16, 2010**

Jing Shen, 424037 (EA)

Final Action: Ms. Steel moved to grant the petition for the period January 1997 to August 1998 and that the petition otherwise be redetermined as recommended by the Appeals Division. 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 Ms. Mandel, 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 redetermined as recommended by the Appeals Division.

The Board adjourned at 5:33 p.m.

The foregoing minutes are adopted by the Board on September 15, 2010.

Thursday, June 17, 2010

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:33 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Medison America, Inc., 417171 (EA)

4-1-03 to 3-31-06, \$6,394.52 Tax

For Petitioner:

Anthony Robert De Palma, Representative

Victoria L. Murphy, Representative

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

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

Issue: Whether the use of equipment withdrawn from resale inventory for training purposes is taxable, and if so, whether the audited measure of tax is excessive.

David H. Levine, Counsel, Appeals Division, Legal Department, advised of the revised recommendation of the Appeals Division to reduce the measure of tax due on the use, for training purposes, of resale inventory equipment to the average daily fair rental value of \$125, which would reduce the measure of tax on this use to \$55,750.

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

Saddleback Recreational Vehicles, 379945 (EH)

1-1-03 to 12-31-05, \$123,068.62 Tax

For Petitioner:

Michael Sebastian, Taxpayer

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issue: Whether adjustments are warranted to the disallowed claimed exempt sales in interstate commerce.

David H. Levine, Counsel, Appeals Division, Legal Department, advised of the revised recommendation of the Appeals Division to remove the Rath and Tobler sales from the deficiency because those two sales occurred to non-residents outside California.

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 submitted for decision.

Mokhim Rasooli and Malak Sajedah, 432459 (AC)

10-01-03 to 9-30-06, \$18,712.64 Tax, \$1,871.29 Negligence Penalty

For Petitioner:

Mokhim Rasooli, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Note: These minutes are not final until Board approved.

Thursday, June 17, 2010

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

Maherali, Inc., 343758 (KH)

4-1-02 to 3-31-05, \$9,786.62 Tax, 00.00 Penalty

For Petitioner:

Sukhjinder Singh Gill, Taxpayer

Indervir Randhawa, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issue: Whether further adjustments are warranted.

Action: The Board directed staff to confer with the taxpayer and deferred consideration of the matter to later in the day.

Thomas International Home Furnishings, 425486 (AS)

10-1-03 to 9-30-06, \$35,157.95 Tax

For Petitioner:

Meher "Mike" Ohanessian, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether adjustments are warranted to the audited amount of disallowed claimed nontaxable transportation charges.

Whether petitioner has established that its failure to report tax on its transportation charges was due to its reasonable reliance on advice provided by the Board.

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 submitted for decision.

The Board recessed at 12:35 p.m. and reconvened at 1:37 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Maherali, Inc., 343758 (KH) (continued)

David H. Levine, Counsel, Appeals Division, Legal Department, reported that staff met with the taxpayer who indicated that he had no additional evidence to provide that staff had not already reviewed.

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 petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days with additional time if needed to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

Thursday, June 17, 2010

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

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

Char Fasl Restaurant, Inc., 418861 (AC)

Bahram Arya Husaini, 418864 (AC)

Melody Arya Husaini, 418867 (AC)

4-1-03 to 6-30-06, \$00.00 Tax, \$28,904.71 Fraud Penalty

9-9-05 to 6-30-06, \$00.00 Tax, \$14,575.02 Fraud Penalty

4-1-03 to 11-30-05, \$00.00 Tax, \$17,235.72 Fraud Penalty

For Petitioner:

Melody Arya Husaini, Taxpayer

Bahram Arya, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Action: The Board postponed the matter to the October 2010 meeting in Culver City.

D & H Service Station, 435924 (EA)

4-1-04 to 3-31-07, \$80,006.59 Tax, \$25,114.26 Negligence Penalty

For Petitioner:

Joyce Cheng, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether adjustments are warranted to the amount of unreported taxable sales based on an examination of daily sales reports.

Whether adjustments are warranted to the audited amount of disallowed recorded nontaxable sales related to repair labor and referral fees.

Whether petitioner was negligent.

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 petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

LJ Corporation, 478296 (AA)

1-1-05 to 4-16-08, \$137,726.72 Tax, \$13,772.73 Negligence Penalty

For Petitioner:

Martin Lin, Taxpayer

Asam Han, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Whether petitioner was negligent.

Action:

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

Thursday, June 17, 2010

Kamal F. Batech and Wafaa Elias Batech, 406741 (EH)

7-1-02 to 12-31-05, \$47,264.95 Tax, \$14,369.00 Penalty

For Petitioner: Nate Green, Representative

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

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

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

Whether the rebates petitioner received from cigarette manufacturers represent gross receipts subject to tax.

Whether petitioner was negligent.

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 submitted for decision.

The Board recessed at 3:18 p.m. and reconvened at 3:38 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

J & L Phang, Inc., 443371 (AP)

7-1-03 to 6-30-06, \$92,005.40 Tax, \$9,247.64 Negligence Penalty

For Petitioner: Shau Tang Chen, Representative

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

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

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

Whether petitioner was negligent.

Action: Upon motion of Ms. Steel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered the happy hour percentage increased to 36 percent and the petition otherwise redetermined as recommended by the Appeals Division.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
JUNE 17, 2010**

Medison America, Inc., 417171 (EA)

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

Saddleback Recreational Vehicles, 379945 (EH)

Final Action: Upon motion of Ms. Steel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered the MacNab sale removed from the deficiency because it occurred outside California to a non-resident, and the petition otherwise redetermined in accordance with the revised recommendation of the Appeals Division.

Note: These minutes are not final until Board approved.

Thursday, June 17, 2010

Mokhim Rasooli and Malak Sajedah, 432459 (AC)

Final Action: Upon motion of Ms. Steel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered the taxable ratio reduced to 78.99 percent and an allowance for self consumption of \$10 per day, and the petition otherwise redetermined as recommended by the Appeals Division.

Thomas International Home Furnishings, 425486 (AS)

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

SALES AND USE TAX APPEALS HEARING

Chuy's Management Services Fresno, LLC, 341587 (KH)

4-18-98 to 12-31-01, \$00.00 Tax, \$35,405.98 Fraud Penalty

Carpinteria Chuy's, Inc., 341590 (GH)

10-1-97 to 12-31-01, \$00.00 Tax, \$18,655.79 Fraud Penalty

Chuy's Management Services Camarillo, 341591 (AR)

1-1-98 to 12-31-01, \$00.00 Tax, \$49,784.09 Fraud Penalty

Chuy's Management Services Stevenson Ranch, LLC, 341592 (AR)

1-1-97 to 12-31-01, \$00.00 Tax, \$91,060.06 Fraud Penalty

Chuy's Management Services Bakersfield, 341593 (AR)

10-1-98 to 12-31-01, \$00.00 Tax, \$44,570.40 Fraud Penalty

Chuy's Management Services Thousand Oaks, 341594 (AR)

1-1-98 to 12-31-01, \$00.00 Tax, \$50,361.95 Fraud Penalty

Jeanine Gayle Stenoien, 341596 (AR)

1-1-95 to 12-31-01, \$00.00 Tax, \$00.00 Fraud Penalty

For Petitioner: No Appearance

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

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

Issues: Whether there is clear and convincing evidence of fraud or intent to evade the tax.

Whether petitioners are entitled to relief from interest.

Action: Upon motion of Mr. Horton, seconded by Ms. Yee 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 SALES AND USE TAX APPEALS HEARINGS HELD

JUNE 17, 2010

LJ Corporation, 478296 (AA)

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

Note: These minutes are not final until Board approved.

Thursday, June 17, 2010

Kamal F. Batech and Wafaa Elias Batech, 406741 (EH)

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

The Board adjourned at 4:13 p.m.

The foregoing minutes are adopted by the Board on September 15, 2010.

Note: The following matter was removed from the calendar prior to the meeting: *Aftershock Power Boats, Inc., 334423 (EH)*.

Friday, June 18, 2010

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:33 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.

SPECIAL TAXES APPEALS HEARING

K.A.R.E.N. Oil Company, Inc., 339357 (MT)

10-1-97 to 9-30-05, \$120,475.93 Fee, \$12,038.87 Failure to Timely Pay Penalty

For Petitioner:

Herzel Michaeli, Taxpayer

Duke L. Peters, Attorney

For Property and Special Taxes Department:

Carolee Johnstone, Tax Counsel

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

Issues: Whether petitioner is liable for the assessed underground storage tank maintenance fees.

Whether the 10-percent failure-to-pay penalty should be relieved.

Whether interest on the fee liability should be relieved.

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 submitted for decision.

Ms. Yee directed staff to work jointly with Cal EPA, if funding issues arise in regards to the Water Resources Board/Cal EPA database, *California Environmental Reporting System*, and to present any such issues to the Board.

Ms. Steel directed staff to more effectively work with taxpayers regarding BOE's practices, and to work with taxpayers' on a case-by-case basis, specifically providing information regarding payment plans at the district office level.

The Board recessed at 10:19 a.m. and reconvened at 10:27 a.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

Mas N Zul, Inc., 434597 (AR)

4-1-04 to 3-31-07, \$26,044.74 Tax

For Petitioner:

Fred Hassan, Taxpayer

Sargis Khaziran, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

Note: These minutes are not final until Board approved.

Friday, June 18, 2010

Jason R. Pridmore, 421508 (UT)

March 2, 2005, \$23,991.00 Tax

For Petitioner:

Jason R. Pridmore, Taxpayer

Alessandro Assanti, Attorney

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issue: Whether petitioner purchased a recreational vehicle for use in this state.

Action: Upon motion of Ms. Alby, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

The Board recessed at 11:49 a.m. and reconvened at 1:39 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Zograb Kyababchyan, 472377 (AC)

10-1-04 to 12-31-07, \$30,603.05 Tax, \$3,069.85 Negligence Penalty, \$3,069.79 Finality Penalty

For Petitioner:

Solak Avedissian, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Whether taxpayer was negligent.

Whether relief of the finality penalty is warranted.

Whether the claim for refund filed December 10, 2009, should be granted.

Action: Ms. Steel moved to abate the negligence penalty, uphold the finality penalty, maintain the taxable ratio of 87.16 percent and average the markup to 37.165 percent. 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. Mandel 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.

Nelly's Market, Inc., 445459 (FH)

1-1-04 to 12-31-06, \$21,262.56 Tax, \$00.00 Negligence Penalty

For Petitioner:

Zahir "Zack" Romaya, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

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 submitted for decision.

Friday, June 18, 2010

OTHER CHIEF COUNSEL MATTERS**Request for Authorization to File *Amicus Curiae* Brief (continued from May 26, 2010)**

Richard Moon, Staff Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to file an amicus curiae brief in the consolidated property tax actions challenging fractionally owned aircraft taxation statutes, as requested by Santa Barbara County, for the Orange County Superior Court's consolidation of the following four cases: *Netjets Aviation Inc. v. Webster J. Guillory*, Case Number 30-2008-00107805-CU-MC-CJC; *Flight Options LLC v. Webster J. Guillory*, Case Number 30-2008-00110932-CU-MC-CJC; *CitationShares Management LLC v. Joseph E. Holland, Santa Barbara County Assessor*, Case Number 30-2009-00288116-CU-MC-CJC; and, *Bombardier Aerospace Corp. v. Joseph E. Holland, Santa Barbara County Assessor*, Case Number 30-2009-00303518-CU-MC-CJC.

Speakers: Robert Quon, Acting Los Angeles Assessor
James Harman, Deputy County Counsel for Orange County Assessor
Marie LaSala, Deputy County Counsel for Santa Barbara County Assessor

Mr. Horton commended Mr. Moon on a fabulous job of representing the Board at the April 30, 2010 meeting of the California Probate Referee's Association in San Diego.

Action: 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 authorized the filing of an *Amicus Curiae* Brief as recommended by staff.

ADMINISTRATIVE SESSION**OTHER ADMINISTRATIVE MATTERS****BOE Board Meeting Start Time**

Mr. Horton suggested a new start time for Board meetings in Sacramento to accommodate travel from Southern California.

Action: Upon motion of Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the first day of Sacramento Board meetings will be scheduled to convene at 10:00 a.m. beginning with July 2010 as recommended by Mr. Horton.

Friday, June 18, 2010

FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD JUNE 18, 2010

K.A.R.E.N. Oil Company, Inc., 339357 (MT)

Action: Ms. Steel moved to uphold the fees as assessed by staff, abate the failure-to-timely-pay penalty, and abate the interest that had accrued on the fees that were incurred beginning January 1, 2001. 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. Mandel 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 redetermined as recommended by the Appeals Division.

Ms. Yee directed staff to inform the petitioner of the Offer in Compromise Program.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JUNE 18, 2010

Matthew Emerey LaTray, 402632 (AS)

1-1-04 to 6-30-06, \$30,266.28 Tax, \$3,616.75 Negligence Penalty

For Petitioner: No Appearance

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

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

Issues: Whether petitioner has established that any of the disallowed claimed sales in interstate commerce should be allowed as exempt interstate commerce sales.

Whether petitioner has established that any of the disallowed claimed sales for resale should be allowed as valid sales for resale

Whether petitioner was negligent.

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

Nelly's Market, Inc., 445459 (FH)

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

The Board adjourned at 3:57 p.m., in memory of Mary Ann Morgan, who passed away Monday, June 7, 2010, and was a Tax Technician II in the State-Assessed Properties Division in her 34th year with the BOE; and, in memory of Todd D. MacMurray, who passed away Friday, June 11, 2010, and was a Business Taxes Specialist II in the Sales and Use Tax Department in his 17th year with the BOE.

The foregoing minutes are adopted by the Board on September 15, 2010.

Note: The following matter was removed from the calendar prior to the meeting: Closed Session.

Note: These minutes are not final until Board approved.