

Tuesday, June 21, 2011

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Gerald J. Marcil and Carol L. Marcil, 458832

2001, \$307,466.00 Tax, \$14,591.81 Post-Amnesty Penalty

For Appellant:

Gerald J. Marcil, Taxpayer

Layton L. Pace, Attorney

For Franchise Tax Board:

David Gemmingen, Tax Counsel

Ciro Immordino, Tax Counsel

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

Issues: Whether appellant's limited partnership satisfied the requirement for a "like-kind" exchange pursuant to Internal Revenue Code section 1031.

Whether this Board has jurisdiction to hear and decide the appeal of the post-amnesty penalty.

Appellant's Exhibit: Chart ([Exhibit 6.1](#))

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 6.2](#))

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

Exhibits to these minutes are incorporated by reference.

Howard Brief, 530872

2004, \$182,673.00 Assessment

For Appellant:

Howard Brief, Taxpayer

For Franchise Tax Board:

Ciro Immordino, Tax Counsel

David Gemmingen, Tax Counsel

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

Issue: Whether appellant was the owner of property such that he is entitled to like-kind exchange treatment with respect to the property under Internal Revenue Code section 1031.

Appellant's Exhibit: 2004 IRS Form 8824, Like-Kind Exchanges ([Exhibit 6.3](#))

Respondent's Exhibit: 2004 FTB Form 565 C1 and Schedule K-1; and, 2004 IRS Form 1040 Schedule E ([Exhibit 6.4](#))

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.

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Jaroslav Marik and Jirina Marik, 547265

2004, \$93,000.00 Claim for Refund

For Appellant:

Jaroslav Marik, Taxpayer

Ward R. Nyhus, Jr., Attorney

For Franchise Tax Board:

Raul Escatel, Tax Counsel

Bill Hilson, Tax Counsel

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

Issue: Whether appellants have substantiated that they are entitled to a bad debt deduction (or alternatively, an investment loss) for the 2004 tax year.

Appellant's Exhibit: Operating Agreement for University Village Housing, LLC ([Exhibit 6.5](#))

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.

Ms. Mandel introduced Rachel Dardashti, an intern from the Controller's Los Angeles office.

Thomas Najarian and Tamar Najarian, 522166

2003, \$24,217.00 Assessment

2004, \$15,575.00 Assessment

2005, \$17,917.00 Assessment

2006, \$13,719.00 Assessment

For Appellant:

Meher Der Ohanessian, Representative

For Franchise Tax Board:

Sonia Deshmukh, Tax Counsel

Bill Hilson, Tax Counsel

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

Issue: Whether the Franchise Tax Board correctly disallowed claimed loss deductions for tax years 2003, 2004, 2005, and 2006 because appellant Thomas Najarian lacked sufficient basis in the stock and debt of Thomas International Home Furnishings (TIHF), an S corporation.

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 the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents with clarification from the Franchise Tax Board as to the specific documents being requested, 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 recessed at 12:30 p.m. and reconvened at 1:33 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

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PUBLIC HEARINGS**Proposed Adoption of Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table***

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for adoption of the proposed regulation to implement the new use tax table provisions of Revenue and Taxation Code section 6452.1. Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, discussed new calculations for the alternative table. ([Exhibit 6.6.](#))

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

Action: Ms. Yee moved to adopt the proposed regulation that was authorized for publication at the April 2011 Business Taxes Committee as recommended by staff. The motion failed for lack of a second.

The Board continued the public hearing to the July 2011 Board Meeting.

Ms. Yee directed staff to start focusing on planning for outreach for when the table gets implemented.

Mr. Horton directed staff to track the legislative process and report the status to Members, specifically if there are any significant changes.

Business Taxpayer's 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. Individuals have the opportunity to present ideas, concerns, and recommendations regarding legislation, the quality of agency services, and issues related to the Board's administration of its tax programs, including sales and use taxes, environmental fees, fuel taxes, and excise taxes, and any problems identified in the Taxpayers' Rights Advocate's Annual Report ([Exhibit 6.7.](#))

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

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. Individuals have the opportunity to present ideas, concerns, and recommendations regarding legislation, the quality of agency services, and issues related to the Board's administration of its tax programs, including state and county property tax programs, and any problems identified in the Taxpayers' Rights Advocate's Annual Report ([Exhibit 6.8.](#))

Speaker: Peter J. Fatooh, Representative, San Francisco Property Tax Appeals
([Exhibit 6.9](#))

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Ms. Yee directed the Taxpayer Bill of Rights staff to work with the Board's Legal Department to examine further the intent of the provision of information under both of the statutory sections (408 and 1606) and provide additional guidance.

Mr. Runner referred the matter to the Property Tax Committee.

Mr. Horton directed staff to resolve the issue expeditiously at the lowest level possible.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Gerald A. Hutchinson, 552085

2004, \$71,926.20 Additional Tax

For Appellant:

For Franchise Tax Board:

Michael Leight, Attorney

Anjali Balasingham, Tax Counsel

David Gemmingen, Tax Counsel

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

Issues: Whether appellant has shown that the Franchise Tax Board (FTB or respondent) erred in disallowing appellant's exclusion of gain from the sale of his home under Internal Revenue Code (IRC) section 121.

Whether appellant has shown that the FTB erred by disallowing appellant's deduction of claimed expenditures for home improvements as an increase to the home's adjusted basis.

Whether appellant has shown that the FTB erred by disallowing a claimed deduction for home mortgage interest in excess of the amounts allowed under IRC section 163.

Whether appellant has shown that the FTB abused its discretion by denying appellant's request for abatement of interest on the proposed additional tax.

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

Myers Power Products, Inc., 546913

2009, \$34,902.24 Claim for Refund

For Appellant:

For Franchise Tax Board:

Stein K. Agee, Representative

Jane Perez, Tax Counsel

Karen Smith, Tax Counsel

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

Issue: Whether appellant has shown reasonable cause for the abatement of the late payment penalty.

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

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.

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Sean S. Niknafs and Sima Mirhashemi, 529770

2004, \$18,711.00 Assessment

For Appellant:

James G. LeBloch, Attorney

For Franchise Tax Board:

Adam Susz, Tax Counsel

Bill Hilson, Tax Counsel

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

Issue: Whether appellants converted their home in Tustin, California, into property held for the production of income in May of 2004 such that their mortgage interest deduction on the Tustin home from May of 2004 to December of 2004 is not subject to the qualified residence interest limitation set forth by Internal Revenue Code section 163, subdivision (h)(3).

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.

The Board recessed at 3:55 p.m. and reconvened at 4:10 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

State-of-the-Art Technologies, Inc., 521969

2002, \$2,973.40 Accuracy-Related Penalty

2003, \$3,765.50 Accuracy-Related Penalty

For Appellant:

Sota Omoigui, Representative

Barry Moser, Representative

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Jane Perez, Tax Counsel

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

Issue: Whether appellant has shown reasonable cause for abatement of the accuracy-related penalties.

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

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 submitted the appeal for decision.

Charles E. Kohlhasse, Jr., 547973

2000, \$1,181.00 Claim for Refund

2001, \$1,355.00 Claim for Refund

2002, \$1,559.00 Claim for Refund

For Appellant:

Charles E. Kohlhasse, Jr., Taxpayer

For Franchise Tax Board:

Karen Smith, Tax Counsel

Diane Ewing, Tax Counsel

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

Issue: Whether respondent properly determined appellant's claims for refund are barred by the statute of limitations.

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

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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.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals 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:

Steve Kwon, 443204 (EH)

10-1-06 to 6-30-07, \$ \$48,797.57 Tax, \$807.40 Late Payment Penalty, \$5,609.60 Failure to File Return Penalty, \$4,605.58 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Cal-U-Rent of Thousand Oaks, Inc., 468292 (AR)

10-1-04 to 9-30-07, \$29,402.60 Tax

Action: Redetermine as recommended by the Appeals Division.

Outback Flight Services, Inc., 329124 (UT)

8-16-02, \$127,435.98 Claim for Refund

Action: Deny the claim for refund as recommended by the Appeals Division.

Ali Shahryarnejad, 418258 (AC)

4-1-06 to 6-30-07, \$630,014.30 Tax, \$46,100.20 Late Payment Penalty, \$28,103.40 Failure to File Return Penalty

Action: Redetermine as recommended by the Appeals Division.

Beach City Market, Inc., 466431 (FH)

7-1-04 to 6-30-07, \$6,566.66 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Victor Mora, 448667 (EA)

1-1-02 to 12-31-06, \$72,349.81 Tax, \$86.00 Failure-to-file Penalty, \$7,148.96 Negligence Penalty, \$86.00 Amnesty Double-failure-to-file Penalty

Action: Redetermine as recommended by the Appeals Division.

Elsie Ruth Edmond, 457736 (AS)

1-1-05 to 3-31-08, \$25,002.64 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Dennab, Inc., 418584 (EH)

1-1-02 to 9-30-04, \$104,534.39 Tax, \$10,453.45 Negligence Penalty, \$3,252.47 Amnesty Double Negligence Penalty, \$10,408.07 Finality Penalty, \$3,207.11 Amnesty Double Finality Penalty, \$3,298.16 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

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Debra Lyn Holland, 474248 (FH)

7-1-04 to 2-15-08, \$65,597.20 Tax, \$7,404.18 Late Payment of Returns Penalty, \$471.49 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Arleen Dauber Robeson and Gerald Patrick Robeson, 308850 (ET)

3-1-98 to 3-31-99, \$7,491.25 Tax, \$1,872.80 Fraud Penalty

Chief Red Cloud, LLC, 298033, 308053, 308054 (ET)

5-1-01 to 1-31-02, \$37,352.13 Tax, \$3,735.21 Negligence Penalty

2-1-01 to 6-30-04, \$104,865.79 Tax, \$26,216.46 Fraud Penalty

4-1-99 to 4-30-01, \$42,269.93 Tax, \$10,550.43 Fraud Penalty

Chief Red Cloud, LLC, 308851 (ET)

8-28-03 to 6-30-04, \$1,978.42 Tax, \$494.62 Fraud Penalty, \$197.94 Failure-to-File Penalty

Action: Redetermine as recommended by the Appeals Division.

Kulbir Singh Khangura, 567266 (ET)

December 16, 2010, \$192.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Harish Gulati, 563805 (ET)

December 2, 2010, \$138.75 Approximate Value

Action: Determined that staff properly seized the tobacco products.

USA Liquor of Bakersfield, LLC, 565979 (ET)

December 29, 2010, \$ 113.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Maria Josefina Valdez, 563791 (ET)

November 9, 2010, \$137.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Sharaf Nagi Ali, 565985 (ET)

January 13, 2011, \$154.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. 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:

Farhad Alamolhoda, 485964

2006, \$6,383.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Virginia H. Atherton, 538072

2003, \$418.00 Claim for Refund

2004, \$2,151.00 Claim for Refund

2005, \$484.00 Claim for Refund

2006, \$3,158.00 Claim for Refund

2007, \$1,040.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Cristilita S. Bautista, 535766

2007, \$803.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Briancroner.com, LLC, 536357

2006-2008, \$800.00 in tax per tax year

UOFNOBS.com, LLC, 536359

2007-2008, \$800.00 in tax per tax year

Greekbod.com, LLC, 536362

2007-2008, \$800.00 in tax per tax year

Adglu.com, LLC, 536363

2007-2008, \$800.00 in tax per tax year

Vapper.com, LLC, 536364

2007-2008, \$800.00 in tax per tax year

Action: Sustain the action of the Franchise Tax Board with modification to delete all penalties, including interest on such penalties, as to each appellant for each respective tax year, as conceded by the Franchise Tax Board.

Sidney Corrie, Jr., 535336

2003, \$12,711.00 Tax

2004, \$2,818.00 Tax

Action: Sustain the action of the Franchise Tax Board.

The Cozy Stove & Spa Company, Inc., 546395

2008, \$482.35 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Elias Gallegos III, 547977

2007, \$749.00 Tax, \$179.75 Late Filing Penalty

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

Carolyn Gereau, 479768

2005, \$133.96 Proposed Interest Assessment

Action: Sustain the action of the Franchise Tax Board.

Kizna Goodie, 510022

2008, \$284.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Janice Healey, 514427

2005, \$930.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Robert Jeavons, 467572

1994, \$12,799.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Prabhakar Kotla, 510830

2006, \$666.50 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Shantai S. Mackey, 514014

2008, \$648.00 Claim for Refund

Action: Dismissed for lack of jurisdiction.

Daniel J. Moncino II, 466930

2006, \$3,009.43 Claim for Refund for Late Payment Penalty

Action: Sustain the action of the Franchise Tax Board with modification that the \$155.00 collection cost recovery fee is removed.

Marta E. Percolla, 467005

2007, \$525.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Catherine A. Perez, 514767

2000, \$13,522.93 Claim for Refund

2001, \$16,871.00 Claim for Refund

2003, \$16,738.35 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

John Reese, 510808

2004, \$1,489.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Todd K. Sand and Jennifer N. Memo, 536773

2006, \$456.00 Proposed Assessment

Action: Sustain the action with concession by the Franchise Tax Board to modify the assessment to \$420.00 in additional tax.

John Albert Schram III, 491626

2005, \$498.00 Proposed Assessment

Action: Sustain the action of the Franchise Tax Board.

Christopher A. Suarez, 536739

2006, \$2,390.00 Proposed Assessment

Action: Sustain the action of the Franchise Tax Board.

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Robert Vernick and Myriam Vernick, 539077

2007, \$767.00 Tax

Action: Modify the action as conceded by the Franchise Tax Board so that assessment is reduced to \$744.00 plus applicable interest.

Matthew Wharton and Stephanie Wharton, 513919

2005, \$167.40 Accuracy-related Penalty

Action: Sustain the action of the Franchise Tax Board.

Ali Reza Zakeri, 535357

2007, \$1,576.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Jeanette L. Dixon, 476764

2006, \$409.00 Tax, \$102.25 Late Filing Penalty, \$102.25 Notice and Demand Penalty, \$122.00 Filing Enforcement Fee, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Lee Gale, 258580

1993, \$26,741.00 Tax, \$5,348.20 Accuracy-Related Penalty

1994, \$5,178.00 Tax, \$1,035.60 Accuracy-Related Penalty

Action: Deny the petition for rehearing.

Clovus M. Sykes, 529645

2007, \$3,170.00 Tax, \$792.50 Demand Penalty, \$792.50 Late Filing Penalty, \$119.00 Filing Enforcement Fee, \$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

SALES AND USE TAX MATTERS, REDETERMINATIONS AND RELIEF OF PENALTIES, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations and 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 orders:

County Sanitation Dist – Orange Co., 547413 (EA)

7-1-06 to 6-30-09, \$117,679.43

Action: Approve the redetermination as recommended by staff.

Ira Stanley, 447520 (EA)

4-1-98 to 3-31-01, \$477,676.99

Action: Approve the redetermination as recommended by staff.

S. Hessam Salarfar, 470298 (EH)

1-1-05 to 12-31-07, \$100,457.12

Action: Approve the redetermination as recommended by staff.

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Home Shopping LP, 567242 (OH)

4-1-10 to 6-30-10, \$136,428.50

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

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. 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:

Barry Lee Collier, 482400 (AR)

1-1-97 to 9-30-03, \$109,628.21

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

County of L.A. Auditor, 553596 (AA)

1-1-10 to 6-30-10, \$107,405.00

Action: Approve the refund as recommended by staff.

Williams-Sonoma, Inc., 559965 (BH)

1-1-03 to 6-30-07, \$118,902.11

Action: Approve the refund as recommended by staff.

Charles Schwab & Co., Inc., 557597 (BH)

1-1-06 to 12-31-08, \$145,632.78

Action: Approve the refund as recommended by staff.

County of Riverside Aud-Controllers, Lois Henry, 487900 (EH)

1-1-03 to 3-31-06, \$231,153.64

Action: Approve the refund as recommended by staff.

Food'N Fuel, Inc., 556245 (EH)

7-1-10 to 9-30-10, \$174,098.62

Action: Approve the refund as recommended by staff.

Inland Empire Architectural Specialties, Inc., 563898 (EH)

7-1-07 to 6-30-10, \$109,077.54

Action: Approve the refund as recommended by staff.

American Material Mgt. Alliance, Inc., 552905 (EH)

1-1-08 to 3-31-10, \$1,302,676.80

Action: Approve the refund as recommended by staff.

Fry's Electronics, Inc., 563520 (GH)

7-1-06 to 6-30-09, \$686,937.41

Action: Approve the refund as recommended by staff.

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Mercedes-Benz USA, LLC, 567416 (KH)

11-29-10 to 3-11-11, \$286,898.00

Action: Approve the refund as recommended by staff.

Agilent Technologies, Inc., 562280 (GH)

1-1-01 to 6-30-05, \$139,720.35

Action: Approve refund as recommended by staff.

Wells Fargo Dealer Services, Inc., 554767 (EA)

7-1-10 to 12-31-10, \$2,576,952.00

Action: Approve the refund as recommended by staff.

Arrowhead Central Credit Union, 538738 (EH)

10-1-09 to 6-30-10, \$780,595.00

Action: Approve the refund as recommended by staff.

Schoolsfirst Federal Credit Union, 497594 (EA)

4-1-06 to 12-31-09, \$1,156,231.76

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 553634 (OH)

4-1-10 to 9-30-10, \$1,093,210.00

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 554396 (EA)

7-1-10 to 12-31-10, \$198,778.00

Action: Approve the refund as recommended by staff.

Pacific Service Credit Union, 553644 (CH)

4-1-10 to 9-30-10, \$151,106.00

Action: Approve the refund as recommended by staff.

Olson Precast Company, 561785 (EH)

1-1-07 to 12-31-09, \$125,169.02

Action: Approve the refund as recommended by staff.

Akka Corporation, 568761 (EA)

7-1-10 to 12-31-10, \$122,258.00

Action: Approve the refund as recommended by staff.

A-L Financial Corp., 553645 (EA)

7-1-10 to 12-31-10, \$177,929.00

Action: Approve the refund as recommended by staff.

Progeny Marketing Innovations, Inc. 518745 (OH)

4-01-06 to 9-30-07, \$284,748.32

Action: Approve the refund as recommended by staff.

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Affinion Benefits Group, LLC, 495398 (OH)

10-1-07 to 9-30-10, \$448,840.39

Action: Approve the refund as recommended by staff.

Dwayne Nash Industries, Inc., 554679 (KH)

1-1-09 to 12-31-09, \$160,191.00

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS AND RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Redeterminations and 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, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Philadelphia Indemnity Insurance Co., 562682*; and, *Fire Insurance Exchange, 562689*; the Board made the following orders:

U S Smokeless Tobacco Brands, Inc., 151452, 163664, 170086, 197348 (ET)

7-1-98 to 6-30-01, \$297,654.45

Action: Approve the redetermination as recommended by staff.

Philadelphia Indemnity Insurance Co., 562682 (ET)

4-1-10 to 6-30-10, \$153,549.80

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

Fire Insurance Exchange, 562689 (ET)

7-1-10 to 9-30-10, \$538,290.80

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

SPECIAL TAXES MATTERS, 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 and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Northwestern Mutual Life Ins. Co., 551094 (ET)

1-1-08 to 12-31-08, \$507,110.94

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

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Northwestern Mutual Life Ins. Co., 552166 (ET)

1-1-09 to 12-31-09, \$1,172,384.00

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

Willis Insurance Services of California, Inc., 564987 (ET)

1-1-09 to 12-31-09, \$128,521.98

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

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD JUNE 21, 2011

Gerald J. Marcil and Carol L. Marcil, 458832

Final Action: Ms. Yee moved to sustain the action of the Franchise Tax Board. Ms. Mandel made a substitute motion to defer consideration of the matter to the following day. The substitute motion unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes.

Howard Brief, 530872

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

Jaroslav Marik and Jirina Marik, 547265

Final Action: Ms. Steel moved to attribute the million dollar loss to the 2009 tax year. The motion was seconded by Ms. Yee with an amendment that the motion be subject to verification of the tax basis, but no vote was taken.

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

The Board directed the Franchise Tax Board to work with the appellants to determine when it would be appropriate to claim the loss deduction given the facts presented during the hearing.

Gerald A. Hutchinson, 552085

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.

Myers Power Products, Inc., 546913

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.

Note: These minutes are not final until Board approved.

Tuesday, June 21, 2011

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.

Sean S. Niknafs and Sima Mirhashemi, 529770

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 sustained the action of the Franchise Tax Board.

State-of-the-Art Technologies, Inc., 521969

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.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Bill Kells, 546539

2005, \$548.00 Tax

For Appellant:

No Appearance

For Franchise Tax Board:

Jaclyn Appleby, Tax Counsel

Diane Ewing, Tax Counsel

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

Issues: Whether appellant has shown error in proposed assessment from the Franchise Tax Board (FTB) based on adjustments to appellant's itemized deductions and Schedule CA adjustments for 2005.

Whether appellant has shown error in the FTB's assessment of interest on the proposed assessment of additional tax due.

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 sustained the action of the Franchise Tax Board.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD JUNE 21, 2011

Charles E. Kohlhase, Jr., 547973

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.

Tuesday, June 21, 2011

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 5:54 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 settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 5:58 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 6:00 p.m.

The foregoing minutes are adopted by the Board on September 21, 2011.

Note: The following matters were removed from the calendar prior to the meeting: *Marilyn S. Kwolek, 518196; Gayle Barrett and Douglas Barrett, 538085; Franklin Casco, Jr., 512009; and, Dean Mike and Theresa Mike, 382833.*

Wednesday, June 22, 2011

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Klaus W. Wang, 441035
2003, \$132,753.00 Assessment
For Appellant:

Klaus Wang, Taxpayer
John O. Kent, Attorney
Maria Brosterhous, Tax Counsel
Ann Hodges, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant has shown that the Franchise Tax Board (FTB or respondent) erred by not allowing damages awarded in a settlement agreement to be excluded from his taxable income.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 6.13](#))

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

Exhibits to these minutes are incorporated by reference.

The Board recessed at 10:49 a.m. and reconvened at 10:58 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Richard Palmquist, 526815
2005, \$7,467.00 Assessment
For Appellant:

Richard Palmquist, Taxpayer
Amber Bridges, Representative
Jaclyn Appleby, Tax Counsel
Diane Ewing, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant has established error in respondent's proposed assessment, which is based on a federal determination.

Appellant's Exhibit: 2005 Individual Returns ([Exhibit 6.14](#))

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.

Wednesday, June 22, 2011

Joe L. Santos, 445970
2003, \$1,914.00 Assessment
For Appellant:
For Franchise Tax Board:

Jason Peart, Representative
Jane Perez, Tax Counsel
Karen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether respondent abused its discretion in refusing to abate interest.
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.

Tawfik H. Rizkallah, 536082
2007, \$2,027.00 Assessment
For Appellant:

Tawfik Rizkallah, Taxpayer
Amber Bridges, Representative
Jaclyn Appleby, Tax Counsel
Diane Ewing, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant has established that he qualifies for head of household filing status for 2007.
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.

Maricel B. Hernandez, 521850
2008, \$210.00 Claim for Refund
For Appellant:
For Franchise Tax Board:

Maya Harel, Representative
Jaclyn Appleby, Tax Counsel
Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant has shown she is entitled to the Child and Dependent Care Expenses credit for 2008.
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.

Dennis LeVine and Dawn LeVine, 529697
2007, \$4,024.96 Claim for Refund
For Appellant:
For Franchise Tax Board:

Dennis P. LeVine, Taxpayer
Diane Ewing, Tax Counsel
Jane Perez, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether appellants have shown reasonable cause for the abatement of the late filing penalty.

Note: These minutes are not final until Board approved.

Wednesday, June 22, 2011

Whether appellants have demonstrated that reasonable cause exists for the abatement of the failure to file upon demand penalty.

Whether appellants have shown that the underpayment of estimated tax penalty should be waived.

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 1:19 p.m. and reconvened at 1:29 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD JUNE 21, 2011

Gerald J. Marcil and Carol L. Marcil, 458832 (Continued)

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 sustained the action of the Franchise Tax Board.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD JUNE 22, 2011

Klaus W. Wang, 441035

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 sustained the action of the Franchise Tax Board.

Richard Palmquist, 526815

Final Action: Upon motion of Mr. Runner, 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 appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

Joe L. Santos, 445970

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

Mr. Horton directed staff to ask the Franchise Tax Board to do an analysis to make a determination, on an overall basis, the impact of workload on the timeliness of resolving their cases and whether there is a way to accelerate the process.

Wednesday, June 22, 2011

Tawfik H. Rizkallah, 536082

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 sustained the action of the Franchise Tax Board.

Maricel B. Hernandez, 521850

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 \$600 in childcare expenses be allowed and otherwise sustained the action of the Franchise Tax Board.

Dennis LeVine and Dawn LeVine, 529697

Final Action: Ms. Mandel moved that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board. Ms. Mandel withdrew her motion.

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 reversed the action of the Franchise Tax Board.

The Board recessed at 1:50 p.m.

The foregoing minutes are adopted by the Board on September 21, 2011.

Note: The following matters were removed from the calendar prior to the meeting: *Matt T. Knudstrup and Deborah E. Knudstrup, 342390; Shirley J. Carter, 518429; Ruben Juarez, 514090, 514195; Vista Pacific Townhomes Association, Inc., 522642; and, Marie R. Sanders, 522825.*

Thursday, June 23, 2011

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

PUBLIC COMMENT

Speaker: William M. Connell, Military Veteran and owner of All American Surf Dogs
(Exhibit 6.15)

Exhibits to these minutes are incorporated by reference.

SALES AND USE TAX APPEALS HEARINGS

Boris Khodzhoian, 405900 (AP)

1-1-03 to 12-31-05, \$175,472.37 Tax, \$17,584.31 Negligence Penalty

For Petitioner:

Akop Baltayan, Attorney

Rubina Arutyunyan, 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 unreported taxable sales established on a markup basis.

Whether any of petitioner's sales were exempt sales in foreign commerce.

Whether petitioner was negligent.

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

James Alan LaBarge, 422110 (UT)

7-13-05, \$20,033.78 Tax, \$0.00 Failure to File Penalty

For Petitioner:

James Alan LaBarge, Taxpayer

Cris J. Wenthur, Attorney

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

Issue: Whether use tax is due on the purchase price of vessel.

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

Frank Allen Randazzo, 421497 (UT)

2-19-05, \$10,883.00 Tax

For Petitioner:

Frank Allen Randazzo, Taxpayer

Howard S. Borenstein, Attorney

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

Issue: Whether the purchase and use of the motor home is subject to use tax.

Note: These minutes are not final until Board approved.

Thursday, June 23, 2011

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

The Board recessed at 11:42 a.m. and reconvened at 1:37 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Jeff's Exotic Fish, Inc., 484114 (AS)

1-1-05 to 2-1-07, \$85,534.56 Tax, \$8,553.43 Negligence Penalty

Jeff's Exotic Fish, Costa Mesa, LLC, 484115 (EA)

8-1-05 to 12-31-07, \$50,699.31 Tax, \$5,069.92 Negligence Penalty

Jeff's Exotic Fish, Costa Mesa, Inc., 484116 (EA)

1-1-05 to 12-31-07, \$77,401.15 Tax, \$7,740.12 Negligence Penalty

For Petitioners: Jeff Majdali, Taxpayer

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

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

Issues: Whether adjustments are warranted to the disallowed claimed exempt sales in interstate commerce or the claimed nontaxable sales for resale.

Whether petitioners were negligent.

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.

.City of Los Angeles-Controller, 489155, 509958 (AA)

10-1-02 to 3-31-06, \$578,056.57 Tax, \$504,101 Claim for Refund

For Petitioner/Claimant: Daniel Whitley, Representative

Ricky Deguchi, Representative

Bruce Truitt, Witness

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 understatement.

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 claim and petition be submitted for decision.

Karen Renee Cullinane, 470168 (EH)

7-1-06 to 10-31-07, \$39,403.00 Tax, \$3,940.30 Late Payment Penalty

For Taxpayer: Karen Cullinane, Taxpayer

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

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

Issues: Whether taxpayer is personally liable as a responsible person for the unpaid liabilities of Cullinane Group, Inc. (CGI) pursuant to Revenue and Taxation Code section 6829 for the period July 1, 2006, through October 31, 2007.

Whether taxpayer has established reasonable cause sufficient for relieving the late-payment penalties originally assessed against CGI.

Thursday, June 23, 2011

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

Edmundo Gonzalez, 470281 (FH)

1-1-06 to 3-31-08, \$104,444.43 Tax, \$7,253.00 Finality Penalties

For Petitioner: Edmundo Gonzalez, Taxpayer

For Sales and Use Tax Department: Andrew Kwee, 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 Intellitruss of California, LLC, pursuant to Revenue and Taxation Code section 6829. Whether the finality penalties should be relieved.

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

Housewares International, Inc., 464830

Diane Olson, Chief, Board Proceedings Division, stated for the record that the taxpayer's representative requested that the above-named petition be postponed and that the postponement request has been granted. Therefore, the matter is rescheduled to the October meeting in Culver City.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JUNE 23, 2011

Boris Khodzhoyan, 405900 (AP)

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

James Alan LaBarge, 422110 (UT)

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

Frank Allen Randazzo, 421497 (UT)

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

Jeff's Exotic Fish, Inc., 484114 (AS)

Jeff's Exotic Fish, Costa Mesa, LLC, 484115 (EA)

Jeff's Exotic Fish, Costa Mesa, Inc., 484116 (EA)

Final Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the redetermination be recalculated for a reduction of the measure by 43 percent for stores 2 and 3 and that the petition otherwise be redetermined as recommended by the Appeals Division.

Note: These minutes are not final until Board approved.

Thursday, June 23, 2011

City of Los Angeles-Controller, 489155, 509958 (AA)

Final Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, 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. Further, the Board gave discretion to the Department to extend its time contingent on the Department's decision to expand the audit period.

Karen Renee Cullinane, 470168 (EH)

Final Action: Mr. Runner moved that the petition be granted. 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.

Ms. Yee moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Mandel. Ms. Steel made a substitute motion to find that the petitioner is not liable for unpaid liabilities incurred by Cullinane Group, Inc., for the period July 1, 2006, through February 14, 2007, and that the petition otherwise be redetermined as recommended by the Appeals Division. The substitute motion was seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes.

Edmundo Gonzalez, 470281 (FH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division. Further, the Board ordered staff to attempt to collect, if possible, against any assets that are available from Intellitruss of California, LLC.

The Board recessed at 5:06 p.m.

The foregoing minutes are adopted by the Board on September 21, 2011.

Note: The following matters were removed from the calendar prior to the meeting: *RC Marketing, Inc., 461615, 377842; Shantilli, LLC, 434838; and, Enyinnaya Christian Ojogho, 396268, 414889.*

Note: These minutes are not final until Board approved.

Friday, June 24, 2011

The Board met at its offices at 5901 Green Valley Circle, Culver City at 9:35 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 HEARING

Lona Marie Lee, 390217 (AA)
1-1-03 to 12-31-05, \$39,399.28 Tax
For Petitioner:

Lona M. Lee, Taxpayer
Floyd McCutcheon, 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 taxable sales.

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 HEARINGS

George Alfonos Youssef, 354991 (ET)
1-1-00 to 4-30-02, \$418,260.53 Tax, \$41,826.05 Failure to File Penalty

For Petitioner: Mark D. Pastor, Attorney

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 tax on purchases and distributions of untaxed tobacco products.

Whether relief of the failure-to-file penalty is warranted.

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

Hassan Antonios Mahfood, 351999 (ET)
4-1-99 to 2-28-03, \$39,492.46 Tax, \$0.00 Failure to File Penalty

For Petitioner: Hassan Antonios Mahfood, Taxpayer
Michel Shashaty, Attorney

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

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

Issue: Whether petitioner distributed untaxed tobacco products from an unlicensed out-of-state vendor and is therefore liable for excise tax on those distributions.

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

Note: These minutes are not final until Board approved.

Friday, June 24, 2011

PETITIONS FOR RELEASE OF SEIZED PROPERTY

Zartosht, Inc., 554941 (ET)

August 24, 2010 Seizure Date, \$788.42 Approximate Value

For Petitioner: Mehdi Behmard, Representative

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

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

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

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

The Board recessed at 11:57 a.m. and reconvened at 12:07 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Egyptian Company, LLC, 562693 (ET)

November 3, 2010 Seizure Date, \$212.50 Approximate Value

For Petitioner: Nabil Khalil, Taxpayer

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

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

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

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

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
JUNE 24, 2011**

Lona Marie Lee, 390217 (AA)

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

FINAL ACTION ON SPECIAL TAXES APPEALS HEARINGS HELD JUNE 24, 2011

George Alfonos Youssef, 354991 (ET)

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

Hassan Antonios Mahfood, 351999 (ET)

Final Action: Mr. Runner moved to adjust the audit to reflect the 24 shipments that were recorded as shipped to the taxpayer's store but not received by the taxpayer. 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.

Note: These minutes are not final until Board approved.

Friday, June 24, 2011

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

FINAL ACTION ON PETITIONS FOR RELEASE OF SEIZED PROPERTY HELD JUNE 24, 2011

Zartosht, Inc., 554941 (ET)

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 determined that staff properly seized the tobacco products.

Egyptian Company, LLC, 562693 (ET)

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 determined that staff properly seized the tobacco products.

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

David Gau, Deputy Director, Property and Special Taxes Department, provided a report regarding time extensions to Alpine, Colusa, Lassen, Los Angeles, Madera, San Joaquin, Santa Cruz, Sonoma, Sutter, Tehama and Yolo Counties to complete and submit the 2011/12 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 ([Exhibit 6.16](#)).

David Gau, Deputy Director, Property and Special Taxes Department, provided a progress report regarding the CROS project to replace BOE's two current tax legacy technology systems ([Exhibit 6.17](#)).

Exhibits to these minutes are incorporated by reference.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JUNE 24, 2011

Lona Marie Lee, 390217 (AA) (Continued)

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

The Board recessed at 12:35 p.m. and reconvened at 1:06 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Friday, June 24, 2011

SPECIAL PRESENTATION**Presentation of Board Resolution to Honorable Matthew K. Fong (Deceased)**

On behalf of the Board, Mr. Horton presented a Board Resolution in memory of Honorable Matthew K. Fong, former Board of Equalization Member, Fourth District, and former California State Treasurer. Members made complementary remarks regarding their experiences with Mr. Fong and his achievements, as well as his exceptional work with the Board of Equalization, and the State of California. Diane Olson, Chief, Board Proceedings Division, read the resolution into the record ([Exhibit 6.18](#)).

The Board adjourned at 1:09 p.m. in memory of Honorable Matthew K. Fong, who passed away Wednesday, June 1, 2011, at his home in Pasadena, California, at the age of 57 years old.

The foregoing minutes are adopted by the Board on September 21, 2011.

Note: The following matters were removed from the calendar prior to the meeting: *Vincent Millhouse, 434901, 450539; Vincent Millhouse and Lisa D. Smith, 434902; and, Ahsan Atiq Rehman, 377576, 528881.*