

Tuesday, August 23, 2011

The Board met at its offices at 450 N Street, Sacramento, at 10:13 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

Speakers: Honorable Tim Donnelly, Assembly Member, 59th Assembly District ([Exhibit 8.1](#))
Honorable Brian Jones, Assembly Member, 77th Assembly District

Exhibits to these minutes are incorporated by reference.

The Board recessed at 10:28 a.m. and reconvened at 10:45 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Jeffrey T. Nolan and Vivienne Nolan, 552938

2008, \$1,739.00 Claim for Refund

For Appellant:

Jeffrey T. Nolan, Taxpayer
Ashley Wistrom, Representative

For Franchise Tax Board:

Kristen Magers, Tax Counsel
Karen Smith, Tax Counsel

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

Issue: Whether appellants have established reasonable cause for the abatement of the late payment penalty.

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.

David A. Lubeck and Mabel C. McNall-Lubeck, 557788

2008, \$11,368.00 Tax, \$2,846.50 Penalty

For Appellant:

David Lubeck, Taxpayer

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 appellants have demonstrated any error in the proposed assessment issued by respondent.

Whether appellants have established reasonable cause to support an abatement of the notice and demand penalty.

Whether the Board should impose a penalty, for the filing of a frivolous appeal, under Revenue and Taxation Code (R&TC) section 19714.

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.

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SALES AND USE TAX APPEALS HEARINGS**Maisa, Inc., 485794 (EH)**

7-1-04 to 3-31-08, \$38,084.84 Tax, \$11,727.21 Negligence Penalty

For Petitioner: Butch Kruse, 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. 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.

Jason H. Walker and Stephen Wayne Sundes, 445416, 462500 (EH)

1-1-04 to 12-31-06, \$128,627.56 Tax, \$12,862.77 Negligence Penalty

1-1-04 to 12-31-06, \$118,477.14 Tax, \$11,847.73 Negligence Penalty

For Petitioners: Stephen Sundes, Taxpayer

Dan Davis, Representative

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

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

Issues: Whether the Department has accurately computed petitioner's taxable sales.

Whether petitioner was negligent.

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 12:33 p.m. and reconvened at 1:37 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Gurmail Singh, 487083 (AR)

10-1-06 to 12-31-07, \$100,845.59 Tax, \$781.10 Late Payment Return Penalty, \$9,976.80 Failure to File Returns Penalty, \$10,802.20 Finality Penalty.

For Petitioner: Gurmail Singh, Taxpayer

For Sales and Use Tax Department: Scott Claremon, Tax Counsel

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

Issues: Whether petitioner is personally liable as a responsible person pursuant to Revenue and Taxation Code section 6829 or the unpaid liabilities of Pizza Food Enterprises, Inc.

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

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.

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PETITION FOR RELEASE OF SEIZED PROPERTY

Wahid Ahmad Taki, 547438 (ET)

May 20, 2010, \$8,240.00 Approximate Value

For Petitioner:

Wahid Ahmad Taki, Taxpayer

Flash Hastings, Witness

Richard E. Coombs, Attorney

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.

SALES AND USE TAX APPEALS HEARING

Akbar Ferdousi Bayrami, 473205 (CH)

1-1-05 to 12-31-07, \$52,455.31 Tax, \$5,245.65 Negligence Penalty

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether adjustments to the determined deficiency measure of tax are warranted.
Whether petitioner was 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.

LEGAL APPEALS MATTERS, CONSENTThe Board deferred consideration of the following matter: *Mairaj Ali, 562696 (ET)*.

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

Jon Michael Shidler and Marilyn K. Shidler, 507833 (UT)

4-13-06, \$2,719.00 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

Thinh Gia Tran, 440629 (GH)

4-1-03 to 12-31-05, \$95,831.56 Tax, \$11,015.95 Negligence Penalty, \$11,015.93 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Jose Luis Alejandre, 507582 (CH)

7-1-06 to 3-31-09, \$ 7,010.02 Tax, \$701.01 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

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Rasheed Iqbal, 570003 (ET)

February 26, 2011, \$44.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Mairaj Ali, 562696 (ET)

August 20, 2009, \$328,508.00 Approximate Value

Action: The Board took no action.

Jourbee Khang and True Yang Khang, 569414 (ET)

February 28, 2011, \$2,647.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Abida Hotaki, 571547 (ET)

March 10, 2011, \$1,378.44 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Young Bin Kim, 570577 (ET)

February 25, 2011, \$331.50 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Glen Eugene Pearson III and Stephen Terrance Pearson, 406221 (KH)

4-1-00 to 6-30-05, \$74,218.15 Tax, \$0.00 Penalty

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *D'Andrea E. Jones*, 522373; and, *Ray E. O'Bier*, 522148.

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:

Richard A. Lopez, 509632

2004, \$2,878.00 Tax, \$575.60 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Michael Aidan, 522049

2005, \$3,673.00 Tax, \$734.60 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

David A. Bancroft, 515130

2003, \$1,500.40 Accuracy-Related Penalty

2004, \$1,452.00 Reportable Transaction Accuracy-Related Penalty

Action: Modify the action of the Franchise Tax Board to abate the reportable transaction accuracy-related penalty for the 2004 tax year, as conceded by the Franchise Tax Board.

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Adalberto Barrios, 481398

2007, \$679.00 Tax

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

Clifford Crane, 515544

2000, \$35,898.00 Tax, \$14,359.20 Accuracy-Related Penalty

2001, \$16,572.00 Tax, \$6,628.80 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Eric B. Davis, 496009

2005, \$15,481.00 Tax, \$3,870.25 Late Filing Penalty

Mary E. Davis, 512638

2005, \$15,481.00 Tax, \$3,870.25 Late Filing Penalty

Action: Modify the action of the Franchise Tax Board such that for each appellant the additional tax should be reduced from \$15,481.00 to \$3,399.00 and the late filing penalty should be reduced from \$3,870.25 to \$849.75, as conceded by the FTB.

DDJ Tri Union Blocker Corporation, 519165

2004, \$867.25 Late Filing Penalty

2005, \$9,481.75 Late Filing Penalty, \$1,193.66 Underpayment of Estimated Tax Penalty

2006, \$24,130.41 Late Payment Penalty, \$16,148.81 Underpayment of Estimated Tax Penalty

Action: Sustain the action of the Franchise Tax Board with the exception that FTB has agreed to abate 50 percent of the late payment penalty for 2006, with applicable interest.

Randall Drabman and Karen Crump, 534013

2005, \$1,291.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Steven Forrest, 490490

2005, \$1,159.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Monica Gutierrez, 528897

2007, \$525.00 Claim for Refund

2008, \$405.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

H&H Marine Center, Inc., 490565

2006, \$61,231.76 Tax, \$15,307.94 Late Filing Penalty, \$15,307.94 Notice and Demand Penalty, \$203.00 Filing Enforcement Cost Recovery Fee

Action: Sustain the action of the Franchise Tax Board.

Richard R. Hughes, 507337

2006, \$1,225.00 Proposed Assessment

Action: Sustain the action of the Franchise Tax Board.

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D'Andrea E. Jones, 522373

2005, \$1,457.00 Proposed Assessment

Action: The Board took no action.

Yongbum Kim and Hyeonju Kim, 552843

2006, \$13,307.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Eli Kohn, 522445

2007, \$914.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michele C. Kunz, 521070

2006, \$ 608.00 Proposed Assessment

Action: Sustain the action of the Franchise Tax Board.

Gary Lan and Hsiao Yun Chang, 530477

2006, \$399.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Gabrielle L. Langford, 495650

2004, \$870.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Angela Leonard, 519576

2006, \$762.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Richard A. Lopez, 538617

2008, \$408.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Philip McGovern and Clare McGovern, 536337

2006, \$3,222.50 Claim for Refund

2007, \$3,286.70 Claim for Refund

2008, \$2,803.34 Claim for Refund

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

Ray E. O'Bier, 522148

2006, \$4,204.00 Tax

Action: The Board took no action.

William W. Palmer, 515729

2007, \$316.00 Tax

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

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Ramesh Patel, 546912

2006, \$188.90

Action: Sustain the action of the Franchise Tax Board.

Julie Porter, 508936

2004, \$1,733.00 Tax, \$346.60 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

William J. Reckmeyer and Joan P. Reckmeyer, 518239

2007, \$2,052.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Santee Russell, 510428

2005, \$2,688.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Daniel A. Ruvalcaba, 518487

2004, \$7,943.00 Tax

Action: Sustain the Franchise Tax Board' modified assessment of \$4,229.00 in additional tax, plus interest.

Yasmin Sahami, 519148

2006, \$1,218.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Amber Vahoviak, 480103

2005, \$409.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Michael Calderon, 523035

2007, \$1,494.00 Tax, \$373.50 Late Filing Penalty, \$373.50 Demand Penalty

Steven Ertelt, 527234

2007, \$4,472.00 Tax, \$1,118.00 Late Filing Penalty, \$1,118.00 Demand Penalty, \$119.00 Filing Enforcement Fee

Steven Olmos, 518961

2007, \$6,267.00 Tax, \$1,566.75 Late Filing Penalty, \$1,566.75 Demand Penalty

Demeris Parks, 524781

2007, \$4,166.00 Tax, \$1,041.50 Late Filing Penalty, \$1,041.50 Demand Penalty, \$113.00 Filing Enforcement Fee

Action: Deny the petition for rehearing and the consolidated decision of March 22, 2011, is affirmed, including the frivolous appeal penalties of \$750.00 to Michael Calderon, \$750.00 to Steve Ertelt, \$5,000.00 to Steven Olmos, and \$2,500.00 to Demeris Parks.

James H. Cornell and Martha E. Cornell, 506809

2005, \$21,955.00 Claim for Refund

Action: Deny the petition for rehearing.

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James Vaughn, 508867, 487205

2005, \$1,927.00 Assessment

2006, \$1,545.00 Assessment

Action: Deny the petition for rehearing and affirm the decision of December 14, 2010.

SALES AND USE TAX MATTERS, REDETERMINATIONS, CONSENT

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

Tele Atlas North America, Inc., 534997 (OH)

7-1-05 to 6-30-08, \$829,174.61

Action: Approve the redetermination as recommended by staff.

Penn Emblem Company, 516316 (OH)

1-1-04 to 12-31-06, \$516,645.11

Action: Approve the redetermination as recommended by staff.

Dun & Bradstreet, Inc., 318342 (OH)

7-1-99 to 3-31-04, \$1,243,621.12

Action: Approve the redetermination as recommended by staff.

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Universal City Studios, Inc., 573389*; the Board made the following orders:

Lion Group, LLC, 572832 (CH)

10-1-06 to 3-31-10, \$194,197.37

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

Tung Khanh Luong, 486375 (KH)

10-1-01 to 3-31-06, \$307,156.13

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

Universal City Studios, Inc., 573389 (AC)

1-1-96 to 4-30-02, \$1,428,970.54

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

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LBS Financial Credit Union, 557987 (EA)

10-1-08 to 12-31-10, \$1,520,309.07

Action: Approve the refund as recommended by staff.

Full Throttle Films, Inc., 536522 (AC)

1-1-09 to 3-31-10, \$170,856.55

Action: Approve the refund as recommended by staff.

Fireside Bank, 560430 (CH)

7-1-10 to 9-30-10, \$725,129.00

Action: Approve the refund as recommended by staff.

Windowmaster Products, 569449 (FH)

7-1-06 to 6-30-09, \$292,703.55

Action: Approve the refund as recommended by staff.

College of Redwoods Foundation, 551279 (JH)

1-1-10 to 3-31-10, \$111,242.18

Action: Approve the refund as recommended by staff.

Subaru of America, Inc., 538742 (OH)

4-1-07 to 6-30-10, \$223,099.44

Action: Approve the refund as recommended by staff.

This Thing of Ours, LLC, 497364 (UT)

7-18-07 to 7-18-07, \$244,125.00

Action: Approve the refund as recommended by staff.

Mainline Information Systems, Inc., 381278 (OH)

4-1-06 to 6-30-06, \$177,012.32

Action: Approve the refund as recommended by staff.

Bridgewater Systems, Inc., 507319 (OH)

7-1-06 to 6-30-08, \$292,769.79

Action: Approve the refund as recommended by staff.

Edwards Lifesciences, LLC, 529357 (EA)

4-1-04 to 3-31-07, \$659,236.34

Action: Approve the refund as recommended by staff.

Zumiez, Inc., 520166 (OH)

1-1-07 to 6-30-09, \$516,757.52

Action: Approve the refund as recommended by staff.

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Medsep Corporation, 486085 (AP)

1-1-06 to 3-31-09, \$457,199.81

Action: Approve the refund as recommended by staff.

Bearingpoint, Inc., 533833 (OH)

10-1-07 to 6-30-09, \$106,479.19

Action: Approve the refund as recommended by staff.

Newmark International, Inc., 557985 (EH)

4-1-10 to 6-30-10, \$113,709.00

Action: Approve the refund as recommended by staff.

Broadridge Investor Community Solutions, 504977 (OH)

4-1-06 to 3-31-09, \$412,852.34

Action: Approve the refund as recommended by staff.

Transouth Financial Corporation, 559987 (OH)

7-1-10 to 12-31-10, \$872,341.00

Action: Approve the refund as recommended by staff.

Starent Networks Corporation, 514988 (OH)

4-1-06 to 6-30-08, \$467,713.38

Action: Approve the refund as recommended by staff.

Cincinnati Machine, LLC, 553657 (OH)

10-1-09 to 6-30-10, \$126,082.00

Action: Approve the refund as recommended by staff.

Quality Financial, Inc., 496020 (AC)

1-1-08 to 6-30-09, \$363,778.54

Action: Approve the refund as recommended by staff.

Discus Dental, LLC, 554689 (AS)

10-1-09 to 6-30-10, \$113,047.00

Action: Approve the refund as recommended by staff.

LEGAL APPEALS MATTERS, ADJUDICATORY

Earth-N-Ware, Inc., 459938 (EA)

1-1-05 to 12-31-07, \$329,749.98 Tax, \$32,975.02 Negligence Penalty

Considered by the Board: March 23, 2011

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

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 petition be redetermined as recommended by the Appeals Division.

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Living Spaces Furniture, LLC, 425660 (AA)

1-1-04 to 12-31-06, \$24,406.20 Tax

Considered by the Board: April 27, 2011

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

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 petition be redetermined as recommended by the Appeals Division.

Los Angeles Country Club, 361952, 416903 (AS)

10-1-02 to 9-30-05, \$0.00 Tax, \$24,604.27 Claim for Refund

Considered by the Board: October 21, 2010

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

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 claim and petition be granted as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTER, ADJUDICATORY

Aurelio Serrano and Haidee Serrano, 519860

2005, \$11,958.00 Tax

Considered by the Board: March 22, 2011

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision modifying the action of the Franchise Tax Board such that the amount of additional tax is reduced from \$11,958 to \$10,697 as conceded by the Franchise Tax Board.

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

Citigroup, Inc. & Subsidiaries & Affiliates, 446954 (OH)

1-1-06 to 6-30-08, \$2,288,442.34

Considered by the Board: April 27, 2011

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

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

Ms. Yee directed staff to note the disposition of all portions resolved, and unresolved (petitioned), claims for refund cases in future Board meeting material.

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SPECIAL TAXES MATTERS, REDETERMINATION, ADJUDICATORY

Glass Mountain Pumice 2004, LLC, 534055 (MT)

4-1-04 to 9-30-08, \$929,976.36

Considered by the Board: August 23, 2011

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

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

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**OFFERS-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *GZ, Inc.*; *Robyne L. Hinds*; *Danny McKernan*; and, *Stafford's Lighting Co., Inc.*; as recommended by staff.

CHIEF COUNSEL MATTERS**RULEMAKING****Section 100 Changes to Specified Special Tax and Fee Regulations**

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board authorized staff to complete Rule 100 changes to amend specified regulations pertaining to the Cigarette and Tobacco Products Licensing Act, the Hazardous Substances Tax Law, and the Integrated Waste Management Fee Law ([Exhibit 8.2](#)).

Ms. Yee directed staff to schedule, as a Chief Counsel Matters agenda item, a discussion of the community benefit test for the property tax welfare exemption with regard to nonprofit organizations engaged in charitable activities both within and outside California at the September Board meeting.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative 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:

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Action: Adopt the following resolutions, extending its sincere and grateful appreciation to the retirees for their dedicated service to the State Board of Equalization and to the State of California, their congratulations on each retiree's well-earned retirement, and best wishes to them and their families for continued success, happiness and good health in the years to come ([Exhibit 8.3](#)).

Gerald F. Helman, Office Assistant (General), Out-of-State Sacramento Office
Judy Holt, Staff Information Systems Analyst (Specialist), Technology Services Department, Headquarters
Barbara Lee, District Principal Auditor, San Francisco District Office
Nanette Rayon-Markin, Tax Technician II, Riverside District Office
Santos D. Reyes, Associate Tax Auditor, Riverside District Office

Action: Continue the current Revenue and Taxation Code, section 6355, coins and bullion bulk sale exemption threshold of \$1,500, as recommended by staff ([Exhibit 8.4](#)).

With respect to the Administrative Matters, Consent Agenda, 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 made the following order:

Action: Approve summons to annual meeting of the Board and county assessors as recommended by staff ([Exhibit 8.5](#)).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

David Gau, Deputy Director, Property and Special Taxes Department, provided a report regarding the progress on the CROS project to replace BOE's two current tax legacy technology systems ([Exhibit 8.6](#)).

Administration Deputy Director's Report

2011/12 Budget Update and Governor's Executive Orders

Liz Houser, Deputy Director, Administration Department, provided an overview of the Budget Cycle ([Exhibit 8.7](#)).

Ms. Yee directed staff to update the budget cycle timeline by including the budget letter component and that certain items within the timeline that need to be brought back to the Board be identified in the timeline.

With respect to the trailer bill process and legislatively enacted bills chaptered after August 31, the Board directed staff to submit draft Budget Change Proposals (BCPs) to the Department of Finance (DOF) pending Board approval by the required date, but notify DOF that there could be amendments as directed by the Board at the next Board meeting.

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Liz Houser, Deputy Director, Administration Department, provided information regarding the Governor's 2011/12 Budget and Governor's Executive Orders.

2012/13 DRAFT Budget Change Proposals

Liz Houser, Deputy Director, Administration Department, provided a high-level overview of the 2012/13 Draft Budget Change Proposals (BCPs): *Headquarters Facility Consolidation*, which requests funding to relocate BOE Headquarters and annex facilities into one location; and, *Permanent Establishment of Natural Gas Public Purpose Programs Surcharge*, which requests that expiring limited term resources be made permanent, allowing BOE to properly enforce Assembly Bill 1002 statutory requirements and legislative mandates ([Exhibit 8.8](#)).

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the draft BCPs *Headquarters Facility Consolidation* and *Permanent Establishment of Natural Gas Public Purpose Programs Surcharge*, as recommended by staff.

Concept Tax Gap 2 Plan and Placeholder BCP

Speakers: Gina Rodriguez, Vice President of State Tax Policy, California Taxpayers Association
Mira Guertin, Policy Analyst, California Chamber of Commerce
Brett Grunland, United Parcel Service

Jeffrey McGuire, Deputy Director, Sales and Use Tax Department, provided some background and an overview of the Tax Gap 2 Plan, which includes proposals and recommendations on the programs, legislation and other ideas for addressing the sales and use tax gap ([Exhibit 8.9](#)).

Susanne Buehler, Chief, Tax Policy Division, Sales and Use Tax Department, provided some detail on the budget change proposal concepts ([Exhibit 8.10](#)).

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved Tax Gap BCP Concept No. 1, *Use Tax Educational Outreach Campaign*, with direction to incorporate into this proposal the development of the survey by an outside expert to meet the Board of Equalization's objective.

Tuesday, August 23, 2011

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Tax Gap Plan proposal with regard to the first portion of *use tax third party data*: identify high income earners most likely to have purchases subject to use tax, as recommended by staff.

The Board deferred consideration of the remaining portions of the Tax Gap Plan proposal with regard to *use tax third party data* (pilot use of purchased public consumer marketing data and pilot use of shipping records) to the September meeting and directed staff to consult with the shipping industry and provide specific information regarding both remaining portions as discussed.

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 approved the Tax Gap Plan proposal with regard to *use tax simplification* as recommended by staff.

Action: Upon motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved Tax Gap BCP Concept No. 2, *Registered Taxpayers – Desk Audit Program*, as recommended by staff.

Action: Upon motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved Tax Gap BCP Concept No. 3, *Registered Taxpayers – Bankruptcy Expansion*, as recommended by staff.

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved Tax Gap BCP Concept No. 4, *Registered Taxpayers – Penalty & Interest Reprieve*, as recommended by staff.

Action: Upon motion of Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board referred the matter of Tax Gap BCP Concept No. 5, *Non-filers and Evaders – Reward Program*, to the Business Tax Committee.

External Affairs Deputy Director's Report

Anita Gore, Deputy Director, External Affairs Department, provided information regarding a potential statewide survey/poll on the topic of use tax.

The Board directed staff to publish the material on the Public Agenda Notice when it is brought back at the September meeting.

Tuesday, August 23, 2011

ADOPTION OF BOARD AND APPROVAL OF COMMITTEE ACTIONS**Business Taxes Committee**

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 approved the Business Taxes Committee report and the actions therein ([Exhibit 8.11](#)).

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD AUGUST 23, 2011

Jeffrey T. Nolan and Vivienne Nolan, 552938

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.

David A. Lubeck and Mabel C. McNall-Lubeck, 557788

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 sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

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

Maisa, Inc., 485794 (EH)

Final Action: Ms. Yee moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Horton. Mr. Runner made a substitute motion 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 substitute motion was seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes.

Jason H. Walker and Stephen Wayne Sundes, 445416, 462500 (EH)

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.

Gurmail Singh, 487083 (AR)

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

Tuesday, August 23, 2011

Akbar Ferdousi Bayrami, 473205 (CH)

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

**FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HELD
AUGUST 23, 2011**

Wahid Ahmad Taki, 547438 (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.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 4:16 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CLOSED SESSION

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

The Board recessed at 5:10 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Mr. Horton announced that Anna Brannan, Deputy Director, Technology Services Department, will be leaving the Board of Equalization for a Governor appointment to the position of Deputy Secretary for Policy at the California Technology Agency. Mr. Horton made complementary remarks and congratulated Ms. Brannan on her Executive Appointment.

Mr. Horton stated for the record that the Board concluded its business for this meeting, and that meeting day Wednesday, August 24, 2011, is therefore cancelled.

The Board adjourned at 5:12 p.m.

The foregoing minutes are adopted by the Board on November 15, 2011.

Note: The following matter was removed from the calendar prior to the meeting: *Legislative Committee Report.*

Note: These minutes are not final until Board approved.