

Tuesday, December 16, 2008

The Board met at its offices at 450 N Street, Sacramento, at 9:45 a.m., with Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

James F. Brown and Lynnae L. Brown, 423373

2000, \$32,849.00 Assessment

For Appellant:

James F. Brown, Taxpayer

For Franchise Tax Board:

Todd Watkins, Tax Counsel

Debra S. Peterson, Tax Counsel

Bruce Langston, Tax Counsel

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

Issues: Whether appellants' transfer of 40,000 shares of OpenTV, Inc. stock to Derivium Capital, LLC in three separate transactions in 2000 constituted a sale of those shares that resulted in taxable gain to appellants.

Whether the FTB properly applied the overpayment from 2003 against appellants' 2000 liability.

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

Ms. Mandel left the Boardroom and Mr. Chivaro entered on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Mr. Chivaro left the Boardroom.

Home Depot U.S.A., Inc., 298683

1999, \$1,092,991.00 Claim for Refund

For Appellant:

Jill Wood, Taxpayer

Carley A. Roberts, Attorney

Eric J. Coffill, Attorney

For Franchise Tax Board:

Carl Joseph, Tax Counsel

Norman Scott, Tax Counsel

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

Issues: Whether respondent has shown that including in appellant's sales factor the gross receipts generated from the redemption of its marketable securities is distortive for purposes of Revenue and Taxation Code section 25137.

Whether respondent has shown that including only the net receipts generated from the redemption of those marketable securities is reasonable.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.1.)

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Mr. Chivaro absent, the Board submitted the appeal for decision.

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Mr. Leonard directed staff to analyze and compose a list of all the deferred cases for *Home Depot U.S.A, Inc.*, 298683 by the variety of factors that have been presented by *Home Depot U.S.A, Inc.*, 298683 today.

Exhibits to these minutes are incorporated by reference.

Ms. Mandel returned to the Boardroom on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Shalimar Lea Beach, 421276
1998, \$6,727.34 Claim for Refund
1999, \$3,192.48 Claim for Refund
2000, \$1,507.64 Claim for Refund
2001, \$1,091.89 Claim for Refund
For Appellant:

Shalimar Beach, Taxpayer
Jaclyn Appleby, Representative
Mary Yee, Tax Counsel
Craig Scott, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant's claims for refund are barred by the statute of limitations.
Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.2.)
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 12:20 p.m. and reconvened at 1:35 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang present.

PROPERTY TAXES HEARING

Sprint PCS (2720), 457703
2008, \$2,546,100,000.00 Unitary Value
For Petitioner:

Richard Wiley, Attorney
Peter Hladek, Representative
Andrew Davis, Representative

For Property and Special Taxes Department: Carole Ruwart, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether petitioner has shown that the Replacement Cost New factors utilized in determining respondent State-Assessed Property Division's Replacement Cost New Less Depreciation value indicator were less reliable than petitioner's Replacement Cost New factors.

Whether petitioner has shown that the depreciation and obsolescence factors used in determining respondent's Replacement Cost New Less Depreciation value indicator were less reliable than petitioner's factors.

Whether respondent's Replacement Cost New Less Depreciation value indicator erroneously includes the cost of leased property owned by third party.

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Whether the value of petitioner's nontaxable intangible assets has been included in respondent's Replacement Cost New Less Depreciation value indicator.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Mr. Chiang voting yes, Ms. Steel voting no, the Board ordered that the value be reduce to \$2,039,700,000.

PROPERTY TAXES MATTERS, CONSENT

With respect to the Property Taxes Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board made the following orders:

Petitions for Reassessment of Private Railroad Car Tax

INEOS Olefins & Polymers USA, LLC (5711), 465161

2008, \$1,432,870.00

Action: Granted the 2008 private railroad car tax petition for reassessment increasing its value to \$2,898,114.00 as recommended by staff.

Trinity Industries Leasing Company (5758), 465160

2008, \$53,212,275.00

Action: Granted the 2008 private railroad car tax petition for reassessment reducing its value to \$53,082,285.00 as recommended by staff.

Azteca Milling, LP (5754), 465150

2008, \$17,270.00

Action: Granted the 2008 private railroad car tax petition for reassessment reducing its value to \$6,168.00 as recommended by staff.

BP Corporation North America, Inc. (540), 465350

2008, \$1,436,574.00

Action: Granted the 2008 private railroad car tax petition for reassessment reducing its value to \$96,903.00 as recommended by staff.

Conagra Foods (MHC, Inc.) (5761), 465348

2008, \$744,171.00

Action: Granted the 2008 private railroad car tax petition for reassessment increasing its value to \$809,422.00 as recommended by staff.

Timber Tax Yield Tax Claim for Refund

Maribeth W. Collins, et al., #2, 468222

2008, \$90,817.92 Claim for Refund

Action: Approve the timber tax yield tax claim for refund as recommended by staff.

Note: These minutes are not final until Board approved.

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SPECIAL TAXES MATTERS, RELIEF OF PENALTIES AND DENIAL OF CLAIM FOR REFUNDS, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties and Denial of Claim for Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, Ms. Steel not participating in *Conocophillips Company, 441890 (MT)* in accordance with Government Code section 87105, the Board made the following orders:

Life Insurance Company of North America, 463960 (ET)

4-1-08 to 6-30-08, \$144,583.50

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

Endurance Reinsurance Corporation of America, 465642 (ET)

7-1-08 to 9-30-08, \$154,058.80

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

Conocophillips Company, 441890 (MT)

1-1-07 to 12-31-07, \$2,148,977.44

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

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 Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board made the following orders:

Chevron USA, Inc., 464117 (MT)

6-1-08 to 6-30-08, \$189,496.37

Action: Approve the refund as recommended by staff.

CM Life Insurance Company, 457463 (ET)

1-1-07 to 12-31-07, \$63,663.91

Action: Approve the refund as recommended by staff.

Tower Insurance Company of New York, 461948 (ET)

1-1-07 to 12-31-07, \$74,748.58

Action: Approve the refund as recommended by staff.

Note: These minutes are not final until Board approved.

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LEGAL APPEALS PROPERTY TAXES MATTERS, ADJUDICATORY**Golden State Water Company (101), 457748**

2008, \$504,700,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Ms. Steel moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee and Mr. Chiang voting no.

Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

San Diego Gas & Electric Company (141), 458198

2008, \$4,451,500,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

Verizon California, Inc. (201), 458200

2008, \$3,920,700,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the value be reduce to \$3,595,900,000.

Pacific Bell Telephone Company (279), 451533

2008, \$7,436,700,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the value be reduce to \$6,900,600,000.

Dynegy Moss Landing, LLC (1103), 458195

2008, \$742,400,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

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La Paloma Generating Company, LLC (1112), 457485

2008, \$477,900,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

Mountainview Power Company (1119), 458202

2008, \$593,500,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

Elk Hills Power, LLC (1126), 457487

2008, \$306,500,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Leonard. No other disqualifying contributions were disclosed.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard not participating in accordance with Government Code section 15626, Ms. Steel not participating in accordance with Government Code section 87105, the Board ordered that the petition be denied.

Delta Energy Center, LLC (1128), 457473

2008, \$438,400,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

Pastoria Energy Center, LLC (1131), 457475

2008, \$455,500,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

Calpine Construction Finance Company, LP (1132), 457477

2008, \$234,200,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

Metcalf Energy Center (1133), 457478

2008, \$319,200,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

Reliant Energy Mandalay, LLC (1114), 457861

2008, \$42,700,000.000 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

Reliant Energy Ormond Beach, LLC (1115) 457862

2008, \$84,700,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

Reliant Energy Etiwanda, LLC (1116), 457863

2008, \$41,000,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

GWF Energy, LLC - Hanford (1122), 457976

2008, \$59,900,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

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GWF Energy, LLC - Henrietta (1123), 457990

2008, \$61,000,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

GWF Energy, LLC - Tracy (1124), 457997

2008, \$93,800,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

Qwest Communications Corporation (2463), 458009

2008, \$172,700,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

AT&T Mobility, LLC (2606), 451532

2008, \$1,822,000,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the value be reduced to \$1,577,721,146.

Level 3 Communications, LLC (7761), 458194

2008, \$514,900,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the value be reduced to \$467,400,000.

Pacific Pipeline System, LLC (486), 458193

2008, \$176,300,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Note: These minutes are not final until Board approved.

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Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, and Mr. Chiang voting yes, Ms. Steel not participating in accordance with Government Code section 87105, the Board ordered that the value be reduced to \$109,000,000.

EAS Communication, Inc. (7859), 450872

2008, \$59,100.00 Unitary Assessed Value, \$5,910.00 Penalty

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

Intelsat Global Service Corporation (7969), 458199

2008, \$21,400,000.00 Unitary Assessed Value, \$2,140,000.00 Penalty

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

Legent Communications Corporation (7978), 450873

2008, \$40,300.00 Unitary Assessed Value, \$4,030.00 Penalty

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

Utility Telephone, Inc. (7994), 450047

2008, \$944,000.00 Unitary Assessed Value, \$94,000.00 Penalty

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied.

The Board directed staff to identify and compile a past history of cases that have been granted relief from the 10 percent penalty imposed for petitioner's failure to timely file a property statement.

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TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**PROPERTY TAX MATTERS****Unitary Land Escaped Assessments**

Sprint PCS (2720)

2005-2007, \$1,691,475.00 Value

Cricket Communications, Inc. (2762)

2007, \$428,531.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board adopted the unitary land escaped assessment as recommended by staff.

Board Roll Changes

2006, 2007 and 2008 State-Assessed Property Rolls

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board approved corrections to the 2006, 2007 and 2008 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 12.3).

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD DECEMBER 16, 2008

Home Depot U.S.A., Inc., 298683

Final Action: Ms. Yee moved to sustain the action of the Franchise Tax Board. The motion was seconded by Dr. Chu but failed to carry, Dr. Chu and Ms. Yee voting yes, Mr. Leonard, Ms. Steel and Mr. Chiang voting no.

Upon motion of Mr. Leonard, seconded by Ms. Steel and duly carried, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, Dr. Chu and Ms. Yee voting no, the Board reversed the action of the Franchise Tax Board.

Ms. Yee directed staff to include in all further related cases an updated status of the relationship of prior decisions including today's decision on *Home Depot U.S.A., Inc.*, 298683.

Mr. Chiang left the Boardroom and Ms. Mandel entered on behalf of Mr. Chiang in accordance with Government Code section 7.9.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Christine A. Baker, 441209
2001, \$145.00 Claim for Refund

For Appellant:

Christine A. Baker, Taxpayer

For Franchise Tax Board:

Jenna Mayfield, Tax Counsel

Bruce Langston, Tax Counsel

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

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

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.4.)

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

Michael L. Cate, 441278
2004, \$5,625.00 Assessment

For Appellant:

Michael L. Cate, Taxpayer

Lindy Marrington, Witness

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Craig Scott, Tax Counsel

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

Issues: Whether appellant has demonstrated respondent erred in denying appellant's
claim for refund.

Whether the Board should impose a frivolous appeal penalty.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.5.)

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

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Cindy A. Saito*,
339713 (KH).

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

Sierra Textile Company, LP, 301401 (EH)

10-1-01 to 12-31-03, \$33,655.31 Tax, \$1,770.47 Amnesty Interest Penalty

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

Robere's Jewelry, Inc., 220461 (FH)

7-1-98 to 3-31-02, \$79,461.04 Tax, \$12,230.76 Negligence Penalty, \$24,973.53 Amnesty Interest
Penalty

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

Note: These minutes are not final until Board approved.

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Joginder Lal, 340507 (KH)

7-1-01 to 6-30-04, \$2,954.79 Tax, \$0.00 Penalty, \$245.41 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Carl Joseph Kennedy III, 349941 (KH)

10-1-00 to 12-31-00, \$11,104.00, \$4,344.43 Penalties

Action: Redetermine as recommended by the Appeals Division.

Michael D. Sanders, 295375 (KH)

Sally A. Sanders, 295376 (KH)

10-1-99 to 6-30-02, \$14,992.96 Tax, \$1,590.11 Failure to Timely Pay Penalty, \$1,775.20

Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Cindy A. Saito, 339713 (KH)

1-1-01 to 6-30-01, \$17,461.45 Tax, \$2,204.90 Late Payment Penalty, \$2,929.93 Amnesty Interest Penalty

Action: The Board took no action.

The Kordahl Trust Dated 02/22/92, 359922 (JT)

11-18-02, \$1,234.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Touch 99 Corporation, 301273, (BH)

7-1-00 to 6-30-03, \$5,725.59 Tax, \$5,759.70 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Personal Selling Power, Inc.*, 380557.

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, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Jose R. Angeles, 400667

2005, \$373.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jeanine M. Artmont, 406115

2003, \$1,386.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Marco A. Cerda, 358728

2004, \$687.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Drew E. Collins and Linda G. Collins, 406111

2003, \$18,138.68 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Patricia C. Fleming, 401328

2005, \$1,361.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Manley A. Golson, 437522

2002, \$385.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

James Griffen and Patricia Griffen, 379667

2003, \$359.15 Assessment

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

Roger A. Grubic and Janice F. Grubic, 380418

2005, \$3,909.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jack D. Lawrence, Jr., 404660

1998, \$3,959.69 Claim for Refund

1999, \$4,357.14 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

K. Linda Lawrence, 401347

2005, \$974 Assessment

Action: Sustain the action of the Franchise Tax Board.

Personal Selling Power, Inc., 380557

2003, \$800.00 Tax, \$108.05 Penalties

Action: The Board took no action.

Roger O. Schafer and Frances F. Schafer, 398947

2005, \$4,572.57 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Laura J. Tennison, 402863

2003, \$846.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Carlos M. Alcala and Norma Alcala, 259159
1995, \$11,416.00 Tax, \$2,854.00 Late Filing Penalty
Action: Deny the petition for rehearing.

William Amonette Anderson, 397348
2004, \$3,333.00 Tax, \$833.25 Late Filing Penalty, \$750.00 Frivolous Appeal Penalty
Action: Deny the petition for rehearing.

Greg Galaski, 383410
2002, \$1,342.00 Tax, \$335.50 Late Filing Penalty, \$81.31 Post Amnesty Penalty, \$2,000.00
Frivolous Appeal Penalty
Action: Deny the petition for rehearing.

Bryon Hoffman, 381469
2004, \$5,798.00 Tax, \$2,899.00 Penalties, \$2,500.00 Frivolous Appeal Penalty
Action: Deny the petition for rehearing.

Shawn Mills, 402021
2001, \$8,151.00 Tax, \$2,039.00 Late Filing Penalty, \$852.28 Post-Amnesty Penalty, \$750.00
Frivolous Appeal Penalty
Action: Deny the petition for rehearing.

Charles H. Bond, 421271
2005, \$3,553.00 Tax, \$888.25 Late Filing Penalty, \$1,291.00 Notice and Demand Penalty
Action: Sustain the modified action of the Franchise Tax Board and impose a \$1,500.00
frivolous appeal penalty.

Thao Nguyen and Phucy Nguyen, 360304
1997, \$14,220.00 Tax, \$2,844.00 Accuracy Related Penalty
Action: Sustain the action of the Franchise Tax Board.

Tuesday, December 16, 2008

John H. Vories, 389158

1992, \$2,007.45 Claim for Refund

1993, \$4,234.20 Claim for Refund

1994, \$1,874.55 Claim for Refund

1995, \$7,087.83 Claim for Refund

1996, \$7,073.83 Claim for Refund

1997, \$158.83 Claim for Refund

1998, \$158.83 Claim for Refund

1999, \$158.83 Claim for Refund

2000, \$292.32 Claim for Refund

2001, \$416.94 Claim for Refund

2002, \$416.94 Claim for Refund

2003, \$327.18 Claim for Refund

2004, \$613.03 Claim for Refund

2005, \$2,389.40 Claim for Refund

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

Gregg Shanberg, 402904

2004, \$105,000.00 Claim for Refund

Action: Dismiss the appeal due to lack of jurisdiction.

Alexander Kazerani, 342393

1999, \$43,797.00 Claim for Refund

Action: Dismiss the appeal due to lack of jurisdiction.

David L. Lee and Ellen W. Lee, 345434

1999, \$939,408.00 Claim for Refund

2000, \$182,396.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Charlotte Agcaoili, 400309

2006, \$312.50

Action: Sustain the action of the Franchise Tax Board.

Gloria Anderson, 431962

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Note: These minutes are not final until Board approved.

Tuesday, December 16, 2008

Odette Baladi (Deceased), 389577

2006, \$472.60

Action: Sustain the action of the Franchise Tax Board.

Jeanne Cervantes, 431542

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Francisco M. Curiel, 422996

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Charles Warren Esler, 380523

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Kadedra Monique Fowler, 397208

2006, \$347.50

Action: Modify the action of the Franchise Tax Board.

Roy A. Harrington, 400305

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Michael S. Jewett, 422819

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Shonna Krogh, 386513

2006, \$332.50

Action: Sustain the action of the Franchise Tax Board.

Marie Patton, 382020

2006 \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Hubert O. Ross, 401187

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

James Royer Segovia, 394603

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Note: These minutes are not final until Board approved.

Tuesday, December 16, 2008

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

Ms. Mandel stated that Mr. Chiang would not participate in the matter of *Wells Fargo Bank, 424234 (BH)*.

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *Wells Fargo Bank, 424234 (BH)*, and in accordance with Government Code section 87105 not participating in *Best Buy Store, LP, 436923 (OH)*, the Board made the following orders:

Los Angeles Department of Water and Power, 354588 (AA)

1-1-00 to 12-31-02, \$216,606.23

Action: Approve the redetermination as recommended by staff.

The Merchant of Tennis, Inc., 293594 (AS)

4-1-00 to 12-31-02, \$74,763.13

Action: Approve the redetermination as recommended by staff.

Aixtron, Inc., 342572 (GH)

4-1-01 to 3-31-03, \$658,908.15

Action: Approve the redetermination as recommended by staff.

Fry's Electronics, Inc., 361957 (GH)

10-1-01 to 9-30-04, \$869,486.25

Action: Approve the redetermination as recommended by staff.

Gulfstream Aerospace Corporation, 332200 (OH)

7-1-99 to 6-30-03, \$15,347,816.20

Action: Approve the redetermination as recommended by staff.

Los Angeles Department of Water and Power, 353893 (AA)

1-1-00 to 12-31-02, \$404,228.11

Action: Approve the redetermination as recommended by staff.

Masimo Corporation, 378525 (EA)

7-1-01 to 6-30-04, \$87,478.46

Action: Approve the redetermination as recommended by staff.

Gateway 2000 Major Accounts, Inc., 333468 (OH)

7-1-98 to 12-31-98, \$57,544.21

Action: Approve the redetermination as recommended by staff.

Note: These minutes are not final until Board approved.

Tuesday, December 16, 2008

OCB, LLC, 423343 (EA)

7-1-03 to 6-30-06, \$905,780.44

Action: Approve the redetermination as recommended by staff.

Henry E. Solowiej, 379793 (EA)

7-1-97 to 6-30-05, \$36,557.06

Action: Approve the redetermination as recommended by staff.

Stock Building Supply West, Inc., 465210 (OH)

5-1-08 to 6-15-08, \$126,470.28

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

Raley's, 465314 (JH)

4-6-08 to 6-28-08, \$205,094.59

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

S. B. Restaurant Co., 464385 (AA)

4-28-08 to 6-9-08, \$69,673.50

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

Wells Fargo Bank, 424234 (BH)

7-1-06 to 3-31-07, \$87,335.00

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating.

Diageo North America, Inc., 356849 (OH)

1-1-03 to 12-31-05, \$437,916.00

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

Thiel Structural Steel, Inc., 318432 (KH)

10-1-00 to 12-31-03, \$94,331.56

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

San Gabriel Insulation, Inc., 402679 (AP)

4-1-04 to 6-30-07, \$56,773.00

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

Best Buy Store, LP, 436923 (OH)

1-1-03 to 12-31-07, \$11,800,000.00

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

Capital One Auto Finance, Inc., 296983 (OH)

1-1-03 to 3-31-05, \$349,354.37

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

Note: These minutes are not final until Board approved.

Tuesday, December 16, 2008

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

The Board deferred consideration of the following matter: *UPS Oasis Supply Corporation, 340492 (OH)*.

Ms. Mandel stated that Mr. Chiang would not participate in the matter of *Exxon Mobil Corporation, 234706 (OH)*.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *Exxon Mobil Corporation, 234706 (OH)*, and in accordance with Government Code section 87105 not participating in *Arco Material Supply Company, 440264 (AS)*, the Board made the following orders:

PC Mall Sales, Inc., 405670 (AS)

7-1-01 to 6-30-04, \$1,932,642.35

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

Aixtron, Inc., 465799 (GH)

4-1-01 to 3-31-04, \$61,199.70

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

Aptix Corporation, 293456 (GH)

7-1-99 to 4-22-04, \$312,420.13

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

Evans Communications, 465351 (KH)

4-1-07 to 9-30-07, \$66,504.38

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

DSW Shoe Warehouse, Inc., 465507 (OH)

7-1-04 to 6-30-05, \$95,249.88

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

Rajmp, Inc., 463856 (FH)

1-1-07 to 5-27-07, \$112,369.15

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

Lexington Acquisition, Inc., 435022 (AC)

7-1-03 to 6-30-06, \$134,110.21

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

Note: These minutes are not final until Board approved.

Tuesday, December 16, 2008

Bonnie Lee Kehoe, 465496 (KH)

1-11-06 to 12-31-06, \$72,079.50

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

Ascent Media Creative Services, Inc., 464413 (BH)

6-28-99 to 6-30-02, \$308,682.42

Action: Approve the refund as recommended by staff.

Sourcecorp BPS Southern California, Inc., 331812 (OH)

7-1-02 to 9-30-05, \$235,998.08

Action: Approve the refund as recommended by staff.

Arco Material Supply Company, 440264 (AS)

1-1-03 to 12-31-06, \$138,204.71

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

Chevron U.S.A., Inc., 464364 (BH)

4-1-03 to 12-31-07, \$276,546.31

Action: Approve the refund as recommended by staff.

PC Mall Sales, Inc., 465205 (AS)

7-1-01 to 6-30-04, \$124,484.70

Action: Approve the refund as recommended by staff.

Palm Springs Motor, Inc., 433713 (EH)

1-1-06 to 9-30-07, \$104,528.03

Action: Approve the refund as recommended by staff.

Acushnet Company, 424506 (OH)

7-1-04 to 9-30-05, \$255,680.67

Action: Approve the refund as recommended by staff.

North Island Financial Credit Union, 417198 (FH)

7-1-04 to 12-31-07, \$217,170.52

Action: Approve the refund as recommended by staff.

National Semiconductor Corporation, 317036 (GH)

6-25-01 to 12-26-04, \$419,315.93

Action: Approve the refund as recommended by staff.

Intevac, Inc., 437742 (GH)

7-1-07 to 9-30-07, \$762,325.40

Action: Approve the refund as recommended by staff.

Note: These minutes are not final until Board approved.

Tuesday, December 16, 2008

Maxtor Corporation, 462979 (GH)

1-1-05 to 3-11-07, \$156,485.18

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 460242 (KH)

4-1-08 to 6-30-08, \$382,707.80

Action: Approve the refund as recommended by staff.

Exxon Mobil Corporation, 234706 (OH)

4-1-00 to 6-30-00, \$1,004,019.27

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

Bloomberg, LP, 388172 (OH)

4-1-02 to 9-30-03, \$141,151.93

Action: Approve the refund as recommended by staff.

Color Control, Inc., 360146 (OH)

4-1-03 to 12-31-05, \$129,810.11

Action: Approve the refund as recommended by staff.

Opex Corporation, 465613 (OH)

10-1-04 to 9-30-07, \$110,061.87

Action: Approve the refund as recommended by staff.

Zenith Insurance Company, 351533 (AC)

1-1-03 to 12-31-06, \$632,179.41

Action: Approve the refund as recommended by staff.

Chevron Credit Bank, National Association, 447146 (CH)

1-1-00 to 9-30-01, \$824,809.34

Action: Approve the refund as recommended by staff.

UPS Oasis Supply Corporation, 340492 (OH)

10-1-01 to 3-31-07, \$3,428,057.20

Action: The Board took no action.

Covad Communications Company, 390374 (GH)

4-1-06 to 12-31-06, \$108,574.72

Action: Approve the refund as recommended by staff.

Banana Republic (California), LLC, 351407 (BH)

1-1-03 to 1-31-04, \$398,498.58

Action: Approve the refund as recommended by staff.

Note: These minutes are not final until Board approved.

Tuesday, December 16, 2008

Old Navy (California), LLC, 351348 (BH)

1-1-03 to 1-31-04, \$65,637.55

Action: Approve the refund as recommended by staff.

Taylor Made Golf Company, Inc., 462276 (FH)

1-1-05 to 3-31-07, \$208,363.42

Action: Approve the refund as recommended by staff.

Village Nurseries Wholesale, LLC, 464334 (EA)

10-1-03 to 9-30-06, \$116,641.19

Action: Approve the refund as recommended by staff.

Cardinal Health 415, Inc., 266959 (AC)

4-1-01 to 3-31-04, \$65,122.11

Action: Approve the refund as recommended by staff.

Frank Kofsuske, 272134 (BH)

4-1-01 to 3-31-04, \$82,238.82

Action: Approve the refund as recommended by staff.

Hold Everything, Inc., 465637 (BH)

7-1-06 to 9-30-06, \$116,646.98

Action: Approve the refund as recommended by staff.

World Wide Parts & Accessories Corp., 420190 (CH)

10-1-04 to 12-31-06, \$150,106.86

Action: Approve the refund as recommended by staff.

Wescom Credit Union, 460973 (AP)

4-1-08 to 6-30-08, \$77,655.88

Action: Approve the refund as recommended by staff.

Philips Semiconductors, Inc., 465636 (GH)

1-1-96 to 12-31-99, \$53,317.96

Action: Approve the refund as recommended by staff.

SCE Federal Credit Union, 349664 (AP)

1-1-03 to 12-31-06, \$158,404.01

Action: Approve the refund as recommended by staff.

Comprehensive Diagnostic Imaging, 263731 (AC)

4-1-01 to 3-31-04, \$112,189.20

Action: Approve the refund as recommended by staff.

Note: These minutes are not final until Board approved.

Tuesday, December 16, 2008

Capital One Auto Finance, Inc., 296983 (OH)

1-1-03 to 3-31-05, \$2,966,160.78

Action: Approve the refund as recommended by staff.

A-L Financial Corp., 460248 (EA)

4-1-08 to 6-30-08, \$184,351.95

Action: Approve the refund as recommended by staff.

K.D.M. Enterprises, 426881 (EH)

10-1-04 to 3-31-08, \$111,445.81

Action: Approve the refund as recommended by staff.

Wesco Tool & Equipment Rental, LLC, 394307 (AS)

8-1-04 to 6-30-07, \$77,072.16

Action: Approve the refund as recommended by staff.

Dentsply Prosthetics U. S., LLC 417199 (OH)

10-1-02 to 9-30-05, \$120,425.01

Action: Approve the refund as recommended by staff.

Kern Schools Federal Credit Union, 451301 (AR)

7-1-05 to 12-31-05, \$51,635.20

Action: Approve the refund as recommended by staff.

Chevron Credit Bank, National Association, 447147 (CH)

10-1-04 to 12-07-07, \$2,139,129.87

Action: Approve the refund as recommended by staff.

LEGAL APPEALS MATTERS, ADJUDICATORY

Trung Duc Trinh and Shelly C. Yun-Trinh, 330253 (AS)

4-1-02 to 12-31-02, \$0.00 Tax, \$972.66 Negligence Penalty

Shaya Beverly Center, Inc., 330254 (AS)

1-1-02 to 6-30-03, \$8,342.78 Tax, \$2,741.83 Negligence Penalty

Considered by the Board: August 6, 2008

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

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

Ibrahim D. Ibrahim and Sahar Ibrahim, 310288 (EH)

7-1-01 to 3-31-04, \$14,610.42 Tax, \$0.00 Penalty

Considered by the Board: August 5, 2008

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

Note: These minutes are not final until Board approved.

Tuesday, December 16, 2008

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

Cities of Los Angeles and San Jose, 352192

4-1-01 to 12-31-06, \$74,232.00 Tax for each City

Considered by the Board: October 11, 2006

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

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

Speakers: Steve Conway, Director of Finance, Town of Los Gatos
Al Koch, Special Tax Counsel, Muni Services
Linda Lowry, City Manager, City of Pomona
Willie Norfleet, City Controller, City of Compton
Arnold Alvarez-Glassman, City Attorney, City of Pomona
Fran Mancina, Director of Government Relations, Muni Services
Robert Cendejas, Tax Attorney, Muni Services

Cities of Torrance and Los Angeles, 469251

3-27-92 and 6-30-92, \$4,927,804.00 Tax

Considered by the Board: Presented for Separate Discussion

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

Action: (Motion expunged on December 17, 2008.)

Cities of South San Francisco and Los Angeles, 469250

3-27-96, \$1,461,817.00 Tax

3-27-96, \$1,387,296.00 Tax

Considered by the Board: Presented for Separate Discussion

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

Action: (Motion expunged on December 17, 2008.)

County of Los Angeles, 469243

12-24-98, \$153,488.00 Tax

Considered by the Board: Presented for Separate Discussion

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

Action: (Motion expunged on December 17, 2008.)

Cities of Pomona and Los Gatos, 469261

6-17-94, \$9,340,284.00 Tax

9-28-94, \$152,471.00 Tax

Considered by the Board: Presented for Separate Discussion

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

Action: (Motion expunged on December 17, 2008.)

Note: These minutes are not final until Board approved.

Tuesday, December 16, 2008

City of Compton, 469256

12-21-95, Unknown Amount

Considered by the Board: Presented for Separate Discussion

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

Action: (Motion expunged on December 17, 2008.)

City of Union City, 469296

3-27-96, \$30,400.00 Tax

Considered by the Board: Presented for Separate Discussion

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

Action: (Motion expunged on December 17, 2008.)

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

John P. Fields and N. Carol Fields, 361390

1996, \$2,706.00 Claim for Refund

Considered by the Board: July 8, 2008

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

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

Pete Hernandez, 378089

2002, \$1,799.00 Tax, \$69.33 Post-Amnesty Penalty

2003, \$1,606.00 Tax

Considered by the Board: February 28, 2008

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision modifying the action of the Franchise Tax Board.

Kenneth Banks, 327922

1995, \$276,096.00 Assessment

Considered by the Board: April 8, 2008

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

Action: Ms. Yee moved that the petition for rehearing be denied. The motion was seconded by Ms. Mandel but no vote was taken.

Mr. Leonard made a substitute motion to grant the petition for rehearing. The substitute motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee, and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition for rehearing be denied.

Tuesday, December 16, 2008

John Cirino and Sepideh Cirino, 361476

2001, \$45,078.00 Tax

Considered by the Board: June 19, 2007

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

Action: The Board took no action.

Swift Transportation Company, Inc. and Swift Transportation Corporation, 266318

1997, \$55,352.00 Assessment

1998, \$118,067.00 Assessment

Considered by the Board: February 1, 2008

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

Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu and Ms. Yee voting no, the Board adopted a decision granting the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, ADJUDICATORY

Allan Walden, 383500

2004, \$347.50

2005, \$347.50

Considered by the Board: August 5, 2008

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

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

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

Infinity Material Management Solutions, 379564 (GH)

1-1-01 to 12-31-02, \$99,606.48

Considered by the Board: March 20, 2007

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

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the credit and cancellation as recommended by staff.

Gottschalks, Inc., 441170 (KH)

7-6-03 to 7-7-07, \$426,590.81

Considered by the Board: August 19, 2008

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

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

Note: These minutes are not final until Board approved.

Tuesday, December 16, 2008

The Mercury Trust, 374580 (UT)

2-26-04 to 2-26-04, \$57,636.86

Considered by the Board: July 8, 2008

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

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

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Herman Mendel* as recommended by staff.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD DECEMBER 16, 2008

James F. Brown and Lynnae L. Brown, 423373

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Byron S. Georgiou, 435061

1997, \$31,808.67 Claim for Refund

For Appellant: Appearance Waived

For Franchise Tax Board: Suzanne Small, Tax Counsel

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

Issue: Whether appellant has shown that his claim for refund for tax year 1997 was filed within the applicable statute of limitations.

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD DECEMBER 16, 2008

Shalimar Lea Beach, 421276

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

Tuesday, December 16, 2008

Christine A. Baker, 441209

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

Michael L. Cate, 441278

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

The Board adjourned at 4:05 p.m.

The foregoing minutes are adopted by the Board on March 17, 2009.

Note: The following matter was removed from the calendar prior to the meeting: *Danny Kangsok Kim, 386898 (EA)*.

Wednesday, December 17, 2008

The Board met at its offices at 450 N Street, Sacramento, at 9:35 a.m., with Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

ABC-NACO, Inc., 167411 (OH)

1-1-99 to 10-17-01, \$881,115.31 Tax

For Petitioner:

Brian Greenburg, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether further adjustments are warranted to the disallowed sales for resale because the sales were actually for resale or because the purchaser self-reported use tax.

Whether further adjustments are warranted for trade-ins.

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

R.C.P. Block & Brick, Inc., 283573, 283514 (FH)

1-1-01 to 12-31-03, \$73,108.00 Tax, \$80,726.79 Claim for Refund

For Petitioner/Claimant:

Jesse McClellan, Representative

Dan Davis, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether petitioner was leasing pallets and correctly reporting tax on such leases.

Whether petitioner is entitled to relief based on its reliance on alleged erroneous advice in prior audits.

Whether the claim for refund should be granted.

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

SPECIAL TAXES APPEALS HEARING

Fassel M. Elder and Amal Elder, 272656 (MT)

10-1-00 to 3-05-02, \$18,621.87 Underground Storage Tank Maintenance Fee, \$1,862.19

Negligence Penalty

For Petitioner:

George Fakhouri, Representative

For Property and Special Taxes Department:

Carolee Johnstone, Tax Counsel

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

Issues: Whether an adjustment should be made to the assessed Underground Storage Tank Maintenance fees.

Note: These minutes are not final until Board approved.

Wednesday, December 17, 2008

Whether petitioner was negligent.
Action: The Board postponed this matter to the January Board meeting.

PUBLIC HEARINGS

Timber Yield Tax Rate

Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, made introductory remarks. Revenue and Taxation Code, section 38202 requires that the Board adjust the timber yield tax rate in December of each year to the nearest one-tenth of one percent for the next calendar year. The adjustment is to be in the same proportion as the change from the previous tax year to the present one of the average general property tax rate in the rate adjustment counties (Exhibit 12.6).

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered to adopt the adjustment to the timber yield tax rate.

Exhibits to these minutes are incorporated by reference.

Timber Harvest Values

Benjamin Tang, Principle Property Appraiser, County Assessed Properties Division, Property and Special Taxes Department, made introductory remarks. On or before December 31, 2008, the Board shall estimate the immediate harvest values of and adopt schedules for timber harvested between January 1, 2009 and June 30, 2009. (Rev. & Tax. Code, § 38204.) (Exhibit 12.7.)

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

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered to adopt the timber harvest values.

Mr. Leonard directed staff to revisit this issue mid year and added that there may be a need to convene the committee and look at the values midterm or sooner than expected due to the economy.

Proposed Amendments to Sales and Use Tax Regulations 1506, *Miscellaneous Services Enterprises* and 1524, *Manufacturers of Personal Property*

Robert Tucker, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments to clarify the application of tax to alteration charges (Exhibit 12.8).

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the proposed amendments.

Proposed Amendments to Sales and Use Tax Regulation 1705, *Relief from Liability*

Christine Bisauta, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments to provide a franchisee relief from liability to pay tax based on erroneous advice provided to a franchisor under certain conditions (Exhibit 12.9).

Speaker: Lindsay Craine, Executive Assistant, Color Me Mine (Exhibit 12.10)

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the proposed amendments.

CHIEF COUNSEL MATTERS

RULEMAKING

Petition to Adopt a Regulation to Designate Qualified Veteran Itinerant Vendors as Consumers of Tangible Personal Property

Carla Caruso, Senior Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the taxpayer's petition to adopt a new regulation providing that an itinerant vendor, who is a qualified United States veteran, is the consumer, not the retailer, of goods that the veteran sells (Exhibit 12.11).

Speaker: William M. Connell, Owner, All American Surf Dog

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, the Board directed staff to submit an opinion request to the Attorney Generals office raising the question as to who has rulemaking authority over matters such as this; citing the Brooks decision, history and intent of the current veterans statue, the 1872 and 1893 acts, and any representations that have been made by the Department of Veterans Affairs as it relates to tax exemptions. Once a response is received, staff will report back to the Board with the opinion of the Attorney Generals office. Should the Attorney Generals office state that the Board has rulemaking authority, the Board would like staff to prepare and present a draft regulation. If the Attorney Generals office denies that the Board has authority, then this petition would be deemed denied.

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The Board directed staff to accept the petition for removal of annotation 410.0900, and follow the procedures for this type of petition. Staff additionally was directed to notify the Attorney General's office that the annotation is undergoing a review by the Board and once it has been completed the Board will submit its review to the Attorney General.

Proposed Amendment to Conflict of Interest Code, Regulation 6001, *General Provisions*

Blanca Breeze, Senior Tax Counsel, Settlement Division, Legal Department, made introductory remarks regarding the proposed amendment to Title 18 California Code of Regulations Section 6001, which represents the Board's Conflict of Interest Code. The proposed changes reflect the classification and organization changes that have taken place at the Board since the Conflict of Interest Code was last amended (Exhibit 12.12).

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendment.

Ms. Yee congratulated Ms. Breeze on her retirement and wished her the best.

Proposed Amendments to Sales and Use Tax Regulation 1620, *Interstate and Foreign Commerce*

Tim Treichel, Tax Counsel, Settlement Division, Legal Department, made introductory remarks regarding the section 100 amendments proposed to reinstate provisions for a 12-month test to demonstrate that a vehicle, vessel, or aircraft was purchased for use out of state (Exhibit 12.13).

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendments.

Ms. Steel requested that staff plan an outreach to educate taxpayers on the changed regulation.

Proposed Amendments to Sales and Use Tax Regulation 1502, *Computers, Programs, and Data Processing*

Robert Lambert, Assistant Chief Counsel, Legal Affairs Division, Legal Department, made introductory remarks regarding the authorization to publish a proposed amendment to Regulation 1502, *Computers, Programs, and Data Processing* (Exhibit 12.14).

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendments.

Note: These minutes are not final until Board approved.

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OTHER CHIEF COUNSEL MATTERS

Proposed Amendments to the Rules of Order

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the approval of the proposed amendments to the Parliamentary Rules of Order (Exhibit 12.15).

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendments.

Retired Annuitant - Hiring Delegation

Kristine Cazadd, Chief Counsel, Legal Department, made introductory remarks regarding the clarification of Resolution Conferring Powers on Executive Director – Hiring Authority over Retired Annuitants (Exhibit 12.16).

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the hiring delegation.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

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

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 12.17).

Gary L. Evans, Business Taxes Specialist I, Internal Security and Audit Division,
Headquarters

Wolfgang Liebelt, Business Taxes Administrator III, San Francisco District
Office

Hue T. Nguyen, Office Technician, Special Procedures Section, Headquarters

Robert Wils, Supervising Tax Auditor II, Audit Determination and Refund
Section, Headquarters

Action: Approve the Board Meeting Minutes of October 28-29, 2008.

Action: Approve the proposed revisions to Compliance Policy and Procedures Manual Chapter 4, Security (Exhibit 12.18).

Note: These minutes are not final until Board approved.

Wednesday, December 17, 2008

Action: Approve the adjustment of sales tax prepayment rate on motor vehicle fuel, diesel fuel and jet fuel (Exhibit 12.19).

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Legislative Committee report and the actions therein (Exhibit 12.20).

Committee votes were as follows:

Property Taxes, 2009 Legislative Proposals, Consent Items

A recommendation to approve the consent agenda unanimously passed with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

These items are as follow:

- Amend Revenue and Taxation Code section 276
- Amend Revenue and Taxation Code section 441
- Amend Government Code section 15641
- Amend Revenue and Taxation Code sections 480.3 and 480.4
- Amend Revenue and Taxation Code section 69 and 69.3
- Amend Revenue and Taxation Code section 214.6

Business Taxes, 2009 Legislative Proposal, Consent Item

A recommendation to approve the consent agenda unanimously passed with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes. The item is as follow:

Add sections 6591.6, 7655.5, 8876.5, 12631.5, 30281.5, 32252.5, 40101.5, 41095.5, 45153.5, 45154.5, 50112.6, 50112.6, 55042.5, and 60207.5 to the Revenue and Taxation Code.

Business Taxes, Sales and Use Taxes, 2009 Legislative Proposal, Consent Item

A recommendation to approve the consent agenda unanimously passed with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes. The item is as follow:

Add section 6363.4 to the Revenue and Taxation Code

Administration, 2009 Legislative Proposal, Consent Item

A recommendation to approve the consent agenda unanimously passed with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes. The item is as follow:

Amend Government Code section 15609

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OTHER ADMINISTRATIVE MATTERS**Deputy Directors Reports**

Randie Henry, Deputy Director, Sales and Use Tax Department, provided an update on the activities and accomplishments for the Enhancing Collections Task Force including responses to SEIU's May 2008 report titled *SEIU Local 1000 Findings and Recommendations on Methods to Enhance Tax Collections* and an updated Task Force Action Plan (Exhibit 12.21).

Speakers: Leora Hill, SEIU Local 1000, Enhancement Collections Task Force
Tamekia Robinson, SEIU Local 1000, Enhancement Collections Task Force

Ms. Steel directed staff to inquire about the measures in place to make district offices more taxpayer friendly for walk-ins. Ms. Steel would like staff to look into a system that would help walk-ins know it's their turn; either a number system or a system that displays the taxpayers name.

Mr. Leonard stated that the cities issuing business licenses should work with our field team, sharing information and allowing them access to our lists. The cities could help in efforts to collect taxes, which would be beneficial to the city and the Board of Equalization. Mr. Leonard requested a list of cities who are and aren't reluctant to help. Additionally, staff should then see where we can work together to ensure that every retailer is a permit holder.

Randie Henry, Deputy Director, Sales and Use Tax Department, provided an update regarding the issue paper 08-014, Proposal to Raise the Threshold for Board Member Approval of Refunds in Excess of \$50,000 (Exhibit 12.22).

Action: Mr. Leonard moved that the threshold be raised to \$100,000 and revise the issue paper to include all of the Members concerns as well as the background of the issue paper. The motion failed for lack of a second.

The Board asked that the matter be brought back at the March meeting after addressing additional information on all related pieces and what the various options would be.

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**Customer Services and Administrative Efficiency Committee**

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report (Exhibit 12.23).

The Board recessed at 12:30 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Note: These minutes are not final until Board approved.

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ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:30 p.m. and reconvened immediately in closed session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e), 11126(e)(2)(B)(i)) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 2:20 p.m. and reconvened immediately in open session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

OTHER ADMINISTRATIVE MATTERS**Deputy Directors Reports**

Elizabeth Houser, Deputy Director, Administration Department, made introductory remarks regarding the request for approval of contracts over \$1 million (Exhibit 12.24).

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the contracts.

Mr. Leonard directed staff that an additional notice be sent to vendors who have contracts over \$1 million notifying them of possible fiscal cuts that the Board may be directed to make.

Elizabeth Houser, Deputy Director, Administration Department, provided a facilities update regarding the New York office relocation, the status of the on-going projects at headquarters and the building repair costs provided by the Department of General Services (Exhibit 12.25).

Elizabeth Houser, Deputy Director, Administration Department, provided a fiscal update regarding the budget update for 2008/09, 2009/10, the 2010/11 budget preparation tentative schedule and the governor's special session for the 2008/09 budget (Exhibit 12.26).

The Board directed staff to present its findings on potential furloughs and lay offs to the Legislature and the Department of Finance.

Wednesday, December 17, 2008

LEGAL APPEALS MATTERS, ADJUDICATORY

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that its previous motions to grant the petitions for hearing for *Cities of Torrance and Los Angeles, 469251; Cities of South San Francisco and Los Angeles, 469250; County of Los Angeles, 469243; Cities of Pomona and Los Gatos, 469261; City of Compton, 469256; and, City of Union City, 469296*, be expunged.

Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board granted the petitions for hearing for *Cities of South San Francisco and Los Angeles, 469250; County of Los Angeles, 469243; Cities of Pomona and Los Gatos, 469261; and, City of Union City, 469296*.

Upon motion of Mr. Leonard, seconded by Ms. Steel and duly carried, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Yee voting no, the Board granted the petitions for hearing for *Cities of Torrance and Los Angeles, 469251, and City of Compton, 469256*.

SALES AND USE TAX APPEALS HEARING

R. Nuri Otus, 308720 (BH)

10-1-03 to 12-31-03, \$143,252.36 Tax, \$9,906.30 Late Payment Penalty

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

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

Issues: Whether taxpayer is personally liable under as a responsible person under Revenue and Taxation Code section 6829 for the unpaid liability of Realm Connect Corporation, bda Auctionner.com.

Whether taxpayer has established reasonable cause to relieve the late-payment penalty assessed against the corporation for which petitioner was held personally liable.

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

Mr. Leonard directed staff to notify the taxpayer if his intentions are to petition for a rehearing, then petitioner needs to present his case in front of the Board personally when the Board considers the petition for rehearing.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD DECEMBER 17, 2008

R.C.P. Block & Brick, Inc., 283573, 283514 (FH)

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

Note: These minutes are not final until Board approved.

Wednesday, December 17, 2008

The Board adjourned at 2:55 p.m.

The foregoing minutes are adopted by the Board on March 17, 2009.

PENDING APPROVAL