

Tuesday, October 28, 2008

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 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**

Frances L. Cummings and Thomas Cummings, 423959

For Appellant: Keith A. Shibou, CPA

For Franchise Tax Board: Judy Hirano, Tax Counsel

Jozel Brunett, Tax Counsel

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

Action: The taxpayers' representative withdrew the appeal, therefore the matter was dismissed.

Delbert Saubel and Elaine D. Saubel, 400896, 434825

2003, \$8,081.00 Assessment

2004, \$8,266.00 Assessment

For Appellant: Keith A. Shibou, CPA

For Franchise Tax Board: Natasha Sherwood Page, Tax Counsel

Teresa Wignall, Tax Counsel

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

Issues: Whether appellants, as California residents, are subject to tax on the per capita Indian gaming distributions received from the Agua Caliente Band of Cahuilla Indians.

Whether the Indian Gaming Regulatory Act and California State Gaming compact together preclude California from taxing individual tribal members.

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.

Thomas C. DuBose, Jr. and Margaret I. DuBose, 423967

1997, \$4,598.00 Tax, \$1,839.20 Accuracy-Related Penalty, \$2,002.57 Amnesty Interest Penalty

For Appellant: Thomas C. DuBose, Jr., Taxpayer

Margaret I. DuBose, Taxpayer

For Franchise Tax Board: Diane Ewing, Tax Counsel

Craig Scott, Tax Counsel

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

Issues: Whether the Franchise Tax Board issued the notices of proposed assessment within the applicable statute of limitations period.

Whether appellants have met their burden of proving that respondent's deficiency assessment based on a federal determination was made in error.

Whether the Board has jurisdiction to abate any portion of the amnesty interest penalty.

Whether the accuracy-related penalty was properly imposed and whether appellants have shown reasonable cause for abatement of the penalty in the event that respondent does not abate the penalty.

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Diane Ewing, Tax Counsel, Franchise Tax Board, conceded abatement of the accuracy-related penalty.

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. Steel urged the Franchise Tax Board to streamline the process of getting information to taxpayers more timely when the IRS notifies the Franchise Tax Board that returns are under federal audit. Mr. Leonard recommended that the Franchise Tax Board remind the taxpayers that they have an obligation to tell the Franchise Tax Board the results of the federal audit.

Mr. Leonard requested the Franchise Tax Board provide the Board with information that would show its efforts to collect taxes from appellants' spouses.

Anthony J. Ciabattoni, 400348  
2005, \$7,387.54 Claim for Refund

For Appellant:

For Franchise Tax Board:

Anthony J. Ciabattoni, Taxpayer

Craig Scott, Tax Counsel

Jozel Brunett, Tax Counsel

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

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

Appellant's Exhibit: Page from Credit Report (Exhibit 10.13)

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.

Exhibits to these minutes are incorporated by reference.

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

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

Maria E. Alvarez, 383697

2004, \$632.00 Tax, \$158.00 Delinquent Filing Penalty

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

Dominic Denha, 400250

2004, \$599.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Doug Green, 381614

1988, \$13,009.06 Tax

Action: Sustain the action of the Franchise Tax Board.

David Grossman, 377155

2004, \$3,454.00 Tax, \$863.50 Failure to File Penalty, \$863.50 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee

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

Kitty M. Hunsaker, 373248

1994, \$812.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Carole Koelfgen, 395441

2005, \$1,157.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Nancy W. Reckas, 362358

2002, \$297.00 Tax

Action: Sustain the action of the Franchise Tax Board.

May C. Strickland, 352481

2004, \$921.00 Assessment

Action: Reverse the action of the Franchise Tax Board.

Chinin Tana, 377390

1999, \$586.56 Assessment

Action: Sustain the action of the Franchise Tax Board.

Affiliated Funding Corporation, 317945

2003, \$14,446.88 Claim for Refund

Action: Deny the petition for rehearing.

Robert Fouts and Maureen Fouts, 383284

2000, \$245,549.00 Assessment, \$61,387.25 Failure to Furnish Information Penalty

Action: Deny the petition for rehearing.

Jerome Thomas Heckenkamp, 381120

2004, \$920.00 Tax, \$230.00 Late Filing Penalty, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Eugene W. Lee, 349301

2003, \$7,069.00 Tax, \$3,624.50 Penalties and Fees, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

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Marc Pretscher, 393425

2004, \$12,202 Tax, \$6,101.00 Penalties, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Byron Reynolds, 382836

2004, \$4,158.00 Tax, \$2,130.75 Penalties, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Marc Pretscher, 414671

2001, \$15,009.00 Tax, \$3,752.25 Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$1,500.00 frivolous appeal penalty.

Paul A. Ricci, 415357

1998, \$6,035.79 Claim for Refund

2000, \$38,982.49 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:

Mary Arbuckle, 424063

2007, \$350.00

Action: Sustain the action of the Franchise Tax Board.

Diana Eisenbeiss, 387192

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Pamela Ann Vargo, 397105

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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

The Board deferred consideration of the following matters: *Richard W. Boothman, 348231 (OH)*; and, *Joyce M. Wooley, 348230 (OH)*.

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With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single 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 made the following orders:

Richard W. Boothman, 348231 (OH)

7-1-03 to 12-31-03, \$67,919.50

Action: The Board took no action.

Joyce M. Wooley, 348230 (OH)

7-1-03 to 12-31-03, \$67,919.50

Action: The Board took no action.

Chordiant Software, Inc., 387754 (GH)

1-1-04 to 3-31-06, \$140,650.00

Action: Approve the redetermination as recommended by staff.

La Salsa Holding CO-A Delaware Corp., 431875 (EA)

10-1-02 to 12-31-03, \$228,078.00

Action: Approve the redetermination as recommended by staff.

CKE Restaurants, Inc., 431867 (EA)

1-1-01 to 12-31-03, \$150,690.09

Action: Approve the redetermination as recommended by staff.

Montblanc North America, LLC, 442300 (OH)

7-1-02 to 9-30-05, \$88,571.18

Action: Approve the redetermination as recommended by staff.

Mindspeed Technologies, Inc., 435919 (EA)

10-1-04 to 9-30-07, \$799,457.53

Action: Approve the redetermination as recommended by staff.

Oak Power Corp. Ltd. Ptn., 341192 (AR)

10-1-02 to 12-31-07, \$1,021,686.00

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

CD Poso I, Inc. Ltd. Ptn., 341180 (AR)

10-1-02 to 12-31-07, \$422,292.00

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

CD Jasmin I, Inc. Ltd. Ptn., 341181 (AR)

10-1-02 to 12-31-07, \$366,723.00

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

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Ace Cogeneration Company, LP, 341179 (EH)

10-1-02 to 12-31-05, \$1,810,369.00

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

Ace Cogeneration Company, LP, 437743 (EH)

1-1-06 to 12-31-07, \$1,305,350.00

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

Garden City, Inc., 345308 (GH)

7-1-01 to 12-31-04, \$98,746.67

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

MCM &amp; Associates, Inc., 404733 (GH)

1-1-06 to 9-30-06, \$61,711.90

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

Information Resources, Inc., 423620 (OH)

7-1-04 to 6-30-07, \$90,415.73

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

Searles Valley Minerals Operations, Inc., 341746 (OH)

10-1-02 to 3-31-05, \$2,016,049.15

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

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

The Board deferred consideration of the following matters: *RJ Financial, Inc.*, 338827 (AA); *Oracle Corporation*, 460489 (BH); and, *Oracle Corporation*, 219810 (BH).

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

Miller Brewing Company, 460669 (EA)

10-1-07 to 12-31-07, \$63,133.15

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

The Artesia Companies, Inc., 282966 (KH)

4-1-01 to 9-30-03, \$114,332.11

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

Cipriano Espino Salazar, 460872 (AC)

4-1-02 to 8-15-04, \$709,773.03

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

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RJ Financial, Inc., 338827 (AA)

1-1-98 to 12-31-01, \$673,259.97

Action: The Board took no action.

Oracle Corporation, 460489 (BH)

7-1-95 to 12-31-95, \$76,101.14

Action: The Board took no action.

Bowne of Los Angeles, Inc., 133520 (AS)

4-1-98 to 12-31-98, \$60,249.16

Action: Approve the refund as recommended by staff.

CSC Outsourcing, Inc., 377107 (FH)

7-1-99 to 3-27-01, \$124,668.61

Action: Approve the refund as recommended by staff.

Coastal International, Inc., 448981 (JH)

4-1-08 to 6-30-08, \$210,868.72

Action: Approve the refund as recommended by staff.

Professional Hospital Supply, Inc., 436891 (EH)

1-1-07 to 12-31-07, \$79,332.30

Action: Approve the refund as recommended by staff.

American Material Management Alliance, Inc., 209398, (EH)

1-1-00 to 6-30-06, \$1,933,642.27

Action: Approve the refund as recommended by staff.

KLA-Tencor Corporation, 288546 (GH)

7-1-01 to 12-31-04, \$1,324,727.03

Action: Approve the refund as recommended by staff.

Oracle Corporation, 219810 (BH)

1-1-93 to 5-31-95, \$60,714.84

Action: The Board took no action.

Information Resources, Inc., 423620 (OH)

7-1-04 to 6-30-07, \$171,734.34

Action: Approve the refund as recommended by staff.

Insurance Company of the West, 379407 (FH)

7-1-03 to 9-30-06, \$269,910.47

Action: Approve the refund as recommended by staff.

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Wachovia Dealer Services, Inc., 447257 (EA)

1-1-08 to 3-31-08, \$3,621,534.48

Action: Approve the refund as recommended by staff.

Calpine Corporation, 444324 (GH)

\$1,204,444.29

Action: Approve the refund as recommended by staff.

Koch Membrane Systems, Inc., 430061 (OH)

10-1-04 to 3-31-07, \$70,020.11

Action: Approve the refund as recommended by staff.

Valero Marketing and Supply Company, 459653 (OH)

7-1-07 to 9-30-07, \$61,660.94

Action: Approve the refund as recommended by staff.

Sonic-Calabasas A, Inc., 449598 (AC)

1-1-03 to 3-31-06, \$117,276.70

Action: Approve the refund as recommended by staff.

Mullen Bros., Inc., 446517 (AC)

7-1-05 to 6-30-07, \$138,974.50

Action: Approve the refund as recommended by staff.

Foreman Financial, Inc., 450966 (AC)

7-1-04 to 3-31-07, \$140,146.77

Action: Approve the refund as recommended by staff.

Consumer Portfolio Services, Inc., 387494 (EA)

4-1-05 to 6-30-07, \$625,664.01

Action: Approve the refund as recommended by staff.

United Auto Credit Corporation, 446519 (EA)

1-1-08 to 3-31-08, \$116,379.20

Action: Approve the refund as recommended by staff.

California Coast Credit Union, 417683 (FH)

1-1-07 to 9-30-07, \$73,262.88

Action: Approve the refund as recommended by staff.

A-L Financial Corp, 415650 (EA)

4-1-07 to 12-31-07, \$641,286.83

Action: Approve the refund as recommended by staff.

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A-L Financial Corp, 446522 (EA)

1-1-08 to 3-31-08, \$228,808.17

Action: Approve the refund as recommended by staff.

Kern Schools Federal Credit Union, 445928 (AR)

4-1-05 to 6-30-05, \$57,850.38

Action: Approve the refund as recommended by staff.

Acco Brands USA, LLC, 464344 (OH)

6-11-08 to 6-11-08, \$96,833.89

Action: Approve the refund as recommended by staff.

Kyoho Manufacturing California, 446216 (KH)

10-1-07 to 12-31-07, \$72,158.35

Action: Approve the refund as recommended by staff.

Household Retail Service, Inc., 449799 (OH)

1-1-03 to 12-31-04, \$4,366,667.48

Action: Approve the refund as recommended by staff.

Louis Dreyfus Corporation, 451412 (OH)

10-1-07 to 12-31-07, \$276,548.25

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT**

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Chevron U.S.A., Inc., 450763*; *Amco Insurance Company, 460150*; *Allied Property & Casualty Insurance Company, 460157*; *Nationwide Mutual Insurance Company, 460160*; and, *Victoria Fire & Casualty Company, 460180*; the Board made the following orders:

Chevron U.S.A., Inc., 450762 (MT)

3-1-08 to 3-31-08, \$846,510.20

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

Chevron U.S.A., Inc., 450763 (MT)

3-1-08 to 3-31-08, \$375,509.56

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

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Amco Insurance Company, 460150 (ET)

4-1-08 to 6-30-08, \$363,264.70

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

Allied Property & Casualty Insurance Company, 460157 (ET)

4-1-08 to 6-30-08, \$104,120.70

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

Nationwide Mutual Insurance Company, 460160 (ET)

4-1-08 to 6-30-08, \$192,988.50

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

Victoria Fire & Casualty Company, 460180 (ET)

4-1-08 to 6-30-08, \$76,964.70

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

#### **SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

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

PMI Mortgage Insurance Company, 354105 (ET)

1-1-04 to 12-31-04, \$55,941.93

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

Allstate Life Insurance Company, 427395 (ET)

1-1-04 to 12-31-04, \$195,258.56

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

Genworth Life and Annuity Insurance Company, 432843 (ET)

1-1-03 to 12-31-05, \$872,587.06

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

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Northwestern Mutual Life Insurance Company, 457465 (ET)

1-1-06 to 12-31-06, \$112,242.90

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

Nationwide Mutual Insurance Company, 457466 (ET)

1-1-06 to 12-31-06, \$499,759.90

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

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

Daniel V, Inc., 342609

1997, \$40,759.23 Tax, \$8,151.85 Accuracy-Related Penalty, \$10,189.80 Late Filing Penalty

1998, \$840,010.32 Tax, \$168,002.06 Accuracy-Related Penalty

Considered by the Board: May 28, 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 with respect to the penalties only.

### **ADMINISTRATIVE SESSION**

#### **ADMINISTRATIVE MATTERS, CONSENT**

Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, made introductory remarks regarding the sales tax prepayment rate on motor vehicle fuel, diesel fuel and jet fuel.

With respect to the Administrative 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 order:

Action: Approve the sales tax prepayment rate on motor vehicle fuel, diesel fuel and jet fuel as recommended by staff and additionally the Board directed staff to recalculate the rate on December 15, 2008 based on data collected during the 13 weeks prior to December 15, 2008 and provide the adjusted rate to the Board for approval at its December 16, 2008 meeting. (Exhibit 10.14.)

Dr. Chu directed staff to research fraud and nonpayment of tax due to rising fuel prices.

Dr. Chu announced that there were no Closed Session items to discuss, therefore Closed Session was cancelled.

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

Tuesday, October 28, 2008

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD OCTOBER 28, 2008**

Delbert Saubel and Elaine D. Saubel, 400896, 434825

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 and denied the appeal because the appellant did not reside in Indian Country.

Thomas C. DuBose, Jr. and Margaret I. DuBose, 423967

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board, which included a concession by the Franchise Tax Board to abate the accuracy-related penalty.

Anthony J. Ciabattoni, 400348

Final Action: Ms. Yee moved to sustain the action of the Franchise Tax Board. Mr. Leonard made a substitute motion to abate the late payment penalty. 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 sustained the action of the Franchise Tax Board.

The Board recessed at 11:15 a.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Thomas E. Philips and Christa Philips, 378023

1997, \$1,360.66 Claim for Refund

1998, \$2,000.60 Claim for Refund

1999, \$1,294.00 Claim for Refund

2000, \$1,595.00 Claim for Refund

For Appellant:

Thomas E. Philips, Taxpayer

Habib Hanna, Representative

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Craig Scott, Tax Counsel

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

Issues: Whether appellants files timely claims for refund for 1997, 1998, 1999 and 2000.

Whether the statute of limitations may be waived.

Whether the doctrine of estoppel applies to allow appellants' claim for refund for 1997, 1998, 1999 and 2000.

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.

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

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The Board recessed at 1:53 p.m. and reconvened at 1:58 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Oscar E. Martinez, 402210

1999, \$42,241.00 Tax, \$8,010.35 Post-Amnesty Penalty

2000, \$11,405.00 Tax, \$1,530.42 Post-Amnesty Penalty

2001, \$2,174.40 Tax, \$179.30 Post-Amnesty Penalty

For Appellant:

Oscar E. Martinez, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issue: Whether appellant has met his burden to show error in the proposed assessments, which are based on federal determinations.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.15)

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 sustained the action of the Franchise Tax Board and suggested that the taxpayer speak to the Franchise Tax Board regarding their Offer in Compromise Program.

#### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD OCTOBER 28, 2008**

Thomas E. Philips and Christa Philips, 378023

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.

Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel abstaining, the Board directed staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.

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

Alex C. Bates, 406133

2003, \$2,094.00 Tax, \$1,047.00 Penalties

2004, \$124.00 Tax, \$131.00 Penalties

For Appellant:

Appearance Waived

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

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

Issues: Whether appellant has demonstrated error in respondent Franchise Tax Board's proposed assessments.

Whether there is reasonable cause for appellant's failure to file timely returns and failure to file upon the Franchise Tax Board's notice and demand letters.

Whether the Board should impose a frivolous appeal penalty.

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Action: Ms. Yee moved to sustain the action of the Franchise Tax Board and impose a \$500.00 frivolous appeal penalty. The motion was seconded by Dr. Chu. Ms. Yee rescinded her motion.

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 and imposed a \$1,000.00 frivolous appeal penalty.

The Board adjourned at 2:10 p.m.

*The foregoing minutes are adopted by the Board on December 17, 2008.*

Note: The following matters were removed from the calendar prior to the meeting: *Viking Office Products, Inc.*, 313229, 339787; *Douglas A. Shiepe*, 421046; and, *John Laszloffy*, 416532.

Wednesday, October 29, 2008

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 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

Anwar Ali Meherally, 333841 (FH)

4-1-00 to 4-30-02, \$19,728.00 Tax, \$2,206.76 Late-Payment Penalty, \$2,942.07 Amnesty Interest Penalty

For Petitioner:

Anwar Meherally, Taxpayer  
Nazem Tiliani, Enrolled Agent

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether petitioner's personal liability for the unpaid liabilities of Car Tune, Inc. was discharged in the consolidated bankruptcy.

Whether petitioner is personally liable for the unpaid tax liabilities incurred by Car Tune while the corporation was suspended.

Whether there is reasonable cause to relieve petitioner of the penalties originally assessed against Car Tune and included in the determination against petitioner.

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.

Anywhere Communications, LLC, 397944 (EA)

7-1-03 to 11-30-05, \$10,047.60 Tax, \$0.00 Negligence Penalty

For Petitioner:

Sandeep Thakore, Taxpayer

For Sales and Use Tax Department:

Christine Bisauta, Tax Counsel

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

Issue: Whether adjustments are warranted to the audited understatement of reported taxable sale of cellular telephones.

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.

Ms. Yee directed staff to re-examine the district offices' procedures for informing taxpayers who are applying for new sellers permits of publications and/or regulations that they will need to comply with, and additionally provide even further assistance with walking the taxpayers through the publications and/or regulations.

Barbara Jean Lovitt, 378798 (AR)

10-1-05 to 10-6-05, \$281.00 Tax, \$28.10 Failure-to-File Penalty

For Petitioner:

Barbara Jean Lovitt, Taxpayer

For Sales and Use Tax Department:

Todd MacMurray, Hearing Representative

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

Issues: Whether petitioner is liable for the determined tax.

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

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Whether petitioner has established reasonable cause for relief of the failure-to-file penalty.

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 that the failure to file penalty be abated, otherwise redetermined as recommended by the Appeals Division.

Mr. Leonard directed staff to revisit the procedures for closing Sales and Use Tax accounts by third parties.

Tal Rubin, 360275 (AC)

1-1-03 to 3-31-03, \$8,322.00 Tax, \$882.20 Late Payment Penalty

For Petitioner:

Tal Rubin, Taxpayer

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether petitioner is personally liable as a responsible person for the tax liability of Sunrise Collections, Inc.

Whether Sunrise Collections, Inc. should be relieved of the penalty for late payment of a return.

Whether the Notice of Determination was timely issued.

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.

Lloyd R. Jensen, Sr. and Wilma L. Jensen, 349155 (UT)

October 29, 2002, \$19,409.48 Tax, \$0.00 Penalty

For Petitioner:

Louis Gandolfo, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether petitioners' purchase and use of the motor home is subject to California use tax.

Whether the transaction was exempt as a sale in interstate commerce.

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.

The Board recessed at 12:05 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

San Clemente Auto Rental, 405669, 451146 (EA)

7-1-03 to 6-30-06, \$773,194.00 Disallowed Bad Debt Deductions

7-1-03 to 6-30-06, \$61,480.93 Claim for Refund

For Petitioner/Claimant:

John Lauer, Representative

Bill Lauer, Representative

Joe Lauer, Representative

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For Sales and Use Tax Department: Christine Bisauta, Tax Counsel  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issues: Whether adjustments are warranted to the disallowed amount of claimed bad debt deductions.  
Whether the claim for refund filed July 7, 2008 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.

Orco Block Company, 334549, 341724 (EA)  
4-1-01 to 3-31-04, \$49,206.99 Tax, \$94,985.00 Claim for Refund  
For Petitioner/Claimant: Heather Theilacker, Representative  
Robert Johnson, Representative  
Richard J. Muth, Witness

For Sales and Use Tax Department: Lisa Andrews, Hearing Representative  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issues: Whether adjustments are warranted to the audited overstatement of claimed nontaxable sales for resale.  
Whether adjustments are warranted to the audited amount of unreported gross receipts for amounts customers paid which were not refunded even if the customer returned the containers.  
Whether petitioner is entitled to relief pursuant to Revenue and Taxation Code section 6596 from the tax applicable to the charges addressed under Issue 2.  
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.

Mr. Leonard directed staff to schedule a discussion of Revenue and Taxation Code section 6596.

4100 Newport, Inc., 336851 (UT)  
July 22, 2004, \$15,773.00 Tax, \$0.00 Failure-to-File Penalty  
For Petitioner: Kristen Brown, Attorney  
For Sales and Use Tax Department: Carla Caruso, Tax Counsel  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issue: Whether the purchase and use of the vessel by petitioner is subject to California use tax.  
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.

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One-Stop Auto Supply, 336169 (EH)

4-1-01 to 4-30-04, \$7,464.71 Tax

For Petitioner:

Floyd Vail, Taxpayer

Russell L. Davis, Attorney

For Sales and Use Tax Department:

Todd MacMurray, Hearing Representative

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

Issue: Whether adjustments are warranted to the audited amount of disallowed claimed nontaxable sales for resale.

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.

Artashes Ambartsumyan, 335123 (EH)

5-24-03 to 9-30-04, \$14,714.84 Tax

Artashes Ambartsumyan, 334788 (EH)

5-24-03 to 9-30-04, \$4,282.43 Tax

For Petitioner:

Artashes Ambartsumyan, Taxpayer

Sarwat E. Mikhail, CPA

For Sales and Use Tax Department:

Lisa Andrews, Hearing Representative

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

Issues: Whether petitioner is liable for the prepaid sales tax collected on sales of motor vehicle fuel and diesel.

Whether adjustments are warranted to the audited numbers of gallons of motor vehicle fuel and diesel.

Whether the audited understatement should be adjusted for nontaxable sales of food and for freight charges petitioner paid to his vendors.

Whether adjustments are warranted to the disallowed amount of claimed sales for resale.

Whether adjustments are warranted to the disallowed amount of cash discounts because the Department erroneously concluded that petitioner claimed deductions for cash discounts on sales for resale.

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.

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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
OCTOBER 29, 2008**

Anwar Ali Meherally, 333841 (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 amnesty interest penalty be waived, otherwise redetermined as recommended by the Appeals Division.

Anywhere Communications, LLC, 397944 (EA)

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.

Tal Rubin, 360275 (AC)

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.

Lloyd R. Jensen, Sr. and Wilma L. Jensen, 349155 (UT)

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.

San Clemente Auto Rental, 405669, 451146 (EA)

Final 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 ordered that the petition be redetermined as recommended by the Appeals Division.

Orco Block Company, 334549, 341724 (EA)

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

4100 Newport, Inc., 336851 (UT)

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.

One-Stop Auto Supply, 336169 (EH)

Final 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 ordered that petitioner's sale to C&M Building Materials be accepted as having been made pursuant to a resale certificate taken in good faith, that the remaining two disputed sales be assessed on an actual basis, and that the petition otherwise be granted.

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

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### SPECIAL TAXES APPEALS HEARING

Adnan Hasan Bawanah, 314857 (ET)

3-22-04 to 12-31-04, \$272,484.00 Tax, \$68,121.00 Fraud Penalty, \$27,148.40 Finality Penalty  
For Petitioner: Appearance Waived

For Property and Special Taxes Department: Tim Treichelt, Tax Counsel

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

Issues: Whether applicant purchased and distributed unstamped cigarettes and therefore owes excise tax for the cigarettes distributed.

Whether there is clear and convincing evidence that the understatement of tax is the result of fraud or intent to evade the tax.

Whether applicant has established reasonable cause to relieve the 10-percent finality penalty.

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.

### LEGAL APPEALS MATTERS, CONSENT

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

Audrey Ovington Enterprises, Inc., 392190, 393720 (GH)

4-1-03 to 3-31-06, \$7,749.35 Tax

Action: Redetermine as recommended by the Appeals Division.

Tobacco Trading, Inc., 347399 (ET)

8-17-98 to 6-14-00, \$9,686,942.00 Tax, \$2,421,735.50 Fraud Penalty

Action: Redetermine as recommended by the Appeals Division.

Charles A. Seiniger, 314425 (AS)

7-1-98 to 5-31-04, \$509,087.69 Tax, \$222.61 Failure-to-File Penalty, \$50,908.77 Finality Penalty, \$36.64 Failure to Make a Timely Prepayment Penalty

Action: Redetermine as recommended by the Appeals Division.

Philip Press, Inc., 379140 (AS)

1-1-03 to 12-31-05, \$138,686.53 Tax, \$15,204.95 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Ghani Ebrahim Kothawala, 342923 (FH)

4-1-01 to 3-31-04, \$4,402.81 Tax, \$34.05 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

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Croce's, Inc., 397935 (FH)

7-1-03 to 6-30-06, \$3,266.73 Tax

Action: Redetermine as recommended by the Appeals Division.

Seasilver USA, Inc., 348807 (FH)

1-1-00 to 3-31-04, \$566,771.44 Tax, \$50,591.56 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Harbor Pipe &amp; Steel, Inc., 354605 (EH)

7-1-01 to 6-30-05, \$30,803.72 Tax, \$3,808.69 Amnesty Interest Penalty

Mal Wal of Southern California, Inc., 354604 (EH)

7-15-02 to 6-30-05, \$82,182.60 Tax, \$1,156.30 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Hesperia Truss, Inc., 400356 (EH)

4-1-02 to 6-30-05, \$0.00 Tax, \$14,779.28 Negligence Penalty, \$905.84 Double Negligence

Penalty, \$766.08 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Corona Auction House, Inc., 377130 (EH)

1-1-02 to 12-31-04, \$26,446.53 Tax, \$0.00 Negligence Penalties, \$1,205.25 Amnesty Interest

Penalty

Action: Redetermine as recommended by the Appeals Division.

Yael Rubin, 360274 (AC)

1-1-03 to 3-31-03, \$0.00 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Sunrise Collections, Inc., 282023 (AC)

7-1-00 to 6-30-03, \$17,914.70 Tax, \$2,344.09 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

The Board adjourned at 4:30 p.m.

*The foregoing minutes are adopted by the Board on December 17, 2008.*