

Tuesday, October 19, 2010

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

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

Donald R. Diamond and Joan B. Diamond, 441030

1999, \$199,804.00 Assessment

Frank A. Aries and Mary Lou Aries, 464475

1999, \$154,047.00 Claim for Refund

For Appellant:

Donald R. Diamond, Taxpayer  
 Steven W. Phillips, Attorney  
 Thomas Henning, Representative  
 Glenn Bystrom, Representative  
 Valerie Leclerc, Tax Counsel  
 David Gemmingen, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether the acquisition of an interest in a qualified replacement property by appellants' partnership and immediate transfer of that interest to a limited liability company qualifies as a "like-kind" exchange pursuant to Internal Revenue Code section 1033.

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

The Board recessed at 10:38 a.m. and reconvened at 10:53 a.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Ms. Mandel introduced Vincent Cicconi, an intern from the Controller's Los Angeles office.

Charles E. Grays II, 464314

1995, \$6,519.25 Claim for Refund

1996, \$917.97 Claim for Refund

1997, \$2,748.15 Claim for Refund

1998, \$1,124.82 Claim for Refund

1999, \$3,132.46 Claim for Refund

2000, \$220.00 Claim for Refund

2001, \$2,808.46 Claim for Refund

2002, \$3,113.36 Claim for Refund

For Appellant:

Charles E. Grays II, Taxpayer  
 Suzanne Small, Tax Counsel  
 Craig Scott, Tax Counsel

For Franchise Tax Board:

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

Issue: Did appellant timely file refund claims for the tax years beginning 1995 through and including 2002.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 10.1](#))

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

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

Exhibits to these minutes are incorporated by reference.

The matters of *Edmund (Chad) Siva (Deceased)*, 384247, 390860, 401330, 401331, 481024; *Harold T Riggs, Jr.*, 449373, 474423, 504746; and, *Wayne L. Hause and Kelly R. Hause*, 467603; were consolidated at the representative's request.

Edmund (Chad) Siva (Deceased), 384247, 390860, 401330, 401331, 481024

2001, \$4,536.00 Claim for Refund

2002, \$11,109.00 Claim for Refund

2003, \$10,951.00 Assessment, \$764.00 Late Filing Penalty

2004, \$11,260.00 Assessment \$2,815.00 Late Filing Penalty

2005, \$19,487.00 Assessment \$4,871.75 Late Filing Penalty

Harold T Riggs, Jr., 449373, 474423, 504746

2003, \$10,951.00 Assessment

2004, \$11,260.00 Assessment

2005, \$27,528.00 Assessment

Wayne L. Hause and Kelly R. Hause, 467603

2004, \$11,059.00 Assessment \$2,764.75 Failure to Furnish Information Penalty

For Appellant: Keith A. Shibou, Representative

For Franchise Tax Board: Natasha Page, Tax Counsel

Bill Hilson, Tax Counsel

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

Issues: Whether appellant resided in Indian country during the years at issue so that their reservation-sourced income is not subject to California tax.

Whether appellant's reservation-sourced income is exempt from California tax even if they did not live on reservation land.

*Issue in the matters of 401330, 401331 and 481024 only:*

Whether appellant has shown reasonable cause for the abatement of the late filing penalties.

Appellants' Exhibits: Edmund (Chad) Siva (Deceased): Letter with Tribal Map ([Exhibit 10.2](#))

Harold T Riggs, Jr.: Letter with Tribal Map ([Exhibit 10.3](#))

Wayne L. and Kelly R. Hause: Letter with Tribal Map ([Exhibit 10.4](#))

Respondent's Exhibits: Edmund (Chad) Siva (Deceased): Land Status Map ([Exhibit 10.5](#))

Harold T Riggs, Jr.: Land Status Map ([Exhibit 10.6](#))

Wayne L. and Kelly R. Hause: Land Status Map ([Exhibit 10.7](#))

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

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John J. Skillings, 515852  
 2005, \$2,910.00 Assessment  
 For Appellant:  
 For Franchise Tax Board:

Waived Appearance  
 Karen Smith, Tax Counsel  
 Suzanne Small, Tax Counsel

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

Issue: Whether respondent properly determined appellant's tax liability for tax year 2005.

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

Steven T. Waltner and Sarah V. Waltner, 468742

2004, \$2,122.18 Claim for Refund, \$500.00 Frivolous Return Penalty

For Appellant: Sarah V. Waltner, Taxpayer  
 For Franchise Tax Board: Suzanne Small, Tax Counsel  
 Karen Smith, Tax Counsel

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

Issues: Whether appellants have shown error in respondent's denial of their claim for refund of \$2,122.18.

Whether the Board has jurisdiction to review respondent's imposition of the frivolous return penalty.

Whether the Board should impose a frivolous appeal penalty.

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

## LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Bassem Youssef Ghobrial, 462585 (AA)*.

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

BNP Leasing Corporation, 379971 (OH)

7-1-01 to 6-30-06, \$367,477.86 Tax

Action: Redetermine as recommended by the Appeals Division.

Penster Corporation, 234223 (AS)

10-1-98 to 12-31-01, \$134,678.74 Tax, \$25,360.24 Negligence Penalty, \$7,299.27 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

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Luce of Beverly Hills, LLC, 436918, 437810 (AS)

3-18-04 to 11-14-05, \$65,585.38 Tax, \$6,558.54 Negligence Penalty, \$123,772.00 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

Michelle L. Rohn and Jeffrey Dean Rohn, 427506 (UT)

3-11-05, \$12,847.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Angela Louise Devlin and William Grover Devlin, 406217 (EA)

7-22-05 to 10-17-06, \$19,604.49 Tax, \$1,960.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Veronica Ramirez De Cantu, 460327, 460966 (EH)

4-1-04 to 5-30-06, \$356,755.67 Tax, \$(Unspecified) Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

Bassem Youssef Ghobrial, 462585 (AA)

2-7-06 to 4-18-08, \$42,762.17 Tax

Action: The Board took no action.

Gerard J. Neglio and Marian Marini Mendoza, 384556 (UT)

6-8-05, \$12,704.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Jack Rust Burrell, 484542 (GH)

4-1-07 to 11-12-07, \$5,408.00 Claim for Refund

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

Donica, Inc., 359940 (UT)

5-25-05, \$75,564.00 Tax, \$7,556.40 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

PB Municipal Funding, Inc., 388643 (OH)

6-1-99 to 12-31-02, \$1,036,407.50 Tax

Action: Redetermine as recommended by the Appeals Division.

David Herbert Lutton, 470337 (AC)

1-1-05 to 6-15-06, \$11,734.90 Responsible Person Liability

Action: Redetermine as recommended by the Appeals Division.

Norman James Johnson, 474439 (AP)

4-1-04 to 11-30-04, \$7,935.00 Tax, \$829.30 Late Payment Penalty, \$135.70 Failure to File Penalty, \$135.70 Failure to Timely Pay Penalty

Action: Redetermine as recommended by the Appeals Division.

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Snyder Family Trust DTD 10/1/2002, 417085 (UT)

12-8-05, \$4,884.00 Tax, \$488.40 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Michael David Stanley, 466866 (FH)

1-1-04 to 6-30-07, \$7,040.89 Tax, \$704.10 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

F.R.A., Inc., 447293, 475689, 484515, 488955 (AA)

1-1-05 to 12-31-07, \$215,091.80 Tax, \$15,339.87 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

T.M.B. Enterprises, Inc., 450883 (AC)

7-1-04 to 6-30-07, \$8,689.48 Tax

Action: Redetermine as recommended by the Appeals Division.

Antonio Acosta Trujillo, 450245 (MT)

1-1-05 to 6-30-06, \$14,240.97 Tax, 1,424.11 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Corey Markus, 393827 (AS)

4-1-05 to 9-16-05, \$34,707.08 Tax, \$5,096.93 Penalties

Action: Redetermine as recommended by the Appeals Division.

Oscar Iturralde, 426241 (AC)

1-1-04 to 12-31-06, \$0.00 Tax, \$23,770.28 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Hamid R. Davari, 433698 (CH)

7-1-03 to 9-30-07, \$73,668.38 Tax, \$7,366.42 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Gray Yeon and Soon Yi Yi, 535714 (ET)

3-22-10 Seizure Date, \$475.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Joe Anh Lee, 534393 (ET)

4-8-10 Seizure Date, \$40.25 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Mansour Ghiyam, 535625 (ET)

3-23-10 Seizure Date, \$205.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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Khaled W. Zakher and Medhat Zakher, 533043 (ET)

2-2-10 Seizure Date, \$10,223.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Harpreet Singh Dhillon, 533588 (ET)

2-9-10 Seizure Date, \$1,794.20 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Ashiq Ali Javid, 536546 (ET)

4-15-10 Seizure Date, \$770.98 Approximate Value

Action: Determined that staff properly seized the tobacco products.

DH Enterprise, Inc., 533600 (ET)

3-10-10 Seizure Date, \$83.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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

The Board deferred consideration of the following matter: *Rheem Manufacturing Company, 485872.*

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

Elenita Y. Borja, 506930

2005, \$823.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Josephine R. Caguimbal, 496533

2005, \$1,363.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Margaret Cutri, 445327

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

Action: Sustain the action of the Franchise Tax Board.

Charles Dalrymple, 462524

2006, \$1,455.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Donahue Marital Trust, 477472

2006, \$12,501.71 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Mary Ewell (Ryan), 469486

2001, \$6,071.69 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Brooke E. Hammerling, 493029

2007, \$859.92 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Brock Kruzic, 484760

2006, \$495.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Eli Levite and Hinga Levite, 449394

2001, \$25,551.00 Tax, \$1,273.56 Post-Amnesty Penalty

Eyal Oz and Ziva Oz, 492466

2001, \$66,733.00 Capital Loss Carryover

Siamak Rahimi and Parisma Rahimi, 449345

2001, \$32,717.00 Tax, \$1,979.53 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Dexter Luther, 486933

2005, \$1,748.00 Tax

Action: Modify the action of the Franchise Tax Board.

Brian Nelson, 424177

2005, \$2,954.00 Tax, \$716.75 Late Filing Penalty, \$716.75 Notice and Demand Penalty,  
\$125.00 Filing Enforcement Fee

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

Adegbuyi O. Okupe and Linda F. Okupe, 506421

2005, \$845.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Daniel E. Rowe, 491330

2007, \$1,250.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Timothy J. Ryan, 440948

2004, \$11,418.00 Assessment

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

Jonathan B. Ryder, 486581

2004, \$22,335.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Lyle Sladek, 506462

2004, \$451.00 Tax, \$90.20 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Kim D. Smith, 445937

2003, \$840.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Hao-Sheng Yu and Siew-Hoon Hoe, 522039

2007, \$5,496.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Antonio M. Gallardo and Maria Gallardo, 468082

2007, \$450.00 Claim for Refund

Action: Deny the petition for rehearing.

Rheem Manufacturing Company, 485872

2003, \$225,850.00 Assessment

Action: The Board took no action.

Steven A. McMahon, 479981

2000, \$15,421.29 Claim for Refund

2001, \$14,395.06 Claim for Refund

Action: Deny the petition for rehearing.

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

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

Steelscape, Inc., 505919 (OH)

4-1-01 to 6-30-08, \$138,803.54

Action: Approve the redetermination as recommended by staff.

D'Anna Yacht Center, Inc., 392340 (CH)

1-1-02 to 12-31-04, \$387,570.58

Action: Approve the redetermination as recommended by staff.

Sunrise Medical HHG, Inc., 489175 (OH)

4-1-03 to 3-31-06, \$370,814.33

Action: Approve the redetermination as recommended by staff.

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Robert M. Heller O.D., Inc., 521906 (FH)

10-1-06 to 12-31-06, \$110,582.14

Action: Approve the redetermination as recommended by staff.

Joe M. Khayat, 485671 (JH)

4-1-05 to 3-31-08, \$119,082.15

Action: Approve the redetermination as recommended by staff.

Taco Bell, 536365 (OH)

3-17-10 to 4-13-10, \$110,248.18

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

Sonic-Stevens Creek B, Inc., 437744 (GH)

1-1-05 to 12-31-07, \$0.00

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

Louis Vuitton North America, Inc., 505712 (OH)

10-1-08 to 3-31-09, \$50,603.08

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

Celco Partnership, 316918 (OH)

4-1-02 to 6-30-04, \$580,175.32

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

Celco Partnership, 384267 (OH)

4-1-04 to 6-30-06, \$421,925.00

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

Capital One Auto Finance, Inc., 522400 (OH)

7-1-09 to 3-31-10, \$720,568.00

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

CAL Fuel Purchasing Group, LLC, 514581 (AS)

11-1-06 to 12-31-09, \$55,680.64

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

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

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

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Liquid Partyworks, Inc., 390762 (AC)

1-1-02 to 9-30-05, \$160,500.68

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

Long Beach, LLC, 536887 (OH)

10-1-05 to 3-26-09, \$441,696.95

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

Mattel Sales Corporation, 534113 (AS)

7-1-02 to 12-31-05, \$108,985.04

Action: Approve the refund as recommended by staff.

Gucci America, Inc., 536265 (OH)

1-1-07 to 9-30-09, \$181,158.39

Action: Approve the refund as recommended by staff.

Sonic-Stevens Creek B, Inc., 437744 (GH)

1-1-05 to 12-31-07, \$ 1,268,372.00

Action: Approve the refund as recommended by staff.

Epsilon Trading, Inc., 505335 (OH)

4-1-06 to 3-31-09, \$4,735,807.73

Action: Approve the refund as recommended by staff.

NWA Fuel Services Corporation, 504973 (OH)

4-1-06 to 12-31-08, \$1,134,337.84

Action: Approve the refund as recommended by staff.

Louis Vuitton North America, Inc., 505712 (OH)

10-1-08 to 3-31-09, \$1,906,383.06

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 536393 (KH)

4-12-10 to 6-11-10, \$218,322.00

Action: Approve the refund as recommended by staff.

Farmers Insurance Group, 381012 (AS)

7-1-03 to 12-31-06, \$734,617.49

Action: Approve the refund as recommended by staff.

Conexant Systems, Inc., 424508 (EA)

1-1-04 to 9-30-07, \$137,748.52

Action: Approve the refund as recommended by staff.

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Cymer, Inc., 518049 (FH)

4-1-08 to 12-31-08, \$248,118.82

Action: Approve the refund as recommended by staff.

Varian, Inc., 518985 (GH)

4-1-04 to 12-31-07, \$148,053.54

Action: Approve the refund as recommended by staff.

Pacific Service Credit Union, 520577 (CH)

1-1-09 to 3-31-10, \$384,180.00

Action: Approve the refund as recommended by staff.

Capital One Auto Finance, Inc., 522400 (OH)

7-1-09 to 3-31-10, \$3,288,926.00

Action: Approve the refund as recommended by staff.

Volvo Cars of North America, LLC, 307154 (OH)

10-1-01 to 6-30-04, \$1,277,339.06

Action: Approve the refund as recommended by staff.

WinCo Foods, LLC, 487044 (OH)

10-1-08 to 6-30-09, \$710,352.21

Action: Approve the refund as recommended by staff.

Eagle Community Credit Union, 522669 (EA)

7-1-09 to 3-31-10, \$216,061.00

Action: Approve the refund as recommended by staff.

CAL Fuel Purchasing Group, LLC, 514581 (AS)

11-1-06 to 12-31-09, \$6,174,617.02

Action: Approve the refund as recommended by staff.

Alvarado Hospital, LLC, 468389 (FH)

1-1-07 to 6-30-08, \$124,310.96

Action: Approve the refund as recommended by staff.

Pacific Power Products Co., LLC, 522402 (OH)

4-1-09 to 6-30-09, \$112,478.00

Action: Approve the refund as recommended by staff.

The Board recessed at 12:36 p.m. and reconvened at 1:34 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

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Tuesday, October 19, 2010

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Donald R. Lee and Debra J. Lee, 513965

2005, \$1,077.00 Assessment

For Appellant:

Donald R. Lee, Taxpayer  
Kenneth Yu, Representative  
Raul Escatel, Tax Counsel  
Bill Hilson, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether appellants have established error in the proposed assessment, which is based on a federal determination.

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

Valerie Nelson, 489125

2003, \$1,618.00 Assessment

For Appellant:

Valerie Nelson, Taxpayer  
Amber Bridges, Representative  
Maria Brosterhouse, Tax Counsel  
Karen Smith, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether appellant has demonstrated error in the FTB's assessment, which was based upon federal adjustments.

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

Cecilia Reza, 506933

2007, \$1,575.00 Assessment

For Appellant:

Cecilia Reza, Taxpayer  
Samantha Lohman-Creer, Representative  
Karen Smith, Tax Counsel  
Craig Scott, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether appellant has established that she qualifies for head of household (HOH) filing status for 2007.

Appellant's Exhibit: Declaration and Student Progress Report ([Exhibit 10.8](#))

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

Tuesday, October 19, 2010

The Board recessed at 2:57 p.m. and reconvened at 3:12 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Haik Arakelian and Alice Arakelian, 442173

2003, \$1,636.00 Assessment

For Appellant:

Ara Hovanesian, Attorney

For Franchise Tax Board:

Maria Brosterhouse, Tax Counsel

Karen Smith, Tax Counsel

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

Issue: Whether respondent properly disallowed appellants' claimed charitable contribution deduction for 2003.

Appellant's Exhibit: Memorandum and 2003 Schedule CA 540 ([Exhibit 10.9](#))

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

Osage Garden Apartments, LLC, 462197

2004, \$200.00 Late Payment Penalty

2005, \$112.00 Late Payment Penalty

2006, \$88.00 Late Payment Penalty, \$100.00 Late Filing Penalty

2007, \$76.00 Late Payment Penalty

For Appellant:

Richard T. Smith, Taxpayer

Asmita Devani, Taxpayer

For Franchise Tax Board:

Craig Scott, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether appellant has established that late payment penalties and interest can be abated for the 2004 through 2007 tax years.

Whether appellant has established that the collection fee and lien fee can be abated for 2004.

Whether appellant has established that the late filing penalty can be abated for 2006.

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

The Board recessed at 3:51 p.m. and reconvened at 3:59 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Tuesday, October 19, 2010

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD OCTOBER 19, 2010**

Donald R. Diamond and Joan B. Diamond, 441030

Frank A. Aries and Mary Lou Aries, 464475

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

Ms. Yee moved to sustain the action of the Franchise Tax Board. Ms. Yee withdrew the motion.

The Board deferred consideration to the following day.

Edmund (Chad) Siva (Deceased), 384247, 390860, 401330, 401331, 481024

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Mandel voting yes, Ms. Steel voting no, the Board denied the appeal from the proposed assessment of tax on the basis of abstention.

Upon motion of Ms. Alby, seconded by Mr. Horton and duly carried, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Yee voting no, Ms. Mandel abstaining, the Board abated the 2004 and 2005 penalties.

Harold T Riggs, Jr., 449373, 474423, 504746

Wayne L. Hause and Kelly R. Hause, 467603

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Mandel voting yes, Ms. Steel voting no, the Board denied the appeal on the basis of abstention.

Steven T. Waltner and Sarah V. Waltner, 468742

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

Donald R. Lee and Debra J. Lee, 513965

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

Cecilia Reza, 506933

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

Haik Arakelian and Alice Arakelian, 442173

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

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

Tuesday, October 19, 2010

Osage Garden Apartments, LLC, 462197

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

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

Elizabeth Magness, 508940

2007, \$4,204.00 Tax, \$1,051.00 Late Filing Penalty, \$1,294.75 Demand Penalty

For Appellant:

Waived Appearance

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether appellant has demonstrated error in the underlying tax assessment.  
Whether appellant has shown reasonable cause for abatement of penalties.  
Whether the filing enforcement cost recovery fee should be abated.  
Whether the Board should impose a frivolous appeal penalty.

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$5,000.00 frivolous appeal penalty.

Eric Mattson, 510013

2007, \$1,580.00 Tax, \$395 Late Filing Penalty, \$1,827 Demand Penalty

For Appellant:

Waived Appearance

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether appellant has demonstrated error in the underlying tax assessment.  
Whether appellant has shown reasonable cause for abatement of penalties.  
Whether the filing enforcement fee should be abated.  
Whether the Board should impose a frivolous appeal penalty.

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

The Board adjourned at 4:37 p.m.

*The foregoing minutes are adopted by the Board on January 27, 2011.*

Note: The following matter was removed from the calendar prior to the meeting: *Franklin Casco, Jr., 512009.*

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

Wednesday, October 20, 2010

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

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD OCTOBER 19, 2010**

Donald R. Diamond and Joan B. Diamond, 441030 (Continued)

Frank A. Aries and Mary Lou Aries, 464475 (Continued)

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

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

The Board directed the Appeals Division to make an inquiry to FTB regarding the FTB automated collection system and whether it would be feasible for a review/phone contact procedure to be inserted into the collections process where undeliverable mail is returned to FTB.

**SALES AND USE TAX APPEALS HEARINGS**

The Marble Shop, LLC, 305001 (AC)

2-1-98 to 6-30-04, \$840,666.40 Tax, \$00.00 Failure to File Penalty

For Petitioner: Shalom Rubin, Taxpayer

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

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

Issues: Whether the labor charges at issue are taxable.

Whether relief is warranted because petitioner's failure to report and pay tax on its charges for fabrication labor was the result of its reasonable reliance on erroneous advice from the Board.

Whether adjustments are warranted to the unreported cost of fixed asset purchases subject to use tax.

Whether adjustments are warranted to the unreported sales of fixed assets.

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

The Board directed staff to revise and reissue the January 2007 informational letter sent to construction contractors and the Contractor's State Licensing Board.

The Board recessed at 10:45 a.m. and reconvened at 10:55 a.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Wednesday, October 20, 2010

Lonnie Davis Naefke, 458687 (AS)

4-1-05 to 9-30-05, \$6,064.00 Tax, \$606.40 Late Payment Penalty

For Petitioner: Lonnie Davis Naefke, Taxpayer

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

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

Issues: Whether taxpayer is personally liable as a responsible person for the unpaid liabilities incurred during the period April 1, 2005 to September 30, 2005 by Pacific Cellsite Systems, Inc., dba Pacific Concealment Systems (PCS), while suspended.

Whether the penalties for late payment of returns originally assessed against PCS should be relieved.

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

Gwang Hyun Song and Keum J. Song, 433708 (AP)

7-1-03 to 6-30-06, \$52,386.02 Tax, \$5,238.62 Negligence Penalty

For Petitioner: Justin Park, Representative

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

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

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

Whether the measure of tax for rebates received from cigarette manufacturers should be deleted because petitioner did not collect sales tax reimbursement with respect to those amounts.

Whether petitioner was negligent.

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

The Board recessed at 12:45 p.m. and reconvened at 1:44 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

## PUBLIC COMMENT

Speaker: John Francis Kelly, Owner, *Kelly's Tux Shop*, and California Resident, presented his concerns regarding sales of untaxed tobacco products to California consumers by an unlicensed out-of-state distributor ([Exhibit 10.10](#)).

The Board referred the matter to the Excise Tax Division.

Exhibits to these minutes are incorporated by reference.

Wednesday, October 20, 2010

### SALES AND USE TAX APPEALS HEARINGS

Gaston A. Alvarez, 434595 (EH)

1-1-05 to 3-31-06, \$23,174.21 Tax, \$5,570.90 Late Payment Penalty

Martin L. Hudler, 434939 (EH)

1-1-05 to 3-31-06, \$23,174.21 Tax, \$5,570.90 Late Payment Penalty

For Petitioner:

Gaston Alvarez, Taxpayer

Graham Hoad, Representative

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issues: Whether petitioner is personally liable as a responsible person, pursuant to Revenue and Taxation Code section 6829, for the unpaid liabilities of The Young and the Restofus (Y&R).

Whether petitioner has established reasonable cause sufficient for relieving the penalties for late payment of returns originally assessed against Y&R.

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

Erick Francisco Catalan, 420368 (GH)

2-2-01 to 12-31-02, \$50,892.80 Tax, \$3,624.78 Negligence Penalty, \$2,423.86 Failure to File Penalty, \$6,048.64 Failure to Timely Pay Penalty, \$7,046.16 Amnesty Interest Penalty

For Petitioner:

Gustavo Rocha, 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 is personally liable as a responsible person under Revenue and Taxation Code section 6829 for the unpaid liabilities of Fancy Gold, Inc. (Fancy Gold), for the period February 2, 2001, through December 31, 2002.

Whether Fancy Gold was negligent.

Whether petitioner has established reasonable cause to relieve the failure-to-file penalty, the penalty for failure to timely pay the determination (finality penalty), and amnesty interest penalty, assessed against Fancy Gold, which were also included in the determination issued to petitioner under section 6829.

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

The Board recessed at 3:30 p.m. and reconvened at 3:44 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

United States Tile Co., 402951 (EH)

10-1-02 to 9-30-05, \$21,817.19 Tax

For Petitioner:

Ed Sarkisian, Representative

For Sales and Use Tax Department:

Stephen Smith, Tax Counsel

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

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

Wednesday, October 20, 2010

Issues: Whether certain labor charges included in the cost of purchases of equipment from out-of-state vendors is nontaxable.

Whether an adjustment is warranted to the audited amount of taxable mandatory insurance included in the transportation charges.

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

Janet Chavez, 469083 (AC)

3-27-03 to 2-28-05, \$402,869.19 Tax, \$100,717.34 Fraud Penalty

For Petitioner: Janet Chavez, Taxpayer

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

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

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

Whether the audited amount of bad debts should be increased.

Whether the Investigations Division has established that the understatement was the result of fraud or intent to evade the tax by clear and convincing evidence.

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

Antique Portraiture, Inc., 351260, 374301 (AA)

10-1-01 to 9-30-04, \$63,444.063 Tax, \$6,344.50 Negligence Penalty

10-1-01 to 12-31-02, \$12,769.00 Claim for Refund

For Petitioner/Claimant: Carmen Kane, 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 audited understatement of reported taxable sales.

Whether petitioner was negligent.

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

Finbars Italian Kitchen SB, Inc., 435792, 519738 (EA)

12-1-04 to 9-30-06, \$4,800.90 Tax, \$5,742.80 Claim for Refund

For Petitioner/Claimant: Joseph Barbara, Taxpayer

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

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

Issue: Whether the gratuities at issue represent mandatory tips that are included in petitioner's taxable gross receipts.

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

Wednesday, October 20, 2010

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
OCTOBER 20, 2010**

The Marble Shop, LLC, 305001 (AC)

Final Action: Upon motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board granted the taxpayer a 10 percent adjustment for sales for resale and ordered that the petition otherwise be redetermined as recommended by the Appeals Division. The Board directed staff to inform the petitioner of the Offer in Compromise Program.

Lonnie Davis Naefke, 458687 (AS)

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

Gwang Hyun Song and Keum J. Song, 433708 (AP)

Final Action: Ms. Steel moved to delete the negligence penalty, increase the pilferage allowance by 1 percent, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Alby but failed to carry, Ms. Alby and Ms. Steel voting yes, Ms. Yee, Mr. Horton and Ms. Mandel voting no.

Ms. Steel moved to delete the negligence penalty and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Alby but failed to carry, Ms. Alby and Ms. Steel voting yes, Ms. Yee, Mr. Horton and Ms. Mandel voting no.

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

Gaston A. Alvarez, 434595 (EH)

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

Martin L. Hudler, 434939 (EH)

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

Erick Francisco Catalan, 420368 (GH)

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

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

Wednesday, October 20, 2010

United States Tile Co., 402951 (EH)

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

Janet Chavez, 469083 (AC)

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

Antique Portraiture, Inc., 351260, 374301 (AA)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be returned to the district for a reaudit.

Finbars Italian Kitchen SB, Inc., 435792, 519738 (EA)

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

#### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 6:10 p.m. and reconvened immediately in closed session with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

#### **CLOSED SESSION**

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

The Board recessed at 6:59 p.m. and reconvened immediately in open session with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

The Board adjourned at 7:00 p.m.

*The foregoing minutes are adopted by the Board on January 27, 2011.*

Note: The following matters were removed from the calendar prior to the meeting: *Ali Shahryarinejad, 418258 (AC); Boris Khodzhoian, 405900 (AP); and, Fred's Liquor, Inc., 402953, 495047 (EA).*

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

Thursday, October 21, 2010

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:35 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Ms. Yee expressed her sympathy for the loss of State Senator Jenny Oropeza, who passed away this morning at age 53. Senator Oropeza represented a Senate District in Southern California and served with distinction as a Member of the California State Assembly and the California State Senate and previously served as Chair of the Senate Committee on Revenue and Taxation.

### SALES AND USE TAX APPEALS HEARINGS

Susan Hilary Tregub, 425147 (AS)

10-1-03 to 9-30-04, \$11,898.00 Tax, \$4,974.50 Late Payment Penalty, \$1,715.30 Failure to File Penalty, \$1,715.30 Finality Penalty

For Petitioner:

Susan Hilary Tregub, Taxpayer

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issues: Whether petitioner is personally liable as a responsible person under Revenue and Taxation Code section 6829 for the unpaid liabilities of Santo Coyote, LLC (Santo), a California limited liability company, for the period October 1, 2003 through September 30, 2004.

Whether petitioner has established reasonable cause to relieve the late-payment penalties, failure to file penalty, and finality penalty originally assessed against Santo for the period October 1, 2003 through September 30, 2004.

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

Davood Behdadnia, 421809 (AS)

1-1-99 to 6-30-05, \$22,503.44 Tax, \$8,618.29 Negligence Penalties, \$628.57 Amnesty Negligence Penalty, \$8,618.20 Finality Penalties, \$636.99 Amnesty Finality Penalty, \$541.96 Amnesty Interest Penalty

For Petitioner:

Joseph Boodaie, 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 is personally liable as a responsible person for the unpaid liabilities of Century Home Health Care of America, Inc. (Century), pursuant to Revenue and Taxation Code section 6829.

Whether the negligence penalties included in the responsible person determination issued to petitioner should be deleted.

Whether petitioner should be relieved of the finality and amnesty penalties imposed on Century.

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

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

Thursday, October 21, 2010

## Club Habanos, Inc., 426183 (KH)

7-1-03 to 6-30-06, \$66,904.10 Tax, \$13,843.59 Negligence Penalty

For Petitioner:

Adela Padron, Taxpayer

Graham Hoad, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Whether petitioner was negligent.

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

## Aftershock Power Boats, Inc., 334423 (EH)

7-1-00 to 6-30-03, \$169,927.65 Tax, \$16,992.80 Negligence Penalty, \$10,518.72 Amnesty-Double Negligence Penalty

For Petitioner:

Alejandro Torres, Taxpayer

Robert Hammack, Representative

Rosalina Torres, Witness

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Whether petitioner was negligent.

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

## Iradj Nazarian, 400357 (FH)

5-28-93 to 6-30-03, \$15,222.98 Tax, \$50,403.99 Fraud Penalty, \$240.90 Failure to File Penalty, \$20,392.76 Finality Penalty

For Petitioner:

Mitchell B. Dubick, Attorney

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

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

Issue: Whether petitioner's personal liability as a responsible person for the unpaid liabilities incurred by Abbey Auto Sales &amp; Leasing, Inc.'s (Abbey) is limited based on his criminal case plea agreement.

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

The Board recessed at 12:44 p.m. and reconvened at 1:17 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

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

Thursday, October 21, 2010

## Los Angeles Country Club, 361952, 416903 (AS)

10-1-02 to 9-30-05, \$70,273.56 Tax, \$24,604.27 Claim for Refund

For Petitioner/Claimant:

Gail Egan, Representative

Dennis Pancheco, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

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

## Kenneth Kreisel, 470151 (AC)

10-1-00 to 2-27-07, \$18,041.47 Tax, \$346.50 Failure to File Penalty, \$1,334.91 Finality Penalty, \$1,092.11 Late Payment Penalty, \$830.27 Late Filing Penalty, \$1,247.47 Amnesty Interest Penalty, \$943.41 Amnesty Double Finality Penalty

For Petitioner:

Kenneth Kreisel, 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 under Revenue and Taxation Code section 6829 for the unpaid liabilities of Miller &amp; Kreisel Sound, Inc., dba M&amp;K Sound (M&amp;K) for the period October 1, 2000 through February 27, 2007.

Whether taxpayer has established reasonable cause to relieve the penalties imposed on M&amp;K for the period October 1, 2000 through February 27, 2007.

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

The Board recessed at 2:30 p.m. and reconvened at 2:38 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

## Store2door, Inc., 352179 (AC)

1-1-03 to 12-31-05, \$81,115.37 Tax, \$8,111.56 Negligence Penalty

For Petitioner:

Alex Kleyner, Taxpayer

Sergey Tsyganovskiy, Taxpayer

Mikhail Zadoyen, Representative

Mark Rabinovich, Attorney

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Whether adjustments are warranted to the purchases of fixed assets subject to use tax.

Whether the rebates petitioner received from cigarette manufacturers are subject to tax.

Whether petitioner was negligent.

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

Thursday, October 21, 2010

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

### PETITION FOR RELEASE OF SEIZED PROPERTY

Kamal F. Batech and Wafaa Elias Batech, 533038 (ET)

3-4-10 Seizure Date, \$806.32 Approximate Value

For Petitioner:

Kamal F. Batech, Taxpayer

Nate Green, Representative

For Property and Special Taxes Department

Stephen Smith, Tax Counsel

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

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

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

### LEGAL APPEALS MATTERS, ADJUDICATORY

David Bergstein, 425117 (AS)

10-1-03 to 9-30-04, \$11,898.00 Tax, \$4,974.50 Late Payment Penalties, \$1,715.30 Failure to File Penalty, \$1,715.30 Finality Penalty

Considered by the Board: Hearing Notice Sent – No Response

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

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

Pacific Window Corporation, 391906 (EH)

10-1-01 to 9-30-04, \$273,848.32 Tax, \$27,680.17 Negligence Penalty, \$7,977.15 Amnesty Double Negligence Penalty

Considered by the Board: Hearing Notice Sent – Appearance Waived

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

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

Thursday, October 21, 2010

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
OCTOBER 21, 2010**

Susan Hilary Tregub, 425147 (AS)

Final Action: Ms. Steel moved that the taxpayer was the responsible party only for the third quarter of 2004. The motion was seconded by Ms. Alby but failed to carry, Ms. Alby and Ms. Steel voting yes, Ms. Yee, Mr. Horton and Ms. Mandel voting no.

Ms. Yee moved that the petition be redetermined as recommended by the Appeals Division. The motion failed for lack of a second.

The Board deferred consideration to later in the day.

Davood Behdadnia, 421809 (AS)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division and directed staff to examine whether or not there is a nontax reimbursement portion of the first audit liability and make an allowance if warranted.

Club Habanos, Inc., 426183 (KH)

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

Aftershock Power Boats, Inc., 334423 (EH)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to consider a payment plan and to inform the taxpayer of the Offer in Compromise Program.

Iradj Nazarian, 400357 (FH)

Final Action: Ms. Alby moved that the petition be granted. The motion was seconded by Ms. Steel but failed to carry, Ms. Alby and Ms. Steel voting yes, Ms. Yee and Mr. Horton voting no, Ms. Mandel abstaining.

The Board deferred consideration to a later date.

Kenneth Kreisel, 470151 (AC)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division, subject to relief of penalties if petitioner submits the required request for relief and the Appeals Division determines that an adequate basis for relief has been established, and directed staff to investigate whether exempt funds were levied and refund the amount if it is required.

Thursday, October 21, 2010

**FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HELD  
OCTOBER 21, 2010**

Kamal F. Batech and Wafaa Elias Batech, 533038 (ET)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board determined that staff properly seized the tobacco products.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
OCTOBER 21, 2010**

Susan Hilary Tregub, 425147 (AS) (Continued)

Final Action: Ms. Steel moved that the petition be granted. The motion was seconded by Ms. Alby but failed to carry, Ms. Alby and Ms. Steel voting yes, Ms. Yee and Mr. Horton voting no, Ms. Mandel abstaining.

The Board deferred consideration to a later date.

The Board adjourned at 4:07 p.m.

*The foregoing minutes are adopted by the Board on January 27, 2011.*

Note: The following matter was removed from the calendar prior to the meeting: *William Brett Corbin, 434956 (EA).*