

Tuesday, September 16, 2008

The Board met at its offices at 450 N Street, Sacramento, at 10:45 a.m., with Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Thomas P. Bengard and Kim C. Bengard, 422294

2000, \$329,015.00 Assessment

2001, \$361,187.50 Assessment

Bengard Group, Inc., 424221

2001, \$51,243.00 Assessment

For Appellant:

Charles L. Germany, Representative

Wendell R. Bird, Attorney

Thomas P. Bengard, Taxpayer

Kim C. Bengard, Taxpayer

Renel Sapiandante, Tax Counsel

For Franchise Tax Board:

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

Issues: Whether appellants have shown that respondent erred in its determination that Internal Revenue Code section 453A is applicable to the contingent installment obligation under the Asset Purchase Agreement because the agreement did not state a maximum purchase price.

Assuming the Internal Revenue Code section 453A is applicable, whether appellants have shown that the fair market value of the contingent installment obligation between appellants and Berwind Industries, Inc. was not \$85,000,000 for purposes of determining the amount of interest.

Whether respondent is estopped from issuing a Notice of Proposed Assessment for the 2001 taxable year based on an audit of appellant's 1996 income tax return.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 9.1)

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.

LEGAL APPEALS MATTERS, CONSENT

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

Home Care Information Systems, Inc., 89002426820 (OH)

1-1-90 to 12-31-96, \$73,159.94 Tax, \$0.00 Penalty

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

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Promotion Products, Inc., 336535, 338891 (OH)
1-1-96 to 6-30-02, \$4,267.35 Tax, \$426.74 Finality Penalty, \$426.74 Amnesty Double-Finality
Penalty, \$1,084.22 Amnesty Interest Penalty
Action: Redetermine as recommended by the Appeals Division.

Shahbaz Zarghampour, 358123 (AR)
7-1-01 to 6-30-04, \$79,715.46 Tax, \$7,971.57 Negligence Penalty, \$2,506.98 Amnesty Double
Negligence Penalty, \$2,934.25 Amnesty Interest Penalty
Action: Redetermine as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Kenneth Banks, 327922*; and, *Swift Transportation Company, Inc., and Swift Transportation Corporation, 266318*.

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

Richard A. Lucich, 387301
2003, \$5,209.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Nazar E. Najor and Lauren Najor, 358691
2002, \$862.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

James L. Smith, 344810
Sandra Smith, 360531
1986, \$2,680.25 Innocent Spouse Relief
Action: Sustain the action of the Franchise Tax Board.

Kenneth Banks, 327922
1995, \$276,096.00 Assessment
Action: The Board took no action.

Rick Burningham, 395921
2004, \$3,026.00 Tax, \$756.50 Penalty for Delinquent Return, \$756.50 Failure to File Penalty,
\$120.00 Filing Enforcement Fee, \$5,000.00 Frivolous Appeal Penalty
Action: Deny the petition for rehearing.

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Swift Transportation Company, Inc., and Swift Transportation Corporation, 266318
 1997, \$55,352.00 Assessment
 1998, \$118,067.00 Assessment
 Action: The Board took no action.

Roman Garcia, 416435
 2006, \$540.00 Claim for Refund
 Action: Sustain the action of the Franchise Tax Board.

Larry Mazur, 377123
 2002, \$356.00 Assessment
 Action: Sustain the modified action of the Franchise Tax Board.

Debra K. Pace, 328284
 1996, \$41,633.00 Assessment, \$10,381.75 Late Filing Penalty
 1997, \$10,103.00 Assessment
 Action: Sustain the action of the Franchise Tax Board.

George Saffas, 396089
 2003, \$2,931.00 Tax, \$1,465.50 Penalties
 Action: Sustain the action of the Franchise Tax Board and impose a \$3,500.00 frivolous appeal penalty.

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

Sri Mesing, 382022
 2005, \$347.50
 Action: Sustain the action of the Franchise Tax Board.

Michelle D. Bell, 426291
 2006, \$1.00 or more
 Action: Sustain the action of the Franchise Tax Board.

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

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Computer Sciences Corporation, 387048 (AS)

4-1-00 to 3-31-03, \$119,290.50

Action: Approve the redetermination as recommended by staff.

Golden State Lumber, Inc., 362701 (JH)

10-1-02 to 12-31-03, \$98,434.38

Action: Approve the redetermination as recommended by staff.

Anthony Schools Corporation, 342569 (EA)

4-1-02 to 3-31-05, \$130,514.50

Action: Approve the redetermination as recommended by staff.

Fresno Auto West, Inc., 360213 (AR)

4-1-02 to 10-5-04, \$158,587.73

Action: Approve the redetermination as recommended by staff.

The Reynolds & Reynolds Company, 417535 (OH)

10-1-02 to 12-31-05, \$61,657.39

Action: Approve the redetermination as recommended by staff.

Sprint/United Management Company, 401793 (OH)

10-1-01 to 6-30-05, \$3,133,597.70

Action: Approve the redetermination as recommended by staff.

Café Pacific Beach, Inc., 265930 (FH)

10-1-99 to 12-31-02, \$57,516.18

Action: Approve the redetermination as recommended by staff.

Laeroc Barnabeys 2002, LLC, 433707 (AS)

7-1-05 to 12-18-06, \$156,770.38

Action: Approve the redetermination as recommended by staff.

Nortel Communications Systems, Inc., 445236 (OH)

4-1-95 to 4-30-97, \$417,003.10

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

Downtown Ford Sales, 449447 (KH)

1-1-08 to 3-31-08, \$70,018.80

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

U.S. Foodservice, Inc., 449445 (OH)

1-1-08 to 1-31-08, \$53,676.22

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

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Arbonne International, LLC, 449448 (EA)

11-01-07 to 11-30-07, \$52,738.74

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

United Parcel Service, Inc., 301622 (EA)

1-1-02 to 12-31-04, \$966,389.22

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

Laboratory Corporation of America, 450029 (OH)

1-1-04 to 3-31-05, \$152,022.52

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

AT&T Communications of California, 239818 (OH)

1-1-00 to 12-31-02, \$221,471.88

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

Harry R. Sawl, 441869 (UT)

3-31-00 to 3-31-00, \$52,645.25

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

SC Aviation, LLC 425693 (UT)

7-21-00 to 7-21-00, \$103,190.78

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

TP & SG, Inc., 405622 (AC)

4-1-00 to 12-31-05, \$125,004.06

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

Mecom Equipment, LLC, 377867 (KH)

1-1-06 to 6-30-06, \$82,787.00

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 Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Johnson & Johnson Health Care Systems, Inc., 400809 (OH)*; the Board made the following orders:

D'Anna Yacht Center, Inc., 449657 (CH)

1-1-05 to 3-31-05, \$206,967.53

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

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Trekstor USA, Inc., 445493 (CH)

4-1-03 to 12-31-06, \$123,375.81

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

Gateway Business, LLC, 449681 (OH)

1-1-01 to 9-30-01, \$83,415.40

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

Fresh Start Bakeries, Inc., 449975 (EA)

4-1-07 to 9-30-07, \$91,942.00

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

A-1 M & M Enterprise, Inc., 448330 (AS)

1-1-01 to 12-31-04, \$514,997.49

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

City of Lompoc, 444311 (GH)

1-1-05 to 3-31-08, \$60,992.88

Action: Approve the refund as recommended by staff.

Kenneth Elliott Bradley, 445285 (GH)

10-1-04 to 9-30-07, \$58,135.41

Action: Approve the refund as recommended by staff.

Washington Township District Hospital, 436268 (CH)

4-1-03 to 6-30-06, \$188,955.08

Action: Approve the refund as recommended by staff.

United Parcel Service, Inc., 449849 (CH)

1-1-02 to 12-31-06, \$1,511,611.04

Action: Approve the refund as recommended by staff.

United Parcel Service, Inc., 301622 (EA)

1-1-02 to 12-31-04, \$86,473.15

Action: Approve the refund as recommended by staff.

United Parcel Service, Inc., 450166 (EA)

1-1-02 to 12-31-06, \$4,911,903.97

Action: Approve the refund as recommended by staff.

Laboratory Corporation of America, 378553 (OH)

7-1-03 to 3-31-05, \$78,766.57

Action: Approve the refund as recommended by staff.

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Golden State Lumber, Inc., 450592 (JH)

1-1-04 to 9-30-05, \$127,318.89

Action: Approve the refund as recommended by staff.

United Parcel Service, Inc., 303264 (OH)

1-1-02 to 9-30-05, \$156,962.76

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 445173 (KH)

1-1-08 to 3-31-08, \$393,631.36

Action: Approve the refund as recommended by staff.

The Boeing Company, 373477 (OH)

1-1-02 to 12-31-06, \$1,378,930.58

Action: Approve the refund as recommended by staff.

FEI Company, 441082 (OH)

10-1-06 to 12-31-06, \$58,091.37

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 441611 (KH)

3-25-08 to 5-12-08, \$207,136.00

Action: Approve the refund as recommended by staff.

Kailey's Break Place, Inc., 430386 (KH)

1-1-04 to 3-30-07, \$91,920.26

Action: Approve the refund as recommended by staff.

Wachovia Dealer Services, Inc., 435533 (EA)

10-1-07 to 12-31-07, \$3,668,320.20

Action: Approve the refund as recommended by staff.

Saint-Gobain Containers, Inc., 447054 (OH)

1-1-07 to 12-31-07, \$383,509.71

Action: Approve the refund as recommended by staff.

California State Automobile Association, 367254 (BH)

1-1-03 to 3-31-06, \$586,514.79

Action: Approve the refund as recommended by staff.

Petco Animal Supplies Stores, Inc. 397925 (FH)

10-1-02 to 12-31-06, \$115,337.00

Action: Approve the refund as recommended by staff.

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Andre Bonini Barbosa, 444946 (EA)

1-1-05 to 9-30-05, \$85,111.38

Action: Approve the refund as recommended by staff.

Applied Telcomm Corporation, 446844 (AR)

1-1-05 to 9-30-07, \$59,970.94

Action: Approve the refund as recommended by staff.

Johnson & Johnson Health Care Systems, Inc., 400809 (OH)

7-1-02 to 12-31-06, \$179,179.10

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

Americredit Financial Service, Inc., 444792 (OH)

1-1-08 to 3-31-08, \$1,773,285.75

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 444790 (EA)

10-1-07 to 3-31-08, \$184,435.62

Action: Approve the refund as recommended by staff.

Mumm Napa Estates, Inc., 403747 (JH)

4-1-04 to 3-31-06, \$165,907.44

Action: Approve the refund as recommended by staff.

Groupware Technology, Inc., 444750 (GH)

4-1-04 to 3-31-07, \$110,882.16

Action: Approve the refund as recommended by staff.

United Auto Credit Corporation, 445178 (EA)

10-1-07 to 12-31-07, \$132,287.49

Action: Approve the refund as recommended by staff.

Monster, LLC, 448167 (BH)

4-1-04 to 3-31-07, \$166,728.38

Action: Approve the refund as recommended by staff.

Inovant, LLC, 448525 (BH)

10-1-03 to 9-30-06, \$1,339,885.80

Action: Approve the refund as recommended by staff.

Zara USA, Inc., 402359 (OH)

1-1-07 to 3-31-07, \$415,097.23

Action: Approve the refund as recommended by staff.

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Challenge Financial Services, Inc., 443777 (EA)

7-1-07 to 12-31-07, \$81,726.48

Action: Approve the refund as recommended by staff.

Global Power Supply, LLC, 443781 (GH)

7-1-07 to 12-31-07, \$59,701.55

Action: Approve the refund as recommended by staff.

Ortho Biotech Products, LP, 379584 (OH)

1-1-03 to 12-31-06, \$413,120.85

Action: Approve the refund as recommended by staff.

Transportation Technology Center, Inc., 398881 (OH)

10-1-05 to 9-30-06, \$60,882.28

Action: Approve the refund as recommended by staff.

Medcal Sales, LLC, 448792 (EH)

10-1-05 to 9-30-06, \$87,287.97

Action: Approve the refund as recommended by staff.

South Western Federal Credit Union, 438020 (EA)

10-1-07 to 3-31-08, \$52,070.75

Action: Approve the refund as recommended by staff.

Eagle Community Credit Union, 442668 (EA)

7-1-07 to 12-31-07, \$77,700.04

Action: Approve the refund as recommended by staff.

**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, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Tesoro Refining and Marketing Company, 443126 (MT)

7-1-01 to 6-1-06, \$64,847.09

Action: Approve the refund as recommended by staff.

McLane/Suneast, Inc., 433733 (ET)

1-16-08 to 1-16-08, \$124,997.97

Action: Approve the refund as recommended by staff.

Note: These minutes are not final until Board approved.

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LEGAL APPEALS MATTERS, ADJUDICATORY

Donald R. Loya, 358842 (AC)

1-1-01 to 3-31-02, \$14,000.00 Claim for Refund

Considered by the Board: Hearing Notice Sent – No Response

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

Action: The Board deferred consideration of this matter to the November Sacramento Meeting.

Michael Richard Luna, 356507 (KH)

1-1-02 to 12-31-04, \$8,688.31 Tax, \$1,066.41 Amnesty Interest Penalty

Considered by the Board: March 18, 2008

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

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

David W. Penney, 341465

2003, \$372.00 Tax, \$100.00 Late Filing Penalty, \$93.00 Notice and Demand Penalty

Considered by the Board: May 28, 2008

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

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

Melody L. Beattie, 359059

1997, \$20,000.00 Claim for Refund

Considered by the Board: January 31, 2008

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

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 adopted a decision denying the petition for rehearing.

Mr. Leonard directed staff to advise the Franchise Tax Board to get economic data and examine the actual mortgage market in order to determine the proper mortgage interest multiplier.

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**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS,
ADJUDICATORY**

Diane J. Reed, 333196
2005, \$162.50

Considered by the Board: June 24, 2008

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

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

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

James Bruce Tananbaum, 432510 (BH)
1-1-04 to 12-31-05, \$62,812.44

Considered by the Board: Presented for Separate Discussion

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

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

United Rentals Northwest, Inc., 436595 (OH)
8-1-07 to 10-31-07, \$394,392.78

Considered by the Board: May 13, 2008

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

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and duly carried, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Yee voting no, the Board approved the relief of penalty as recommended by staff.

T-Mobile Resources Corporation, 441946 (OH)
4-1-05 to 12-31-05, \$204,815.60

Considered by the Board: Presented for Separate Discussion

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

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

John Raymond Collins, 399683 (UT)
8-14-98 to 8-14-98, \$95,632.15

Considered by the Board: June 24, 2008

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

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel not participating, the Board approved the denial of claim for refund as recommended by staff.

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Robert L. Reynolds, 424795 (KH)

7-1-98 to 6-30-01, \$124,341.00

Considered by the Board: June 24, 2008

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

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board approved the denial of claim for refund as recommended by staff.

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

Water & Power Community Credit Union, 334165 (AS)

7-1-02 to 3-31-06, \$832,353.93

Considered by the Board: June 24, 2008

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

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

SPECIAL TAXES MATTERS, REDETERMINATIONS, ADJUDICATORY

Hotel Airport Shuttle.com, LLC, 358672 (MT)

1-1-03 to 12-31-05, \$87,746.81

Considered by the Board: May 13, 2008

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

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

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**PROPERTY TAX MATTERS****Audits**

Pacific Bell Telephone Company (279)

2004, \$19,900,000.00 Excessive Assessment

Action: 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 not participating in accordance with Government Code section 7.9, the Board adopted the audit excessive assessment as recommended by staff.

The Board recessed at 12:15 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Note: These minutes are not final until Board approved.

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SALES AND USE TAX APPEALS HEARING

William H. Callaway and Gregory F. Lay, 417789 (KH)

10-1-03 to 9-30-06, \$6,231.00 Claim for Refund

For Claimant:

William H. Callaway, Taxpayer

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

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

Issue: Whether the separately stated transportation charges on claimant's invoices are subject to sales 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.

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

Thomas P. Bengard and Kim C. Bengard, 422294

Bengard Group, Inc., 424221

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

SALES AND USE TAX APPEALS HEARING

AMC Petroleum, Inc., 305202 (AS)

4-1-01 to 3-31-04, \$10,696.32 Tax, \$11,509.00 Negligence Penalty, \$11,118.67 Amnesty Interest Penalty

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

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

Issues: Whether further adjustments are warranted.

Whether rebate payments received by petitioner from cigarette manufacturers are additional taxable gross receipts related to the taxable sale of cigarettes.

Whether petitioner was negligent.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee 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 in accordance with the revised recommendation of the Appeals Division.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD SEPTEMBER 16, 2008

William H. Callaway and Gregory F. Lay, 417789 (KH)

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

Note: These minutes are not final until Board approved.

Tuesday, September 16, 2008

The Board adjourned at 1:50 p.m.

The foregoing minutes are adopted by the Board on November 13, 2008.

Note: The following matters were removed from the calendar prior to the meeting: *Kevin B. Turner and Sally C. Turner, 396393; Stephen D. Coffman, 431487; Federal Express Corporation, 402428; and, Fedex Corporation & Subsidiaries, 402431.*

PENDING APPROVAL

Wednesday, September 17, 2008

The Board met at its offices at 450 N Street, Sacramento, 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 HEARING

Juan Carlos Morales, 389924 (KH)

8-1-04 to 2-12-06, \$9,824.29 Tax, \$8,420.30 Penalties

For Petitioner:

Juan C. Morales, Taxpayer

For Sales and Use Tax Department:

Stephen Smith, Tax Counsel

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

Issues: Whether petitioner was a responsible person who is personally liable for the outstanding liabilities of Family Sports Pizza and Grill, LLC for the period December 2, 2005, to February 12, 2006, in addition to the conceded period of August 1, 2004, to March 31, 2005.

Whether petitioner has established reasonable cause sufficient to relieve the late payment, failure to file return, and finality penalties originally assessed against Family Sports Pizza and Grill, LLC for the periods August 1, 2004, to March 31, 2005, and December 2, 2005, to February 12, 2006.

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.

PUBLIC HEARING

Proposed Amendments to Sales and Use Tax Regulations 1591, *Medicines and Medical Devices*, and 1602, *Food Products*

Robert Tucker, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to Sales and Use Tax Regulations 1591, *Medicines and Medical Devices* and 1602, *Food Product*, to clarify that when a dietary supplement or adjunct product does not qualify as a food product, it may qualify as medicine if furnished by a physician as part of a medically supervised weight loss program to treat obesity. (Exhibit 9.2.)

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

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

Exhibits to these minutes are incorporated by reference.

Wednesday, September 17, 2008

CHIEF COUNSEL MATTERS**RULEMAKING****Proposed Amendments to Sales and Use Tax Regulation 1702.5, *Responsible Person Liability***

Tim Treichel, Tax Counsel, Settlement Division, Legal Department, made introductory remarks regarding the section 100 changes to Sales and Use Tax Regulation 1702.5, *Responsible Person Liability*. Approval of the proposed amendments incorporate the provisions of AB 1895 (Ch. 24, Stat. of 2008) regarding the statute of limitations for issuing deficiency determinations to corporate officers or other responsible persons. (Exhibit 9.3.)

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 approved the section 100 changes as recommended by staff.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

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

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California. (Exhibit 9.4.)

Lou Vena Alexander, Information Systems Technician Supervisor II, Technology Services Division, Headquarters

Paul Bacchi, Data Processing Manager II, Technology Services Division, Headquarters

Linda Dwyer, Secretary, Investigations Division, Headquarters

Bonnie Jeanene Geller, Tax Technician III, West Covina District Office

Bonnie Peach, Data Processing Manager III, Technology Services Division, Headquarters

Joyce Vincenty, Senior Information Systems Analyst Specialist, Technology Services Division, Headquarters

Action: Approve the Board Meeting Minutes of August 5-7, 2008.

Action: Approve the 2009 diesel fuel tax rate for interstate users. (Exhibit 9.5.)

Action: Approve the 2009 Hazardous Substances Program Fees and Occupational Lead Poisoning Prevention Fee. (Exhibit 9.6.)

Note: These minutes are not final until Board approved.

Wednesday, September 17, 2008

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

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein. (Exhibit 9.7.)

Committee votes were as follows:

The committee approved and authorized for publication the proposed regulatory amendments to Regulation 1506, *Miscellaneous Service Enterprises*, and Regulation 1524, *Manufacturers of Personal Property*, as recommended by staff, with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

The committee approved and authorized for publication the proposed regulatory amendments to Regulation 1705, *Relief from Liability*, as recommended by staff, with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

Property Tax Committee

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Property Tax Committee report and the actions therein. (Exhibit 9.8.)

Committee vote was as follows:

The committee adopted the staff-recommended petition procedures and guidelines for personal property and fixtures valuation, with Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no.

OTHER ADMINISTRATIVE MATTERS**Deputy Directors Reports*****Collection Enhancement Task Force Update***

Randie Henry, Deputy Director, Sales and Use Tax Department, provided an update on the recent activities and accomplishments of the Collections Enhancement Task Force and a revised action plan for the Task Force. (Exhibit 9.9.)

Speakers: Bobbi Smith, Business Taxes Representative, Centralized Collections Section, Sales and Use Tax Department, President-of DLC 782 of SEIU Local 1000, and member of the Collection Enhancement Task Force

Ms. Yee directed staff to provide, as part of the presentation of the upcoming task force report, the history of augmentation to the collections program since the large cuts in that area, to determine whether resources have been restored, and invited additional proposals with respect to properly utilizing collections staff for bringing in revenue rather than working the front counter.

Note: These minutes are not final until Board approved.

Wednesday, September 17, 2008

Interagency Agreement Contract Over \$1 Million

David Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding the interagency agreement contract over \$1 million with SICPA Products Security, which is an extension of the vendor contract for a one-year term for the production of the State's cigarette tax stamp. (Exhibit 9.10.)

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 approved the contract over \$1 million with SICPA Products Security.

BOE's Green Day

Elizabeth Houser, Deputy Director, Administration Department, reported on BOE's Green Day. Ms. Houser introduced Catherine Stroh, Analyst, Appeals Division, Legal Department, who reported that BOE's two charitable organizations, Charitable Activities Council, Inc., and Capitol Area Child Care Consortium, Inc., will be sponsoring a recycle day to be held at BOE Headquarters day care's play yard. Children of the day care center presented personalized invitations for the event to the Members of the Board.

Dr. Chu presented a certificate of appreciation to Roberta Hinchman, Manager, Contract and Procurement Section, Administration Department; and, Wayne Williams, Manager, Network Infrastructure Support, Technology Services Division; in recognition of their dedication to energy conservation and for taking initiative to explore other savings strategies for BOE. Roberta and Wayne secured a \$27,000 energy rebate from SMUD's Network PC Power Management Software Express Incentive Program designed to rebate the cost of certain software that reduces power consumption of PCs and laptops.

Facilities Update

Elizabeth Houser, Deputy Director, Administration Department, provided an update on the space assessment project and status of on-going headquarters repair projects. (Exhibit 9.11.)

Speaker: Bobbi Smith, Business Taxes Representative, Centralized Collections Section, Sales and Use Tax Department, and President-of DLC 782 of SEIU Local 1000

Mr. Leonard directed the SEIU Union Representative to contact its members and DGS to determine how much of a priority has been placed on moving BOE employees out of the building and impress upon union members who work for DGS to consider this a top priority.

Fiscal Year 2008/09 Draft Budget Update

Elizabeth Houser, Deputy Director, Administration Department, provided the current status of the 2008/09 Budget, including the Proposed Amnesty Program and the 1 percent sales tax increase.

Note: These minutes are not final until Board approved.

Wednesday, September 17, 2008

Fiscal Year 2009/10 Budget Change Proposals

Elizabeth Houser, Deputy Director, Administration Department, presented the 2009/2010 draft budget change proposals for approval. (Exhibit 9.12.)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the *BCP U.S. Customs Program*, as recommended by staff.

Action: (Motion expunged after Closed Session.)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the *BCP Environmental Stewardship Program*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the *BCP Natural Gas Public Purpose Programs Surcharge*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the *BCP Flavored Malt Beverages*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the *BCP Cigarette and Tobacco Enforcement*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, the Board approved the *BCP Administrative Appeals*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the *BCP Tax Refund Litigation*, as recommended by staff.

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

Digital Board of Equalization – Our Initial Roadmap to Becoming Digital

Anna Brannen, Deputy Director, Technology Services Department, reported on the Digital Board of Equalization, a paper presenting initial findings and recommendations enabling taxpayers and staff to access BOE information any way, any time, any place. (Exhibit 9.13.)

Speaker: Bobbi Smith, Business Taxes Representative, Centralized Collections Section,
Sales and Use Tax Department, and President-of DLC 782 of SEIU
Local 1000

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Wednesday, September 17, 2008

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

Juan Carlos Morales, 389924 (KH)

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 in accordance with the revised recommendation of the Appeals Division, and directed staff to review the dual liability.

SALES AND USE TAX APPEALS HEARINGS

Pine Meadows Partners, Inc., 358977 (KH)

4-1-05 to 6-30-05, \$40,968.16 Tax, \$4,096.82 Failure to File Penalty

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether retail sales of materials to petitioner were subject to sales tax, meaning that petitioner's use of those materials were exempt from use tax.

Whether there is a basis for recommending relief of the failure-to-file penalty.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee 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.

Jewelry by Michael Alan, Inc., 290752, 316317, 380958 (KH)

4-1-00 to 12-31-01, \$28,615.95 Tax, \$2,861.51 Negligence Penalty, \$4,765.36 Amnesty Interest Penalty

4-1-00 to 12-31-01, \$16,927.00 Claim for Refund

7-1-04 to 6-30-05, \$13,512.53 Tax, \$1,634.15 Negligence Penalty

Michael Alan Morales, 293200, 316479, 395457 (KH)

4-1-00 to 12-31-01, \$9,211.00 Tax, \$921.00 Negligence Penalty

4-1-00 to 12-31-01, \$17,704.00 Claim for Refund

7-1-04 to 6-30-05, \$12,188.21 Tax, \$1,318.82 Negligence Penalty

Teresa A. Morales, 293201, 317278 (KH)

4-1-00 to 12-31-01, \$9,211.00 Tax, \$921.00 Negligence Penalty

4-1-00 to 12-31-01, \$17,704.00 Claim for Refund

For Petitioner/Claimant: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

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

Issues: Whether Jewelry Bu Michael Alan, Inc. is entitled to any further reduction to the determined tax liabilities.

Whether Jewelry Bu Michael Alan, Inc. was negligent.

Whether Mr. Morales and Ms. Morales are personally responsible for the tax liabilities incurred by Jewelry Bu Michael Alan, Inc. while its corporate status was suspended.

Whether the claims for refund should be granted.

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Wednesday, September 17, 2008

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

EPAC Technologies, Inc., 396039 (CH)

7-1-03 to 6-30-06, \$23,432.06 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Christine Bisauta, Tax Counsel

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

Issue: Whether petitioner should be relieved of the tax and interest applicable to its sales of special printing aids based on its alleged reliance on erroneous advice received during a prior audit.

Action: Upon motion of Ms. Mandel, 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 petition be redetermined in accordance with staff's revised recommendation.

Dr. Chu directed the Department to send a letter to staff to clarify the Board's policy as it relates to the issue in the above case to ensure uniformity throughout the districts.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 11:30 a.m. and reconvened immediately in closed session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

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

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

Ramon Hirsig, Executive Director, announced the appointment of Kevin Hanks to the position of Chief, Headquarters Operations Division, Sales and Use Tax Department.

Fiscal Year 2009/10 Budget Change Proposals

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that its previous motion to approve the *BCP Out-of-State Audits and Registration*, as recommended by staff, be expunged.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, the Board approved the *BCP Out-of-State Audits and Registration*, as recommended by staff.

The Board adjourned at 1:35 p.m.

The foregoing minutes are adopted by the Board on November 13, 2008.

Note: These minutes are not final until Board approved.