

Tuesday, November 17, 2009

The Board met at its offices at 450 N Street, Sacramento, at 1:55 p.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

John Nelson and Ivy Nelson, 469840

2004, \$746.77 Claim for Refund

For Appellant:

Rita Madgett-Scott, Representative

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Bruce Langston, Tax Counsel

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

Issue: Whether appellant's taxable pension and annuity income received in 2004 is subject to the California Personal Income Tax.

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board waived \$3.48 of interest, otherwise sustained the action of the Franchise Tax Board.

Filtrona Industrial Corporation, 427430

2005, \$4,354.08 Claim for Refund

For Appellant:

Jeffrey Healy, Representative

Kimberly Reeder, Representative

For Franchise Tax Board:

Craig Scott, Tax Counsel

Jean Cramer, Tax Counsel

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

Issues: Whether appellant has demonstrated reasonable cause to abate the late payment penalty.

Whether appellant has demonstrated that the Franchise Tax Board erred by not refunding the underpayment of estimated tax penalty.

Mr. Scott stated for the record that the Franchise Tax Board concedes a portion of the underpayment of estimated tax penalty of approximately \$181.00.

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Speaker: Laura Lee George made public comments and provided an exhibit regarding her appeal, *Melvin L. George, Sr. and Laura Lee George, 443087*; which was discussed later in the day. (Exhibit 11.1.)

Exhibits to these minutes are incorporated by reference.

Tuesday, November 17, 2009

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Connie S. Ray, 418262

2003, \$1,031.35 Tax, \$256.72 Penalty

For Appellant:

Emily Foehr, Representative

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Bruce Langston, Tax Counsel

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

Issues: Whether appellant has demonstrated error in the proposed assessment.

Whether appellant has shown reasonable cause to abate the late filing penalty.

Whether respondent properly determined not to abate interest.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 11.2)

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

Victoria Soufflet, 461166

2001, \$622.00 Claim for Refund

For Appellant:

L. Tracy Mackenzie, Representative

For Franchise Tax Board:

Delinda Tamagni, Tax Counsel

Bruce Langston, Tax Counsel

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

Issue: Whether the Board has jurisdiction to consider a claim for refund of payments appellant made through the tax amnesty program.

Appellant's Exhibit: Taxpayer's Declaration (Exhibit 11.3.)

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

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Main Street California, Inc.*, 224746.

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

City of Sacramento, 472921

1-1-96 to 6-30-96, \$245,798.00 Amount in dispute

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

Main Street California, Inc., 224746 (OH)

Action: The Board took no action.

Charan Singh Dhillon and Sukhwinder Singh, 437867 (KH)

1-1-03 to 12-31-05, \$48,194.15 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

Ki Hwan Pae, 445598, 445929 (GH)

1-1-04 to 6-30-07, \$62,090.62 Tax, \$6,222.14 Penalty

Action: Redetermine as recommended by the Appeals Division.

Michael Joseph Cavallaro, 440139 (CH)

1-1-00 to 3-31-03, \$8,430.00 Tax, \$2,694.74 Penalty

Action: Redetermine as recommended by the Appeals Division.

CTC Liquidation, Inc., 420935 (BH)

1-1-01 to 12-31-03, \$5,969.56 Tax

Action: Redetermine as recommended by the Appeals Division.

R.S. Basso, LLC, 396034 (JH)

7-1-02 to 12-31-05, \$122,504.28 Tax, 0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Sherlock Systems, Inc., 435794 (OH)

1-1-04 to 6-30-07, \$58,589.14 Tax, \$297.93 Penalty

Action: Redetermine as recommended by the Appeals Division.

Nalco Energy Services, LP, 104749, 135768 (OH)

10-1-94 to 12-31-97, \$127,571.28 Claim for Refund

1-1-98 to 12-31-00, \$100,135.03 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

Biricti Kansai, 491643 (ET)

February 19, 2009, \$2,773.78 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Rajwant Kaur Dhillon, 496359 (ET)

April 15, 2009, \$224.80 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Mehra Corporation, 496329 (ET)

April 9, 2009, \$366.00 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 matters: *Ivo I. Georgiev, 443908; Christopher D. Harper, 439956; and, Kenneth K. Low and Linda Marissa Low, 474345.*

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

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

Michael B. Azzam and Amalia Azzam, 431459

1993, \$28,516.67 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Adalberto Barrios, 433000

2004, \$1,225.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Daniel Buckler, 431056

1999, \$844.21 Claim for Refund

2000, 6,445.44 Claim for Refund

2001, \$5,941.45 Claim for Refund

2002, \$0.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ivy L. Calvin and Wendy D. Calvin, 469771

2006, \$516.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jose Luis Contreras, Jr., 447585

2007, \$360.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Estate of Defang Ma (Deceased), 424293

2003, \$3,386.98 Assessment

Action: Sustain the action of the Franchise Tax Board.

Mary Ann Del Valle, 431501

2005, \$537.94 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Norman Edwards (Deceased), 451525

2000, \$19,209.38 Claim for Refund

2001, \$34,125.22 Claim for Refund

2002, \$2,152.94 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Tammy S. Fisher, 419982

1993, \$1 of more, Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Richard M. Friedel, 439485

2005, \$9,275.75 claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

Ivo I. Georgiev, 443908

Action: The Board took no action.

Gamiel C. Gran and Gail K. Gran, 258344

2000, \$27,861 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Christopher D. Harper, 439956

Action: The Board took no action.

Karl Ihrig, 449600

2005, \$1,582.35 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Futo Tehshyong Kao, 404648

2005, \$566.51 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Edmond C. Ku and Ellen Ku, 406864

2004, \$312.00 Assessment

2005, \$1,963 Assessment

Action: Sustain the action of the Franchise Tax Board.

Eric G. Leonard, 451531

2000, \$19,157.00 Tax, \$8,019.33 Penalty

Action: Sustain the action of the Franchise Tax Board.

Charles Lewis and Georgia Lewis, 405936

2003, \$686.00 Assessment

Action: Modify the action with concession of the Franchise Tax Board.

Kenneth K. Low and Linda Marissa Low, 474345

Action: The Board took no action.

Roger B. Menard and Mimi Platt, 422886

2005, \$12,739.76 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Shelley E. McAlpine, 400659

2003, \$3,553.00 Tax, \$606.73 Interest

Action: Sustain the action of the Franchise Tax Board.

Daniel McInerney, 449284

2005, \$7,260.00 Tax, \$1,815 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

Glenn M. Rosen and Peggy A. Rosen, 462041
2001, \$5,447.00 Tax, \$856.00 accuracy-related Penalty and Interest
Action: Sustain the action of the Franchise Tax Board.

Michael Ruggiero and Christine Sadel, 439529
1989, \$237.25 Late Filing Penalty, \$171.20 Negligence Penalty, \$856.00 Notice and Demand
Penalty, \$2,068.05 Amnesty Penalty
Action: Sustain the action of the Franchise Tax Board.

Johnny Stake, 468636
2006, \$1,528.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Clinton Tinker, 468753
2002, \$38,822.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Alvin J. Washington, 434784
1998, \$235.57 Claim for Refund
1999, \$1,820.93 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Theodore S. Wentworth and Diana Wentworth, 476742
2003, \$29,472.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Barbara J. Whipple, 466276
1998, \$142,146.00 Claim for Refund
1999, \$13,190.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Robert M. Yeakey and Veronique Marie Yeakey, 468749
2003, \$2,911.00 Tax, \$100.00 Late Filing Penalty
Action: Modify the action of the Franchise Tax Board.

Jeremiah S. Ryder, 399886
2003, \$15,217.00 Tax
Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matter: *Rosalina A. Reyes, 448041.*

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

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

Elizabeth Dela Torre, 463915

2007, \$314.00

Action: Sustain the action of the Franchise Tax Board.

Bertha Garcia, 464119

2007, \$157.50

Action: Sustain the action of the Franchise Tax Board.

Maria Pacheco, 435517

2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Rosalina A. Reyes, 448041

Action: The Board took no action.

Georgina Rogers, 436644

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Jack Stuart, 432467

2007, \$347.50

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

(Motion expunged.)

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 Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Steel not participating in *Chevron U.S.A., Inc.*, 489793; Ms. Mandel not participating in accordance with Government Code section 87105 in *Walt Disney Pictures & Television*, 435361; *Disney Worldwide Services*, 435366; *Tyco Telecommunications (US), Inc.*, 424233; *General Electric Company*, 240394; and, *Nestle USA-Prepared Foods Division, Inc.*; the Board made the following orders:

Stephen J. Heuer, 505497 (GH)

7-1-01 to 12-31-03, \$55,492.99

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

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

Unisys Corporation, 458688 (OH)

4-1-02 to 12-31-04, \$1,177,358.57

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

Made2Manage Systems, Inc., 426243 (OH)

7-1-03 to 12-31-06, \$502,753.54

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

California State Automobile Association, 507302 (BH)

7-1-06 to 3-31-07, \$84,894.48

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

Worldwide Environmental Products, Inc., 470167 (EA)

4-1-05 to 12-31-07, \$128,673.49

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

T A Operating Corporation, 461733 (OH)

1-1-03 to 12-31-05, \$963,977.47

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

Walt Disney Pictures & Television, 435361 (OH)

10-1-99 to 12-31-05, \$4,616,322.70

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

Disney Worldwide Services, 435366 (OH)

10-1-99 to 12-31-05, \$2,530,493.15

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

Chevron U.S.A., Inc., 489793 (BH)

1-1-03 to 12-31-07, \$9,508,759.90

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

Raymar Information Technology, Inc., 467806 (KH)

4-1-07 to 12-31-07, \$119,066.64

Action: Approve the refund as recommended by staff.

Harcourt, Inc., 494470 (OH)

1-1-03 to 12-12-07, \$1,250,162.72

Action: Approve the refund as recommended by staff.

Hitco Carbon Composites, Inc., 485941 (AS)

1-1-08 to 12-31-08, \$86,530.15

Action: Approve the refund as recommended by staff.

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

Professional Hospital Supply, Inc., 490851 (EH)

7-1-06 to 12-31-08, \$156,447.78

Action: Approve the refund as recommended by staff.

Verity, Inc., 422052 (BH)

1-1-06 to 6-30-07, \$71,858.28

Action: Approve the refund as recommended by staff.

Ripon Manufacturing Company, 426880 (KH)

1-1-06 to 12-31-08, \$333,171.63

Action: Approve the refund as recommended by staff.

Stohlman & Rogers, Inc., 465762 (KH)

7-1-05 to 6-30-08, \$241,679.78

Action: Approve the refund as recommended by staff.

Anheuser-Busch, Inc., 424505 (OH)

1-1-01 to 12-31-03, \$242,371.53

Action: Approve the refund as recommended by staff.

Raytheon Technical Services Company, 464433 (OH)

1-1-07 to 6-30-08, \$642,083.22

Action: Approve the refund as recommended by staff.

APV North America, Inc., 483751 (OH)

4-1-08 to 6-30-08, \$59,323.14

Action: Approve the refund as recommended by staff.

Powell Electrical Systems, Inc., 467817 (OH)

7-1-08 to 9-30-08, \$107,139.19

Action: Approve the refund as recommended by staff.

Safilo USA, 477959 (OH)

10-1-05 to 12-31-08, \$459,633.86

Action: Approve the refund as recommended by staff.

NWA Fuel Services Corporation, 469435 (OH)

7-1-08 to 9-30-08, \$602,632.86

Action: Approve the refund as recommended by staff.

Tyco Telecommunications (US), Inc., 424233 (OH)

4-1-05 to 6-30-05, \$216,560.52

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

UPS Oasis Supply Corporation, 340492 (OH)

10-1-01 to 3-31-07, \$2,197,842.51

Action: Approve the refund as recommended by staff.

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

DC Shoes, Inc., 473695 (FH)

7-1-08 to 9-30-08, \$80,117.02

Action: Approve the refund as recommended by staff.

Francisco Abel Machuca, 434880 (EH)

1-1-05 to 12-31-08, \$66,540.22

Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 494879 (OH)

4-1-06 to 3-31-09, \$52,383.11

Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 494990 (OH)

4-1-06 to 3-31-09, \$56,385.40

Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 494987 (OH)

7-1-07 to 3-31-09, \$91,545.25

Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 494992 (OH)

1-1-07 to 3-31-09, \$162,951.66

Action: Approve the refund as recommended by staff.

General Electric Company, 240394 (OH)

1-1-98 to 3-31-03, \$3,165,178.40

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

3M Company, 398837 (OH)

1-1-04 to 12-31-05, \$442,598.15

Action: Approve the refund as recommended by staff.

CalMat Co., 492971 (AA)

4-1-08 to 9-30-08, \$215,981.12

Action: Approve the refund as recommended by staff.

J.E. DeWitt, Inc., 447331 (AP)

4-1-05 to 12-31-07, \$114,153.63

Action: Approve the refund as recommended by staff.

Ford Motor Credit Company, 93946 (OH)

7-1-97 to 12-31-00, \$7,156,125.68

Action: Approve the refund as recommended by staff.

Shreve & Co. Jewelers, Ltd., 473169 (OH)

1-1-08 to 3-31-08, \$77,168.15

Action: Approve the refund as recommended by staff.

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

General Atomics Aeronautical Systems, Inc., 478142 (FH)

1-1-07 to 6-30-08, \$138,376.20

Action: Approve the refund as recommended by staff.

Nestle USA-Prepared Foods Division, Inc., 465756 (OH)

1-1-08 to 12-31-08, \$118,345.78

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

Siemens Transportation, 252135 (OH)

10-1-00 to 9-30-03, \$6,249,087.04

Action: Approve the refund as recommended by staff.

Olson and Company Steel, 486416 (CH)

1-1-06 to 3-31-09, \$215,461.45

Action: Approve the refund as recommended by staff.

Nuvell Credit Corporation, 399888 (OH)

1-1-04 to 12-31-06, \$1,520,729.97

Action: Approve the refund as recommended by staff.

Frederick Arnold Shaw, LLC, 494059 (AA)

1-1-06 to 12-31-08, \$146,294.74

Action: Approve the refund as recommended by staff.

A-L Financial Corp., 488221 (EA)

1-1-09 to 6-30-09, \$301,080.83

Action: Approve the refund as recommended by staff.

1st United Services Credit Union, 482551 (CH)

10-1-08 to 3-31-09, \$111,678.07

Action: Approve the refund as recommended by staff.

Medcal Sales, LLC, 494427 (EH)

10-1-05 to 3-31-07, \$126,149.48

Action: Approve the refund as recommended by staff.

Pacific Cabinets, Inc., 469584 (OH)

7-1-07 to 9-30-08, \$50,444.31

Action: Approve the refund as recommended by staff.

H&E Equipment Services, Inc., 473163 (OH)

1-1-08 to 3-31-08, \$131,190.94

Action: Approve the refund as recommended by staff.

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

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

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

Santa Maria Refining Company, 371844 (MT)

5-1-99 to 12-31-01, \$265,973.89

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

Pan Pacific Retail Properties, Inc., 444206 (MT)

4-1-99 to 9-14-05, \$145,174.61

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

McLane/Suneast, Inc., 462371 (ET)

8-29-08 to 8-29-08, \$54,871.42

Action: Approve the refund as recommended by staff.

Diageo North America, Inc., 473563 (ET)

10-1-05 to 12-31-08, \$207,918.95

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

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

Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board expunged its earlier motion with respect to the Legal Appeals Matters Consent Agenda.

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *EMC Corporation, 506836*; the Board made the following orders:

Ralf Mandt-Rauch, 483500 (AS)

1-1-05 to 12-31-07, \$120,330.43

Action: Approve the redetermination as recommended by staff.

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

Desiree C. (Garcia) Nutley, 478049 (EH)

1-1-01 to 3-31-03, \$201,670.72

Action: Approve the redetermination as recommended by staff.

AGM Glass Machinery, Inc., 418977 (OH)

10-1-02 to 9-30-05, \$104,752.04

Action: Approve the redetermination as recommended by staff.

Funny World, Inc., 394048 (AS)

10-1-02 to 9-30-05, \$118,270.80

Action: Approve the redetermination as recommended by staff.

In L.A. Jewelry, Inc., 451064 (AA)

1-1-03 to 12-31-05, \$164,609.67

Action: Approve the redetermination as recommended by staff.

Stanley Security Solutions, Inc., 445616 (OH)

1-1-02 to 12-31-04, \$398,646.95

Action: Approve the redetermination as recommended by staff.

Amway Corporation, 436837 (OH)

1-1-02 to 12-31-05, \$98,417.62

Action: Approve the redetermination as recommended by staff.

EMC Corporation, 506836 (OH)

7-1-08 to 9-30-08, \$238,082.50

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

Equilon Enterprises, LLC, 495651 (OH)

3-1-00 to 9-30-04, \$69,928.55

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

Tower Energy Group, 506347 (AS)

5-1-09 to 6-15-09, \$69,000.00

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

Home Shopping, LP, 505748 (OH)

1-1-09 to 3-31-09, \$102,996.20

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

ATS Automation Tooling Systems, Inc., 506652 (OH)

12-18-00 to 3-31-08, \$88,616.87

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

American Material Management Alliance, Inc., 333020 (EH)

1-1-00 to 6-30-06, \$425,058.55

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

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

STMicroelectronics, Inc., 374890 (CH)

7-1-99 to 6-30-02, \$181,056.82

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

Integrated Supply Network, Inc., 462796 (JH)

7-1-03 to 9-30-06, \$141,374.00

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

3M Company, 398837 (OH)

1-1-04 to 12-31-05, \$58,664.97

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

Ford Motor Credit Company, 93946 (OH)

7-1-97 to 12-31-00, \$2,584,656.87

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

PROPERTY TAXES MATTERS, CONSENT

With respect to the Property Taxes Matters, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Steel not participating in accordance with Government Code section 87105 in *Pacific Terminals, LLC (488), 495429*; and, *Pacific Terminals, LLC (488), 496063*; Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Petitions for Reassessment of Unitary Value

Southwest Gas Corporation (152), 492249

2009, \$202,400,000.00 Unitary Value

Action: Grant the petition and reduce the 2009 Board-adopted unitary value to \$202,100,000.00 as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Pacific Terminals, LLC (488), 495429

2009, \$31,800,000.00 Unitary Value

Action: Reduce the 2009 Board-adopted unitary value to \$11,300,000.00 as recommended by staff. Ms. Steel not participating in accordance with Government Code section 87105. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petition for Reallocation of Unitary Value

Pacific Terminals, LLC (488), 496063

2009, \$1.00 Unitary Value

Action: Approve staff's recommendation to recalculate the allocation of the reduced 2009 unitary value and that the roll changes be made to the 2009 Board Roll of State-Assessed Property reflecting these adjustments. Ms. Steel not participating in accordance with Government Code section 87105. Ms. Mandel not participating in accordance with Government Code section 7.9.

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

Petitions for Reassessment and Penalty Abatement on Unitary Value

Astound Broadband, LLC (7832), 495663

2009, \$57,200,000.00 Unitary Value, \$5,720,000.00 Penalty

Action: Reduce the 2009 Board-adopted unitary value to \$39,000,000.00 and deny the request for penalty abatement but reduce the penalty to \$3,900,000.00 as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petitions for Penalty Abatement on Unitary Value

Calaveras Telephone Company (210), 492251

2005, \$14,000,000.00 Penalty

Action: Approve the penalty abatement on 2009 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

LEGAL APPEALS MATTERS, ADJUDICATORY

Michael Donovan Thompson, 381893 (AR)

7-1-01 to 12-31-05, \$455,195.41 Tax, \$141,048.82 Penalties

Considered by the Board: Hearing Notice Sent – No Response

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton, 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.

A Realty Publications, Inc., 343231, 373181, 379332, 391653 (EH)

7-1-01 to 12-31-04, \$0.00 Tax, \$11,570.65 Negligence Penalty, \$5,320.56 Double Amnesty Negligence Penalty

1-1-05 to 3-31-06, \$0.00 Tax, \$5,482.50 Negligence Penalty

4-1-06 to 6-30-06, \$0.00, \$1,430.30 Penalty

7-1-06 to 9-30-06, \$0.00, \$1,354.50 Penalty

Considered by the Board: April 29, 2009

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

Action: Ms. Steel moved to abate the negligence penalty for the period July 1, 2001 to December 31, 2004, otherwise redetermine the petition as recommended by the Appeals Division. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Mr. Horton voting no, Ms. Mandel not participating.

Ms. Yee moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Horton. Ms. Yee withdrew her motion.

The Board deferred consideration of this matter to the next Board meeting.

Select Office Solutions, Inc., 187460, 345451 (AP)

4-1-98 to 3-31-01, \$474,194.06 Tax, \$0.00 Negligence Penalty

1-1-02 to 6-30-05, \$271,445.42 Tax

Considered by the Board: September 23, 2009

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

Action: The Board deferred consideration of this matter to the next Board meeting.

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

Elufa Corporation, 350440 (AA)
10-1-01 to 9-30-04, \$1,596.46 Tax, \$0.00 Negligence Penalty
Considered by the Board: September 23, 2009
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: The Board deferred consideration of this matter to the next Board meeting.

Zuma Arc, Inc., 466074 (ET)
May 15, 2008, \$368.47 Approximate Value
Considered by the Board: May 27, 2009
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: The Board deferred consideration of this matter to the next Board meeting.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Gregory E. Mudwilder and Patricia A. Mudwilder, 444049
2004, \$138,990.00 Tax, \$27,798.00 Accuracy-Related Penalty
Considered by the Board: September 22, 2009
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: (Motion expunged.)

Melvin L. George, Sr. and Laura Lee George, 443087
2002, \$5,259.00 Tax, \$202.67 Post-Amnesty Penalty
2003, \$5,733.00 Tax
2004, \$6,023.00 Tax
2005, \$6,152.00 Tax
Considered by the Board: March 17, 2009
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board adopted a decision denying the petition for rehearing.

Marc Pretscher, 441638
2003, \$10,410.00 Tax, \$2,602.50 Late Filing Penalty, \$2,602.50 Notice and Demand Penalty
Considered by the Board: September 22, 2009
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard abstaining, the Board adopted a decision sustaining the action of the Franchise Tax Board of Equalization and imposed a \$3,000.00 frivolous appeal penalty.

Marc Pretscher, 444263
2002, \$12,499.00 Tax, \$3,124.75 Late Filing Penalty, \$3,124.75 Notice and Demand Penalty,
\$757.31 Post-Amnesty Penalty
Considered by the Board: September 22, 2009
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

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

Gregory E. Mudwilder and Patricia A. Mudwilder, 444049
2004, \$138,990.00 Tax, \$27,798.00 Accuracy-Related Penalty
Considered by the Board: September 22, 2009

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

Action: Upon motion of Mr. Horton, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board expunged its earlier motion.

Upon motion of Mr. Horton, seconded by Ms. Mandel and duly carried, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Yee voting no, the Board adopted a decision modifying the action of the Franchise Tax Board to reflect that the accuracy-related penalty should be recalculated, as if the CPA had used the fair market value of \$2,545,000 as the property's original basis for loss, otherwise sustaining the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, RELIEF OF PENALTY, ADJUDICATORY

General Petroleum Corporation, 493595 (AA)
4-1-08 to 6-30-08, \$118,479.10
Considered by the Board: September 22, 2009

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

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

SALES AND USE TAX MATTERS, CREDIT AND CANCELLATION, ADJUDICATORY

Artoor Keshish-Moses, 493010 (AC)
1-1-05 to 2-13-07, \$183,973.57
Considered by the Board: September 22, 2009

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

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

SPECIAL TAXES MATTERS, DENIAL OF RELIEF OF PENALTY, ADJUDICATORY

Big West of California, LLC, 460290 (MT)
8-1-07 to 8-31-07, \$235,786.70
Considered by the Board: Presented for Separate Discussion

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

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

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

PROPERTY TAXES MATTERS, ADJUDICATORY

Petitions for Penalty Abatement on Unitary Value

Vizada, Inc. (7948), 492252

2009, \$\$8,190,000.00 Unitary Value, \$819,000 Late Filing Penalty

Action: Ms. Steel moved to abate the penalty. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Mr. Horton voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

Ms. Yee moved to deny the petition as recommended by staff. The motion was seconded by Mr. Horton but failed to carry, Ms. Yee and Mr. Horton voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

Petitions for Reassessment of Unitary Value

Gilroy Energy Center, LLC (1129), 495853

2009, \$\$78,700,000.00 Unitary Value

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied as recommended by staff.

Los Esteros Critical Energy Facility, LLC (1143), 495857

2009, \$\$95,000,000.00 Unitary Value

Action: Mr. Horton moved to deny the petition as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Mr. Horton voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

I-wireless, LLC (2780), 495445

2009, \$\$881,000.00 Unitary Value, \$88,100.00 Late Filing Penalty

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the unitary value portion of the assessment be reduced to \$504,000 and denied the request for penalty abatement, the resulting total value for petitioner's 2009 unitary value is \$554,400, as recommended by staff.

Tuesday, November 17, 2009

Level 3 Communications, LLC (7761), 495662

2009, \$ \$431,000,000.00 Unitary Value

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be partially granted reducing the 2009 Board-adopted unitary value to \$409,600,000, as recommended by staff.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Unitary Assessment

Local Fiber, LLC, (7976)

2009, \$122,100 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary assessment as recommended by staff.

Unitary Land Escaped Assessments

Pacific Gas and Electric Company, (135)

2008, \$9,182,742.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment as recommended by staff.

Southern California Gas Company, (149)

2006-2008, \$335,151.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment as recommended by staff.

Foresthill Telephone Company, (235)

2008, \$778,140.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment as recommended by staff.

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

Los Angeles SMSA Ltd., Partnership, (2532)

2006-2008, \$717,803.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment as recommended by staff.

AT&T Mobility, LLC, (2606)

2008, \$893,862.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment as recommended by staff.

California Rural Service Area #1, Inc., (2671)

2008, \$39,020.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment as recommended by staff.

Sprint PCS, (2720)

2006-2008, \$2,767,991.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment as recommended by staff.

MetroPCS California, LLC, (2733)

2008, \$215,139.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment as recommended by staff.

NTCH-CA, Inc., (2764)

2007-2008, \$574,014.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment as recommended by staff.

Tuesday, November 17, 2009

Royal Street Communications, LLC, (2779)

2008, \$804,474.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment as recommended by staff.

Trillion Partners, Inc., (8094)

2009, \$25,207.00 Value

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment as recommended by staff.

Board Roll Changes

2006, 2007, 2008 and 2009 Board Rolls of State Assessed Property

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2006, 2007, 2008 and 2009 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 11.4).

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Valgene E. Christensen and Joan J. Christensen; Fereidoon Esfandiary and Mr. Café*; and, *Corner Cigars Distributing, Inc.* as recommended by staff.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD NOVEMBER 17, 2009

Filtrona Industrial Corporation, 427430

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

Connie S. Ray, 418262

Final Action: Upon motion of Ms. Steel, seconded by Mr. Horton and duly carried, Mr. Horton, Mr. Leonard and Ms. Steel and voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the late filing penalty be abated, otherwise sustained the action of the Franchise Tax Board.

Note: These minutes are not final until Board approved.

Tuesday, November 17, 2009

Victoria Soufflet, 461166

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

The Board adjourned at 4:38 p.m.

The foregoing minutes are adopted by the Board on March 25, 2010.

Note: The following matters were removed from the calendar prior to the meeting: *Keith Costello, 432902; Donald G. Northrup and Dacrey Northrup, 467011; and, Lester Eaton and Karen Eaton, 481267.*

Wednesday, November 18, 2009

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

PUBLIC COMMENT

Speaker: William Matthew Connell, All American Surf Dogs, made public comment and provided exhibits regarding the veterans' exemption. (Exhibit 11.5.)

The Board directed staff to schedule a December closed session discussion of similarly situated veterans and pending litigation: *William M. Connell, v. Board of Equalization*, Court of Appeal, Third Appellate District Case No. C061180 (Gov. Code § 11126(e)).

Exhibits to these minutes are incorporated by reference.

SALES AND USE TAX APPEALS HEARINGS

Nickolaos Papadopoulos and Dimitra Papadopoulos, 436833, 461505 (GH)

7-1-03 to 3-31-07, \$25,184.85 Tax, \$2,518.52 Penalty

For Petitioner/Claimant: Nickolaos Papadopoulos, Taxpayer
George H. Ellis, Representative
Ted Bestolarides, CPA

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 further adjustments are warranted to the audited cost of self-consumed taxable merchandise subject to use tax.

Whether petitioner was negligent.

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

Bruce Arthur Schoen, 421602 (CH)

1-1-06 to 6-30-06, \$34,841.65 Tax, \$3,653.00 Penalty

For Petitioner: Bruce Schoen, 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 for the unpaid liability incurred by Ultimate Floors, Inc.

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

The Board referred the taxpayer to the Taxpayers' Rights Advocate.

Wednesday, November 18, 2009

Jeries A. Izhaq and Nemeh T. Zarour, 423914 (KH)

5-11-05 to 3-31-07, \$33,393.37 Tax

For Petitioner:

Jeries A. Izhaq, Taxpayer

Nemeh T. Zarour, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

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

The Board referred the taxpayer to the Taxpayers' Rights Advocate.

The Board recessed at 11:56 a.m. and reconvened at 1:34 p.m. with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Musleh Saleh Zokari, 392337 (KH)

1-1-03 to 12-31-05, \$11,496.55 Tax

For Petitioner:

Musleh Zokari, Taxpayer

Gabriel Ruiz, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

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

Julie Lynn Cossey, 441252 (KH)

8-1-05 to 3-31-07, \$13,144.49 Tax, \$00.00 Penalty

For Petitioner:

Julie L. Cossey, Taxpayer

Anthony Harmon, Witness

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

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

Wednesday, November 18, 2009

Local Tax Reallocation Hearing

City of Los Angeles, City of San Jose, and City of Irvine, 472925

7-1-92 to 6-30-96, \$224,465.00 Amount (City of Los Angeles)

7-1-92 to 3-31-97, \$636,606.00 Amount (City of San Jose)

7-1-96 to 6-30-01, \$344,941.00 Amount (City of Irvine)

For Petitioner:

Roxanne Miller, Representative

Eric Myers, Representative

Janis Varney, Representative

For Affected Jurisdiction, City of Merced:

Robin Sturdivant, Representative

For Sales and Use Tax Department:

Carole Ruwart, Tax Counsel

Not subject to contribution disclosure pursuant to Government Code section 15626.

Issues: Whether local sales tax directly allocated to Merced should be reallocated to petitioners.

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

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD NOVEMBER 18, 2009

Nickolaos Papadopoulos and Dimitra Papadopoulos, 436833, 461505 (GH)

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

Bruce Arthur Schoen, 421602 (CH)

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

Jeries A. Izhaq and Nemeah T. Zarour, 423914 (KH)

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

Musleh Saleh Zokari, 392337 (KH)

Final Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be returned to the Department to reexamine its markup test to ensure that it compared the shelf price of an item with the purchase price of that same item, specifically ensuring that it did not compare the shelf price of one size container of soda with the purchase price of a different size container of soda.

Wednesday, November 18, 2009

Julie Lynn Cossey, 441252 (KH)

Final Action: Ms. Steel moved to delete the interest conditioned on the petitioner filing a statement under penalty of perjury that her testimony was true and accurate, otherwise that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Ms. Mandel voting no, Mr. Horton passing.

The Board deferred the matter to the following day.

City of Los Angeles, City of San Jose, and City of Irvine, 472925

Final Action: Mr. Leonard moved to deny the petition. The motion was seconded by Ms. Steel but no vote was taken.

Upon motion of Mr. Leonard, seconded by Mr. Horton and duly carried, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Yee voting no, the Board ordered that the petition be denied and that a portion of the local tax should not be deallocated from petitioners Los Angeles and San Jose to Merced.

The Board adjourned at 4:01 p.m.

The foregoing minutes are adopted by the Board on March 25, 2010.

Note: The following matter was removed from the calendar prior to the meeting: *James Fishman, 355538 (CH)*.

Thursday, November 19, 2009

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Mr. Leonard and Ms. Steel present.

PROPERTY TAXES HEARINGS

Petitions for Reassessment of Unitary Value

Qwest Communications Corporation (2463), 494029
2009, \$182,360,934.00 Unitary Value

For Petitioner:

Peter Hladek, Representative
Christopher Zamora, Representative
Andrew Davis, Representative
Matthew Rakela, Representative

For Property and Special Taxes Department: Andrew Jacobson, Tax Counsel

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

Issues: Whether petitioner has shown that 25 percent reliance should be placed on its Capitalized Earning Ability value indicator.

Whether petitioner has shown that the 2009 Board-adopted unitary value, based entirely on the Replacement Cost New Less Depreciation (ReplCLD) value indicator, does not adequately account for economic obsolescence.

- a. Whether petitioner has shown that the ReplCLD should be adjusted for additional economic obsolescence by using its "Loss in Income Method."
- b. Whether petitioner has shown that the ReplCLD should be adjusted for additional economic obsolescence by using its "Inutility Method."

Whether petitioner has shown that 25 percent reliance should be placed on its "market approach" value indicator.

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

Sprint PCS (2720), 495664
2009, \$1,567,600,000.00 Unitary Value

For Petitioner:

Gene Harris, Taxpayer
Louis Dancer, Taxpayer
Richard Wiley, Attorney
Jerome Weinert, Representative

For Property and Special Taxes Department: Matthew Burke, Tax Counsel

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

Issues: Whether petitioner has shown that the Replacement Cost New (RCN) factors utilized in calculating respondent State-Assessed Property Division's (respondent) Replacement Cost New Less Depreciation (ReplCLD) value indicator were less reliable than petitioner's RCN factors.

Whether petitioner has shown that the depreciation and obsolescence factors used in determining respondent's ReplCLD value indicator were less reliable than petitioner's factors.

Whether respondent should have considered a capitalized earning approach value indicator in the determination of petitioner's 2009 unitary value.

Note: These minutes are not final until Board approved.

Thursday, November 19, 2009

Whether respondent's ReplCLD value indicator for the 2009 Board-adopted unitary value for AT&T Mobility LLC (Mobility) which is based on a write-down of a portion of Mobility's property, plant and equipment costs denies petitioner equal protection of the laws and demonstrates that respondent's valuation methodology does not fully reflect depreciation.

Whether respondent's ReplCLD value indicator includes exempt intangible property value.

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

Golden State Water Company (101), 495665

2009, \$516,100,000.00 Unitary Value

For Petitioner:

Peter Hladek, Representative

Andrew Davis, Representative

Matthew Rakela, Representative

For Property and Special Taxes Department:

Carole Ruwart, Tax Counsel

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

Issues: Whether petitioner has shown that respondent's Historical Cost Less Depreciation (HCLD) value indicator fails to account for all forms of obsolescence in petitioner's unitary property.

Whether petitioner has shown that equal reliance should be placed on the HCLD value indicator and the Capitalized Earning Ability indicator to compute petitioner's 2009 unitary value.

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

The Board recessed at 12:10 p.m. and reconvened at 12:25 p.m. with Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CHIEF COUNSEL MATTERS

RULEMAKING

Proposed Revisions to Alcoholic Beverage Tax Regulations, Section 100 Changes

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for the Board's authorization to complete Rule 100 changes to correct grammatical errors and revise outdated references in specified alcoholic beverage tax regulations: 2504, *Distilled Spirits Produced, Packaged, or Bottled*; 2505, *Bottled or Packaged Distilled Spirits Acquired in California*; 2506, *Bottled or Packaged Distilled Spirits Imported*; 2507, *Distilled Spirits Sold or Exported*; 2508, *Distilled Spirits Invoices and Bottling or Packaging Records*; 2509, *Prepayment of Distilled Spirits Tax; Consolidated Returns*; 2512, *Beer and Wine Production; Beer Bottling; Wholesalers' Beer and Wine Purchases*; 2513, *Beer and Wine Imported*; 2514, *Beer and Wine Sold*; 2525, *Contents*; 2530, *Inventories*; 2535, *Distilled Spirits*; 2536, *Beer Manufacturers*; 2537, *Wine Growers*; 2538, *Beer*

Note: These minutes are not final until Board approved.

Thursday, November 19, 2009

and Wine Importers; 2540, Common Carrier Receipts and Delivery Reports; 2541, Common Carrier Tax Reports; 2542, Public Warehouses; 2543, Customs Brokers; 2544, Conversion of Liters to Gallons; 2557, Powdered Distilled Spirits; 2560, Treated as Sales; and, 2561, Exports and Sales for Export. (Exhibit 11.6.)

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to specified alcoholic beverage tax regulations as recommended by staff.

Exhibits to these minutes are incorporated by reference.

OTHER CHIEF COUNSEL MATTERS

Opinion and Recommendation on Federal Ban and Attorney General's De-Listing of Flavored Cigarettes and Roll-Your-Own Tobacco Products

Randy Ferris, Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's analysis and recommendation on the federal ban and the Attorney General's removal of flavored cigarettes and roll-your-own tobacco products from Tobacco Directory. (Exhibit 11.7.)

Mr. Leonard requested a cost comparison of this proposal above normal operations.

Ms. Yee directed staff to work with the External Affairs Department and other points of contact to further develop the outreach plan; and, schedule this matter for the next meeting.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, 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 11.8.)

Frederick T. Bagood, Business Taxes Specialist I, Internal Security and Audit Division

Patricia A. Clough, Tax Technician III, Return Analysis Unit, Sales and Use Tax Department

Kathleen Cobb, Business Tax Specialist I, Consumer Use Tax Section

Lucille C. Lascano, Tax Technician III, Norwalk Office

Note: These minutes are not final until Board approved.

Thursday, November 19, 2009

Steven Macken, Business Taxes Specialist II, Environmental Fees Division,
Property and Special Taxes Department
Susan A. Mayhew, Business Taxes Compliance Supervisor II, Return Analysis
Unit, Sales and Use Tax Department
Richard L. Rinetti, District Principal Tax Auditor, Van Nuys Office
Frances L. Schmelter, Business Taxes Compliance Specialist, San Diego Office
Edwin Studer, Jr., Systems Software Specialist II (Technical), Technology
Services Division

- Action: Approve the Board Meeting Minutes of July 21, 2009.
- Action: Approve the 2010 Timberland Production Zone Values as recommended by staff. (Exhibit 11.9.)
- Action: Approve the report on the effects of Proposition 10 on cigarette and tobacco products consumption. (Exhibit 11.10.)
- Action: Approve proposed Property Tax Form BOE-263-C, *Church Lessors' Exemption Claim*. (Exhibit 11.11.)
- Action: Approve Assessors' Handbook Section 531, *Residential Building Costs*. (Exhibit 11.12.)

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

- Action: Approve proposed revisions to Compliance Policy and Procedures Manual Chapter 5, *Returns*, and directed staff to provide an accounting of unapplied remittance for a sample period at a future meeting. (Exhibit 11.13.)

With respect to the Administrative Matters, Consent Agenda, the Board deferred approval of Assessors' Handbook Section 534, *Rural Building Costs*, to the December meeting and directed staff to verify its figures and calculations. (Exhibit 11.14.)

The Board recessed at 12:58 p.m. and reconvened at 1:34 p.m. with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel present.

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee

- Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Legislative Committee report and the actions therein and ordered that the votes be reflected in these minutes. (Exhibit 11.15.)

Note: These minutes are not final until Board approved.

Thursday, November 19, 2009

A recommendation to approve the consent agenda unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes. These items are as follow:

Amend Revenue and Taxation Code sections 61 and 5096 to (1) correct a renumbering error and (2) correct a cross reference error.

Amend Revenue and Taxation Code sections 63.1 and 69.5, related to (1) the parent-child change in ownership exclusion and (2) base year value transfers for those over 55, to clarify instances when the real property is held in a trust.

Amend Revenue and Taxation Code section 218 to replace specified disasters with a generic overall provision to retain homeowners' exemption on properties destroyed in governor-declared disasters.

Amend Revenue and Taxation Code sections 41030, 41031, 41032, 41136, 41136.1, 41137, 41137.1, 41138, 41139, 41140, 41141, 41142, 45855, 45863, 45981, and 45982 and amend Public Resources Code section 42463 to reflect recent changes in California state government organizational structure.

A recommendation of support for the following item unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes: Amend Revenue and Taxation Code section 276.1 to extend from 30 days to 90 days the time for a disabled veteran to file a claim to receive the disabled veterans' exemption retroactively to the effective date of disability in cases where the necessary disability rating letter issued by the United States Department of Veterans Affairs is not timely.

A recommendation of support for the following item duly carried with Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no: add section 6225.1 to the Revenue and Taxation Code to allow the Board to register certain persons that incur a use tax liability on a regular basis, who are not otherwise required to be registered.

A recommendation of support for the following item duly carried with Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no: amend Revenue and Taxation Code sections 6452.1, 6453, 6487.3, and 18510 to eliminate the sunset date of December 31, 2009, in order to continue to require the Franchise Tax Board to provide a line for payment of use tax on the state income tax returns.

A recommendation of support for the following item duly carried with Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no: amend Business and Professions Code section 7145.5 to authorize the Board to request the Contractor's State License Board for a denial or suspension of a contractor's license for failure to resolve any outstanding final tax or fee liabilities.

Thursday, November 19, 2009

A recommendation of support for the following item duly carried with Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no: amend Unemployment Insurance Code section 1088.5 to allow the Board to use the new employee registry information maintained by the Employment Development Department for tax enforcement purposes.

Business Taxes Committee

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein and ordered that the votes be reflected in these minutes. (Exhibit 11.16.)

A recommendation to approve authorization to publish proposed Regulation 1698.5, *Audit Procedures*, with amendments duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no.

Customer Services and Administrative Efficiency Committee

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report and the actions therein. (Exhibit 11.17.)

OTHER ADMINISTRATIVE MATTERS

Deputy Directors Reports

Liz Houser, Deputy Director, Administration Department, made introductory remark regarding the contract over \$1 million with Hygiene Technology International, Inc. The contract amendment increases the amount of the contract and extends the term.

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the contract as recommended by staff. (Exhibit 11.18.)

Liz Houser, Deputy Director, Administration Department, provided an update on the Headquarters Remediation Project including the activated swing space moves within the building; and, an update on the site search selection for the Headquarters annex.

Liz Houser, Deputy Director, Administration Department, provided information on recent developments regarding the Governor's 2009/10 and 2010/11 Budget, Governor's Executive Order S-16-08 State Employee Furlough, and layoffs.

Ms. Yee and Members of the Board thanked staff members who are participating in the voluntary employee leave program for their support in helping to absorb some of the impact of this budget reduction.

Note: These minutes are not final until Board approved.

Thursday, November 19, 2009

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
NOVEMBER 18, 2009**

Julie Lynn Cossey, 441252 (KH)

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

FINAL ACTION ON PROPERTY TAXES HEARINGS HELD NOVEMBER 19, 2009

Qwest Communications Corporation (2463), 494029

Final Action: Upon motion of Mr. Horton, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied.

Sprint PCS (2720), 495664

Final Action: The Board requested additional briefing and directed staff to schedule the matter for the December nonappearance calendar.

Golden State Water Company (101), 495665

Final Action: Upon motion of Mr. Horton, seconded by Mr. Leonard and duly carried, Ms. Yee, Mr. Horton and Mr. Leonard voting yes, Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:52 p.m. and reconvened immediately in closed session with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

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

The Board recessed at 2:17 p.m. and reconvened immediately in open session with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Ramon Hirsig, Executive Director, announced that Charlene Yount, Chief, Administrative Support Division, Administration Department, will be leaving the agency for other opportunities. The Members joined Mr. Hirsig in expressing their appreciation for her many years of excellent service.

The Board adjourned at 2:19 p.m.

The foregoing minutes are adopted by the Board on March 25, 2010.

Note: These minutes are not final until Board approved.