

Tuesday, December 15, 2009

The Board met at its offices at 450 N Street, Sacramento, at 10:15 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.

### SALES AND USE TAX APPEALS HEARING

Rodney Eugene Lane, 415962 (BH)

1-1-04 to 12-31-06, \$4,661.44 Interest

For Petitioner:

Rodney Lane, Taxpayer

Denise Rivas, Witness

Cary Huxsoll, Tax Counsel

For Sales and Use Tax Department:

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

Issue: Whether petitioner is entitled to relief from the interest.

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.

### LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Sukrita Sanahi, 436874 (EA)*; and, *Surinder Singh, 506263 (ET)*.

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

Sukrita Sanahi, 436874 (EA)

Action: The Board took no action.

Jose Aristides Torres and Angela J. Torres, 436435 (JH)

4-1-04 to 9-30-07, \$40,904.86 Tax, 6\$6,752.68 Penalty

Action: Redetermine as recommended by the Appeals Division.

Yeon Hwga USA, Inc., 496421 (ET)

May 13, 2009, \$249.43 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Nabil I. Dib and Amal Deib, 496417 (ET)

April 1, 2009, \$1,819.24 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Fuad Mohammed Alwishah, 496370 (ET)

April 21, 2009, \$159.61 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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Chu Mei Yang, 496457 (ET)

May 6, 2009, \$610.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Surinder Singh, 506263 (ET)

May 27, 2009, \$561.25 Approximate Value

Action: The Board took no action.

Sukhjivan Singh Dhaliwal, 506123 (ET)

April 30, 2009, \$1,010.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Baldev Raj and Sarbjit Kaur, 491620 (ET)

March 13, 2009, \$161.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Bains Highway 99 Store, LLC, 506152 (ET)

May 7, 2009, \$92.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Bains Lincoln Rd Store, Inc., 506150 (ET)

May 5, 2009, \$174.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Amany Incorporated, 506185 (ET)

May 13, 2009, \$126.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Karamjit Kaur Grewal, 510014 (ET)

July 1, 2009, \$575.61 Approximate Value

Action: Determined that staff properly seized the tobacco products.

1621 North Mountain Ave., Inc., 506182 (ET)

May 14, 2009, \$3,554.16 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Triangle, Inc., 496439 (ET)

May 6, 2009, \$320.71 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Charanjit Singh, 506869 (ET)

June 4, 2009, \$941.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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

The Board deferred consideration of the following matter: *Cargill Incorporated, 476845.*

With respect to the Corporate Franchise and Personal Income Tax 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:

Jackie L. Adamson, 422135

2006, \$413.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Alliance Media, LLC, 443388

2005, \$274 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Patricia Betts, 423117

1999, \$1,182.00 Tax, \$313.81 Amnesty Penalty

Action: Modify the action of the Franchise Tax Board.

Paul Burke, 464512

2005, \$795.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Chris Alan Capriotti, 460717

2005, \$5,043.00 Tax, \$1,260.75 Late Filing Penalty, \$1,260.75 Notice and Demand Penalty, \$122.00 Filing Enforcement Cost Recovery Fee

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

Cargill Incorporated, 476845

1996, \$737,468.00 Tax

1997, \$232,703.00 Tax

Action: The Board took no action.

Cascade Acceptance Corporation, 423950

2002, \$19,342.48 Tax

2003, \$15,707.00 Tax

2004, \$18,169.97 Tax

Action: Sustain the action of the Franchise Tax Board.

Charles Chu and Peichun Tsai, 468880

2003, \$6,212.00 Assessment

Action: Modify the action of the Franchise Tax Board.

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Richard Courtney, 400993

2002, \$1,076.00 Tax, \$740.94 Penalty

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

Dot.Org, Inc., 450405

2005, \$2,000.00 Corporate Demand Penalty, \$800.94 Late Filing Penalty, \$305.00 Filing Enforcement Cost Recovery Fee

Action: Sustain the action of the Franchise Tax Board.

Extreme Distri, 439456

2004, \$200.00 Late Filing Penalty, \$30.88 Underpayment of Estimated Tax Penalty, \$245.00 Collection Fee, \$171.57 Interest

Action: Sustain the action of the Franchise Tax Board.

Donna Hannah, 460190

2005, \$37,464.00 Tax, \$5,562.28 Interest

Action: Sustain the action of the Franchise Tax Board.

Isaac V. Hardy, 447640

2004, \$1,571.00 Assessment

Action: Modify the action of the Franchise Tax Board.

Nanci Ann Herbst, 435957

2004, \$141,492.00 Tax, \$27,512.46 Interest

Action: Sustain the action of the Franchise Tax Board.

Michael Hodsdon, 474164

2006, \$927.00 Tax, \$231.75 Late Filing Penalty, \$561.00 Notice and Demand Penalty, \$122.00 Filing Enforcement Fee

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

Greg Hohman, 406863

2005, \$1,234.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Lincoln Kennedy, 461408

1999, \$236,742.53 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Steve M. Kolhoff, 464694

2001, \$537.00 Tax, \$44.89 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

David R. Shelton and Suzanne Rosenbloom, 390857

2003, \$480.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Ramiro Perez, 439532

2006, \$516.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Glenn A. Smith and Eileen Smith, 431712

1997, \$9,222.00 Tax, \$2,868.88 Post-Amnesty Penalty

1998, \$9,127.00 Tax, \$2,221.74 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Ada Unruh, 402857

2004, \$2,747.00 Assessment, \$686.75 Demand Penalty, \$686.75 Late Filing Penalty, \$120.00 Filing Enforcement Fee

Action: Modify the action of the Franchise Tax Board and impose a frivolous appeal penalty in the amount of 1,500.00.

Angelica Urquiza Patlan and Abel Gonzalez, 424056

2005, \$545.68 Claim for Refund

Action: Reverse in part the action of the Franchise Tax Board.

John I. Alioto and Linda M. Alioto, 204713

1989, \$127,171.00 Tax, \$6,358.55 Negligence Penalty, \$31,792.75 Late Filing Penalty

1990, \$5,293.00 Tax, \$1,058.60 Accuracy Penalty

1991, \$180.00 Tax, \$36.00 Accuracy Penalty

Action: Deny the petition for rehearing.

Gwendolyn Webber, 406027

2005, \$842.00 Assessment

Action: Deny the petition for rehearing.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTY/INTEREST, DENIAL OF CLAIMS FOR REFUND, AND DENIAL OF RELIEF PENALTIES/INTEREST, CONSENT**

The Board deferred consideration of the following matters: *Bodybuilding.Com, LLC, 467307 (OH)*; and, *Thermo Keytek, LLC, 494632 (OH)*.

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalty/Interest, Denial of Claims for Refund, and Denial of Relief of Penalty/Interest, 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, Ms. Mandel not participating in *Time Warner, LP, 509159 (AC)*; the Board made the following orders:

Hot Topic, Inc., 466441 (AP)

10-1-02 to 12-31-05, \$420,415.39

Action: Approve the redetermination as recommended by staff.

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Richard Starr S B S, Inc., 426096 (KH)

1-1-03 to 12-31-05, \$73,955.89

Action: Approve the redetermination as recommended by staff.

Bodybuilding.Com, LLC, 467307 (OH)

7-1-06 to 12-31-07, \$96,238.84

Action: The Board took no action.

Coach, Inc., 511141 (OH)

4-1-09 to 4-30-09, \$161,622.48

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

Amway Corp., 505757 (OH)

4-1-09 to 6-15-09, \$139,440.00

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

Time Warner, LP, 509159 (AC)

1-1-97 to 12-31-99, \$125,562.33

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating.

Derse, Inc., 507748 (OH)

1-1-01 to 12-31-06, \$165,448.26

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

The Irvine Company, LLC, 510204 (EA)

1-1-06 to 9-30-08, \$75,950.47

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

Modern Finance Company, 446816 (AC)

10-1-07 to 12-31-07, \$61,029.04

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

Thermo Keytek, LLC, 494632 (OH)

7-1-06 to 12-31-07, \$94,145.40

Action: The Board took no action.

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Intel Americas, Inc., 506482 (GH)*; the Board made the following orders:

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Global Micro, Inc., 496769 (EH)

10-1-03 to 12-31-06, \$212,365.55

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

Fleetwood Holdings, Inc., 509449 (EH)

1-1-05 to 12-31-06, \$92,760.22

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

Desert Hospital Corporation, 468774 (EH)

7-1-05 to 3-31-07, \$242,223.17

Action: Approve the refund as recommended by staff.

Delta Design, Inc., 468429 (FH)

1-1-07 to 6-30-08, \$114,142.34

Action: Approve the refund as recommended by staff.

Redwood Credit Union, 504742 (JH)

4-1-08 to 6-30-09, \$458,902.61

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 487374 (KH)

1-1-09 to 6-30-09, \$681,304.80

Action: Approve the refund as recommended by staff.

Washington Mutual Bank FA, 435118 (OH)

1-1-03 to 12-31-07, \$1,792,887.84

Action: Approve the refund as recommended by staff.

Tuff Shed, Inc., 507704 (OH)

1-1-05 to 3-31-08, \$587,977.59

Action: Approve the refund as recommended by staff.

Hollywood Aviation, Inc., 464745 (UT)

9-11-02 to 9-11-02, \$340,690.96

Action: Approve the refund as recommended by staff.

California Shock Trauma Air Rescue, 507007 (UT)

12-3-04 to 12-3-04, \$71,567.71

Action: Approve the refund as recommended by staff.

John Picard, 479024 (UT)

11-23-04, \$53,327.79

Action: Approve the refund as recommended by staff.

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Global Micro, Inc., 473631 (EH)

10-1-03 to 12-31-06, \$50,543.56

Action: Approve the refund as recommended by staff.

Dot Hill Systems Corp., 444255 (FB)

1-1-07 to 3-31-08, \$183,686.63

Action: Approve the refund as recommended by staff.

Intel Americas, Inc., 506482 (GH)

1-1-05 to 12-31-07, \$533,973.52

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

Aerofreeze, Inc., 476653 (OH)

7-1-08 to 9-30-08, \$56,807.58

Action: Approve the refund as recommended by staff.

Platform Enterprises, 458323 (AP)

7-1-07 to 3-31-08, \$135,470.20

Action: Approve the refund as recommended by staff.

Lawson Software, Inc., 486585 (OH)

4-1-06 to 6-30-08, \$72,938.94

Action: Approve the refund as recommended by staff.

Home Carpet Investments, Inc., 509326 (FH)

1-1-06 to 3-31-09, \$220,524.92

Action: Approve the refund as recommended by staff.

River City Paper Co, Inc., 473190 (KH)

10-01-05 to 9-30-08, \$121,968.33

Action: Approve the refund as recommended by staff.

Arrowhead Central Credit Union, 459962 (EH)

10-1-07 to 12-31-08, \$1,013,099.11

Action: Approve the refund as recommended by staff.

Arrowhead Central Credit Union, 485901 (EH)

1-1-06 to 12-31-08, \$569,107.88

Action: Approve the refund as recommended by staff.

Arrowhead Central Credit Union, 504693 (EH)

1-1-09 to 3-31-09, \$356,886.00

Action: Approve the refund as recommended by staff.

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USE Credit Union, 484205 (FH)

10-1-08 to 3-31-09, \$126,384.15

Action: Approve the refund as recommended by staff.

Modern Finance Company, 432794 (AC)

1-1-06 to 12-31-07, \$321,731.14

Action: Approve the refund as recommended by staff.

United Auto Credit Corporation, 484206 (EA)

1-1-09 to 3-31-09, \$99,833.68

Action: Approve the refund as recommended by staff.

Bulgari Retail Usa Sr1, 480365 (OH)

5-1-04 to 6-30-07, \$61,660.51

Action: Approve the refund as recommended by staff.

NNV, Inc., 460974 (FH)

10-1-06 to 6-30-08, \$79,505.80

Action: Approve the refund as recommended by staff.

Barnes &amp; Noble Booksellers, Inc., 374369 (OH)

1-1-06 to 3-31-06, \$212,880.47

Action: Approve the refund as recommended by staff.

Garmin International, Inc., 484612 (OH)

7-1-08 to 12-31-08, \$72,778.19

Action: Approve the refund as recommended by staff.

TWC Leaseco, L.P., 463888 (OH)

7-31-06 to 6-30-08, \$599,147.62

Action: Approve the refund as recommended by staff.

Tenet Healthsystem Desert, Inc., 477169 (EH)

4-1-07 to 6-30-08, \$78,707.90

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Refunds, 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:

Asbury Environmental Services, 491946 (EF)

1-1-08 to 12-31-08, \$76,681.51

Action: Approve the refund as recommended by staff.

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Distribution Services, Inc., 512434 (EF)

1-1-08 to 12-31-08, \$237,246.68

Action: Approve the refund as recommended by staff.

Weider Publications, LLC, 512436 (EF)

1-1-08 to 12-31-08, \$51,368.08

Action: Approve the refund as recommended by staff.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Main Street California, Inc., 224746 (OH)

4-1-98 to 6-30-01, \$320,799.88 Tax

Considered by the Board: June 9, 2009

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

Speaker: Troy M. Van Dogen, Attorney, Winston &amp; Strawn, LLP

Action: Upon motion of Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board deferred consideration of the matter to later in the day.

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: Upon motion of Ms. Mandel, seconded by Mr. Horton 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.

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: Upon motion of Ms. Mandel, seconded by Mr. Horton 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.

Universal City Studios, Inc., 373822, 378248 (AC)

7-1-96 to 4-30-02, \$250,867.40 Tax

7-1-96 to 4-30-02, \$200,000.00 or as Determined Claim for Refund

Considered by the Board: July 1, 2009

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

Speaker: Dean Andal, Representative, Price Waterhouse Coopers, LLP

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 deferred consideration of the matter to later in the day.

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Sukhwant S. Sekhon and Amarjit Sekhon, 491719 (ET)

April 7, 2009, \$619.84 Approximate Value

Considered by the Board: September 1, 2009

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

Speaker: Amarjit Sekhon, Taxpayer

Action: Upon motion of Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board deferred consideration of the matter to later in the day.

City of Pomona and Town of Los Gatos, 469261

7-1-93 to 12-31-07, \$9,531,496.00 Amount (City of Pomona)

10-1-93 to 12-31-07, \$146,630.00 Amount (Town of Los Gatos)

Considered by the Board: August 31, 2009

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

Speaker: Fran Mancina, Representing City of Pomona and Town of Los Gatos  
Linda C. Lowry, City Manager, Representing City of Pomona  
Stephen Conway, Director of Finance, Representing Town of Los Gatos  
Robert Cendejas, Attorney, MuniServices, Representing City of Long Beach  
Robin Sturdivant, Senior Auditor, HdL Companies, Representing 23 Affected Jurisdictions

Jim DeBoo, Representing City of Los Angeles

Pejmon Shemtoob, Deputy City Attorney, Representing City of Los Angeles

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board deferred consideration of the matter to later in the day.

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: 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 determined that staff properly seized the tobacco products as recommended by the Appeals Division.

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

Bakal Company Limited Partnership, 395917

2004, \$400.00 Claim for Refund

Considered by the Board: February 3, 2009

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

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 adopted a decision sustaining the action of the Franchise Tax Board.

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Tuesday, December 15, 2009

James G. Degnan (Deceased) and Isobel Degnan, 388851

2001, \$10,922.00 Assessment

Considered by the Board: October 6, 2009

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

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 adopted a decision modifying the action of the Franchise Tax Board.

Joseph May, 429333

2004, \$386.00 Claim for Refund of Late Filing Penalty, \$244.48 Claim for Refund of Interest

Considered by the Board: November 17, 2009

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

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 adopted a decision modifying the action of the Franchise Tax Board.

#### **SALES AND USE TAX MATTERS, REFUNDS, ADJUDICATORY**

Professional Hospital Supply, Inc., 457642 (EH)

10-1-05 to 6-30-08, \$66,207.88

Considered by the Board: Presented for Separate Discussion

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

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 refund as recommended by staff.

Professional Hospital Supply, Inc., 466754 (EH)

7-1-06 to 12-31-07, \$118,288.82

Considered by the Board: Presented for Separate Discussion

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

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 refund as recommended by staff.

Professional Hospital Supply, Inc., 493135 (EH)

10-1-07 to 3-31-09, \$55,555.12

Considered by the Board: Presented for Separate Discussion

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

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 refund as recommended by staff.

Owens & Minor Distribution, Inc., 459093 (OH)

4-1-05 to 3-31-08, \$59,555.23

Considered by the Board: Presented for Separate Discussion

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

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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 refund as recommended by staff.

Owens & Minor Distribution, Inc., 468180 (OH)

7-1-05 to 6-30-08, \$54,660.75

Considered by the Board: Presented for Separate Discussion

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

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 refund as recommended by staff.

### **SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, ADJUDICATORY**

Life Insurance Company of North America, 468866 (ET)

7-1-08 to 9-30-08, \$144,583.50

Considered by the Board:

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

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 approved the relief of penalty as recommended by staff.

Connecticut General Life Insurance Company, 468867 (ET)

7-1-08 to 9-30-08, \$403,773.70

Considered by the Board:

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

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 approved the relief of penalty as recommended by staff.

### **TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

#### **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 Offer in Compromise of *Nicholas Parks* as recommended by staff.

The Board recessed at 12:00 p.m. and reconvened at 12:06 p.m. with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel present.

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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD  
DECEMBER 15, 2009**

Rodney Eugene Lane, 415962 (BH)

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

Ms. Yee directed staff to talk with Districts to ensure that emphasis on taxpayers getting BOE advice in writing is provided in every class.

Mr. Leonard directed staff to include a disclaimer on all handouts to remind taxpayers to get tax advice in writing.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Main Street California, Inc., 224746 (OH) (Continued)

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and duly carried, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the petition for rehearing be granted.

Universal City Studios, Inc., 373822, 378248 (AC) (Continued)

Action: Ms. Steel moved to: 1) adjust the tax for contracts without alcohol; 2) reduce the measure by 10 percent for food sales prior to the opening of the Globe; and, 3) accept the petitioner's adjustments for gift cards as adjusted by the Appeals Division. The motion was seconded by Ms. Yee but failed to carry, Ms. Steel voting yes, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Mandel voting no.

Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered to accept the petitioner's adjustments for gift cards as adjusted by the Appeals Division, otherwise that the petition be redetermined as recommended by the Appeals Division.

Sukhwant S. Sekhon and Amarjit Sekhon, 491719 (ET) (Continued)

Action: Ms. Steel moved to grant the petition. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Mr. Horton and Ms. Mandel voting no.

Mr. Leonard directed staff to pursue legislation to emphasize tax collection rather than the destruction of seized tobacco products.

Upon motion of Ms. Yee, 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 determined that staff properly seized the tobacco products as recommended by the Appeals Division.

Tuesday, December 15, 2009

City of Pomona and Town of Los Gatos, 469261 (Continued)

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Mr. Horton voting no, the Board ordered that as to the petition filed by the City of Pomona, 75 percent of the local tax at issue for the period October 1, 1993, through December 31, 2007, be granted in accordance with Pomona's willingness to accept a 25 percent reduction, including mitigation of eight quarters with 20 percent of the reallocation being made for each of the first two quarters and 10 percent being reallocated for each of the remaining six quarters; and, the Board ordered that the petition filed by the Town of Los Gatos be granted.

The Board adjourned at 1:22 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: *Adobe Beverages and Foods, Inc., 506102 (ET)*; and, *David M. Gallegos, 390980*.

Wednesday, December 16, 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.

### **SALES AND USE TAX APPEALS HEARING**

Raw Skate Parks, Inc., 459785, 507070 (GH)

10-1-04 to 9-30-07, \$74,409.75 Tax

For Petitioner/Claimant:

Bob Fisher, Taxpayer

Butch Kruse, Representative

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issue: Whether adjustments are warranted because petitioner was a victim of embezzlement.

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.

### **PUBLIC HEARINGS**

#### **Timber Yield Tax Rate**

Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, made introductory remarks regarding the timber yield tax rate. Revenue and Taxation Code section 38202 requires that the Board adjust the timber yield tax rate in December of each year to the nearest one-tenth of one percent for the next calendar year. The adjustment is to be in the same proportion as the change from the previous tax year to the present one of the average general property tax rate in the rate adjustment counties. (Exhibit 12.1.)

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

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 adopted the 2010 timber yield tax rate of 2.9 percent as recommended by staff.

Members thanked staff for their diligent work on this item.

Exhibits to these minutes are incorporated by reference.

#### **Timber Harvest Values**

Mitchell Cari, Principal Property Appraiser, Timber Tax Section, County-Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding timber harvest values. On or before December 31, 2009, the Board shall estimate the immediate harvest values of and adopt schedules for timber harvested between January 1, 2010 and June 30, 2010. (Rev. & Tax. Code, § 38204.) (Exhibit 12.2.)

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

Wednesday, December 16, 2009

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the 2010 timber harvest values as recommended by staff.

Members thanked staff for their diligent work on this item.

## CHIEF COUNSEL MATTERS

### RULEMAKING

#### **Regulation 4076, *Wholesale Cost of Tobacco Products***

Carolee Johnstone, Tax Counsel, Tax and Fee Division, Legal Department, made introductory remarks regarding Regulation 4076, *Wholesale Cost of Tobacco Products*. Staff requested Board approval to commence a proposed new rulemaking proceeding to clarify how to determine the taxable wholesale cost of tobacco products to distributors. (Exhibit 12.3.)

Speaker: Dennis Loper, Representing the California Distributors Association

Action: The Board referred the regulation to the Business Tax Committee to initiate the expedited interested parties process in January 2010.

#### **Regulation 4903, *Innocent Spouse or Registered Partner Relief from Liability***

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*. Staff requested authorization to publish proposed Regulation 4903 (and related cross-referencing regulations) to prescribe the requirements for obtaining innocent spouse relief from specified taxes and fees. (Exhibit 12.4.)

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 authorized publication as recommended by staff.

### 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, and Gilbert Haas, Chief, Investigations and Special Operations Division, Legal Department, provided an update on staff's analysis and recommendation regarding the federal ban and the Attorney General's de-listing of flavored cigarettes and roll-your-own tobacco products.

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

Wednesday, December 16, 2009

## ADMINISTRATIVE SESSION

### ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single 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 made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California. (Exhibit 12.5.)

Victor C. Anderson, Jr., Business Taxes Administrator III, Out-of-State Office

Richard A. Gardenhire, Tax Technician II, West Covina Office

Robert L. Haber, Tax Auditor, West Covina Office

Edward W. King, Chief, Fuel Taxes Division, Property and Special Taxes

Department

Tim Rauscher, Staff Programmer Analyst (Specialist), Technology Services

Department

Ruth Snyder, Business Taxes Specialist I, Centralized Collection Section, Sales and Use Tax Department

Linda Studer, Staff Services Analyst, Case Management Section, Board Proceedings Division

Linda J. Welker, Senior Tax Auditor, Riverside Office

Wayne Williams, Data Processing Manager II, Technology Services Division

Action: Approve the Board Meeting Minutes of August 12, 2009 and August 31–September 1, 2009.

Action: Approve revisions to Compliance Policy and Procedures Manual Chapter 7, *Collections*. (Exhibit 12.6.)

### ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

#### Legislative Committee

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 Legislative Committee report and the actions therein. (Exhibit 12.7.)

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

Repeal Revenue and Taxation Code sections 1624.3, 1636.2, and 636.5 which were made redundant by recent legislation.

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

Wednesday, December 16, 2009

Amend Revenue and Taxation Code section 1604 to clarify that the two year period that an assessment appeals board has to decide appeals before a property owner's opinion of value becomes controlling applies to supplemental and escape assessment appeals.

Amend Revenue and Taxation Code section 4831 to clarify the provisions related to assessment roll corrections.

A recommendation of the following item unanimously passed with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes: Amend Revenue and Taxation Code section 401.11 to extend for five years the assessment valuation methodology for intercounty pipeline rights-of-way which are otherwise scheduled to sunset.

A recommendation of the following item unanimously passed with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes: Amend Revenue and Taxation Code section 6829 of the Sales and Use Tax Law to include imposition of personal liability on responsible persons of a closely held corporation or closely held limited liability company (LLC) for liabilities arising during a period of suspension of that closely held corporation or closely held LLC, but only if the corporation or LLC is not revived within 60 days of the imposition of the suspension. Further, to add statutes comparable to section 6829, as amended, to those Board-administered Special Taxes and Fees programs where circumstances would warrant the imposition of personal liability on an officer, partner, member, manager, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of taxes or fees for a corporation, partnership, limited partnership, limited liability partnership, or LLC that has been terminated, dissolved or abandoned or on a responsible person of a closely held corporation or closely held LLC that has been suspended without being timely revived.

A recommendation of the following item unanimously passed with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes: Amend Business and Professions Code sections 22971, 22980.2, and 22980.3 to (1) prohibit a licensee from gifting or displaying cigarettes or tobacco products during a period when the license is suspended or after a license has been revoked and (2) provide that cigarettes or tobacco products displayed during a license suspension or after a license has been revoked are presumed to be displayed for sale.

A recommendation of the following item unanimously passed with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes: Amend Unemployment Insurance Code section 1095 to authorize the Board to admit the Employment Development Department's confidential employment tax information as evidence into the Board's administrative hearings for feepayer appeals and in court proceedings.

Wednesday, December 16, 2009

A recommendation of the following item unanimously passed with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes: Add sections 7304.1, 7304.2 and 7360.1 to, amend sections 7304, 7326 and 7402 of, and repeal sections 8651.8 and 8657 of, the Revenue and Taxation Code to reclassify alcohol fuel, commonly know as E85, from the Use Fuel Tax Law to the Motor Vehicle Fuel Tax Law in order to conform the reporting requirements with those for gasoline and diesel fuel.

### Property Tax Committee

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 approved the Property Tax Committee report and the actions therein. (Exhibit 12.8.)

A recommendation of the following item unanimously passed with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes: adopt the recommended offset lithographic printing presses valuation factors as presented in Issue Paper 09-008.

A recommendation of the following item unanimously passed with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes: adopt the recommended document processors valuation factors as presented in Issue Paper 09-006.

A recommendation of the following item unanimously passed with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes: adopt the 2010 revision of AH 581 as presented in Issue Paper 09-007, Alternative Number 4.

### OTHER ADMINISTRATIVE MATTERS

#### Executive Director's Report

Ramon Hirsig, Executive Director, made introductory remarks regarding the Board of Equalization's *Employee Recognition Award Program*. Cristina Herrera, Manager, Strategic Analysis and Review, External Affairs Department, read the names of the nominees and their achievements into the record. (Exhibit 12.9.)

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 Board of Equalization's nominees for the *Employee Recognition Award Program*.

Mr. Horton discussed meeting with the staff in his district and suggested that the agency incorporate any audit policy enhancements these individuals have accomplished, including improvements in the area of public relations skills and techniques.

Ms. Yee encouraged her colleagues to visit staff in their districts and commended her district staff for their excellent work.

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

Wednesday, December 16, 2009

### Deputy Directors Reports

Dean Kinnee, Chief, County-Assessed Properties Division, Property and Special Taxes Department, presented the Assessors' Handbook Section 534, *Rural Building Costs*.

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 approved publication of the 2010 revision of Assessors' Handbook Section 534, *Rural Building Costs*, as recommended by staff. (Exhibit 12.10.)

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. Ms. Houser also 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.

### FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD DECEMBER 16, 2009

Raw Skate Parks, Inc., 459785, 507070 (GH)

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

### SALES AND USE TAX APPEALS HEARING

I2 Group, LLC, 448503 (UT)

August 30, 2006, \$39,487.00 Tax

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Christine Bisauta, Tax Counsel

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

Issue: Whether petitioner purchased the aircraft with tail number 314A for use in California.

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.

### ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 10:55 a.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)).

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

Wednesday, December 16, 2009

The Board recessed at 12:04 p.m. and reconvened immediately in open session with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel present.

The Board recessed at 12:05 p.m. and reconvened at 1:39 p.m. with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Mr. Chiang present.

## **SPECIAL PRESENTATION**

### **Special Presentation of Retirement Resolution to Edward King**

David Gau, Deputy Director, Property and Special Taxes Department, made introductory remark regarding the retirement of Edward King, Chief, Fuel Tax Division, Property and Special Taxes Department.

Ms. Yee read into the record the retirement resolution for Mr. King, and welcomed his wife Sharon King who was in the audience. Members made complementary remarks regarding their experiences with Mr. King and his exceptional work.

## **SPECIAL ANNOUNCEMENT**

Mr. Gau announced the retirement of Kathie Newton, Executive Assistant, Property and Special Taxes Department. Members requested Ms. Newton's presence in the Board room.

## **PROPERTY TAXES MATTERS, ADJUDICATORY**

### **Petitions for Reassessment of Unitary Value**

Questar Southern Trails Pipeline Co., 495440 (196)

2009, \$22,800,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the 2009 unitary value be reduced to \$18,600,000.00 as recommended by staff.

Mr. Chiang stated for the record that he would not participate in *TW Telecom of California, LP, 495865*; due to a possible campaign contribution.

TW Telecom of California, LP, 495865 (7522)

2009, \$188,900,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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<sup>1</sup> This matter was continued later in the day.

Wednesday, December 16, 2009

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard and Ms. Steel voting yes, Mr. Chiang not participating in accordance with Government Code section 15626, the Board granted the petition for reassessment and ordered that the unitary value be reduced to \$168,300,000.00 as recommended by staff.

#### **Petition for Reassessment of Private Railroad Car Tax**

Paneltech International, LLC, 510882 (6399)

2009, \$6,511.00 Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board granted the petition for reassessment and reduced the 2009 private railroad car value to \$1,384.00 as recommended by staff.

#### **Petition for Reassessment of Unitary Value**

Lodi Gas Storage, LLC, 494028 (198)

2009, \$327,600,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and duly carried, Ms. Yee, Mr. Horton, Ms. Steel and Mr. Chiang voting yes, Mr. Leonard voting no, the Board ordered that the value be reduced to \$270,700,000.00 as recommended by staff.

### **LEGAL APPEALS PROPERTY TAXES MATTERS, ADJUDICATORY**

#### **Petitions for Reassessment of Unitary Value**

San Diego Gas & Electric Company (141), 495448

2009, \$4,790,100,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

Dynegy Oakland, LLC (1105), 495512

2009, \$5,720,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

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

Wednesday, December 16, 2009

La Paloma Generating Company, LLC (1112), 495858

2009, \$482,200,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

Reliant Energy Coolwater, LLC (1113), 495859

2009, \$25,000,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

Reliant Energy Mandalay, LLC (1114), 495860

2009, \$46,300,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

Reliant Energy Ormond Beach, LLC (1115), 495861

2009, \$55,500,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

Reliant Energy Etiwanda, LLC (1116), 495862

2009, \$47,800,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

High Desert Power Trust 2000-A (1127), 495661

2009, \$445,200,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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Wednesday, December 16, 2009

Action: Upon motion of Mr. Horton, seconded by Mr. Chiang and duly carried, Ms. Yee, Mr. Horton and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the 2009 unitary value be reduced to \$417,100,000.00 as recommended by the Appeals Division.

Verizon California, Inc. (201), 495518

2009, \$3,328,200,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the 2009 unitary value be reduced to \$3,018,100,000.00 as recommended by the Appeals Division.

Pacific Bell Telephone Company (279), 495430

2009, \$7,741,200,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the 2009 unitary value be reduced to \$6,864,000,000.00 as recommended by the Appeals Division.

Sprint PCS (2720), 495664

2009, \$1,567,600,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the 2009 unitary value be reduced to \$1,386,200,000.00 as recommended by the Appeals Division.

OmniPoint Communications, Inc. (2748), 495863

2009, \$1,712,400,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the 2009 unitary value be reduced to \$1,569,000,000.00 as recommended by the Appeals Division.

Mountainview Power Company (1119), 495660

2009, \$664,600,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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Wednesday, December 16, 2009

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

Elk Hills Power, LLC (1126), 495447

2009, \$324,500,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton and Mr. Chiang voting yes, Mr. Leonard voting no, Ms. Steel not participating in accordance with Government Code section 87105, the Board ordered that the petition be denied as recommended by the Appeals Division.

Delta Energy Center, LLC (1128), 495852

2009, \$439,900,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

Pastoria Energy Facility (1131), 495854

2009, \$489,100,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

Calpine Construction Finance Company (1132), 495855

2009, \$249,500,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

Metcalf Energy Center, LLC (1133), 495856

2009, \$357,000,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

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Wednesday, December 16, 2009

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

2009, \$95,000,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

**Petitions for Abatement of Penalty**

Atlantic Path 15, LLC (156), 495433

2009, \$137,000,000.00 Unitary Value, \$13,700,000.00 Penalty

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition for abatement of penalty be granted as recommended by the Appeals Division.

Vizada, Inc. (7948), 492252

2009, \$8,190,000.00 Unitary Value, \$819,000.00 Penalty

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the late filing penalty be reduced to 5 percent.

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

WWC License, LLC (2665)

2006-2009, \$ 170,000.00 Escaped Assessment, \$17,000.00 Penalty, \$38,100.00 In-lieu Interest

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board adopted the audit escaped assessment, plus penalty and in-lieu interest, as recommended by staff.

**Unitary and Nonunitary Escaped Assessments**

Golden State Water Company (101)

2008-2009, \$16,625,000.00 Nonunitary Value

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

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

Wednesday, December 16, 2009

Los Angeles SMSA Ltd., Partnership (2532)

2006-2009, \$2,641,511.00 Unitary Value

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

Sprint PCS (2720)

2009, \$131,236.00 Unitary Value

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

### Board Roll Changes

2006, 2007, 2008 and 2009 State-Assessed Property Rolls

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board approved corrections to the 2006, 2007, 2008 and 2009 Board Rolls of State-Assessed Property as recommended by staff. (Exhibit 12.11.)

### SPECIAL ANNOUNCEMENT (CONTINUED)

David Gau, Deputy Director, Property and Special Taxes Department, introduced Kathie Newton, Executive Assistant, Property and Special Taxes Department, to the Board. Members made complementary remarks and thanked Ms. Newton for her more than 40 years of service to the State Board of Equalization and the State of California.

The Board adjourned at 2:12 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: *Macromedia, Inc., 461946 (BH)*; and, *Covad Communications Company (7706), 495864*.