

Thursday, January 31, 2008

The Board met at its offices at 450 N Street, Sacramento, at 11:30 a.m., Ms. Yee, Chairwoman, Dr. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

**ORGANIZATION OF THE BOARD**

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board appointed Dr. Chu Chair and Ms. Yee Vice Chairwoman.

The Board recessed at 11:33 a.m. and reconvened at 11:37 a.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Dr. Chu thanked the Board for the opportunity to serve as Chair and commended Ms. Yee for her conduct of the meetings as Chair throughout the past year.

Ms. Yee announced that Jeffrey Margolis, Tax Counsel IV, would be leaving her office to rejoin the Franchise Tax Board and thanked him for his contribution to the Board of Equalization.

**CHIEF COUNSEL MATTERS**

**RULEMAKING CHIEF COUNSEL MATTERS**

**Petition to Amend Property Tax Rule 462.001, *Change in Ownership – General***

Speakers: David R. Doerr, Chief Tax Consultant, California Taxpayers' Association

This matter continued later in the day with an introduction, discussion, and more speakers.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Randall G. Tipton, 427078

1999, \$3,596.00 Tax, \$899.00 Delinquency Penalty, \$2,697.00 Fraud Penalty  
2000, \$2,769.00 Tax, \$692.25 Delinquency Penalty, \$2,076.75 Fraud Penalty  
2001, \$9,711.00 Tax, \$2,427.00 Delinquency Penalty, \$7,283.25 Fraud Penalty  
2002, \$14,914.00 Tax, \$3,729.00 Delinquency Penalty, \$11,185.50 Fraud Penalty  
2003, \$4,764.00 Tax, \$1,191.00 Delinquency Penalty, \$3,573.00 Fraud Penalty  
2004, \$7,819.00 Tax, \$1,954.75 Delinquency Penalty, \$5,664.25 Fraud Penalty  
2005, \$36,776.00 Tax, \$9,194.00 Delinquency Penalty, \$27,582.00 Fraud Penalty  
2006, \$17,231.00 Tax, \$861.55 Underpayment Penalty, \$127.31 Monthly, \$12,923.00 Fraud Penalty

For Appellant: Karen L. Hawkins, Representative  
For Franchise Tax Board: Suzanne Small, Tax Counsel  
Carissa Lynch, Tax Counsel

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

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Issues: Whether respondent has met its burden of proof to show that, under the circumstances presented, its determination was reasonable that jeopardy existed as to the assessment or collection of tax against appellant.

Whether the Board has jurisdiction to determine the proper amount of the underlying assessment; and, if so, whether appellant has met its burden of proof to show that the assessment was in error.

Whether the Board has jurisdiction to determine whether the fraud penalties were properly imposed; and, if so, whether respondent has met its burden of proof to show that it properly imposed fraud penalties.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 1.1)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 1.2)

Appeal's Exhibit: Questions posed to parties in response to appellant's letter of January 25, 2008 (Exhibit 1.3)

The Board recessed at 12:43 p.m. and reconvened at 1:35 p.m. with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Amy Kelly, Tax Counsel, Appeals Division, Legal Department, announced that the Franchise Tax Board could review the record and provide additional information the following day.

Action: The Board continued the appeal to the following day.

Exhibits to these minutes are incorporated by reference.

Swift Transportation Company, Inc., 266318

1997, \$55,352.00 Assessment

1998, \$118,067.00 Assessment

For Appellant:

Chris Schutz, Representative

John G. Rucker, III, Representative

Renaewelder, Representative

For Franchise Tax Board:

Laurie McElhatton, Tax Counsel

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

Issues: Whether the special apportionment formula set for the in California Code of Regulations, title 18, section 25137-11 applies to all members of appellants' combined reporting group.

Whether appellants are entitled to a refund for the years in question and, if so, in what amount.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 1.4)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 1.5)

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

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Lionel M. Nurse and Silvia I. Perez, 397729  
2002, \$65.00 Assessment

For Appellant:

Lionel M. Nurse, Taxpayer  
Silvia I. Perez, Taxpayer

For Franchise Tax Board:

Mark McEvelly, Tax Counsel

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

Issue: Whether appellants may exclude from their gross income attorneys' fees paid in the amount of \$35,000.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 1.6)

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

### SALES AND USE TAX APPEALS HEARINGS

Johnny Quik Food Stores, Inc., 303702 (KHO)  
4-1-00 to 3-31-03, \$54,421.01 Claim for Refund

For Claimant:

Nishan Kochian, Representative  
Nickolas Dibiaso, Attorney

For Sales and Use Tax Department:

Christine Bisauta, Tax Counsel

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

Issue: Whether claimant is entitled to a refund for the period April 1, 2000, through June 30, 2001.

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

Scot Kenney, 312450 (KH)  
4-1-01 to 3-31-04, \$10,002.41 Tax

For Petitioner:

Scot Kenney, Taxpayer

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

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

Issue: Whether petitioner has established that any of the remaining disallowed claimed sales for resale are in fact valid sales for resale.

Jeff Angeja, Tax Counsel, Appeals Division, Legal Department, announced a revised recommendation that would reduce the measure of tax by \$3,599.00.

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

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Homecare Information Systems, Inc., 89002426820 (OHB)

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

For Petitioner: Richard E.V. Harris, Representative

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

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

Issues: Whether nexus exists for purposes of petitioner's sales to its customers for use tax collection and remittance debts.

Whether the Notice of Determination issued on April 7, 1998 is valid.

Whether the statute of limitations for 1990 through 1995 expired before the Board's mailing of the April 7, 1998 Notice of Determination.

Whether the three-year limitation period applies pursuant to Revenue and Taxation Code section 6487.05 to the deficiency for 1990 through 1995.

Whether any basis exists to further delete or reduce petitioner's use tax collection and remittance liability from that which is currently shown in the January 2003 reaudit report.

Whether Revenue and Taxation Code section 6203 and 6204 are unconstitutional.

Whether any relief can be granted to petitioner pursuant to Revenue and Taxation Code section 6596.

Whether any equitable basis exists to delete or further reduce petitioner's liability as shown in the January 2003 reaudit schedule.

Whether petitioner can be relieved of interest charges on its use tax collection and remittance debts amounts due to the alleged misconduct of the Department.

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

Tarek Anwar Nada, 305290 (CH)

10-1-00 to 3-31-04, \$92,411.42 Tax

For Petitioner: Cindy Ho, Attorney

Tarek Nada, Taxpayer

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

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

Issue: Whether petitioner has established that reductions to the unreported taxable sales are warranted.

Jeff Angeja, Tax Counsel, Appeals Division, Legal Department, announced a revised recommendation that would recognize \$115,000 as loans rather than taxable sales, which would reduce the measure of tax to \$1,011,817.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu voting no, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

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**CHIEF COUNSEL MATTERS****RULEMAKING CHIEF COUNSEL MATTERS****Petition to Amend Property Tax Rule 462.001, *Change in Ownership – General***

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the petition to amend Property Tax Rule 462.001 *Change in Ownership – General*, to state that property transfers must be from primary owners in order to constitute changes in ownership (Exhibits 1.7).

Speakers: Stephen Bennett, CPA, Letwak & Bennett (Exhibits 1.8)  
Thomas R. Parker, Deputy County Counsel, Sacramento County, representing the Sacramento County Assessor and the California Assessors' Association

Action: Mr. Leonard moved to refer the matter to an interested parties meeting. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board denied the petition.

**LEGAL APPEALS MATTERS, CONSENT**

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

City of Brisbane, 384183 (BH)

1-1-01 to 9-30-07, \$1,914,483.00 Tax

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

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

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

Neal Archer and Pamela Archer, 363077

2002, \$3,534.88 Tax, \$883.72 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Luis Bueno and Emilia Bueno, 361513

2001, \$1,422.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Ronco Consulting Corporation, 306086

1993, \$6,736.03 Claim for Refund of Interest

1994, \$21,750.23 Claim for Refund of Interest

Action: Sustain the action of the Franchise Tax Board.

Ronald C. Salerno, 400375

1993, \$14,868.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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

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

Joyce Coleman, 349371

2005, \$400.00

Action: Sustain the action of the Franchise Tax Board.

Laura Dennis, 339328

2005, \$472.60

Action: Sustain the action of the Franchise Tax Board.

James Deringol, 387193

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Yasmin Gonsouland, 341130

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Leonardo L. Calica, 377400

2006, \$265.00

Action: Deny the petition for rehearing.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu and Ms. Mandel not participating in *Pacific Gas & Electric Company*, 271983; the Board made the following orders:

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Yoosef Aminpour, 157910 (AC)

1-1-97 to 6-14-99, \$33,389.97

Action: Approve the redetermination as recommended by staff.

Exact Software Erp-Na, Inc., 361771 (OHA)

7-1-02 to 6-30-05, \$72,517.88

Action: Approve the redetermination as recommended by staff.

Qwest Communications Corporation, 343233 (OH)

1-1-98 to 12-31-02, \$13,225,307.02

Action: Approve the redetermination as recommended by staff.

Penn Emblem Company, 376819 (OHB)

7-1-98 to 3-31-03, \$108,961.06

Action: Approve the redetermination as recommended by staff.

Praxair Surfaces Technologies, Inc., 400762 (OHB)

4-1-02 to 9-30-05, \$53,402.13

Action: Approve the redetermination as recommended by staff.

The Robert Allen Group, Inc., 405239 (OHB)

10-1-02 to 9-30-05, \$52,419.85

Action: Approve the redetermination as recommended by staff.

Cardinal Health 303, Inc., 378172 (FH)

7-1-00 to 6-30-05, \$101,845.15

Action: Approve the redetermination as recommended by staff.

Imax Corporation, 109214 (OHA)

3-1-04 to 9-30-99, \$549,042.19

Action: Approve the redetermination as recommended by staff.

Saeid Aminpour, 157907 (AC)

10-1-98 to 12-31-98, \$731.35

Action: Approve the redetermination as recommended by staff.

Flowserve US, Inc., 379037 (OHC)

7-1-00 to 6-30-03, \$124,952.79

Action: Approve the redetermination as recommended by staff.

Thoren Caging Systems, Inc., 351532 (OHB)

10-1-96 to 3-31-05, \$103,626.61

Action: Approve the redetermination as recommended by staff.

Durango Mining Equipment, Inc., 219878 (OH)

1-1-94 to 9-30-01, \$72,474.33

Action: Approve the redetermination as recommended by staff.

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Pacific Gas &amp; Electric Company, 271983 (BH)

4-6-01 to 3-31-02, \$833,808.81

Action: Approve the redetermination as recommended by staff. Dr. Chu and Ms. Mandel not participating.

Babol Sons, Inc., 157906 (AC)

10-1-095 to 9-30-98, \$12,142.85

Action: Approve the redetermination as recommended by staff.

Aminpour Brothers, Inc., 158234 (AC)

10-1-96 to 9-30-98, \$16,731.42

Action: Approve the redetermination as recommended by staff.

White Oak Inn, Inc., 157905 (AC)

1-1-97 to 8-31-99, \$34,645.22

Action: Approve the redetermination as recommended by staff.

For Stars Express, Inc., 380964 (AS)

7-1-03 to 12-31-03, \$81,194.82

Action: Approve the redetermination as recommended by staff.

La Curacao, 425509 (AS)

1-1-07 to 3-31-07, \$82,447.80

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

American Honda Motor Company, Inc., 399483 (AS)

4-1-05 to 6-30-05, \$114,131.13

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

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu not participating in *International Business Mach. Corporation, 399474*; and, *International Business Mach. Corporation, 328946*; Ms. Steel not participating in *Hess Microgen, LLC, 349771*; Ms. Mandel not participating in *UPS Logistics Technologies, Inc., 197014*; and, *Operating Engineers Local Unit #3, 355034*; Ms. Mandel not participating in accordance with government code section 87105 in *Chevrolet Motor Division, 424152*; the Board made the following orders:

Nelco Products, Inc., 422686 (EA)

10/1/00 to 12/31/03, \$169,818.64

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

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Iron Mountain Info Management, Inc., 382768 (OHB)

7-1-02 to 3-31-06, \$355,524.59

Action: Approve the refund as recommended by staff.

Sage Holding Company, Inc., 421991 (AS)

1-1-04 to 12-31-06, \$85,099.08

Action: Approve the refund as recommended by staff.

Nissan North America, Inc., 417315 (AS)

8-21-07 to 9-25-07, \$760,348.95

Action: Approve the refund as recommended by staff.

Occidental College, 423041 (AP)

7-1-03 to 6-30-06, \$53,611.27

Action: Approve the refund as recommended by staff.

California Portland Cement Company, 391661 (AP)

7-1-06 to 9-30-06, \$141,424.52

Action: Approve the refund as recommended by staff.

Doremi Labs, Inc., 415512 (AC)

1-1-07 to 3-31-07, \$107,847.08

Action: Approve the refund as recommended by staff.

The Gap Stores, Inc., 294925 (BH)

4-1-98 to 3-31-04, \$275,959.11

Action: Approve the refund as recommended by staff.

Peterson Power Systems, Inc., 420319 (CH)

1-1-07 to 3-31-07, \$144,300.68

Action: Approve the refund as recommended by staff.

Primary Color Systems Corporation, 262778 (EAA)

1-1-01 to 3-31-04, \$231,632.33

Action: Approve the refund as recommended by staff.

First Future Credit Union, 327425 (FH)

10-1-01 to 6-30-05, \$100,720.23

Action: Approve the refund as recommended by staff.

Logitech, Inc., 359339 (CH)

4-1-04 to 9-30-05, \$153,237.91

Action: Approve the refund as recommended by staff.

Ormco Corporation, 262509 (EA)

10-1-00 to 3-31-04, \$68,280.60

Action: Approve the refund as recommended by staff.

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Wafernet, Inc., 405477 (GH)

4-1-04 to 9-30-06, \$139,069.35

Action: Approve the refund as recommended by staff.

Safe Credit Union, 401537 (KH)

10-1-06 to 6-30-07, \$65,355.48

Action: Approve the refund as recommended by staff.

UPS Logistics Technologies, Inc., 197014 (OHB)

10-1-00 to 9-30-04, \$70,240.95

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

Genie Industries Incorporated, 421341 (OH)

1-1-03 to 12-31-05, \$86,557.72

Action: Approve the refund as recommended by staff.

UOP, Inc. &amp; Katalistiks International, Inc., 417461 (OHA)

1-1-07 to 3-31-07, \$708,093.75

Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 424152 (OHA)

3-2-07 to 9-27-07, \$1,053,139.47

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

Daimler Chrysler Corporation, 424151 (CHA)

1-24-07 to 7-11-07, \$395,514.27

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 414135 (KH)

6-28-07 to 9-07-07, \$281,929.00

Action: Approve the refund as recommended by staff.

The Doctors Company, 380016 (JHF)

7-1-03 to 12-31-06, \$107,588.64

Action: Approve the refund as recommended by staff.

McAfee, Inc., 422993 (GH)

10-1-98 to 9-30-01, \$368,591.48

Action: Approve the refund as recommended by staff.

Westates Carbon-Arizona, Inc., 261343 (OHB)

1-1-01 to 6-30-03, \$66,725.52

Action: Approve the refund as recommended by staff.

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Intl Post Leasing Limited, 423047 (AC)

10-1-98 to 9-30-02, \$50,518.00

Action: Approve the refund as recommended by staff.

Cedar Fair LP, 329583 (EA)

1-1-01 to 12-31-03, \$205,346.69

Action: Approve the refund as recommended by staff.

Bemusic, Inc., 420054 (OHB)

4-1-07 to 6-1-07, \$162,847.43

Action: Approve the refund as recommended by staff.

International Business Mach. Corporation, 399474 (OHB)

1-1-99 to 9-30-05, \$120,758.93

Action: Approve the refund as recommended by staff. Dr. Chu not participating.

International Business Mach. Corporation, 328946 (OHB)

1-1-01 to 12-31-03, \$1,555,808.31

Action: Approve the refund as recommended by staff. Dr. Chu not participating.

American Honda Motor Company, Inc., 399483 (AS)

4-1-05 to 6-30-05, \$1,211,453.23

Action: Approve the refund as recommended by staff.

Travis Credit Union, 417200 (JHF)

4-1-07 to 6-30-07, \$132,361.30

Action: Approve the refund as recommended by staff.

Imation Corporation, 421992 (OHA)

10-1-02 to 12-31-05, \$70,981.33

Action: Approve the refund as recommended by staff.

Universal Sodexho, 263741 (GH)

10-1-03 to 3-31-04, \$141,149.64

Action: Approve the refund as recommended by staff.

Arcadia Financial Ltd., 400986 (OHB)

1-1-07 to 6-30-07, \$526,175.84

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 416631 (OHC)

4-1-07 to 6-30-07, \$997,918.48

Action: Approve the refund as recommended by staff.

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Hess Microgen, LLC, 349771 (OHB)

7-1-02 to 6-30-05, \$54,083.72

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

Rock-It Surfaces, Inc., 389758 (FHB)

10-1-03 to 3-31-07, \$53,035.51

Action: Approve the refund as recommended by staff.

United Auto Credit Corporation, 415867 (EAA)

1-1-07 to 6-30-07, \$199,722.21

Action: Approve the refund as recommended by staff.

GNLD International, LLC, 417381 (CH)

2-15-07 to 2-15-07, \$128,895.36

Action: Approve the refund as recommended by staff.

Transouth Financial Corporation, 400795 (OHB)

1-1-07 to 6-30-07, \$1,138,748.57

Action: Approve the refund as recommended by staff.

Finance and Thrift Company, 334311 (KHO)

7-1-02 to 6-30-05, \$213,981.03

Action: Approve the refund as recommended by staff.

Cig Financial, 404730 (EAA)

10-1-06 to 3-31-07, \$202,143.38

Action: Approve the refund as recommended by staff.

Roy's Pasadena-I Ltd. Partnership, 398840 (AS)

10-1-05 to 12-31-05, \$92,136.07

Action: Approve the refund as recommended by staff.

San Francisco Federal Credit Union, 339256 (BH)

10-1-02 to 3-31-06, \$61,094.37

Action: Approve the refund as recommended by staff.

Kaz USA, Inc., 422913 (OHB)

1-1-97 to 6-30-02, \$94,201.99

Action: Approve the refund as recommended by staff.

Mediaflo USA, Inc., 390379 (FH)

4-1-06 to 9-30-06, \$74,530.00

Action: Approve the refund as recommended by staff.

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Operating Engineers Local Unit #3, 355034 (CH)

7-1-02 to 3-31-06, \$67,914.96

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

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

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

Lincoln National Life Insurance Company, 422872 (ET)

7-1-07 to 9-30-07, \$398,672.50

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

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

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Robert Mondavi Imports, Inc., 402795*; *CM Life Insurance Company, 426203*; *Massachusetts Mutual Life Ins. Company, 426204*; and, *Aetna Life Insurance Company, 426846*; the Board made the following orders:

Burlington Northern &amp; Santa Fe Railway, 340352 (EF)

1-1-02 to 12-31-04, \$160,149.14

Action: Approve the refund as recommended by staff.

Robert Mondavi Imports, Inc., 402795 (ET)

2-1-07 to 2-28-07, \$77,374.90

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

CM Life Insurance Company, 426203 (ET)

1-1-06 to 12-31-06, \$166,643.12

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

Massachusetts Mutual Life Ins. Company, 426204 (ET)

1-1-06 to 12-31-06, \$2,676,583.48

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

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Aetna Life Insurance Company, 426846 (ET)

1-1-06 to 12-31-06, \$268,715.38

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

Santa Clara Valley Water District, 427354 (EF)

1-1-04 to 12-31-05, \$101,942.80

Action: Approve the refund as recommended by staff.

### **PROPERTY TAXES MATTERS, CONSENT**

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

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

RTI Railroad Services, Inc., 421436

2007, \$60,154.00 Value

Action: Reduce the 2007 Private Railroad Car Tax value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

#### **Petition for Penalty Abatement on Private Railroad Car Tax**

American Soda, LLP, 421439

2007, \$21,120.00 Penalty

Action: Approve the penalty abatement on the 2007 Private Railroad Car Tax value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

### **LEGAL APPEALS MATTER, ADJUDICATORY**

Ngo My Chau, 415744 (ET)

May 3, 2007, \$1,987.20 Approximate Value

Considered by the Board: November 14, 2007

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

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

Mr. Leonard directed staff to refer the issue of holding cigarette distributors accountable instead of retailers to the Legislative Committee.

Thursday, January 31, 2008

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

Downey Toy Company, 306793

1998, \$162,051.63 Claim for Refund

1999, \$93,067.27 Claim for Refund

2000, \$94,676.15 Claim for Refund

Considered by the Board: Formal Opinion

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

Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and did not adopt the formal opinion.

Taiheiyo Cement USA, Inc., 332855

1998, \$1,668,152.00 Claim for Refund

1999, \$920,236.00 Claim for Refund

1999, \$180,415.00 Claim for Refund

Considered by the Board: Formal Opinion

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel voting no, the Board adopted the formal opinion.<sup>1</sup>

Melody L. Beattie, 359059

1997, \$20,000.00 Claim for Refund

Considered by the Board: November 14, 2007

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

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

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

Tanya Berry, 395705

2006, \$347.50

Considered by the Board: December 12, 2007

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

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

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<sup>1</sup> The Board rescinded this action the following day.

Thursday, January 31, 2008

Frances M. Franklin, 335907

2005, \$347.00

Considered by the Board: December 12, 2007

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

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

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

Michael P. Rogers, 314398 (CH)

4-1-02 to 3-31-03, \$705,078.17

Considered by the Board: October 2, 2007

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

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

UPS Oasis Supply Corporation, 418332 (OHA)

7-1-06 to 9-30-06, \$68,363.30

Considered by the Board: December 12, 2007

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

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

Aramark Uniform &amp; Career Apparel, 300481 (AC)

7-1-99 to 6-30-02, \$317,874.61

Considered by the Board: December 12, 2007

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

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

Caddo Design &amp; Office Products, 421105 (OH)

1-1-04 to 12-31-04, \$56,661.97

Considered by the Board: December 12, 2007

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

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

Thursday, January 31, 2008

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

Montgomery Ward, LLC, 394694 (OHA)

7-8-97 to 7-31-99, \$632,776.82

Considered by the Board: May 31, 2007

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

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

**PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE****Board Roll Changes**

2004, 2005, 2006 and 2007 Board Rolls of State-Assessed Property

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2004, 2005, 2006 and 2007 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 1.9).

**Private Railroad Car Roll Changes**

2007 Private Railroad Car Roll

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2007 Private Railroad Car Roll as recommended by staff (Exhibit 1.10).

**OFFERS-IN-COMPROMISE RECOMMENDATIONS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Enrique Torres* and *Stephen Mannarmattathil* as recommended by staff.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD JANUARY 31, 2008**

Swift Transportation Company, Inc., 266318

Final Action: The Board deferred consideration of this matter to the following day.

Thursday, January 31, 2008

Lionel M. Nurse and Silvia I. Perez, 397729

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

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JANUARY 31, 2008**

Johnny Quik Food Stores, Inc., 303702 (KHO)

Final Action: Ms. Mandel moved that the petition be redetermined as recommended by staff. The motion was seconded by Ms. Yee. Mr. Leonard made a substitute motion that the petition be granted. The substitute motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Ms. Mandel voting no, Dr. Chu abstaining.

Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee 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.

Upon motion of Mr. Leonard, seconded by Ms. Steel and duly carried, Dr. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Yee voting no, Ms. Mandel abstaining, the Board directed staff to send a letter to the California Victim Compensation and Government Claims Board (VCGCB) recommending favorable consideration of the request for relief filed by the taxpayer.

Ms. Mandel directed staff to track Board of Equalization recommendations for favorable consideration of VCGCB claims and to keep the Controller, via the tax deputy, informed of these claims as they are filed.

Homecare Information Systems, Inc., 89002426820 (OHB)

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

Scot Kenney, 312450 (KH)

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

The Board adjourned at 5:40 p.m.

*The foregoing minutes are adopted by the Board on April 8, 2008.*

Note: The following matter was removed from the calendar prior to the meeting: *Advanced Aviation, LLC, 314063, 314064 (UT).*