



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
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BETTY T. YEE
First District, San Francisco

BILL LEONARD
Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

**STATE BOARD OF EQUALIZATION MEETING
450 N Street, Room 121, Sacramento
February 3, 2009**

PRELIMINARY RECORD OF BOARD ACTION

Tuesday, February 3, 2009

The following is a preliminary record of Board actions taken at the February 3, 2009 Board Meeting. This is not an official record and is subject to correction or modification. The official record of the Board's actions is the minutes of the Board, which will be adopted at a subsequent meeting.

The Board's decision reflects only the issues resolved by the Board at the meeting. Issues resolved prior to the meeting are not reflected in this document.

If you would like specific information regarding items on this Preliminary Record of Board Action, please telephone Joann Richmond at (916) 322-1931 or e-mail: Joann.Richmond@boe.ca.gov. Please be advised that material containing confidential taxpayer information cannot be publicly disclosed.

Board Committee Meetings— Please see Page 9, O. Adoption of Board Committee Reports and Approval of Committee Actions, for voting results.

Board Meeting

A. Homeowner and Renter Property Tax Assistance Hearings
There are no items for this matter.

B. Corporate Franchise and Personal Income Tax Hearings

~~B1. Farmers & Merchants Bank of Long Beach, 359062~~

C. Sales and Use Tax Appeals Hearings**C1. Raymond David Boyda, 349462 (CH)**

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Taxpayer's Petition Partially Granted/Denied	Ms. Yee	No
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	No
	Mr. Chiang/ Ms. Mandel	Yes

C2. Syed A. Ali, 400214 (UT)**C3. Yohannes Kahsai, 426226 (GH)**

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Taxpayer's Petition Denied.	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	No

C4a. Michael D. Midgett, 314399 (KH) – Appearance Waived**C4b. Michael D. Midgett, Sr., 314453 (KH) – Appearance Waived**

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Taxpayer's Petition Denied.	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

There are no items for the following matters:

- D. Special Taxes Appeals Hearings
- E. Property Tax Appeals Hearings

F. Public Hearings

F1. Property Taxes - State Assessee's Presentations on Capitalization Rates and Other Factors Affecting Values

F2. Sales and Use Tax Regulation 1591, Medicines and Medical Devices

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Approved Staff Recommendation.	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

G. Tax Program Nonappearance Matters – Consent

G1. Legal Appeals Matters

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Approved Staff Recommendations.	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

- Petition for Rehearing
 1. Michael Richard Luna, 356507 (KH)
- Hearing Notice Sent – No Response
 2. Bass Industries, Inc., 398659 (OH)
- Hearing Notices Sent – Appearance Waived
 3. Oasys Telecom, Inc., 325640 (CH)
 4. DMJ Corporation, 208179 (OH)

G2. Franchise and Income Tax Matters

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Approved Staff Recommendations.	Ms. Yee	Yes
No final determination on sub-items 3, 4, 5 and 11.	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

- Decisions
 1. Frederick Adams, 362547
 2. Heidi R. Adams, 421272
 3. ~~Bakal Company Limited Partnership, 395917~~
 4. ~~Royce A. Barrett, 414668~~

- 5. ~~Thomas A. Bladow, 374589~~
- 6. Lisel S. Brunson, 423298
- 7. Glenda R. Ribeiro Carvalho, 395922
- 8. Elizabeth Espinoza, 417818
- 9. Donald Gilchrist, 283962
- 10. Keith E. Karam, 396547
- 11. ~~Leah Lukrich, 391844~~
- 12. Cynthia Majors, 308191
- 13. Harapanahalli Mallareddy and Sundra Reddy, 395820
- 14. Elnorse McLemore and Kimberly McLemore, 378036
- 15. Freweyni Meles, 300214
- 16. Polacheck & Associates, Inc., 397157
- 17. Diane M. Reznik, 397972
- 18. Russell M. Rick, 414672
- 19. Laurie Van Den Bosch, 311123
- Petitions for Rehearing
 - 20. Craig A. Cook, 406121
 - 21. Roger Romero, 397740
 - 22. Francelle Vercher, 417995
- Hearing Notices Sent - No Response
 - 23. Elmer E. Lawton and Margaret A. Deal, 417832
 - 24. Marla D. Shannon, 424614
- Hearing Notice Sent – Appearance Waived
 - 25. Carrie Jeanne Babcock, 400565

G3. Homeowner and Renter Property Tax Assistance Matters

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Approved Staff Recommendations.	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

- Decisions
 - 1. Sandra Benham, 378355
 - 2. Larisa Eganova, 383257
 - 3. Christopher Eggleston, 381608
 - 4. Ruben Garcia, 394091
 - 5. Olivia Olson, 415851
 - 6. Sheila D. Silas, 394097
 - 7. Paul Strigari, 399403
 - 8. Kim Vu, 386857
 - 9. Willis Q. Zhoe, 422903

G4. Sales and Use Taxes Matters

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Approved Staff Recommendations.	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

- Redeterminations
 1. Hines Nurseries, Inc., 355536 (EA)
 2. Fresno Truck Center, 354606 (KH)
- Relief of Penalty/Interest
 3. County of Los Angeles Auditor, 463990 (AA)
 4. Union Pacific Railroad Company, 467723 (OH)
 5. Lockheed Martin Corporation, 465663 (OH)
- Denials of Claims for Refund
 6. Kraft Foods Global, Inc., 443970 (OH)
 7. National Genetics Institute, 378339 (OH)
 8. Janice Anne Lazarof, 357527 (AS)

G5. Sales and Use Taxes Matters – Credits, Cancellations, and Refunds

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Approved Staff Recommendations.	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

- Credits and Cancellations
 1. Hideaki Kikuchi, 468752 (AS)
 2. Fanfare Graphics, Inc., 467398 (AR)
 3. Certified Window Installations, Inc., 468750 (KH)
- Refunds
 4. Harsco Corporation, 399484 (OH)
 5. Safe Credit Union, 462890 (KH)
 6. Kent's Oil Service, 382282 (KH)
 7. The Aerospace Corporation, 388610 (AS)
 8. Bigge Crane & Rigging Corporation, 461271 (CH)
 9. Americredit Financial Service, Inc., 462177 (OH)
 10. Lobel Financial Corporation, 462892 (EA)
 11. Balboa Thrift & Loan Association, 465382 (FH)
 12. Santana Row Hotel Partners, LP, 468914 (GH)
 13. Penegon Mission Viejo, Inc., 425720 (EA)
 14. CIG Financial, 462163 (EA)

15. Surefire, LLC, 445329 (EA)
16. Medcal Sales, LLC, 459864 (EH)
17. Fought & Company, Inc., 426883 (OH)

G6. Special Taxes Matters

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Approved Staff Recommendations.	Ms. Yee Mr. Leonard Ms. Steel Dr. Chu Mr. Chiang/ Ms. Mandel	Yes Yes Yes Yes Yes, except not participating in sub-items 1 and 3.

- Redeterminations
 1. California State Automobile Association, 432452 (ET) 'CF'
 2. Liberty Brands, LLC, 444198 (ET)
- Relief of Penalty
 3. Lincoln National Life Insurance Company, 431910 (ET) 'CF'

G7. Special Taxes Matters – Credits, Cancellations, and Refunds

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Approved Staff Recommendations.	Ms. Yee Mr. Leonard Ms. Steel Dr. Chu Mr. Chiang/ Ms. Mandel	Yes Yes Yes Yes Yes except not participating in sub-items 5, 6 and 7.

- Credits and Cancellations
 1. Peter Allan Larson, 60027 (ET)
 2. Peter A. Larson, Inc., 469942 (ET)
 3. Keith A. Larson, 469941 (ET)
 4. JK Larson, Inc., 469955 (ET)
- Refunds
 5. Anheuser-Busch, Inc., 432073 (ET) 'CF'
 6. Heineken USA, Incorporated, 470155 (ET) 'CF'
 7. California State Automobile Association, 476067 (ET) 'CF'

There are no items for the following matters:

- G8. Property Tax Matters
- G9. Cigarette License Fee Matters
- G10. Legal Appeals Property Tax Matters

H. Tax Program Nonappearance Matters – Adjudicatory

H1. Legal Appeals Matters

There are no items for this matter.

H2. Franchise and Income Tax Matters

➤ Decisions

1. ~~Craig E. Jackson, 377160~~

2. Rocky Terhune, 342184

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Taxpayers' Appeal Partially Granted/Denied.	Ms. Yee	Yes
	Mr. Leonard	No
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

There are no items for the following matters:

H3. Homeowner and Renter Property Tax Assistance Matters

H4. Sales and Use Taxes Matters

H5. Sales and Use Taxes Matters – Credits, Cancellations, and Refunds

➤ Credits and Cancellations

1. RJ Financial, Inc., 338827 (AA)

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Taxpayer's Claim Granted.	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

H6. Special Taxes Matters

➤ Redeterminations

1. Alliant Insurance Services, Inc., 387929 (ET) 'CF'

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Taxpayers' Petition Granted.	Ms. Yee	Abstaining
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Not participating

H7. Special Taxes Matters – Credits, Cancellations, and Refunds

➤ Refunds

1. Alliant Insurance Services, Inc., 391200 (ET) 'CF'

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Taxpayers' Claim Granted.	Ms. Yee	Abstaining
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Not participating

There are no items for the following matters:

H8. Property Tax Matters

H9. Cigarette License Fee Matters

H10. Legal Appeals Property Tax Matters

➤ Welfare Exemption Claim

1. The Spaulding Center for Wooden Boats, 403978

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Taxpayers' Petition Denied.	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

I. Tax Program Nonappearance Matters

I1. Property Taxes Matters

➤ Unitary Land Escaped Assessments

1.a. Verizon California, Inc. (201) 'CF'

1.b. AT&T Mobility LLC (2606) 'CF'

1.c. Metro PCS California/Florida, Inc. (2733) 'CF'

1.d. ~~OmniPoint Communications, Inc. (2748) 'CF'~~

1.e. Royal Street Communications, LLC (2779) 'CF'

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Approved Staff Recommendations. No final determination on sub-item 1.d.	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Not participating

- I2. Offers-in-Compromise Recommendations
There are no items for this matter.

Chief Counsel Matters

There are no items for the following matters:

- J. Rulemaking
- K. Business Taxes
- L. Property Taxes
- M. Other Chief Counsel Matters

Administrative Session

N. Consent Agenda

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Approved Staff Recommendations.	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

N1. Board Employee Retirement Resolutions

- Lorene Carter
- Joyce Ann Montiero

N2. 2009 Timber Advisory Committee Membership

O. Adoption of Board Committee Reports and Approval of Committee Actions

O1. Legislative Committee –January 21, 2009

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Adopted committee report and approved the actions therein. For details see: http://www.boe.ca.gov/legdiv/legmeetings08.htm	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

2009 Legislative Proposals

Business Taxes

- 2-2 — ~~Add section 524 to the Evidence Code to specify that the burden of proof is with the Board in any assertion of penalties for intent to evade or fraud and require a clear and convincing evidence standard for such assertions, as specified.~~

- ~~2-3 Add section 525 to the Evidence Code to specify that in a court of law any assertion of penalties (other than intent to evade or fraud) requires a preponderance of the evidence standard for such penalties and the burden of proof is placed on the Board in its assertion of such penalties.~~
- ~~2-4 Add Part 10.1 (commencing with section 15706) to Division 3 of Title 2 of the Government Code to specify that the Board and the Franchise Tax Board (FTB) shall have the burden of proof in any court or administrative tax proceeding, with respect to a factual issue related to ascertaining the tax liability of a taxpayer that has established that it is a cooperating taxpayer, as defined.~~

Business Taxes – Sales and Use Taxes

- ~~3-7 Amend Revenue and Taxation Code sections 6011 and 6012 to eliminate the sales and use tax exclusion for separately stated charges for transportation.~~
- 3-8 Amend Revenue and Taxation Code section 6018.6 to provide that specified garment cleaning establishments shall be regarded as consumers, rather than retailers, of tangible personal property they sell, provided those sales do not exceed one-half of one percent of their total gross receipts for the preceding calendar year.

<u>POSITION</u>	<u>MEMBER</u>	<u>COMMITTEE VOTE</u>
Adopted as recommended by staff.	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Absent
	Mr. Chiang/Ms. Mandel	Yes

Business Taxes – Special Taxes

- ~~4-1 Amend Revenue and Taxation Code section 30141 to revise the minimum amount of security required from a cigarette distributor from \$1,000 per licensed location to an amount determined by the Board and add security release requirements consistent with other Board-administered programs. Also amend section 30142 to remove provisions not related to the security requirements for purchasing cigarette tax stamps on credit.~~

- 4-2 Amend Revenue and Taxation Code sections 7339 and 60003 of the Motor Vehicle Fuel and Diesel Fuel Tax Laws, respectively, to redefine a terminal to include a fuel production facility with storage so that facilities outside the bulk transfer system have the same licensing and reporting requirements as terminals supplied by pipeline or vessel.

<u>POSITION</u>	<u>MEMBER</u>	<u>COMMITTEE VOTE</u>
Adopted as recommended by staff.	Dr. Chu	Absent
	Mr. Leonard	Yes
	Ms. Steel	No
	Ms. Yee	Yes
	Mr. Chiang/Ms. Mandel	Yes

- 4-3 Amend Revenue and Taxation Code sections 60501 and 60508, and repeal sections 60508.1, 60508.2, 60508.4, and 60509, to allow a supplier of diesel fuel to file a claim for refund or claim a credit on their supplier return on behalf of retailers for qualified sales to consulate officers or consulate employees, or to the United States and its agencies and instrumentalities.

<u>POSITION</u>	<u>MEMBER</u>	<u>COMMITTEE VOTE</u>
Adopted as recommended by staff. (Consent)	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Absent
	Mr. Chiang/Ms. Mandel	Yes

- 4-4 Amend Revenue and Taxation Code sections 60022 and 60023 to clarify that the definition of "diesel fuel" includes biodiesel, other biomass-based diesel fuel, and blends. Also add sections 60022.1, 60022.2, 60022.3, 60022.4 and 60023.1 to define biodiesel, biomass, biomass-based diesel, petroleum-based diesel, and raw vegetable oil, respectively.

<u>POSITION</u>	<u>MEMBER</u>	<u>COMMITTEE VOTE</u>
Adopted as recommended by staff.	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	No
	Dr. Chu	Absent
	Mr. Chiang/Ms. Mandel	Yes

- 4-5 Add section 55041.1 to the Revenue and Taxation Code to require annual fee payers under programs administered pursuant to the Fee Collection Procedures Law to file a closing return when they close or sell their business.

<u>POSITION</u>	<u>MEMBER</u>	<u>COMMITTEE VOTE</u>
Adopted as recommended by staff. (Consent)	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Absent
	Mr. Chiang/Ms. Mandel	Yes

Administration

- 5-2 Amend Vehicle Code section 1808.4 to add the Board's limited peace officers to the list of public employees and officials whose home addresses are granted enhanced confidentiality by the Department of Motor Vehicles.

<u>POSITION</u>	<u>MEMBER</u>	<u>COMMITTEE VOTE</u>
Adopted as recommended by staff.	Ms. Yee	Yes
	Mr. Leonard	No
	Ms. Steel	No
	Dr. Chu	Yes
	Mr. Chiang/Ms. Mandel	Yes

O2. Business Taxes Committee—February 3, 2009

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Adopted committee report and approved the actions therein. For details see: http://www.boe.ca.gov/meetings/bt_committee.htm	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

P. Other Administrative Matters

- P1. Executive Director's Report
- a. Future of BOE Headquarters
- P2. Chief Counsel Report
- a. Report from Geoff Way, Chief Counsel, Franchise Tax Board

P3. Deputy Director's Report

- a. Sales and Use Tax
There are no items for this matter.
- b. Property and Special Taxes

1. Flavored Malt Beverage Update

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
Continued to March Sacramento.	Ms. Yee	Yes
	Mr. Leonard	No
	Ms. Steel	No
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

c. Administration

1. Facilities Update

On-going projects at 450 N Street.

2. Budget Update 2008/09 and 2009/10

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
The Board approved the Return Process Efficiencies Project Spring Finance Letter	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

<u>DECISION</u>	<u>MEMBER</u>	<u>BOARD VOTE</u>
The Board approved the New Special Taxing Jurisdictions Spring Finance Letter	Ms. Yee	Yes
	Mr. Leonard	Yes
	Ms. Steel	Yes
	Dr. Chu	Yes
	Mr. Chiang/ Ms. Mandel	Yes

Q. Closed Session