

Tuesday, April 8, 2008

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

### **HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING**

David Adelman, 394379

2005, \$1.00 or more

For Appellant:

Darren Pluth, Representative

For Franchise Tax Board:

Lisa Lawson, Hearing Representative

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

Issue: Whether respondent correctly determined that appellant untimely filed his claim and that the exception for medical incapacity does not apply to excuse the untimely claim.

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

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Kenneth Banks, 327922

1995, \$276,096.00 Assessment

For Appellant:

Kenneth Banks, Taxpayer

For Franchise Tax Board:

Judy Hirano, Tax Counsel

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

Issue: Whether the Franchise Tax Board correctly determined that appellant was a resident of California during the entire 1995 tax year so that all of his income was subject to taxation by California for that year.

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.

### **PUBLIC HEARINGS**

#### **Property Taxes – State Assessee Presentations on the Valuation of State-Assessed Properties**

Stanley Siu, Chief, State-Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding State assessee presentations on the valuation of State-assessed properties.

Speakers: Peter Michaels, Attorney, Law Office of Peter Michaels, representing State Assessed Gas/Electric, Intercounty Pipeline, Telephone and Railroad Companies  
Lenny Goldberg, California Tax Reform Association  
Shari Freidenrich, City Treasurer, City of Huntington Beach

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**LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Rajinder Singh Garcha, 30060 (KH)*; *Bay Briar Shoppe, Inc., 405478 (ET)*; and, *M & B Corporation, 417080 (ET)*.

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

Hagop Vartanian, 255764 (KHO)

10-1-99 to 9-30-02, \$40,038.00 Tax, \$0.00 Penalty

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

Rajinder Singh Garcha, 30060 (KH)

Action: The Board took no action.

Tieng Duc Nguyen, 432533 (ET)

October 2, 2007, \$1,272.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Tuan Le, 430348 (ET)

October 2, 2007, \$171.57 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Bay Briar Shoppe, Inc., 405478 (ET)

May 1, 2007, \$963.13 Approximate Value

Action: The Board took no action.

Hamidullah Nawabi, 418254 (ET)

July 3, 2007, \$1,711.20 Approximate Value

Action: Determined that staff properly seized the tobacco products.

M & B Corporation, 417080 (ET)

June 27, 2007, \$2,677.37 Approximate Value

Action: The Board took no action.

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

The Board deferred consideration of the following matters: *Kayla L. Williams, 397041*; and, *John Cirino and Sepideh Cirino, 361476*.

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

Anthony R. Doyle and Ilona N. Koti-Doyle, 349001

2003, \$1,134.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Patrick Flocchini, 361406

2002, \$11,842.00 Tax, \$574.00 Post Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board with respect to the tax; however the Board does not have jurisdiction in this case to review the Franchise Tax Board's imposition of the post-amnesty penalty.

Fred Jackmovich and Adele Jackmovich, 380411

2001, \$870.00 Tax, \$72.23 Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Fred Jackmovich, 381169

2004, \$3,999.00 Tax, \$999.75 Late Filing Penalty, \$1,602.75 Failure to File Penalty, \$120.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Roger Romero, 382838

2004, \$1,088.00 Tax, \$272.00 Late Filing Penalty, \$1,503.00 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Jeffrey T. Stinchcomb, 394004

2003, \$316.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Kayla L. Williams, 397041

2005, \$1,114.00 Assessment

Action: The Board took no action.

John Buerger, 353717

2003, \$9,069.00 Tax, \$4,624.50 Penalty, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

John Cirino and Sepideh Cirino, 361476

2001, \$45,078.00 Assessment

Action: The Board took no action.

Walter J. Kubon, Jr., 337056

1999, \$12,895.00 Tax, \$13,067.50 Penalties, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Nathalie M. Lohrli, 329170

1996, \$54,658.17 Innocent Spouse Relief

1997, \$50,520.11 Innocent Spouse Relief

1998, \$30,388.49 Innocent Spouse Relief

1999, \$54,658.00 Innocent Spouse Relief

Action: Deny the petition for rehearing.

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

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

Gloria Burns, 394079  
2006, \$350.00

Action: Sustain the action of the Franchise Tax Board.

Yolanda Alexander Dozier, 339298  
2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Patricia A. Lee, 386729  
2006, \$318.54

Action: Sustain the action of the Franchise Tax Board.

Karen R. Murphy, 378378  
2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Lawrence Richard Brown, 389602  
2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Joe P. Rios, 377238  
2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Bobbie Scott, 348658  
2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

L'Oreal USA Sales, Inc., 209556 (OHB)  
1-1-99 to 3-31-00, \$238,250.71

Action: Approve the redetermination as recommended by staff.

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L'Oreal USA Sales, Inc., 218317 (OHB)

4-1-00 to 12-31-01, \$111,128.46

Action: Approve the redetermination as recommended by staff.

Tesoro Refining & Marketing Company, 391125 (OHC)

7-1-02 to 6-30-05, \$337,845.36

Action: Approve the redetermination as recommended by staff.

Century-TCI CA Communications, LP, 378524 (OHB)

7-1-06 to 7-31-06, \$4,519,045.53

Action: Approve the redetermination as recommended by staff.

Crystal Decisions, Inc., 379039 (GH)

7-1-02 to 12-31-03, \$58,231.63

Action: Approve the redetermination as recommended by staff.

Hon Hai Precision Industry Company, Ltd., 404549 (EA)

7-1-02 to 12-31-05, \$345,262.00

Action: Approve the redetermination as recommended by staff.

Van Unen/Miersma Propane, Inc., 298294 (KH)

1-1-01 to 12-31-03, \$86,993.11

Action: Approve the redetermination as recommended by staff.

L'Oreal USA S/D, Inc., 255772 (OHB)

1-1-00 to 12-31-02, \$303,456.49

Action: Approve the redetermination as recommended by staff.

99 Cents Only Stores, 434016 (AA)

10-1-07 to 11-30-07, \$334,845.24

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

Barney's, Inc., 433833 (OHB)

10-1-07 to 11-31-07, \$139,740.00

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

Bobst Group North America, Inc., 433838 (OHB)

1-1-07 to 3-31-07, \$51,615.60

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

CIT Technology Financing Services I, LLC, 433837 (OHB)

5-1-07 to 6-30-07, \$168,307.70

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

William Lyon Homes, Inc., 330495 (EAA)

10-1-02 to 12-31-02, \$72,935.00

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

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

Sheila Grover, 421692 (KH)

4-1-05 to 12-31-05, \$57,499.05

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

SKA Consulting, LLC, 418407 (UT)

8-18-05 to 8-18-05, \$659,939.17

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

Jeong Soon Yi, 433143 (FH)

1-1-07 to 6-30-07, \$50,935.98

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

Methodist Hospital Southern California, 400671 (AP)

4-1-04 to 3-31-07, \$53,704.73

Action: Approve the refund as recommended by staff.

California Casualty Management CO, 350100 (OH)

1-1-03 to 12-31-05, \$329,905.66

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 424229 (KH)

7-1-07 to 9-30-07, \$310,597.54

Action: Approve the refund as recommended by staff.

The Boeing Company, 213345 (OHA)

1-1-00 to 12-31-03, \$167,587.44

Action: Approve the refund as recommended by staff.

Greyhound Lines, Inc., 390089 (OHC)

7-1-03 to 6-30-06, \$89,585.44

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 422400 (KH)

10-17-07 to 11-02-07, \$169,205.00

Action: Approve the refund as recommended by staff.

Claudia J. Martinic, 437894 (UT)

5-11-98 to 5-11-98, \$102,326.92

Action: Approve the refund as recommended by staff.

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Align Technology, Inc., 433116 (GH)

10-1-03 to 9-30-06, \$125,879.82

Action: Approve the refund as recommended by staff.

Gambro Renal Products, Inc., 332066 (OH)

4-1-02 to 12-31-05, \$250,242.46

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 422581 (EA)

4-1-07 to 9-30-07, \$147,282.67

Action: Approve the refund as recommended by staff.

Modern Finance Company, 325438 (AC)

1-1-03 to 9-30-05, \$73,079.62

Action: Approve the refund as recommended by staff.

Penryn Enterprises, Inc., 396110 (KH)

10-1-03 to 9-30-06, \$67,224.96

Action: Approve the refund as recommended by staff.

Fred Pierce Enterprises, Inc., 432885 (KHO)

4-1-04 to 3-31-07, \$76,975.75

Action: Approve the refund as recommended by staff.

Long Beach Acceptance Corporation, 427371 (EA)

4-1-07 to 6-30-07, \$187,448.50

Action: Approve the refund as recommended by staff.

ABC Window Company, Inc., 318322 (EH)

1-6-04 to 3-31-06, \$81,200.94

Action: Approve the refund as recommended by staff.

Central Coast Cinemas, Inc., 431935 (GH)

1-1-04 to 9-30-06, \$143,679.46

Action: Approve the refund as recommended by staff.

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

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by 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 order:

Classic Distributing & Beverage Group, Inc, 432958 (ET)

8-1-07 to 8-31-07, \$102,214.00

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

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**LEGAL APPEALS MATTERS, ADJUDICATORY**

Atlantic Richfield Company, 158211, 167993, 348075 (MT)

1998, \$2,182,414.79 Claim for Refund

1999, \$2,108,009.50 Claim for Refund

2001, \$3,385,304.58 Fee

BP West Coast Products, LLC, 216210, 264250, 307637, 349423 (MT)

2002, \$3,799,831.67 Fee

2003, \$3,454,392.43 Fee

2004, \$3,523,283.18 Fee

2005, \$3,646,660.15 Fee

BP Products North America, Inc., 306843 (MT)

2004, \$23.30 Fee

Considered by the Board: March 19, 2008

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

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

Chevron U.S.A., Inc., 165308, 215016, 260466, 260468, 306293, 346981 (MT)

1999, \$1,873,518.73 Fee Assessment

2001, \$2,963,128.46 Fee Assessment

2002, \$3,325,960.52 Fee Assessment

2003, \$3,023,600.47 Fee Assessment

2004, \$3,083,899.96 Fee Assessment

2005, \$3,191,890.79 Fee Assessment

Considered by the Board: August 14, 2007

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

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

Speaker: Marty Dakessian, Attorney, Dakessian & Associates, representing *Onnik Mooradian and Mariette Mooradian, 220157, 220158, 292978, 293031 (MT)*

Onnik Mooradian and Mariette Mooradian, 220157, 220158, 292978, 293031 (MT)

1-1-95 to 2-2-95, \$926.36 Fee

5-5-97 to 6-30-98, \$31,783.19 Fee

7-1-96 to 6-30-97, \$9,847.79 Fee, \$984.78 Finality Penalty

7-1-01 to 3-31-04, \$67.67 Fee, \$5,238.70 Failure to File Penalty, \$10,758.39 Finality Penalty

Considered by the Board: October 4, 2007

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

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Action: Ms. Mandel moved to delete remaining penalties at issue subject to payment of fees within 30 days of the notice of determination, otherwise deny the petition for rehearing as recommended by staff. Ms. Yee made a substitute motion that the petition for rehearing be granted. The substitute motion was seconded by Dr. Chu but no vote was taken.

The Board deferred consideration of the matter to later in the day.

**Phillip N. Cutler, 377150 (AC)**

7-1-03 to 12-31-03, \$10,736.00 Tax, \$1,073.60 Failure to File Penalty

Considered by the Board: Hearing Notices Sent – No Response

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

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.

**Doris Lydia Cutler, 380705, 381147 (AC)**

4-1-05 to 9-30-06, \$19,464.00 Tax, \$3,226.20 Failure to File Penalty

10-1-04 to 9-30-06, \$22,429.00 Claim for Refund, \$4,119.90 Penalty

Considered by the Board: Hearing Notices Sent – No Response

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

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.

**Eulipia, Inc., 300130 (GH)**

10-1-00 to 12-31-03, \$50,357.41 Tax, \$5,035.76 Negligence Penalty

**Los Gatos Restaurants, Inc., 299490 (GH)**

1-16-01 to 12-31-03, \$23,103.84 Tax, \$2,310.41 Negligence Penalty

Considered by the Board: October 24, 2007

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

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.

**Stephen Charles Borkenhagen, 302079 (GH)**

10-1-00 to 12-31-03, \$50,357.41 Tax, \$5,035.76 Negligence Penalty

Considered by the Board: October 24, 2007

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

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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.

Laurencio Gutierrez, Sergio Gutierrez, and Ruben Gutierrez Alvarez, 312859 (FH)

1-1-01 to 12-31-03, \$85,397.36 Tax, \$00.00 Penalty

Considered by the Board: October 3, 2007

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

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

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

Lisa M. Fagundes, 317594

2003, \$1,175.00 Tax, \$293.75 Penalty

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 Dr. Chu and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Ramona Romero, 343076

2001, \$117.18 Assessment

2002, \$376.71 Assessment

Considered by the Board: June 19, 2007

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

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board dismissed the appeal for lack of jurisdiction.

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

Saddleback Recreational Vehicles, 432967 (EH)

10-1-98 to 9-30-01, \$385,876.50

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

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

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PC Technologies, Inc., 432756 (AC)

1-1-98 to 12-31-00, \$159,452.89

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

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

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

Republic Indemnity Company of California, 298649 (ET)

10-1-04 to 12-31-04, \$124,765.20

Considered by the Board: December 12, 2007

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

Action: Ms. Yee moved that the denial of relief of penalty be approved as recommended by staff. The motion was seconded by Dr. Chu but failed to carry, Dr. Chu and Ms. Yee voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

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

#### **PROPERTY TAX MATTERS**

##### **Audits**

Sierra Pacific Power Company (146)

2004, \$400,000.00 Escaped Assessment, \$40,000.00 Penalties, \$132,000.00 In-lieu Interest

2005, \$500,000.00 Escaped Assessment, \$50,000.00 Penalties, \$120,000.00 In-lieu Interest

2006, \$600,000.00 Escaped Assessment, \$60,000.00 Penalties, \$90,000.00 In-lieu Interest

2007, \$1,700,000.00 Escaped Assessment, \$170,000.00 Penalties, \$102,000.00 In-lieu Interest

Action: Upon 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 adopted the audit escaped assessment, plus penalties and in-lieu interest, as recommended by staff.

##### **Unitary Land Escaped Assessments**

Pacific Gas and Electric Company (135)

2006-2007, \$287,500.00 Value

Sprint PCS (2720)

2004-2006, \$29,511,077.00 Value

Edge Wireless, LLC (2753)

2004-2006, \$491,429.00 Value

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Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Dr. Chu not participating in *Pacific Gas and Electric Company (135)*, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment as recommended by staff.

### **Board Roll Changes**

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

Action: Upon 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 approved corrections to the 2005, 2006 and 2007 Board Rolls of State-Assessed Property as recommended by staff. (Exhibit 4.1.)

Exhibits to these minutes are incorporated by reference.

### **CHIEF COUNSEL MATTERS**

#### **RULEMAKING CHIEF COUNSEL MATTERS**

#### **Alcohol Beverage Tax Flavored Malt Beverages: Regulation 2558, *Distilled Spirits*, Regulation 2559, *Presumption-Distilled Spirits*, Regulation 2559.1, *Rebuttable Presumption-Distilled Spirits*, Regulation 2559.3, *Internet List*, and Regulation 2559.5, *Correct Classification*.**

Monica Brisbane, Tax Counsel, Business Taxes Division, Legal Department, reported on public comments regarding (1) the Formal Issue Paper relied upon and (2) the March 21, 2008, changes to the original proposed text of Alcoholic Beverage Tax Regulation 2558, *Distilled Spirits*; Regulation 2559, *Presumption – Distilled Spirits*; Regulation 2559.1, *Rebuttable Presumption – Distilled Spirits*; Regulation 2559.3, *Internet List*; and, Regulation 2559.5, *Correct Classification*; and recommendation to adopt the changes. (Exhibit 4.2.)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board adopted the revised text to Regulations 2558, 2559, 2559.1, 2559.3, and 2559.5, as recommended by staff.

#### **PROPERTY TAX CHIEF COUNSEL MATTERS**

#### **Assessment of Cable Television Taxable Possessory Interests**

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed Letter to Assessor on the assessment of cable television and video service taxable possessory interests. (Exhibit 4.3.)

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Speakers: Dennis H. Mangers, President, California Cable & Telecommunications Association  
 Thomas R. Parker, Deputy County Counsel, Sacramento County, representing the Sacramento County Assessor and the California Assessors' Association  
 Joel Butler, Yolo County Assessor

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

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

### **State Assessee Property Tax Appeals Procedures**

Lou Ambrose, Tax Counsel, Property Taxes Division, Legal Department, made introductory remarks regarding the proposed alternatives for distribution of unsolicited late materials and revision of hearing summaries for State assessee property tax appeals. (Exhibit 4.4.)

Action: The Board deferred consideration of this matter to a later date.

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

Aladdin Persian Rug, LLC, 374411 (CH)  
 1-1-02 to 12-31-04, \$17,305.00 Tax

For Petitioner: Fardin Sayyar, Enrolled Agent  
 Matthew Gheisari, Taxpayer

For Department: Robert Tucker, Tax Counsel

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

Issue: Whether petitioner has shown that it is entitled to a reduction of the measure of understated taxable sales determined by the bank deposit analysis.

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.

### **ADMINISTRATIVE SESSION**

#### **ADMINISTRATIVE MATTERS, CONSENT**

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

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California. (Exhibit 4.5.)

Tuesday, April 8, 2008

Ellen M. Juka, Accounting Administrator I, Accounting Section, Headquarters  
Joseph D. Young, CEA II, Sales and Use Tax Department, Headquarters  
Marla K. Blumenthal, Associate Tax Auditor, Rancho Mirage Branch Office  
Victoria T. Winter, Business Taxes Compliance Supervisor III, District Principal  
Compliance Supervisor, San Francisco District Office

Action: Approve the Board Meeting Minutes of January 31-February 1, 2008 and February 26-28, 2008.

Action: Approve the 2008 Timber Advisory Committee Membership. (Exhibit 4.6.)

Action: Approve the 2008-09 Tobacco Products Tax Rate. (Exhibit 4.7.)

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

**Legislative Committee**

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Legislative Committee report and the actions therein. (Exhibit 4.8.)

Committee vote was as follows:

**2008 Legislative Proposals-Business Taxes (Sales and Use Taxes)**

A recommendation to approve the consent agenda unanimously passed with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes. This item was as follows:

Repeal Section 7076.5 of the Sales and Use Tax Law to delete the January 1, 2009 sunset date of the Managed Audit Program and thereby extend the program indefinitely.

**Customer Services and Administrative Efficiency Committee**

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 Customer Services and Administrative Efficiency Committee report and the actions therein. (Exhibit 4.9.)

**OTHER ADMINISTRATIVE MATTERS**

**Executive Director's Report**

Ramon Hirsig, Executive Director, provided status of the Board of Equalization's 450 N Street Headquarters Building in Sacramento and introduced Elizabeth Houser, Deputy Director, Administration Department, who provided more details regarding the headquarters building remediation. (Exhibit 4.10.)

Tuesday, April 8, 2008

**Deputy Directors Reports**

Ms. Houser made introductory remarks regarding contracts over \$1 million.  
(Exhibit 4.11.)

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved an interagency agreement with California Department of Transportation; and, a standard agreement with International Network Consulting, Inc. (a Master Service Agreement vendor).

Ms. Houser also provided an update regarding the proposed fiscal year 2008-2009 budget, which included feedback on Senate Sub-Committee 4 Hearing held April 7, 2008 and assembly Sub-Committee 4 Hearing (currently set for April 15, 2008).

Mr. Leonard requested a new revenue estimate for the budget change proposal on flavored malt beverages.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD APRIL 8, 2008**

Kenneth Banks, 327922

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

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Onnik Mooradian and Mariette Mooradian, 220157, 220158, 292978, 293031 (MT)  
(Continued from earlier in the day)

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu and Ms. Yee voting no, the Board ordered that its decision of October 4, 2007 in this matter be revised by deleting the remaining penalties at issue subject to payment of fees within 30 days of the notice of determination, otherwise deny the petition for rehearing as recommended by staff.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD APRIL 8, 2008**

Aladdin Persian Rug, LLC, 374411 (CH)

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.

Tuesday, April 8, 2008

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 3:15 p.m. and reconvened immediately in closed session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**CLOSED SESSION**

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

The Board recessed at 5:10 p.m. and reconvened immediately in open session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Ramon Hirsig, Executive Director, announced the appointments of Randy Ferris to the position of Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, and, Robert Lambert to the position of Assistant Chief Counsel, Legal Affairs Division, Legal Department

The Board adjourned at 5:15 p.m.

*The foregoing minutes are adopted by the Board on May 29, 2008.*

Note: The following matter was removed from the calendar prior to the meeting: *Proposed Amendments to Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5000 et seq.)*.