

Tuesday, May 13, 2008

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 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.

SALES AND USE TAX APPEALS HEARINGS

Tullio Mamolo, 336687 (AC)

2-1-96 to 12-31-04, \$32,204.00 Tax

Viktor Benes Continental Pastries, Inc., 336688 (AC)

7-1-97 to 6-30-05, \$48,514.67 Tax, \$00.00 Penalty

For Petitioner:

Tullio Mamolo, Taxpayer

Ugo Mamolo, Taxpayer

For Department:

Trecia Nienow, Tax Counsel

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

Issues: Whether petitioner has established that it should not be liable for sales tax on its unreported taxable food sales.

Whether petitioner has established that it is entitled to relief from liability under Revenue and Taxation Code section 6596.

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.

Jay F. Mannino, 249957 (UT)

October 15, 2001, \$21,228.37 Tax

For Petitioner:

Jay Mannino, Taxpayer

For Department:

Carla Caruso, Tax Counsel

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

Issue: Whether petitioner has established that he did not purchase the motor home for use in California.

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.

Gen-Mar, Inc., 311275, 334987 (FH)

10-1-99 to 9-30-02, \$7,605.33 Tax, \$00.00 Penalty

10-1-99 to 9-30-02, \$7,605.33 Claim for Refund

For Petitioner/Claimant:

Gary Kevorkyan, Taxpayer

Nancy Kevorkyan, Spouse

For Department:

Kevin Hanks, Hearing Representative

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

Issues: Whether further adjustment is warranted to the audited understatement of reported taxable sales.

Whether the claim for refund should be granted.

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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 claim and petition be submitted for decision.

Jill Pierce, 342657 (AP)

7-1-00 to 10-31-00; 1-1-01 to 3-31-07, \$634.61 Interest, \$1,488.30 Late Payment Penalties

For Petitioner: Jill Pierce, Taxpayer

For Department: Christine Bisauta, Tax Counsel

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

Issues: Whether petitioner is personally liable for the unpaid liabilities of Platinum Financial Systems, Inc. for the third quarter 2000 and for the first quarter 2001.

Whether Platinum was entitled to relief from interest and penalties under Revenue and Taxation Code section 7093.8.

Whether petitioner should be relieved of interest assessed against the corporation.
Whether the late-payment penalties assessed against the corporation should be relieved.

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.

Jamshid Malakouti, 308952 (EH)

7-1-01 to 9-30-04, \$54,695.07 Tax, \$5,469.56 Negligence Penalty

For Petitioner: Jamshid Malakouti, Taxpayer

Olman Martinez, Witness

For Department: Kevin Hanks, Hearing Representative

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

Issues: Whether petitioner has established that the audited understatement of taxable vehicle sales is excessive.

Whether an adjustment is warranted for exempt or nontaxable sales.

Whether the understatement resulted from negligence.

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.

Gabinda, Inc., 352181 (EA)

1-1-04 to 9-2-04, \$8,858.24 Tax, \$1,417.60 Late Payment Penalty

For Petitioner: David Charest, Taxpayer

For Department: Robert Tucker, Tax Counsel

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

Issues: Whether petitioner is liable as a successor for the unpaid liabilities of PPC Paintball, Inc. #7.

Whether petitioner has established reasonable cause that it should be relieved of the penalties for late payment of returns incurred by the predecessor.

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David Levine, Tax Counsel, Appeals Division, Legal Department, announced a revised recommendation that would relieve the late payment penalty upon the petitioner's signing a statement under penalty of perjury.

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.

The Board recessed at 12:18 p.m. and reconvened at 1:35 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Chawki A. Rafeh, 241564 (ARH)

4-1-00 to 12-31-02, \$11,709.33 Tax

Chawki A. Rafeh, 241569 (ARH)

1-1-00 to 12-31-02, \$18,004.10 Tax

Chawki A. Rafeh, 241573 (ARH)

1-4-01 to 12-31-02, \$726.19 Tax

For Petitioner:

Jeff Lentz, Accountant

For Department:

Kevin Hanks, Hearing Representative

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

Issue: Whether rebate payments received by petitioner from cigarette manufactures are additional taxable gross receipts related to the sales of cigarettes.

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.

Spa De Soleil, Inc., 349460 (AC)

1-1-00 to 12-31-02, \$43,373.26 Tax, \$5,627.00 Amnesty Interest Penalty

For Petitioner:

Joseph Yafeh, CPA

Rena Revivo, President

For Department:

Trecia Nienow, Tax Counsel

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

Issues: Whether petitioner is entitled to additional adjustments for disallowed sales for resale.

Whether there is any basis for relieving petitioner of any interest due to alleged unreasonable delay by a Board employee.

Action: The Board deferred the hearing to later in the day to assess petitioner's new evidence.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Paulette D. Thompson, 383553

2004, \$3,483.00 Assessment, \$870.75 Late Filing Penalty, \$1,496.00 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee

For Appellant:

Eldon H. Thompson, Representative

Victor Roy, Witness

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For Franchise Tax Board: Suzanne Small, Tax Counsel
 Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
 Issues: Whether appellant has met her burden to prove error in the proposed assessment.
 Whether there is a basis to abate the late filing penalty, and notice and demand penalty.
 Whether a frivolous appeal penalty should be imposed.
 Appellant's Exhibit: Miscellaneous Documents (Exhibit 5.1)
 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.

Exhibits to these minutes are incorporated by reference.

Deborah Sharpe, 382011
 2004, \$322.00 Assessment, \$100.00 Late Filing Penalty, \$495.25 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee
 For Appellant: Deborah Sharpe, Taxpayer
 For Franchise Tax Board: Suzanne Small, Tax Counsel
 Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
 Issues: Whether appellant has shown error in the proposed assessment.
 Whether there is a basis to abate the late filing penalty and notice and demand penalty.
 Appellant's Exhibit: Miscellaneous Documents (Exhibit 5.2)
 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 COMMENT

Speaker: Victor Roy, made remarks regarding his petitions for rehearing *Victor Roy, 307162 and 341901*. (Exhibit 5.3.)

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Duane Dworshak, 384281
 2004, \$749.00 Tax, \$187.25 Late Filing Penalty, \$468.25 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee
 For Appellant: Duane Dworshak, Taxpayer
 For Franchise Tax Board: Suzanne Small, Tax Counsel
 Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
 Issues: Whether appellant has demonstrated error in the underlying tax assessment.
 Whether appellant has shown reasonable cause for the abatement of penalties.
 Whether the Board should impose a frivolous appeal penalty.
 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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SALES AND USE TAX APPEALS HEARING

Spa De Soleil, Inc., 349460 (AC) (Continued from earlier in the day)

Mr. Joseph Young, Chief, Headquarters Operations Division, Sales and Use Tax Department, recommended 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.

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

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *K.V.L., Inc., 263001 (AR)*; *Richard D. Hebb and Gregory L. Smith, 250398 (MT)*; and, *H & S Coatings, Inc., 261373 (MT)*.

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 orders:

K.V.L., Inc., 263001 (AR)

4-1-00 to 3-31-03, \$22,995.69 Tax, \$2,299.57 Negligence Penalty

Action: The Board took no action.

Goldilocks Food Products, Inc., 303517 (AS)

7-1-01 to 6-30-04, \$57,740.59 Tax

Action: Redetermine as recommended by the Appeals Division.

A La Carte Gourmet, Inc., 379333 (EA)

4-1-03 to 3-31-06, \$5,141.17 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Armando Chavez, 304190 (EH)

4-1-99 to 8-26-01, \$73,611.66 Tax, \$69,805.94 Penalties

Action: Redetermine as recommended by the Appeals Division.

John J. Devito, Jr., 285931 (EAA)

7-1-01 to 9-30-01, \$28,860.00 Tax, \$3,003.50 Failure to File Penalty, \$2,886.00 Failure to Timely Pay Penalty

Action: Redetermine as recommended by the Appeals Division.

Donald Goff, 345455 (EH)

Melanie Gamblin Goff, 345456 (EH)

7-1-03 to 2-4-04, \$109,092.25 Tax, \$22,426.00 Penalties

Melanie Gamblin Goff, 345448 (EH)

2-25-04 to 11-12-04, \$75,012.77 Tax, \$15,002.58 Penalties

Action: Redetermine as recommended by the Appeals Division.

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Winston John Sullivan, 358819 (GH)

10-1-03 to 12-31-03, \$6,084.79 Tax, \$610.50 Failure to File Penalty, \$608.48 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

AZ3, Inc., 329902 (UT)

January 2, 2004, \$154,225.00 Tax

Action: Redetermine as recommended by the Appeals Division.

The Bob Koll Sailing Foundation, 348264 (UT)

December 31, 2003, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Maria Cecilia Arango, 289813 (AC)

10-1-00 to 9-30-02, \$46,500.07 Tax, \$11,625.08 Penalty

Action: Redetermine as recommended by the Appeals Division.

Lawrence Edward Kast, 270395 (KHO)

1-1-00 to 12-31-02, \$3,797.36 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Lucas Alexander Paun, 354582 (AS)

10-1-02 to 12-31-04, \$11,225.73 Tax, \$1,122.59 Negligence Penalty, \$147.86 Double Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Cartridge World of North America, LLC, 332309 (CH)

8-1-03 to 9-30-05, \$99,080.25 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

Richard D. Hebb and Gregory L. Smith, 250398 (MT)

1-1-91 to 12-6-91, \$12,485.05 Tax, \$0.00 Penalty

H & S Coatings, Inc., 261373 (MT)

10-7-91 to 12-31-99, \$180,433.62 Tax, \$0.00 Penalty

Action: The Board took no action.

Guru Gas & Market, Inc., 431276 (ET)

October 10, 2007, \$78.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

(Motion expunged.)

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 ordered that its previous motion to approve the Corporate Franchise and Personal Income Tax Matters, Consent Agenda, be expunged.

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The Board deferred consideration of the following matters: *Victor Roy, 395839*; and, *Vidco Express, Inc., 378528*.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single 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 made the following orders:

Victor Roy, 395839

2004, \$848.00 Assessment, \$212.00 Late Filing Penalty, \$212.00 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee

Action: The Board took no action.

Brown Shingle Mutual Housing Association, 382905

2005, \$800.00 Tax, \$200.00 Penalty

Action: Sustain the action of the Franchise Tax Board.

Edward Buffalo, 355450

2002, \$129.94 Claim for Refund, \$43.87 Post-amnesty Penalty

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

Lillian Gilbert, 379621

2000, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Yekta Gursel, 375150

2003, \$372.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Hobbs Management Services, LLC, 356954

1997, \$100.00 Late Filing Penalty, \$200.00 Late Payment Penalty

1998, \$100.00 Late Filing Penalty, \$200.00 Late Payment Penalty

1999, \$100.00 Late Filing Penalty, \$200.00 Late Payment Penalty

2000, \$100.00 Late Filing Penalty, \$200.00 Late Payment Penalty

2001, \$100.00 Late Filing Penalty, \$200.00 Late Payment Penalty

2002, \$100.00 Late Filing Penalty, \$200.00 Late Payment Penalty

2003, \$100.00 Late Filing Penalty, \$160.00 Late Payment Penalty

2004, \$112.00 Late Payment Penalty

Action: Sustain the action of the Franchise Tax Board.

Jammens, Inc., 362628

2005, \$202.95 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Kenneth Klee and Robyn Klee, 356944

2002, \$2,941.00 Assessment

Action: Modify the action of the Franchise Tax Board.

Eugene W. Lee, 349301

2003, \$7,069.00 Tax, \$3,624.50 Penalties and Fees

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

Marie Ragaban, 339675

1987, \$5,168.82 Claim for Refund

1990, \$1,120.80 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Gary B. Shelly, 313293

1983, \$4,803.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Glenn Wennen and Sandra Wennen, 354572

2002, \$3,008.00 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Juliet Zacks, 383547

1998, \$1,235.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Victor C. Bortka, 192236

2000, \$8,425.82 Innocent Spouse Relief Granted

Action: Deny the petition for rehearing.

Jerry Chow, 349005

2003, \$7,032.00 Tax, \$3,606.00 Penalties and Fees, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Michael Edward Farrell and Christine Farrell, 268382

1994, \$1,171.20 Assessment

1995, \$2,908.00 Assessment

1997, \$624.00 Assessment

Action: Approve the modified action of the Franchise Tax Board, otherwise deny the petition for rehearing.

Harold Leonard Kuder, Jr., 362625

2002, \$11,654.00 Tax, \$2,914.50 Penalties

Action: Deny the petition for rehearing.

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Victor Roy, 307162

Victor Roy, 341901

2000, \$2,936.00 Tax, \$734.00 Penalties, \$1,666.66 Frivolous Appeal Penalty

2001, \$2,026.00 Tax, \$506.50 Penalties, \$1,666.66 Frivolous Appeal Penalty

2002, \$1,765.00 Tax, \$441.25 Penalties, \$1,666.68 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Kenneth Schweit, 342024

1988, \$5,718.38 Unpaid Interest

1989, \$2,771.38 Unpaid Interest

Action: Deny the petition for rehearing.

Vidco Express, Inc., 378528

1997, \$252,281.84 Assessment

Action: The Board took no action.

Donna Yarnovich, 345641

1997, \$1.00 or more Claim for Refund

1998, \$1.00 or more Claim for Refund

Action: Deny the petition for rehearing.

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 Mr. Leonard, 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:

Cynthia A. Callegri, 383626

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Quitin Cheeseborough, 395753

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Roger Craven, 387203

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Jeffrey Frei, 387879

2006, \$445.00

Action: Sustain the action of the Franchise Tax Board.

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Anthony Garrison, 345945

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Lorena Getz, 380751

2006, \$349.00

Action: Sustain the action of the Franchise Tax Board.

James Iddings, 378588

2006, \$349.00

Action: Sustain the action of the Franchise Tax Board.

David Lapides, 383529

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Leandro C. Maniquis, 372972

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Ethel E. Martin (Deceased), 391712

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Shiline Middleton, 378380

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Victoria Jo Schaller, 361586

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Puspa K. Widjaja (Deceased), 352261

2005, \$472.60

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**

The Board deferred consideration of the following matter: *United Rentals
Northwest, Inc., 436595 (OHB).*

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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 Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu not participating in *International Business Machines Corp., 436916 (OHB)*; Ms. Steel not participating in *Conocophillips Company, 437017 (OHA)*; the Board made the following orders:

Palomar Transit Mix, Inc., 353087 (FHB)

10-1-01 to 3-31-04, \$68,109.01

Action: Approve the redetermination as recommended by staff.

Michael Korman, 336167 (KH)

4-1-04 to 12-17-04, \$516,493.74

Action: Approve the redetermination as recommended by staff.

Regina Lee Nizzoli, 346006 (KH)

10-1-99 to 8-20-02, \$78,238.86

Action: Approve the redetermination as recommended by staff.

Entrust Technologies, Inc., 383206 (OHA)

7-1-01 to 6-30-05, \$203,710.85

Action: Approve the redetermination as recommended by staff.

Calmat Co., 353088 (AA)

7-1-00 to 12-31-03, \$2,560,884.82

Action: Approve the redetermination as recommended by staff.

Imperial Valley Cablevision, Inc., 399506 (OHB)

7-1-06 to 7-31-06, \$696,730.74

Action: Approve the redetermination as recommended by staff.

Buenavision, 399505 (OHB)

1-1-06 to 7-31-06, \$145,856.87

Action: Approve the redetermination as recommended by staff.

Adelphia CA Cablevision, LLC, 399503 (OHB)

7-1-06 to 7-31-06, \$295,930.36

Action: Approve the redetermination as recommended by staff.

Adelphia Cablevision of Inland Empire, LLC, 399502 (OHB)

7-1-06 to 7-31-06, \$1,614,486.90

Action: Approve the redetermination as recommended by staff.

Adelphia Communications of California III, LLC, 399504 (OHB)

7-1-06 to 7-31-06, \$267,010.25

Action: Approve the redetermination as recommended by staff.

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Adelphia Communications of California, LLC, 399500 (OHB)

7-1-06 to 7-31-06, \$299,878.92

Action: Approve the redetermination as recommended by staff.

Adelphia Cablevision of Simi Valley, LLC, 399501 (OHB)

7-1-06 to 7-31-06, \$466,102.50

Action: Approve the redetermination as recommended by staff.

Autozone West, Inc., 436605 (OHA)

10-1-07 to 10-31-07, \$169,666.32

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

Rubio's Restaurants, Inc., 436924 (FHB)

10-1-07 to 12-31-07, \$105,112.30

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

Symbol Technologies, Inc., 434450 (OHB)

7-1-99 to 9-30-05, \$73,465.90

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

Arbonne International, Inc., 436820 (EAA)

4-1-07 to 6-30-07, \$95,309.70

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

United Rentals Northwest, Inc., 436595 (OHB)

8-1-07 to 10-31-07, \$394,392.78

Action: The Board took no action.

Uline Incorporated, 436834 (OHA)

7-1-07 to 9-30-07, \$56,573.20

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

Urban Outfitters West, LLC, 436819 (OHB)

10-1-07 to 10-31-07, \$83,923.86

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

Studio Photo Imaging Services, Inc., 283442 (AS)

7-1-01 to 6-30-04, \$50,000.00

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

Conocophillips Company, 437017 (OHA)

4-1-04 to 12-31-04, \$269,078.78

Action: Approve the denial of claim for refund as recommended by staff. Ms. Steel not participating.

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International Business Machines Corp., 436916 (OHB)

1-1-00 to 3-31-02, \$137,046.88

Action: Approve the denial of claim for refund as recommended by staff. Dr. Chu not participating.

Orange County's Credit Union, 436913 (EA)

1-1-06 to 12-31-06, \$120,194.71

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

Airlines Reporting Corporation, 417441 (OHB)

10-1-03 to 12-31-06, \$111,403.00

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 Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu not participating in *International Business Machines Corp., 350108 (OHB)*; Ms. Steel not participating in *Conocophillips Company, 340383 (OHA)*; the Board made the following orders:

Muzak, LLC, 435612 (OHB)

1-1-02 to 12-31-04, \$131,763.21

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

CRS Retail Systems, Inc., 394394 (OHB)

10-1-01 to 9-30-04, \$282,628.47

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

Moheb Magdy Lotfy, 435470 (BH)

3-1-06 to 3-31-07, \$51,729.20

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

Trackstar Printing, Inc., 341260 (AS)

10-1-02 to 12-31-05, \$78,150.73

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 414206 (BH)

1-1-04 to 12-31-06, \$196,908.70

Action: Approve the refund as recommended by staff.

Finisar Corp., 406171 (GH)

10-1-03 to 9-30-06, \$227,186.09

Action: Approve the refund as recommended by staff.

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Alta Bates Summit Medical Center, 434556 (CH)

4-1-06 to 3-31-07, \$163,758.08

Action: Approve the refund as recommended by staff.

Sunston Equipment, Inc., 420846 (AA)

1-1-06 to 6-30-07, \$72,557.58

Action: Approve the refund as recommended by staff.

Space Systems/Loral, Inc., 434751 (GH)

7-1-03 to 6-30-06, \$179,779.16

Action: Approve the refund as recommended by staff.

Professional Hospital Supply, Inc., 426433 (EH)

7-1-06 to 9-30-07, \$53,611.33

Action: Approve the refund as recommended by staff.

Fujitsu Network Communications, Inc., 391662 (CH)

1-1-06 to 3-31-06, \$155,649.38

Action: Approve the refund as recommended by staff.

Corporate Express Promotional Marketing, 401688 (OHA)

10-1-05 to 9-30-06, \$80,378.68

Action: Approve the refund as recommended by staff.

Conocophillips Company, 340383 (OHA)

4-1-04 to 3-31-05, \$8,461,024.73

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

Gen-Probe Sales & Service, Inc., 415647 (FH)

10-1-06 to 12-31-06, \$132,726.36

Action: Approve the refund as recommended by staff.

West Coast Surfaces, Inc., 418390 (EA)

4-1-04 to 12-31-06, \$57,705.90

Action: Approve the refund as recommended by staff.

Sprint Telephony PCS, L.P., 250020 (OHA)

1-1-01 to 12-31-02, \$221,028.44

Action: Approve the refund as recommended by staff.

Warrior Custom Golf, Inc., 433118 (EAA)

1-1-04 to 12-31-06, \$62,660.18

Action: Approve the refund as recommended by staff.

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Wachovia Dealer Services, Inc., 426879 (EAA)

7-1-07 to 9-30-07, \$2,327,056.96

Action: Approve the refund as recommended by staff.

Jet Turbine Service, Inc., 421981 (OHA)

1-1-07 to 3-31-07, \$71,208.98

Action: Approve the refund as recommended by staff.

International Business Machines Corp., 350108 (OHB)

1-1-00 to 12-31-02, \$168,762.13

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

Cedars-Sinai Medical Center, 361404 (AS)

1-1-05 to 12-31-05, \$146,694.47

Action: Approve the refund as recommended by staff.

Wescom Credit Union, 424990 (AP)

7-1-07 to 9-30-07, \$61,632.64

Action: Approve the refund as recommended by staff.

Irvine Photo Graphics, Inc., 203750 (EAA)

1-1-99 to 9-30-01, \$67,543.84

Action: Approve the refund as recommended by staff.

All Good Pallets, Inc., 420056 (CH)

4-1-05 to 9-30-07, \$108,120.25

Action: Approve the refund as recommended by staff.

Integrated Impressions, Inc., 399887 (EAA)

1-1-04 to 12-31-06, \$79,305.22

Action: Approve the refund as recommended by staff.

Balboa Thrift & Loan Association, 403729 (FH)

1-1-07 to 6-30-07, \$63,926.81

Action: Approve the refund as recommended by staff.

Orange County's Credit Union, 405612 (EA)

1-1-06 to 9-30-07, \$91,342.44

Action: Approve the refund as recommended by staff.

Transouth Financial Corporation, 382928 (OHB)

7-1-05 to 12-31-06, \$2,027,853.96

Action: Approve the refund as recommended by staff.

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CIG Financial, 424045 (EAA)

4-1-07 to 6-30-07, \$99,113.20

Action: Approve the refund as recommended by staff.

DST Output West, LLC, 433982 (OHA)

1-1-05 to 6-30-07, \$69,565.58

Action: Approve the refund as recommended by staff.

Automotive Funding Group, Inc., 424504 (EA)

10-1-05 to 3-31-07, \$595,120.14

Action: Approve the refund as recommended by staff.

BRE/ESA Properties, LLC, 357532 (OHB)

1-1-05 to 3-31-06, \$307,844.35

Action: Approve the refund as recommended by staff.

Kaiperm Federal Credit Union, 356120 (CH)

1-1-03 to 6-30-06, \$137,082.58

Action: Approve the refund as recommended by staff.

Open Biosystems, Inc., 421983 (OHA)

7-1-04 to 12-31-06, \$61,983.55

Action: Approve the refund as recommended by staff.

CIT Healthcare, LLC, 406168 (OHB)

10-1-06 to 12-31-06, \$66,681.89

Action: Approve the refund as recommended by staff.

Rogers Acceptance Corporation, 425090 (AP)

7-1-02 to 12-31-06, \$89,851.58

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS AND RELIEF OF PENALTIES, CONSENT

The Board deferred consideration of the following matters: *Conco Paint Company, 346956 (MT), Hotel Airport Shuttle.Com, LLC, 358672 (MT).*

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

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Conco Paint Company, 346956 (MT)

1-1-05 to 12-31-05, \$81,338.92

Action: The Board took no action.

Hotel Airport Shuttle.Com, LLC, 358672 (MT)

1-1-03 to 12-31-05, \$87,746.81

Action: The Board took no action.

National General Insurance Company, 436156 (ET)

10-1-07 to 12-31-07, \$72,431.40

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 AND CANCELLATIONS CONSENT

The Board deferred consideration of the following matter: *Conco Paint Company, 435335 (MT)*.

Conco Paint Company, 435335 (MT)

1-1-06 to 12-31-06, \$105,075.13

Action: The Board took no action.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MAY 13, 2008

Tullio Mamolo, 336687 (AC)

Viktor Benes Continental Pastries, Inc., 336688 (AC)

Final Action: Upon motion of Dr. Chu, 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 with respect to the Century City location 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; and, that the remainder be redetermined as recommended by the Appeals Division.

Jay F. Mannino, 249957 (UT)

Final Action: Ms. Steel moved 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. The motion failed for lack of a second.

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 ordered that the petition be redetermined as recommended by the Appeals Division and directed staff to advise petitioner which documentation would be useful if he chooses to file a petition for rehearing.

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Gen-Mar, Inc., 311275, 334987 (FH)

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 claim be denied and the petition be redetermined as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARING

Karim Maredia, 283833 (ARH)

8-1-00 to 4-27-03, \$91,868.86 Tax, \$423.01 Failure to File Penalty, \$8,883.52 Negligence Penalty

For Petitioner: No Appearance

For Department: Christine Bisauta, Tax Counsel

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

Issues: Whether petitioner has established that the Department's use of the mark-up method to determine additional taxable sales resulted in an excessive measure of tax.

Whether petitioner has established that its claimed sales for resale were sales for resale.

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.

FINAL ACTION ON SALES AND USE TAX APPEAL HEARING HELD MAY 13, 2008

Jill Pierce, 342657 (AP)

David Levine, Tax Counsel, Appeals Division, Legal Department, announced a revised recommendation that would grant the petition.

Final Action: Upon motion of Mr. Leonard, 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.

SALES AND USE TAX APPEAL HEARING

Stuart Brian Collins, 334426 (AS)

2-2-01 to 12-31-03, \$151,689.72 Tax, \$26,560.74 Penalty

For Petitioner: Appearance Waived

For Department: Kevin Hanks, Hearing Representative

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

Issues: Whether petitioner has established that the audited amount of unreported taxable sales should be reduced.

Whether petitioner has established that adjustments are warranted to the disallowed amount of claimed and netted exempt and nontaxable sales.

Whether the understatement is the result of negligence.

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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.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MAY 13, 2008

Jamshid Malakouti, 308952 (EH)

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.

Gabinda, Inc., 352181 (EA)

Final 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 penalty be relieved and the petition be redetermined in accordance with the revised recommendation of the Appeals Division. Additionally, the Board directed staff to continue collection against the predecessor before proceeding against petitioner.

SALES AND USE TAX APPEALS HEARING

Anna Berardini, 288368 (AA)

7-1-99 to 6-30-03, \$103,259.37 Tax, \$10,325.94 Negligence Penalty

For Petitioner: Appearance Waived

For Department: Kevin Hanks, Hearing Representative

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

Issues: Whether adjustments are warranted to the audited amount of unreported sales of pets.

Whether petitioner is liable for tax on the cost of supply items used in providing pet grooming services.

Whether adjustments are warranted to the audited amount of sales of accessories.

Whether the audited understatement is the result of negligence

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.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MAY 13, 2008

Chawki A. Rafeh, 241564, 241569, 241573 (ARH)

Final 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 petition be redetermined as recommended by the Appeals Division.

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Spa De Soleil, Inc., 349460 (AC)

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 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.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD MAY 13, 2008

Paulette D. Thompson, 383553

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 sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Jerome Thomas Heckenkamp, 381120

2004, \$920.00 Tax, \$230.00 Late Filing Penalty

For Appellant: Appearance Waived

For Franchise Tax Board: Suzanne Small, Tax Counsel

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

Issues: Whether appellant has demonstrated error in the proposed tax assessment.
Whether appellant has shown reasonable cause for the abatement of the late filing penalty.

Whether the Board should impose a frivolous appeal penalty.

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 sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD MAY 13, 2008

Deborah Sharpe, 382011

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 sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

Duane Dworshak, 384281

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 sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Marc Pretscher, 393425

2004, \$12,202.00 Tax, \$3,050.50 Late Filing Penalty, \$3,050.50 Failure to File Penalty, \$120.00 Filing Enforcement Fee

For Appellant: Waived Appearance
For Franchise Tax Board: Suzanne Small, Tax Counsel

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

Issues: Whether appellant has demonstrated error in the proposed assessment.
Whether appellant has shown reasonable cause for the abatement of penalties.
Whether the Board should impose a frivolous appeal penalty.

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 sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

Rick Burningham, 395921

2004, \$3,026.00 Tax, \$756.00 Penalty for Delinquent Return, \$756.50 Failure to File Penalty, \$120.00 Filing Enforcement Fee

For Appellant: Waived Appearance
For Franchise Tax Board: Suzanne Small, Tax Counsel

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

Issues: Whether appellant has demonstrated error in the proposed assessment.
Whether appellant has shown reasonable cause for the abatement of penalties.
Whether the Board should impose a frivolous appeal penalty.

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 sustained the action of the Franchise Tax Board and imposed a \$5,000.00 frivolous appeal penalty.

The Board adjourned at 3:05 p.m.

The foregoing minutes are adopted by the Board on June 24, 2008.

Note: The following matter was removed from the calendar prior to the meeting: *Bobby Eugene Cook, 333472 (FH)*.