

Wednesday, May 28, 2008

The Board met at its offices at 450 N Street, Sacramento, at 10:20 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

Janice Diana Samsing and Mildred Kaunas, 356928 (UT)

September 29, 2004, \$2,982.00 Tax

For Petitioner:

Mildred Kaunas, Taxpayer

For Department:

NaTasha Ralston, Tax Counsel

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

Issue: Whether the purchase and use of the vehicle by petitioners is subject to California use tax.

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.

Foster Poultry Farms, 77405, 265656, 304306 (KHE)

1-1-95 to 9-12-98, \$131,576.77 Tax, \$0.00 Penalty

1-1-99 to 12-28-02, \$112,320.84 Tax

12-29-02 to 6-19-04, \$805,488.00 Claim for Refund

For Petitioner/Claimant:

Rich Carlson, Representative

For Department:

Bradley Heller, Tax Counsel

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

Issue: Whether petitioner's lease of equipment that injects a vaccine into eggs also included a separate technology transfer agreement so that a portion of petitioner's otherwise taxable lease payments were not subject to tax.

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 petitions and claim be submitted for decision.

Matt Lababedy, 89002316680 (KH)

1-1-95 to 12-31-97, \$10,502.00 Tax, \$2,267.53 Amnesty Interest Penalty

For Petitioner:

Matt Lababedy, Taxpayer

Don McKaughan, CPA

For Department:

Kevin Hanks, Hearing Representative

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

Issue: Whether the evidence supports further adjustments for check-cashing fees.

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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OTHER CHIEF COUNSEL MATTERS**Adoption of Formal and Memorandum Opinions**

Deborah Cooke, Tax Counsel, Legal Department, made introductory remarks regarding the adoption of Formal and Memorandum Opinions and the publication of Dissenting and Concurring Opinions. (Exhibit 5.14.)

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 amended staff's recommendation for implementing the provisions of the *Board of Equalizations Rules for Tax Appeals* with regards to the adoption and publication of Formal and Memorandum Opinions and the submission and publication of Concurring and Dissenting Opinions as follows: reflect a vote to adopt a formal opinion to mean the Member agrees with the result and the rationale set forth in the formal opinion; concurring opinions submitted by Members who vote to adopt the formal opinion must be consistent with the result and rationale of the formal opinion; update the Board's publications to reflect the foregoing; remove "motion to continue hearing to a later date" and "motion to take matter under submission" from staff's flow chart; and, clarified that the Appeals Division will promptly notify the taxpayer of the Board's decision when the Board asks that a Formal Opinion be drafted.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 12:40 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

SPECIAL PRESENTATIONS**Superior Accomplishment Award Presentations**

Ramon Hirsig, Executive Director, and Members of the Board presented the 2007-08 Sustained Superior Accomplishment Awards to employees in recognition of their outstanding achievements.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Jamal A. Mahgoub, 356195*; and, *AMT Solutions, Inc., 356197, 392072*.

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:

Synpep Corporation, 329381 (CH)

4-1-01 to 3-31-04, \$78,361.87 Tax, \$7,836.22 Negligence Penalty, \$5,222.79 Double Negligence Penalty, \$6,042.19 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

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Jamal A. Mahgoub, 356195 (CH)

1-1-02 to 3-19-03, \$3,686.02 Tax, \$0.00 Finality Penalties, \$327.44 Amnesty Interest Penalty

AMT Solutions, Inc., 356197, 392072 (CH)

3-20-03 to 5-31-05, \$3,489.09 Tax, \$0.00 Penalty

3-20-03 to 5-31-05, \$10,000.00 Claim for Refund

Action: The Board took no action.

Kenneth Darryl Beecham, 393632, (KH)

8-1-04 to 2-12-06, \$51,307.00 Tax, \$5,130.70 Penalty

Action: Redetermine as recommended by the Appeals Division.

Weston James Coolidge, 386899 (CH)

12-1-98 to 3-31-00, \$79,555.76 Tax, \$33,992.48 Penalty

Action: Redetermine as recommended by the Appeals Division.

Simmons Duplicating Supply Company, Inc., 347724 (OH)

4-1-02 to 6-30-05, \$44,030.07 Tax, \$5,685.96 Penalties, \$1,187.47 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Hany M. Abuelrous, 433967 (ET)

October 10, 2007, \$175.50 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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:

Jack Larson, 329112

2003, \$1,449.00 Assessment

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:

Gloria M. Williams, 387273

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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

With respect to the Sales and Use Tax Matters, Redeterminations 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:

Nissan North America, Inc., 272698 (OHA)

4-1-98 to 6-30-02, \$753,095.18

Action: Approve the redetermination as recommended by staff.

Panasonic Corporation of North America, 422116 (OHB)

1-1-01 to 6-30-04, \$181,307.35

Action: Approve the redetermination as recommended by staff.

4 S Casino Party Suppliers, LLC, 299497 (BH)

1-1-98 to 6-30-04, \$285,562.71

Action: Approve the redetermination as recommended by staff.

Specialty Salvage Limited, 283580 (KH)

7-1-95 to 11-30-97, \$107,775.80

Action: Approve the redetermination as recommended by staff.

Union Pacific Railroad Company, 326246 (OHA)

1-1-99 to 9-30-02, \$4,593,357.48

Action: Approve the redetermination as recommended by staff.

Govstor, LLC, 417205 (JHF)

10-1-05 to 12-31-06, \$75,779.00

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 Ms. Steel, seconded by Ms. Yee 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 87105 in *Target Corporation, 360870*, the Board made the following orders:

Target Corporation, 360870 (OHA)

1-1-00 to 6-30-03, \$238,090.57

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

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Lighthouse Worldwide Solutions, Inc., 373666 (CH)

7-1-04 to 6-30-07, \$50,816.59

Action: Approve the refund as recommended by staff.

Birchwood Cabinets of California, Inc., 389873 (KH)

1-1-03 to 6-30-06, \$619,597.44

Action: Approve the refund as recommended by staff.

Pentax of America, Inc., 403453 (OHB)

1-1-06 to 9-30-06, \$130,134.19

Action: Approve the refund as recommended by staff.

Daimler Chrysler Corporation, 436898 (CHA)

7-17-07 to 12-06-07, \$487,897.67

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 426403 (KH)

11-15-07 to 1-23-08, \$180,804.00

Action: Approve the refund as recommended by staff.

Qualcomm, Inc., 404369 (UT)

7-28-04 to 7-28-04, \$2,258,156.28

Action: Approve the refund as recommended by staff.

KII Acquisition Company, 342751 (FH)

1-1-03 to 12-31-05, \$1,216,627.59

Action: Approve the refund as recommended by staff.

Vertis, Inc., 396782 (OHB)

4-1-06 to 3-31-07, \$56,995.79

Action: Approve the refund as recommended by staff.

Consolidated Electrical Distributors, Inc., 287507 (AC)

1-1-02 to 12-31-04, \$920,073.75

Action: Approve the refund as recommended by staff.

TSK America, Inc., 417773 (OHA)

1-1-07 to 3-31-07, \$176,252.45

Action: Approve the refund as recommended by staff.

Freight Systems, Inc., 395248 (OHA)

10-1-04 to 12-31-06, \$325,367.74

Action: Approve the refund as recommended by staff.

Watsonville Hospital Corporation, 381029 (GHC)

7-1-03 to 12-31-04, \$66,622.83

Action: Approve the refund as recommended by staff.

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**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, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Equiva Trading Company, 254407; Equiva Trading Company, 208034; and, Midland National Life Insurance Company, 427043*; the Board made the following orders:

Equiva Trading Company, 254407, (MT)

Equiva Trading Company, 208034, (MT)

3-1-99 to 12-31-01, \$3,427,542.73

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

Nella Oil Company, LLC, 345962 (MT)

10-1-05 to 12-31-05, \$192,683.70

Action: Approve the refund as recommended by staff.

Midland National Life Insurance Company, 427043 (ET)

1-1-04 to 12-31-06, \$488,280.81

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

LEGAL APPEALS MATTERS, ADJUDICATORY

Rajinder Singh Garcha, 30060 (KH)

7-1-95 to 6-30-98, \$10,894.69 Tax

Considered by the Board: April 8, 2008

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.

John Richard Dudley, 253691 (KH)

7-1-00 to 6-30-03, \$15,019.87 Tax, \$6,112.27 Penalty, \$3,615.91 Amnesty Interest Penalty

Considered by the Board: December 11, 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.

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Don Ricardo's Restaurant, Inc., 42025 (AP)

4-1-95 to 12-31-06, \$37,111.60 Tax, \$3,711.16 Penalty

Padrino's, Inc., 42029 (AC)

4-1-95 to 3-31-98, \$179,168.19 Tax, \$17,916.81 Penalty, \$76,605.02 Amnesty Interest Penalty

Considered by the Board: February 27, 2008

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

Action: Upon motion of Dr. Chu, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating, the Board ordered that the amnesty interest penalty be relieved, otherwise redetermined as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Affiliated Funding Corporation, 317945

2003, \$14,446.88 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. 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 adopted a decision sustaining the action of the Franchise Tax Board but did not adopt a formal opinion.

Ronald C. Nelson and Marie J. Nelson, 329716

1985, \$1,048.54 Accrued Interest

Considered by the Board: February 27, 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 adopted a decision modifying the action of the Franchise Tax Board.

Constance Zorn, 317272

1992 to 1994, \$216,732.36 Assessment

Considered by the Board: Presented for Separate Discussion

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

Bruce H. Erfer and Lynn N. Erfer, 294534

2001, \$756.75 Claim for Refund

2002, \$953.18 Claim for Refund

Considered by the Board: Presented for Separate Discussion

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

Action: Ms. Steel moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee and Ms. Mandel voting no.

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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 a decision modifying the action of the Franchise Tax Board.

Stanley W. Gribble, 354879

1994, \$1,239,603.62 Claim for Refund

SWG Management Company, 354880

1994, \$95,441.22 Claim for Refund

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board adopted a decision reversing the action with concessions by the Franchise Tax Board in the appeal of *SWG Management Company, 354880*; and, modified the action with concessions by the Franchise Tax Board in the appeal of *Stanley W. Gribble, 354879*.

Teresa Rothman, 380556

2004, \$2,909.00 Tax, \$727.25 Penalty

Considered by the Board: 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. Mandel, seconded by Mr. Leonard and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board. The Board did not impose a frivolous appeal penalty.

Catherine Wimby, 354090

2005, \$851.00 Claim for Refund

Considered by the Board: September 12, 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 Mr. Leonard, seconded by Ms. Steel and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Dr. Chu and Ms. Yee voting no, the Board adopted a decision modifying the Franchise Tax Board's denial of claim for refund to allow for Child and Dependent Care Credit expenses in the amount of \$984.80.

Larry Geisel and Rhoda Geisel, 358724

2000, \$92,424.00 Assessment

Considered by the Board: December 12, 2007

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

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard abstaining, the Board adopted a decision denying the petition for rehearing.

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Speakers: Marty Dakessian, Attorney, Akerman Senterfitt LLP, representing *Daniel V, Inc.*,
342609
Ron Lane, Taxpayer, *Daniel V, Inc.*, 342609

Daniel V, Inc., 342609

1997, \$40,759.23 Assessment

1998, \$840,010.32 Assessment

Considered by the Board: May 15, 2008

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

Action: Mr. Leonard moved that the petition be granted. 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. 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.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, ADJUDICATORY

Savann Nhem, 379885

2006, \$1.00 or more

Considered by the Board: Presented for Separate Discussion

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 dismissed the appeal.

Sajjad Riyaz, 349075

2004, \$300.00

2005, \$300.00

Considered by the Board: March 19, 2008

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 Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a denying the petition for rehearing.

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

Messer Griesheim Industries, Inc., 435576 (OHB)

1-1-01 to 12-31-04, \$50,534.74

Considered by the Board: Presented for Separate Discussion

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 relief of penalty as recommended by staff.

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PCS Leasing Co, L.P., 431274 (OHA)

1-1-07 to 3-31-07, \$59,230.00

Considered by the Board: March 19, 2008

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 Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel not participating in accordance with Government Code section 87105, the Board approved the relief of penalty as recommended by staff.

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

Owens & Minor Distribution, Inc., 306485 (OHB)

1-1-02 to 12-31-05, \$2,072,102.77

Considered by the Board: Presented for Separate Discussion

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

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 refund as recommended by staff.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Audits

CallTower, Inc. (7960)

2004, \$560,000.00 Escaped Assessment, \$56,000.00 Penalties, \$184,800.00 In-lieu Interest

2005, \$40,000.00 Escaped Assessment, \$4,000.00 Penalties, \$9,600.00 In-lieu Interest

2006, \$640,000.00 Escaped Assessment, \$64,000.00 Penalties, \$96,000.00 In-lieu Interest

2007, \$290,000.00 Excessive Assessment

Action: Upon motion of Ms. Yee, 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 adopted the audit escaped and excessive assessments, plus penalties and in-lieu interest, as recommended by staff.

IP Networks, Inc. (7995)

2004, \$1,570,000.00 Escaped Assessment, \$157,000.00 Penalties, \$518,100.00 In-lieu Interest

2005, \$130,000.00 Excessive Assessment

2006, \$1,600,000.00 Escaped Assessment, \$160,000.00 Penalties, \$240,000.00 In-lieu Interest

2007, \$200,000.00 Excessive Assessment

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Action: Upon motion of Ms. Yee, 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 adopted the audit escaped and excessive assessments, plus penalties and in-lieu interest, as recommended by staff.

OFFERS-IN-COMPROMISE RECOMMENDATIONS

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 Offers in Compromise of *Sharp Image Electronics, Inc.*; *Fassel Mahmoud Elder*; *Management Insultants L.P.*; *James Steven Slack*; *Fadel Mohammed*; *Elwalani and Marina Elwalani*; and *Angie Wilder*; as recommended by staff.

SALES AND USE TAX APPEALS HEARING

Norman P. Shockley, Jr., 306953 (GH)

Acclaim Technology, Inc., 341204 (GH)

7-1-03 to 9-30-03, \$51,488.23 Tax, \$11,728.85 Failure to Pay Penalty

For Petitioner/Claimant:

Norman Shockley, Jr., Taxpayer

Norman Shockley, Sr., Witness

For Department:

Cary Huxsoll, Tax Counsel

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

Issues: Whether petitioner is personally responsible for the unpaid liability of Acclaim Technology, Inc. for the third quarter 2003.

Whether the failure-to-pay penalty should be relieved.

Whether Acclaim's overpayments related to unclaimed bad deduction for the fourth quarters of 2000, 2001, and 2002 can be offset against its liability for the third quarter 2003, with corresponding adjustments to petitioner's personal liability.

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 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.

PUBLIC HEARINGS

Proposed Amendments to Sales and Use Tax Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries*; and, adoption of Regulation 1828, *Process for Reviewing Transactions and Use Tax Distribution Inquiries*.

David Levine, Tax Counsel, Appeals Division, Legal Department, made introductory remarks regarding the proposed amendments to Regulations 1807, *Process of Reviewing Local Tax Reallocation Inquiries*, and 1828, *Process for Reviewing Transactions and Use Tax Distributions*, which are changes to the process of reviewing petitions for local tax reallocations and transition and use tax distributions. (Exhibit 5.15.)

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Speakers: Fran Mancina, Director of Government Relations, Muniservices
Dan Carrigg, Legislative Director, League of CA Cities
Matt Hinderliter, Audit Manager, HDL
Al Koch, General Counsel, MuniServices, LLC
Bob Cendejas, Attorney, Cendejas & Associates
Dave McPherson, Deputy Finance Director, City of San Jose

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 adopted the proposed amendments.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MAY 28, 2008

Janice Diana Samsing and Mildred Kaunas, 356928 (UT)

Final Action: Ms. Steel moved that the petition be granted. The motion failed for lack of a second.

Upon motion of Mr. Leonard, 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 the petitioner be relieved of the interest that accrued from August 8, 2005, when the Department should have sent a follow up letter to petitioners, and May 12, 2006, when the Department issued the Notice of Determination, and otherwise redetermine in accordance with the recommendation of the Appeals Division.

Foster Poultry Farms, 77405, 265656, 304306 (KHE)

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

Matt Lababedy, 89002316680 (KH)

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.

The Board adjourned at 3:35 p.m.

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