

Tuesday, June 24, 2008

The Board met at its offices at 450 N Street, Sacramento, at 10:50 a.m., with 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.

SPECIAL PRESENTATION

On behalf of the Board, Dr. Chu presented to Joseph D. Young, Chief, Headquarters Operations Division, Sales and Use Tax Department, and read into the record a retirement resolution, extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California. The Members made favorable personal remarks as each reflected on time spent working with Mr. Young, describing him as “a steady hand” with reliable sound judgment and flexibility. Mr. Young thanked the Members for their guidance and support, and then thanked his staff for their support.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Carlos M. Alcala and Norma Alcala, 259159
1995, \$11,416.00 Tax, \$2,854.00 Late Filing Penalty

For Appellant:

Carlos Alcala, Taxpayer

Norma Alcala, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Candace Hailing, Protest Hearing Officer

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

Issues: Whether appellants have met their burden to prove error in the proposed assessment and the underlying federal action.

Whether the Board has jurisdiction to determine that the assessment was discharged in appellants' bankruptcy.

Whether the late filing penalty was properly imposed and whether appellants have shown reasonable cause for relief from the penalty.

Whether respondent abused its discretion in refusing to abate interest.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.1.)

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.

SALES AND USE TAX APPEALS HEARING

Linkus Enterprises, Inc., 334425 (KH)
7-1-01 to 6-30-04, \$202,009.60 Tax, \$0.00 Negligence Penalty

For Petitioner:

Jon Warren, Representative

For Department:

Kevin Hanks, Hearing Representative

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

Issue: Whether petitioner has shown that the audited measure of unreported tax is excessive.

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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 submitted for decision.

The Board recessed at 12:20 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:30 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 settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11), pending litigation (Gov. Code §§ 11126(e) and 11126(e)(2)(B)(i)), and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 2:20 p.m. and reconvened immediately in open session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Kyle Rosier, 397169
1999, \$22,133.00 Assessment
2000, \$30,892.00 Assessment

For Appellant: Kyle Rosier, Taxpayer
For Franchise Tax Board: Renel A. Sapiandante, Tax Counsel

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

Issues: Whether appellant’s transfer of 5,700 shares of stock to Derivium Capital, LLC in April 1999 and appellant’s transfer of 4,200 shares of stock to Derivium in May and June 2000 constitutes a sale of those shares that resulted in taxable gain to appellant.

Whether the sales of the transferred shares of stock by Derivium constituted, for tax purposes, taxable sales by appellant.

Whether the appellant is entitled to nonrecognition of gain on his transfers of stock pursuant to Internal Revenue Code section 1058.

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

SALES AND USE TAX APPEALS HEARINGS

James Asher Finegold and Dana Lee Finegold, 351626 (UT)
9-25-04 or 10-26-04, \$40,162.50 Tax

For Petitioner: James A. Finegold, Taxpayer
Dana L. Finegold, Taxpayer
John Barnard, Attorney

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For Department: Carla Caruso, Tax Counsel
 Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
 Issue: Whether petitioners' purchased the vessel 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.

Ferede Beyene Negash and Lielti Desta Mesfi, 336999 (GH)

2-1-05 to 2-28-05, \$697.00 Tax

For Petitioner: Ferede Negash, Taxpayer
 Aschilew Jember, Representative

For Department: Robert Tucker, Tax Counsel
 Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
 Issues: Whether petitioners have established that the deduction for claimed exempt food sales was proper.
 Whether petitioners' deduction for costs of labor and repair of the restaurant property and equipment was proper.
 Whether petitioners have established that their deduction for bad debts was proper.
 Action: The Board continued the hearing to July 8, 2008.

PUBLIC HEARINGS

Timber Harvest Values

Benjamin Tang, Principal Property Appraiser, County-Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding the timber harvest values. On or before June 30, the Board shall estimate the immediate harvest values of and adopt schedules for each species or sub classification of timber harvested between July 1 and December 31. Revenue and Taxation Code section 38204[a]. (Exhibit 6.2.)

Speakers were invited to address the Board, but there were none.

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 adopted the timber harvest values as recommended by staff.

LEGAL APPEALS MATTERS, CONSENT

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

Cigars By Chivas, Inc., 334787 (AP)

4-1-02 to 3-31-05, \$79,830.88 Tax, \$7,983.08 Negligence Penalty, \$970.69 Amnesty Negligence Penalty, \$930.72 Amnesty Interest Penalty

Cigars By Chivas, Inc., 334876 (ET)

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4-1-02 to 3-31-05, \$165,822.40 Tax, \$16,582.25 Negligence Penalty

Action: Redetermine with adjustments as recommended by the Appeals Division, otherwise deny the petitions for rehearing.

Douglas Wayne Wright Jr., 351528 (CH)

Monica Laurene Bezore, 358675 (CH)

1-1-05 to 8-31-05, \$24,339.00 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Cargo Airline Transport, Inc., 350445 (UT)

September 29, 2001, \$8,401.00 Tax, \$840.10 Failure to File Penalty, \$714.13 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

AM-Farjo International, Inc., 360093 (AR)

Mian S. Qureshi and Farhat B. Pervaiz, 361774 (AR)

7-1-02 to 6-30-05, \$38,394.93 Tax, \$3,839.49 Negligence Penalty, \$496.25 Double Negligence Penalty, \$443.57 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Brett Carson Haynes, 333836 (KH)

10-1-00 to 12-31-03, \$40,545.51 Tax, \$16,887.29 Negligence Penalty, \$6,587.18 Double Negligence Penalty, \$8,634.03 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Ammar Gaber Said Awnallah, 429325 (ET)

September 18, 2007, \$634.20 Approximate Value

Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Terry N. Black, 355231*; and, *Sandras Clark, 355234*.

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:

Alvina Bannister, 327650

1998, \$3,101.27 Innocent Spouse Relief

Action: Reverse the action of the Franchise Tax Board.

Terry N. Black, 355231

1997, \$60,305.00 Tax, \$12,061.00 Accuracy-Related Penalty, \$15,076.25 Failure to File Penalty, \$15,076.25 Failure to Furnish Information Penalty, \$90.00 Filing Enforcement Fee

Action: The Board took no action.

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Sandras Clark, 355234

1998, \$71,579.00 Tax, \$14,315.80 Accuracy-Related Penalty, \$17,894.75 Failure to Furnish Information Penalty

1999, \$19,529.00 Tax, \$3,905.80 Accuracy-Related Penalty, \$4,882.25 Failure to Furnish Information Penalty

Action: The Board took no action.

David L. Danek and Pimolmas Danek, 347639

1995, \$786.09 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Seth D. Ehrlich and Cindy A. Ehrlich, 361464

2001, \$327.73 Amnesty Penalty

2002, \$241.05 Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Robert O. Garner, 380431

1991, \$12,489.05 Claim for Refund

1992, \$716.57 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jami Gibson, 395425

2003, \$327.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Fred C. Haney and Jeannine A. Haney, 361322

1998, \$27,402.00 Claim for Refund

1999, \$117,042.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Duck Kim and Ingyu Kim, 357020

2000, \$23,840.00 Claim for Refund

2001, \$17,766.76 Claim for Refund

Action: Reverse the action of the Franchise Tax Board.

Martin Ortiz, 358670

2005, \$700.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

William Simpkins, 250998

1993, \$1,734.00 Tax, \$346.80 Accuracy-Related Penalty

1994, \$8,422.00 Tax, \$1,684.40 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

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Loc B. Ta, 383531

2002, \$7,897.00 Tax, \$382.78 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Vivian Fontenot, 391245

2003, \$628.65 Claim for Refund

Action: Deny the petition for rehearing.

John Nelson and Ivy C. Nelson, 393411

2003, \$955.35 Claim for Refund

Action: Deny the petition for rehearing.

William Amonette Anderson, 397348

2004, \$3,333.00 Tax, \$833.25 Late Filing Penalty

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

Brandon J. Gaffney, 381176

2004, \$2,521.00 Tax, \$630.25 Late Filing Penalty, \$854.25 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$1,500.00 frivolous appeal penalty.

Greg Galaski, 383410

2002, \$1,342.00 Tax, \$335.50 Late Filing Penalty, \$81.31 Post Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,000.00 frivolous appeal penalty.

Anthony Long, 383389

2002, \$2,565.00 Tax, \$641.25 Late Filing Penalty, \$155.41 Post Amnesty Penalty

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

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matter: *Diane J. Reed, 333196.*

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:

Jose Amezola, 346692

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Deborah Davis, 387815

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Arlene Fleck, 389593

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Roger Hoffman, 399438

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Richard Lopez, Sr., 359734

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Sandra Love, 387479

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Mary K. Martin (Deceased), 394348

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Diane J. Reed, 333196.

2005, \$162.50

Action: The Board took no action.

Rolfe Simonsen, 403756

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Enrico Varricchio, 386505

2006, \$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**

The Board deferred consideration of the following matters: *John Raymond Collins, 399683 (UT)*; and, *Robert L. Reynolds, 424795 (KH)*.

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

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Ludlow Coated Products, LP, 414214 (OH)

7-1-03 to 2-15-06, \$117,068.21

Action: Approve the redetermination as recommended by staff.

Rocky Mountain Log Homes, 288216 (OH)

7-29-95 to 9-30-03, \$240,227.85

Action: Approve the redetermination as recommended by staff.

Hussmann Corporation, 441206 (OH)

10-1-07 to 12-31-07, \$59,154.60

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

Fedex Kinko's/Print Services, Inc., 441208 (OH)

11-1-07 to 11-30-07, \$92,880.00

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

John Raymond Collins, 399683 (UT)

8-14-98 to 8-14-98, \$95,632.15

Action: The Board took no action.

Robert L. Reynolds, 424795 (KH).

7-1-98 to 6-30-01, \$124,341.00

Action: The Board took no action.

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

The Board deferred consideration of the following matters: *Clear Vision Management, Inc., 440337 (EH)*; and, *Water & Power Community Credit Union, 334165 (AS)*.

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. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Nissan North America, Inc., 421912 (OH)*; and, *Infineon Technologies Corporation, 423699 (GH)*, the Board made the following orders:

O'Neil Group, Inc., 441800 (EH)

10-1-01 to 11-18-01, \$184,964.70

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

Wireless Retail, Inc., 439843 (OH)

10-1-04 to 10-1-04, \$103,813.59

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

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Dot Hill Systems Corporation, 442263 (FH)

4-1-07 to 6-30-07, \$114,237.00

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

Apex Design Technology, Inc., 439778 (EA)

12-01-05 to 12-31-05, \$87,423.72

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

Clear Vision Management, Inc., 440337 (EH)

10-1-06 to 3-31-07, \$62,207.65

Action: The Board took no action.

Mike Campbell & Associates, Ltd., 442334 (AP)

7-1-07 to 9-30-07, \$58,260.36

Action: Approve the refund as recommended by staff.

Nissan North America, Inc., 421912 (OH)

7-1-06 to 12-31-06, \$244,832.30

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

Oakley, Inc., 336750 (EA)

4-1-02 to 9-30-05, \$487,860.16

Action: Approve the refund as recommended by staff.

I-Flow Corporation, 441176 (EA)

10-1-03 to 3-31-07, \$173,373.78

Action: Approve the refund as recommended by staff.

Sharper Image Corporation, 439856 (BH)

1-1-04 to 12-31-06, \$58,630.99

Action: Approve the refund as recommended by staff.

Schwing America, Inc., 381465 (OH)

1-1-04 to 3-31-04, \$221,163.39

Action: Approve the refund as recommended by staff.

Lone Oak Veterinary Clinic, Inc., 401313 (KH)

1-1-04 to 9-30-07, \$51,387.19

Action: Approve the refund as recommended by staff.

Gottschalks, Inc., 441170 (KH)

7-2-06 to 7-7-07, \$203,504.41

Action: Approve the refund as recommended by staff.

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Cart Mart, Inc., 405440 (FH)

4-1-04 to 3-31-07, \$63,704.24

Action: Approve the refund as recommended by staff.

First Future Credit Union, 416572 (FH)

7-1-05 to 12-31-06, \$67,843.75

Action: Approve the refund as recommended by staff.

J-M Manufacturing Company, Inc., 425717 (OH)

4-1-07 to 9-30-07, \$57,750.00

Action: Approve the refund as recommended by staff.

Valley First Credit Union, 383236 (KH)

1-1-03 to 12-31-05, \$221,372.08

Action: Approve the refund as recommended by staff.

Compuware Corporation, 386557 (OH)

1-1-04 to 6-30-06, \$373,970.72

Action: Approve the refund as recommended by staff.

Dresser Rand Company, 243917 (OH)

7-1-00 to 6-30-03, \$71,346.35

Action: Approve the refund as recommended by staff.

Nellson Nutraceutical, Inc., 442338 (AP)

1-29-06 to 3-31-07, \$71,764.00

Action: Approve the refund as recommended by staff.

Larry Green Chrysler Plymouth Dodge Eagle, Inc., 434821 (EH)

4-1-07 to 6-30-07, \$57,374.31

Action: Approve the refund as recommended by staff.

Palomar Technologies, Inc., 432419 (FH)

10-1-07 to 12-31-07, \$56,959.45

Action: Approve the refund as recommended by staff.

Home Shopping, LP, 318294 (OH)

1-1-02 to 9-30-02, \$56,682.65

Action: Approve the refund as recommended by staff.

Infineon Technologies Corporation, 423699 (GH)

7-1-03 to 6-30-06, \$494,063.27

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

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Paper Machinery Corporation, 421801 (OH)

4-1-07 to 6-30-07, \$82,858.79

Action: Approve the refund as recommended by staff.

Amtek (USA) Enterprises, Inc., 437740 (GH)

7-1-03 to 6-30-06, \$108,516.03

Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 346670 (OH)

1-1-03 to 12-31-06, \$369,222.25

Action: Approve the refund as recommended by staff.

Six Leasing, Inc., 439789 (EH)

1-1-05 to 6-30-05, \$52,700.73

Action: Approve the refund as recommended by staff.

Convergent Media Systems Corporation, 316349 (OH)

1-1-03 to 12-31-03, \$86,776.49

Action: Approve the refund as recommended by staff.

Guardian Building Products Distribution, Inc., 421812 (OH)

7-1-05 to 6-30-07, \$337,462.67

Action: Approve the refund as recommended by staff.

United Auto Credit Corporation, 430063 (EA)

7-1-07 to 9-30-07, \$109,029.04

Action: Approve the refund as recommended by staff.

Water & Power Community Credit Union, 334165 (AS)

7-1-02 to 3-31-06, \$832,353.93

Action: The Board took no action.

County Schools Federal Credit Union, 331821 (AR)

1-1-02 to 3-31-07, \$106,305.63

Action: Approve the refund as recommended by staff.

Kern Schools Federal Credit Union, 432422 (AR)

7-1-04 to 12-31-04, \$115,649.80

Action: Approve the refund as recommended by staff.

Newegg, Inc., 432588, (AP)

10-1-05 to 3-31-07, \$161,781.28

Action: Approve the refund as recommended by staff.

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SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, 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 and Ms. Mandel voting yes, the Board made the following order:

Ralphs Grocery Company, 431287 (ET)

8-9-07 to 8-28-07, \$105,582.86

Action: Approve the relief of penalty 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 Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Sentry Life Insurance Company, 397178 (ET)*; *The Wine Group, LLC, 417145 (ET)*; *Metropolitan Life Insurance Company, 433462 (ET)*; and, *Standard Life Insurance Company of Indiana, 431684 (ET)*, the Board made the following orders:

Hunsaker & Sons, Inc., 388737 (MT)

1-1-00 to 12-31-05, \$93,160.84

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

Sentry Life Insurance Company, 397178 (ET)

1-1-02 to 12-31-05, \$289,799.06

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

The Wine Group, LLC, 417145 (ET)

10-1-04 to 9-30-07, \$187,574.99

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

Metropolitan Life Insurance Company, 433462 (ET)

1-1-06 to 12-31-06, \$3,935,292.80

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

Standard Life Insurance Company of Indiana, 431684 (ET)

1-1-06 to 12-31-06, \$70,446.90

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

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

4-1-00 to 3-31-03, \$22,995.69 Tax, \$2,299.57 Negligence Penalty, \$2,583.83 Amnesty Interest Penalty

Considered by the Board: May 13, 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 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 Coca Cola Company, 286352, 193081, 288534 (OH)

1-1-98 to 3-31-02, \$237,175.00 Tax

Considered by the Board: February 1, 2008

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

Action: Ms. Steel moved to grant the claim in Case ID 193081. 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.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Mr. Leonard, Ms. Yee and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the claim in Case ID 193081 be granted in part and denied in part and that the petition and remaining claims be denied, as recommended by the Appeals Division.

Tarek Anwar Nada, 305290 (CH)

10-1-00 to 3-31-04, \$82,923.90 Tax, \$0.00 Penalty

Considered by the Board: January 31, 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.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Ms. Mandel directed staff to include in future summary decisions details regarding appellants' appeals history, thus explaining the reason for recommending the frivolous appeal penalty (FAP) amounts. In addition, Mr. Leonard directed staff to add language to summary decisions and advise appellants online that the FAP may be imposed in increasing amounts for repeated filings of frivolous appeals.

Byron Hoffman, 381469

2004, \$5,798.00 Tax, \$2,899.00 Penalties

Considered by the Board: February 26, 2008

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

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Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board and imposed a \$2,500.00 frivolous appeal penalty.

Thomas Jones, 383406

2004, \$8,451.00 Tax, \$2,112.75 Late Filing Penalty, \$2,112.75 Notice and Demand Penalty

Considered by the Board: February 26, 2008

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board and imposed a \$2,500.00 frivolous appeal penalty.

Steven R. Olmos, 342009

2003, \$3,433.00 Tax, \$858.25 Late Filing Penalty, \$858.25 Notice and Demand Penalty

Considered by the Board: February 26, 2008

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board and imposed a \$1,500.00 frivolous appeal penalty.

Margaret Rogers, 382827

2004, \$1,923.00 Tax, \$480.75 Late Filing Penalty, \$533.25 Failure to File, \$120.00 Enforcement Fee

Considered by the Board: February 26, 2008

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board and imposed a \$2,500.00 frivolous appeal penalty.

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

Atlantic Richfield Company, 433808 (AA)

1-1-98 to 12-31-01, \$95,345.04

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 denial of relief of penalty as recommended by staff.

Tuesday, June 24, 2008

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**PROPERTY TAX MATTERS****Private Railroad Car Tax Refunds Request**

Mallard Transportation Company (603)
2007, \$21.71

Rocky Mountain Transportation (6062)
2007, \$89.59

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 granted the petition for refund as recommended by staff.

OFFERS-IN-COMPROMISE RECOMMENDATIONS

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 offer in compromise of *Barton Magner* as recommended by staff.

CHIEF COUNSEL MATTERS**RULEMAKING****Proposed Amendments to Hazardous Substances Tax Regulation 3000, *Generator of Hazardous Waste*.**

Windie Scott, Tax Counsel, Settlement Division, Legal Department, made introductory remarks regarding the proposed section 100 change to Regulation 3000 to eliminate an erroneous internal reference in the regulation as originally adopted in 1999. (Exhibit 6.3.)

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 adopted the proposed amendments to Hazardous Substances Tax Regulation 3000, *Generator of Hazardous Waste*, as recommended by staff.

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:

Tuesday, June 24, 2008

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 6.4.)

Tella R. Barreda, Tax Technician II, Norwalk District Office
Dennis W. Ensley, Business Taxes Specialist I, Sacramento District Office
Bonnie Jeanene Geller, Tax Technician II, West Covina District Office
Carol A. Holman, Supervising Tax Auditor I, San Diego District Office
Jim Loman, Business Taxes Specialist II, Compliance and Technology Section,
San Jose District Office

Action: Approve the Board Meeting Minutes of May 13-15 and May 28-29, 2008.

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Business Taxes 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 Business Taxes Committee report and the actions therein. (Exhibit 6.5.)

Committee votes were as follows:

Proposed regulatory changes to clarify the application of tax to sales of meal replacement products – Sales and Use Tax Regulations 1591, Medicines and Medical Devices, and 1602, Food Products

A motion by Mr. Leonard, seconded by Dr. Chu, to approve and authorize publication of the proposed regulatory amendments unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

Customer Services and Administrative Efficiency Committee

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 approved the Customer Services and Administrative Efficiency Committee report and the actions therein. (Exhibit 6.6.)

Committee votes were as follows:

Administrative Settlement Program Report and Recommendations.

A motion by Ms. Yee, seconded by Ms. Mandel, to adopt alternative 2 to establish a 15-day deadline with the modification of eliminating the option for the Chair to waive the deadline, unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

Tuesday, June 24, 2008

Property Tax Committee

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Property Tax Committee report and the actions therein. (Exhibit 6.7.)

OTHER ADMINISTRATIVE MATTERS**Executive Director's Report**

Ramon Hirsig, Executive Director, provided a report regarding time extensions to Calaveras, Colusa, Lassen, Los Angeles, Madera, Orange, Plumas, San Diego, Sutter, Tehama, Trinity and Yuba Counties to complete and submit 2008-09 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155. (Exhibit 6.8.)

Deputy Directors Reports

David Gau, Deputy Director, Property and Special Taxes Department, provided a status report on the implementation plan for the Flavored Malt Beverages Regulations: 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*. (Exhibit 6.9.)

Elizabeth Houser, Deputy Director, Administration Department, provided an update on the proposed budget for fiscal year 2008-2009.

Ms. Yee requested that staff contact the Budget Conference Committee and request a delay of the implementation of the Financial Institutions Records Match Program until BOE can fully evaluate the merits of this proposal. Additionally, Ms. Yee requested that staff confer with the Franchise Tax Board on how the Financial Institutions Records Match Program would work.

Elizabeth Houser, Deputy Director, Administration Department, provided a BOE headquarters building update.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD JUNE 24, 2008

Carlos M. Alcala and Norma Alcala, 259159

Final 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 sustained the action of the Franchise Tax Board.

Tuesday, June 24, 2008

Kyle Rosier, 397169

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 sustained the action of the Franchise Tax Board.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JUNE 24, 2008

Linkus Enterprises, Inc., 334425 (KH)

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 petition be redetermined as recommended by the Appeals Division.

James Asher Finegold and Dana Lee Finegold, 351626 (UT)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be 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 adjourned at 5:10 p.m.

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

Note: The following matters were removed from the calendar prior to the meeting: *International Investment Properties, Inc., 313013 (KH); Robin J. Steele, 342595; and, Adoption of Property Tax Forms.*