

Tuesday, September 16, 2008

The Board met at its offices at 450 N Street, Sacramento, at 10:45 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.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Thomas P. Bengard and Kim C. Bengard, 422294

2000, \$329,015.00 Assessment

2001, \$361,187.50 Assessment

Bengard Group, Inc., 424221

2001, \$51,243.00 Assessment

For Appellant:

Charles L. Germany, Representative

Wendell R. Bird, Attorney

Thomas P. Bengard, Taxpayer

Kim C. Bengard, Taxpayer

For Franchise Tax Board:

Renel Sapiandante, Tax Counsel

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

Issues: Whether appellants have shown that respondent erred in its determination that Internal Revenue Code section 453A is applicable to the contingent installment obligation under the Asset Purchase Agreement because the agreement did not state a maximum purchase price.

Assuming the Internal Revenue Code section 453A is applicable, whether appellants have shown that the fair market value of the contingent installment obligation between appellants and Berwind Industries, Inc. was not \$85,000,000 for purposes of determining the amount of interest.

Whether respondent is estopped from issuing a Notice of Proposed Assessment for the 2001 taxable year based on an audit of appellant's 1996 income tax return.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 9.1)

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.

LEGAL APPEALS MATTERS, CONSENT

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:

Home Care Information Systems, Inc., 89002426820 (OH)

1-1-90 to 12-31-96, \$73,159.94 Tax, \$0.00 Penalty

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

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Promotion Products, Inc., 336535, 338891 (OH)

1-1-96 to 6-30-02, \$4,267.35 Tax, \$426.74 Finality Penalty, \$426.74 Amnesty Double-Finality Penalty, \$1,084.22 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Shahbaz Zarghampour, 358123 (AR)

7-1-01 to 6-30-04, \$79,715.46 Tax, \$7,971.57 Negligence Penalty, \$2,506.98 Amnesty Double Negligence Penalty, \$2,934.25 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Kenneth Banks, 327922*; and, *Swift Transportation Company, Inc., and Swift Transportation Corporation, 266318*.

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

Richard A. Lucich, 387301

2003, \$5,209.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Nazar E. Najor and Lauren Najor, 358691

2002, \$862.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

James L. Smith, 344810

Sandra Smith, 360531

1986, \$2,680.25 Innocent Spouse Relief

Action: Sustain the action of the Franchise Tax Board.

Kenneth Banks, 327922

1995, \$276,096.00 Assessment

Action: The Board took no action.

Rick Burningham, 395921

2004, \$3,026.00 Tax, \$756.50 Penalty for Delinquent Return, \$756.50 Failure to File Penalty, \$120.00 Filing Enforcement Fee, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

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Swift Transportation Company, Inc., and Swift Transportation Corporation, 266318

1997, \$55,352.00 Assessment

1998, \$118,067.00 Assessment

Action: The Board took no action.

Roman Garcia, 416435

2006, \$540.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Larry Mazur, 377123

2002, \$356.00 Assessment

Action: Sustain the modified action of the Franchise Tax Board.

Debra K. Pace, 328284

1996, \$41,633.00 Assessment, \$10,381.75 Late Filing Penalty

1997, \$10,103.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

George Saffas, 396089

2003, \$2,931.00 Tax, \$1,465.50 Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$3,500.00 frivolous appeal penalty.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

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

Sri Mesing, 382022

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Michelle D. Bell, 426291

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by 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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Computer Sciences Corporation, 387048 (AS)

4-1-00 to 3-31-03, \$119,290.50

Action: Approve the redetermination as recommended by staff.

Golden State Lumber, Inc., 362701 (JH)

10-1-02 to 12-31-03, \$98,434.38

Action: Approve the redetermination as recommended by staff.

Anthony Schools Corporation, 342569 (EA)

4-1-02 to 3-31-05, \$130,514.50

Action: Approve the redetermination as recommended by staff.

Fresno Auto West, Inc., 360213 (AR)

4-1-02 to 10-5-04, \$158,587.73

Action: Approve the redetermination as recommended by staff.

The Reynolds & Reynolds Company, 417535 (OH)

10-1-02 to 12-31-05, \$61,657.39

Action: Approve the redetermination as recommended by staff.

Sprint/United Management Company, 401793 (OH)

10-1-01 to 6-30-05, \$3,133,597.70

Action: Approve the redetermination as recommended by staff.

Café Pacific Beach, Inc., 265930 (FH)

10-1-99 to 12-31-02, \$57,516.18

Action: Approve the redetermination as recommended by staff.

Laeroc Barnabeys 2002, LLC, 433707 (AS)

7-1-05 to 12-18-06, \$156,770.38

Action: Approve the redetermination as recommended by staff.

Nortel Communications Systems, Inc., 445236 (OH)

4-1-95 to 4-30-97, \$417,003.10

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

Downtown Ford Sales, 449447 (KH)

1-1-08 to 3-31-08, \$70,018.80

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

U.S. Foodservice, Inc., 449445 (OH)

1-1-08 to 1-31-08, \$53,676.22

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

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Arbonne International, LLC, 449448 (EA)

11-01-07 to 11-30-07, \$52,738.74

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

United Parcel Service, Inc., 301622 (EA)

1-1-02 to 12-31-04, \$966,389.22

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

Laboratory Corporation of America, 450029 (OH)

1-1-04 to 3-31-05, \$152,022.52

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

AT&T Communications of California, 239818 (OH)

1-1-00 to 12-31-02, \$221,471.88

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

Harry R. Sawl, 441869 (UT)

3-31-00 to 3-31-00, \$52,645.25

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

SC Aviation, LLC 425693 (UT)

7-21-00 to 7-21-00, \$103,190.78

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

TP & SG, Inc., 405622 (AC)

4-1-00 to 12-31-05, \$125,004.06

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

Mecom Equipment, LLC, 377867 (KH)

1-1-06 to 6-30-06, \$82,787.00

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, Ms. Mandel not participating in accordance with Government Code section 87105 in *Johnson & Johnson Health Care Systems, Inc., 400809 (OH)*; the Board made the following orders:

D'Anna Yacht Center, Inc., 449657 (CH)

1-1-05 to 3-31-05, \$206,967.53

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

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Trekstor USA, Inc., 445493 (CH)

4-1-03 to 12-31-06, \$123,375.81

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

Gateway Business, LLC, 449681 (OH)

1-1-01 to 9-30-01, \$83,415.40

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

Fresh Start Bakeries, Inc., 449975 (EA)

4-1-07 to 9-30-07, \$91,942.00

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

A-1 M & M Enterprise, Inc., 448330 (AS)

1-1-01 to 12-31-04, \$514,997.49

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

City of Lompoc, 444311 (GH)

1-1-05 to 3-31-08, \$60,992.88

Action: Approve the refund as recommended by staff.

Kenneth Elliott Bradley, 445285 (GH)

10-1-04 to 9-30-07, \$58,135.41

Action: Approve the refund as recommended by staff.

Washington Township District Hospital, 436268 (CH)

4-1-03 to 6-30-06, \$188,955.08

Action: Approve the refund as recommended by staff.

United Parcel Service, Inc., 449849 (CH)

1-1-02 to 12-31-06, \$1,511,611.04

Action: Approve the refund as recommended by staff.

United Parcel Service, Inc., 301622 (EA)

1-1-02 to 12-31-04, \$86,473.15

Action: Approve the refund as recommended by staff.

United Parcel Service, Inc., 450166 (EA)

1-1-02 to 12-31-06, \$4,911,903.97

Action: Approve the refund as recommended by staff.

Laboratory Corporation of America, 378553 (OH)

7-1-03 to 3-31-05, \$78,766.57

Action: Approve the refund as recommended by staff.

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Golden State Lumber, Inc., 450592 (JH)

1-1-04 to 9-30-05, \$127,318.89

Action: Approve the refund as recommended by staff.

United Parcel Service, Inc., 303264 (OH)

1-1-02 to 9-30-05, \$156,962.76

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 445173 (KH)

1-1-08 to 3-31-08, \$393,631.36

Action: Approve the refund as recommended by staff.

The Boeing Company, 373477 (OH)

1-1-02 to 12-31-06, \$1,378,930.58

Action: Approve the refund as recommended by staff.

FEI Company, 441082 (OH)

10-1-06 to 12-31-06, \$58,091.37

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 441611 (KH)

3-25-08 to 5-12-08, \$207,136.00

Action: Approve the refund as recommended by staff.

Kailey's Break Place, Inc., 430386 (KH)

1-1-04 to 3-30-07, \$91,920.26

Action: Approve the refund as recommended by staff.

Wachovia Dealer Services, Inc., 435533 (EA)

10-1-07 to 12-31-07, \$3,668,320.20

Action: Approve the refund as recommended by staff.

Saint-Gobain Containers, Inc., 447054 (OH)

1-1-07 to 12-31-07, \$383,509.71

Action: Approve the refund as recommended by staff.

California State Automobile Association, 367254 (BH)

1-1-03 to 3-31-06, \$586,514.79

Action: Approve the refund as recommended by staff.

Petco Animal Supplies Stores, Inc. 397925 (FH)

10-1-02 to 12-31-06, \$115,337.00

Action: Approve the refund as recommended by staff.

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Andre Bonini Barbosa, 444946 (EA)

1-1-05 to 9-30-05, \$85,111.38

Action: Approve the refund as recommended by staff.

Applied Telcomm Corporation, 446844 (AR)

1-1-05 to 9-30-07, \$59,970.94

Action: Approve the refund as recommended by staff.

Johnson & Johnson Health Care Systems, Inc., 400809 (OH)

7-1-02 to 12-31-06, \$179,179.10

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

Americredit Financial Service, Inc., 444792 (OH)

1-1-08 to 3-31-08, \$1,773,285.75

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 444790 (EA)

10-1-07 to 3-31-08, \$184,435.62

Action: Approve the refund as recommended by staff.

Mumm Napa Estates, Inc., 403747 (JH)

4-1-04 to 3-31-06, \$165,907.44

Action: Approve the refund as recommended by staff.

Groupware Technology, Inc., 444750 (GH)

4-1-04 to 3-31-07, \$110,882.16

Action: Approve the refund as recommended by staff.

United Auto Credit Corporation, 445178 (EA)

10-1-07 to 12-31-07, \$132,287.49

Action: Approve the refund as recommended by staff.

Monster, LLC, 448167 (BH)

4-1-04 to 3-31-07, \$166,728.38

Action: Approve the refund as recommended by staff.

Inovant, LLC, 448525 (BH)

10-1-03 to 9-30-06, \$1,339,885.80

Action: Approve the refund as recommended by staff.

Zara USA, Inc., 402359 (OH)

1-1-07 to 3-31-07, \$415,097.23

Action: Approve the refund as recommended by staff.

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Challenge Financial Services, Inc., 443777 (EA)

7-1-07 to 12-31-07, \$81,726.48

Action: Approve the refund as recommended by staff.

Global Power Supply, LLC, 443781 (GH)

7-1-07 to 12-31-07, \$59,701.55

Action: Approve the refund as recommended by staff.

Ortho Biotech Products, LP, 379584 (OH)

1-1-03 to 12-31-06, \$413,120.85

Action: Approve the refund as recommended by staff.

Transportation Technology Center, Inc., 398881 (OH)

10-1-05 to 9-30-06, \$60,882.28

Action: Approve the refund as recommended by staff.

Medcal Sales, LLC, 448792 (EH)

10-1-05 to 9-30-06, \$87,287.97

Action: Approve the refund as recommended by staff.

South Western Federal Credit Union, 438020 (EA)

10-1-07 to 3-31-08, \$52,070.75

Action: Approve the refund as recommended by staff.

Eagle Community Credit Union, 442668 (EA)

7-1-07 to 12-31-07, \$77,700.04

Action: Approve the refund as recommended by staff.

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

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

Tesoro Refining and Marketing Company, 443126 (MT)

7-1-01 to 6-1-06, \$64,847.09

Action: Approve the refund as recommended by staff.

McLane/Suneast, Inc., 433733 (ET)

1-16-08 to 1-16-08, \$124,997.97

Action: Approve the refund as recommended by staff.

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LEGAL APPEALS MATTERS, ADJUDICATORY

Donald R. Loya, 358842 (AC)

1-1-01 to 3-31-02, \$14,000.00 Claim for Refund

Considered by the Board: Hearing Notice Sent – No Response

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

Action: The Board deferred consideration of this matter to the November Sacramento Meeting.

Michael Richard Luna, 356507 (KH)

1-1-02 to 12-31-04, \$8,688.31 Tax, \$1,066.41 Amnesty Interest Penalty

Considered by the Board: March 18, 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

David W. Penney, 341465

2003, \$372.00 Tax, \$100.00 Late Filing Penalty, \$93.00 Notice and Demand Penalty

Considered by the Board: May 28, 2008

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

Melody L. Beattie, 359059

1997, \$20,000.00 Claim for Refund

Considered by the Board: January 31, 2008

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

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

Mr. Leonard directed staff to advise the Franchise Tax Board to get economic data and examine the actual mortgage market in order to determine the proper mortgage interest multiplier.

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

Diane J. Reed, 333196
2005, \$162.50

Considered by the Board: June 24, 2008

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

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

James Bruce Tananbaum, 432510 (BH)
1-1-04 to 12-31-05, \$62,812.44

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 redetermination as recommended by staff.

United Rentals Northwest, Inc., 436595 (OH)
8-1-07 to 10-31-07, \$394,392.78

Considered by the Board: May 13, 2008

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

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and duly carried, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Yee voting no, the Board approved the relief of penalty as recommended by staff.

T-Mobile Resources Corporation, 441946 (OH)
4-1-05 to 12-31-05, \$204,815.60

Considered by the Board: Presented for Separate Discussion

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

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 relief of penalty as recommended by staff.

John Raymond Collins, 399683 (UT)
8-14-98 to 8-14-98, \$95,632.15

Considered by the Board: June 24, 2008

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 and Ms. Mandel voting yes, Ms. Steel not participating, the Board approved the denial of claim for refund as recommended by staff.

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Robert L. Reynolds, 424795 (KH)

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

Considered by the Board: June 24, 2008

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 approved the denial of claim for refund as recommended by staff.

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

Water & Power Community Credit Union, 334165 (AS)

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

Considered by the Board: June 24, 2008

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

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 refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS, ADJUDICATORY

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

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

Considered by the Board: May 13, 2008

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

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 redetermination as recommended by staff.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**PROPERTY TAX MATTERS****Audits**

Pacific Bell Telephone Company (279)

2004, \$19,900,000.00 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 excessive assessment as recommended by staff.

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

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SALES AND USE TAX APPEALS HEARING

William H. Callaway and Gregory F. Lay, 417789 (KH)

10-1-03 to 9-30-06, \$6,231.00 Claim for Refund

For Claimant: William H. Callaway, Taxpayer

For Sales and Use Tax Department: Carla Caruso, Tax Counsel

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

Issue: Whether the separately stated transportation charges on claimant's invoices are subject to sales 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.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD SEPTEMBER 16, 2008

Thomas P. Bengard and Kim C. Bengard, 422294

Bengard Group, Inc., 424221

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

SALES AND USE TAX APPEALS HEARING

AMC Petroleum, Inc., 305202 (AS)

4-1-01 to 3-31-04, \$10,696.32 Tax, \$11,509.00 Negligence Penalty, \$11,118.67 Amnesty Interest Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

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

Issues: Whether further adjustments are warranted.

Whether rebate payments received by petitioner from cigarette manufacturers are additional taxable gross receipts related to the taxable sale of cigarettes.

Whether petitioner was negligent.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee 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 in accordance with the revised recommendation of the Appeals Division.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD SEPTEMBER 16, 2008

William H. Callaway and Gregory F. Lay, 417789 (KH)

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.

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The Board adjourned at 1:50 p.m.

The foregoing minutes are adopted by the Board on November 13, 2008.

Note: The following matters were removed from the calendar prior to the meeting: *Kevin B. Turner and Sally C. Turner, 396393; Stephen D. Coffman, 431487; Federal Express Corporation, 402428; and, Fedex Corporation & Subsidiaries, 402431.*