

TUESDAY, DECEMBER 3, 2002

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m., with Mr. Chiang, Chair, Mr. Andal and Mr. Parrish present.

**LEGAL APPEALS MATTERS, CONSENT**

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Dr. Connell absent, the Board made the following orders:

**Robert J. Koepple, 92509**

10-1-96 to 12-31-96, \$4,125.00 Tax

\$412.50 Penalty, Failure to File

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

**James P. King, 141949, 141951, 145282**

7-1-00 to 9-30-00, \$104.40 Claim for Refund

\$00.00 Penalty, Failure to Pay

10-1-00 to 12-31-00, \$17.40 Tax

1-1-01 to 3-31-01, \$52.20 Tax

Action: Redetermine as recommended by the Appeals Division.

**Kovacs & Associates, Inc., 135348**

1-1-98 to 3-31-01, \$15,370.73 Tax

Action: Redetermine as recommended by the Appeals Division.

**Pacific Animal Wholesale Supply, 116321**

7-1-96 to 6-30-99, \$284,055.25 Tax

\$28,405.54 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Division.

**Variety Tool & Die, Inc., 63573**

7-1-96 to 6-30-99, \$16,926.39 Tax

Action: Redetermine as recommended by the Appeals Division.

**Michael P. and Kristy S. Shelley, 17161**

1-1-95 to 6-30-98, \$175,821.43 Tax

\$17,582.17 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Division.

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James Howard Cartier, 89000949130, 118937

1-1-92 to 6-30-97, \$23,876.76 Fee

\$00.00 Penalty, Failure to File

7-1-97 to 1-16-98, \$5,332.41 Fee

\$00.00 Penalty, Failure to Timely Pay

Action: Redetermine as recommended by the Appeals Division.

Joanne R. Warren and Don Warren, 114975

3-16-98, \$195.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Best Buy Enterprises, Inc., 135359

5-1-97 to 12-31-99, \$4,519.52 Tax

Action: Redetermine as recommended by the Appeals Division.

Bretford Manufacturing, Inc., 91901, 119202

1-1-93 to 9-30-99, \$55,004.12 Tax

\$00.00 Penalty, Failure to File

Action: Redetermine as recommended by the Appeals Division.

Magic Gumball International Corp., 52177

4-1-96 to 12-31-98, \$34,349.82 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Division.

Casa Filipina Restaurant & Bake Shop, Inc., 128555

10-1-97 to 9-30-00, \$23,517.51 Tax

Action: Redetermine as recommended by the Appeals Division.

Wild West Trailer Sales, Inc., 99682

1-1-97 to 3-31-00, \$167,101.65 Tax

\$30,204.59 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Division.

Llantas Tornel de California, Inc., 128620

1-1-97 to 6-30-00, \$34,906.83 Tax

\$3,490.74 Penalty, Negligence

\$3,490.68 Penalty, Failure to Timely Pay

Action: Redetermine as recommended by the Appeals Division.

Dias & Fragoso, Inc., 131815

1-14-98 to 6-30-00, \$00.00 Tax

\$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

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Tharwat Y. Shaker and Nabila E. Shaker, 61365, 61366

1-1-96 to 9-30-98, \$21,573.25 Tax

\$2,157.34 Negligence Penalty

7-1-95 to 9-30-98, \$11,016.76 Tax

\$1,101.69 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

The Lightspan Partnership, Inc., 103759

9-16-93 to 9-30-99, \$133,507.31 Tax

\$00.00 Penalty Failure to File

Action: Redetermine as recommended by the Appeals Division.

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

Action: (Motion Expunged.)

#### **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. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Dr. Connell absent, the Board made the following orders:

Edward Acidor, 165024

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Zahra Afzal, 156866

2001, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

William Baumhofer, 166396

1999, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Melanie Blunt, 157071

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Vladimir Dratva, 167623

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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**Tamera Gasparien, 164532**

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Andrea Jones, 170728**

2001, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**H. Krmoian, 161113**

2001, \$400.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Pa Lee, 168186**

2001, \$123.25 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Kenyata L. Macklin, 157415**

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Edna McCullough, 157394**

2001, \$249.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Yeshay Polskiy, 167612**

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Edwin R. Shy, 165070**

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Vishnu Deo Sing, 166381**

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Julia M. St. John, 166386**

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Semen S. Verkhovsky, 156888**

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Jacqueline Coleman, 144554  
2001, \$230.00 Claim for Credit  
Action: Deny the petition for hearing.

**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 Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Dr. Connell absent, the Board made the following orders:

**Makino, Inc., 145178**  
7-1-97 to 6-30-00, \$220,859.44  
Action: Approve the redetermination as recommended by staff.

**Tech Data Corporation, 144177**  
1-1-95 to 12-31-97, \$523,532.21  
Action: Approve the redetermination as recommended by staff.

**Orix Financial Services, Inc., 89000854240**  
4-1-88 to 9-30-92, \$205,267.04  
Action: Approve the redetermination as recommended by staff.

**Safelite Glass Corp., 136562**  
4-1-97 to 6-8-00, \$82,438.42  
Action: Approve the redetermination as recommended by staff.

**Marine Development Corp., 161764**  
10-10-97, \$76,500.00  
Action: Approve the redetermination as recommended by staff.

**Bay & Delta Marine Serv. Inc., 151709**  
4-24-99, \$545,242.09  
Action: Approve the redetermination as recommended by staff.

**Sky High Aviation, LLC, 114970**  
4-27-00, \$170,500.00  
Action: Approve the redetermination as recommended by staff.

**Vessel Management Services, Inc., 165843**  
8-1-00, \$247,500.00  
Action: Approve the redetermination as recommended by staff.

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**Zany Brainy, Inc., 145469**

9-14-97 to 5-14-01, \$2,743,017.83

Action: Approve the redetermination as recommended by staff.

**E.I. Du-Pont De-Nemours & Co., 117181**

1-1-97 to 3-31-00, \$325,330.06

Action: Approve the redetermination as recommended by staff.

**Hollywood Party Rentals, Inc., 158225**

7-1-97 to 6-30-00, \$58,080.52

Action: Approve the redetermination as recommended by staff.

**Athome. Net, 165295**

10-1-98 to 9-27-01, \$274,688.12

Action: Approve the redetermination as recommended by staff.

**Danka Corporation, 130648**

1-1-97 to 3-31-98, \$137,535.47

Action: Approve the redetermination as recommended by staff.

**Danka Office Imaging Co., 134947**

1-1-97 to 12-31-99, \$482,640.81

Action: Approve the redetermination as recommended by staff.

**Fernandes Future Technology, Inc., 155678**

1-1-00 to 12-31-00, \$146,475.00

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

**Komori West Incorporated, 129042**

1-1-00 to 3-31-00, \$97,125.00

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

**Canon Financial Services, Inc., 55708**

1-1-97 to 12-31-98, \$154,841.36

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

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

Action: (Motion Expunged.)

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**ADMINISTRATIVE SESSION****Effects of Proposition 10 on Cigarette and Tobacco Products Consumption**

David Hayes, Manager, Research and Statistics Section, Agency Planning and Research Division, and Joe Fitz, Chief Economist, Research and Statistics Section, Agency Planning and Research Division, made introductory remarks regarding the effects of Proposition 10 on Cigarette and Tobacco Products Consumption (Exhibit 12.1).

Speaker: Marion Kavanaugh-Lunch, M.D., Director, CA Breast Cancer Research Program

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Dr. Connell absent, the Board ordered to increase the Backfill by \$9.6 million.

Exhibits to these minutes are incorporated by reference.

**Discussion to publish a memorandum opinion on the appeal of Venture Communications, Inc., 141641**

Slevi Stanislaus, Tax Counsel, Appeals Division, requested authorization to publish the formal opinion in the appeal of Venture Communications, Inc., 141641.

Upon motion of Mr. Klehs, seconded by Mr. Andal and duly carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang voting no, Dr. Connell absent, the Board authorized the publication of the formal opinion in the appeal of Venture Communications, Inc., 141641.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 9:20 a.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish present.

**CLOSED SESSION**

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

The Board recessed at 9:35 a.m. and reconvened immediately in open session with Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish present.

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

The Board deferred consideration of the following matter: *Baxter Healthcare Corporation, 150881*.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Dr. Connell absent, the Board made the following orders:

**Sandra L. Arias, 171005**

1999, \$614.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**James J. Arizini, 156746**

1998, \$781.55 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Elizabeth E. Bateman, 171017**

1998, \$98.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Peter W. and Linda L. Betsekas, 158120**

1998, \$1,421.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Frank and Joyce Bostrom, 152010**

1997, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

**Hugh T. and Kimberly K. Brown, 162815**

1996, \$746.78 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Carolee Casey, 118696**

1992, \$7,507.51 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Kevin Loren Cooper, 165479**

1998, \$1,396.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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**Matthew and Julie Cord, 145380**

1997, \$1,350.54 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Odell Graham, 158150**

1999, \$258.88 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Anthony J. and Susan L. Mino, 155530**

1997, \$1,108.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Gerald B. and Stephanie W. Mitchell, 162140**

2000, \$1,062.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Jennifer L. Monck, 151674**

1998, \$1,490.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Antonio J. and Linda Moreno, 162109**

1997, \$584.00 Assessment

1998, \$451.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Delores O'Brien, 171388**

1999, \$675.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Nancy Orozco, 162052**

2000, \$292.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Donald D. and Reba E. Raef, 158348**

1998, \$4,405.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Gustavo Adolfo Vargas, 157782**

1996, \$10,574.00 Tax

\$2,114.80 Penalty, Accuracy Related

Action: Sustain the action of the Franchise Tax Board.

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Ernest H. Wong, 166400

1999, \$1,215.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Baxter Healthcare Corporation, 150881

1992, \$1.00 or more Claim for Refund

1993, \$1.00 or more Claim for Refund

1994, \$1.00 or more Claim for Refund

1995, \$1.00 or more Claim for Refund

Action: The Board deferred consideration of this matter.

Richard D. Grantham, 89002462700

1984, \$16,522.00 Tax

\$2,460.48 Negligence Penalty

1985, \$7,882.00 Tax

\$676.69 Negligence Penalty

Action: Deny the petition for rehearing.

Richard Hoffman, 103377

1998, \$1,511.00 Tax

\$764.25 Penalty, Notice and Demand

\$377.75 Penalty, Late Filing

\$1,000.00 Penalty, Frivolous Appeal

Action: Deny the petition for rehearing.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Renato &amp; Luzvininda Salumbides, 149982

1995, \$5,236.59 Claim for Refund

For Claimant:

Richard M. Chacon, Attorney

For Franchise Tax Board:

Margalo Weissman, Tax Counsel

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

Issues: Whether or not appellants' claim for refund is barred by the applicable statute of limitations.

Whether or not respondent has the authority to credit or refund appellants' overpayment under section 19302 and subdivision (a) of section 19301 of the Revenue and Taxation Code despite the fact that appellants failed to timely file a claim for refund within the time period prescribed by the applicable statute of limitations.

Respondent's Exhibit: Miscellaneous Document (Exhibit 12.2)

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Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs voting no, Dr. Connell absent, the Board sustained the action of the Franchise Tax Board and directed staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.

**William T. Fitzgerald, III, 156289**

1997, \$508.00 Assessment

For Appellant: William D. Fitzgerald, Appellant's Father

For Franchise Tax Board: Margalo Weissman, Tax Counsel

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

Issue: Whether appellant has met his burden to prove error in respondent's determination that a portion of his 1997 income is California-source income.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.3)

Action: Mr. Andal moved to grant the petition. The motion was seconded by Mr. Parrish, but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang and Mr. Klehs voting no, Dr. Connell absent.

Mr. Parrish moved to reduce the assessment by 39 percent. The motion was seconded by Mr. Andal, but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang and Mr. Klehs voting no, Dr. Connell absent.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Dr. Connell absent, the Board reduced the measure of assessment by 39 percent.

The Board recessed at 10:30 a.m. and reconvened at 10:45 a.m. with Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish.

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

**Ken and Pamela Everson, 144931**

1989, \$1.00 or more Assessment

For Appellant: Ken Everson, Jr.

Pam Everson

For Franchise Tax Board: Jozel Brunett, Tax Counsel

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

Issue: Whether respondent properly denied appellant's request to abate interest under former Revenue and Taxation Code section 19104, subdivision (c).

Appellant's Exhibit: Miscellaneous Letters (Exhibit 12.4)

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Dr. Connell absent, the Board submitted the appeal for decision.

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

Action: (Motion Expunged.)

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Kleeber H. Maldonado, 157846

1996, \$235.24 Claim for Refund

For Claimant:

Kleeber H. Maldonado

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

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

Issue: Whether respondent properly denied appellant's request to abate interest under former Revenue and Taxation Code section 19104, subdivision (c).

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.5)

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Dr. Connell absent, the Board submitted the appeal for decision.

John &amp; Margaret Smit, 156432

1990, \$1.00 or more Assessment

For Appellant:

John F. Smit

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

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

Issue: Whether respondent abused its discretion in refusing to abate interest.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Dr. Connell absent, the Board submitted the appeal for decision.

Roland J. and Helen M. Jensen, 153719, 144939

1998, \$42,325.50 Assessment

1999, \$55,899.00 Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Action: The Board took no action.

John E. and Bianca Mason, 131720

1990, \$22,071.00 Assessment

1991, \$80,904.00 Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

Charlene Woodward, Tax Counsel

Action: The Board took no action.

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**Robert C. Kopple, 139383**

1994, \$95,189.00 Assessment

1995, \$13,760.00 Assessment

1996, \$6,913.00 Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

Renel Sapiandante, Tax Counsel

Action: The Board took no action.

**Koo and Hong Entertainment, Inc., 151478**

12-31-96, \$94,658.00 Tax, \$70,994.00 Penalty

12-31-97, \$62,954.00 Tax, \$47,215.00 Penalty

12-31-98, \$75,532 Tax, \$56,649.00 Penalty

**Susie Young Byun, 145386**

1996, \$42,043.00 Tax, \$31,532.00 Penalty

1997, \$26,809.00 Tax, \$20,107.00 Penalty

1998, \$37,104.00 Tax, \$27,828.00 Penalty

**Johnny Koo, 151533**

1996, \$42,571.00 Tax, \$31,928.00 Penalty

1997, \$25,798.00 Tax, \$19,349.00 Penalty

1998, \$35,762.00 Tax, \$26,822.00 Penalty

**Susie Young Byun, Transferee for Koo and Hong Entertainment, Inc., 151525**

12-31-96 to 12-31-98, \$116,572.00 Tax, \$87,429.00 Penalty

**Johnny Koo, Transferee for Koo and Hong Entertainment, Inc., 151512**

12-31-96 to 12-31-98, \$116,572.00 Tax, \$87,429.00 Penalty

For Appellants:

Steve Blanc, Representative

Chris Campbell, Representative

For Franchise Tax Board:

David Gemmingen, Tax Counsel

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

Issues: Whether the Board has jurisdiction to review the assessment against appellant-corporation Koo &amp; Hong Entertainment, Inc.

Whether individual appellants Koo and Byun received constructive dividends from appellant-corporation Koo &amp; Hong Entertainment, Inc.

Whether individual appellants Koo and Byun are liable for tax as transferees of appellant-corporation Koo &amp; Hong Entertainment, Inc.

Whether respondent has demonstrated that appellants are liable for the fraud penalty.

Respondent's Exhibit: Miscellaneous Schedules (Exhibit 12.6)

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Dr. Connell absent, the Board sustained the action of the Franchise Tax Board in the appeal of *Koo and Hong Entertainment, Inc., 151478*.

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Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Dr. Connell absent, the Board sustained the action of the Franchise Tax Board in the appeals of *Susie Young Byun, 145386; Johnny Koo, 151533; Susie Young Byun, Transferee for Koo and Hong Entertainment, Inc., 151525; and, Johnny Koo, Transferee for Koo and Hong Entertainment, Inc., 151512.*

### HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARINGS

Charleen Covington, 155473

2001, \$1.00 or more Claim for Credit

For Claimant:

No Appearance

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Action: The Board took no action.

Gerald K. White, 156734

2001, \$1.00 or more Claim for Credit

For Claimant:

No Appearance

For Franchise Tax Board:

Suzanne Small, Tax Counsel

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

Issue: Whether respondent properly denied appellant's claim for property tax assistance.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Dr. Connell absent, the Board sustained the action of the Franchise Tax Board.

The Board recessed at 11:50 a.m. and reconvened at 1:35 p.m. with Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

### CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Ronald R. Kallungi, 152602

1990, \$884.00 Tax, \$221.00 Penalty

1991, \$260.00 Tax, \$199.00 Penalty

1992, \$482.00 Tax, \$310.00 Penalty

1993, \$336.00 Tax, \$237.00 Penalty

1994, \$228.00 Tax, \$183.00 Penalty

For Appellant:

Ronald R. Kallungi

For Franchise Tax Board:

Jean Cramer, Tax Counsel

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

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Issues: Whether respondent's proposed assessments of tax and penalties were discharged by petitioner's bankruptcy.

Whether appellant has shown that the proposed assessments, based on federal audit adjustments, are incorrect.

Selvi Stanislaus, Tax Counsel, Appeals Division, reported that the appellant had provided to the Franchise Tax Board the requested documentation and the Franchise Tax Board recommended the appeal be dismissed.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.7)

Action: Upon motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board reversed the action of the Franchise Tax Board.

#### Joseph & Hedva Zer-Ilan, 99342

1994, \$140,250.00 Assessment

For Appellant:

Howard S. Fisher, Attorney

For Franchise Tax Board:

Terry Collins, Tax Counsel

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

Issue: Whether appellants' loss of \$1,275,000.00 was sustained in 1994. Specifically, whether two loans that appellants made in 1994, and which were subsequently found by a Texas Bankruptcy Court to have been usurious and unenforceable under Texas law, represent a loss in 1994 or in a later year.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.8)

Action: Mr. Andal moved to grant the appeal. The motion was seconded by Mr. Parrish but fail to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel voting no, the Board deleted the penalty.

Mr. Klehs moved the petition is neither a deductible event or one that can be claimed as a loss. The motion failed for lack of a second.

Upon motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

#### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 2:10 p.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

#### **CLOSED SESSION**

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

TUESDAY, DECEMBER 3, 2002

The Board recessed at 2:15 p.m. and reconvened immediately in open session with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

**Steven L. Mazza, 131892**

1995, \$5,558.00 Assessment

1996, \$7,801.68 Claim for Refund

For Appellant/Claimant:

No Appearance

For Franchise Tax Board:

Charlene Woodward, Tax Counsel

Action: The Board took no action.

**Thomas Hale III, 37237**

1978, \$942.00 Tax, \$235.00 Penalty

1979, \$5,572.00 Tax, \$1,393.00 Penalty

1980, \$536.00 Tax, \$134.00 Penalty

1981, \$611.00 Tax, \$152.75 Penalty

1982, \$170.00 Tax, \$42.50 Penalty

1983, \$8,624.00 Tax, \$2,156.00 Penalty

1984, \$2,332.00 Tax, \$583.00 Penalty

1985, \$949.00 Tax, \$237.25 Penalty

1986, \$4,571.00 Tax, \$1,142.75 Penalty

1987, \$11,825.00 Tax, \$2,956.25 Penalty

1988, \$13,133.00 Tax, \$3,283.25 Penalty

1989, \$5,873.00 Tax, \$1,468.25 Penalty

1990, \$1,350.00 Tax, \$337.50 Penalty

1991, \$2,732.00 Tax, \$683.00 Penalty

1992, \$374.00 Tax, \$100.00 Penalty

1993, \$360.00 Tax, \$100.00 Penalty

For Appellant:

J. Scott Cummins

Thomas Hale

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

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

Issues: Whether or not appellant has established the existence of an unreasonable error or delay on the part of respondent or its employees pursuant to section 19104 of the Revenue and Taxation Code so as to permit the abatement of interest in this appeal.

Whether or not appellant has established that his failure to timely file his 1978-1993 California income tax returns until the year 2002 was due to reasonable cause and a lack of willful neglect on his part.

If respondent prevails on the merits, whether or not a frivolous appeal penalty should be imposed against appellant under the facts of this appeal.

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Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and did not impose a frivolous appeal penalty against appellant.

**Apple Computer, Inc., 152016**

9-30-89, \$1,258,506.00 Assessment

For Appellant: No Appearance  
For Franchise Tax Board: John Su, Tax Counsel  
Action: The Board took no action.

**Larry L. & Kathy L. Vandermoon, 133267**

1996, \$8,644.00 Tax, \$2,099.72 Penalty

For Appellant: No Appearance  
For Franchise Tax Board: Jozel Brunett, Tax Counsel  
Action: The Board took no action.

**Michael R. and Vicki A. Kappmeyer, 153703**

1995, \$10,676.00 Assessment

For Appellant: Rahul Shah, CPA  
For Franchise Tax Board: Mark McEvelly, Tax Counsel  
Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether appellants realized income from the settlement of a lawsuit in 1995 (the year at issue) or in 1996.

Whether income may be taxed to appellants as individuals if the income was realized by an S corporation.

Whether respondent abused its discretion in refusing to abate interest.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.9)

Respondent's Exhibit: Schedule L (Exhibit 12.10)

Action: Upon motion of Mr. Parrish, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board submitted the appeal for decision, granting the appellant 30 days to submit additional documentation, the Franchise Tax Board 30 days to review the documentation and the Appeals Division 30 days thereafter to bring the matter back to the Board with a final recommendation.

**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. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board made the following orders:

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**Wareforce, Inc., 195675**

10-1-00 to 6-30-01, \$130,640.22

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

**Thermal Air Services, Inc., 195466**

1-22-99, \$136,919.24

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

**Coastal Dredging and Marine, Inc., 195469**

6-19-00, \$212,847.86

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

**Buena Vista Theatres, Inc., 195686**

11-20-98 to 12-31-00, \$55,829.00

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

**Craig T. Mathew, 195723**

1-1-95 to 12-31-99, \$81,294.59

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

**E.I. Du-Pont De-Nemours & Co., 195672**

10-1-00 to 12-31-00, \$94,580.53

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

**Modern Finance Company, 193548**

1-1-00 to 12-31-01, \$89,532.13

Action: Approve the refund as recommended by staff.

**Reynolds & Associates, Inc., 140301**

7-1-98 to 6-30-01, \$185,368.76

Action: Approve the refund as recommended by staff.

**Mc-Connell Cabinets, Inc., 151404**

4-1-98 to 3-31-01, \$145,410.37

Action: Approve the refund as recommended by staff.

**Genentech, Inc., 131847**

4-1-99 to 12-31-00, \$276,848.03

Action: Approve the refund as recommended by staff.

**HSQ Technology, 168968**

1-1-02 to 3-31-02, \$78,423.66

Action: Approve the refund as recommended by staff.

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**3 Com Corporation, 194524**

4-1-96 to 9-30-96, \$447,971.63

Action: Approve the refund as recommended by staff.

**Care Mark, Inc., 193166**

1-1-97 to 6-30-00, \$160,053.31

Action: Approve the refund as recommended by staff.

**Verteq, Inc., 192683**

10-1-97 to 12-31-00, \$71,472.78

Action: Approve the refund as recommended by staff.

**Printrak International, Inc., 142932**

10-01-00 to 12-31-01, \$267,834.69

Action: Approve the refund as recommended by staff.

**ECl Telecom, Inc., 142401**

4-1-00 to 6-30-00, \$63,370.20

Action: Approve the refund as recommended by staff.

**TA Operating Corporation, 63206**

3-1-00 to 9-30-01, \$456,802.05

Action: Approve the refund as recommended by staff.

**Healthsmart Pacific, Inc., 193234**

7-01-98 to 12-31-01, \$254,007.72

Action: Approve the refund as recommended by staff.

**Palo Verde, Inc., 195453**

3-18-98 to 12-31-00, \$77,248.86

Action: Approve the refund as recommended by staff.

**Cellnet Data Services (CA), Inc., 91132**

1-1-98 to 12-31-99, \$50,255.10

Action: Approve the refund as recommended by staff.

**Angi International, LLC, 170669**

10-1-01 to 12-31-01, \$71,488.97

Action: Approve the refund as recommended by staff.

**American President Lines, LTD, 194946**

1-1-93 to 12-31-95, \$1,036,922.78

Action: Approve the refund as recommended by staff.

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Oliver A. Goldsmith, 165598

1-1-01 to 6-30-01, \$161,438.70

Action: Approve the refund as recommended by staff.

CAT Technology Inc., 145821

4-1-99 to 9-30-01, \$298,740.13

Action: Approve the refund as recommended by staff.

Gold Medal Wine Club, 193158

10-1-98 to 9-30-01, \$309,570.75

Action: Approve the refund as recommended by staff.

APL Information Services, LTD., 145825

1-1-96 to 12-31-98, \$146,300.89

Action: Approve the refund as recommended by staff.

The Board recessed at 2:55 p.m. and reconvened at 3:00 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

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

Christian Community Credit Union, 144236

1988, \$4,226.00 Claim for Refund

1990, \$3,517.00 Claim for Refund

1994, \$8,327.00 Claim for Refund

1995, \$5,250.00 Claim for Refund

1996, \$17,331.00 Claim for Refund

1997, \$11,645.00 Claim for Refund

Considered by the Board: September 11, 2002

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

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board adopted the formal opinion.

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**California Steel Industries, Inc., 160703**

1995, \$901,729.40 Assessment

1996, \$13,055.36 Assessment

Considered by the Board: November 13, 2002

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

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Andal absent, the Board adopted a decision reversing the action of the Franchise Tax.

**Wilshire Restaurant Group, Inc., 166408**

12-29-94, \$242,767.00 Assessment

12-28-95, \$199,391.14 Assessment

Considered by the Board: November 13, 2002

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

Action: Mr. Klehs moved to sustain the action of the Franchise Tax Board. The motion failed for lack of a second.

Mr. Parrish moved to reverse the action of the Franchise Tax Board. The motion was seconded by Mr. Chiang but failed to carry, Mr. Chiang and Mr. Parrish voting yes, Mr. Klehs and Ms. Mandel voting no, Mr. Andal absent.

Mr. Klehs moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Mandel but failed to carry, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish and Mr. Chiang voting no, Mr. Andal absent.

The Board deferred consideration of the matter to the next Sacramento Board meeting.

**FINAL ACTION ON APPEALS HEARD DECEMBER 3, 2002**

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs and Mr. Parrish voting yes, Ms. Mandel not participating, Mr. Andal absent, in the appeal of *Ken and Pamela Everson, 144931*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs and Mr. Parrish voting yes, Ms. Mandel not participating, Mr. Andal absent, in the appeal of *Kleeber H. Maldonado, 157846*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs and Mr. Parrish voting yes, Ms. Mandel not participating, Mr. Andal absent, in the appeal of *John & Margaret Smit, 156432*, the Board sustained the action of the Franchise Tax Board.

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Upon motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Andal absent, in the appeal of *Joseph & Hedva Zer-Ilan, 99342*, the Board sustained the action of the Franchise Tax Board with regards to the tax years 1994-1998 and reversed the action with regards to tax year 1999.

The Board adjourned at 3:10 p.m.

*The foregoing minutes are adopted by the Board on February 6, 2003.*