

Tuesday, December 14, 2010

The Board met at its offices at 450 N Street, Sacramento, at 10:42 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SPECIAL PRESENTATION

Presentation of Retirement Resolution to Jean Ograd

On behalf of the Board, Ms. Yee presented to Jean Ograd, Assistant Chief Counsel, Settlement and Taxpayer Services Division, Legal Department, a retirement resolution, extending its sincere and grateful appreciation for her dedicated service to the State Board of Equalization and the State of California. Members made complementary remarks regarding their experiences with Ms. Ograd and her exceptional work with the Board of Equalization, describing her as a hard-working individual with an excellent sense of humor, and wished her well in her retirement. Ms. Ograd thanked the Members and then thanked her staff.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Kingston Technology Corporation, 480846

1999, \$34,873.00 Assessment

David Sun and Diana Sun, 480891

1999, \$551,221.00 Assessment

John Tu and Mary Tu, 480894

1999, \$497,799.00 Assessment

For Appellant:

Christopher A. Whitney, Representative

Jung H. Kim, Attorney

For Franchise Tax Board:

Daniel Biedler, Tax Counsel

Bill Hilson, Tax Counsel

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

Issue: Whether appellants must recognize gain on the disposition of a contingent note arising from an installment sale under Revenue and Taxation Code (R&TC) section 24667, which conforms to Internal Revenue Code (IRC) section 453B.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 12.1](#))

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision. Also, the Board suggested a review of the new appraisal and that the parties may be requested to comment later in the day.

Exhibits to these minutes are incorporated by reference.

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Daniel V, Inc., 527082

1997, \$23,414.02 Claim for Refund

1998, \$2,150,000.00 Claim for Refund

For Appellant:

Daniel Ron Lane, Taxpayer

Marty Dakessian, Attorney

David B. Hehn, Witness

For Franchise Tax Board:

William Gardner, Tax Counsel

Bill Hilson, Tax Counsel

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

Issues: Whether the Board's determination on appellant's previous appeal involving the same tax years and same issues is controlling in the present appeal pursuant to the doctrine of res judicata or the Board's opinion regarding the controlling nature of a previous appeal stated in the *Appeal of George H. and Sky Williams et al.* (Sky Williams) (84-SBE-050), decided on February 28, 1984.

If not, whether appellant was commercially domiciled in Nevada or California during the appeal years, and;

Whether appellant has shown that it had reasonable cause for late filing.

Whether the Board has jurisdiction to consider the constitutionality of Revenue and Taxation Code section 19777.5 (the amnesty penalty).

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

Douglas Gail Hufnagel and Robyn Hufnagel, 510017

1995, \$8,496.88 Claim for Refund

1996, \$14,131.43 Claim for Refund

1997, \$8,668.22 Claim for Refund

1999, \$1,234.00 Claim for Refund

2000, \$5,311.00 Claim for Refund

For Appellant:

Douglas Hufnagel, Taxpayer

Dale Hoppes, Representative

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Marguerite Mosnier, Tax Counsel

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

Issue: Whether appellants' claims for refund are barred by the statute of limitations.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 12.2](#))

Respondent's Exhibit: Memo and Chart ([Exhibit 12.3](#))

Amy Kelly, Tax Counsel, Appeals Division, Legal Department, stated for the record that 1996 and 1997 are no longer in dispute and that the Franchise Tax Board has paid those claims.

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

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The Board recessed at 1:16 p.m. and reconvened at 2:00 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

James Vaughn, 487205, 508867

2005, \$1,927.00 Assessment

2006, \$1,545.00 Assessment

For Appellant:

James Vaughn, Taxpayer

For Franchise Tax Board:

Ciro Immordino, Tax Counsel

Christopher Parker, Tax Counsel

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

Issue: Whether respondent properly disallowed certain business expense and unreimbursed employee expense deductions for 2005 and 2006.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 12.4](#))

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

PUBLIC HEARINGS

Proposed Amendments to Regulation 1506, *Miscellaneous Service Enterprises*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments to Regulation 1506 clarifying the application of the student meals exemption to meals sold by camps ([Exhibit 12.5](#)).

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

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board adopted the amendments as recommended by staff.

2011 Timber Yield Tax Rate

Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, made introductory remarks regarding Section 38202 of the Revenue and Taxation Code, which requires an annual adjustment of the timber yield tax rate ([Exhibit 12.6](#)).

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

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board adopted the 2011 timber yield tax rate of 2.9 percent as recommended by staff.

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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 December 31, 2010, the Board shall estimate the immediate harvest values of and adopt schedules for timber harvested between January 1, 2011 and June 30, 2011 (Rev. & Tax. Code, § 38204) ([Exhibit 12.7](#)).

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

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, 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. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Pacmac, Inc., 380574 (OH)

10-1-97 to 9-30-05, \$1,312,697.24 Tax, \$131,269.72 Failure to File Penalty, \$82,586.66 Amnesty Double Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Thu Anh Le, 479512 (GH)

4-1-05 to 3-31-08, \$87,063.84 Tax, \$8,706.44 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Jihad Nazzal Nazzal, 357155 (GH)

7-1-02 to 9-30-05, \$10,053.76 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

United Capital Investment Group, Inc., 478843 (UT)

June 25, 2007, \$40,687.50 Tax

Action: Redetermine as recommended by the Appeals Division.

Harbans L. Kathpal and Deepak Kathpal, 549138 (ET)

June 25, 2010, \$329.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Jaswinder Singh Sidhu and Harbhajan Singh Sidhu, 549131 (ET)

April 29, 2010, \$143.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Mokhim Rasooli and Malak Sajadeh, 432459 (AC)

10-1-03 to 9-30-06, \$15,038.08 Tax, \$1,592.95 Negligence Penalty

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

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CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Outrigger Marina I, LLC, 472893*.

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

John V. Black, 449295

2005, \$1,541.00 Tax, \$385.25 Late Filing Penalty

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

Jaime D. Borrego, 512651

2007, \$977.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Roman D. Cardenas, 482910

2005, \$465.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jose L. Celis, 483663

2005, \$2,872.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Lowene Clemente, 495843

2004, \$881.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Priscilla Dawn, 521624

2005, \$514.43 Tax

Action: Sustain the action of the Franchise Tax Board.

Jacque Doiron, 485958

2004, \$186.00 Tax, \$100 Late Filing Penalty

2005, \$752.00 Tax, \$188 Late Filing Penalty

2006, \$1,131.00 Tax

Action: Sustain the action of the Franchise Tax Board and impose a \$250.00 frivolous appeal penalty for each tax year on appeal.

Ernesto M. Dorado, 450396

2006, \$1,557.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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My-Lien Do, 415395

1999, \$1,860.91 Claim for Refund

Action: Modify the action with concession by the Franchise Tax Board.

Lee Gale, 258580

1993, \$26,741.00 Tax, \$5,348.20 Accuracy-Related Penalty

1994, \$5,178.00 Tax, \$1,035.60 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

David Graffam, 468765

2006, \$3,797.00 Tax, \$949.25 Notice and Demand Penalty, \$949.25 Late Filing Penalty

Action: Modify the action with concession by the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Troy Jolliff, 491091

2004, \$5,169.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Outrigger Marina I., LLC, 472893

2006, \$100.00 Claim for Refund

Action: The Board took no action.

Charles R. Nixon and Jeanne F. Nixon, 461716

2004, \$7,277.00 Assessment

Action: Modify the action with concession by the Franchise Tax Board.

Valerie Parish, 472909

2006, \$1,050.00

2007, \$420.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jan Tutupoly and Deetje A. Lisapaly, 468744

2003, \$68.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Robert A. Forslund, 496775

2006, \$4,439.00 Tax, \$1,109.75 Late Filing Penalty, \$1,109.75 Notice and Demand Penalty, \$119.00 Filing Enforcement Fee, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Frederick M. Fox, 468764

2006, \$1,817.00 Tax, \$454.25 Late Filing Penalty, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Mark S. Harker and Suzanne K. Harker, 464522

2005, \$16,607.00 Tax

Action: Deny the petition for rehearing.

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Lucile T. Hemann, 491065

2005, \$996.00 Tax

Action: Deny the petition for rehearing.

Gary Laub, 468084

2000, \$5,816.00 Claim for Refund

Action: Deny the petition for rehearing.

Clovus M. Sykes, 512493

2006, \$101.00 Tax, \$125.25 Penalties, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

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

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Abbott Laboratories, Inc., 426773*; the Board made the following orders:

Makino, Inc., 515800 (OH)

7-1-04 to 9-30-07, \$209,719.88

Action: Approve the redetermination as recommended by staff.

Derco, Inc., 136570 (BH)

1-1-07 to 12-31-99, \$504,719.12

Action: Approve the redetermination as recommended by staff.

Abbott Laboratories, Inc., 426773 (OH)

1-1-01 to 12-31-03, \$175,352.82

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

National Railway Equipment Company, Inc., 529263 (OH)

4-1-05 to 3-31-09, \$750,966.57

Action: Approve the redetermination as recommended by staff.

The Jim Henson Company, Inc., 446668 (AS)

4-1-03 to 3-31-06, \$164,181.06

Action: Approve the redetermination as recommended by staff.

AF Services, Inc., 402634 (AS)

11-1-02 to 9-30-05, \$395,194.00

Action: Approve the redetermination as recommended by staff.

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GTE Mobilnet of Santa Barbara, LP, 316922 (OH)

4-1-02 to 6-30-04, \$165,182.44

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

IBM Credit, LLC, 496756 (OH)

7-1-06 to 3-31-09, \$1,142,976.62

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

Santander Consumer USA, Inc., 515790 (OH)

7-1-09 to 9-30-09, \$154,436.00

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

Nevada Reliance Equipment Leasing, LLC, 512645 (AS)

1-1-09 to 6-30-09, \$109,234.65

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

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *General Electric International, Inc., 546754*; the Board made the following orders:

Pacific Sales Kitchen and Bath Centers, Inc., 547728 (OH)

1-1-05 to 12-31-08, \$711,398.79

Action: Approve the refund as recommended by staff.

Quiedan Company, 510048 (GH)

1-1-08 to 12-31-09, \$307,502.56

Action: Approve the refund as recommended by staff.

Marines Memorial Association, 518684 (BH)

10-1-06 to 6-30-09, \$394,666.45

Action: Approve the refund as recommended by staff.

California Casualty Management Company, 497153 (OH)

1-1-06 to 12-31-08, \$295,997.71

Action: Approve the refund as recommended by staff.

Scripps Health, 495268 (FH)

4-1-06 to 3-31-09, \$1,244,358.35

Action: Approve the refund as recommended by staff.

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State of California-California Lottery, 506177 (KH)

10-1-08 to 6-30-09, \$220,710.55

Action: Approve the refund as recommended by staff.

Regents of the University of California, 468396 (JH)

4-1-04 to 12-31-08, \$1,344,930.05

Action: Approve the refund as recommended by staff.

Certainteed Corporation, 547786 (OH)

10-1-03 to 9-30-07, \$138,565.28

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 549343 (KH)

6-29-10 to 8-20-10, \$279,838.00

Action: Approve the refund as recommended by staff.

First American Commercial Bancorp, Inc., 523039 (OH)

10-1-09 to 12-31-09, \$171,015.00

Action: Approve the refund as recommended by staff.

Metropolitan Finance, LLC, 507633 (AP)

4-1-09 to 12-31-09, \$205,043.58

Action: Approve the refund as recommended by staff.

Metropolitan Finance, LLC, 527072 (AP)

1-1-10 to 6-30-10, \$207,662.00

Action: Approve the refund as recommended by staff.

City Car Share, 548275 (BH)

7-1-06 to 6-30-09, \$523,507.92

Action: Approve the refund as recommended by staff.

Travis Credit Union, 435159 (JH)

1-1-05 to 6-30-09, \$222,972.40

Action: Approve the refund as recommended by staff.

J. Solanki Corporation, 531037 (AS)

4-1-09 to 12-31-09, \$110,956.00

Action: Approve the refund as recommended by staff.

Konecranes, Inc., 514983 (OH)

10-1-06 to 12-31-08, \$115,360.64

Action: Approve the refund as recommended by staff.

Members 1st Credit Union, 523309 (KH)

1-1-09 to 12-31-09, \$188,442.00

Action: Approve the refund as recommended by staff.

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Miller-DM, Inc., 492471 (AS)

4-1-06 to 6-30-09, \$286,330.63

Action: Approve the refund as recommended by staff.

Halozyme, Inc., 483490 (FH)

1-1-06 to 12-31-08, \$304,786.33

Action: Approve the refund as recommended by staff.

Central Purchasing, LLC, 477998 (AR)

10-1-05 to 12-31-08, \$268,772.28

Action: Approve the refund as recommended by staff.

Creative Impact Agency, LLC, 487844 (AC)

1-1-06 to 6-30-09, \$119,281.79

Action: Approve the refund as recommended by staff.

Altaone Federal Credit Union, 524921 (AR)

10-1-09 to 3-31-10, \$119,798.00

Action: Approve the refund as recommended by staff.

Sonic Wilshire Cadillac, Inc., 509242 (AS)

10-1-07 to 3-31-09, \$128,444.26

Action: Approve the refund as recommended by staff.

Samsung Telecommunications America, LLC, 477941 (OH)

1-1-08 to 9-30-08, \$140,143.66

Action: Approve the refund as recommended by staff.

GILC Incorporated, 512057 (GH)

4-1-09 to 6-30-09, \$105,246.93

Action: Approve the refund as recommended by staff.

Santander Consumer USA, Inc., 515790 (OH)

7-1-09 to 9-30-09, \$287,693.00

Action: Approve the refund as recommended by staff.

General Electric International, Inc., 546754 (OH)

1-1-08 to 12-31-08, \$118,731.87

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

Amberwood Installation, Inc., 528679 (GH)

1-1-06 to 9-30-08, \$716,673.22

Action: Approve the refund as recommended by staff.

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LEGAL APPEALS MATTERS, ADJUDICATORY

Commodore Cruises and Events, Inc., 424031, 514975 (CH)
1-1-04 to 12-31-06, \$162,450.21 Tax, \$16,245.04 Negligence Penalty
Considered by the Board: July 14, 2010

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

Action: Ms. Steel moved that the \$15 per person charge not be substituted for unreported taxable sales on the contract where the taxpayer lost money on the food and beverage sales based on the Departments test, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Alby but failed to carry, Ms. Alby and Ms. Steel voting yes, Ms. Yee, Mr. Horton and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Kerry Michael Lawrence, 439774 (KH)
10-1-01 to 10-31-02, \$21,853.82 Tax, \$2,302.60 Penalties
Robert A. Schimpf, 437280 (KH)
10-1-01 to 10-31-02, \$21,853.82 Tax, \$2,302.60 Penalties
Considered by the Board: July 14, 2010

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Susan Hilary Tregub, 425147 (AS)
10-1-03 to 9-30-04, \$11,898.00 Tax, \$4,974.50 Late Payment Penalty, \$1,715.30 Failure to File Penalty, \$1,715.30 Finality Penalty
Considered by the Board: October 21, 2010

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. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petitioner be held liable only for the third quarter of 2004, and that the petition otherwise be granted.

Iradj Nazarian, 400357 (FH)
5-28-93 to 6-30-03, \$15,222.98 Tax, \$50,403.99 Fraud Penalty, \$240.90 Failure to File Penalty, \$20,392.76 Finality Penalty
Considered by the Board: October 21, 2010

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

Action: Ms. Alby moved to grant the petition. The motion was seconded by Ms. Steel but failed to carry, Ms. Alby and Ms. Steel voting yes, Ms. Yee, Mr. Horton and Ms. Mandel voting no.

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Upon motion of Ms. Mandel, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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

Diane G. Olson, Chief, Board Proceedings Division, stated for the record that in the matter of *Christopher J. Hadsell and Catherine C. Hadsell, 477797*; disqualifying contributions to Ms. Yee and Mr. Chiang were disclosed, and that the contribution made to Mr. Chiang was returned on December 6, 2010. Ms. Yee stated that she has no record of the disclosed contribution to her and that her treasurer sent correspondence via overnight mail to the appellant informing him as such and that she is qualified to participate in the matter.

F. Thomas Eck, 383414

1999, \$1,430,256.00 Tax, \$357,564.00 Notice and Demand Penalty, \$572,102.40 Accuracy Related Penalty, \$379,715.99 Proposed Post-Amnesty Penalty

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision modifying the action of the Franchise Tax Board.

Hank Feenstra and Catherine Feenstra, 464316

2001, \$14,041.00 Claim for Refund

2002, \$22,838.00 Claim for Refund

2003, \$14,842.00 Claim for Refund

2004, \$29,463.00 Claim for Refund

Considered by the Board: July 13, 2010

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

Action: (Motion expunged.)

Upon motion of Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that its previous motion sustaining the action of the Franchise Tax Board be expunged.

Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton, Ms. Steel and Ms. Mandel voting yes, Ms. Alby voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Wayne J. Pollard Insurance Agency, Inc., 496538

2007, \$1,429.14 Claim for Refund

Considered by the Board: Presented for Separate Discussion

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

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Action: Upon motion of Ms. Alby, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Christopher J. Hadsell and Catherine C. Hadsell, 477797

2000, \$241,292.00 Assessment

Considered by the Board: August 24, 2010

Contribution Disclosures pursuant to Government Code section 15626: Disqualifying contributions to Ms. Yee and Mr. Chiang were disclosed. The contribution made to Mr. Chiang was returned on December 6, 2010. Ms. Yee noted that her records disclosed no contributions from this taxpayer, his agent or participants. No other contributions were disclosed.

Action: Upon motion of Ms. Alby, seconded by Mr. Horton and duly carried, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Yee voting no, Ms. Mandel not participating, the Board reversed the action of the Franchise Tax Board.

Brent C. Welling and Viki Lee Welling, 348029

1998, \$188,585.00 Assessment, \$47,146.00 Late Filing Penalty, \$47,146.00 Failure to Furnish Penalty

1999, \$39,636.00 Assessment, \$9,909.00 Late Filing Penalty, \$9,909.00 Failure to Furnish Penalty

2000, \$192,559.00 Assessment, \$48,140.00 Late Filing Penalty, \$48,140.00 Failure to Furnish Penalty

Considered by the Board: August 24, 2010

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

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

Frank J. Vigil, 402865

2000, \$245,677.00 Assessment

Considered by the Board: November 18, 2010

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

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

PROPERTY TAXES MATTERS, ADJUDICATORY

Petitions for Reassessment of Unitary Value

Verizon California, Inc. (201), 538247

2010, \$3,080,700,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the 2010 Board-adopted unitary value be reduced to \$3,057,100,000.00 as recommended by staff.

Pacific Pipeline System, LLC (486), 538073

2010, \$68,300,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton and Ms. Alby voting yes, Ms. Steel not participating in accordance with Government Code section 87105, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the 2010 Board-adopted unitary value be reduced to \$57,000,000.00 as recommended by staff.

Pacific Terminals, LLC (488), 538078

2010, \$11,300,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton and Ms. Alby voting yes, Ms. Steel not participating in accordance with Government Code section 87105, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the 2010 Board-adopted unitary value be reduced to \$6,780,000.00 as recommended by staff.

Conterra Ultra Broadband, LLC (8089), 537379

2010, \$2,060,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be granted, reducing the 2010 Board-adopted unitary value to \$1,680,000.00 as recommended by staff.

Tuesday, December 14, 2010

LEGAL APPEALS PROPERTY TAX MATTERS, ADJUDICATORY**Petitions for Reassessment of Unitary Value**

San Diego Gas & Electric Company (141), 537387

2010, \$5,163,600,000.00 Unitary Value

Elk Hills Power, LLC (1126), 538071

2010, \$306,600,000.00 Unitary Value

Delta Energy Center, LLC (1128), 538221

2010, \$444,500,000.00 Unitary Value

Pastoria Energy Facility (1131), 538224

2010, \$484,900,000.00 Unitary Value

Calpine Construction Finance, Co., LP (1132), 538225

2010, \$228,300,000.00 Unitary Value

Metcalf Energy Center, LLC (1133), 538226

2010, \$364,400,000.00 Unitary Value

Otay Mesa Generating Company, LLC (1134), 538231

2010, \$459,300,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Ms. Yee moved that the petitions be denied as recommended by staff. The motion was seconded by Mr. Horton but failed to carry, Ms. Yee and Mr. Horton voting yes, Ms. Alby and Ms. Steel voting no, Ms. Steel not participating in accordance with Government Code section 87105 in *Elk Hills Power, LLC (1126)*, Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board deferred consideration of the matters to the following day.

Pacific Bell Telephone Company (279), 538081

2010, \$7,297,200,000.00 Unitary Value

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. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition for reassessment be granted in part and adopted the revised value which has been agreed upon by petitioner and respondent, reducing the 2010 Board-adopted unitary value to \$7,072,200,000.00 as recommended by staff.

Los Esteros Critical Energy Facility, LLC (1143), 538233

2010, \$91,300,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Tuesday, December 14, 2010

Action: Mr. Horton moved that the petition be denied as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Mr. Horton voting yes, Ms. Alby and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9

The Board deferred consideration of the matter to the following day.

AT&T Communications, Inc. (2310), 537386

2010, \$762,600,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition for reassessment be partially granted and adopted the revised value which has been agreed upon by petitioner and respondent, reducing the 2010 Board-adopted unitary value to \$464,300,000.00 as recommended by staff.

AT&T Mobility, LLC (2606), 538083

2010, \$1,692,400,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition for reassessment be partially granted and adopted the revised value which has been agreed upon by petitioner and respondent, reducing the 2010 Board-adopted unitary value to \$1,651,800,000.00 as recommended by staff.

Covad Communications Company (7706), 538674

2010, \$41,600,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition for reassessment be granted in part and adopted the revised value which has been agreed upon by petitioner and respondent, reducing the 2010 Board-adopted unitary value to \$34,400,000.00 as recommended by staff.

CBeyond Communications LLC (8049), 538673

2010, \$19,000,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Tuesday, December 14, 2010

Action: Upon motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition for reassessment be granted in part and adopted the revised unitary value which has been agreed upon by petitioner and respondent State-Assessed Properties Division, reducing the 2010 Board-adopted unitary value to \$18,300,000.00 as recommended by staff.

Petition for Penalty Abatement on Unitary Escape Assessment

MetroPCS California/Florida, Inc. (2733), 492233

2005, \$480,000.00 Penalty

Considered by the Board: Presented for Separate Discussion

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

Action: Mr. Horton moved that the petition for penalty abatement on unitary escape assessment be denied as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Mr. Horton voting yes, Ms. Alby and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9

The Board deferred consideration of the matter to the following day.

BT Americas, Inc. (7758), 450954

2005-2007, \$683,300.00 Penalty

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton and Ms. Steel voting yes, Ms. Alby voting no, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition for penalty abatement on unitary escape assessment be denied as recommended by staff.

Petition for Penalty Abatement and Reassessment of Unitary Escape Assessment

Pacific Bell Telephone Company (279), 496050

2005, \$257,700,000.00 Escaped Assessment, \$25,770,000.00 Penalty, \$85,041,000.00 In-Lieu Interest

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition for abatement of penalty be partially granted by reducing the penalty from \$25,770,000.00 to \$1,200,000.00 in accordance with respondent's recommendation on appeal but, in all other respects, affirm the 2005 Board-adopted escape assessment as recommended by staff.

Tuesday, December 14, 2010

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

Citizens Telecommunications Company of California, Inc., (284)
2006-2009, \$4,500,000.00 Excessive Assessment, \$450,000 Penalties, \$1,701,000.00 In-lieu Interest

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit excessive assessment, plus penalties and in-lieu interest, as recommended by staff.

Unitary Land Escaped Assessment

California Rural Service Area #1, Inc., (2761)
2009, \$249,897.00 Value

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped, plus interest, assessment as recommended by staff.

Unitary Escaped Assessment

ST Network Services, LLC, (3435)
2010, \$767,000.00 Value, \$76,700.00 Penalty

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary escaped assessment, plus interest, as recommended by staff.

Board Roll Changes

2008, 2009 and 2010 State-Assessed Property Rolls

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2008, 2009 and 2010 Board Rolls of State-Assessed Property as recommended by staff ([Exhibit 12.8](#)).

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *In Young Ho*; and, *Guetsso LLC*; as recommended by staff.

Tuesday, December 14, 2010

LOCAL TAX REALLOCATION MATTERS

Speaker: Robin Sturdivant, Local Government Advocate, The HdL Companies, on behalf of Costa Mesa and Santa Monica

City of Torrance, 433194

7-1-02 to 6-30-06, \$302,730.00

Considered by the Board: Appearance Waived

Action: Upon motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be partially granted and the tax be reallocated as recommended by the Appeals Division.

City of Torrance, 433198

4-1-01 to Current for Retailer 1 and 10-1-04 to Current for Retailer 2, \$4,428,956.00

Considered by the Board: Appearance Waived

Action: Upon motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be partially granted and the tax be reallocated as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARINGS

United Spas Manufacturing, Inc., 389563 (KH)

1-1-03 to 3-31-06, \$129,013.22, Tax, \$00.00 Negligence Penalty

For Petitioner: Tim Kelly, Taxpayer
Nadine Kelly, Taxpayer

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

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

Issues: Whether adjustments are warranted to the understatement of reported taxable sales based on a reconciliation with recorded taxable sales.

Whether adjustments are warranted to the disallowed claimed nontaxable sales for resale.

Whether adjustments are warranted to the disallowed claimed exempt sales in interstate commerce.

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel absent, the Board ordered that the petition be submitted for decision.

Fernando Olvera Barragan and Claudia Olvera, 436181 (JH)

7-1-03 to 6-30-06, \$38,567.74 Tax

For Petitioner: Claudia Olvera, Taxpayer
Butch Kruse, Representative

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

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

Issue: Whether further adjustments are warranted to the audited understatement of reported taxable sales.

Tuesday, December 14, 2010

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel absent, the Board ordered that the petition be submitted for decision.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Kingston Technology Corporation, 480846 (Continued)

David Sun and Diana Sun, 480891 (Continued)

John Tu and Mary Tu, 480894 (Continued)

For Appellant:

Christopher A. Whitney, Representative

Jung H. Kim, Attorney

For Franchise Tax Board:

Daniel Biedler, Tax Counsel

Bill Hilson, Tax Counsel

Action: Ms. Alby moved to reverse the action of the Franchise Tax Board. The motion was seconded by Ms. Steel but failed to carry, Ms. Alby and Ms. Steel voting yes, Ms. Yee, Mr. Horton and Ms. Mandel voting no.

Upon motion of Mr. Horton, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Steel and Ms. Mandel voting yes, Ms. Yee and Ms. Alby voting no, the Board modified the action of the Franchise Tax Board to reflect the July 1999 appraisal value.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD DECEMBER 14, 2010

Daniel V, Inc., 527082

Final Action: Ms. Steel moved to reverse the action of the Franchise Tax Board. The motion was seconded by Ms. Alby but failed to carry, Ms. Alby and Ms. Steel voting yes, Mr. Horton and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board, including the amnesty penalty issue.

Douglas Gail Hufnagel and Robyn Hufnagel, 510017

Final Action: Upon motion of Ms. Alby, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board, with the Franchise Tax Board's concession of tax years 1996 and 1997.

James Vaughn, 487205, 508867

Final Action: Upon motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board, with concession to allow the standard deduction for the 2005 tax years.

Tuesday, December 14, 2010

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
DECEMBER 14, 2010**

United Spas Manufacturing, Inc., 389563 (KH)

Final Action: Upon motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to offer the taxpayer a payment plan and to inform the taxpayer of other payment options.

Fernando Olvera Barragan and Claudia Olvera, 436181 (JH)

Final Action: Upon motion of Mr. Horton, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following order:

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 12.9](#)).

Judy L. Hecox, Business Taxes Compliance Specialist, Centralized Collection
Section, Sales and Use Tax Department, Headquarters
Dean Mosqueda, Office Assistant (General), Mail Services Unit, Administration
Department, Headquarters
Jean Ograd, Assistant Chief Counsel, Settlement and Taxpayer Services
Division, Legal Department, Headquarters

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**Legislative Committee November 16, 2010**

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the Legislative Committee report of November 16, 2010 and the actions therein ([Exhibit 12.10](#)).

Business Taxes Committee December 14, 2010

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report of December 14, 2010 and the actions therein ([Exhibit 12.11](#)).

Tuesday, December 14, 2010

Customer Services and Administrative Efficiency Committee December 14, 2010

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report of December 14, 2010 and the actions therein ([Exhibit 12.12](#)).

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

Kristine Cazadd, Interim Executive Director, requested the Board's approval of nominees for the BOE Employee Recognition Award Program. The employees to be recognized were originally nominated for Superior Accomplishment Awards and Sustained Superior Accomplishment Awards for 2009/10.

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the BOE Employee Recognition Award Program nominees.

Sales and Use Tax Deputy Directors Report

Jeff McGuire, Deputy Director, Sales and Use Tax Department, made introductory remarks regarding the Collection Cost Reimbursement Program implementation plan that BOE is required to impose on past due liabilities beginning January 1, 2011 ([Exhibit 12.13](#)).

Action: Ms. Mandel moved to Alternative 1, stratified flat fee, as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, Mr. Horton absent.

The Board deferred consideration of the matter to the following day.

Jeff McGuire, Deputy Director, Sales and Use Tax Department, made provided an update on the Field Office of the Future project and a more focused approach on the impacts of eRegistration and ePayments ([Exhibit 12.14](#)).

Administration Deputy Directors Report

Liz Houser, Deputy Director, Administration Department, provided an update on the Headquarters Remediation Project, an update on the Headquarters annex locations, and an update on the site search to relocate the San Diego and San Marcos Offices.

Liz Houser, Deputy Director, Administration Department, provided information regarding employee the Governor's 2010/11 and 2011/12 Budget, the Union Agreements, Governor's Executive Order S-12-10, State Employee Furlough, and layoffs.

Tuesday, December 14, 2010

The Board adjourned at 5:02 p.m.

The foregoing minutes are adopted by the Board on April 27, 2011.

Note: The following matter was removed from the calendar prior to the meeting: *Sylvia Bellew (Deceased) and Philip K. Lee (Trustee), 459746.*

Tuesday, December 15, 2010

The Board met at its offices at 450 N Street, Sacramento, at 9:32 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby, Ms. Steel and Mr. Chiang present.

LEGAL APPEALS PROPERTY TAX MATTERS, ADJUDICATORY**Petitions for Reassessment of Unitary Value**

San Diego Gas & Electric Company (141), 537387 (Continued)

2010, \$5,163,600,000.00 Unitary Value

Elk Hills Power, LLC (1126), 538071 (Continued)

2010, \$306,600,000.00 Unitary Value

Delta Energy Center, LLC (1128), 538221 (Continued)

2010, \$444,500,000.00 Unitary Value

Pastoria Energy Facility (1131), 538224 (Continued)

2010, \$484,900,000.00 Unitary Value

Calpine Construction Finance, Co., LP (1132), 538225 (Continued)

2010, \$228,300,000.00 Unitary Value

Metcalf Energy Center, LLC (1133), 538226 (Continued)

2010, \$364,400,000.00 Unitary Value

Otay Mesa Generating Company, LLC (1134), 538231 (Continued)

2010, \$459,300,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: (Motion expunged.)

Upon motion of Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Mr. Chiang voting yes, the Board ordered that its previous motion that the petitions be denied as recommended by staff be expunged.

Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton and Mr. Chiang voting yes, Ms. Alby and Ms. Steel voting no, Ms. Steel not participating in accordance with Government Code section 87105 in *Elk Hills Power, LLC (1126)*, the Board ordered that the petitions be denied as recommended by staff.

Los Esteros Critical Energy Facility, LLC (1143), 538233 (Continued)

2010, \$91,300,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton, Ms. Steel and Mr. Chiang voting yes, Ms. Alby voting no, the Board ordered that the petition be denied as recommended by staff.

Petition for Penalty Abatement on Unitary Escape Assessment

MetroPCS California/Florida, Inc. (2733), 492233 (Continued)

2005, \$480,000.00 Penalty

Considered by the Board: Presented for Separate Discussion

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

Tuesday, December 15, 2010

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton and Mr. Chiang voting yes, Ms. Alby and Ms. Steel voting no, the Board ordered that the petition for penalty abatement on unitary escape assessment be denied as recommended by staff.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Sales and Use Tax Deputy Directors Reports (Continued)

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton and Mr. Chiang voting yes, Ms. Alby and Ms. Steel voting no, the Board approved the Collection Cost Reimbursement Program implementation plan Alternative 1, stratified flat fee, as recommended by staff.

SPECIAL PRESENTATION

Presentation of Board Resolution to Barbara Alby

On behalf of the Board, Ms. Yee presented to Barbara Alby, Acting Member, Second District, a resolution, extending its sincere and grateful appreciation for her dedicated service to the State Board of Equalization and the State of California. Members made complementary remarks regarding their experiences with Ms. Alby and her exceptional work with the Board of Equalization, describing her as compassionate, an advocate for BOE employees and a champion of the people of the State of California, and wished her well in her new position in BOE's Taxpayers' Rights Advocate Office. Ms. Alby thanked the Members, her staff and agency staff, stating that it has been an honor working with them and that she looks forward to working with Todd Gilman, Chief, Taxpayers' Rights Advocate.

PROPERTY TAXES HEARING

Petition for Reassessment of Unitary Value

Lodi Gas Storage, LLC (198), 538665

2010, \$289,700,000.00 Unitary Value

For Petitioner/Claimant:

Jeff Miller, Taxpayer

Antreas E. Ghazarossian, Representative

For Property and Special Taxes Department: Mathew Burke, Tax Counsel

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

Issues: Whether respondent State-Assessed Properties Division (respondent) placed an appropriate amount of reliance on the Reproduction Cost Less Depreciation value indicator in the determination of petitioner's 2010 unitary value.

Whether the Board-adopted unitary value properly treats petitioner's pad gas as taxable property.

Petitioner's Exhibit: Fitch Ratings and NOI & Appraisal Income Projections ([Exhibit 12.15](#))

Tuesday, December 15, 2010

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be submitted for decision.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 10:45 a.m. and reconvened at 10:56 a.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Mr. Chiang present.

FINAL ACTION ON PROPERTY TAXES HEARING HELD DECEMBER 15, 2010

Lodi Gas Storage, LLC (198), 538665

Final Action: Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton and Mr. Chiang voting yes, Ms. Alby and Ms. Steel voting no, the Board ordered that the petition for reassessment be granted in part by reducing the 2010 Board-adopted unitary value by \$13,100,000 in accordance with respondent's revised recommendation.

Mr. Chiang directed staff to continue to work with the taxpayer as to future valuations and consider increasing the weighting of the Capitalized Earnings Approach (CEA) indicator when the income is considered mature.

PROPERTY TAXES HEARINGS

Petition for Reassessment of Unitary Value

Golden State Water Company (101), 538248

2010, \$538,900,000.00 Unitary Value

For Petitioner/Claimant:

Waived Appearance

For Property and Special Taxes Department:

Carole Ruwart, Tax Counsel

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

Issue: Whether petitioner has shown that respondent's Historical Cost Less

Depreciation value indicator fails to account for the economic obsolescence present in petitioner's unitary property.

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied.

Petition for Reassessment of Unitary Escaped Assessment

Golden State Water Company (101), 496057

2005-2008, \$40,700,000.00 Audit Excessive Assessment, \$10,488,000.00 Excessive in-Lieu Interest

For Petitioner/Claimant:

Waived Appearance

For Property and Special Taxes Department:

Carole Ruwart, Tax Counsel

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

Tuesday, December 15, 2010

Issues: Whether the capital structure used in formulating the capitalization rate upon which a Board-adopted Capitalized Earning Ability (CEA) value indicator is based can be corrected by the Board in this appeal and, if so, whether respondent used the correct capital structure in formulating the capitalization rate to determine the CEA value indicator.

Whether the capital replacement expenditure allowance amount used in computing petitioner's CEA value indicator can be corrected in this appeal and, if so, whether respondent used the correct capital replacement expenditure allowance in computing petitioner's CEA value indicator.

Whether respondent's audit adjustment related to Deferred Income Taxes (DIT) is correct.

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton, Ms. Steel and Mr. Chiang voting yes, Ms. Alby voting no, the Board ordered that the petition be denied.

Ms. Mandel entered the Boardroom on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Front Page Communications, Inc., 361961 (AA)

4-1-01 to 12-31-04, \$99,894.71 Tax, \$5,199.64 Amnesty Interest Penalty

For Petitioner: Athanase Sbarounis, Taxpayer
Carlos A. Salazar, Representative

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

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

Issues: Whether adjustments are warranted to the amount of unreported sales.
Whether relief of interest is warranted.

Action: Mr. Horton moved that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board. Ms. Yee offered an amendment that the interest between September 3, 2008 and June 24, 2009 be abated. Ms. Yee's motion was seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes.

The Board recessed at 12:17 p.m. and reconvened at 1:34 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Lockheed Martin Government Services, Inc., 300158 (OH)

1-1-01 to 12-31-03, Claim for Refund of Tax Paid on \$6,393,911.00 Cost of Equipment

For Claimant: Rex Halverson, Attorney
Ilya Gurfinkel, Witness

For Sales and Use Tax Department: Chris Schutz, Tax Counsel

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

Tuesday, December 15, 2010

Issue: Whether claimant's transfers of computer hardware, software, and office equipment to the United States Government were exempt leases of the items transferred, thus entitling claimant to a refund of use tax paid on the cost of the equipment.

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 3:23 p.m. and reconvened at 3:30 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

PETITION FOR RELEASE OF SEIZED PROPERTY

CRC/TR Corp., 537954 (ET)

March 29, 2010 Seizure Date, \$297.00 Approximate Value

For Petitioner: Tariq Rasuli, Taxpayer
Bashir Khan, Witness

For Property and Special Taxes Department: Pamela Mash, Tax Counsel

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

Issue: Whether cigarettes and tobacco products should be forfeited because they are described by Business and Professions Code sections 22974.3, subdivisions (a) and (b).

Cindy Chiu, Tax Counsel, Appeals Division, Legal Department, stated for the record that the petitioner no longer seeks the return of the seized cigarettes.

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD DECEMBER 15, 2010

Lockheed Martin Government Services, Inc., 300158 (OH)

Final Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Yee. Ms. Mandel withdrew her motion.

The Board deferred consideration to later in the day.

SALES AND USE TAX APPEALS HEARING

Sunkist Enterprises Corporation, 469916 (CH)

7-1-05 to 6-30-06, \$11,230.08 Tax, \$1,123.02 Negligence Penalty

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Andrew Kwee, Tax Counsel

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

Issues: Whether petitioner is liable for the determined tax.

Whether petitioner was negligent.

Tuesday, December 15, 2010

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HELD
DECEMBER 15, 2010**

CRC/TR Corp., 537954 (ET)

Final Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board determined that staff properly seized the tobacco products.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
DECEMBER 15, 2010**

Lockheed Martin Government Services, Inc., 300158 (OH) (Continued)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 4:16 p.m.

The foregoing minutes are adopted by the Board on April 27, 2011.

Note: The following matters were removed from the calendar prior to the meeting: *William Brett Corbin, 434956 (EA)*; and, *Kashmir Singh Khinda, 536518 (ET)*.

Tuesday, December 16, 2010

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 9:31 a.m. and reconvened immediately in closed session with Ms. Yee, Mr. Horton, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 1:24 p.m. and reconvened immediately in open session with Ms. Yee, Mr. Horton, Ms. Steel and Ms. Mandel present.

The Board recessed at 1:25 p.m. and reconvened at 2:30 p.m. in closed session with Ms. Yee, Mr. Horton, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

The Board met to continue discussing pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 4:07 p.m. and reconvened immediately in open session with Ms. Yee, Ms. Steel and Ms. Mandel present.

The Board adjourned at 4:08 p.m.

The foregoing minutes are adopted by the Board on April 27, 2011.