

Tuesday, February 23, 2010

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

ADMINISTRATIVE MATTER

Census 2010: California Complete Count

Ms. Yee introduced Ditas Kitague, Director, Census 2010, who provided a special presentation by the Governor's Office of Planning and Research to discuss the Census 2010 project, the California Complete Count (CCC) effort to avoid an undercount, particularly in the counties with highest numbers of hard-to-count (HTC) populations, and ways Board Members can lend their support within their respective districts to encourage full participation by all Californians. (Exhibit 2.1.)

Exhibits to these minutes are incorporated by reference.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Bruce Culver and Donna Turner Culver, 480448

2004, \$ 875,336.00 Claim for Refund

For Appellant:

Bruce Culver, Taxpayer

Glenn Smith, Attorney

For Franchise Tax Board:

Raul Escatel, Tax Counsel

Terry Collins, Tax Counsel

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

Issues: Whether stock warrants issued to appellant that were exercised in 2004 resulted in any income to appellant under Internal Revenue Code (IRC) section 83.

Whether appellant incurred business/nonbusiness bad debt losses and worthless stock losses in 2004.

Whether appellant was issued a refund check for losses on the sale of stock for 2004.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.2)

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

The Board recessed at 11:05 a.m. and reconvened at 11:23 a.m. with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel present.

On behalf of the Board, Ms. Yee expressed condolences and sympathy to the family of former Board Member William M. Bennett, who passed away on February 9, 2010. Ms. Yee acknowledged his long career and contributions to the State of California, which began in 1949 as Deputy State Attorney General, and ended in December 1992 after serving seven terms on the Board of Equalization.

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Donald A. Wattson and Christine A. Wattson, 446005

2001, \$273,149.00 Tax, \$54,629.80 Accuracy-Related Penalty

For Appellant:

Donald A. Wattson, Taxpayer
James T. Burnes, Attorney
Craig W. Murrel, Representative
Susanne Coakley, Tax Counsel
Michael Cornez, Tax Counsel
Craig Scott, Tax Counsel

For Franchise Tax Board:

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

Issues: Whether appellants received a taxable deemed distribution from a partnership of \$3,257,815 in 2001.

Whether the duty of consistency should bar appellants' contention that the amount at issue should have been applied to the 1995 or 1996 tax year.

Whether the accuracy-related penalty should be abated.

Whether the Board has jurisdiction over the post-amnesty penalty in the context of this appeal.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.3)

Respondent's Exhibit: California Schedule K-1 (565) (Exhibit 2.4)

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

Robin Lake, 480267

2005, \$1,118.00 Assessment

For Appellant:

Robin Lake, Taxpayer

For Franchise Tax Board:

Maria Brosterhous, Tax Counsel
Terry Collins, Tax Counsel

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

Issue: Whether respondent properly included and calculated appellant's foreign source income for purposes of computing appellant's rate of taxation under subdivision (b) of Revenue and Taxation Code (R&TC) section 17041.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.5)

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

Willard M. Christine, 468893

2004, \$374.00 Assessment

For Appellant:

Willard M. Christine, Taxpayer

For Franchise Tax Board:

Mark McEvilly, Tax Counsel
Jozel Brunett, Tax Counsel

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

Issues: Whether appellant was entitled to subtract the total amount of Social Security benefits received in calculating his California taxable income, rather than the amount of taxable Social Security benefits?

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Whether any of the interest may be abated due to appellant's payment of \$411.68 on October 28, 2007, which respondent refunded on October 30, 2007, because no balance showed on appellant's tax account due to his protest of the proposed assessment?

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board modified the action with concession of the Franchise Tax Board.

Mr. Leonard requested the Franchise Tax Board review its publications for how to report Social Security income.

The Board recessed at 12:37 p.m. and reconvened at 1:42 p.m. with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Jon Bryant Artz and Wendi A. Artz, 464509
1999, \$5,494.00 Tax, \$1,041.84 Post-Amnesty Penalty
For Appellant:

Jon Bryant Artz, Taxpayer
Terry Adamson, Witness
Jack Pritchett, Witness
Mel Profit, Witness

For Franchise Tax Board:

Mark McEvilly, Tax Counsel
Craig Scott, Tax Counsel

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

Issues: Whether appellants have established error in respondent's proposed assessment, which was based on federal adjustments to appellants' 1999 tax year.

Whether the Board has jurisdiction over the post-amnesty penalty in the context of this appeal.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.6)

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

Carol A. Strike-Palumbo and Frank N. Palumbo, 479933

1995, \$0.00 Assessment

1996, \$0.00 Assessment

1999, \$0.00 Assessment

2000, \$0.00 Assessment

2001, \$0.00 Assessment

2002, \$0.00 Assessment

2003, \$0.00 Assessment

For Appellant:

Terry A. Gottlieb, Representative
Leticia A. Ildefonso, Representative

For Franchise Tax Board:

Karen Smith, Tax Counsel
Jozel Brunett, Tax Counsel

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

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Issues: Whether the Board has jurisdiction to grant appellants' request to require the Franchise Tax Board (respondent of FTB) to accept appellants' change of filing status for closed tax years.

If jurisdiction exists, whether the closed statute of limitations precludes appellants from changing their filing status.

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and directed the Franchise Tax Board to examine the amended returns.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Chuy's Management Services Fresno, LLC, 341587; Carpinteria Chuy's, Inc., 341590; Chuy's Management Services Camarillo, LLC, 341591; Chuy's Management Services Stevenson Ranch, LLC, 341592; Chuy's Management Services Bakersfield, LLC, 341593; Chuy's Management Services Thousand Oaks, LLC, 341594; Jeanine Gayle Stenoien, 341596; and, Valerie Dawn Freedman, 342567.*

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

Chuy's Management Services Fresno, LLC, 341587 (KH)

4-18-08 to 12-31-01, \$00.00 Tax, \$35,405.98 Penalty

Carpinteria Chuy's, Inc., 341590 (GH)

10-1-97 to 12-31-01, \$00.00 Tax, \$18,655.79 Penalty

Chuy's Management Services Camarillo, LLC, 341591 (AR)

1-1-98 to 12-31-01, \$00.00 Tax, \$19,784.09 Penalty

Chuy's Management Services Stevenson Ranch, LLC, 341592 (AR)

1-1-97 to 12-31-01, \$00.00 Tax, \$91,060.06 Penalty

Chuy's Management Services Bakersfield, LLC, 341593 (AR)

10-1-98 to 12-31-01, \$00.00 Tax, \$44,570.40 Penalty

Chuy's Management Services Thousand Oaks, LLC, 341594 (AR)

1-1-98 to 12-31-01, \$00.00 Tax, \$50,361.95 Penalty

Jeanine Gayle Stenoien, 341596 (AR)

1-1-95 to 12-31-01, \$00.00 Tax, \$00.00 Penalty

Action: The Board took no action.

Maria P. Barrera and Gabriel Corona, 434887 (AA)

1-1-03 to 12-31-05, \$9,485.19 Tax, \$1,225.70 Penalty

Action: Redetermine as recommended by the Appeals Division.

Jerry Pena, 384853, 426907 (EH)

7-1-01 to 12-31-04, \$ 101,833.08 Tax

Action: Redetermine as recommended by the Appeals Division.

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Ryan Michael Schuster and Jan Rene Copeland, 350439 (AR)

1-1-03 to 12-31-04, \$00.00, \$38,645.44 Penalty

Action: Redetermine as recommended by the Appeals Division.

Red Sea Imports, Inc., 359769 (FH)

7-1-98 to 12-31-03, \$35,000.00 Successor Liability

Action: Redetermine as recommended by the Appeals Division.

Thamir Mahmud, 432156 (UT)

6-7-05, \$ 825.00 Tax, \$82.50 Penalty

Action: Redetermine as recommended by the Appeals Division.

In Boun Kim and Yoon Seo Rim, 430082 (EA)

10-1-03 to 1-31-07, \$53,478.46 Tax, \$5,378.84 Penalty

Action: Redetermine as recommended by the Appeals Division.

Alderm Na, LLC, 405317 (EA)

1-1-03 to 12-31-05, \$66,640.37, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Joaquin E. Hernandez, 387757 (AA)

10-1-02 to 9-30-05, \$53,758.70, \$514.91 Penalty

Action: Redetermine as recommended by the Appeals Division.

Norma June Rulison, 402954 (KH)

1-1-99 to 12-31-01, \$6,427.44, \$1,403.10 Penalty

Action: Redetermine as recommended by the Appeals Division.

Jonathas L. Coelho, 404622 (UT)

12-04-00, \$2,458.67 Tax

Action: Redetermine as recommended by the Appeals Division.

Yes Bar, LLC, 362366 (AS)

4-1-03 to 9-30-03, \$6,138.53

Action: Redetermine as recommended by the Appeals Division.

Valerie Dawn Freedman, 342567 (EA)

9-1-04 to 5-31-05, \$6,975.00 Tax, \$697.50 Penalty

Action: The Board took no action.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *James Cook, 445260;* and, *Debasish Banerjee and Radhika Banerjee, 393736.*

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

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Trace R. L. Armstrong and Tami Fraser Armstrong, 474197
2002, \$79,676.75 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Lou Parcon Benitez and Maria P. Benitez, 434832
2003, \$2,800.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

James Cook, 445260
2005, \$1,362.00 Claim for Refund
Action: The Board took no action.

George K. Ernestberg, 448285
2006, \$760.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Darlene M. Hazlewood, 424650
1990, \$49,125.00 Tax, \$48,338.32 Post-Amnesty Penalty
Action: Sustain the action of the Franchise Tax Board.

Konstantine Karavakis, 478167
2004, \$38,738.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Karl K. Klessig, 328285
2000, \$26,756.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Howard A. Olgin, 438146
2003, \$1,800.00 Claim for Refund
2005, \$2,445.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Michael W. Reeves, 468290
2004, \$2,705.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Ronald Reinhold, 432996
2003, \$5,411.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Katherine R. Richardson, 439469
2004, \$1,647.00 Tax
Action: Sustain the action of the Franchise Tax Board.

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Jose O. Rios and Amy D. Rios, 461390

1998, \$621.75 Interest

Action: Sustain the action of the Franchise Tax Board.

Rochelle M. Dorfler, 306426

1988, \$11,867.00 Assessment

1989, \$61,066.00 Assessment

1990, \$120.00 Assessment

Action: Deny the petition for rehearing.

Matt Ward, 431775

2000, \$969,904.00 Tax

Action: Deny the petition for rehearing.

Leonard Magness, 441637

2003, \$835.00 Tax, \$208.75 Late Filing Penalty, \$772.25 Notice and Demand Penalty, \$125.00 Filing Enforcement Fee

Action: Deny the petition for rehearing.

Debasish Banerjee and Radhika Banerjee, 393736

1999, \$1,802.08 Claim for Refund

2000, \$24,537.00 Claim for Refund

Action: The Board took no action.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

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

Lan Thi Hoang, 492442

2006, \$347.50

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Tuesday, February 23, 2010

Optical One, 318331 (GH)

10-1-99 to 12-31-01, \$74,348.63

Action: Approve the redetermination as recommended by staff.

Heard Optical Company, 318337 (EA)

10-1-99 to 11-1-01, \$60,622.82

Action: Approve the redetermination as recommended by staff.

Heard Optical Company, 318338 (EA)

10-1-99 to 11-1-01, \$433,003.14

Action: Approve the redetermination as recommended by staff.

Adventist Media Center, Inc., 239896 (AR)

7-1-99 to 6-30-02, \$121,288.68

Action: Approve the redetermination as recommended by staff.

Bartley Optical Sales, Inc., 318334 (OH)

10-1-99 to 10-31-01, \$63,906.00

Action: Approve the redetermination as recommended by staff.

Opti-Craft, Inc., 318340 (OH)

10-1-98 to 10-31-01, \$247,252.35

Action: Approve the redetermination as recommended by staff.

PDK-Optical, Inc., 318336 (AA)

10-1-99 to 12-31-01, \$820,545.60

Action: Approve the redetermination as recommended by staff.

Essilor Labs of America, LP, 318335 (OH)

1-1-00 to 12-31-02, \$74,995.22

Action: Approve the redetermination as recommended by staff.

Essilor Labs of America, Inc., 318333 (OH)

11-1-01 to 12-31-02, \$1,675,944.72

Action: Approve the redetermination as recommended by staff.

Nora Ross, Inc., 290119 (AP)

7-1-01 to 6-30-04, \$72,164.38

Action: Approve the redetermination as recommended by staff.

Baker Petrolite Corporation, 244210 (OH)

7-1-00 to 6-30-03, \$131,252.69

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

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Radioshack Corporation, 352039 (OH)

4-1-03 to 12-31-04, \$1,100,000.00

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

Filtrol Corporation, 244595 (AA)

7-1-00 to 6-30-03, \$193,695.43

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

Criterion Catalyst Company, 244593 (OH)

7-1-00 to 6-30-03, \$109,273.69

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

UOP, Inc. & Katalistiks International, Inc., 244089 (OH)

7-1-00 to 6-30-03, \$252,393.62

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

Napa Aviation, LLC, 480154 (UT)

9-8-06 to 9-8-06, \$224,750.00

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

Rhodia, Inc., 244219 (OH)

7-1-00 to 6-30-03, \$658,486.68

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

SBC Services, Inc., 334382 (OH)

7-1-01 to 3-31-02, \$1,385,237.00

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

Gamestop, Inc., 399588 (OH)

1-1-06 to 3-31-06, \$74,604.79

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

Grounds For Play, Inc., 396775 (OH)

1-1-00 to 12-31-05, \$146,136.95

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

Segura Motors Group, Corp., 422586 (AR)

3-15-06 to 3-31-07, \$50,452.00

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

American Stores Company, LLC, 377870 (OH)

6-2-06 to 6-30-06, \$68,496.00

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

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Mill Valley Refuse Service, Inc., 415248 (JH)

7-1-01 to 12-31-06, \$241,059.15

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

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

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

J. Crew, Inc., 448168 (OH)

1-1-05 to 12-31-07, \$107,993.58

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

Heart Wood Manufacturing, Inc., 514710 (GH)

10-1-08 to 12-31-08, \$60,445.00

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

Putzmeister, Inc., 475933 (OH)

10-1-06 to 9-30-08, \$155,720.31

Action: Approve the refund as recommended by staff.

Santa Barbara Infrared, Inc., 489115 (GH)

10-1-07 to 3-31-08, \$87,738.07

Action: Approve the refund as recommended by staff.

Los Angeles County Fair Association, 514944 (AP)

7-1-09 to 9-30-09, \$369,907.00

Action: Approve the refund as recommended by staff.

Fort Bragg Electric, Inc., 473171 (JH)

10-1-05 to 9-30-08, \$53,383.05

Action: Approve the refund as recommended by staff.

Affiliated Computer Services, Inc., 483475 (OH)

7-1-06 to 3-31-09, \$1,784,953.44

Action: Approve the refund as recommended by staff.

Mentor Graphics, Corp., 496882 (OH)

4-1-09 to 6-30-09, \$72,880.00

Action: Approve the refund as recommended by staff.

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Magnolia Hi-Fi, Inc., 485227 (OH)

1-1-09 to 3-31-09, \$61,406.97

Action: Approve the refund as recommended by staff.

International Paper Company, 485730 (KH)

10-1-08 to 12-31-08, \$60,693.80

Action: Approve the refund as recommended by staff.

Arcadia Financial, LTD, 432797 (OH)

7-1-07 to 9-30-08, \$1,973,775.79

Action: Approve the refund as recommended by staff.

Arcadia Financial, LTD, 491593 (OH)

1-1-09 to 6-30-09, \$714,353.22

Action: Approve the refund as recommended by staff.

Reliant Financial Corporation, 491283 (EA)

1-1-09 to 6-30-09, \$56,268.34

Action: Approve the refund as recommended by staff.

HMH Supplemental Publishers, Inc., 513211 (OH)

4-1-03 to 6-30-08, \$149,118.80

Action: Approve the refund as recommended by staff.

Premier America Credit Union, 489979 (AC)

1-1-09 to 6-30-09, \$94,365.78

Action: Approve the refund as recommended by staff.

Cook Medical Incorporated, 477787 (OH)

10-1-05 to 6-30-08, \$76,432.86

Action: Approve the refund as recommended by staff.

Heritage Community Credit Union, 491303 (KH)

1-1-09 to 6-30-09, \$83,830.87

Action: Approve the refund as recommended by staff.

Global Power Supply, LLC, 490967 (GH)

1-1-09 to 3-31-09, \$65,964.42

Action: Approve the refund as recommended by staff.

Trifish Finance, Inc., 489476 (AS)

1-1-08 to 12-31-08, \$70,917.58

Action: Approve the refund as recommended by staff.

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IPC Systems, Inc., 488622 (OH)

10-1-07 to 12-31-07, \$91,433.02

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS AND RELIEF OF PENALTY, CONSENT

With respect to the Special Taxes Matters, Redeterminations and Relief of Penalty, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in , *Dallas National Insurance Company, 442762; Commercial Casualty Insurance Company, 442757; Equilon Enterprises, LLC, 467049; and, Allianz Global Risk US Insurance Company, 511401;* the Board made the following orders:

Dallas National Insurance Company, 442762 (ET)

1-1-03 to 12-31-03, \$272,683.51

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

Chevron U.S.A., Inc., 444645 (MT)

10-1-02 to 9-30-05, \$150,298.88

Action: Approve the redetermination as recommended by staff.

Chemical Waste Management, 475325 (EF)

1-1-03 to 12-31-05, \$1,096,167.96

Action: Approve the redetermination as recommended by staff.

Commercial Casualty Insurance Company, 442757 (ET)

1-1-03 to 12-31-03, \$146,366.79

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

Equilon Enterprises, LLC, 467049 (MT)

9-1-02 to 9-30-02, \$2,054,020.23

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

Allianz Global Risk US Insurance Company, 511401 (ET)

1-1-09 to 3-31-09, \$55,805.80

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

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

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *JDC Specialty Insurance Brokers, Inc.*, 515983; *Heineken USA, Incorporated*, 492553; *Northwestern Mutual Life Insurance Company*, 506219; *Northwestern Mutual Life Insurance Company*, 506221; Ms. Mandel not participating in accordance with Government Code section 87105 in *Wal-Mart Stores, Incorporated*, 463849, the Board made the following orders:

JDC Specialty Insurance Brokers, Inc., 515983 (ET)

1-1-04 to 12-31-06, \$65,099.25

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

Heineken USA, Incorporated, 492553 (ET)

9-1-08 to 9-30-08, \$617,556.98

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

Northwestern Mutual Life Insurance Company, 506219 (ET)

1-1-08 to 12-31-08, \$104,934.06

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

Northwestern Mutual Life Insurance Company, 506221 (ET)

1-1-07 to 12-31-07, \$108,327.45

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

Wal-Mart Stores, Incorporated, 463849 (ER)

11-1-07 to 11-30-07, \$102,234.54

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

Tulare Firestone, Inc., 511050 (ER)

4-1-06 to 3-31-09, \$169,146.46

Action: Approve the refund as recommended by staff.

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**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD FEBRUARY 23, 2010**

Bruce Culver and Donna Turner Culver, 480448

Final Action: Ms. Yee moved to sustain the action of the Franchise Tax Board. The motion was seconded by Mr. Horton. Mr. Leonard made a substitute motion to grant the appeal as to the approximately \$3.5 million Taser Warrants, otherwise sustain the action of the Franchise Tax Board. The substitute motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, 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, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

Donald A. Wattson and Christine A. Wattson, 446005

Final Action: Mr. Leonard moved to reverse the action of the Franchise Tax Board. The motion was seconded by Ms. Steel but no vote was taken.

The Board deferred consideration to the following day.

Robin Lake, 480267

Final Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board modified the action with concession of the Franchise Tax Board.

Jon Bryant Artz and Wendi A. Artz, 464509

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

The Board adjourned at 3:42 p.m.

The foregoing minutes are adopted by the Board on March 25, 2010.

Note: The following matters were removed from the calendar prior to the meeting: *John Harold Kraft, 446023*; and, *Sandy Rowe and Sylvia Rowe, 467791*.

Note: These minutes are not final until Board approved.

Wednesday, February 24, 2010

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Sherry Donnelly, 474206
2000, \$3,788.00 Claim for Refund
For Appellant:

Sherry Donnelly, Taxpayer
Ian S. Kroop, Representative
Karen Smith, Tax Counsel
Jozel Brunett, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether appellant is entitled to a refund of taxes paid for taxable year 2000 on severance pay income that she may have been required to repay to her employer in 2007.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.7)

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

Exhibits to these minutes are incorporated by reference.

Ysidro Martinez, 479960
2005, \$402.48 Claim for Refund
2006, \$466.26 Claim for Refund
For Appellant:
For Franchise Tax Board:

Rachael Callahan, Representative
Craig Scott, Tax Counsel
Jozel Brunett, Tax Counsel

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

Issues: Whether appellant is entitled to refunds of the self-assessed taxes he paid with married filing separate returns where his total income was below the "married" filing threshold amount shown in the instructions of the FTB.

Whether appellant has shown reasonable cause for refund of the late filing penalty that was assessed for the 2006 tax year.

Whether appellant has shown that he is entitled to a refund of interest for the 2005 and/or 2006 tax years.

Whether appellant has shown that equitable estoppel applies to the facts at hand.

Ms. Callahan stated for the record that the appellant concedes the 2005 tax and interest and 2006 tax.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board abated the late filing penalty, otherwise sustained the action of the Franchise Tax Board.

Wednesday, February 24, 2010

Robert M. Miller, 449286

2000, \$ 4,291.69 Claim for Refund

For Appellant:

Alexander Yen, Representative

For Franchise Tax Board:

Craig Scott, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issue: Whether appellant's claim for refund is barred by the statute of limitations.

Action: The Board postponed the hearing to June 2010 and directed the Franchise Tax Board to search its records for an informal refund claim.

Ian James Johnston, 481263

2006, \$269.00 Assessment, \$100.00 Late Filing Penalty

For Appellant:

Ian James Johnston, Taxpayer

Doug Barnett, Witness

Marla Bernstein, Witness

For Franchise Tax Board:

Karen Smith, Tax Counsel

Jozel Brunett, Tax Counsel

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

Issues: Whether appellant has shown error in respondent's proposed assessment.

Whether appellant has shown reasonable cause for the abatement of the late filing penalty.

Whether this Board should impose a frivolous appeal penalty.

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

The Board recessed at 10:40 a.m. and reconvened at 10:53 a.m. with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel present.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD FEBRUARY 23, 2010

Donald A. Wattson and Christine A. Wattson, 446005

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

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

Wednesday, February 24, 2010

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD FEBRUARY 24, 2010**

Sherry Donnelly, 474206

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Ian James Johnston, 481263

Final Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board modified the action with concession of the Franchise Tax Board.

Ms. Yee moved to impose a \$750.00 frivolous appeal penalty. The motion was seconded by Mr. Horton but failed to carry, Ms. Yee and Mr. Horton voting yes, Mr. Leonard, Ms. Steel and Ms. Mandel voting no.

Ms. Mandel directed staff to include in the decision letter the standard language regarding how the frivolous appeal penalty is applied.

SALES AND USE TAX APPEALS HEARINGS

Elizabeth Wardley Kwong, 316054 (AP)

Raymond Wah Kwong, 316055 (AP)

1-1-00 to 3-28-01, \$89,155.00 Tax, \$12,215.50 Penalties

For Petitioner: Liz Wardley Kwong, Taxpayer

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

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

Issues: Whether petitioners' liability as responsible persons has been discharged as a result of the bankruptcy of Wiseguys or as a result of petitioners' personal bankruptcy.

Whether petitioners have established that any adjustments are warranted to the underlying liability of Wiseguys due to bad debts.

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, generally granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, subject to the parties working together to attempt to obtain relevant documentation from the corporation's bankruptcy proceeding, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

Medical Equipment Discount Center, 400764 (EH)

7-1-03 to 6-30-06, \$18,167.44 Tax

For Petitioner: Mohtasham Shalika, Representative

For Sales and Use Tax Department: Robert Tucker, Tax Counsel

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

Issue: Whether further adjustments are warranted to the disallowed claimed exempt sales of medical equipment.

Note: These minutes are not final until Board approved.

Wednesday, February 24, 2010

Action: Upon motion of Mr. Leonard, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Mr. Leonard directed staff to determine whether it is advisable to recommend legislation to update the definitions of medical equipment. Mr. Horton stated that his office has contacted the Assembly Committee on Aging and Long-Term Care and AARP, and will update the Board with the results of his outreach.

L & S Restaurant, Inc., 425516 (AA)

10-1-03 to 9-30-06, \$7,620.71 Tax, \$762.07 Negligence Penalty

For Petitioner:

Michael S. Sy, 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 audited amount of unreported taxable sales.

Whether petitioner was negligent.

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

The Board recessed at 12:42 p.m. and reconvened at 1:40 p.m. with Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Team Dennis Conner Corporation, 353247 (UT)

February 18, 2002, \$117,136.00 Tax

For Petitioner:

Cris J. Wenthur, Attorney

Dennis Conner, Representative

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

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

Issue: Whether the subject vessel was purchased for use in California, and if so, whether that use was exempt from tax.

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

Wednesday, February 24, 2010

Young Life, 270405 (KH)

7-1-01 to 6-30-03, \$51,824.09 Tax

For Petitioner:

Terry L. Polley, Attorney
 Paul W. Sherrill, Representative
 Catherine Barankin, Witness
 Roger Williams, Witness
 Michele Branconier Witness
 Robert Tucker, Tax Counsel

For Sales and Use Tax Department:

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

Issues: Whether petitioner's sales of meals to campers were exempt sales of student meals.

Whether petitioner should be regarded as a consumer, rather than a seller, of meals.

Action: Mr. Horton moved to find that the petitioner met criteria of conducting regularly scheduled classes requiring attendance taught by qualified instructors, established that the purpose of its operation is education, substantially enough to meet the requirements for exempt sales of meals to students, and that the petition be granted for this reason. The motion was seconded by Ms. Yee for purposes of discussion only. Mr. Horton withdrew his motion.

Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered the petition granted. The Board also referred the topic of meals sold by camps to the Business Taxes Committee for an interested parties process to consider clarifying amendments to California Code of Regulations, title 18, section 1506 and ordered that further audit review of sales of meals by camps be held in abeyance pending the outcome of that process, with outreach to camps regarding the results of the process and the requirement to hold a seller's permit.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD FEBRUARY 24, 2010

L & S Restaurant, Inc., 425516 (AA)

Final Action: Upon motion of Mr. Horton, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered a reduction to the deficiency of 20 percent to account for nontaxable sales otherwise remaining in the audited measure of deficiency, based on the lack of a mark-up test to substantiate the audit calculations, and that the petition otherwise be redetermined as recommended by the Appeals Division.

Team Dennis Conner Corporation, 353247 (UT)

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

Wednesday, February 24, 2010

SALES AND USE TAX APPEALS HEARING

Betty Jo Robart, 383878 (AC)

1-1-94 to 12-31-00, \$29,181.81 Tax, \$16,342.38 Penalties

For Petitioner: Appearance Waived

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

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

Issues: Whether the Notice of Determination to petitioner as a responsible person for the liabilities of Philwan, Inc. (Philwan) was timely.

Whether petitioner is entitled to relief from interest.

Whether the penalties originally assessed against Philwan for which petitioner is being held liable as a responsible person should be deleted.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be granted in accordance with the revised recommendation of the Appeals Division.

The Board adjourned at 4:16 p.m.

*The foregoing minutes are adopted by the Board on March 25, 2010.*Note: The following matter was removed from the calendar prior to the meeting: *Closed Session.*