

Wednesday, March 9, 2005

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

SALES AND USE TAX APPEALS HEARINGS

Hamid Samiei, 168227

10-1-00 to 3-31-01, \$86,309.79 Tax, \$8,630.98 Failure to File Penalty, \$8,630.98 Failure to Timely Pay Penalty

For Petitioner: Hamid Samiei, Taxpayer

For Sales and Use Tax Department: Jeffrey Graybill, Tax Counsel

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

Issues: Whether applicant was a partner in the used car dealership named Myla Auto Sales, and liable for the sales tax on the unreported taxable sales of used cars made by the business.

Whether the 10 percent failure to file penalty should be relieved.

Whether the 10 percent late payment penalty should be relieved.

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

Meila R. Reyes, 152298

10-1-00 to 3-31-01, \$86,309.79 Tax, \$8,561.98 Late Payment Penalty

For Petitioner: Meila M. Reyes, Taxpayer

Coy Weiser, Witness

For Sales and Use Tax Department: Jeffrey Graybill, Tax Counsel

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

Issues: Whether taxpayer was a partner in the used car dealership doing business as Myla Auto Sales, or is otherwise liable for the unreported taxable sales of the business.

Whether taxpayer should be relieved of the late payment penalty.

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

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD MARCH 8, 2005

Jane Marchiorlatti, 213237

Final Action: Mr. Leonard moved to grant the appeal. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

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

Wednesday, March 9, 2005

John Marshall, 216967
G.M.S., 221190

Final Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the Franchise Tax Board 30 days to review and respond to documents, the appellant 30 days to respond, and the Appeals Division 30 days thereafter to review the Franchise Tax Board's response, the appellant's response and provide its recommendation to the Board.

Kaldeep S. and Imelda Brar, 262087
Professional Resource Enterprises, Inc., 265288

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

Hilltopper Publications, Inc., Judith Mancini, and Thomas K. Vodrey (Assumers), 250265
Final Action: The Board deferred consideration of this matter to later in the day.

Louis and Judith Woods Mancini, 255117

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

Edgar Symore Brower and Pauline Y. Brower, 264244

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Scott M. Austin, 265596
1983, \$5,253.87 Claim for Refund
1985, \$299.29 Claim for Refund

For Claimant: Appearance Waived
For Franchise Tax Board: Suzanne Small, Tax Counsel

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

Issue: Whether appellant's claims for refund are barred as untimely.

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

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD MARCH 8, 2005

Gadi Meir, 251905

Final Action: Ms. Yee moved to sustain the Franchise Tax Board. Mr. Leonard made a substitute motion to reverse the action of the Franchise Tax Board. The substitute motion was seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang and Ms. Yee voting no.

Wednesday, March 9, 2005

George C. Brown, 261151

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Janice B. Madrid, 253563

2000, \$590.00 Tax, \$147.50 Late Filing Penalty, \$214.75 Notice and Demand Penalty

For Appellant: Appearance Waived

For Franchise Tax Board: Mark McEvelly, Tax Counsel

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

Issues: Whether appellant filed her appeal in a timely fashion so that this Board may hear her appeal.

Whether appellant has demonstrated any error in respondent's proposed assessment for appellant's 2000 tax year.

Whether a frivolous appeal penalty should be imposed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD MARCH 8, 2005

Robert E. Wesley, 262544

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered the appeal be submitted for written opinion sustaining the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty. The Board's decision on this matter shall not become final until the matter is brought back to the Board for adoption of the proposed opinion.

FINAL ACTION ON HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING HELD MARCH 8, 2005

Barbara Smith, 255544

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

Wednesday, March 9, 2005

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Orleans Victor McFoy, 256239

2003, \$347.50

For Claimant: No Appearance

For Franchise Tax Board: Suzanne Small, Tax Counsel

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

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

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

SALES AND USE TAX APPEALS HEARING

Steven B. Neal and Richard Wallace, 224185

7-8-01, \$24,401.00 Tax

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Anthony Epolite, Tax Counsel

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

Issue: Whether petitioners have established their entitlement to the exemption for the purchase of a vessel used principally in commercial deep sea fishing operations by a person who is regularly engaged in commercial deep sea fishing.

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

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD MARCH 8, 2005

Toscana International Trading, Inc., 217895

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the amounts attributable to the Chandler location be removed from the measure, otherwise redetermined as recommended by the Appeals Division.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD MARCH 8, 2005

Hilltopper Publications, Inc., Judith Mancini, and Thomas K. Vodrey (Assumers), 250265

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board ordered that the built-in gain tax be reduced by \$36,854.00, subject to any additional calculations necessary for that tax adjustment, otherwise sustained the action of the Franchise Tax Board.

Wednesday, March 9, 2005

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MARCH 8, 2005

Artistic Resources Corporation, 224742

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

James Mulligan, 236450

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

SALES AND USE TAX APPEALS HEARING

La Mode Du Golf, Inc., 219996

4-1-99 to 12-31-01, \$15,673.00 Tax, \$1,567.30 Failure to Timely Pay Penalty

For Petitioner: Appearance Waived

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

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

Issues: Whether taxpayer is entitled to relief from the tax and interest with respect to embroidery charges pursuant to Revenue and Taxation Code section 6596 because it relied on erroneous advice received in the prior audit.

Whether taxpayer's financial difficulties provide a valid basis for relief from the protested liability.

Whether relief is warranted from the 10 percent penalty added to the liability for failure to pay the determination when due.

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

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MARCH 8, 2005

Mario Cruz, 161101

Fleetpower, Inc., 213068

Final Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Yee. Mr. Leonard made a substitute motion that the petition of *Fleetpower, Inc., 213068*, be redetermined as recommended by the Appeals Division and that the petition of *Mario Cruz, 161101*, be granted. The substitute motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Wednesday, March 9, 2005

Ilya Meller, 219832

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division and directed staff to offer the petitioner a generous payment plan.

Steve Gonzalez Alfaro, 198278

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

Mr. Leonard and Ms. Mandel directed staff to ask the Department of Motor Vehicles to include sales tax reporting information on their form so dealers are informed that sales tax is due if a vehicle is picked up in California, even if the vehicle is exempt from VLF.

SALES AND USE TAX APPEALS HEARING

Ronald D. Moran, 136538

1-1-90 to 12-31-94, \$9,580.00 Claim for Refund

For Claimant: Appearance Waived

For Sales and Use Tax Department: Mark Woolston, Hearing Representative

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

Issues: Whether any portion of the claim is barred by the statute of limitations.

Whether claimant is entitled to a refund of sales tax paid on bank deposits determined as taxable gross receipts for the period in issue.

Whether claimant is entitled to a refund of the amount of penalties imposed for failure to file tax returns and for failure to timely pay the determination.

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

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD MARCH 8, 2005

Richard James Alonzo and Tama Guadalupe Cesin (a.k.a. Irma Alonzo), 246517

Final Action: Upon motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the measure of tax be reduced by 25 percent, otherwise redetermine as recommended by the Appeals Division.

LEGAL APPEALS MATTERS, CONSENT

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

Wednesday, March 9, 2005

Dactek International, Inc., 221385

4-1-99 to 12-31-01, \$16,715.40 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Kalfon Crafts Corporation, 236142

4-1-98 to 3-31-02, \$58,126.50 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

SV Holding, Ltd., 235830

1-1-99 to 12-31-01, \$47,980.60 Tax, \$4,798.12 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Malak Sajedeh and Mokhim Rasooli, 290742

August 24, 2004 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the cigarettes.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

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

Gwyne H. and Troy Alden, 265591

2000, \$1,743.68 Assessment

Action: Sustain the action of the Franchise Tax Board.

Lisa Crain, 224653

2000, \$1,739.00 Tax, \$434.75 Late Filing Penalty

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

Jeffrey D. Gerber, 261117

2001, \$20,213.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Donald R. Huntley, 255739

2001, \$2,156.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Shirley M. Longwell, 253674

Ronald A. Rehberg, 264008

1993, \$5,022.06 Assessment

1994, \$5,632.17 Assessment

Action: Modify the action of the Franchise Tax Board.

Wednesday, March 9, 2005

Edgil A. Reid, Jr., 253644

Donna Reid, 263286

2000, \$4,425.69 Assessment

Action: Sustain the action of the Franchise Tax Board.

Roland and Romaine Reese, 252111

1999, \$1,092.00 Tax, \$218.40 Accuracy Related Penalty

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

Matthew D. Strouss and Noelle Rogers, 267338

2000, \$457.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Richard Schotts, Jr., 253203

2000, \$12,702 Tax, \$6,350 Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Steven Unger and Linda LaFourcade, 262569

1999, \$15,787.00 Tax, \$3,157.40 Penalty

2000, \$7,154.00 Tax, \$1,430.80 Penalty

Action: Sustain the action of the Franchise Tax Board.

Roupen L. and Lilik Zakarian, 260587

2000, \$845.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

David Jenkins, 251232

1999, \$936.00 Assessment

Action: Deny the petition for rehearing.

Brian H. Pye, 253539

1994, \$1,715.02 Claim for Refund

Action: Deny the petition for rehearing.

John A. and Barbara J. Vertullo, 241944

1975, \$15,938.04 Claim for Refund

1978, \$22,915.00 Claim for Refund

Action: Deny the petition for rehearing.

Mounier Zaki, 250419

1997, \$1,290.00 Assessment

Action: Deny the petition for rehearing.

Wednesday, March 9, 2005

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

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

Darryl B. Matthews, 255093

2003, \$347.50

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

Diane McQueen, 262589

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

George Saylor, 273007

2003, \$1.00 or more

Maria Dolores Arvizo, 273008

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Tyrone G. Smith, 284181

2004, \$320.00

Action: Sustain the action of the Franchise Tax Board.

George R. St. Louis, 260766

2002, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Vickie Taylor, 268772

1999, \$240.00

Action: Sustain the action of the Franchise Tax Board.

Hsiao-chun L. Wang, 284206

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Melody Wasserman, 264524

2003, \$320.00

Action: Sustain the action of the Franchise Tax Board.

Terrell Williams, 264528

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Wednesday, March 9, 2005

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

With respect to the Sales and Use Tax Matters, Redeterminations, Denials of Claims for Refund and Denial of Relief of Penalty, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating in accordance with Government Code section 87105 in *Oracle Corporation, 249407*; Ms. Mandel not participating in accordance with Government Code section 87105 in *Wells Fargo Bank, 295043*; the Board made the following orders:

Pacific Bell Directory, 138573

4-1-98 to 12-31-98, \$71,231.55

Action: Approve the redetermination as recommended by staff.

Pacific Bell Directory, 219584

7-1-99 to 3-31-01, \$83,259.54

Action: Approve the redetermination as recommended by staff.

Canyon Pottery Company, Inc., 255760

10-1-00 to 9-30-03, \$96,365.22

Action: Approve the redetermination as recommended by staff.

Doctor's Signature Sales/Marketing International, 188163

10-1-98 to 9-30-01, \$50,606.76

Action: Approve the redetermination as recommended by staff.

United States Surgical Corporation, 261660

4-1-97 to 3-31-99, \$403,554.25

Action: Approve the redetermination as recommended by staff.

National Screen Service Group, Inc., 241073

7-1-00 to 9-30-00, \$176,504.00

Action: Approve the redetermination as recommended by staff.

Miami Computer Supply Corporation, 234232

4-1-98 to 3-31-01, \$212,142.31

Action: Approve the redetermination as recommended by staff.

Event Vehicles, Inc., 261649

7-1-00 to 6-30-03, \$498,159.94

Action: Approve the redetermination as recommended by staff.

Ace Lumber & Supply Company, Inc., 207667

4-1-99 to 3-31-00, \$717,969.44

Action: Approve the redetermination as recommended by staff.

Wednesday, March 9, 2005

Ace Lumber & Supply Company, Inc., 235389

4-1-00 to 4-28-02, \$100,890.37

Action: Approve the redetermination as recommended by staff.

KII Acquisition Company, 271404

2-21-00 to 12-31-02, \$119,400.09

Action: Approve the redetermination as recommended by staff.

Health Forum, 261173

1-1-00 to 12-31-02, \$62,092.47

Action: Approve the redetermination as recommended by staff.

Respironics, Inc., 245791

7-1-99 to 6-30-02, \$358,136.56

Action: Approve the redetermination as recommended by staff.

Willy Rodriguez, 209989

7-1-97 to 6-30-02, \$98,160.68

Action: Approve the redetermination as recommended by staff.

Wells Fargo Bank, 295043

1-1-95 to 9-30-98, \$129,434.05

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

Robert Harry Rosinski, 288177

7-1-91 to 5-15-93, \$71,899.43

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

Oracle Corporation, 249407

4-1-02 to 6-30-02, \$88,926.91

Action: Approve the denial of relief of penalty as recommended by staff. Mr. Chiang not participating in accordance with Government Code section 87105.

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating in accordance with Government Code section 87105 in *Johnson & Johnson Health Care System, 133497, 154316, 164155, 183240, 205738, 205740, 206491, 210277, 220261*; Ms. Mandel not participating in accordance with Government Code section 87105 in *Wells Fargo Bank, 294876, Ford Motor Company, 294321; Daimler Chrysler Corporation, 295151; Johnson & Johnson Health Care System, 133497, 154316, 164155, 183240, 205738, 205740, 206491, 210277, 220261*; and, *Echo Star Satellite Corporation, 243539, 260539*; the Board made the following orders:

Wednesday, March 9, 2005

Pacific Bell Directory, 173372

1-1-99 to 6-30-99, \$101,494.20

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

Port Stockton Food Distributor, Inc., 250478

7-1-99 to 6-30-02, \$160,635.68

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

Pacific Gas & Electric Company, 293242

4-1-99 to 6-30-99, \$1,220,939.98

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

Stolo Cabinets, Inc., 254660

10-1-00 to 12-31-03, \$293,238.14

Action: Approve the refund as recommended by staff.

University Center, Association of Students, 290389

4-1-01 to 6-30-04, \$96,405.27

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 290744

7-1-96 to 12-31-01, \$90,911.22

Action: Approve the refund as recommended by staff.

Wells Fargo Bank, 294876

1-1-95 to 9-30-98, \$71,312.41

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

Fresno Community Hospital, 294359

4-1-00 to 3-31-03, \$92,130.67

Action: Approve the refund as recommended by staff.

The Desert Sun Publishing Company, 293702

7-1-01 to 6-30-04, \$98,390.19

Action: Approve the refund as recommended by staff.

Architectural Doors, Inc., 293243

10-1-00 to 12-31-03, \$71,797.29

Action: Approve the refund as recommended by staff.

Guy Hill Cadillac, Inc., 251965

1-1-01 to 12-31-03, \$51,780.30

Action: Approve the refund as recommended by staff.

Wednesday, March 9, 2005

Professional Hospital Supply, Inc., 267641, 267642, 267643, 267644
4-1-01 to 3-31-04, \$161,192.74

Action: Approve the refund as recommended by staff.

Cardinal Health 301, Inc., 261018

7-1-02 to 3-31-04, \$85,949.56

Action: Approve the refund as recommended by staff.

American Material Management Alliance, Inc., 272107

4-1-01 to 3-31-04, \$115,618.55

Action: Approve the refund as recommended by staff.

Bank of the West, 285919

7-1-01 to 12-31-03, \$323,169.29

Action: Approve the refund as recommended by staff.

Altera Corporation, 294066

4-1-99 to 6-30-02, \$342,530.47

Action: Approve the refund as recommended by staff.

Regents of the University of California, 263597

4-1-01 to 3-31-04, \$960,804.77

Action: Approve the refund as recommended by staff.

Universal Instruments Corporation, 260535

10-1-01 to 9-30-03, \$95,118.57

Action: Approve the refund as recommended by staff.

Ford Motor Company, 294321

5-1-04 to 9-30-04, \$984,251.56

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

Daimler Chrysler Corporation, 295151

7-1-04 to 12-31-04, \$762,160.44

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

Mercedes-Benz USA, LLC., 287540

10-31-99 to 12-18-03, \$165,012.00

Action: Approve the refund as recommended by staff.

Zenith Insurance Company, 197511

7-1-99 to 12-31-02, \$101,795.45

Action: Approve the refund as recommended by staff.

Wednesday, March 9, 2005

BA Merchant Services, Inc., 193740, 208252, 225373

7-1-99 to 9-30-02, \$216,185.56

Action: Approve the refund as recommended by staff.

No Marketing, Inc., 272135

4-1-01 to 9-30-04, \$102,238.90

Action: Approve the refund as recommended by staff.

3Par Data, Inc., 294351

1-1-01 to 6-30-02, \$427,503.12

Action: Approve the refund as recommended by staff.

Greenpoint Credit, LLC., 171361

1-1-99 to 6-30-02, \$79,861.21

Action: Approve the refund as recommended by staff.

Unaxis USA, Inc., 265222

1-1-94 to 12-31-01, \$59,147.10

Action: Approve the refund as recommended by staff.

Intralase Corporation, 260847

3-1-01 to 12-31-03, \$159,174.97

Action: Approve the refund as recommended by staff.

Chemrx LLC., 198926

4-1-01 to 6-30-02, \$74,954.09

Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 259524, 249598, 252757

1-1-02 to 12-31-03, \$264,573.50

Action: Approve the refund as recommended by staff.

Bericap, LLC., 236976

5-1-02 to 6-30-02, \$75,944.90

Action: Approve the refund as recommended by staff.

Bombardier Capitol, Inc., 289291

4-1-04 to 6-30-04, \$63,645.52

Action: Approve the refund as recommended by staff.

Rossini Video Group, 244245

7-1-00 to 7-31-03, \$131,040.41

Action: Approve the refund as recommended by staff.

Wednesday, March 9, 2005

Mark Lloyd Hineser, 262554

10-1-01 to 12-31-03, \$57,530.52

Action: Approve the refund as recommended by staff.

Johnson & Johnson Health Care System, 133497, 154316, 164155, 183240, 205738, 205740, 206491, 210277, 220261

7-1-98 to 12-31-02, \$51,100.84

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

Arinc, Inc., 118922

1-1-98 to 3-31-01, \$202,188.61

Action: Approve the refund as recommended by staff.

Echo Star Satellite Corporation, 243539, 260539

1-1-01 to 12-31-03, \$146,900.71

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

Americredit Financial Service, Inc., 289316

7-1-03 to 9-30-03, \$1,803,453.96

Action: Approve the refund as recommended by staff.

Thermo Electron, LLC., 282344

4-1-04 to 6-30-04, \$51,648.53

Action: Approve the refund as recommended by staff.

Spear Technologies, Inc., 272100

4-1-03 to 3-31-04, \$68,194.53

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

The Insurance Corporation of New York, 265586

1-1-02 to 12-31-03, \$230,297.70

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

Wednesday, March 9, 2005

PacifiCare Life & Health Insurance Company, 272693

4-1-04 to 6-30-04, \$133,708.80

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

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

Mr. Chiang requested that the Legal Department prepare a cover letter for the Board Members when the Board will be expunging a previous meeting's vote explaining the reason this action is needed. This memo would be distributed with the Board Meeting materials.

Clayinvest, Inc., 249945

1997, \$427,627.77 Assessment

Considered by the Board: December 15, 2004

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Westly. No other disqualifying contributions were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that its previous motion of February 8, 2005 be expunged.

Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 15626, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Scott R. and Judith E. Martin, 253561

1999, \$9,399.00 Assessment

Considered by the Board: December 15, 2004

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

Action: Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that its previous motion of February 8, 2005 be expunged.

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Terry W. and Dawn W. Williamson, 241485

1993, \$4,228.56 Claim for Refund

Considered by the Board: December 15, 2004

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

Action: Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that its previous motion of February 8, 2005 be expunged.

Wednesday, March 9, 2005

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision reversing the action of the Franchise Tax Board.

Mercury General Corporation, 145450

1993, \$1,924,582.16 Assessment

1994, \$1,593,504.39 Assessment

1995, \$1,936,025.87 Assessment

1996, \$2,131,411.09 Assessment

Considered by the Board: June 25, 2003

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

Action: Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that its previous motion of February 8, 2005 be expunged.

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision granting the petition for rehearing.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

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

Action: Approve the 2004-05 Superior Accomplishment Award nominees (Exhibit 3.10).

Exhibits to these minutes are incorporated by reference.

SALES AND USE TAX APPEALS HEARINGS

Meza Family Enterprises, Inc., 198668

7-1-98 to 6-30-01, \$24,880.92 Tax

Meza Body Shop Supplies, Inc., 198715

10-1-98 to 6-30-01, \$20,093.44 Tax

For Petitioner:

Jose L. Manzano, Consultant

Jose R. Meza, Taxpayer

For Sales and Use Tax Department:

Sandy McCaleb, Hearing Representative

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

Issues: Whether the Sales and Use Tax Department has authority to establish the tax liability for each account on a test basis.

Whether any of the remaining errors found in the tests of sales for resale are in fact valid sales for resale.

Wednesday, March 9, 2005

Whether any of the remaining errors found in the tests of sales for resale should be deleted from the tests as non-recurring errors.

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

Dennert Garage Door Company, Inc., 168676

10-1-97 to 9-30-00, \$00.00 Tax, \$32,900.82 Negligence Penalty

For Petitioner: Walter Weiss, Attorney
Kim (Dennert) May, Taxpayer

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

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

Issue: Whether the 10 percent negligence penalty was properly imposed.

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

Loma Linda Mercantile, 51647

7-1-97 to 12-31-02, \$532,166.20 Claim for Refund

For Claimant: Glenn Bystrom, CPA
Suzanne Beaudelaire, CPA

For Sales and Use Tax Department: Jeffrey Graybill, Tax Counsel

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

Issue: Whether overhead expenses incurred on behalf of claimant by claimant's affiliate company are properly includable in the taxable measure of gross receipts for sales tax purposes.

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

E S K Inc., 135362

10-1-96 to 9-30-99, \$61,565.78 Tax, \$00.00 Penalty

For Petitioner: Terry E. Stept, CPA

For Sales and Use Tax Department: Mark Woolston, Hearing Representative

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

Issues: Whether the evidence supports further adjustments to the audited taxable sales.
Whether the evidence supports further adjustments for taxable self-consumption of merchandise.

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

The Board recessed at 11:55 a.m. and reconvened at 1:00 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Wednesday, March 9, 2005

Marco A. Sanchez, 89000214800

10-1-92 to 12-31-96, \$35,956.81 Tax, \$3,783.64 Negligence Penalty

For Petitioner: Patrick Leone, Accountant
Marco A. Sanchez, Taxpayer

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

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

Issues: Whether petitioner is entitled to additional adjustments to the remaining unreported taxable sales of vehicles.

Whether the statute of limitations bars the determination for periods prior to July 1, 1995.

Whether the negligence penalty is applicable.

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

Mr. Chiang directed the conference holder to submit to the Board Members as documentary evidence the basis by which he included the statement "we take trade-ins."

Dennis Bruno, 15042

1-1-93 to 12-31-96, \$1,430.92 Tax, \$212.96 Negligence Penalty

For Petitioner: Patrick Leone, Accountant
Dennis Bruno, Taxpayer

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

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

Issues: Whether the statute of limitations for periods prior to January 1, 1995 had expired prior to the issuance of the Notice of Determination.

Whether the evidence warrants further adjustments to the audited taxable sales.

Whether the negligence penalty was properly imposed.

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

Everett Chas Technologies, Inc., 187467, 246250

4-1-99 to 12-31-99, \$82,053.54 Tax

1-1-00 to 6-30-02, \$68,006.25 Tax

For Petitioner: Brian E. Gledhill, Attorney
John Allen, Representative

For Sales and Use Tax Department: Jeffrey Graybill, Tax Counsel

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

Issue: Whether petitioner's claimed nontaxable sale to Multek was properly disallowed.

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

Wednesday, March 9, 2005

Edison Source, 208634, 208952

10-1-98 to 12-31-01, \$58,058.78 Tax

10-1-98 to 12-31-01, \$501,000.00 Claim for Refund

For Petitioner: Rick Richman, Representative
Arthur Tomura, Taxpayer

For Sales and Use Tax Department: Brad Heller, Tax Counsel

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

Issue: Whether petitioner made a taxable sale of tangible personal property, and if so, whether the measure of tax was correctly computed by the Sales and Use Tax Department.

Action: Mr. Parrish moved that the petition be redetermined with adjustments. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Ms. Mandel moved that the petition be granted. The motion was seconded by Mr. Chiang but failed to carry, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish, Mr. Leonard and Ms. Yee voting no.

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

Western Materials, LLC, 245621

1-1-00 to 12-31-02, \$110,724.90 Tax

For Petitioner: Brian Nisenholtz, Representative
Roderick Calub, Representative
John Montazeri, Taxpayer

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

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

Issue: Whether delivery charges claimed as sales for resale are subject to sales tax.

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

Rodgers & McDonald Publishers, Inc., 195682

7-1-98 to 6-30-01, \$52,329.87 Tax

For Petitioner: David Rush, Representative
David Leslie, Representative

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

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

Issues: Whether the evidence shows that the disallowed sales for resale were in fact valid sales for resale.

Whether petitioner received misinformation qualifying for relief under Revenue and Taxation Code section 6596.

Whether the evidence supports further adjustments to the difference established between recorded and reported sales tax reimbursement.

Wednesday, March 9, 2005

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

Quality Auto Brokers, Inc., 220313

1-1-98 to 12-31-00, \$31,163.87 Tax, \$5,158.01 Negligence Penalty

For Petitioner: Patrick Leone, Accountant
John Mussari, Taxpayer

For Sales and Use Tax Department: Anthony Epolite, Tax Counsel

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

Issues: Whether the Sales and Use Tax Department properly disallowed claimed nontaxable sales for resale and exempt sales or the measure of tax is excessive.

Whether the estimated unreported taxable sales based on missing Department of Motor Vehicles (DMV) Report of Sales (ROS) slips is excessive.

Whether petitioner was negligent.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard 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.

Ms. Mandel requested the department to find out what Department of Motor Vehicles (DMV) is generally telling dealers about what to do with the Report of Sales (ROS) issued to them. And, specifically, what DMV is telling dealers to do with the ROS on unwind transactions (i.e., whether DMV is telling dealers to destroy documentation on unwinds).

Luis Eduardo Gil, 163980

10-1-98 to 12-31-00, \$18,316.89 Tax, \$00.00 Penalty

For Petitioner: Joaquin Chacon, Representative
Luis Gil, Taxpayer

For Sales and Use Tax Department: Sandy McCaleb, Hearing Representative

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

Issue: Whether the audited understatement includes sales of vehicles not occurring during the audit period.

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

Aadvantage Airwaves, Inc., 220986

7-1-98 to 12-31-01, \$40,311.20 Tax

For Petitioner: Jeff Gleckman, Taxpayer

For Sales and Use Tax Department: Sandy McCaleb, Hearing Representative

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

Wednesday, March 9, 2005

Issues: Whether an adjustment to the measure of tax is warranted due to a change in audit methodology.

Whether the audited cost of goods sold should be reduced to account for employee theft.

Whether a portion of the accrued interest should be relieved due to an unreasonable error or delay on the part of a Board employee.

Action: Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the taxable measure be reduced by 15 percent, otherwise redetermine as recommended by the Appeals Division.

Danny Daytona, 140907

7-1-96 to 6-30-00, \$20,571.98 Tax, \$00.00 Negligence Penalty

For Petitioner: Gary Amico, Representative
Danny Daytona, Taxpayer

For Sales and Use Tax Department: Anthony Epolite, Tax Counsel

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

Issues: Whether petitioner is entitled to relief based on erroneous advice he claims to have received from the DMV.

Whether the average selling price of \$754 applied to certain sales of vehicles is excessive.

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

F. Hamisch, Inc., 238538

10-1-99 to 6-30-02, \$49,011.98 Tax

For Petitioner: Fred Hamisch, Taxpayer
Deborah R. Bender, CPA

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

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

Issue: Whether petitioner properly claimed the partial exemption under section 6356.5 for its use of property in the performance of lump-sum construction contracts to furnish and install farm irrigation systems for its farmer-customers.

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

Professional Growers, Inc., 251498

7-1-99 to 6-30-02, \$25,463.30 Tax

For Petitioner: Michael L. Caplinger, CPA
Kurt Swainston, Attorney

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

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

Wednesday, March 9, 2005

Issues: Whether petitioner is liable for use tax on its purchase price for containers and stakes purchased for resale and used in its growing operations.

Whether petitioner's crane charges are subject to tax.

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

John N. Bozanich, 235827

4-1-99 to 6-30-99, \$00.00 Tax, \$10,146.02 Tax Evasion Penalty

Ann L. Bozanich, 235829

4-1-99 to 6-30-99, \$00.00 Tax, \$10,146.02 Tax Evasion Penalty

For Petitioner: John Bozanich, Taxpayer
Ann Bozanich, Taxpayer

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

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

Issue: Whether the 50-percent penalty under Revenue and Taxation Code section 6485.1 for attempting to evade the payment of California use tax with respect to the purchase of a vehicle outside California is applicable.

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

Diane Eisenhauer, 203826

10-1-94 to 12-31-99, \$205,165.04 Tax, \$51,291.34 Fraud Penalty

For Petitioner: Brian Nisenhotz, Representative
James Han, Representative
Diane Eisenhauer, Taxpayer
Dustin Eisenhauer, Witness

For Sales and Use Tax Department: Brad Heller, Tax Counsel

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

Issue: Whether petitioner has met her burden of establishing that she is entitled to relief as an innocent spouse or to other equitable relief.

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

PUBLIC COMMENT

Speakers: Donald E. Williamson, San Bernardino County Assessor, made remarks regarding the 2 percent annual inflation adjustment on properties reconstructed following a disaster.
Destin Seferat, a San Bernardino County Property Owner

Wednesday, March 9, 2005

Mr. Parrish directed staff to bring the issue of the application of the Proposition 13 annual inflation adjustment to properties reconstructed following a disaster, to the April 12, 2005 Sacramento Board meeting's Property Tax Committee for discussion.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MARCH 9, 2005

Hamid Samiei, 168227

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

Meila R. Reyes, 152298

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the finality penalty be deleted.

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

Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the monies be collected from *Hamid Samiei, 168227*, before trying to collect from petitioner (*Meila R. Reyes, 152298*).

Loma Linda Mercantile, 51647

Final Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Yee voting no, the Board ordered that the claim be granted.

E S K Inc., 135362

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

Marco A. Sanchez, 89000214800

Final Action: Mr. Parrish moved that the petition be granted. The motion failed for lack of a second.

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the negligence penalty be deleted, otherwise redetermine as recommended by the Appeals Division.

Dennis Bruno, 15042

Final Action: Mr. Parrish moved that the petition be granted. The motion failed for lack of a second.

Wednesday, March 9, 2005

Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the negligence penalty be deleted, otherwise redetermine as recommended by the Appeals Division.

Mr. Leonard requested that if the Appeals Division recommends a substantial reduction in the deficiency, the summary for Board hearing should, when appropriate, include the finding by the Appeals Division as to the reason the Department asserted an excess amount of tax due at the Appeals conference.

Mr. Leonard requested information on the Board of Equalization's process to obtain a search warrant and who authorizes them.

Dennert Garage Door Company, Inc., 168676

Final Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. Mr. Parrish made a substitute motion to delete the negligence penalty. The substitute motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no, Mr. Leonard abstaining.

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

Everett Chas Technologies, Inc., 187467, 246250

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

Edison Source, 208634, 208952

Final Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel voting no, the Board ordered that the petition be granted and the claim for refund be denied.

Western Materials, LLC, 245621

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

SALES AND USE TAX APPEALS HEARING

Steven Wiener, 171101

7-1-98 to 12-31-00, \$70,255.86 Tax, \$00.00 Penalty

For Petitioner: Appearance Waived

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

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

Issue: Whether the determination is excessive.

Wednesday, March 9, 2005

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

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MARCH 9, 2005

Rodgers & McDonald Publishers, Inc., 195682

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

Meza Family Enterprises, Inc., 198668

Meza Body Shop Supplies, Inc., 198715

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

Luis Eduardo Gil, 163980

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

Danny Daytona, 140907

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

F. Hamisch, Inc., 238538

Final Action: Ms. Yee moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Mandel. Mr. Leonard made a substitute motion that the petition be granted. The substitute motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

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

Professional Growers, Inc., 251498

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish abstaining, Mr. Chiang not participating in accordance with Government Code section 15626, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Wednesday, March 9, 2005

John N. Bozanich, 235827

Ann L. Bozanich, 235829

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

Diane Eisenhower, 203826

Final Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. Mr. Parrish made a substitute motion that the petition be granted. The substitute motion failed for lack of a second.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division and directed staff to collect from the husband for one year before pursuing the petitioner. The Board also directed the petitioner be informed of the Amnesty program.

The following cases were voluntarily postponed to a later date: *Cosmos Medical Technology, Inc.*, 198974; *Liquid Partyworks, Inc.*, 207939; *Inter Export Trading Corporation*, 149794; *Kevin Michael Mehegan and Lorraine Mehegan (dec)*, 249876; *Kevin Michael Mehegan*, 249874; *Modern Mold International, Inc.*, 46790, 151920; *Internet Design Technologies, LLC*, 104735, 202260; and, *Philip Werbin and Leonard Werbin*, 185789.

The Board adjourned at 6:25 p.m.

The foregoing minutes are adopted by the Board on May 25, 2005.

Note: The following cases were removed from the calendar prior to the meeting: *M C Y III Corporation*, 218314; *Jahangir Toughian and Leon Leontin Salajan*, 219434; *Action Boats, Inc.*, 241957; *Rimoun A. Nunez*, 157736; and, *Stanley Gene Lorentzen*, 89000966070, 89000966080.

Wednesday, March 9, 2005