

**Tuesday, March 22, 2005**

The Board met at its offices at 450 N Street, Sacramento, at 11:01 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 HEARING**

Reel Tape Corporation, 166633

10-1-97 to 9-30-00, \$8,331.85 Tax, \$00.00 Penalty

For Petitioner: Stan Braidman, Taxpayer  
Joe Leifer, Consultant

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

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

Issues: Whether petitioner is entitled to additional adjustments for sales for resale.  
Whether the nonreturnable container exemption applies.

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 gum paper tape of Confidence Gall be excluded.

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.

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

Hocopar, Inc. & Consolidated Subsidiaries, 223807

1997, \$634,412.31 Assessment, \$126,882 Penalty

For Appellant: Alan J. Pinner, Attorney  
Aaron M. Valenti, Attorney

For Franchise Tax Board: Michael Smalley, Tax Counsel

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

Issue: With respect to the "accrued but unpaid interest" portion of the non-recourse debt on property transferred to a mortgage holder via a deed in lieu of foreclosure in 1997, has appellant established that the realized income attributable to such interest constituted debt-discharge income that is excludable from income in the case of insolvency under Internal Revenue Code section 108 or, in the alternative, gain from the sale or other disposition of such property to which Internal Revenue Code section 108 is inapplicable.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.11)

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 submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

John E. and Sharon A. Tyson, 221998

1996, \$480,997.00 Assessment

For Appellant: Dwayne M. Horii, Attorney  
Hilary C. Kingston, Attorney  
Eric Miethke, Attorney  
John E. Tyson, Taxpayer

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For Franchise Tax Board: Ron Babcock, Tax Counsel  
 Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
 Issue: Whether appellants have shown respondent erred in its determination that appellant-husband received a taxable interest in a limited liability company.  
 Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.12)  
 Respondent's Exhibit: Miscellaneous Documents (Exhibit 3.13)  
 Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board reversed the action of the Franchise Tax Board.

**Alan F. and Rita K. Shugart, 221743**

1988, \$10,104.77 Claim for Refund  
 1990, \$118,851.99 Claim for Refund  
 1991, \$87,290.93 Claim for Refund  
 1992, \$193,161.42 Claim for Refund  
 1993, \$169,903.62 Claim for Refund  
 1994, \$110,426.26 Claim for Refund

For Claimant: Christopher A. Whitney, CPA  
 For Franchise Tax Board: Jozel Brunett, Tax Counsel  
 Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.  
 Issue: Whether or not the Franchise Tax Board abused its discretion in determining that appellant was not entitled to abatement of accrued interest under Revenue and Taxation Code section 19104.  
 Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.14)  
 Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel voting no, the Board reversed the action of the Franchise Tax Board.<sup>1</sup>

The Board recessed at 12:13 p.m. and reconvened at 1:30 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

**Alan F. and Rita K. Shugart, 221743**

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered the appeal be submitted for written opinion reversing the action of the Franchise Tax Board. 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.

**Paul and Kathleen Sarkaria, 266328**

1998, \$22,756 Assessment  
 For Appellant: Tom Collins, CPA  
 For Franchise Tax Board: Renel Sapiandante, Tax Counsel  
 Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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<sup>1</sup> Additional action was taken immediately following the break.

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Issue: Whether appellants have shown that they are entitled to deduct expenses paid by appellant-husband's bankruptcy estate on behalf of the bankruptcy estate  
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 submitted the appeal for decision.

John David Lundberg, 255354

1996, \$20,645.00 Assessment, \$5,056.00 Late Filing Penalty

For Appellant: John David Lundberg, Taxpayer

For Franchise Tax Board: Diane Ewing, Tax Counsel

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

Issues: Whether or not the Notice of Proposed Assessment is barred by the statute of limitations.

Whether or not appellant has established good cause to abate the late filing penalty.

Whether or not the Franchise Tax Board abused its discretion in determining that appellant was not entitled to abatement of accrued interest under Revenue and Taxation Code section 19104.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.15)

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 submitted the appeal for decision.

### SALES AND USE TAX APPEALS HEARINGS

International Investment Properties, Inc., 144677

7-1-98 to 12-31-00, \$65,847.17 Tax, \$7,024.61 Negligence and \$7,024.61 Finality Penalties

For Petitioner: Dale Grewal, CPA

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

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

Issues: Whether the audited ratio of taxable to total store merchandise purchases is excessive.

Whether the evidence warrants further adjustments to the audited taxable store markup.

Whether the evidence supports lowering the tax liability because taxpayer asserts it was initially informed by the Department that the tax liability was approximately \$57,000.

Whether the negligence penalty was properly applied.

Whether relief from the penalty for failure to timely pay the determination (finality penalty) is warranted.

Action: The Board postponed this matter for 60 days.

Jerry Rosenbusch, 215133

3-1-01 to 7-1-02, \$53,220.00 Tax, \$00.00 Negligence Penalty

For Petitioner: William Dysart, Attorney

Ralph J. Pribble, Representative

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For Sales and Use Tax Department: Jeffrey Graybill, Tax Counsel  
 Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
 Issue: Whether petitioner owes use tax on the purchase price of the vessel rather than on rental receipts.  
 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.

**Herman V. and Catherine E. DeVera, 216621**

1-12-95 to 4-12-95, \$00.00 Tax, \$00.00 Failure to File Penalty  
 For Petitioner: Herman V. DeVera, M.D., Taxpayer  
 For Sales and Use Tax Department: Jeffrey Graybill, Tax Counsel  
 Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
 Issue: Whether petitioners are entitled to relief of interest.  
 Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Division and directed staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief for the entire period filed by the taxpayer.

**Thanhtam Thi Pham, 169954**

1-1-98 to 6-30-01, \$94,793.71 Tax, \$23,698.49 Fraud Penalty  
 For Petitioner: Peter Liederman, Attorney  
 Chi Pham, Manager  
 Thunh Tam Pham, Taxpayer  
 For Sales and Use Tax Department: Kevin Hanks, Hearing Representative  
 Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
 Issues: Whether the evidence shows that the audited taxable sales are excessive.  
 Whether the fraud 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.

The Board recessed at 3:06 p.m. and reconvened at 3:14 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

**PUBLIC HEARING**

**Adoption of Proposed Special Taxes Regulations 1160, 1214, 1331.2, 1425, 2232.1, 2333, 2425, 2520, 3005, 3203, 3303, 3503, 4031.1, and 4905 pertaining to Electronic Funds Transfer**

Janice Thurston, Assistant Chief Counsel, Business Taxes Division, Legal Department, made introductory remarks regarding the proposed regulation regarding requirements for Electronic Funds Transfer reporting, (Regulation 4905, Electronic Funds

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Transfer), and proposed regulations to cross refer tax and fee payers to proposed Regulation 4905 for information on payments by Electronic Funds Transfer (Regulations 1160, 1331.2, 4031.1, 2520, 2333, 2425, 3005, 3303, 2232.1, 1214, 3203, 3503, and 1425, Payment by Electronic Funds Transfer) (Exhibit 3.16).

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 adopted Regulations 1160, 1331.2, 4031.1, 2520, 2333, 2425, 3005, 3303, 2232.1, 1214, 3203, 3503, and 1425, *Payment by Electronic Funds Transfer*, and Regulation 4905, *Electronic Funds Transfer*.

### **LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Bosch Auto Center, Inc., 150660*.

With respect to the Legal Appeals Matters Consent Agenda, upon a single 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 made the following orders:

**ABC NJ, Inc., 150661**

3-2-97 to 3-31-00, \$3,960.48 Tax, \$00.00 Negligence Penalty

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

**Bosch Auto Center, Inc., 150660**

1-1-97 to 3-31-00, \$125,974.27 Tax, \$36,972.31 Negligence Penalty

Action: The Board deferred consideration of this matter.

**Bentec Medical, 223786**

1-1-99 to 6-30-02, \$49,880.16 Tax

Action: Redetermine as recommended by the Appeals Division.

**Albert Mark Garcia, 258850**

1-1-01 to 6-1-02, \$4,489.89 Tax

Action: Redetermine as recommended by the Appeals Division.

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

The Board deferred consideration of the following matter: *Azer B. Dauz, 263189*.

With respect to the Corporate Franchise and Personal Income Tax 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 orders:

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Saun Hwa Baek, 266621

1996, \$14,519.00 Tax, \$2,903.80 Accuracy Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Jack Clemes, 263263

2000, \$51.54 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Christopher Craddock and Glenda Heugh, 260886

1998, \$1,800.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Azer B. Dauz, 263189

2001, \$708.00 Assessment

Action: The Board took no action.

Thom Espinosa, 254902

2001, \$731.00 Tax, \$182.75 Failure to Provide Information Penalty

Action: Sustain the action of the Franchise Tax Board.

Debra Ann Miller, 255136

1990, \$266.40 Assessment

Action: Modify the action of the Franchise Tax Board.

Patricia Ann Thompson, 264060

1997, \$417.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Leonard M. and Merri Jean Ross, 203280

1997, \$46,979.00 Claim for Refund

Action: Deny the petition for rehearing.

Roy Eugene Tuckman, 245871

2002, \$1.00 or more Claim for Refund

Action: Deny the petition for rehearing.

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

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

Pamela Selahvarzi, 268777

2002, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Carter Spikes, 284183

2004, \$347.00

Action: Sustain the action of the Franchise Tax Board.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish not participating in *Pacific Ford, Inc., 296624*, the Board made the following orders:

Long Beach Cable, Inc., 138564

7-1-97 to 6-30-00, \$363,983.25

Action: Approve the redetermination as recommended by staff.

Electronics for Imaging, Inc., 263003

4-1-99 to 3-31-02, \$212,886.01

Action: Approve the redetermination as recommended by staff.

Costco Wholesale Membership Company, 214651

2-14-00 to 3-18-01, \$7,326,518.32

Action: Approve the redetermination as recommended by staff.

Pacific Ford, Inc., 296624

7-1-03 to 9-30-03, \$83,295.80

Action: Approve the relief of penalty as recommended by staff. Mr. Parrish not participating.

Sun Microsystems, Inc., 296728

8-1-04 to 8-31-04, \$71,564.64

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

Schmid Insulation Contractors, Inc., 297606

1-1-02 to 6-30-02, \$150,301.30

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

Kimberly-Clark Worldwide, Inc., 296563

1-1-99 to 12-31-01, \$104,144.97

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

Reuben David Chudy, 234699

1-1-92 to 12-31-97, \$230,000.00

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

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

(Motion expunged.)

Upon 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 ordered that its previous motion with respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, be expunged.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish not participating, the Board made the following orders:

**Powell Electrical Manufacturing Company, 297871**

1-1-04 to 3-31-04, \$79,289.98

Action: Approve the credit and cancellation as recommended by staff. Mr. Parrish not participating.

**Essentially Yours Industry Corporation, 297552**

1-1-00 to 12-31-00, \$60,992.58

Action: Approve the credit and cancellation as recommended by staff. Mr. Parrish not participating.

**Warner Brothers Records, Inc., 296452**

4-1-98 to 12-31-01, \$218,475.94

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

**Los Robles Regional Medical Center, 254857, 262505**

10-1-00 to 12-31-03, \$193,905.90

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

**Schmid Insulation Contractors, Inc., 213933**

1-1-02 to 6-30-02, \$59,857.44

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

**Stanford University, 290059**

4-1-99 to 9-30-03, \$72,161.78

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

**Cypress Semiconductor Corporation, 185468**

3-31-98 to 6-30-00, \$104,729.37

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

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Buth-Na-Bodhaige, Inc., 252760

10-1-00 to 12-31-02, \$65,466.28

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

Mercedes-Benz USA, LLC, 295414

3-1-01 to 4-21-04, \$125,227.00

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

Kimberly-Clark Worldwide, Inc., 284746

1-1-99 to 12-31-01, \$207,846.77

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

O'Gara Coach Company, LLC, 295737

4-1-04 to 9-30-04, \$82,063.35

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

RMC Pacific Materials, Inc., 295619

4-1-00 to 12-31-02, \$58,081.53

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

TV Magic, Inc., 288515

1-1-00 to 6-30-03, \$51,168.29

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

Delaware Mitchell International, Inc., 261315

1-1-01 to 12-31-03, \$131,418.19

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

Tutor-Saliba Corporation, 296611

1-1-01 to 6-30-04, \$407,899.83

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

**SPECIAL TAXES MATTERS, REDETERMINATIONS, CONSENT**

With respect to the Special Taxes Matters, Redeterminations, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 87105, the Board made the following orders:

Home Depot U.S.A., Inc., 261591

1-1-91 to 12-31-93, \$130,236.53

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

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Home Depot U.S.A., Inc., 261622

1-1-96 to 12-31-99, \$205,866.63

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

### **SPECIAL TAXES MATTERS, REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Home Depot, U.S.A., Inc., 240279*; and, in accordance with Government Code section 7.9 in *Americo Financial Life & Annuity Insurance, 217326*, the Board made the following orders:

Home Depot, U.S.A., Inc., 240279

1-1-97 to 12-31-98, \$140,454.10

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

Americo Financial Life & Annuity Insurance, 217326

1-1-98 to 12-31-98, \$78,753.90

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

### **LEGAL APPEALS MATTERS, ADJUDICATORY**

David M. Golumbic, 216561

6-1-96 to 3-3-1-01, \$1,602.00 Tax, \$00.00 Failure to File Penalty

Considered by the Board: September 21, 2004

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

Action: Mr. Parrish moved that the disputed measure of tax be reduced to \$16,698.00 due to a possible mathematical error and that the petition for rehearing be denied. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, and Ms. Yee voting no, Ms. Mandel not participating.

Upon motion of Ms. Yee, seconded by Mr. Chiang and duly carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Mr. Parrish voting no, Ms. Mandel not participating, the Board ordered that the petition for rehearing be denied.

James Harper, 240351

7-1-01 to 9-30-02, \$131,695.70, \$895.73 Penalty

Considered by the Board: January 25, 2005

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

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Action: 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 that the petition be postponed. The Board requested a memorandum from staff in 90 days advising the status of the related matter of System Control Technologies, Inc. (SCT). The memo should indicate whether SCT is ready for Board hearing or, remains in settlement, and remind the Board that it is withholding action on the Harper matter pending settlement negotiations in SCT.

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

Elizabeth Montes, 224954

Dennis Arthur Speldrick, 225542

1997, \$1,043.94 Assessment

Considered by the Board: January 25, 2005

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

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

Richard and Lori Randall, 260104

1992, \$113,600.00 Assessment

Considered by the Board: December 14, 2004

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

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 adopted a decision modifying the action of the Franchise Tax Board as recommended by staff.

Susan Lynne Sabin, 260586

1992, \$3,102.90 Claim for Refund

1993, \$878.75 Claim for Refund

1994, \$3,123.99 Claim for Refund

1995, \$10,303.13 Claim for Refund

1996, \$8,284.90 Claim for Refund

1997, \$175.00 Claim for Refund

1998, \$6,872.75 Claim for Refund

Considered by the Board: January 25, 2005

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

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Mr. Chiang voting no, Ms. Mandel not participating, the Board adopted a decision sustaining the action with concession of the Franchise Tax Board to refund the 1998 amount and directed staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer for years 1992 to 1997.

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**James and Jean A. Bagley, 217274**

1994, \$436,394.00 Assessment

1995, \$214,272.00 Assessment

1996, \$525,255.00 Assessment

1997, \$57,700.00 Assessment

Considered by the Board: June 30, 2004

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

Action: Mr. Parrish moved that the Board's ruling be modified to make the taxpayers Texas residents during the entire audit period and deny the petition for rehearing. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel voting no, Ms. Yee abstaining.

Mr. Parrish moved that the Board's ruling be modified to make the taxpayers Texas residents during the audit period until June 1, 1996 and deny the petition for rehearing.

Ms. Mandel made a substitute motion that the petition for rehearing be granted for years 1995 to 1997 and directed the Franchise Tax Board to provide briefing as to evidence of a tax shelter.

The substitute motion was seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes.

**SALES AND USE TAX MATTERS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, ADJUDICATORY****Valero Marketing & Supply Company, 286662**

12-1-03 to 6-30-04, \$10,308,359.40

Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the relief of penalty as recommended by staff.

**South Bay Ford, Inc., 286141**

1-1-03 to 6-30-03, \$112,332.50

Presented for Separate Discussion

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

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 approved the relief of penalty as recommended by staff.

**Centellax, Inc., 250575**

12-1-01 to 6-30-02, \$56,408.42

Considered by the Board: January 25, 2005

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

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

## **PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

### **Audits**

#### **Foresthill Telephone Company (235)**

2001-2004, \$1,616,000.00 Escaped Assessment, \$187,000.00 Penalties, \$435,660.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard 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 adopted the audit escaped and excessive assessment, plus penalties and in-lieu interest, as recommended by staff.

#### **CALNEV Pipe Line, LLC (402)**

2002, \$2,200,000.00 Excessive Assessment

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard 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 adopted the audit excessive assessment as recommended by staff.

#### **Global Tel\*Link Corporation (7988)**

1999-2004, \$4,254,700.00 Escaped Assessment, \$1,060,675.00 Penalties, \$907,404.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard 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 adopted the audited escaped assessment, plus penalties and in-lieu interest, as recommended by staff.

### **Board Roll Changes**

#### **2003 and 2004 State-Assessed Property Rolls**

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard 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 approved corrections to the 2003 and 2004 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 3.17).

## **CHIEF COUNSEL MATTERS**

### **RULEMAKING—ADMINISTRATION**

#### **Petition to amend the Rules of Practice**

Jean Ograd, Acting Chief Counsel, Legal Department, made introductory remarks regarding the petition to amend the Rules of Practice regarding: (1) the granting of additional time for oral hearings in complex or significant cases; (2) the order of oral hearings on the Board's agenda; and (3) the publishing of Board Opinions (Exhibit 3.18).

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Speaker: Dave Doerr, Cal Tax

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 referred this matter to the Customer Services and Administrative Efficiency Committee for discussion.

**RULEMAKING—SALES AND USE TAX**

**Petitions to Amend or Repeal subdivision (h), “Buying Companies-General” of Sales and Use Tax Regulation 1699, Permits**

Janice Thurston, Assistant Chief Counsel, Business Taxes Division, Legal Department, made introductory remarks regarding the petitions to amend or repeal subdivision (h), “Buying Companies-General” of Sales and Use Tax Regulation 1699, Permits (Exhibit 3.19).

Speakers: David Silberman, Deputy County Counsel, San Mateo County  
 Jean Alexander, Deputy City Attorney, San Francisco County  
 Shawn P. Kelly, Senior Investigator, San Francisco City Attorney  
 Todd Rydstrom, Director of Budget and Analysis, San Francisco City and County Controller’s Office  
 Alan B. Wayne, Director of Governmental/Public Affairs, United Airlines and Air Transport Association  
 Kathy Rees, Southwest Airlines  
 Erika Frank, Legislative Advocate, California Chamber of Commerce  
 Pat Leary, Legislative Representative, California State Association of Counties

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the matter for decision later in the day.

**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 orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 3.20).

Robert Sayre, Business Taxes Specialist I, Sacramento District Office  
 Janet M. Tankersley, Manager, Business Services Section, Administrative Support Division, Administration Department, Headquarters

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Carl E. Vandrie, Supervising Property Appraiser, Timber Tax Section, County Property Tax Division, Property and Special Taxes Department, Headquarters  
Rayvella (Raye) M. Zentner, Deputy Director, Administration Department, Headquarters

Action: Approve the Board Meeting Minutes of November 17, 2004, December 14-15, 2004 and January 25, 2005.

Action: Approve Board meeting date changes as follows: Change October 18-19 (Sacramento) to October 25-26; change November 8-9 (Sacramento) to November 15-16; and, change November 16 (San Diego) to November 8 (Exhibit 3.21).

#### **BOARD COMMITTEE REPORT**

##### **Property Tax Committee**

Action: Upon motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Property Tax Committee report (Exhibit 3.22). Ms. Mandel noted for the record that she would not approve Item 1 of the Property Tax Committee report.

#### **OTHER ADMINISTRATIVE MATTERS**

##### **Executive Director's Report**

Ramon Hirsig, Executive Director, introduced Larry Bergkamp, Board of Equalization's Streamlined Sales Tax Coordinator, who was available to answer questions regarding the report on the Streamlined Sales Tax Project (Exhibit 3.23).

Mr. Leonard requested the Board to place the Streamlined Sales Tax Project on hold absent some leadership and direction from the legislature or Governor.

Ms. Yee added that the topic of the ongoing level of activity should be discussed at the next Board of Governance meeting. In addition, Ms. Yee requested staff to consult the author of SB 157 for input.

##### **Contracts Over \$1 Million**

Raye Zentner, Deputy Director, Administration Department, made introductory remarks regarding the approval of routine renewals of interagency agreements that expire June 30, 2005 (Exhibit 3.24).

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 approved the contract for Stephen P. Teale Data Center.

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The Board deferred consideration of the contract for the Department of Motor Vehicles to the next Sacramento meeting, and directed staff to provide information on whether it would be appropriate to include the Board's request for Report of Sales information in this contract.

### **Finance Letter**

Raye Zentner, Deputy Director, Administration Department, made introductory remarks regarding the approval of 2005-06 Finance Letter No. 4, Special Tax Jurisdictions Workload Increase (Exhibit 3.25).

Action: 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 approved Finance Letter No. 4, Special Tax Jurisdictions Workload Increase as recommended by staff.

### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD MARCH 22, 2005**

#### **Hocopar, Inc. & Consolidated Subsidiaries, 223807**

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 ordered that the penalty be relieved, otherwise sustained the action of the Franchise Tax Board.

#### **Paul and Kathleen Sarkaria, 266328**

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.

#### **John David Lundberg, 255354**

Final Action: Ms. Mandel moved that the Franchise Tax Board be sustained. Mr. Parrish made a substitute motion that the late-filing penalty be relieved, otherwise sustained the action of the Franchise Tax Board. The substitute 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.

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 sustained the action of the Franchise Tax Board.

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

#### **Douglas C. Roberts, 264021**

2001, \$978.50 Tax, \$244.50 Late Filing Penalty, \$249.00 Failure to File Penalty

For Appellant: Appearance Waived

For Franchise Tax Board: Christine Roloff, Tax Counsel

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

Issues: Whether appellant has shown that respondent incorrectly determined the amount of his income for 2001.

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Whether appellant has shown that he was not required to file a tax return for 2001.

Whether appellant has shown that he had “reasonable cause” for his failure to file upon notice and demand.

Whether a frivolous appeal penalty should be imposed against appellant.

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.

### **SALES AND USE TAX APPEALS HEARINGS**

**Prestige Stations, Inc., 181580, 264789**

7-1-94 to 12-17-97, \$373,012.00 Claim for Refund

For Petitioner: Appearance Waived

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

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

Issues: Whether claimant is entitled to a refund of the amount of tax it reported and paid in excess of the amount of sales tax reimbursement it collected using the tax brackets specifically authorized by Civil Code section 1656.1.

Whether the amount of the claim for refund is accurate.

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.

**Atlantic Richfield Company, 181606**

4-1-94 to 12-17-97, \$00.00 Tax, \$00.00 Penalty

For Petitioner: Appearance Waived

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

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

Issue: Whether the software purchased from MSI consists of custom computer programs or prewritten programs.

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 redetermined as recommended by the Appeals Division.

### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MARCH 22, 2005**

**Reel Tape Corporation, 166633**

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and duly carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang voting no, the Board ordered that in addition to the Board’s exclusion made earlier in the day, the carton-sealing tape of Fashion Watch and the stretch tape of Motion Masters be excluded, otherwise redetermine as recommended by the Appeals Division.

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Jerry Rosenbusch, 215133

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**

Templock Enterprises, LLC, 255362

1-1-02 to 8-31-02, \$19,173.00 Tax, \$00.00 Failure to File Penalty, \$00.00 Finality Penalty

For Petitioner: Appearance Waived

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

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

Issue: Whether the Department properly found petitioner liable as a successor.

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 22, 2005**

Thanhtam Thi Pham, 169954

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

**CHIEF COUNSEL MATTERS****RULEMAKING—SALES AND USE TAX****Petitions to Amend or Repeal subdivision (h), “Buying Companies-General” of Sales and Use Tax Regulation 1699, Permits**

Action: Ms. Yee moved to repeal Regulation 1699, subdivision (h) and referred the matter to the interested parties process. The motion was seconded by Mr. Chiang but failed to carry, Mr. Chiang and Ms. Yee voting yes, Mr. Parrish, Mr. Leonard and Ms. Mandel voting no.

Ms. Mandel moved to draft an amendment to Regulation 1699, subdivision (h), specific to jet fuel. No vote was taken.

Upon motion of Ms. Mandel, seconded by Mr. Chiang and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board referred the matter to the interested parties process.

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**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 5:25 p.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

**CLOSED SESSION**

The Board met to discuss pending litigation (Govt. Code § 11126(e)), settlements (R&T Code § 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 6:25 p.m. and reconvened immediately in open session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Ramon Hirsig, Executive Director, announced the appointments of Kristine Cazadd, to the position of Chief Counsel.

The Board adjourned at 6:28 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: *George and Judy Georgiou, 254030; Barr-Mullin, Inc., 82997; Mohammad Wahid Nayibkhal and Arian Baraki, 235824; Tri-Air, Inc., 240935; Telmax Communications Corporation, 250368; and, Harjinder S. Birdi, 215318.*

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