

Tuesday, April 12, 2005

The Board met at its offices at 450 N Street, Sacramento, at 10:02 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.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Superior Accomplishment Award Presentations

Ramon Hirsig, Executive Director, and Members of the Board presented the 2004-05 Sustained Superior Accomplishment Awards to employees in recognition of their outstanding achievements.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Lawrence M. and Katherine S. Clark, 260879

1997, \$20,425.00 Claim for Refund

For Claimant:

Lawrence M. Clark, Taxpayer

For Franchise Tax Board:

Suzanne Small, Tax Counsel

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

Issue: Whether appellants have shown that they filed their tax return for 1997 within the applicable statute of limitations for a refund claim.

Appellant's Exhibit: Letter (Exhibit 4.1)

Respondent's Exhibit: Interest Computation (Exhibit 4.2)

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.

Jon E. Drury, 254324

2001, \$2,228.00 Tax, \$557.00 Late Filing Penalty

For Appellant:

Jon E. Drury, Taxpayer

For Franchise Tax Board:

Jane Perez, Tax Counsel

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

Issues: Whether appellant has met his burden to prove error in the proposed assessment.
Whether appellant has shown reasonable cause for relief from the late filing penalty.

Whether a frivolous appeal penalty should be imposed.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 4.3)

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 submitted the appeal for decision.

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Giuseppe Aiello, et al., 240658

1995, \$1.00 or more Claim for Refund

For Claimant:

Harry Gordon Oliver, Attorney

For Franchise Tax Board:

Suzanne Small, Tax Counsel

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

Issue: Whether or not appellants, or any of them, either elected out—or should be deemed to have elected out—of the installment method of reporting their 1986 sale of NorCal stock utilizing an installment promissory note.

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.

SALES AND USE TAX APPEALS HEARINGS

Varsity Restaurants, Inc., 246328

1-1-99 to 12-31-01, \$11,598.61 Tax

For Petitioner:

Jan A. Sullivan, Taxpayer

Daniel H. Sullivan, Taxpayer

For Sales and Use Tax Department:

Bradley Heller, Tax Counsel

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

Issue: Whether the sales tax liability established in the audit of petitioner's catering business can be offset against the excess tax reimbursement petitioner collected from customers on nontaxable sales that were previously reported on petitioner's sales and use tax returns.

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.

D'Anna Yacht Center, Inc., 188672, 198973

10-1-98 to 12-31-01, \$353,826.55 Tax, \$46,455.55 Negligence Penalty

For Petitioner:

Cris Wenthur, Representative

Wayne D'Anna, Taxpayer

For Sales and Use Tax Department:

Anthony Epolite, Tax Counsel

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

Issues: Whether sales tax is due on sales to Kenneth McCaulou, Carlos and Robbin Vasquez, and Milton and Marlylis Piver, less credit for use tax paid, given that the purchasers paid certain amounts as use tax directly to the Board.

Whether petitioner has provided sufficient documentation to show that disallowed claimed exempt sales to David Garrett and Mike Gorun were exempt from tax.

Whether petitioner has provided sufficient documentation to show that the disallowed claimed exempt sale to Mack and Gina Montanez was "exempt" pursuant to Revenue and Taxation Code section 6247.

Whether petitioner has established that tax on the sale to John Faber was actually paid.

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Whether petitioner has established that the measure of its actual unreported sales of parts was \$130,000 (\$10,000 per quarter for the 13-quarter audit period) rather than the \$455,720 determined in the audit.

Whether petitioner has established that unreported vessel sales were improperly established in the audit.

Whether petitioner was negligent.

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, 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.

Rosalie Wardell, 115009

10-1-96 to 3-31-00, \$8,541.50 Tax, \$00.00 Failure to File Penalty

For Petitioner: Rosalie Wardell, Taxpayer

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

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

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

Whether any of petitioner's contracts constituted technology transfer agreements.

Whether the evidence supports further adjustments of tax-paid purchases resold.

Action: The Board postponed this matter to June 30, 2005.

The Board recessed at 11:45 a.m. and reconvened at 1:30 p.m. with Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel present.

PUBLIC HEARING

Property Taxes – State Assessee Presentations on Capitalization Rates & Other Factors Affecting Values

Stanley Siu, Chief, Valuation Division, Property and Special Taxes Department, made introductory remarks regarding: 1) state assessee's presentations on capitalization rates and other factors and procedures affecting 2005-06 values of California state-assessed public utilities and railroads; and, 2) private railroad car assessee's presentations on factors and procedures affecting 2005-06 taxable values of private railroad cars.

Speakers: Peter Michaels, Cooper, White and Cooper, spoke on behalf of State-assessed gas/electric, intercounty pipeline and railroad companies.

LEGAL APPEALS MATTERS, CONSENT

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

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Melanie C. Greer, 157817

11-22-95, \$1,731.76 Tax

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

Charles and Lucille Lewis, 202683

6-19-01 to 12-31-01, \$6,175.87 Tax

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

Gordana Samardzic, 195296

4-1-98 to 12-31-01, \$25,286.65 Tax, \$00.00 Negligence Penalty

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

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 Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

George Castaneda, 272601

2002, \$323.03 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Marvin B. Edwards, 265362

2001, \$2,510.00 Tax, \$627.50 Late Payment Penalty, \$627.50 Notice and Demand

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

Sanford Fernandez, 262275

1999, \$1,051.00 Tax, \$262.75 Late Filing Penalty, \$265.25 Notice and Demand Penalty

2001, \$1,344.00 Tax, \$336.00 Late Filing Penalty, \$367.00 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Robert Frankson, 220802

2000, \$1,323.00 Tax, \$330.75 Late Filing Penalty

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

Gary Gwinn, 267558

1991, \$4,734.51 Assessment

Action: Sustain the action of the Franchise Tax Board.

A. Sidney and Mavis S. Hanson, 267340

2000, \$1,657.08 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Earl W. Hauck, 268642

2000, \$4,355.00 Tax, \$1,088.75 Late Filing Penalty

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

Douglas T. and Robin N. Richert, 268068

2000, \$5,803.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Leon S. Simon, 265455

2000, \$769.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Maria Teresa Tuason, 257675

2002, \$422.72 Claim for Refund

Action: Sustain the modified action with concession by the Franchise Tax Board.

Sam M. and Julie C. Yeh, 267572

2000, \$5,516.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

A-C Compressor Corporation, 192031

1992, \$1.00 or more Claim for Refund

1993, \$1.00 or more Claim for Refund

Dover Corporation, 192551

1992, \$1.00 or more Claim for Refund

Novacap, Inc., 192556

1993, \$1.00 or more Claim for Refund

Action: Deny the petition for rehearing.

David and Judith A. Epstein, 249990

1998, \$24,713.00 Assessment

1999, \$20,412.00 Assessment

Action: Deny the petition for rehearing.

David and Elizabeth Kuhn, 246267

1994, \$7,957.62 Claim for Refund

1995, \$8,794.83 Claim for Refund

1996, \$1,368.03 Claim for Refund

Action: Deny the petition for rehearing.

Rohr, Inc., 182100

7-31-85, \$1,192,815.00 Assessment

7-31-86, \$1,991,093.00 Assessment

7-31-87, \$1,971,507.00 Assessment

Action: Deny the petition for rehearing.

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Phillip R. and Patricia L. Roy, 239537

1996, \$5,324.00 Tax, \$1,064.80 Accuracy-Related Penalty, \$1,154.75 Late Filing Penalty

Action: Modify the decision of September 21, 2004 and deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matters: *Joe Santiago, 263154*; and, *Madison Shelby, 263148*.

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

Andrea Blando, 283594

2002, \$452.19

Action: Sustain the action of the Franchise Tax Board.

Susan D. Church, 281852

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Alexandra K. DeKrassel, 281850

2003, \$177.50

Action: Sustain the action of the Franchise Tax Board.

C. M. Lam, 287125

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Charles C. Lesley, 287126

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Hana Niv-Malmeth, 282930

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Josephina Okai, 281147

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Denise Claire Ritthaler, 268764

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Socorro Roman, 282618

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Joe Santiago, 263154

2003, \$475.00

Action: The Board deferred consideration of this matter.

Madison Shelby, 263148

2002, \$332.50

Action: The Board deferred consideration of this matter.

Barbara J. Smith, 284177

2004, \$325.00

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, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

New Cars, Inc., 262189

1-1-01 to 9-30-03, \$73,694.02

Action: Approve the redetermination as recommended by staff.

Data Comm Leasing Corporation, 149821

1-1-98 to 12-31-00, \$225,424.51

Action: Approve the redetermination as recommended by staff.

Silhouette Optical, LTD, 253700

10-1-99 to 9-30-02, \$61,262.58

Action: Approve the redetermination as recommended by staff.

General Datacomm, Inc., 146402

1-1-97 to 6-30-00, \$264,196.25

Action: Approve the redetermination as recommended by staff.

Suzanne E. Moller, 286868

4-1-00 to 6-30-01, \$201,124.23

Action: Approve the redetermination as recommended by staff.

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Flaghouse, Inc., 244193

4-1-98 to 6-30-01, \$150,531.26

Action: Approve the redetermination as recommended by staff.

Gleamco Fine Arts, LLC, 299579

7-1-04 to 9-30-04, \$56,100.00

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

KBI Norcal, 299880

4-1-04 to 6-30-04, \$72,341.00

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

Ontario T., Inc., 296760

4-1-04 to 6-30-04, \$58,073.60

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

United Power Corporation, 205923

1-1-97 to 12-31-00, \$168,358.46

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

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating in *Beverly Ent-Distribution Services, Inc., 106884*, Mr. Parrish absent, the Board made the following orders:

Z-Point, Inc., 298686

7-1-03 to 6-30-04, \$91,382.06

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

Victory Packaging, Inc., 213351

7-1-98 to 12-31-01, \$83,066.51

Action: Approve the refund as recommended by staff.

Tom J. Smart, 298297

1-1-97 to 12-31-99, \$51,223.98

Action: Approve the refund as recommended by staff.

Grafico, Inc., 244200

7-1-00 to 9-30-04, \$906,535.50

Action: Approve the refund as recommended by staff.

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Bergelectric Corporation, 297246

7-1-00 to 6-30-03, \$96,212.63

Action: Approve the refund as recommended by staff.

Executive Car Leasing Company, 161294

1-1-99 to 12-31-01, \$70,206.24

Action: Approve the refund as recommended by staff.

ICN Biomedicals, Inc., 258510

7-1-98 to 12-31-01, \$99,030.43

Action: Approve the refund as recommended by staff.

Valeant Pharmaceuticals International, 258508

7-1-98 to 12-31-01, \$106,681.33

Action: Approve the refund as recommended by staff.

The Walking Company, 294803

1-1-04 to 3-2-04, \$61,643.71

Action: Approve the refund as recommended by staff.

Coast Insulation Contractors, Inc., 208021

1-1-02 to 3-31-02, \$129,417.51

Action: Approve the refund as recommended by staff.

Renovizers, Inc., 298361

4-1-85 to 12-31-92, 335,945.97

Action: Approve the refund as recommended by staff.

Paccar, Inc., 254709

7-1-98 to 6-30-01, \$102,159.08

Action: Approve the refund as recommended by staff.

Concerto Software, Inc., 259012

4-1-01 to 6-30-03, \$73,922.31

Action: Approve the refund as recommended by staff.

Lexair 2001 Trust, 298625

10-1-01, \$628,032.63

Action: Approve the refund as recommended by staff.

Wachovia Bank, National Association Trust, 250061

9-27-02, \$265,878.60

Action: Approve the refund as recommended by staff.

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Wachovia Bank, National Association Trust, 250062

9-27-02, \$170,214.88

Action: Approve the refund as recommended by staff.

Wachovia Bank, National Association Trust, 250063

9-27-02, \$236,443.54

Action: Approve the refund as recommended by staff.

Wachovia Bank, National Association Trust, 250057

9-27-02, \$265,878.60

Action: Approve the refund as recommended by staff.

Wachovia Bank, National Association Trust, 250058

9-27-02, \$229,698.29

Action: Approve the refund as recommended by staff.

Wachovia Bank, National Association Trust, 250059

9-27-02, \$207,008.66

Action: Approve the refund as recommended by staff.

Wachovia Bank, National Association Trust, 250060

9-27-02, \$243,802.44

Action: Approve the refund as recommended by staff.

Motel 6 Operating, LP, 251376

1-1-01 to 9-30-03, \$163,687.69

Action: Approve the refund as recommended by staff.

Monterey Newspapers, Inc., 245358

1-1-01 to 3-31-04, \$76,986.13

Action: Approve the refund as recommended by staff.

HBS International, Inc., 206152

1-1-00 to 9-30-01, \$53,146.95

Action: Approve the refund as recommended by staff.

GA East Bay, Inc., 260531

1-1-01 to 9-30-04, \$955,046.77

Action: Approve the refund as recommended by staff.

Ino Therapeutics, Inc., 261826

1-1-01 to 6-30-03, \$280,306.67

Action: Approve the refund as recommended by staff.

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Telesis Community Credit Union, 297267

1-1-99 to 12-31-01, \$66,061.01

Action: Approve the refund as recommended by staff.

Conseco Finance Corporation, 207311

1-1-00 to 12-31-03, \$868,679.75

Action: Approve the refund as recommended by staff.

See's Candy Shops, Inc., 203715

10-1-99 to 12-31-02, \$164,213.23

Action: Approve the refund as recommended by staff.

See's Candies, Inc., 298237

10-1-99 to 12-31-02, \$111,235.54

Action: Approve the refund as recommended by staff.

Oshkosh Truck Corporation, 294792

4-1-04 to 9-30-04, \$50,955.14

Action: Approve the refund as recommended by staff.

Engelhard Corporation, 272783

4-1-01 to 6-30-03, \$206,591.72

Action: Approve the refund as recommended by staff.

Beverly Ent-Distribution Services, Inc., 106884

1-1-99 to 3-31-02, \$80,748.98

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

Mullen Brothers, Inc., 296978

1-1-02 to 3-31-04, \$145,386.86

Action: Approve the refund as recommended by staff.

Calpine CA Equipment Finance, Company, 264514

4-1-03 to 9-30-03, \$220,633.52

Action: Approve the refund as recommended by staff.

Pacific Marine Credit Union, 218197

10-1-99 to 9-30-03, \$71,992.48

Action: Approve the refund as recommended by staff.

Spinnaker Networks, LLC, 253479

7-1-03 to 9-30-03, \$63,999.72

Action: Approve the refund as recommended by staff.

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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, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Parrish absent, the Board made the following orders:

John Hancock Variable Life Insurance Company, 268872

1-1-04 to 12-31-04, \$105,910.60

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

Republic Indemnity Company of California, 287701

1-1-04 to 12-31-04, \$124,765.20

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

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

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

Circle K Stores, Inc., 299297

1-1-03 to 12-31-03, \$117,975.52

Action: Approve the refund as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY**Roofing Technology, 300538**

7-1-91 to 3-31-99, \$158,389.48

Presented for Separate Discussion

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

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

Sheldon I. Ausman, 205053

4-1-02 to 6-30-02, \$63,366.07

Presented for Separate Discussion

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

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

NationsBanc Leasing Corporation, 113329

1-1-98 to 9-30-99, \$269,083.90

Presented for Separate Discussion

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

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

PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

Audits

KMC Millennium, LLC, (7905)

2002-2004, \$1,300,000.00 Escaped Assessment, \$130,000.00 Penalties, \$249,000.00 In-lieu Interest

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Parrish absent, the Board adopted the audited escaped assessment, plus penalties and in-lieu interest, as recommended by staff.

KMC Funding Corporation (7962)

2003-2004, \$400,000.00 Excessive Assessment

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Parrish absent, the Board adopted the audited excessive assessment as recommended by staff.

KMC Telecom XI, LLC (7963)

2003-2004, \$357,000.00 Escaped Assessment, \$35,700.00 Penalties, \$40,050.00 In-lieu Interest

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Parrish absent, the Board adopted the audited escaped assessment, plus penalties and in-lieu interest, as recommended by staff.

KMC Telecom XII, LLC (7987)

2004, \$27,700.00 Excessive Assessment

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Parrish absent, the Board adopted the audited excessive assessment as recommended by staff.

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Board Roll Changes**2003 and 2004 State-Assessed Property Rolls**

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Parrish absent, the Board approved corrections to the 2003 and 2004 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 4.4).

CHIEF COUNSEL MATTER**PROPERTY TAX****Board Consideration of Findings and Decision****High Desert Power Trust 2000-A (1127), 267687**

2004, \$489,000,000.00 Unitary Value

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

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, 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 4.5).

John K. Chan, Business Taxes Specialist I, Appeals Division, Legal Department,
Headquarters

Richard L. Evans, Supervising Tax Auditor III, Ventura District Office

Stephen J. Foti, Business Taxes Specialist I, San Francisco District Office

Roy David Graham, Associate Property Appraiser, Valuation Division, Property
and Special Taxes Department, Headquarters

Hae-Hong Joo, Tax Auditor, Norwalk District Office

Horace Reese, Jr., Associate Tax Auditor, San Francisco District Office

Action: Adopt a resolution honoring Arnold R. Fontes, who retired as the San Benito County Assessor on January 31, 2005, extending its best wishes on his retirement and its appreciation for his service to the County of San Benito and the State of California (Exhibit 4.6).

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Action: Approve extension of time to complete and submit 2005-06 Local Assessment Rolls pursuant to Revenue and Taxation Code section 155 granted to Yolo County (Exhibit 4.7).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Kristine Cazadd, Chief Counsel, introduced Jerri Dale, Chief, Customer and Taxpayer Services Division, who provided an update on the E-File Program (Exhibit 4.8).

Mr. Leonard requested an update on security and the E-File Program be provided at the June 30, 2005 Board meeting.

Ms. Yee requested that the Executive Director's Report at the next Board meeting provide an update on the status of the Alternative Cigarette Tax Stamp Project and the status of the Electronic Waste Program.

Interagency Agreement Over \$1 Million

Raye Zentner, Deputy Director, Administration Department, made introductory remarks regarding the approval of a routine renewal of an interagency agreement that expires June 30, 2005. This contract provides for DMV to collect sales, use and transit district taxes relating to vehicles and/or vessels (Exhibit 4.9).

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the contract for the Department of Motor Vehicles.

Offers-in-Compromise Recommendations

Jean Ograd, Assistant Chief Counsel, Settlement and Administration Division, Legal Department, made introductory remarks regarding the Offers-in-Compromise Recommendations.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, Mr. Parrish absent, the Board approved the Offers in Compromise of *Wilfredo Castillo*; *Brian Draper*; *Chris and Gail Randall*; and, *Curtis Tarpley*; as recommended by staff.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:44 p.m. and reconvened immediately in closed session with Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Tuesday, April 12, 2005

CLOSED SESSION

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

The Board recessed at 3:31 p.m. and reconvened immediately in open session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Kristine Cazadd, Chief Counsel, announced the appointments of Karen Johnson to the position of Deputy Director, Administration Department.

ADMINISTRATIVE SESSION**OTHER ADMINISTRATIVE MATTERS****Legal Department Reorganization**

Kristine Cazadd, Chief Counsel, made introductory remarks regarding the Legal Department Reorganization (Exhibit 4.10).

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel voting no, the Board approved the Legal Department reorganization.

BOARD COMMITTEE REPORT**Legislative Committee Minutes of March 22, 2005**

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 approved the Legislative Committee report for March 22, 2005 (Exhibit 4.11).

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD APRIL 12, 2005

Lawrence M. and Katherine S. Clark, 260879

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.

Jon E. Drury, 254324

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 and imposed a \$750.00 frivolous appeal penalty.

Tuesday, April 12, 2005

Giuseppe Aiello, et al., 240658

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 reversed the action of the Franchise Tax Board only in the matters of *Fetulio Catene; Gio Batta and Angela Fazio; Vanda Peverada; Albert and Ida Sciamanna; and, Ruggero and Elena Micheli;* and ordered that the remainder of the appeal be submitted for decision, granting the remaining appellants 60 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD APRIL 12, 2005

Varsity Restaurants, Inc., 246328

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.

ADMINISTRATIVE SESSION

BOARD COMMITTEE REPORT

Property Tax Committee

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 approved the Property Tax Committee report (Exhibit 4.12).

Mr. Chiang adjourned the Board meeting at 3:40 p.m. in memory of Maria Zaire, daughter of Ray Cordova of Mr. Chiang's staff.

The foregoing minutes are adopted by the Board on July 1, 2005.

Note: The following matter was removed from the calendar prior to the meeting: *Petition to Amend Property Tax Rule 462.180, Change in Ownership—Legal Entities.*

Tuesday, April 12, 2005