

**Tuesday, April 13, 2004**

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

## **SPECIAL PRESENTATIONS**

### **SUSTAINED SUPERIOR ACCOMPLISHMENT AWARD PROGRAM**

Ramon Hirsig, Executive Director, made introductory remarks regarding the Sustained Superior Accomplishment Awards program and the recipients.

Ms. Migden and Board Members presented Sustained Superior Accomplishment Awards to the following-listed employees in recognition of their outstanding achievements:

#### **Individual Awards**

Mary Ann Alonzo	Jan Enlow	Tim Fairchild
Joe Fitz	Arnold Fong	Cheryl Gasparini
Kevin Hanks	Thomas Hopkins	Tammie Jennings
Lucian Khan	Chris Lee	Scott Maxwell
Becky Ross	Ramon Salazar	Sheila Sarem
Kim Thomas	Claudette Yang	

The Board recessed at 9:40 a.m. and reconvened at 9:50 a.m. with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

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

**Rajendra Prasad, 237187**

1999, \$16,536.00 Claim for Refund

For Claimant:

Rajendra Prasad, Claimant

For Franchise Tax Board:

Shane Hofeling, Tax Counsel

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

Issue: Whether stock sold by appellant was "qualified small business stock," thereby entitling appellant to exclude 50 percent of the gain from gross income.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**Richard E. and Pamela D. Zierenberg, 195329**

1997, \$832.00 Assessment

1998, \$1,565.00 Assessment

For Appellant:

Richard E. Zierenberg, Taxpayer

Pamela D. Zierenberg, Taxpayer

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

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

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Issues: Whether appellants may exclude from California adjusted gross income an amount claimed as disability income from a workers' compensation award.

Whether respondent's actions in prior years, upon which appellants allegedly relied, implicate the doctrine of equitable estoppel, thus relieving appellants of the 1997 and 1998 tax liabilities or interest thereon.

Respondent's Exhibit: Miscellaneous Documents (Exhibit 4.1)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

**Dale E. and Carol Fredericks, 186833**

1984, \$1,819.00 Assessment

For Appellant: Dale E. Fredericks, Taxpayer

For Franchise Tax Board: Diane Ewing, Tax Counsel

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

Issues: Whether appellants have shown that respondent's proposed assessment, based on a federal adjustment to appellants' income, is erroneous.

Whether appellants have shown that respondent's proposed assessment is barred by the statute of limitations.

Whether respondent is barred by the rule of res judicata from issuing its proposed assessment.

Whether respondent entered into a binding settlement agreement by negotiating a check that appellants tendered specifically upon the condition that their proposed terms of settlement be accepted.

Appellant's Exhibit: Declaration and Miscellaneous Documents (Exhibit 4.2)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

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

**Eric Clark and Virginia Franklin, 161758**

11-15-95, \$3,014.75 Tax

For Petitioner: Virginia Franklin, Taxpayer

For Sales and Use Tax Department: Sharon Jarvis, Tax Counsel

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

Issue: Whether petitioners' use of the vessel Aquaventure is subject to this state's use tax.

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

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Tanney Machine Manufacturing, Inc., 150403

10-1-97 to 12-31-00, \$17,548.57 Tax, \$1,754.86 Finality Penalty

For Petitioner: John Tanney, 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 establishes that the disallowed sales were, in fact, nontaxable sales for resale.

Whether the evidence establishes that a certain sale qualifies as an exempt sale in foreign commerce.

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

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang 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 APRIL 13, 2004**

Rajendra Prasad, 237187

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

Richard E. and Pamela D. Zierenberg, 195329

Final Action: Ms. Mandel moved to sustain the action of the Franchise Tax Board. Mr. Parrish made a substitute motion to delete the interest, otherwise sustain 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, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

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

Dale E. and Carol Fredericks, 186833

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

#### **SALES AND USE TAX APPEALS HEARING**

R. Ring Enterprises, Inc., 173396

4-1-98 to 3-31-01, \$00.00 Tax

For Petitioner: Waived Appearance

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

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

Issue: Whether relief from interest is warranted with respect to the disallowed claimed cash discounts and nontaxable sales for resale.

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

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD APRIL 13, 2004**

Tanney Machine Manufacturing, Inc., 150403

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

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

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Elizabeth J. Lavine, 218155

1999, \$4,579.91 Claim for Refund

For Claimant:

Appearance Waived

For Franchise Tax Board:

Mark McEvelly, Tax Counsel

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

Issues: Whether or not the Board has the authority to determine if the Franchise Tax Board's assessment or collection actions in this matter were illegal or unconstitutional; and, if so, whether or not such assessment or collection actions were, in fact, illegal or unconstitutional.

Whether or not appellant has demonstrated entitlement to the requested refund.

Whether or not appellant has demonstrated entitlement to reimbursement of fees and expenses under Revenue and Taxation Code section 21013.

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

**PUBLIC HEARING**

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

Stanley Siu, Acting 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 2004-05 values of California state-assessed public utilities and railroads; and, 2) private railroad car assessee's presentations on factors and procedures affecting 2004-05 taxable values of private railroad cars.

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Speakers: Peter Michael, Attorney, Cooper White and Cooper

**LEGAL APPEALS MATTERS, CONSENT**

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

Seiniger Advertising, Inc., 41251  
7-1-98 to 9-30-98, \$531,706.82 Tax

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

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

The Board deferred consideration of the following matters: *Michiko Bristle, 224306; Cheryl L. Johnson, 215645; Margaret A. Scott, 216141; Peter and Natasha Skillsky, 193977; Jess A. Sloan, 214766; and, Meagan A. Stott, 217212.*

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

Lee Berlinsky, 213305  
1997, \$1,654.89 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michiko Bristle, 224306  
1997, \$265.00 Claim for Refund

Action: The Board deferred consideration of this matter.

Andrew R. Burns II, 219678  
1999, \$722.00 Assessment

Action: Reverse the action of the Franchise Tax Board.

Frank Carreon, 224290  
1997, \$2,193.69 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Audrey Demirjian, 215894  
1996, \$8,646.00 Tax, \$1,729.20 Accuracy Related Penalty  
1997, \$14,833.00 Tax, \$2,966.60 Accuracy Related Penalty

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

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Jeff L. Devore, 238351

1984, \$4,804.10 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

June Dilevsky, 202271

1999, \$658.80 Assessment

Action: Sustain the action of the Franchise Tax Board.

Susan M. Dillon, 218634

1999, \$1,024.19 Assessment

Action: Sustain the action of the Franchise Tax Board.

Atsushi Fujii, 215896

2000, \$5,257.33 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Guadalupe Galvan, 219069

2000, \$570.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Aaron Harris, 218220

2000, \$1,000.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jan Hoogland, 218632

1987, \$1,582.42 Assessment

1988, \$20,393.57 Assessment

Action: Sustain the action of the Franchise Tax Board.

Cheryl L. Johnson, 215645

1998, \$141.00 Claim for Refund

Action: The Board deferred consideration of this matter.

Christopher E. King, 220262

2000, \$1,181.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

David Negrete, 215138

1988, \$3,889.05 Assessment

1989, \$2,011.50 Assessment

1995, \$790.69 Assessment

1996, \$489.03 Assessment

1997, \$968.04 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Shirley I. Niles, 221130

1999, \$145.27 Assessment

Action: Modify the action of the Franchise Tax Board.

Trude A. and Timo J. Peltonen, 240278

1999, \$670.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Robert E. Punzo, 240160

1999, \$333.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

James W. and Rita L. Quinlivan, 237060

1984, \$7,647.41 Assessment

1985, \$5,868.86 Assessment

1986, \$3,810.31 Assessment

Action: Sustain the action of the Franchise Tax Board.

Rapid Pulse, LLC, 186467

2001, \$985.27 Claim for Refund Tax

Action: Sustain the action of the Franchise Tax Board.

Louis J. Sardonis, 213389

2000, \$1,230.00 Assessment

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

Margaret A. Scott, 216141

1993, \$645.42 Assessment

Action: The Board deferred consideration of this matter.

Fay E. Simon, 220122

2000, \$1,087.00 Tax, \$271.75 Late Filing Penalty, \$277.00 Notice and Demand Penalty

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

Devinder and Debra Singh, 215119

1998, \$461.00 Tax, \$92.20 Accuracy Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Debra Sipich, 239334

2000, \$1,138.56 Assessment

Action: Sustain the action of the Franchise Tax Board.

Peter and Natasha Skillsky, 193977

1992, \$1,341.89 Claim for Refund

Action: The Board deferred consideration of this matter.

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**Jess A. Sloan, 214766**

1998, \$501.00 Assessment

Action: The Board took no action.

**Meagan A. Stott, 217212**

1998, \$257.99 Claim for Refund

1999, \$1,064.30 Claim for Refund

2000, \$640.26 Claim for Refund

2001, \$131.23 Claim for Refund

Action: The Board deferred consideration of this matter.

**Charles M. and Nell Sweeney, 217177**

2001, \$156,767.01 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Tim-Chuen Tam, 234017**

2001, \$1,045.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Udo Willie Udokop, 220155**

1996, \$4,316.32 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Elias Vaca, 239580**

2001, \$1,051.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Cynthia R. and Wolfgang Weinberg, 237176**

1997, \$2,430.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**David Jordan Yarbrough, 221825**

2000, \$1,339.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Juan Zalapa, 220150**

2000, \$471.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Gregory J. Hobbs and Patricia Ann Martin, 187092**

1996, \$1,466.00 Tax, \$293.20 Accuracy Related Penalty

Action: Deny the petition for rehearing.

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Samuel and Irene Langberg, 181665

1995, \$3,351.00 Claim for Refund

1996, \$9,561.00 Claim for Refund

Michael and Leora Langberg, 184086

1994, \$1,453.00 Claim for Refund

1995, \$31,639.00 Claim for Refund

1996, \$21,292.00 Claim for Refund

Mark Langberg and Mary Glover, 184091

1994, \$1,323.00 Claim for Refund

1995, \$28,691.00 Claim for Refund

1996, \$21,827.00 Claim for Refund

Action: Deny the petition for rehearing.

Douglas W. Samski, 183035

1999, \$2,587.00 Tax, \$909.75 Notice and Demand Penalty, \$646.75 Late Filing Penalty

Action: Deny the petition for rehearing.

Charles E. Travis, 195669

1999, \$5,937.00 Tax, \$1,484.25 Late Filing Penalty

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

Reza Abootorab, 221864

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Donald Baer, 217135

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Charles P. Baker, 239175

2003, \$332.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Josie M. Barrow, 239162

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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**Carmen Battle, 240040**

2002, \$384.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Shu-ying Chang, 241643**

2003, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Nelvatha Jean Jones Dunbar, 239613**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Nina Fadyukhin, 207697**

2002, \$348.00 Claim for Credit

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

**Leroy Grant, 221271**

2002, \$347.50 Claim for Credit

Action: Reverse the action of the Franchise Tax Board.

**Hank Jay Hayes, 208264**

2002, \$265.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Andres Ortiz Jimenez, 221630**

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Janine Marie Kristof, 221442**

2002, \$147.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Emma Y. Ledon, 221531**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Leonid Levinson, 242303**

2003, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Teresa C. Martinez, 240660**

2003, \$347.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Danny W. McClendon, 240635

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Agnes McCurn, 245280

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

A. F. Morris, 242295

2003, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Phong N. Nguyen, 224385

1998, \$1.00 or more Claim for Credit

1999, \$1.00 or more Claim for Credit

2000, \$1.00 or more Claim for Credit

2001, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Thong Huu Nguyen, 238809

2003, \$275.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Rosa Oseguera, 218277

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Arsen Pashaei, 241668

2003, \$181.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Duong Pham, 240537

2003, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Hong Pham, 242296

2003, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Denise F. Pompa, 242294

2003, \$347.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Anatoliy Presler, 242297

2003, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Yuriy M. Presler, 242235

2003, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Nikolay Prupis, 245587

2003, \$265.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Deryl J. Reed, 238801

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Julio Regil, 241682

2003, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Sonia Marie Rivera (Tomasetti), 221279

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Deborah J. Rolle, 239379

2003, \$65.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Diane E. Rossetto, 240655

2003, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Reuel L. Rozelle, 219484

2002, \$332.50 Claim for Credit

Action: Reverse the action of the Franchise Tax Board.

Jane S. Rubin, 239380

2003, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Lennis Stephens, Jr., 221563

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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

The Board deferred consideration of the following matter: *Global Crossing Telecom, Inc., 245528.*

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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. Chiang and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, Mr. Parrish not participating in *Mercedes-Benz USA, Inc., 140420; Mercedes-Benz Credit Corporation, 157707*; and, *BCI Coca-Cola Bottling Company, L.A., 192593*; Ms. Mandel not participating in *GE Wind Energy, LLC, 245536*; the Board made the following orders:

**Empirix, Inc., 255053**

10-1-02 to 12-31-02, \$69,371.40

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

**Ecommerce Transactions, LLC, 254703**

1-1-03 to 6-30-03, \$83,543.45

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

**Bacon O'Brien Design, Inc., 61935**

10-1-93 to 6-30-01, \$543,907.21

Action: Approve the refund as recommended by staff.

**Sims Group USA Corporation, 253071**

1-1-03 to 3-31-03, \$80,450.01

Action: Approve the refund as recommended by staff.

**University of California Irvine, 253050**

10-1-97 to 3-31-01 \$54,542.88

Action: Approve the refund as recommended by staff.

**Scripps Health, 253684**

10-1-97 to 3-31-01, \$146,808.23

Action: Approve the refund as recommended by staff.

**Bank of the West, 134231**

4-1-98 to 6-30-01, \$89,309.02

Action: Approve the refund as recommended by staff.

**Bank of the West, 254023**

7-1-03 to 9-30-03, \$107,578.05

Action: Approve the refund as recommended by staff.

**Regents of the University of California, 221393**

1-1-97 to 3-31-01, \$139,878.03

Action: Approve the refund as recommended by staff.

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**Mercedes-Benz USA, Inc., 140420**

7-1-98 to 6-30-00, \$832,961.07

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

**Mercedes-Benz Credit Corporation, 157707**

1-1-99 to 11-30-01, \$248,563.30

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

**Global Crossing Telecom, Inc., 245528**

1-1-01 to 12-31-01, \$229,895.63

Action: The Board deferred consideration of this matter.

**Biora US, Inc., 164838**

1-1-99 to 3-31-02, \$149,211.91

Action: Approve the refund as recommended by staff.

**Union City Hotel Management Corporation, 253405**

1-1-99 to 6-30-02, \$89,786.02

Action: Approve the refund as recommended by staff.

**P.W. Gillibrand Company, Inc., 254144**

7-1-00 to 6-30-03, \$126,437.87

Action: Approve the refund as recommended by staff.

**Siemens Westinghouse Power Corporation, 238566**

7-1-02 to 3-31-03, \$418,561.04

Action: Approve the refund as recommended by staff.

**Netstal Machinery, Inc., 171497**

1-1-99 to 3-31-01, \$63,576.68

Action: Approve the refund as recommended by staff.

**Turin Networks, Inc., 254142**

1-1-00 to 6-30-02, \$75,159.25

Action: Approve the refund as recommended by staff.

**VSK Photonics, Inc., 203756**

4-1-01 to 3-31-03, \$99,147.36

Action: Approve the refund as recommended by staff.

**Los Angeles Department Water & Power, 118920**

1-1-97 to 12-31-99, \$431,577.21

Action: Approve the refund as recommended by staff.

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BCI Coca-Cola Bottling Company, L.A., 192593

1-1-02 to 6-30-03, \$159,591.56

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

City Graphics, 183172

4-1-99 to 12-31-02, \$53,746.39

Action: Approve the refund as recommended by staff.

Credence Capital Corporation, 224998

4-1-00 to 3-31-03, \$67,721.50

Action: Approve the refund as recommended by staff.

Lantis Eyewear Corporation, 172121

10-1-97 to 12-31-00, \$166,746.48

Action: Approve the refund as recommended by staff.

Town of Hillsborough, 242281

7-1-02 to 9-30-02, \$56,031.20

Action: Approve the refund as recommended by staff.

GE Wind Energy, LLC, 245536

4-1-03 to 6-30-03, \$100,493.08

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

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

The Board deferred consideration of the following matter: *A-L Financial Corporation, 254103.*

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, Mr. Parrish not participating in *Mercedes-Benz USA, Inc., 246308*, the Board made the following orders:

Nikken, Inc., 235820

7-1-99 to 6-30-02, \$277,416.43

Action: Approve the redetermination as recommended by staff.

Newport Corporation, 208216

7-1-97 to 12-31-00, \$359,894.24

Action: Approve the redetermination as recommended by staff.

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Lens Crafters, Inc., 207251

10-1-97 to 6-30-01, \$69,186.03

Action: Approve the redetermination as recommended by staff.

Musicland Stores Corporation, 134019

12-1-99 to 4-30-01, \$126,638.69

Action: Approve the redetermination as recommended by staff.

Mercedes-Benz USA, Inc., 246308

7-1-98 to 6-30-00, \$865,346.64

Action: Approve the denial of claim for refund as recommended by staff. Mr. Parrish not participating.

Conner Family Trust Dtd 2/23/91, 241187

2-26-99, \$106,115.90

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

Planetary Networks, LLC, 146424

7-1-01 to 9-30-01, \$102,314.00

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

Los Angeles Department of Water &amp; Power, 254963

1-1-97 to 12-31-99, \$192,893.25

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

A-L Financial Corporation, 254103

1-1-01 to 12-31-02, \$163,190.03

Action: The Board deferred consideration of this matter.

**SPECIAL TAXES MATTERS, REFUNDS, CONSENT**

Action: (Motion Expunged.)

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that its previous motion which included Mr. Chiang participating in *The Vons Companies, Inc.*, 255140, be expunged.

Ms. Migden stated for the record that she would have voted with the majority on Items A through F.

Tuesday, April 13, 2004

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Chiang not participating in *The Vons Companies, Inc., 255140*; Ms. Mandel not participating in accordance with Government Code section 7.9 in *Kendall-Jackson Wine Estates, Ltd., 249060*; *Western Risk Specialists, Inc., 252358*; and, *Miller Brewing Company, 254347*; the Board made the following orders:

**Kendall-Jackson Wine Estates, Ltd., 249060**

7-1-03 to 9-30-03, \$242,169.27

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

**Western Risk Specialists, Inc., 252358**

1-1-01 to 12-31-02, \$457,480.95

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

**Miller Brewing Company, 254347**

1-1-01 to 12-31-03, \$75,702.35

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

**McLane/Suneast, Inc., 255139**

2-1-04 to 2-29-04, \$55,093.87

Action: Approve the refund as recommended by staff.

**The Vons Companies, Inc., 255140**

11-1-03 to 11-30-03, \$51,002.98

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

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,  
ADJUDICATORY****Roseann Garcia, 223810**

2001, \$437.00 Assessment

Considered by the Board: March 9, 2004

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

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

**Blaine Perrella, 202125**

1989, \$4,700.38 Claim for Refund

Considered by the Board: March 9, 2004

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

Tuesday, April 13, 2004

Action: Mr. Parrish moved to delete the filing penalty, otherwise sustain the action of the Franchise Tax Board. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

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

**Mau D. and Thuy P. Pham, 218430**

1999, \$1,471.00 Assessment

Presented for Separate Discussion

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

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

**Maurice A. Mayben, Jr., 186286**

1999, \$2,818.25 Assessment

Considered by the Board: December 4, 2003

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. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision denying the petition for rehearing.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS,  
ADJUDICATORY****Laverne Falls, 222597**

2002, \$347.50 Claim for Credit

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

**Anthony E. Graham, 166415**

2001, \$1.00 or more Claim for Credit

Presented for Separate Discussion

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

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

Tuesday, April 13, 2004

**CHIEF COUNSEL MATTERS****PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE****Board Consideration of Findings and Decisions**

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, made introductory remarks regarding the approval of the Findings and Decision.

**Broadwing Communications, Inc. (7630), 214611**

1999, \$17,200,000.00 Escaped Assessment, \$1,720,000.00 Penalty, \$5,676,000.00 In-Lieu Interest

2000, \$28,700,000.00 Escaped Assessment, \$2,870,000.00 Penalty, \$6,888,000.00 In-Lieu Interest

2001, \$18,000,000.00 Escaped Assessment, \$1,800,000.00 Penalty, \$2,700,000.00 In-Lieu Interest

Action: Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating, the Board adopted the Findings and Decisions as recommended by staff.

**ADMINISTRATIVE SESSION****CITY OF SANTA MONICA - REQUEST FOR LOCAL TAX REALLOCATION BOARD HEARING**

Janice Thurston, Assistant Chief Counsel, Business Taxes Division, Legal Department, made introductory remarks regarding the City of Santa Monica's request for Local Tax Reallocation Board hearing.

Speaker: Bob Cendejas, Attorney, representing the City of Santa Monica

Action: Upon motion of Ms. Migden and duly carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish voting no, the Board granted the petition of the City of Santa Monica.<sup>1</sup>

**RESOLUTION CONFERRING POWERS ON THE EXECUTIVE DIRECTOR**

Timothy W. Boyer, Chief Counsel, made introductory remarks regarding the resolution conferring on Ramon J. Hirsig, the authority to act for and on behalf of the Board in the capacity of Executive Director (Exhibit 4.3).

Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the resolution Conferring Powers on the Executive Director.

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<sup>1</sup> Additional action was taken later in the day.

Tuesday, April 13, 2004

**ALTERNATIVE CIGARETTE TAX STAMP PROJECT STATUS REPORT**

Ramon Hirsig, Executive Director, made introductory remarks regarding the Alternative Cigarette Tax Stamp Project. Mr. Hirsig requested the Board's approval of the letter to the Department of Finance (Exhibit 4.4)

Speakers: Russell La Coste, Vice President, SICPA Product Security  
John McComas, Account Director, Standard Register  
David Woodward, President, Assure Digi-Tax

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the letter to the Department of Finance.

The Board directed staff to be prepared to release a new IFB to coincide with the release of the May Revise in mid-May 2004.

Mr. Leonard also requested staff to compare the requirements and costs of the stamp with and without a unique number.

**CITY OF SANTA MONICA - REQUEST FOR LOCAL TAX REALLOCATION BOARD HEARING**

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board referred the question of local tax allocation involving electronically processed orders to the Business Taxes Committee.

**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. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Frank Zanotto Enterprises, Inc.* and *Steven Henry Schmidt* as recommended by staff.

**AUGUST-DECEMBER 2004 BOARD WORKLOAD PLAN**

Deborah Pellegrini, Chief, Board Proceedings Division, presented the proposed August-December 2004 Board Workload Plan (Exhibit 4.5).

Action: Upon motion of Mr. Parrish, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the August-December 2004 Board Workload Plan as presented with the exception of deleting the August 25, 2004 meeting date.

Tuesday, April 13, 2004

**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, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang 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 4.6).

Sharon Barbour, Business Taxes Representative, Sacramento District Office  
Mona Beverly, Associate Tax Auditor, Torrance District Office  
Nancy A. Cochrane, Office Assistant (General), Consumer Use Tax Section,  
Headquarters  
Peter R. Elash, Supervising Tax Auditor II, Torrance District Office  
Patrick B. Jepsen, Business Taxes Specialist I, Ventura District Office  
Mary Palmer, Staff Programmer Analyst (Specialist), Technology Services  
Division, Headquarters  
Richard Tubbs, Senior Programmer Analyst, Supervisor, Technology Services  
Division, Headquarters

Action: Approve extensions of time to complete and submit 2004-05 Local Assessment Rolls pursuant to Revenue and Taxation Code section 155 granted to Calaveras and El Dorado Counties (Exhibit 4.7).

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 11:15 a.m. and reconvened immediately in closed session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

**CLOSED SESSION**

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

The Board recessed at 11:20 a.m. and reconvened immediately in open session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

Mr. Hirsig, Executive Director, reported that in Closed Session the Board approved a category transfer in the amount of \$7.4 million to address budgetary concerns this year.

Tuesday, April 13, 2004

**ADMINISTRATIVE SESSION**

**PROPOSED CONTRACTS OVER \$1 MILLION**

The Board deferred consideration of this matter.

**BOARD COMMITTEE REPORTS**

**Property Tax Committee**

Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Midgen absent, the Board approved the Property Tax Committee report (Exhibit 4.8).

The Board adjourned at 11:40 a.m.

*The foregoing minutes are adopted by the Board on May 25, 2004.*