

TUESDAY, AUGUST 20, 2002

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m., with Mr. Chiang, Chair, and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of this matter: *The R.A.Q. Corporation, 128530* and *Shane Douglas Beattie, 114516*.

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 and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board made the following orders:

Havana Studios, Inc., 76838

4-1-96 to 3-3-99, \$15,406.54 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Terry Craig Koh, 89000117780

7-1-93 to 9-30-97, \$00.00 Tax

\$00.00 Penalty

KTC Concepts, Inc., 89002073190

7-1-93 to 9-30-97, \$00.00 Tax

\$47,697.09 Penalty, Fraud

Action: Redetermine as recommended by the Appeals Section.

A.M. Personnel Partners, Inc., 110753, 110754, 110755

1-1-97 to 12-31-97, \$900.00 Tax

1-1-98 to 12-31-98, \$1,500.00 Tax

1-1-99 to 12-31-99, \$2,863.00 Tax

Action: Redetermine as recommended by the Appeals Section.

Shawn Scott Mc Kinney, 41886

1-1-96 to 12-31-98, \$4,191.70 Tax

Action: Redetermine as recommended by the Appeals Section.

Richard Dean Farkas, 118900

07-31-98, \$394.00 Tax

Action: Redetermine as recommended by the Appeals Section.

TUESDAY, AUGUST 20, 2002

Hassan Abdelrahim Talli, 91837

7-1-97 to 6-30-00, \$38,419.15 Tax

\$3,916.69 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

The R.A.Q. Corporation, 128530

1-1-98 to 3-31-00, \$3,270.97 Tax

\$327.10 Penalty, Failure to Pay Final Liability

Action: The Board took no action.

Shane Douglas Beattie, 114516

1-1-96 to 12-31-99, \$13,848.33 Tax

\$1,384.83 Penalty, Failure to File

Action: The Board took no action.

California Custom USA Motors, Inc., 47700

4-1-96 to 12-31-98, \$8,232.91 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Image 2000, 28083

4-1-94 to 3-31-97, \$135,575.68 Tax

\$00.00 Penalty, Negligence

\$00.00 Penalty, Finality

Action: Redetermine as recommended by the Appeals Section.

Falex Samergon, 89002291400

8-1-94 to 9-30-97, \$360,120.33 Tax

\$00.00 Penalty, Fraud

Action: Redetermine as recommended by the Appeals Section.

Alpeco Enterprises, Inc., 94635

4-1-96 to 3-31-99, \$91,525.75 Tax

Action: Redetermine as recommended by the Appeals Section.

Pedro Haro Llamas, 101470

1-1-97 to 12-31-99, \$5,084.95 Tax

\$516.11 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Puente Hills Hop Corporation, 89000222970

7-1-92 to 6-30-95, \$115,721.65 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

TUESDAY, AUGUST 20, 2002

Sony Pictures Studios, Inc., 113600

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

Action: Redetermine as recommended by the Appeals Section.

California Chassis, Inc., 128564

1-1-98 to 9-30-00, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Section.

Donald M. Scott and Phillip R. Scott, 91339

4-1-96 to 3-31-99, \$44,517.89 Tax

Action: Redetermine as recommended by the Appeals Section.

Fuel Management, Inc., 75920

1-1-96 12-31-98, \$00.00 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Xcel Arnold Circuits, Inc., 42219

1-1-96 to 3-31-98, \$67,686.54

\$00.00 Penalty, Failure to Timely Pay

Action: Redetermine as recommended by the Appeals Section.

Nirav Rajendra Mankad, Vishant S. Patel, and Navinbhai Baludas Patel, 170285

3-21-02, \$12,000.00

Action: Redetermine as recommended by the Appeals Section.

Parmjit S. Randhawa and Kulwant Thind, 183256

4-17-02, \$7,810.00

Action: Redetermine as recommended by the Appeals Section.

Ramila Patel and Joitabhai V. Patel, 172133

3-28-02, \$ 3,080.00

Action: Redetermine as recommended by the Appeals Section.

Parmjit S. Randhawa, 174374

4-17-02, \$2,760.00

Action: Redetermine as recommended by the Appeals Section.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENTThe Board deferred consideration of this matter: *Marc S. Feldman, 130126.*

TUESDAY, AUGUST 20, 2002

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

Thomas L. Keysor, 99207

1995, \$1,851.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Richard Anane and Yolanda Jackson, 127067

1993, \$1,886.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Timothy J. Davis, 133122

1995, \$9,591.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Robert P. Mastroianni, M.D., 133779

1999, \$184,07 Claim for Refund

Action: Modified the action of the Franchise Tax Board.

Carlos A. Enriquez, 134979

1997, \$1,628.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Charles J. Wright, 136524

1991, \$1.00 or more Claim for Refund

1992, \$1.00 or more Claim for Refund

1993, \$1.00 or more Claim for Refund

1994, \$1.00 or more Claim for Refund

1995, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Rhonda L. Barnwell, 141398

1993, \$581.72 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Annette Thompson, 142096

1995, \$1,350.00 Tax

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

Arnold Zidell and Estate of Linda T. Noble, 142976

1996, \$3,009.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

TUESDAY, AUGUST 20, 2002

J. Robert Holt, 144938

2000, \$382.85 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Barry and Abby Pezzner, 146366

1997, \$614.01 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Robert Balak, 149736

1997, \$5,612.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Wade S. Church, 149833

1997, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Hugo Gudiel Aceituno, 152011

1999, \$320.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Barbara S. Arnold, 153286

1999, \$804.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

James and Elizabeth A. Rizzo, 154997

1998, \$1,764.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Tatia Butler, 156622

1999, \$870.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Richard D. Grantham, 89002462700

1984, \$16,522.00 Tax

\$2,460.48 Penalty, Negligence

1985, \$7,882.00 Tax

\$676.69 Penalty, Negligence

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

Theodore M. Johnson, 88998

1993, \$5,156.00 Assessment

Action: Deny the petition for rehearing.

TUESDAY, AUGUST 20, 2002

Thomas J. Gumina, 91411

1982, \$7,405.00 Assessment

Action: Deny the petition for rehearing.

Eric H. Johnsen, 106690

1998, \$2,308.00 Tax

\$577.00 Penalty, Late Filing

\$586.25 Penalty, Notice and Demand

Action: Deny the petition for rehearing.

Marc S. Feldman, 130126

1996, \$19,808.00 Assessment

1997, \$12,639.89 Assessment

Action: The Board took no action.

In the Club, Inc., 132292

12-31-99, \$7,154.61 Claim for Refund

Pure Class, Inc., 133843

12-31-99, \$5,664.39 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. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board made the following orders:

Lamar Harris, 139044

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Jacqueline Coleman, 144554

2001, \$230.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Lora Martin, 152670

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Carl T. Patton, 153317

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

TUESDAY, AUGUST 20, 2002

Rosalia Y. Ramos, 153322

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Stanley E. Russell, 153344

2001, \$345.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Joe B. Harris, 153390

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Mildred Morrison (Mildred Washington), 153398

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Dau Thi Nguyen, 153426

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Jerry Moisa, 153713

2001, \$200.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

William A. Oliphant, 154086

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Michael Morrison, 154090

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Ana Olano, 154092

2001, \$473.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Twyman McElroy, 154094

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Suzanna Grant, 154118

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

TUESDAY, AUGUST 20, 2002

Pearl Howard, 154119

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Tanya DeGrate, 154333

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Darnell L. Smith, 154581

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Moisey Sapozhnikov, 155225

2001, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Wanda Pearson, 155234

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Stephen K. Nam, 155240

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Dorothy B. Anama, 155770

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Alvard A. Arytyunyan, 155924

2001, \$369.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Florie Ann Rollins, 156264

2001, \$60.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Jon E. White, 156527

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Helen M. Deo, 156613

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

TUESDAY, AUGUST 20, 2002

Bettie J. Lofton, 156966

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Gayle Kelly, 157198

2001, \$235.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Solomon Lerman, 157399

2001, \$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**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board made the following orders:

Packard-Bell Electronics Inc., 182113

7-1-97 to 3-31-99, \$134,704.61

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

Young & Rubicam Inc., LTD. PTN., 106402

7-1-95 to 6-30-98, \$121,232.96

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

Research Services America, 182112

1-1-02 to 3-31-02, \$72,647.36

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

Bristol-Myers Company, 182772

10-1-97 to 12-31-00, \$57,064.65

Action: Approve the refund as recommended by staff.

Toyota Motor Sales, U.S.A. Inc., 104186

4-1-89 to 12-31-93, \$613,343.35

Action: Approve the refund as recommended by staff.

Stan Evenson Design Inc., 94046

10-1-97 to 9-30-00, \$54,383.91

Action: Approve the refund as recommended by staff.

TUESDAY, AUGUST 20, 2002

Williams-Sonoma Inc., 163447

4-1-99 to 9-30-99, \$424,229.15

Action: Approve the refund as recommended by staff.

Newport Corporation, 164430

10-1-01 to 12-31-01, \$101,446.12

Action: Approve the refund as recommended by staff.

Southern Auto Supply Inc., 182555

10-1-98 to 9-30-01, \$86,507.32

Action: Approve the refund as recommended by staff.

Dart Container Corp of California, 105591

10-1-99 to 12-31-99, \$160,256.08

Action: Approve the refund as recommended by staff.

Louis and Company, 149955

1-1-01 to 9-30-01, \$51,156.83

Action: Approve the refund as recommended by staff.

The Regents of the University of California, 174373

10-1-93 to 12-31-96, \$280,101.10

Action: Approve the refund as recommended by staff.

Modern Mold International Inc., 46790

10-1-95 to 9-30-99, \$122,353.87

Action: Approve the refund as recommended by staff.

Modern Mold International Inc., 151920

1-1-99 to 6-30-00, \$172,445.74

Action: Approve the refund as recommended by staff.

Exchange Bank, 132108

4-1-98 to 9-30-01, \$62,816.58

Action: Approve the refund as recommended by staff.

Tehama Bank, 115200

1-1-98 to 12-31-00, \$65,607.53

Action: Approve the refund as recommended by staff.

L Amy Inc., 143365

1-1-98 to 3-31-01, \$55,547.88

Action: Approve the refund as recommended by staff.

TUESDAY, AUGUST 20, 2002

Ulvac Technologies, 156519

1-1-01 to 5-30-01, \$171,063.86

Action: Approve the refund as recommended by staff.

Craig Waterman, 134745

1-1-01 to 3-31-01, \$81,084.15

Action: Approve the refund as recommended by staff.

WCT, LLC., 164700

7-1-01 to 9-30-01, \$84,905.10

Action: Approve the refund as recommended by staff.

Medina Wood Products, Inc., 174163

4-1-00 to 12-31-01, \$50,226.92

Action: Approve the refund as recommended by staff.

Internet Design Technologies, LLC., 104735

7-1-00 to 5-30-01, \$83,319.49

Action: Approve the refund as recommended by staff.

Anderson Chevrolet, 173826

1-1-98 to 6-30-01, \$95,116.25

Action: Approve the refund as recommended by staff.

Brunswick Corporation, 163451

10-1-01 to 12-31-01, \$121,169.88

Action: Approve the refund as recommended by staff.

A & A Technology Inc., 141230

10-1-98 to 3-31-00, \$108,015.17

Action: Approve the refund as recommended by staff.

Imation Corp, 140419

7-1-96 to 6-30-01, \$431,083.93

Action: Approve the refund as recommended by staff.

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

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board made the following orders:

TUESDAY, AUGUST 20, 2002

Unlimited Air LLC., 151073

8-13-98, \$92,013.69

Action: Approve the redetermination as recommended by staff.

John E. Werner, 169282

8-18-98, \$91,140.00

Action: Approve the redetermination as recommended by staff.

Joyce Reitman, 119172

1-1-93 to 12-31-97, \$127,715.60

Action: Approve the redetermination as recommended by staff.

Johnson & Johnson Health Care System, 52891

4-1-95 to 6-30-98, \$624,865.14

Action: Approve the redetermination as recommended by staff.

Tag Manufacturing Incorporated, 97584

4-1-00 to 9-30-00, \$50,411.00

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

Avex Electronics Inc., 16921

1-1-99 to 3-31-99, \$233,898.00

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

CTR Systmes, Inc., 75829

10-1-94 to 12-31-97, \$61,485.55

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

SALES AND USE TAXES MATTERS, ADJUDICATORY**Fireside Thrift Company, 174384**

1-1-97 to 3-31-01, \$1,065,413.10 Claim for Refund

Considered by the Board: August 1, 2002

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

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

The Board recessed at 9:15 a.m. and reconvened at 9:25 with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

TUESDAY, AUGUST 20, 2002

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Richard L. Pessler, Jr., 119149

1997, \$739.00 Assessment

For Appellant:

Richard Pessler

For Franchise Tax Board:

Diane Ewing, Tax Counsel

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

Issues: Whether appellant has shown that respondent incorrectly determined his underlying tax liability for 1997.

Whether appellant has shown that the frivolous return penalty imposed by respondent should be abated.

Whether a frivolous appeal penalty should be imposed against appellant.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board submitted the appeal for decision.

Mr. Klehs stated for the record that he would have voted with the majority in Items A, B, C, D, E and G.

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

The Board deferred consideration of this matter: *Sunamerica Life Insurance Company, 89000899800*.

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Calamerica Life Insurance Company, 89000898340*, *Anchor National Life Insurance Company, 89000900440*, and *Western Wine Services, Inc., 173622*, the Board made the following orders:

Santa Clara County Transit District, 158213

4-1-01 to 9-30-01, \$772,385.59

Action: Approve the refund as recommended by staff.

Calamerica Life Insurance Company, 89000898340

1-1-92 to 12-31-95, \$119,819.88

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

Sunamerica Life Insurance Company, 89000899800

1-1-92 to 12-31-97, \$70,023.47

Action: The Board deferred consideration of this matter.

TUESDAY, AUGUST 20, 2002

Anchor National Life Insurance Company, 89000900440

1-1-92 to 12-31-95, \$945,774.38

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

Western Wine Services, Inc., 173622

4-1-99 to 9-30-01, \$76,694.88

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**De Andre Bracy, 149832**

1986, \$1.00 or more Assessment

1997, \$1.00 or more Assessment

For Appellant: DeAndre Bracy

For Franchise Tax Board: Jozell Brunett, Tax Counsel

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

Issues: Whether the Board has jurisdiction to consider abatement of penalties and fees and if so, whether abatement should be granted.

Whether respondent abused its discretion in denying appellant's interest abatement request.

Appellant's Exhibit: Overview (Exhibit 8.17)

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

Arde V. Atheian, 112506

1998, \$82.02 Claim for Refund

For Claimant: Arde V. Atheian

For Franchise Tax Board: Diane Ewing, Tax Counsel

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

Issue: Whether respondent abused its discretion in refusing to refund paid interest.

Appellant's Exhibit: Letter to FTB dated March 11, 2001 (Exhibit 8.18)

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board submitted the appeal for decision.

TUESDAY, AUGUST 20, 2002

George G. Hardie, 127537

1993, \$1,172,932.00 Assessment

For Appellant:

Sidney J. Machtinger, Attorney

George Hardie

For Franchise Tax Board:

Robert Dunn, Tax Counsel

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

Issues: Whether appellant has established that he changed his domicile from California to Nevada during 1993.

Whether appellant has established that he changed his residency from California to Nevada during 1993.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs not participating in accordance with Government Code section 15626, Mr. Andal absent, the Board submitted the appeal for decision.

Nathan Boatner, 138360

1992, \$2,260.00 Assessment

For Appellant:

Nathan Boatner

For Franchise Tax Board:

Diane Ewing, Tax Counsel

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

Issues: Whether respondent properly relied on information received from the Internal Revenue Service to recalculate appellant's 1992 state income tax liability.

Whether respondent's proposed assessment based on federal adjustments to appellant's 1992 federal tax return constitutes an arbitrary and retroactive change of appellant's business classification in violation of the Due Process Clause of the California Constitution.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board submitted the appeal for decision.

The Board recessed at 10:30 a.m. and reconvened at 10:40 a.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

Joseph A. Drongoski, 79191

1996, \$17,173.00 Assessment

For Appellant:

Joseph Drongoski

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

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

Issue: Whether appellant has met his burden to prove error in the proposed assessment, or the underlying federal action.

TUESDAY, AUGUST 20, 2002

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board submitted the appeal for decision.

Ernest Deri, 115286

1994, \$17,616.00 Assessment

1995, \$19,975.00 Assessment

1996, \$11,800.00 Assessment

For Appellant: Murray H. Falk, Attorney
Ernest Deri

For Franchise Tax Board: Mark McEvelly, Tax Counsel

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

Issues: Whether respondent has conceded a portion of appellant's position, and whether the alleged concession caused the burden of proof to shift to respondent.

Whether payments received pursuant to a settlement are excludable from taxation as amounts received by inheritance.

Whether payments received pursuant to a settlement are excludable from taxation as amounts received on account of personal injuries.

Appellant's Exhibit: Statement by Ernest Deri (Exhibit 8.19)

Statement by N. Farberow, PhD. (Exhibit 8.20)

Action: Mr. Klehs moved to submit the appeal for decision. Ms. Mandel offered a substitute to modify the action of the Franchise Tax Board. The motion was seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent.

Stretto Enterprises, 76184

1992, \$545,680.73 Assessment

For Appellant: Theodore P. Jonavic, CPA
Jerrold S. Pressman, President

For Franchise Tax Board: John Penfield, Tax Counsel
Dean Peterson

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

Issues: Whether appellant has shown that respondent erroneously concluded that appellant realized "built-in gains" under IRC section 1374 during the appeal year.

Whether appellant has shown that the "built-in gains" alleged by respondent were not taxable under IRC section 1374 as a result of certain transitional rules of the Tax Reform Act of 1986.

Appellant's Exhibit: Index (Exhibit 8.21)

Summary of Discounts and Premiums (Exhibit 8.22)

Stock Purchase Documents (Exhibit 8.23)

Stock Purchase Agreements (Exhibit 8.24)

Respondent's Exhibit: Letter (Exhibit 8.25)

TUESDAY, AUGUST 20, 2002

Exhibits M and N from FTB (Exhibit 8.26)

Action: Mr. Klehs moved to submit the appeal for decision. Mr. Parrish offered a substitute motion that the appeal be submitted for decision, granting the appellant 30 days to submit additional documentation, the Franchise Tax Board 30 days to review the documentation and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation. The motion was seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent.

Weider Health & Fitness, 115304

5-31-89, \$74,134.00 Assessment

5-31-90, \$258,704.00 Assessment

5-31-91, \$207,573.00 Assessment

5-31-92, \$73,582.00 Assessment

For Appellant: No Appearance

For Franchise Tax Board: Jeff Margolis, Tax Counsel

Action: The Board took no action.

Kent Harclerode, 127034

1998, \$866.00 Tax

\$216.50 Penalty, Late Filing

\$2,005.50 Penalty, Notice and Demand

For Appellant: Kent Harclerode

For Franchise Tax Board: Jozell Brunett, Tax Counsel

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

Issues: Whether the Board may remand the case back to respondent for the purpose of holding a new protest hearing.

Whether appellant has demonstrated error in respondent's assessment by showing that he is entitled to certain deductions.

Whether appellant has demonstrated reasonable cause for abatement of penalties.

Whether a frivolous appeal penalty is appropriate.

Appellant's Exhibit: Statement of Kent Harclerode (Exhibit 8.27)

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board submitted the appeal for decision.

FINAL ACTION ON APPEAL HEARD AUGUST 20, 2002

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, in the appeal of *Richard L. Pessler, 119149*, the Board sustained the action of the Franchise Tax Board and impose a frivolous appeals penalty of \$1000.00.

TUESDAY, AUGUST 20, 2002

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Martha Zapien, 114746

1994, \$4,969.00 Tax

\$00.00 Penalty, Accuracy Related

For Appellant: No Appearance

For Franchise Tax Board: Mark McEvelly, Tax Counsel

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

Issue: Whether respondent erred in its determination to grant innocent spouse relief to appellant's former spouse.

Mr. Donald Fillman stated for the record the accuracy related penalty issue was resolved before the hearing.

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

FINAL ACTION ON APPEALS HEARD AUGUST 20, 2002

Upon motion of Mr. Parrish, seconded by Mr. Klehs and unanimously carried, Mr. Klehs and Mr. Parrish voting yes, Mr. Chiang abstaining, Ms. Mandel not participating, Mr. Andal absent, in the appeal of *De Andre Bracy, 149832*, the Board adopted a decision which modified the action of the Franchise Tax Board. The Board 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.

Mr. Klehs moved to sustain the action of the Franchise Tax Board in the appeal of *Arde V. Atheian, 112506*. Mr. Parrish made a substitute motion to adopt a decision which modified the action of the Franchise Tax Board. The motion was seconded by Mr. Chiang and duly carried, Mr. Chiang and Mr. Parrish voting yes, Mr. Klehs voting no, Ms. Mandel not participating, Mr. Andal absent. The Board 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.

The Board ordered the appeal *George G. Hardie, 127537*, be deferred to the next Sacramento meeting.¹

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, in the appeal of *Nathan Boatner, 138360*, the Board sustained the action of the Franchise Tax Board.

¹ This case was decided later in the day.

TUESDAY, AUGUST 20, 2002

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, in the appeal of *Joseph A. Drongoski, 79191*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, in the appeal of *Kent Harclerode, 127034*, the Board sustained the action of the Franchise Tax Board.

The Board recessed at 12:00 p.m. and reconvened at 1:45 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

PUBLIC HEARINGS

BUSINESS TAXPAYERS' BILL OF RIGHTS HEARINGS

Jennifer Willis, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers' Bill of Rights Hearings.

Speakers: Susan K. Bonas

PROPERTY TAXPAYERS' BILL OF RIGHTS HEARINGS

Jennifer Willis, Chief, Taxpayer Rights Advocates Office, made introductory remarks regarding the Property Taxpayers' Bill of Rights Annual Hearings.

Speakers: Ronen Brown
Sylvia Marks-Barnett

BUSINESS TAXES APPEALS HEARINGS

Moh Omar Chammae, 66260

10-29-96 to 6-30-99, \$373,949.50 Tax

\$38,588.71 Penalty, Negligence

For Petitioner: Omar Chammae
James T. Burnes, Attorney

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

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

Issues: Whether the evidence shows that the audited taxable sales are excessive.
Whether relief from the negligence penalty is warranted.

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

TUESDAY, AUGUST 20, 2002

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision in regards to the unresolved issues.

BOARD COMMITTEE REPORTS

Legislative Committee

Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish abstaining, Mr. Andal absent, the Board approved the Legislative Committee report (Exhibit 8.28).

BUSINESS TAXES APPEALS HEARINGS

Imran Mohammed and Ali Noor Ahmed, 109524

4-1-97 to 12-31-99, \$11,942.35 Tax

For Petitioner: Ali N. Ahmed, Partner
Manual Jimenez
Ejaz Rajwani

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

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

Issues: Whether the evidence shows that the audited markup is excessive.
Whether the evidence warrants increasing the allowance for self-consumption.
Whether the evidence warrants increasing the shrinkage allowance.
Whether relief from the interest is warranted.
Whether petitioner's claim that profit was inflated during 1999 warrants a reduction in audited taxable sales.

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

Telstar Cellular Corporation, 89000486500

1-1-94 to 12-31-96, \$58,309.83 Tax

Recomm Wireless, Inc., 89002078210

1-1-94 to 5-31-97, \$44,361.05 Tax

\$00.00 Penalty

For Petitioner: David T. Shomaker, CPA
John Thompson, President

For Sales and Use Tax Department: Stephen Smith, Tax Counsel

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

TUESDAY, AUGUST 20, 2002

Issues: Whether adjustments should be made to Telstar's audit for unreported recorded taxable sales, and/or for handling charges and security division fees that Telstar asserts are nontaxable gross receipts.

Whether adjustments should be made to the Telstar audit for use tax assessed on the unreported cost of phones given away free.

Whether Recomm is liable to the Board as a successor to Telstar, for amounts Telstar owes the Board.

Action: Upon motion of Mr. Parrish, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered the petition be submitted for decision, granting the petitioner 30 days to submit additional documentation, the Department 30 days to review the documentation and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation.

The Board recessed at 3:20 p.m. and reconvened at 3:30 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

Rita Marie Klopner, 51709

4-1-96 to 3-31-99, \$16,878.07 Tax

For Petitioner: Dean Alkalla, CPA

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

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

Issues: Whether the evidence shows that vendor-supplied purchases obtained from Coca Cola are overstated.

Whether the evidence shows the audited taxable markup is excessive.

Whether the evidence warrants increasing the pilferage allowance in the audit from 1 percent to 3 percent.

Ms. Cumins stated for the record that Issue 1 was resolved prior to the hearing.

As to Issue 3, the percentage of pilferage was erroneously reported in the Decision and Recommendation as 2 percent.

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

Quality House Envelope & Printing Specialties, Inc., 61228

1-1-96 to 12-31-98, \$18,486.95 Tax

\$00.00 Penalty, Negligence

For Petitioner: No Appearance

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

Action: The Board took no action.

TUESDAY, AUGUST 20, 2002

Glen M. Passaretti, 89000491040

1-1-90 to 6-30-93, \$00.00 Tax

\$5,641.18 Penalty, Negligence

For Petitioner: Glen M. Passaretti

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

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

Issue: Whether relief from the 10 percent negligence penalty is warranted.

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

Jose Luis Sandoval and Celina Nungaray Sandoval, 141537

1-1-98 to 3-31-01, \$27,626.12 Tax

\$00.00 Penalty, Negligence

For Petitioner: Leslie Bushnell, Representative

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

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

Issues: Whether the evidence shows that understated taxable sales were excessive.

Whether the evidence shows that the audited taxable merchandise purchase ratio of 78.78 percent is excessive.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be redetermined with adjustments.

FINAL ACTION ON PETITION HEARD AUGUST 20, 2002

Mr. Klehs moved to redetermined the petition of *Moh Omar Chammae*, 66260. Mr. Parrish offered a substitute motion redetermined with adjustments. The motion was seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs and Mr. Parrish voting yes, Ms. Mandel voting no, Mr. Andal absent.

BUSINESS TAXES APPEALS HEARING

Michael Patrick Gerrity, 40654

4-1-95 to 3-31-97, \$5,059.63 Tax

\$00.00 Penalty, Negligence

Gerrity Grafix, Inc., 40676

4-1-97 to 3-31-98, \$3,249.06 Tax

For Petitioner: No Appearance

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

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

TUESDAY, AUGUST 20, 2002

Issue: Whether petitioners are entitled to more claimed exempt sales in interstate commerce than allowed by the Department.

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

FINAL ACTION ON PETITIONS HEARD AUGUST 20, 2002

Mr. Parrish moved to increase the shrinkage from 1 percent to 2 percent, otherwise redetermine as recommend by the Appeals Section in the petition of *Imran Mohammed and Ali Noor Ahmed, 109524*. The motion was seconded by Mr. Chiang but failed to carry, Mr. Parrish and Mr. Chiang voting yes, Mr. Klehs and Ms. Mandel voting no, Mr. Andal absent.

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

Upon motion of Mr. Klehs, seconded by Ms. Mandel and duly carried, Mr. Klehs and Ms. Mandel voting yes, Mr. Chiang voting no, Mr. Parrish abstaining, Mr. Andal absent, the Board ordered that the petition of *Rita Marie Klopner, 51709*, be redetermined as recommended by the Appeals Section.

Mr. Klehs moved that the petition of *Glen M. Passaretti, 89000491040* be redetermined as recommended by the Appeals Section. Mr. Parrish offered a substitute motion that the penalty be deleted, otherwise redetermined as recommended by the Appeals Section. The motion was seconded by Ms. Mandel but failed to carry, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs voting no, Mr. Andal absent.

Upon the motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Klehs and Mr. Chiang voting yes, Mr. Parrish voting no, Ms. Mandel abstaining, Mr. Andal absent, the Board ordered the petition be redetermined as recommended by the Appeals Section. The Board directed staff to offer petitioner a payment plan and to inform the petitioner of the Offer in Compromise Program.

Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs not participating in accordance with Government Code section 15626, Mr. Andal absent, the Board ordered that the petition of *George G. Hardie, 127537*, be submitted for decision, granting the petitioner 30 days to submit additional documentation, the Department 30 days to review the documentation and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation

TUESDAY, AUGUST 20, 2002

The Board adjourned at 4:35 p.m.

The foregoing minutes are adopted by the Board on November 13, 2002.