

Wednesday, September 12, 2007

The Board met at its offices at 450 N Street, Sacramento, at 9:35 a.m., Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD SEPTEMBER 11, 2007

Accounting Solutions, 378329

Ian Foster, Tax Counsel, Appeals Division, Legal Department, provided a spreadsheet of calculations (Exhibit 9.6).

Final Action: Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board modified the action of the Franchise Tax Board by using the median multiples and the weighted average of “publicly traded” and “merged and acquired” methods for valuation based on a \$1 million salary for the sole shareholder.

Exhibits to these minutes are incorporated by reference.

James Fischer Montgomery and Diane Montgomery, 309423

Final Action: Ms. Steel moved to reverse the action of the Franchise Tax Board. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered a new hearing be held and requested information regarding the stock option as source income.

PUBLIC HEARINGS

Proposed Amendments to Sales and Use Tax Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes*

Carole Ruwart, Tax Counsel, Business Taxes Division, Legal Department, made introductory remarks. Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes*, is proposed to be amended to provide that, operative January 1, 2008, all sellers who are required to collect local use tax on transactions of \$500,000 or more shall report the local use tax revenues derived therefrom directly to the jurisdiction where the property is first functionally used. (Exhibit 9.7.)

Speakers: Fran Mancina, Director of Government Relations, Muni Services
Robert Cendejas, Special Counsel, Muni Services
Joe Vinatieri, Mayor Pro Tem, City of Whittier

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Action: Upon motion of Ms. Yee, seconded by Ms. Steel and duly carried, Ms. Yee, Mr. Leonard and Ms. Steel voting yes, Ms. Chu voting no, Ms. Mandel abstaining, the Board ordered that the operative date be removed, share proposed revisions with the interested parties, and publish the revised amendments in the 15-day file.

Proposed Amendments to Regulation 4703, *Seizures and Forfeitures*

Monica Brisbane, Tax Counsel, Business Taxes Division, Legal Department, made introductory remarks. Cigarette & Tobacco Products Licensing Act Regulation 4703 proposed amendments clarify that licensed distributors are excluded from seizures of unstamped cigarettes and that unstamped cigarettes and/or untaxed tobacco products are subject to seizure unless there is an exemption or lawful possession under the Revenue and Taxation Code. (Exhibit 9.8.)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted proposed amendments to Regulation 4703 as recommended by staff.

Proposed Adoption of Regulation 5000 et seq, Board of Equalization Rules for Tax Appeals

Bradley Heller, Tax Counsel, Business Taxes Division, Legal Department, made introductory remarks. The Board heard public comments on the proposed repeal of the Rules of Practice (Cal. Code of Regs., tit. 18, § 5010 et seq.) and the promulgation of the new *Board of Equalization Rules for Tax Appeals* (Cal. Code of Regs., tit. 18, § 5000 et seq.). The new rules will provide more comprehensive information regarding the administrative and appellate review processes for all the tax and fee programs administered by the Board. The new rules will also address areas of concern regarding the issuance of decisions, publication of opinions, procedures for scheduling hearings, and the nature of Board hearings. (Exhibit 9.9.)

Speakers: Michael Mooslin, President, Color Me Mine Enterprises, Inc.
Bruce Dear, Placer County Assessor and California Assessors' Association
Lenny Goldberg, California Tax Reform Association
Joe Vinatieri, Tax Counsel, Bewley, Lassleben & Miller
David R. Doerr, California Taxpayers' Association

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and duly carried, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Yee abstaining, Ms. Mandel voting no, the Board adopted Regulation 5000 et seq, Board of Equalization Rules for Tax Appeals as recommended by staff.

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LEGAL APPEALS MATTERS, CONSENT

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

Harry R. Sawl, 298342 (UT)

April 7, 2000, \$28,463.42 Tax, \$2,846.34 Failure to File Penalty

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

Pragudha Financial Services, Inc., 406193 (ET)

May 9, 2007, \$141.50 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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 Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

James A. Adamic, 358685

2002, \$202.85 Claim for Refund

Action: Sustain the action of the Franchise Tax Board with its concession to refund the amnesty penalty.

Joseph R. Banister, 348720

2003, \$4,307.00 Tax, \$1,076.75 Late Filing Penalty, \$1,076.75 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Jose M. Clavel, 374601

2005, \$510.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Christina Greene, 361294

2004, \$995.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Cedric Heffner, 349126

2000, \$758.21 Interest

2001, \$319.94 Interest

2002, \$1,463.68 Interest

Action: Sustain the action of the Franchise Tax Board.

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Iceffine King, 360721

1998, \$945.44 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

David L. Kramer and Cathleen D. Kramer, 358722

2001, \$364.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Linda Joyce Leonard, 353422

1991, \$115,580.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ronald S. Mayers and Ann D. Mayers, 258574

1994, \$122.00 Assessment

1995, \$78.00 Assessment

1996, \$232.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Amy L. Moreno and Arturo Moreno, Jr., 377876

2001, \$727.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Shlomo Rechnitz, 357302

2003, \$40,155.76 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Sammy Thiru, 360361

2002, \$1,536.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Katherine A. Trost, 357291

1997, \$12,606.93 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Alfred J. Braun, 335261

2003, \$3,833.00 Tax, \$958.25 Late Filing Penalty, \$958.25 Demand Penalty, \$90.00 Filing Enforcement Fee

Action: Deny the petition for rehearing.

Thomas R. Camerato, 311016

1992, \$411.00 Assessment

1993, \$427.00 Assessment

Action: Deny the petition for rehearing.

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Gloria Cox, 335266

2003, \$296.00 Tax, \$100.00 Late Filing Penalty, \$74.00 Demand Penalty, \$90.00 Filing Enforcement Fee

Action: Deny the petition for rehearing.

Daniel L. Mahnke, 334606

2003, \$164.00 Tax, \$100.00 Late Filing Penalty, \$45.00 Notice and Demand Penalty

Action: Deny the petition for rehearing.

Brian K. Shaw, 341954

1990, \$93,544.00 Tax, \$23,386.00 Penalty

1991, \$29,347.00 Tax, \$7,336.75 Penalty

1992, \$122,052.00 Tax, \$30,513.00 Penalty

1993, \$128,948.00 Tax

1994, \$113,193.00 Tax, \$28,298.25 Penalty

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matter: *David Silverman, 379230.*

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

Harlan Barnes, 378595

2006, \$332.50

Action: Sustain the action of the Franchise Tax Board.

Catherine R. Blalock, 374334

2006, \$350.00

Action: Sustain the action of the Franchise Tax Board.

Emric A. Calvin, Jr., 373294

2006, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Su Giang, 378768

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Judith M. Gonzales, 363044

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Ruo Hong Li, 382655

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

In Sung Lim, 378239

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

R Z Liu, 383480

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Grigory Magidin, 377688

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Caridad U. Naughton, 378349

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Anatoliy Nedavniy, 378351

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Alfred O. Parham, 372897

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Semen M. Peremen, 374533

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Theang Pich, 387789

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Mavis I. Piechota (Deceased), 358671

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Zeynab Raouf-Kazerouni, 380747

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Ella Shved-Mogilevskaya, 377283

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

David Silverman, 379230

2006, \$332.00

Action: The Board deferred consideration of this matter.

Richard A. Smith, 328286

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Homer Stafford, 383496

2006, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Hung K. Wang, 379516

2006, \$265.00

Action: Sustain the action of the Franchise Tax Board.

S.H. Yun, 379227

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties/Interest and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Target Corporation, 361951*; and, *Northrop Grumman Systems Corporation, 377304*; the Board made the following orders:

Printronic, Inc., 380580 (EAA)

10-1-01 to 9-30-04, \$86,418.66

Action: Approve the redetermination as recommended by staff.

Arco Material Supply Company, 342565 (AS)

1-1-98 to 12-31-01, \$2,408,544.08

Action: Approve the redetermination as recommended by staff.

Target Corporation, 361951 (OHA)

1-1-00 to 6-30-03, \$83,532.38

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

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Herbalife International America, Inc., 255274 (AS)

7-1-00 to 6-30-03, \$199,323.53

Action: Approve the redetermination as recommended by staff.

Kwikset Corporation, 390209 (EAA)

7-1-01 to 3-31-05, \$88,024.23

Action: Approve the redetermination as recommended by staff.

Maxim Integrated Products, Inc., 390347 (GH)

4-1-01 to 6-30-04, \$128,436.18

Action: Approve the redetermination as recommended by staff.

Cargill, Inc., 290110 (OHA)

7-1-99 to 6-30-02, \$61,336.29

Action: Approve the redetermination as recommended by staff.

Maxell Corporation of America, 218844 (OH)

4-1-98 to 3-31-01, \$232,518.66

Action: Approve the redetermination as recommended by staff.

Messer Griesheim Industries, Inc., 361134 (OHB)

1-1-01 to 12-31-04, \$157,836.11

Action: Approve the redetermination as recommended by staff.

Niagara Conservation Corporation, 225014 (OHB)

1-1-99 to 12-31-01, \$82,060.16

Action: Approve the redetermination as recommended by staff.

ESI Altamont Acquisitions, Inc., 307989 (CH)

1-1-01 to 12-31-03, \$585,365.97

Action: Approve the redetermination as recommended by staff.

Draeger Medical, Inc., 382903 (OHB)

1-1-06 to 3-31-06, \$234,456.78

Action: Approve the redetermination as recommended by staff.

Toyota Motor Credit Corporation, 405328 (AS)

1-1-07 to 1-31-07, \$331,624.02

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

Sport-Chalet, Inc., 405327 (JHF)

1-29-07 to 2-25-07, \$127,320.00

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

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First Financial Corporation Services, Inc., 404659 (EA)

7-1-01 to 6-30-05, \$71,585.33

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

Ross Dress For Less, Inc., 405329 (CH)

2-1-07 to 2-28-07, \$539,209.08

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

Qualex, Inc., 270545 (OHB)

1-1-00 to 12-31-02, \$276,145.00

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

T Square Logistics Services Corporation, 378137 (UT)

5-27-06, \$94,552.00

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

Northrop Grumman Systems Corporation, 377304 (AS)

1-1-02 to 12-31-02, \$53,596.69

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

Ford Motor Credit Company, 335913 (OHA)

10-1-98 to 12-31-02, \$1,283,783.29

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

Trega Biosciences, Inc., 209391 (FH)

10-1-02 to 12-31-02, \$72,245.00

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

QLX Photoprocessing, Inc., 270546 (OHB)

1-1-00 to 12-31-02, \$386,974.00

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

Sprint Communications Company LP, 344618 (OHA)

10-1-01 to 9-30-04, \$348,926.28

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

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

The Board deferred consideration of the following matters: *Kaiser Foundation Health Plan, Inc., 398517; Time Warner Entertainment Company, LP, 312205; Kaiser Foundation Hospitals, 398554; and, Oliver A. Goldsmith, 395912.*

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With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Amgen, 403722*; and, *Northrop Grumman Systems Corporation, 377304*; the Board made the following orders:

Clougherty Packing Company, 373168 (AA)

10-1-01 to 12-31-04, \$88,827.38

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

Luke Brugnara, 403470 (BH)

1-16-03 to 12-31-04, \$174,898.11

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

CMI International Corporation, 403303 (OHA)

1-1-00 to 9-30-01, \$160,134.55

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

Joseph Finley, 404357 (FHB)

6-15-04 to 12-31-04, \$1,627,694.72

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

Habib Ghannadian, 398298 (FH)

1-1-05 to 12-31-05, \$55,905.74

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

Leiner Health Products, LLC, 405311 (AS)

4-1-02 to 3-31-04, \$147,842.12

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

L.A. Unified School District, 287897 (AS)

7-1-01 to 3-31-05, \$867,345.37

Action: Approve the refund as recommended by staff.

Kaiser Foundation Health Plan, Inc., 398517 (AP)

1-1-01 to 12-31-03, \$248,913.74

Action: The Board deferred consideration of this matter.

Bacon O'Brien Design, Inc., 289300 (AS)

7-1-01 to 6-30-04, \$109,453.18

Action: Approve the refund as recommended by staff.

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Amgen, 403722 (AR)

10-1-00 to 12-31-03, \$1,516,145.41

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

City of Hope National Medical Center, 397631 (AP)

4-1-03 to 3-31-06, \$108,077.74

Action: Approve the refund as recommended by staff.

Gottschalks, Inc., 331065 (KHO)

1-5-03 to 7-2-05, \$495,510.80

Action: Approve the refund as recommended by staff.

Coastal Tractor, 357833 (GHC)

1-1-04 to 3-31-05, \$53,262.22

Action: Approve the refund as recommended by staff.

Novellus Systems, Inc., 382198 (GH)

10-1-04 to 3-31-06, \$127,282.02

Action: Approve the refund as recommended by staff.

Fleet Business Credit Corporation, 404471 (OHA)

7-1-04 to 9-30-06, \$126,559.59

Action: Approve the refund as recommended by staff.

Daktronics, Inc., 354945 (OHA)

1-1-04 to 9-30-04, \$117,881.34

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 396408 (KH)

3-27-07 to 5-11-07, \$322,325.00

Action: Approve the refund as recommended by staff.

Time Warner Entertainment Company, LP, 312205 (AC)

10-1-98 to 10-31-01, \$111,057.83

Action: The Board deferred consideration of this matter.

Martin Door Manufacturing, 403684 (OH)

4-1-03 to 3-31-06, \$344,717.03

Action: Approve the refund as recommended by staff.

Nuance Communications, Inc., 402877 (OHB)

7-1-02 to 6-30-05, \$92,528.64

Action: Approve the refund as recommended by staff.

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Three Man Corporation, 339406 (FH)

10-1-02 to 6-30-04, \$58,498.99

Action: Approve the refund as recommended by staff.

Zhone Technologies, Inc., 402390 (CH)

1-1-03 to 9-30-06, \$238,492.20

Action: Approve the refund as recommended by staff.

Britesmile, Inc., 404469 (CH)

4-1-03 to 3-31-06, \$144,580.32

Action: Approve the refund as recommended by staff.

Scharzkopf Technologies Corporation, 391852 (OHB)

7-1-06 to 12-31-06, \$54,169.89

Action: Approve the refund as recommended by staff.

Wachovia Dealer Services, Inc., 399593 (EAA)

7-1-06 to 9-30-06, \$1,496,360.62

Action: Approve the refund as recommended by staff.

Kaiser Foundation Hospitals, 398554 (AP)

1-1-01 to 12-31-03, \$1,855,651.82

Action: The Board deferred consideration of this matter.

Oliver A. Goldsmith, 395912 (AP)

1-1-01 to 12-31-03, \$722,849.19

Action: The Board deferred consideration of this matter.

Northrop Grumman Systems Corporation, 377304 (AS)

1-1-02 to 12-31-02, \$262,281.94

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

City of Hayward, 396772 (CH)

1-1-06 to 12-31-06, \$94,360.92

Action: Approve the refund as recommended by staff.

Ford Motor Credit Company, 335913 (OHA)

10-1-98 to 12-31-02, \$2,142,695.07

Action: Approve the refund as recommended by staff.

Travis Credit Union, 394718 (JHF)

1-1-06 to 9-30-06, \$189,007.86

Action: Approve the refund as recommended by staff.

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Wescom Credit Union, 394874 (AP)

10-1-06 to 12-31-06, \$75,904.56

Action: Approve the refund as recommended by staff.

Lucent Technologies, Inc., 393587 (OHB)

7-1-05 to 3-31-06, \$76,822.08

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 401434 (EA)

1-1-07 to 3-31-07, \$79,585.20

Action: Approve the refund as recommended by staff.

Westlake Services, Inc., 401101 (AS)

7-1-06 to 9-30-06, \$56,997.10

Action: Approve the refund as recommended by staff.

Capital One Auto Finance, Inc., 348061 (OHA)

10-1-05 to 12-31-05, \$419,391.92

Action: Approve the refund as recommended by staff.

United Auto Credit Corporation, 396779 (EAA)

4-1-06 to 12-31-06, \$263,213.12

Action: Approve the refund as recommended by staff.

Lincoln Finance Company, 380722 (FH)

1-1-05 to 12-31-06, \$67,573.65

Action: Approve the refund as recommended by staff.

A-L Financial Corporation, 399086 (EA)

10-1-06 to 3-31-07, \$389,192.50

Action: Approve the refund as recommended by staff.

Triad Financial Corporation, 329572 (EA)

4-1-05 to 3-31-07, \$5,650,710.34

Action: Approve the refund as recommended by staff.

Ontario T, Inc., 374795 (EH)

1-29-04 to 3-31-06, \$160,718.33

Action: Approve the refund as recommended by staff.

Cal State 9 Credit Union, 401102 (CH)

1-1-04 to 12-31-05, \$223,983.20

Action: Approve the refund as recommended by staff.

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DTS, Inc., 345306 (AC)

7-1-01 to 12-31-02, \$81,000.92

Action: Approve the refund as recommended by staff.

Open Text, Inc., 405229 (EAA)

1-1-07 to 3-31-07, \$143,542.23

Action: Approve the refund as recommended by staff.

Sprint Communications Company, LP, 344618 (OHA)

10-1-01 to 9-30-04, \$211,618.97

Action: Approve the refund as recommended by staff.

Inwood Credit Union, 351206 (CH)

1-1-03 to 9-30-06, \$72,060.25

Action: Approve the refund as recommended by staff.

CG Bretting Manufacturing Company, Inc., 390375 (OHA)

1-1-03 to 6-30-06, \$128,111.54

Action: Approve the refund as recommended by staff.

Salinas Valley Dodge Chrysler, 400881 (GHC)

10-1-06 to 12-31-06, \$79,046.92

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Trammo Petroleum, Inc., 395351 (MT)

9-1-05 to 9-30-05, \$109,351.50

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

Dell Marketing, LP, 404674 (ER)

11-1-06 to 11-30-06, \$77,849.90

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

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Trammo Petroleum, Inc., 295177, 317655*; the Board made the following orders:

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Trammo Petroleum, Inc., 358803 (MT)

9-1-05 to 9-30-05, \$843,729.59

Action: Approve the refund as recommended by staff.

Trammo Petroleum, Inc., 295177, 317655 (MT)

1-1-03 to 12-31-05, \$405,014.66

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

PROPERTY TAXES MATTERS, CONSENT

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

Timber Yield Tax Claim for Refund

Roseburg Forest Products Company, 414132

10-1-06 to 12-31-06, \$79,838.01 Claim for Refund

Action: Approve the refund as recommended by staff.

LEGAL APPEALS MATTERS, ADJUDICATORY

Alpine Mountain Homes, Inc., 288136 (KHM)

9-1-01 to 9-30-03, \$31,705.61 Tax

Considered by the Board: Hearing Notice Sent – No Response

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. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

National Medical Care, Home Care Division, Inc., 59219, 60413, 89000080330, 89000080340, 89000080360, 89000080370, 89000080380 (OHA)

1-1-90 to 3-31-97, \$310,758 Tax

4-1-97 to 7-28-98, Undisclosed

Considered by the Board: Hearing Notice Sent – Appearance Waived

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

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

Wednesday, September 12, 2007

Anil Kumar Sharma, 318327 (KH)

1-1-02 to 1-31-05, \$34,156.29 Tax, \$00.00 Negligence Penalty

Considered by the Board: April 24, 2007

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

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

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

Affiliated Funding Corporation, 317945

2003, \$14,446.88 Claim for Refund

Considered by the Board: November 20, 2006

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

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

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

**SALES AND USE TAX MATTERS, CREDITS AND CANCELLATIONS,
ADJUDICATORY**

Paul J. Polizzi, 243663 (GH)

1-1-97 to 6-30-02, \$243,565.08

Considered by the Board: January 31, 1007

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

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

SPECIAL TAXES MATTERS, REFUNDS, ADJUDICATORY

Nella Oil Company, LLC, 281412, 332367, 386966 (MT)

1-1-04 to 12-31-05, \$717,531.57

Considered by the Board: June 19, 1007

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved the refund as recommended by staff.

Wednesday, September 12, 2007

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**PROPERTY TAX MATTERS****Audits**

RuralWest-Western Rural Broadband, Inc., (7996)

2004, \$1,870,000.00 Excessive Assessment

2005, \$1,590,000.00 Excessive Assessment

2006, \$357,000.00 Escaped Assessment, \$35,700.00 Penalties, \$26,775.00 In-lieu Interest

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

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Inland 99 Cents Wholesale, Inc.*; *KM Solutions, Inc.*; and, *Vaughn Christopher Jewell*; as recommended by staff.

CHIEF COUNSEL MATTERS**RULEMAKING****Petition to Amend Property Tax Rule 21, *Taxable Possessory Interests-Valuation***

Richard Moon, Tax Counsel, Tax and Fee Group, Legal Department, made introductory remarks. The petition proposes to amend Property Tax Rule 21, *Taxable Possessory Interest-Valuation*, to modify (1) the criteria used in determining reasonably anticipated term of possession and (2) the burden of proof. (Exhibit 9.10.)

Speakers: Robert Quon, Director, Major Appraisals Section, Los Angeles County Assessor's Office
Eric Haagenon, Chief Appraiser, Los Angeles County Assessor's Office
David S. Breault, Chairman of the California Assessors' Association and Possessory Interest Committee, Los Angeles County
Thomas Parker, Deputy County Counsel of Sacramento County representing Sacramento County Assessor Kenneth D. Stieger and California Assessors' Association
Bruce Dear, Placer County Assessor and California Assessors' Association
Michele Pielsticker, General Counsel, representing California Taxpayers' Association
Eric J. Miethke, Attorney, Nielsen, Merksamer, Parrinello, Mueller & Naylor
Kyla Christoffersen, Policy Advocate, California Chamber of Commerce

Wednesday, September 12, 2007

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and duly carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel voting no, the Board denied the petition to amend Property Tax Rule 21 as recommended by staff.

Petition to Amend Property Tax Rule 325, *Notice and Clarification of Decision*

Richard Moon, Tax Counsel, Tax and Fee Group, Legal Department, made introductory remarks. The petition proposes to amend Property Tax Rule 325, *Notice and Clarification of Decision*, to address an assessment appeals board's failure to issue a written notice of decision within the 120-day period. (Exhibit 9.11.)

Speakers: Stephen Bennett, CPA, Letwak and Bennett
Bruce Dear, Placer County Assessor and California Assessors' Association
Thomas Parker, Deputy County Counsel, Sacramento County, representing the Sacramento County Assessor
Mark Servino, Deputy County Counsel, Orange County, representing the Orange County Clerk of the Board

Action: Mr. Leonard moved to deny the petition and refer the matter to the Interested Parties Process. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board denied the petition as recommended by staff.

Request for approval to submit revised language to the 15-day file on Regulation 1521, *Construction Contractors*, regarding application of tax to solar panels

Robert Tucker, Tax Counsel, Business Taxes Division, Legal Department, made introductory remarks. Sales and Use Tax Regulation 1521, *Construction Contractors*, is proposed to be amended to provide that photovoltaic cells, solar panels, and solar modules should be considered materials when they function in the same manner as other materials such as roofing shingles, skylights, wall panels or windows, but that other photovoltaic cells, solar panels, and solar modules are accessory to a building and should be considered fixtures. (Exhibit 9.12.)

Speakers: Sue Kately, California Solar Energy Industries Association

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted the revised language as recommended by staff.

Wednesday, September 12, 2007

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel 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 9.13).

Frank F. Bobadilla, Supervising Tax Auditor II, San Francisco District Office
Joseph W. Clayton, Business Taxes Specialist I, Out-of-State District Office
Maria Hendrick, Business Taxes Specialist I, Compliance and Technology
Section, Tax Policy Division

Action: Adopt the 2008 Diesel Fuel Tax Rate for Interstate Users (AB 1269) as recommended by staff (Exhibit 9.14).

Action: Approve summons to annual meeting of the Board and county assessors (Exhibit 9.15).

Action: Approve index for coins and bullion bulk sale threshold for inflation, based on the (June to June) California Consumer Price Index (Rev. & Tax. Code § 6355), as recommended by staff (Exhibit 9.16).

Action: Approve the 2007-08 Emergency Telephone Users Surcharge Rate of .50 percent and publish the rate in these Board meeting minutes (Exhibit 9.17).

Action: Ms. Mandel moved to approve the 2008 Board Workload Plan as recommended by staff. The motion was seconded by Ms. Yee. Ms. Mandel withdrew her motion.

The Board deferred consideration of the 2008 Board Workload Plan to the October Sacramento meeting (Exhibit 9.18).

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Legislative Committee report and the actions therein (Exhibit 9.19).

Wednesday, September 12, 2007

OTHER ADMINISTRATIVE MATTERS**Executive Director's Report**

Ramon Hirsig, Executive Director, introduced David Gau, Interim Deputy Director, Administration Department, who provided an update regarding the Board of Equalization Fiscal Year 2007-08 signed Budget (Exhibit 9.20).

The Board will take the necessary steps to appeal the budget reduction with the Department of Finance.

Mr. Hirsig introduced Charlene Yount, Chief, Administrative Support Division, Administration Department, who provided a status report on the final construction activities of the Board of Equalization headquarters curtain wall (Exhibit 9.21).

Chief Counsel Report

Gil Haas, Jr., Chief, Investigations Division, provided a report regarding Business License Inspection Program Lessons Learned (Exhibit 9.22).

Deputy Director's Report, Sales and Use Tax

Randie Henry, Deputy Director, Sales and Use Tax Department, made introductory remarks regarding Fiscal Year 2008/09 Statewide Compliance and Outreach Program Budget Change Proposal (formerly known as the Business Licensing Inspection Program) (Exhibit 9.23).

Action: Upon motion of Ms. Yee, seconded by Ms. Chu and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved Alternative 1 as recommended by staff.

Ms. Henry introduced Jeff McGuire, Manager, Tax Policy Division, Sales and Use Tax Department, who made introductory remarks regarding the Budget Change Proposal with Franchise Tax Board related to Joint Behavioral Compliance Study (Exhibit 9.24).

Mr. McGuire also reported on additional tax gap proposals and Legislative ideas (Exhibit 9.25).

Mr. Leonard directed staff to develop each non-legislative proposal as Budget Change Proposals with full write-ups.

Deputy Director's Report, Property and Special Taxes

David Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding the SICPA Products Security Contract over \$1 Million (Exhibit 9.26).

Wednesday, September 12, 2007

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the SICPA Products Security Contract as recommended by staff.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:30 p.m. and reconvened immediately in closed session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

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

The Board recessed at 1:50 p.m. and reconvened immediately in open session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Ramon Hirsig, Executive Director, announced the appointment of Anna Brannen to the position of Chief Information Officer of the Technology Services Division.

The Board adjourned at 1:54 p.m.

The foregoing minutes are adopted by the Board on October 24, 2007.