

Tuesday, September 20, 2005

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:43 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Joseph R. Mayzel, 295829

2003, \$305.00

For Claimant:

Joseph R. Mayzel, Claimant

For Franchise Tax Board:

Diane Ewing, Tax Counsel

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

Issue: Whether respondent properly denied appellant's claim for property tax assistance.

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Michelle Feldt, 296746

2002, \$1,080.00 Assessment

For Appellant:

Michelle Feldt, Taxpayer

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

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

Issue: Whether appellant qualifies for head of household filing status.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board directed staff to investigate options to seek change in federal statute through legislation regarding foster care children.

Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Alorica, Inc., 224473

1999, \$10,700.00 Claim for Refund

2000, \$18,757.00 Claim for Refund

For Claimant:

Eric M. Anderson, Accountant

Mark Andrus, CPA

For Franchise Tax Board:

Michael Smally, Tax Counsel

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

Issues: Whether appellant has shown that it has satisfied the "discovery" test of Internal Revenue Code (IRC) section 41(d)(1).

Whether appellant has shown that it has satisfied the "process of experimentation" test of IRC section 41(d)(1).

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Whether appellant has shown that it has qualified for any of the “internal use” exceptions of IRC section 41(d)(4)(E).

Whether appellant has otherwise provided sufficient evidence that its expenses for wages and supplies qualify for the research credit under IRC 41.

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

Thomas F. and Judith J. Carter, 258811

1994, \$32,657.00 Assessment

For Appellant:

Kirk H. Riley, Attorney

For Franchise Tax Board:

Michael Smally, Tax Counsel

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

Issues: Whether appellants have met their burden to prove error in respondent’s determination of realized gains in a like-kind exchange.

Whether appellants have met their burden to prove error in respondent’s allocations of gains and cash and mortgage relief boot.

Appellant’s Exhibit: Tax Balance Worksheets (Exhibit 9.3)

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 15626, the Board submitted the appeal for decision at a later date.

Exhibits to these minutes are incorporated by reference.

Tony Lucich, 235783

1994, \$11,499.35 Claim for Refund

1995, \$11,963.85 Claim for Refund

1996, \$9,769.18 Claim for Refund

1997, \$13,902.01 Claim for Refund

For Claimant:

F. A. Lucich, Taxpayer

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

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

Issue: Whether appellant’s claims are barred by the applicable statute of limitations.

Appellant’s Exhibit: Miscellaneous Documents (Exhibit 9.4)

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

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Billy Wayne and Gayle H. Blanks, 268581

1998, \$663,038.00 Assessment

1999, \$987,125.00 Assessment

BG Star Productions, Inc., 268579

1998, \$112,394.00 Assessment

1999, \$62,250.00 Assessment

For Appellant:

Charles H. Rosenblatt, CPA

Yunna Barats, CPA

Michael Crum, Financial Advisor

Renel Sapiandante, Tax Counsel

For Franchise Tax Board:

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

Issues: Whether appellant BG Star Productions, Inc.'s sale of the exclusive rights to market and sell "Tae-Bo" for \$140,000,000 (to be paid in \$20,000,000 installments over 7 years) occurred in 1998 (and was an installment sale) or 1999 (and not an installment sale).

Whether an installment sale contract never existed (was void) because the buyer (NCP), who made the 1998 and 1999 payments due under the contract, allegedly never intended to make the remaining payments, and because Mr. Blank's consent to the contract was allegedly obtained through undue influence.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 9.5)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 9.6)

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

Stanley W. Gribble, 283008

1994, \$671,102.00 Assessment

SWG Management Company, 282437

1994, \$51,179.00 Assessment

For Appellant:

Michael Jennings, CPA

M. Edward Mishow, Attorney

Stanley Gribble, Taxpayer

Ron Babcock, Tax Counsel

LouAnn Foltyn, Accountant

For Franchise Tax Board:

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

Issues: Whether a series of transactions between the appellants, a related partnership, and an unrelated party should be disregarded and/or combined under the "sham transaction" or "step transaction" doctrines.

Assuming respondent prevails on the underlying issues, whether respondent has properly calculated the additional tax due.

Whether appellants' request for reimbursement of attorney fees is premature.

Respondent's Exhibit: Miscellaneous Documents (Exhibit 9.7)

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

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Playmates Toys, Inc., 261810
 1988, \$89,237 Assessment
 1989, \$662,407.00 Claim for Refund
 1990, \$3,014,189.00 Claim for Refund
 For Appellant:

Ellis G. Wasson, Attorney
 Craig Stein, Attorney

For Franchise Tax Board:

Melissa Wulff, Tax Counsel

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

Issues: Whether respondent properly included sales of a foreign unitary member in the numerator of the sales factor.

Whether appellant proved that respondent's assignment of California as the ultimate destination of goods for sales factor is incorrect.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 9.8)

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

The Board recessed at 12:10 p.m. and reconvened at 1:15 p.m. with Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Avalon Sunset, A California Corporation, 283190
 3-31-97, \$126,092.47 Assessment
 3-31-99, \$6,097.96 Assessment
 For Appellant:

David Chatfield, Attorney
 James Walters, CPA
 Stephen Gaggero, Representative

For Franchise Tax Board:

Renel Sapiandante, Tax Counsel

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

Issue: Whether appellant has shown that funds advanced to it by its sole shareholder constitute a loan rather than a contribution to capital, with the result that the amount at issue paid by appellant to the shareholder would constitute deductible interest rather than a dividend.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 9.9)

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

Byron Reynolds, 267548
 2001, \$6,555.00 Tax, \$1,638.75 Failure to File Penalty
 For Appellant:

Peymon Mottahedeh, Representative
 Adishian Brooks, Representative

For Franchise Tax Board:

Mark McEvelly, Tax Counsel

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

Issues: Whether appellant has shown error in respondent's determination for his underlying tax for 2001.

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Whether appellant has shown error in respondent’s determination for his underlying tax for 1999.

Whether appellant has shown that the failure to file penalty imposed by respondent should be abated.

Whether a frivolous appeal penalty should be imposed against appellant.

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

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

Vincent Castell, 263180, 269716

2000, \$822.00 Tax, \$205.50 Late Filing Penalty, \$1,307.25 Notice and Demand

2001, \$6,467.00 Tax, \$1,616.75 Late Filing Penalty, \$1,780.50 Notice and Demand

For Appellant: Peymon Mottahedeh, Representative

Adishian Brooks, Representative

For Franchise Tax Board: Mark McEvelly, Tax Counsel

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

Issues: Whether appellant has demonstrated error in the assessment of tax.

Whether appellant has demonstrated reasonable cause for abatement of the late filing penalties.

Whether appellant has demonstrated reasonable cause for abatement of the notice and demand penalties.

Whether the Board should impose a penalty for filing a frivolous appeal.

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

Christina Hanzel, 281922

2001, \$7,968.00 Tax, \$1,992.00 Late Filing Penalty, \$1,992.00 Notice and Demand

For Appellant: Peymon Mottahedeh, Representative

Adishian Brooks, Representative

For Franchise Tax Board: Jozel Brunett, Tax Counsel

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

Issues: Whether appellant has demonstrated any error in respondent’s proposed assessment for appellant’s 2001 tax year.

Whether a frivolous appeal penalty should be imposed.

Appellant’s Exhibit: Excerpt from Revenue and Taxation Code (Exhibit 9.10)

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

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Elisabeth A. Bossingham, 269712

2000, \$5,378.00 Tax, \$1,344.50 Late Filing Penalty

For Appellant:

Peymon Mottahedeh, Representative

Adishian Brooks, Representative

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

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

Issues: Whether appellant has demonstrated error in the assessment of tax.

Whether appellant has demonstrated reasonable cause for abatement of the late filing penalty.

Whether the Board should impose a penalty for filing a frivolous appeal.

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

Elizabeth R. Magness, 268509

2001, \$217.00 Tax, \$100.00 Failure to File Penalty

For Appellant:

Peymon Mottahedeh, Representative

Adishian Brooks, Representative

For Franchise Tax Board:

Mark McEvelly, Tax Counsel

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

Issues: Whether appellant has shown error in respondent's determination of her underlying tax for 2001.

Whether appellant has shown the failure to file penalty imposed by respondent should be abated.

Whether a frivolous appeal penalty should be imposed here.

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

The Board recessed at 3:00 p.m. and reconvened at 3:13 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Kretek International, Inc.*, 253847.

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

Cal-Cart Concrete, Inc., 221742 (AR)

1-1-99 to 12-31-01, \$31,622.16 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

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Kretek International, Inc., 253847 (ET)

1-1-01 to 12-31-01, \$113,864.00 Fee

Action: The Board deferred consideration of this matter.

Arif Noorali Moledina and Rubina Arif Moledina, 246504 (AS)

4-1-00 to 3-31-03, \$14,651.52 Tax

Action: Redetermine as recommended by the Appeals Division.

Line One Laboratories, Inc. (USA), 253124 (AC)

1-1-00 to 12-31-02, \$2,433.36 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Fouad Said Ismail and Nader A. Barakat, 52089, 240624 (ET)

3-1-94 to 2-28-98, \$33,774.55 Tax, \$3,377.44 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Sanjay Jariwala, 313754 (EH)

March 23, 2005 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the tobacco products.

Parviz Mouzooni, 316505 (KH)

April 27, 2005 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the cigarettes.

Ahmed Ali Ubadi, 312814 (ARH)

March 8, 2005 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the cigarettes.

Kim Phuong Thi Nguyen, 312813 (AA)

February 17, 2005 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the cigarettes.

Andy Narender Chhikara, 312808 (KHO)

March 3, 2005 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the cigarettes.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Maytag Corporation*, 265542; *Hannah Dawn Swift*, 304424; and, *Jane Marchiorlatti*, 213237.

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

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Philip and Lorraine Battaglia, 220023

1993, \$9,406.60 Assessment

1995, \$7,814.34 Assessment

1996, \$4,900.42 Assessment

1997, \$4,509.04 Assessment

Action: Sustain the action of the Franchise Tax Board.

Richard R. and Mari J. Cower, 294394

2000, \$63,635.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Charlene Grant, 301577

2000, \$100.00 Claim for Refund

2001, \$100.00 Claim for Refund

2002, \$100.00 Claim for Refund

2003, \$9.90 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Todd and Deborah Kopit, 266931

1992-1994, \$1,442.44 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Maytag Corporation, 265542

1994, \$100.156.00 Claim for Refund

Action: The Board took no action.

James W. McCain, 270549

2000, \$441.14 Assessment

Action: Sustain the action of the Franchise Tax Board.

Raymond and Maria Y. Mendoza, 282256

2000, \$1,537.00 Tax, \$282.00 Accuracy Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Calvin Thomas Morton, 290258

2000, \$13,477.00 Tax, \$3,369.25 Late Filing Penalty

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

Jeffery Patterson, 288690

2000, \$1,562.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Louise Renfro, 289778

2002, \$357.00 Tax, \$100.00 Late Filing Penalty, \$89.25 Notice and Demand Penalty

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

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Christina Stallard, 287312

2000, \$1,477.54 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Hannah Dawn Swift, 304424

1999, \$850.76 Claim for Refund

Action: The Board deferred consideration of this matter.

Kim C. and Leticia Wong, 288715

2001, \$630.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Barry D. Zinner, 287123

1992, \$1,687.00 Tax, \$421.79 Late Filing Penalty

1993, \$3,789.46 Tax, \$947.37 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Ken M. Aronovsky, 266622

2001, \$304.00 Tax, \$100.00 Late Filing Penalty

Action: Deny the petition for rehearing.

Jane Marchiorlatti, 213237

1991, \$11,759.00 Assessment

Action: The Board deferred consideration of this matter.

Paul and Kathleen Sarkaria, 266328

1998, \$22,756.00 Assessment

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

Richard An, 296164

2004, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Tazma Anaya, 299975

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Cynthia Jean Brewer, 299944

2004, \$300.50

Action: Sustain the action of the Franchise Tax Board.

Marine Brown (Deceased), 296183

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Betty A. Bustamante, 300011

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Sylvia I. Cole, 300032

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Sylvia T. Cordier, 296062

2004, \$340.00

Action: Modify the action of the Franchise Tax Board.

Margaret Gardner, 293047

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Erika R. Grady, 293054

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Desheng Huang, 298111

2004, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Tanya Kilgore, 293062

2004, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Ella Linebager, 300348

2004, \$374.00

Action: Sustain the action of the Franchise Tax Board.

Darryl B. Matthews, 301710

2004, \$347.50

Action: Reverse the action of the Franchise Tax Board.

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Abram Okopnik, et al., 282759

2003, \$1.00 or more

Musya Avrutis, et al., 305333

2003, \$1.00 or more

Michael Erlich, et al., 305334

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Maria F. Oliveira, 308370

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

A. J. Sanger, 295176

2001, \$347.50

Action: Reverse the action of the Franchise Tax Board.

Stephanie Spence, 300858

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Frederick J. Susewitz, 288619

2004, \$312.50

Action: Sustain the action of the Franchise Tax Board.

Van V. Tran, 295104

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Sammie N. Williams, 284205

2000, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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

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

Viking Pumps of Southern California, Inc., 244376 (EA)

1-1-00 to 3-31-03, \$166,251.28

Action: Approve the redetermination as recommended by staff.

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Sensormatic Electronics Corporation, 288760 (OHC)

4-1-99 to 11-30-01, \$245,833.88

Action: Approve the redetermination as recommended by staff.

Ericsson Radio Systems, Inc., 241427 (OHC)

4-1-95 to 12-31-98, \$8,693,144.92

Action: Approve the redetermination as recommended by staff.

Market America, Inc., 249338 (OHB)

1-1-96 to 9-30-99, \$615,645.05

Action: Approve the redetermination as recommended by staff.

Westates Carbon-Arizona, Inc., 251931 (OHB)

1-1-99 to 12-31-01, \$178,038.02

Action: Approve the redetermination as recommended by staff.

Access Used Equipment Corporation, 288361 (FHB)

7-1-00 to 6-30-01, \$109,709.35

Action: Approve the redetermination as recommended by staff.

Westell, Inc., 244742 (OHA)

7-1-94 to 9-30-02, \$105,319.99

Action: Approve the redetermination as recommended by staff.

Pacesetter, Inc., 287287 (AC)

10-1-00 to 12-31-03, \$136,125.00

Action: Approve the redetermination as recommended by staff.

American Transit Mix Company, Inc., 315690 (KH)

10-1-04 to 12-31-04, \$131,120.70

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

Sidel (Canada), Inc., 314862 (OHB)

10-1-04 to 12-31-04, \$54,088.70

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

The Okonite Company, Inc., 315424 (OHB)

1-1-00 to 12-31-02, \$115,518.00

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

America Online, Inc., 288536 (OHB)

7-1-01 to 6-30-03, \$201,094.94

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

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SALES AND USE TAX MATTERS, REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating in accordance with Government Code section 87105 in *Washington Mutual Bank FA, 313285*; and, *GE Fanuc Embedded Systems, Inc., 269625*; Mr. Parrish not participating in *Foster Poultry Farms, 304306*; Ms. Mandel not participating in accordance with Government Code section 87105 in, *Washington Mutual Bank FA, 313285*; *AIG Claim Services, 187211*; *Mission Financial Services Corporation, 281319*; and, *GE Fanuc Embedded Systems, Inc, 269625*; the Board made the following orders:

City of Long Beach, 266401 (EAB)

4-1-02 to 6-30-02, \$2,001,243.50

Action: Approve the refund as recommended by staff.

United California Bank, 313717 (AS)

10-1-01 to 3-31-02, \$61,865.09

Action: Approve the refund as recommended by staff.

United California Bank, 133003 (AS)

4-1-98 to 6-30-01, \$362,956.07

Action: Approve the refund as recommended by staff.

Bio-Rad Laboratories, 218353 (CH)

7-1-00 to 6-30-03, \$93,023.61

Action: Approve the refund as recommended by staff.

Bank of the West, 310358 (CH)

4-1-02 to 12-31-04, \$52,412.64

Action: Approve the refund as recommended by staff.

Foster Poultry Farms, 304306 (KH)

12-29-02 to 6-19-04, \$278,535.81

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

Washington Mutual Bank FA, 313285 (OH)

1-1-00 to 12-31-02, \$112,937.99

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

Cook Cabinets, Inc., 281761 (KH)

1-1-01 to 3-31-04, \$296,020.84

Action: Approve the refund as recommended by staff.

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T R W, Inc., 94210 (AS)

1-1-97 to 12-31-00, \$1,301,606.82

Action: Approve the refund as recommended by staff.

The Okonite Company, Inc., 248919 (OHB)

1-1-00 to 12-31-02, \$93,322.00

Action: Approve the refund as recommended by staff.

Alcoa Fujikura Ltd., 222087 (OHA)

4-1-00 to 12-31-01, \$90,278.69

Action: Approve the refund as recommended by staff.

AIG Claim Services, 187211 (OHB)

4-1-99 to 12-31-02, \$83,381.67

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

Donco Enterprises, Inc., 310916 (EH)

10-1-04 to 12-31-04, \$93,175.34

Action: Approve the refund as recommended by staff.

Ping Incorporated, 168462 (OH)

1-1-99 to 12-31-01, \$104,905.02

Action: Approve the refund as recommended by staff.

GATX Technology Services Corporation, 265229 (BH)

10-1-03 to 9-30-04, \$189,984.13

Action: Approve the refund as recommended by staff.

Modesto A-1 Glass Company, Inc., 304494 (KH)

1-1-01 to 6-30-04, \$216,986.92

Action: Approve the refund as recommended by staff.

General Motors Acceptance Corporation, 207313 (OH)

1-1-00 to 12-31-03, \$3,178,026.42

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

Mission Financial Services Corporation, 281319 (EA)

1-1-03 to 12-31-04, \$104,119.37

Action: Approve the refund as recommended by staff.

Kurita America, Inc., 263718 (OHC)

1-1-03 to 6-30-03, \$89,538.31

Action: Approve the refund as recommended by staff.

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Citibank (West), FSB, 249607 (OHC)

4-1-03 to 12-31-03, \$308,267.35

Action: Approve the refund as recommended by staff.

GE Fanuc Embedded Systems, Inc., 269625 (OHC)

7-1-95 to 9-30-03, \$56,475.24

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

Automotive Funding Group, Inc., 313286 (EA)

7-1-00 to 12-31-03, \$668,041.75

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES AND REDETERMINATIONS, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties and Redeterminations, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Allied World Assurance Company (US), Inc., 266311*; the Board made the following orders:

Conocophillips Company, 315010 (MT)

10-1-04 to 12-31-04, \$299,321.83

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

AT & T Communications of California, Inc., 268636 (ET)

9-1-01 to 12-31-01, \$255,650.41

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

Allied World Assurance Company (US), Inc., 266311 (ET)

1-1-99 to 12-31-01, \$1,031,057.92

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

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish not participating in *Valero Refining Company, California, 286677*; Ms. Mandel not participating in accordance with Government Code section 7.9 in *Transamerica Occidental Life Insurance, 112404*; *Transamerica Occidental Life Insurance, 112400*; *Transamerica Life Insurance Annuity Company, 112397*; and, *Pacificare Life & Health Insurance Company, 259369*; the Board made the following orders:

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Valero Refining Company, California, 286677 (MT)

5-15-00 to 9-30-00, \$52,392.72

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

Thrifty Payless, Inc., 315715 (ET)

7-1-05 to 6-30-06, \$57,900.00

Action: Approve the refund as recommended by staff.

Transamerica Occidental Life Insurance, 112404 (ET)

1-1-97 to 12-31-97, \$84,364.41

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

Transamerica Occidental Life Insurance, 112400 (ET)

1-1-96 to 12-31-96, \$62,304.99

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

Transamerica Life Insurance Annuity Company, 112397 (ET)

1-1-97 to 12-31-97, \$52,929.43

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

County of San Luis Obispo, 255443 (EF)

1-1-02 to 12-31-02, \$65,391.31

Action: Approve the refund as recommended by staff.

Pacificare Life & Health Insurance Company, 259369 (ET)

1-1-01 to 12-31-01, \$149,625.36

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 TAX MATTERS,
ADJUDICATORY**

Len and Jasmine Forman, 222703

1999, \$19,602.00 Claim for Refund

Considered by the Board: March 8, 2005

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

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating, the Board adopted a decision sustaining the action of the Franchise Tax Board.

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CHIEF COUNSEL MATTERS**RULEMAKING****Sales and Use Tax Regulation 1584, Membership Fees**

Selvi Stanislaus, Acting Chief, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding Sales and Use Tax Regulation 1584, *Membership Fees* (Exhibit 9.11).

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Mr. Chiang voting no, Ms. Mandel abstaining, the Board maintained the current amount of the nominal membership fee of \$45 and referred this matter to the Chief Counsel to be addressed at the October meeting in order to remove the inflation adjustment from the current regulation.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

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

Action: Approve the 2006 Diesel Fuel Tax Rate for Interstate Users as recommended by staff (Exhibit 9.12.)

FINAL ACTION ON HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING HELD SEPTEMBER 20, 2005

Joseph R. Mayzel, 295829

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating, the Board sustained the action of the Franchise Tax Board and directed the Taxpayer Rights Advocate staff to contact the taxpayer.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD SEPTEMBER 20, 2005

Michelle Feldt, 296746

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

Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board directed the Legislative Division to contact Franchise Tax Board and State Legislature to change Federal statutes for claiming foster child(ren) for head-of-household filing status due to the number of displaced children as a result of Hurricane Katrina and provide a report to Members within 30 days.

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Alorica, Inc., 224473

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

Tony Lucich, 235783

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

Stanley W. Gribble, 283008

SWG Management Company, 282437

Final Action: Mr. Leonard moved to grant the petition. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board sustained the action of the Franchise Tax Board.

Mr. Chiang requested the Franchise Tax Board provide him with the calculation of tax.

Billy Wayne and Gayle H. Blanks, 268581

BG Star Productions, Inc., 268579

Final Action: Ms. Yee moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Mandel. Mr. Leonard made a substitute motion to reverse the action of the Franchise Tax Board. The substitute motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Ms. Yee moved to sustain the action of the Franchise Tax Board but no vote was taken.

The Board deferred consideration of this matter to the following day.¹

Playmates Toys, Inc., 261810

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Nancy Posner, 287773

1998, \$4,346.00 Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

Kathleen Cooke, Tax Counsel

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

¹ Additional action was taken later in the day.

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Issue: Whether appellant has shown that the proposed assessment, which is based on alimony her ex-spouse was required to pay pursuant to a court order, is in error.

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

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD SEPTEMBER 20, 2005

Avalon Sunset, A California Corporation, 283190

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

Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board sustained the action of the Franchise Tax Board.

Byron Reynolds, 267548

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

Vincent Castell, 263180, 269716

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty for each year on appeal.

Christina Hanzel, 281922

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

Elisabeth A. Bossingham, 269712

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

Elizabeth R. Magness, 268509

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

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ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 3:50 p.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

CLOSED SESSION

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

The Board recessed at 4:28 p.m. and reconvened immediately in open session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD SEPTEMBER 20, 2005

Billy Wayne and Gayle H. Blanks, 268581
BG Star Productions, Inc., 268579

Final Action: The Board ordered that the matter be submitted for decision, directing the Appeals Division to review the Board hearing transcript and bring the matter back to the Board with a final recommendation at a later Board meeting.

The Board adjourned at 4:30 p.m.

The foregoing minutes are adopted by the Board on February 1, 2006.

Note: The following cases were removed from the calendar prior to the meeting: *Joseph L. and Kathyanne Hale, 289903*; and, *Byron Reynolds, 267947*.