

Tuesday, September 21, 2004

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 11:00 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Dale R. Peterson, 172243

Judith Peterson, 266995

1993, \$39,632.58 Assessment

1994, \$5,033.02 Assessment

For Party Opposing Innocent Spouse Relief: Dale R. Peterson, Taxpayer
Mary L. O'Brien, CPA

For Party Granted Innocent Spouse Relief: Judith Peterson, Responding Spouse

For Franchise Tax Board: Kathleen Cooke, Tax Counsel

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

Issue: Whether respondent properly granted innocent spouse relief to Ms. Peterson.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 9.8)

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

Exhibits to these minutes are incorporated by reference.

Hal A. and Lesley Sandler, 251044

1997, \$23,442.00 Claim for Refund

1998, \$29,112.00 Claim for Refund

For Claimant: Martin Rosenthal, CPA
Hal Sandler, Taxpayer

For Franchise Tax Board: Cody Cinnamon, Tax Counsel

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

Issue: Whether or not appellants have established that they had sufficient adjusted basis in their stock and debt interests in their S corporation, Reproductive Images, Inc., to permit the deduction in full of the losses generated by such S corporation in 1997 and 1998.

Claimant's Exhibit: Miscellaneous Documents (Exhibit 9.9)

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

David and Judith A. Epstein, 249990

1998, \$24,713.00 Assessment

1999, \$20,412.00 Assessment

For Appellant: John F. Warda, Jr., CPA

For Franchise Tax Board: Renel Sapiandante, Tax Counsel

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

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Issue: Whether appellants are entitled to a charitable deduction with respect to a residential structure allegedly donated to charity.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 9.10)

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

Eric and Bitten Hilton, 250180

1997, \$28,014.00 Assessment

For Appellant: Richard K. Semeta, Attorney

For Franchise Tax Board: Jeanne Sibert, Tax Counsel

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

Issues: Whether or not appellants have established that the taxable gain realized on the exercise of appellant-husband's stock options received as an employee of the Los Angeles office of the Hilton Hotels Corporation constitutes employee compensation – a portion of which must be sourced to and taxed by California – or, in the alternative, gain derived from “intangible property” that must be sourced to appellants' out-of-state domicile.

Whether or not appellants have established that the “workday” apportionment method set forth in California Code of Regulations, title 18, section 17951-5, subdivision (b) – and utilized by respondent in allocating appellants' taxable gain from the stock options in this appeal – constitutes a reasonable apportionment method under the facts of this case so as to properly limit appellants' taxable gross income to that earned “from sources within this State” pursuant to the dictates of Revenue and Taxation Code section 17951.

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

Brenda Dickson-Weinberg, 238527

1988, \$9,840.74 Assessment

For Appellant: Brenda Dickson-Weinberg, Taxpayer

For Franchise Tax Board: Jozel Brunett, Tax Counsel

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

Issue: Whether or not appellant has established that the accrued interest is attributable in whole or in part to any unreasonable error or delay by an officer or employee of respondent in performing a ministerial act.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 9.11)

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

Seymour I. Neuman, 252228

1998, \$11,891.00 Assessment

For Appellant: Seymour I. Neuman, Taxpayer

For Franchise Tax Board: Jeanne Sibert, Tax Counsel

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

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Issues: Whether appellant has a California basis in his Individual Retirement Account and Keogh plan.

Whether appellant has established the amount of any such California basis.

Appellant's Exhibit: Summary Table and CA Forms 540 (Exhibit 9.12)

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board.

Brian H. Pye, 253539

1994, \$1,175.02 Claim for Refund

For Claimant: Brian Pye, Taxpayer

For Franchise Tax Board: Suzanne Small, Tax Counsel

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

Issue: Whether appellant's claim for refund is barred by the statute of limitations.

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

Paul N. and Ava M. Paquette, 221938

1998, \$1,953.99 Assessment

For Appellant: Ava M. Paquette, Taxpayer

For Franchise Tax Board: Jozel Brunett, Tax Counsel

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

Issue: Whether respondent abused its discretion in refusing to abate interest under Revenue and Taxation Code section 19104.

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

German C. Garcia, 255773

2001, \$1,056.00 Assessment

For Appellant: German Garcia, Taxpayer
Maria Christina Garcia, Witness

Erica Zea, Interpreter

For Franchise Tax Board: Kathleen Cooke, Tax Counsel

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

Issue: Whether appellant is entitled to head of household filing status.

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

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Sunny Benson, 259095
2000, \$412.00 Assessment
For Appellant:

Sunny Benson, Taxpayer
Nwaeze Nwachuku, Representative
Diane Ewing, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether respondent properly used appellant's non-California source wage income in the calculation of appellant's California tax liability.

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

Marvin and Joan Klotz, 235904
2002, \$6.00 Claim for Refund
For Claimant:

Marvin Klotz, Taxpayer
Gina Rodriguez, Enrolled Agent
David Gemmigen, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether or not the Board has jurisdiction to consider appellants' contention that Revenue and Taxation Code section 17145 is unconstitutional; and, if so, whether or not such contention is correct.

Claimant's Exhibit: Miscellaneous Documents (Exhibit 9.13)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 9.14)

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

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Alpert Auto Wholesale, Inc, 143310, Joe Singh Sandhu, 169564, 186293; and, Joaquin E. Hernandez, 217942.*

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

Jerames Industries, Inc., 112004
10-1-96 to 9-30-99, \$29,993.23 Tax

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

Federal Motors Corporation, 193242
4-1-99 to 3-31-02, \$2,170.72 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

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Alpert Auto Wholesale, Inc, 143310

4-1-97 to 6-30-00, \$29,768.18 Tax

Action: The Board deferred consideration of this matter.

Joe Singh Sandhu, 169564, 186293

4-1-94 to 3-31-99, \$179,701.50 Tax, \$44,925.46 Fraud Penalty, \$12,970.15 Finality Penalty

Action: The Board deferred consideration of this matter.

Joaquin E. Hernandez, 217942

4-1-99 to 3-31-02, \$28,520.50 Tax, \$2,795.78 Negligence Penalty, \$2,795.73 Finality Penalty

Action: The Board deferred consideration of this matter.

Mila Chin, Il Pom Chin, and Sunny Chin, 268845

April 16, 2004 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the cigarettes.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

Action: (Motion expunged.)

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

Steve A. Calhoun, 250049

2003, \$347.28

Action: Reverse the action of the Franchise Tax Board.

Terry D. Campbell, 253813

2003, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Jian Chen, 253853

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Cassidy Clore, 254007

2003, \$1.00 or more

Action: Modify the action of the Franchise Tax Board.

Marat Dubinsky, 250413

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Joe Dunham, 254018

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Erika Easter, 258269

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Wan Chun Fu, 253620

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Paul Gerard, 251415

2002, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Beverly J. Gross, 251427

2003, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Janelle M. Jarvis, 244436

2002, \$200.00

Action: Sustain the action of the Franchise Tax Board.

Helen Kikes (Deceased), 251531

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Jong Yul Kim, 251571

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Taneisha L'aimont, 254055

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Frank Louie, 253616

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Sharon M. Parker, 255101

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Carolyn L. Reno, 258869

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Buddy Rogers, 258870

2003, \$400.00

Action: Sustain the action of the Franchise Tax Board.

Angela San Juan, 260795

2002, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Kathleen M. Surbey, 257948

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Wai Ching Tse, 257972

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Hershel L. Williams, 260765

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Connie Wong, 242324

2002, \$241.40

Action: Sustain the action of the Franchise Tax Board.

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

The Board deferred consideration of the following matter: *Cardinal Health 110, Inc., 260537.*

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

York International Corporation, 246509

7-1-97 to 6-30-00, \$67,834.62

Action: Approve the redetermination as recommended by staff.

Cerner Corporation, 244297

7-1-99 to 6-30-02, \$140,325.34

Action: Approve the redetermination as recommended by staff.

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Rapak, LLC, 217121

4-1-97 to 8-11-00, \$89,983.48

Action: Approve the redetermination as recommended by staff.

Tamglass Tempering Systems, Inc., 171569

1-1-95 to 9-30-01, \$408,666.65

Action: Approve the redetermination as recommended by staff.

Union Pacific Railroad Company, 160720

1-1-94 to 12-31-98, \$2,166,833.99

Action: Approve the redetermination as recommended by staff.

Chevys, Inc., 259817

10-1-00 to 10-9-03, \$333,375.38

Action: Approve the redetermination as recommended by staff.

Cardinal Health 110, Inc., 260537

7-1-93 to 9-30-96, \$525,387.64

Action: The Board deferred consideration of this matter.

Hewlett-Packard Financial Service, 267946

4-1-99 to 12-31-01, \$812,825.97

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

Ikea California, LLC, 242665

10-1-99 to 9-30-02, \$56,261.78

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

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Chiang not participating in *Tenet Healthsystems Hospitals, Inc., 268618*, Ms. Mandel not participating in accordance with Government Code section 87105 in *Tyco Electronics Corporation, 238490*, the Board made the following orders:

DEVX.COM, Inc., 268840

4-1-00 to 7-11-03, \$58,006.30

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

Automotive Racing Products, Inc., 234650

4-1-00 to 12-31-01, \$79,351.27

Action: Approve the refund as recommended by staff.

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General Precision, Inc., 207133

10-1-01 to 12-31-01, \$72,535.56

Action: Approve the refund as recommended by staff.

Tenet Healthsystems Hospitals, Inc., 268618

10-1-99 to 12-31-02, \$83,370.94

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

Fireside Bank, 258909

1-1-02 to 12-31-02, \$2,361,195.83

Action: Approve the refund as recommended by staff.

Clevenger Ford, 219125

1-1-00 to 12-31-02, \$83,783.95

Action: Approve the refund as recommended by staff.

Varian Medical Systems, Inc., 268252

1-1-00 to 12-31-02, \$313,943.21

Action: Approve the refund as recommended by staff.

Birleffi Motors, Inc., 267915

7-1-00 to 2-26-04, \$61,595.07

Action: Approve the refund as recommended by staff.

Tyco Electronics Corporation, 238490

1-1-00 to 12-31-02, \$359,054.90

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

Dynix Corporation, 198585

1-1-00 to 9-30-03, \$83,220.39

Action: Approve the refund as recommended by staff.

Harmon/Becker Automotive Systems, 267719

\$51,430.00

Action: Approve the refund as recommended by staff.

Hewlett-Packard Financial Service, 267945

4-1-99 to 12-31-01, \$5,762,752.86

Action: Approve the refund as recommended by staff.

Flowserve US, Inc., 263742

4-1-01 to 6-30-01, \$149,288.28

Action: Approve the refund as recommended by staff.

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Blaze Network Products, Inc., 209290

1-1-00 to 12-31-02, \$438,371.93

Action: Approve the refund as recommended by staff.

Longs Drug Stores California, Inc., 251379

10-1-00 to 9-30-03, \$2,183,625.17

Action: Approve the refund as recommended by staff.

National Broadcasting Company, Inc., 168065

1-1-97 to 12-31-00, \$390,747.80

Action: Approve the refund as recommended by staff.

Ashley Furniture Industries, Inc., 253592

1-1-02 to 12-31-02, \$54,280.00

Action: Approve the refund as recommended by staff.

Time Finance Company, 190706

1-1-02 to 12-31-02, \$116,117.58

Action: Approve the refund as recommended by staff.

Newport Acceptance Corporation, 211630

1-1-02 to 12-31-02, \$53,641.33

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS AND DENIAL OF CLAIM FOR REFUND, CONSENT

With respect to the Special Taxes Matters, Redeterminations and Denial of Claim for Refund, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Ultramar, Inc., 171576*; and, *Ultramar, Inc., 174415*; the Board made the following orders:

Cenco Refining Company, 259349

1-1-03 to 12-31-03, \$318,552.39

Action: Approve the redetermination as recommended by staff.

Ultramar, Inc., 171576

4-1-91 to 3-31-94, \$1,461,082.01

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

Ultramar, Inc., 174415

4-1-91 to 3-31-94, \$23,742,306.97

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

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**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,
CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Nationwide Life Insurance Company, 266288*; *Merastar Insurance Company, 261659*; *Allianz Life Insurance Company of North America, 264574*; and, *Humana Insurance Company, 266926*;, the Board made the following orders:

Cenco Refining Company, 239364

1-1-02 to 12-31-02, \$339,988.37

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

Cenco Refining Company, 264266

1-1-01 to 12-31-02, \$489,517.24

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

Chevron U.S.A., Inc., 270641

10-1-00 to 9-30-03, \$248,366.10

Action: Approve the refund as recommended by staff.

Nationwide Life Insurance Company, 266288

1-1-01 to 12-31-01, \$194,691.10

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

Merastar Insurance Company, 261659"

1-1-03 to 12-31-03, \$79,502.52

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

Allianz Life Insurance Company of North America, 264574

1-1-02 to 12-31-02, \$814,174.01

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

Humana Insurance Company, 266926

1-1-99 to 12-31-01, \$140,689.58

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

The Board recessed at 12:50 p.m. and reconvened at 1:50 p.m. with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

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ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:52 p.m. and reconvened immediately in closed session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

CLOSED SESSION

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

The Board recessed at 2:10 p.m. and reconvened immediately in open session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

Ramon Hirsig, Executive Director, announced the appointment of Randie L. Henry to the position of Deputy Director of the Sales and Use Tax Department and Anita Gore to the position of Chief, Communications Office.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

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

Action: The Board approved the 2005 Board Workload Plan (Exhibit 9.15).

SALES AND USE TAX APPEALS HEARINGS

IMC Chemicals, Inc., 196281

7-1-99 to 9-30-02, \$2,277,862.00 Claim for Refund

Oak Power Corporation, Ltd., Ptn., 196280

7-1-99 to 9-30-02, \$542,010.00 Claim for Refund

CD Poso I, Inc., Ltd., Ptn., 196283

7-1-99 to 9-30-02, \$275,616.00 Claim for Refund

CD Jasmin I, Inc., Ltd., Ptn., 196284

7-1-99 to 9-30-02, \$255,104.00 Claim for Refund

Ace Cogeneration Company, LP, 196282

7-1-99 to 9-30-02, \$1,663,999.00 Claim for Refund

For Claimant:

Mark L. Mann, Attorney

Dan Tobias, Accountant

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

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

Issues: Whether claimants are entitled to refunds of the tax reimbursement paid to retailers with respect to purchases of coal, because the coal was purchased for resale and was physically incorporated into electricity.

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

D & G Marine, Inc., 82414, 207531, 90009

12-30-96, \$288,512.81 Claim for Refund

8-11-99, \$569,198.00 Tax

6-1-96, \$43,642.50 Claim for Refund

Doug Bombard Enterprises, Inc., 240445

4-12-01, \$629,600.00 Claim for Refund

For Petitioner:

Richard Carlson, Representative

Greg Bombard, Taxpayer

For Sales and Use Tax Department:

Randy Ferris, Tax Counsel

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

Issue: Whether any of the vessels were used principally in interstate or foreign commerce.

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish not participating, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Creative Resource Associates, Inc., 216179

1-1-99 to 12-31-01, \$12,276.00 Tax, \$5,391.41 Negligence Penalty

For Petitioner:

Michael Lindenlaub, Taxpayer

Manny Almeida, Representative

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

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

Issues: Whether petitioner's transfer of production drawings is subject to sales tax.

Whether the negligence penalty should be deleted.

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

David Elias Pardo, 172990

7-1-97 to 6-30-00, \$20,308.70 Tax

For Petitioner:

David E. Pardo, Taxpayer

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

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

Issues: Whether the evidence shows that the audited cost of goods sold is overstated.

Whether the evidence shows that allowance for pilferage should be increased by 2 percent, from approximately 3 percent to 5 percent.

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

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD SEPTEMBER 21, 2004

Dale R. Peterson, 172243

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

Hal A. and Lesley Sandler, 251044

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

David and Judith A. Epstein, 249990

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

Eric and Bitten Hilton, 250180

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

John R. Bova, 212925

1998, \$17,245.00 Tax, \$3,449.00 Accuracy Related Penalty

For Appellant: No Appearance

For Franchise Tax Board: Diane Ewing, Tax Counsel

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.

Issues: Whether appellant has shown that respondent's proposed assessment, based on federal adjustments, is erroneous.

Whether appellant has shown that he acted in good faith with respect to his understatement of tax and had reasonable cause to warrant abatement of the accuracy-related penalty.

Respondent Exhibit: Miscellaneous Document (Exhibit 9.16)

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

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**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD SEPTEMBER 21, 2004**

Brenda Dickson-Weinberg, 238527

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

Brian H. Pye, 253539

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

Paul N. and Ava M. Paquette, 221938

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

German C. Garcia, 255773

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Paul E. and Linda Brooke Vogelgesang, 251062

1998, \$952.00 Assessment

For Appellant: No Appearance

For Franchise Tax Board: Diane Ewing, Tax Counsel

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.

Issue: Whether appellants have shown that the proposed assessment, based upon federal adjustments, are erroneous.

Respondent Exhibit: Miscellaneous Document (Exhibit 9.17)

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

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD SEPTEMBER 21, 2004**

Sunny Benson, 259095

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

Tuesday, September 21, 2004

Marvin and Joan Klotz, 235904

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

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
SEPTEMBER 21, 2004**

IMC Chemicals, Inc., 196281

Oak Power Corporation, Ltd., Ptn., 196280

CD Poso I, Inc., Ltd., Ptn., 196283

CD Jasmin I, Inc., Ltd., Ptn., 196284

Ace Cogeneration Company, LP, 196282

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

Creative Resource Associates, Inc., 216179

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

David Elias Pardo, 172990

Final Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered the protested measure of tax be reduced by 5 percent.

SALES AND USE TAX APPEALS HEARINGS

Jue Wang and Quing Xu, 215144

7-1-99 to 3-31-02, \$13,799.54 Tax

For Petitioner:

Maxwell E. Lin, Attorney

Tim Chen, CPA

Quing Xu, Taxpayer

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

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

Issue: Whether the evidence shows that the amount of total merchandise purchases used in the audit computations is excessive.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that the protested measure of tax be reduced by 15 percent.

Ms. Mandel announced that she would not be participating in *David M. Golumbic, 21656*, and left the boardroom.

Tuesday, September 21, 2004

David M. Golumbic, 216561

6-1-96 to 3-31-01, \$2,919.00 Tax, \$00.00 Penalty

For Petitioner: David Golumbic, Taxpayer
Julia Leigh Miranda, Attorney
Kaj Hooper, Witness

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

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

Issues: Whether the evidence establishes that petitioner was a retailer.
Whether the evidence warrants further adjustments to the audited taxable sales.
Whether relief from interest is warranted.

Action: Upon motion of Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Migden absent, Ms. Mandel absent and not participating, the Board ordered that the petition be submitted for decision.

Ms. Mandel returned to the Boardroom.

Kenneth Paull Smith and Diana L. Smith, 207936

1-5-95, \$2,908.00 Tax, \$00.00 Finality Penalty

For Petitioner: Kenneth Paull Smith, Taxpayer
Diana Smith, Taxpayer

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

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

Issue: Whether petitioners have established that they paid the use tax through a broker.

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

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Elaine M. Nichols, 245442

2003, \$347.50

For Claimant: Elaine M. Nichols, Taxpayer
Judith Holtz, Representative

For Franchise Tax Board: Suzanne Small, 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 Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board submitted the appeal for decision.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Colin G. Campbell, 224478

1998, \$5,122.00 Tax, \$1,280.50 Late Filing Penalty

For Appellant: Colin G. Campbell, Taxpayer

For Franchise Tax Board: Jozel Brunett, Tax Counsel

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

Issues: Whether appellant has proved that respondent's determination of his income is in error.

Whether abatement of the late filing penalty is appropriate.

Whether interest may be abated.

Whether a frivolous appeal penalty is appropriate.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 9.18)

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

SPECIAL TAXES APPEALS HEARING

Fibernet, Inc., 87388

4-1-92 to 12-31-99, \$23,579.96 Tax, \$2,321.43 Failure to File and \$36.54 Negligence Penalties

For Petitioner: Douglas Denoff, Taxpayer

For Property and Special Taxes Department: M. Judith Nelson, Tax Counsel

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

Issues: Whether the Department correctly calculated and determined the amount of the emergency telephone users surcharge due.

Whether relief from the interest liability is warranted.

Whether the penalty for negligence was properly imposed.

Whether relief from the penalty for failure to file returns is warranted.

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

The Board recessed at 4:30 p.m. and reconvened at 4:35 p.m. with Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that the motion to approve the Corporate Franchise and Personal Income Tax Matters Consent Agenda be expunged.

The Board deferred consideration of the following matter: *Rosemarie Williams, 217726.*

Tuesday, September 21, 2004

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

John A. Bettencourt, 251034

1995, \$3,696.12 Interest, \$1,306.85 Penalty

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

Edith Gentry, 246309

2001, \$1,192.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jesus Jose Guerrero, Jr., 243500

1994, \$2,960.40 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Truc T. Nguyen, 252222

2000, \$1,743.03 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Phillip R. and Patricia L. Roy, 239537

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

Action: Sustain the action of the Franchise Tax Board.

James J. and Kazue O. Short, 239540

1991, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ian G. and Madeleine Walker, 246158

1999, \$11,012.00 Claim for Refund

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

Rosemarie Williams, 217726

1988, \$2,560.00 Tax, \$128.00 Negligence Penalty

1989, \$2,374.00 Tax, \$118.00 Negligence Penalty

Action: The Board deferred consideration of this matter.

Thomas E. Wojcicki, 252125

1992, \$1,007.77 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Atsushi Fujii, 215896

2000, \$5,257.33 Claim for Refund

Action: Deny the petition for rehearing.

Tuesday, September 21, 2004

The Board adjourned at 4:40 p.m.

The foregoing minutes are adopted by the Board on December 14, 2004.

Note: The following cases were removed from the calendar prior to the meeting: *Victor C. Bortka, 192236; Gerald W. and Kathleen Chamales, 213440; Raul Velez Casian, 93198; Doctor's Signature Sales/Marketing International, 188163; and, Qantas Airways, Ltd., 109811.*