

**Tuesday, June 19, 2007**

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with 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.

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

Victor C. Bortka, 192236

2000, \$00.00

Peggy C. Lesnick, 266462

2000, \$9,574.79 Innocent Spouse Relief Requested, \$8,425.82 Innocent Spouse Relief Granted

For Appellant:

Victor C. Bortka, Taxpayer

Myra E. Bortka, Bookkeeper

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Peggy Lesnick, Taxpayer

Edward Lesnick, Appellant's Son

Alec Lesnick, Appellant's Son

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

Issue: Whether respondent's grant of partial equitable innocent spouse relief amounts to an abuse of discretion.

Respondent's Exhibit: Miscellaneous Documents (Exhibit 6.17)

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

Exhibits to these minutes are incorporated by reference.

James J. DeCarlo, 351343

1998, \$14,566.94 Claim for Refund

1999, \$16,600.88 Claim for Refund

2000, \$13,890.71 Claim for Refund

For Claimant:

F. Patrick St. Peter, CPA

James J. DeCarlo, Taxpayer

For Franchise Tax Board:

Suzanne Small, Tax Counsel

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

Issues: Whether appellant filed his claims for refund prior to the expiration of the applicable statute of limitations.

Whether appellants are entitled to equitable relief from the statute of limitations.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.18)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 6.19)

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

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Donald Iwuchukwu, 309168

1997, \$4,535.00 Assessment

For Appellant:

Donald Iwuchukwu, Taxpayer

For Franchise Tax Board:

Jane Perez, Tax Counsel

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

Issues: Whether appellant has shown that the proposed assessment, based on federal changes, is erroneous.

Whether respondent abused its discretion in denying interest abatement.

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

Charles H. Bond, 344966

2000, \$5,810.00 Assessment, \$1,452.50 Late Filing Penalty

2001, \$4,184.00 Assessment, \$1,046.00 Late Filing Penalty

For Appellant:

Charles H. Bond, Taxpayer

Salvador Martinez, Jr., Representative

For Franchise Tax Board:

Jane Perez, Tax Counsel

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

Issues: Whether appellant has met his burden to prove error in the proposed assessments.

Whether appellant has shown that the late filing penalties should be abated for reasonable cause.

Whether a frivolous appeal penalty should be imposed.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.20)

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

Lionel Kolker, 334482

1997, \$14,425.00 Tax, \$3,605.25 Late Filing Penalty

For Appellant:

Marc McDonald, Representative

For Franchise Tax Board:

Jane Perez, Tax Counsel

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

Issues: Whether appellant has established error in the federal determination.

Whether appellant has established reasonable cause that the late filing penalty should be abated.

Whether the Board should impose a frivolous appeal penalty.

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 sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

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**LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Soveida A. Loza, 271980 (AC); Elidia Gonzalez Ledesma, 271978 (AC).*

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:

**Canyon Motors, Ltd., 219451 (AS)**

1-1-00 to 12-31-01, \$270,036.54 Tax, \$27,003.69 Negligence Penalty

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

**U.S. Car Nation, 255367 (EA)**

7-1-98 to 6-30-01, \$2,035,464.83 Tax, \$221,409.19 Negligence Penalty

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

**Ronald Edward Young, 330248 (AA)**

1-1-03 to 7-31-03, \$25,027.00 Tax, \$5,007.40 Penalty

Action: Redetermine as recommended by the Appeals Division.

**Robert Wayne Stone, 335013 (EAA)**

10-1-99 to 9-30-00, \$9,809.14 Tax, \$3,642.09 Penalties

Action: Redetermine as recommended by the Appeals Division.

**J. R. Tomkinson, Inc., 251377 (UT)**

10-26-01, \$71,250.00 Tax, \$7,125.00

Action: Redetermine as recommended by the Appeals Division.

**Toni Inez Swain, 289948 (UT)**

11-20-02, \$978.00 Tax, \$97.80 Penalty

Action: Redetermine as recommended by the Appeals Division.

**Soveida A. Loza, 271980 (AC)**

4-1-00 to 3-31-03, \$39,925.87 Tax, \$9,981.51 Penalty

**Elidia Gonzalez Ledesma, 271978 (AC)**

10-1-00 to 9-30-03, \$17,770.28 Tax, \$4,885.96 Penalty

Action: The Board took no action.

**Fine Line Paint Corporation, 165509, 214928, 259649 (MT)**

2001, \$6,466.41 Childhood Lead Poisoning Prevention Fee

2002, \$7,822.72 Childhood Lead Poisoning Prevention Fee

2003, \$7,932.94 Childhood Lead Poisoning Prevention Fee

Action: Redetermine as recommended by the Appeals Division.

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**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:

Donald Bodan, 361473

2004, \$584.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Katrina M. Carloss, 340159

1996, \$2,076.30 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Five Corporation, 353421

2003, \$32,059.94 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michelle A. Foote, 353311

2001, \$307.40 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ella S. Johnson, 349143

2003, \$924.25 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Mitchell McMurray, 361407

2004, \$935.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Holly H. Nash, 354334

2003, \$1,380.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Arlan Rower, 261875

1993, \$2,788.00 Tax, \$557.60 Accuracy Penalty

Action: Sustain the action of the Franchise Tax Board.

Toll CA GP Corporation, 353019

2004, \$5,695.34 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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David C. Claunch, 315648

2002, \$815.00 Assessment, \$204.25 Notice and Demand Penalty, \$203.75 Late Filing Penalty, \$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Jimmie Ray Cox, 314893

2002, \$1,279.00 Tax, \$319.75 Late Filing Penalty, \$319.75 Notice and Demand Penalty, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Bradley Kastle, 316304

2002, \$1,635.00 Tax, \$408.75 Late Filing Penalty, \$408.75 Notice and Demand Penalty, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Janice Madrid, 317476

2002, \$1,031.00 Tax, \$389.75 Notice and Demand Penalty, \$257.75 Late Filing Penalty, \$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Leonard R. Magness, 314816

2002, \$3,030.00 Tax, \$757.50 Notice and Demand Penalty, \$757.50 Late Filing Penalty, \$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Fakhradin Mirian and Laura Mirian, 329166

2001, \$3,315.00 Assessment

Action: Deny the petition for rehearing.

Steven R. Olmos, 311772

2002, \$5,522.00 Tax, \$1,380.50 Late Filing, \$1,380.50 Notice and Demand Penalty, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Byron Reynolds, 307167

2002, \$5,987.00 Tax, \$1,496.75 Notice and Demand Penalty, \$1,496.75 Late Filing Penalty

Action: Deny the petition for rehearing.

Darrel Alan Travis, 339857

2003, \$352.50 Assessment, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

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**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Diane J. Reed*, 333196.

With respect to the Homeowner and Renter Property Tax Assistance 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:

Debra Bradford, 356806  
2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Raymond Ireland, 378587  
2006, \$347.50

Action: Modify the action of the Franchise Tax Board.

Armananush Khachatryan, 345649  
2005, \$472.60

Action: Sustain the action of the Franchise Tax Board.

Diane J. Reed, 333196

Action: The Board took no action.

Phyllis H. Roth, 377515  
2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Quang D. Tran, 362992  
2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Cresenciana Vasquez, 372998  
2006, \$347.50

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. Steel, 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:

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Aramark Uniform & Career Apparel, 281415 (AC)

7-1-99 to 6-30-02, \$70,311.39

Action: Approve the redetermination as recommended by staff.

Hanger Prosthetics & Orthotics West, 361948 (OHB)

4-1-01 to 9-30-04, \$251,938.14

Action: Approve the redetermination as recommended by staff.

Photon Dynamics, Inc., 296447 (GH)

10-1-00 to 12-31-01, \$1,354,256.93

Action: Approve the redetermination as recommended by staff.

Alpha Shirt Company, 288137 (OHB)

7-1-99 to 6-30-02, \$359,912.84

Action: Approve the redetermination as recommended by staff.

Churchill Downs California Company, 312856 (AS)

7-1-00 to 12-31-04, \$381,466.40

Action: Approve the redetermination as recommended by staff.

Design Bath & Hardware, Inc., 329594 (AS)

1-1-01 to 12-31-04, \$72,881.29

Action: Approve the redetermination as recommended by staff.

Mike Thompson's Recreational Vehicle, 396889 (AA)

10-1-06 to 12-31-06, \$92,049.40

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

Carl Karcher Enterprises, Inc., 396895 (EA)

4-1-06 to 6-30-06, \$253,678.50

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

United Rentals Northwest, Inc., 388739 (OHB)

1-1-00 to 9-30-04, \$232,688.28

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

Buca Restaurants 2, Inc., 396882 (OHA)

1-1-06 to 3-31-06, \$64,419.40

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

Mercedes-Benz USA, LLC, 378421 (KH)

10-1-03 to 9-30-06, \$2,500,000.00

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

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American Auto Financing, Inc., 340068 (EA)

4-1-04 to 9-30-05, \$67,147.68

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 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 87105 in *Chevrolet Motor Division, 395957*, the Board made the following orders:

UHS-Corona, Inc., 359309 (GH)

4-1-04 to 5-31-04, \$317,466.13

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

Norton & Norton Electric Company, Ltd., 367234 (AA)

7-1-03 to 9-30-06, \$65,309.70

Action: Approve the refund as recommended by staff.

Chevron USA, Inc., 348173 (BH)

1-1-03 to 12-31-06, \$3,573,448.70

Action: Approve the refund as recommended by staff.

Pioneer Northern, Inc., 373497 (CH)

7-1-03 to 6-30-06, \$66,509.85

Action: Approve the refund as recommended by staff.

San Diego County Credit Union, 387738 (FH)

7-1-06 to 9-30-06, \$58,156.35

Action: Approve the refund as recommended by staff.

BMW Financial Services NA, Inc., 116684 (OHB)

1-1-08 to 6-30-99, \$114,472.37

Action: Approve the refund as recommended by staff.

The Glidden Company, 281771 (OHA)

4-1-01 to 6-30-04, \$202,873.48

Action: Approve the refund as recommended by staff.

Pioneer Americas, Inc., 394114 (OHC)

4-1-97 to 7-31-01, \$105,867.56

Action: Approve the refund as recommended by staff.

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Ford Motor Company, 395823 (OHA)

9-19-06 to 1-9-07, \$779,652.36

Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 395957 (OHA)

6-19-06 to 1-3-07, \$711,478.74

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

Full / Tech Systems, Inc., 382284 (FH)

12-1-03 to 9-30-06, \$56,198.95

Action: Approve the refund as recommended by staff.

Misys Hospital Systems, Inc., 372006 (OHB)

1-1-06 to 12-31-06, \$112,114.52

Action: Approve the refund as recommended by staff.

Misys Hospital Systems, Inc., 394725 (OHB)

1-1-05 to 3-31-06, \$134,705.87

Action: Approve the refund as recommended by staff.

IMA North America, Inc., 340423 (OHB)

10-1-02 to 12-31-02, \$66,437.44

Action: Approve the refund as recommended by staff.

GOR Acquisition Corporation, 233398 (AC)

4-1-00 to 9-30-04, \$334,278.13

Action: Approve the refund as recommended by staff.

GOR Acquisition Corporation, 332382 (AC)

1-1-04 to 9-30-05, \$56,192.77

Action: Approve the refund as recommended by staff.

Wachovia Dealer Services, Inc., 390377 (EAA)

10-1-06 to 12-31-06, \$1,722,649.27

Action: Approve the refund as recommended by staff.

Omnibus Systems, Inc. / Delaware Corporation, 257803 (OH)

8-4-99 to 6-30-01, \$77,771.95

Action: Approve the refund as recommended by staff.

KSL La Costa Resort Corporation, 372313 (FHB)

1-1-04 to 12-31-04, \$550,754.45

Action: Approve the refund as recommended by staff.

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Butler Manufacturing Company, 357831 (OHA)

4-1-05 to 6-30-05, \$98,756.75

Action: Approve the refund as recommended by staff.

First Financial Credit Union, 390378 (AP)

1-1-06 to 9-30-06, \$164,830.87

Action: Approve the refund as recommended by staff.

Pacific Southwest Container, LLC, 388174 (KH)

10-1-06 to 12-31-06, \$274,042.70

Action: Approve the refund as recommended by staff.

ING Life Insurance & Annuity Company, 361970 (OHC)

4-1-03 to 12-31-05, \$68,583.89

Action: Approve the refund as recommended by staff.

American Auto Financing, Inc., 339832 (EA)

4-1-04 to 9-30-05, \$80,913.60

Action: Approve the refund as recommended by staff.

Doctors Med Center of Modesto, Inc., 394398 (KH)

1-1-03 to 12-31-05, \$93,684.03

Action: Approve the refund as recommended by staff.

World Data Products, Inc., 393426 (OHA)

7-1-03 to 9-30-06, \$82,206.82

Action: Approve the refund as recommended by staff.

### **SPECIAL TAXES MATTERS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

The Board deferred consideration of the following matter: *Financial Indemnity Company, 238365 (ET)*

With respect to the Special Taxes Matters, Relief of Penalties and Denials of Claims for Refund, 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 *Heineken USA, Incorporated, 399507*, the Board made the following orders:

Financial Indemnity Company, 238365 (ET)

1-1-02 to 3-31-03, \$203,763.90

Action: The Board took no action.

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Heineken USA, Incorporated, 399507 (ET)

7-1-06 to 7-31-06, \$107,670.42

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

TMT-Pathway, LLC, 377865 (MT)

1-1-05 to 12-31-05, \$70,348.35

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

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

The Board deferred consideration of the following matters: *Nella Oil Company, LLC, 281412, 332367, 386966 (MT)*

With respect to the Special Taxes Matters, Credits, Cancellations and 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 *ING Life Insurance & Annuity Company, 392049 (ET)*, the Board made the following orders:

Nella Oil Company, LLC, 281413, 332371, 386970 (MT)

1-1-04 to 12-31-05, \$251,541.28

Action: Approve the refund as recommended by staff.

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

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

Action: The Board took no action.

ING Life Insurance & Annuity Company, 392049 (ET)

1-1-02 to 12-31-02, \$58,818.56

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

The Board recessed at 12:40 p.m. and reconvened at 1:40 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

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

John Cirino and Sepideh Cirino, 361476

2001, \$45,078.00 Assessment

For Appellant:

Sepideh Cirino, Taxpayer

Neal M. Reitz, CPA

For Franchise Tax Board:

Raul Escatel, Tax Counsel

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

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Issues: Whether appellant has shown that she was “engaged in a trade or business as a trader in securities” for purposes of Internal Revenue Code section 475(f)(1) during 2001.

Whether appellant properly made a “mark to market” election for 2001.

Appellant’s Exhibit: Miscellaneous Document (Exhibit 6.21)

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

Dean H. Fletcher and Valerie A. Fletcher, 335777

2002, \$60,703.00 Assessment

For Claimant: Larry Goldstein, CPA

For Franchise Tax Board: Mark McEvelly, Tax Counsel

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

Issue: Whether appellants may exclude from their gross income attorneys’ fees paid in the amount of \$1,405,179.

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

Larry Geisel and Rhoda Geisel, 358724

2000, \$92,424.00 Assessment

For Appellant: Larry Geisel, Taxpayer

For Franchise Tax Board: Todd Watkins, Tax Counsel

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

Issues: Whether appellants were California residents or domiciliaries on or about June 15, 2000 (the date of the “90 percent Stock Loan” transaction at issue).

Whether appellant Larry Geisel engaged in a taxable sale transaction by transferring 15,000 shares of Alteon WebSystems, Inc., stock to Derivium Capital, LLC, in exchange for cash pursuant to a “90 percent Stock Loan” transaction that was documented as a non-recourse loan.

Whether a sale of 15,000 shares of Alteon stock by Derivium constituted, for tax purposes, a taxable sale by appellant.

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

Ashok Israni and Lata Israni, 349396

1998, \$99,521.00 Assessment

For Appellant: Ashok Israni, Taxpayer

Richard Carpenter, Attorney

For Franchise Tax Board:

Raul Escatel, Tax Counsel

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

Issue: Whether amounts received by appellant Ashok Israni from Pacifica Pima, Inc., an S corporation, constituted taxable distributions.

Appellant’s Exhibit: Miscellaneous Document (Exhibit 6.22)

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

Barry T. Calvert and Diane L. Calvert, 334985

1999, \$100,204.00 Assessment

For Appellant:

Thomas R. Lamons, Attorney

For Franchise Tax Board:

Mark McEvelly, Tax Counsel

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

Issue: Whether appellants have shown that they are entitled to exclude various payments from their gross income under Internal Revenue Code section 104(a)(2).

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

Ronald Tomsic, 294757

1998, \$13,934.00 Claim for Refund, \$5,968.00 Interest

1999, \$31,273.00 Claim for Refund, \$10,156.00 Interest

2000, \$194,271.00 Claim for Refund, \$42,656.00 Interest

2001, \$22,975.00 Claim for Refund, \$2,781.00 Interest

2002, \$22,957.00 Claim for Refund, \$1,231.00 Interest

Bernard A. Reiling and Judith Reiling, 294780

1999, \$157,837.00 Claim for Refund, \$51,276.00 Interest

2001, \$193,172.00 Claim for Refund, \$23,371.00 Interest

2002, \$16,592.00 Claim for Refund, \$896.00 Interest

Sanford Kopelow and Marlene Kopelow, 295580

1999, \$56,471.00 Claim for Refund, \$18,345.00

Steven C. Walker and Lissa Walker, 301166

2001, \$20,948 Claim for Refund

For Claimant:

Robert S. Horwitz, Attorney

Rex Halverson, Attorney

Steve Walker, Taxpayer

Ronald Tomsic, Taxpayer

Ben Reiling, Taxpayer

For Franchise Tax Board:

David Gemmingen, Tax Counsel

William Hilson, Tax Counsel

Edwin P. Chase, Expert Witness

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

Issue: Whether appellants were engaged in an abusive tax shelter such that respondent properly disallowed deductions attributable to certain commercial real property.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.23)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 6.24)

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

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William F. Grun and Susan J. Grun, 337066

1999, \$172,851.00 Assessment

For Appellant:

Robert Klueger, Attorney

For Franchise Tax Board:

John Penfield, Tax Counsel

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

Issue: Whether the Franchise Tax Board correctly determined that appellants were residents of California on June 25, 1999.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.25)

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

Benjamin Dorn, 358674

2002, \$1,849.00 Tax, \$89.62 Post Amnesty Penalty

For Appellant:

Benjamin W. Dorn, Taxpayer

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

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

Issues: Whether appellant has shown error in the Franchise Tax Board's proposed assessment for 2002.

Whether a frivolous appeal penalty should be imposed.

Appellant's Exhibit: Statement of Earnings (Exhibit 6.26)

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

## **CHIEF COUNSEL MATTERS**

### **RULEMAKING**

#### **Petition to Amend Property Tax Rule 462.060, Change in Ownership – Life Estates and Estates for Years.**

Robert Lambert, Acting Assistant Chief Counsel, and Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the petition to amend Property Tax Rule 462.060, Change in Ownership – Life Estates and Estates for Years. The petition proposes to amend Rule 462.060, so that the creation or termination of a life estate gives rise to only a rebuttable presumption that a change in ownership takes place. (Exhibit 6.27.)

Speakers:

Stephen H. Bennett, CPA, Letwak & Bennett

Juliet Apfel, Principal Appraiser, Los Angeles County Assessor

Richard Girgado, Deputy County Counsel, County of Los Angeles,

California Assessor's Association and California Association of Counties

**Tuesday, June 19, 2007**

Action: Mr. Leonard moved to defer this matter to an interested parties meeting. 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. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board denied the petition.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD JUNE 19, 2007**

Donald Iwuchukwu, 309168

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

Victor C. Bortka, 192236

Peggy C. Lesnick, 266462

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

James J. DeCarlo, 351343

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

Charles H. Bond, 344966

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

John Cirino and Sepideh Cirino, 361476

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 Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

Dean H. Fletcher and Valerie A. Fletcher, 335777

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 Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

Tuesday, June 19, 2007

Larry Geisel and Rhoda Geisel, 358724

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel 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.

Ashok Israni and Lata Israni, 349396

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

Barry T. Calvert and Diane L. Calvert, 334985

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 Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

Ronald Tomsic, 294757

Bernard A. Reiling and Judith Reiling, 294780

Sanford Kopelow and Marlene Kopelow, 295580

Steven C. Walker and Lissa Walker, 301166

Final Action: Mr. Leonard moved to reverse the action of the Franchise Tax Board. 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. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

William F. Grun and Susan J. Grun, 337066

Final Action: Ms. Steel moved to reverse the action of the Franchise Tax Board. The motion failed for lack of a second.

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

Benjamin Dorn, 358674

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

Tuesday, June 19, 2007

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Patrick E. Galvin, 350467

2002, \$1,923.00 Tax, \$480.75 Late Filing Penalty, \$480.75 Notice and Demand Penalty, \$90.00 Filing Enforcement Fee

For Appellant:

Appearance Waived

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

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

Issues:

Whether the Board has jurisdiction over this appeal.

Whether appellant has established error in the proposed assessment for 2002.

Whether appellant has shown reasonable cause for the abatement of penalties.

Whether the Board should impose a frivolous appeal penalty.

Action:

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 dismissed this appeal for lack of jurisdiction. In addition, the Board noted for the record that had the Board had jurisdiction, it would have sustained the action of the Franchise Tax Board.

Thomas Jones, 346184

2003, \$8,006.00 Tax, \$2,001.50 Late Filing Penalty

For Appellant:

Appearance Waived

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 underlying tax assessment.

Whether appellant has shown reasonable cause to abate the late filing penalty.

Whether the Board should impose a frivolous appeal penalty.

Action:

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

The Board adjourned at 6:40 p.m.

*The foregoing minutes are adopted by the Board on August 14, 2007.*

Note: The following cases were removed from the calendar prior to the meeting: *Kenneth Schweit, 342024; Daniel Najor, 349031; Mia L. Andrade, 355422; Victor Roy, 307162, 341901; and, Demetrios Sgouros, 344822.*