

**Tuesday, October 2, 2007**

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

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

Donna Yarnovich, 345641

1997, \$1.00 or more Claim for Refund

1998, \$1.00 or more Claim for Refund

For Appellant:

Donna Yarnovich, Taxpayer

Edward Yarnovich, Representative

For Franchise Tax Board:

Diane Ewing, Tax Counsel

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

Issue: Whether the Franchise Tax Board correctly denied appellant's claim for refund of interest.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.1)

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.

Michael Edward Farrell and Christine Marie Farrell, 268382

1994, \$1,171.20 Assessment

1995, \$2,908.00 Assessment

1997, \$624.00 Assessment

For Appellant:

Michael E. Farrell, Taxpayer

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

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

Issues: Whether appellants have established that respondent's assessments, and the federal adjustments upon which they are based, are barred by the statute of limitations.

Whether appellants have met their burden of proving that respondent's Notice of Proposed Assessment are erroneous.

Whether appellants have shown that they acted in good faith with respect to their understatement of tax and had reasonable cause to warrant abatement of the accuracy-related penalties.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.2)

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.

Domingo Chavez, Jr., 378262

1987, \$12,180.29 Assessment

1988, \$7,869.30 Assessment

For Appellant:

Carrie Chavez, Witness

For Franchise Tax Board:

Jane Perez, Tax Counsel

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

Issue: Whether the Board has jurisdiction to consider the penalties for late filing, negligence and notice and demand.

Whether respondent abused its discretion in refusing to fully abate interest.

Amy Kelly, Tax Counsel, Legal Appeals Division, Legal Department, announced a concession by the Franchise Tax Board to abate interest from October 18, 2005, to September 8, 2006, for the tax year 1987.

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.

**David H. Ward, 379737**

2002, \$9,885.00 Tax, \$380.95 Penalty

For Appellant:

Keith Shibou, Representative

For Franchise Tax Board:

Natasha Page, Tax Counsel

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

Issues: Whether California may tax appellant's per capita Indian gaming distribution.

Whether the Board has jurisdiction to review the imposition of the post-amnesty penalty by the Franchise Tax Board and, if so, whether the FTB properly determined that the post-amnesty penalty is applicable.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.3)

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.

The Board recessed at 11:30 a.m. and reconvened at 11:35 a.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**Hseintai Meng and Shauming Mong, 333224**

2000, \$27,620.00 Assessment

For Appellant:

Hseintai Meng, Taxpayer

Alan Spiegel, Representative

For Franchise Tax Board:

Christopher Parker, Tax Counsel

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

Issue: Whether the Franchise Tax Board properly determined the amount of compensation income recognized as a result of appellant-husband's exercise of stock options.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.4)

Respondent's Exhibit: Amended Interest Computation Memorandum (Exhibit 10.5)

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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Leonard J. Saubel, 352452, 379738

2002, \$9,621.00 Tax

2003, \$10,862.00 Tax

Lonae J. Saubel, 355613

2002, \$12,094.00 Tax

Leila J. Saubel, 355681

2001, \$5,340.00 Tax, \$1,335.00 Late Filing Penalty

2002, \$10,966.00 Tax

For Appellant:

Keith Shibou, Representative

For Franchise Tax Board:

Natasha Page, Tax Counsel

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

Issue: Whether appellants resided in "Indian country" during the years at issue, thereby preventing California from taxing their per-capita Indian gaming distributions.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.6)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 10.7)

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.

Daniel V, Inc., 342609

1997, \$40,759.23 Assessment

1998, \$840,010.32 Assessment

For Appellant:

Marty Dakessian, Attorney

David Keligian, Attorney

David Hehn, Witness

Ron Lane, Witness

For Franchise Tax Board:

William Gardner, Tax Counsel

Farzaneh Eshaghian, Tax Counsel

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

Issues: Whether respondent has shown that appellant had a commercial domicile in California during the appeal years.

Whether appellant has shown that accuracy-related penalties imposed by the Franchise Tax Board for the appeal years should be abated.

Whether appellant has shown that it had "reasonable cause" for filing a late tax return for 1997.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.8)

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

Tuesday, October 2, 2007

Berendo, Inc., 384277

2001, \$33,875.61 Assessment

2002, \$43,686.42 Assessment

2003, \$49,779.12 Assessment

For Appellant:

Wayne R. Johnson, Attorney

For Franchise Tax Board:

Christopher Haskins, Tax Counsel

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

Issues: Whether respondent properly characterized monetary advances made to appellant as capital contributions rather than loans and properly disallowed appellant's claimed deductions for payments of interest.

If the Board determines that the claimed deductions were properly disallowed, whether appellant has passive activity losses to offset any increases in income resulting from respondent's proposed adjustments based on the disallowance.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.9)

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.

The Board recessed at 2:15 p.m. and reconvened at 3:05 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

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

Yolanda King Family Trust, 357825

1999, \$89,837.00 Assessment

2000, \$159,753.00 Assessment

2001, \$61,157.00 Assessment

Mary L. Tunney Junior Trust, 357829

1999, \$202,266.00 Assessment

For Appellant:

Jon A. Sperring, Representative

Ben Muilenburg, Representative

Joseph Denara, Representative

Yolanda King, Taxpayer

John Tunney, Taxpayer

For Franchise Tax Board:

John Penfield, Tax Counsel

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

Issue: Whether an individual trust fiduciary who is a California resident, but who delegated her administrative duties to a non-California agent, is a resident fiduciary for the purpose of apportioning trust income.

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.

Tuesday, October 2, 2007

Paul L. Mickelsen and Patricia A. Mickelsen, 343108

1999, \$537,178.00 Claim for Refund

For Appellant:

Charles P. Rettig, Representative

Sharyn M. Fisk, Representative

Avram Salkin, Representative

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

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

Issue: Whether appellants are entitled to interest suspension under Revenue and Taxation Code section 19116.

Appellant's Exhibit: Miscellaneous Document (Exhibit 10.10)

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.

Karen J. Hodsdon, 383402

2004, \$124.00 Assessment, \$100.00 Late Filing Penalty

For Appellant:

Karen J. Hodsdon, Taxpayer

Michael E. Hodson, Witness

For Franchise Tax Board:

Diane Ewing, Tax Counsel

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

Issues: Whether appellant has met her burden to prove error in the proposed assessment.  
Whether appellant has shown reasonable cause for relief from the late filing penalty.

Whether a frivolous appeal penalty should be imposed.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.11)

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.

Mark Morgan, 378779

2004, \$535.00 Tax, \$314.00 Notice and Demand Penalty, \$133.75 Late Filing Penalty

For Appellant:

Mark Morgan, Taxpayer

For Franchise Tax Board:

Kenneth Davis, 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 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 submitted the appeal for decision.

Mr. Leonard suggested that taxpayers be offered location options for protest hearings with the Franchise Tax Board.

Tuesday, October 2, 2007

Victor Roy, 307162, 341901

2000, \$2,936.00 Tax, \$734.00 Penalty

2001, \$2,026.00 Tax, \$506.50 Penalty

2002, \$1,765.00 Tax, \$441.25 Penalty

For Appellant:

Victor Roy, Taxpayer

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 proposed assessments.

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

Whether the Board has jurisdiction to consider the frivolous return penalty; and if so, whether respondent properly imposed the frivolous return penalties for the appeal years.

Whether the Board should impose a frivolous appeal penalty.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.12)

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.

Jimmy Lui, 374768, 378419, 383325

1999, \$2,347.00 Tax, \$1,143.09 Penalties

2002, \$2,016.00 Tax, \$1,130.15 Penalties

2004, \$1,512.00 Tax, \$756.00 Penalties

For Appellant:

Jimmy Lui, Taxpayer

Jim Mattatall, Representative

For Franchise Tax Board:

Ken Davis, Tax Counsel

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

Issues: Whether appellant has shown any error in the proposed assessments.

Whether the Board has jurisdiction over the post-amnesty penalties.

Whether the Board is the proper forum for disputing frivolous return penalties.

Whether the Board should impose frivolous appeal penalties.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.13)

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.

### LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Thomas D. Thomas, 315849.*

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

Tuesday, October 2, 2007

Thomas D. Thomas, 315849 (UT)

12-10-99, \$4,125.00 Tax, \$412.50 Failure to File Penalty

Action: The Board deferred consideration of this matter.

Patricia Golden, 343757 (AA)

1-01-02 to 12-31-03, \$14,304.81 Tax, \$ 4,853.80 Late Filing and Late Payment of Returns Penalty, \$1,589.58 Failure to File Penalty, \$1,589.58 Failure to Timely Pay Penalty

Action: Redetermine as recommended by the Appeals Division.

Bradford H. Sachs, 260796 (EAA)

1-01-97 to 6-30-98, \$98,199.24 Tax, \$9,819.92 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Matthew Aloysius Valentine, 249941 (EH)

1-01-97 to 3-31-00, \$246,010.80 Tax, \$24,624.99 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Larry Wahl and Patricia J. Wahl, 268395 (MT)

1-01-96 to 9-30-97, \$6,017.47 Tax, \$601.75 Failure to Timely Pay Fee Penalty, \$601.75 Failure to Timely Pay Determination Penalty

Action: Redetermine as recommended by the Appeals Division.

Jales A. Mello, 269575 (EH)

7-01-01 to 9-30-02, \$26,186.48 Tax, \$1,730.45 Late Payment of Returns Penalty, \$1,290.40 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Artest Corporation, 301725, 301726, 301728, 301729, 301731, 301732, 301733, 301735, 334953, 339732, 339735, 339736, 346954, 356096, 356097, 356098 (GH)  
4-01-00 to 9-30-03, \$481,915.80 Tax

Action: Redetermine as recommended by the Appeals Division.

San Mateo Links Corporation, 405480 (ET)

May 9, 2007, \$4,574.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

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

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**Phil Blat, 359601**

1994, \$50,857.95 Claim for Refund

1995, \$4,416.42 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Harold Leonard Kuder, Jr., 362625**

2002, \$11,654.00 Tax, \$2,914.50 Delinquency Penalty

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

**Michael S. Stele and Emma V. Stele, 358661**

2000, \$1,539.00 Tax, \$307.80 Accuracy Penalty

Action: Sustain the action of the Franchise Tax Board with its concession to reduce the tax due to \$1,403.00 and the accuracy-related penalty to \$280.60.

**Albert W. Yeung, 360336**

2001, \$4,185.00 Assessment, \$1,674.00 Accuracy Penalty

Action: Sustain the modified action of the Franchise Tax Board.

**Jose Alvarez, Jr., 342600**

2003, \$1,712.00 Tax, \$428.00 Late Filing Penalty, \$2,500.00 Frivolous Penalty

Action: Deny the petition for rehearing.

**Butch Berry, 344963**

2003, \$1,366.00 Tax, \$341.50 Notice and Demand Penalty, \$341.50 Late Filing Penalty, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

**David Klein, 316299, 342006**

2002, \$2,723.00 Tax, \$680.75 Late-Filing Penalty

2003, \$1,759.00 Tax, \$879.50 Penalties, \$90.00 Enforcement Fee, \$750.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

**Joel Kreiner and Stella Kreiner, 340869**

1996, \$77,710.00 Claim for Refund

Action: Deny the petition for rehearing.

**Margaret L. Rogers, 330576, 331883, 332659**

1999, \$2,328.00 Tax, \$582.00 Late Filing Penalty, \$90.00 Filing Enforcement Fee

2000, \$2,316.00 Tax, \$579.00 Penalties, \$108.00 Filing Enforcement Fee

2003, \$1,873.00 Tax, \$982.25 Penalties, \$90.00 Filing Enforcement Fee, \$1,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

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

Felicidad E. Ayeras, 379517

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Jicai Chen, 379288

2006, \$250.00

Action: Sustain the action of the Franchise Tax Board.

Jimmy L. Conley, 387625

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Ernesto S. Cortes, 380024

2006, \$327.00

Action: Sustain the action of the Franchise Tax Board.

Mary G. Domen, 378261

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Rakhil Goldberg, 379924

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Albert Hawkins, 378175

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Hyingil Kim, 374503

2006, \$265.00

Action: Sustain the action of the Franchise Tax Board.

Carolyn Kincaid, 380513

2006, \$347.50

Action: Reverse the action of the Franchise Tax Board.

Yan-Qun Liang, 374157

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Lien B. Nguyen, 373057

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Vitaliy Tsverov, 378187

2006, \$354.00

Action: Sustain the action of the Franchise Tax Board.

Deming Wen, 372919

2006, \$265.00

Action: Sustain the action of the Franchise Tax Board.

Xiu Ying Ye, 378572

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**

The Board deferred consideration of the following matters: *Michael P. Rogers, 314398 and Christies, Inc., 404723.*

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

Catalina Channel Express, Inc., 355256 (EAB)

4-01-01 to 9-30-04, \$81,477.68

Action: Approve the redetermination as recommended by staff.

Michael P. Rogers, 314398 (CH)

4-01-02 to 3-31-03, \$705,078.17

Action: The Board deferred consideration of this matter.

Shell Oil Company, 288839 (OHC)

7-01-96 to 12-31-98, \$612,312.73

Action: Approve the redetermination as recommended by staff.

Christies, Inc., 404723 (OHB)

10-01-06 to 12-31-06, \$1,020,672.50

Action: The Board deferred consideration of this matter.

Hanson Aggregates. Pacific Southwest, Inc., 405962 (OHC)

10-29-06 to 11-25-06, \$55,620.00

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

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Nextel Systems Corporation, 405963 (OHB)

1-01-07 to 4-30-07, \$168,699.30

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

Huntsman Advance Materials Americas, Inc., 349730 (AS)

7-01-02 to 9-30-02, \$137,941.00

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

CB Mill, Inc., 312199 (BH)

10-01-01 to 9-30-04, \$210,312.00

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

Rancho Santa Fe Thrift &amp; Loan, 305283 (FHB)

1-01-03 to 6-30-06, \$322,896.00

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 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 *Wells Fargo Service Company, 330484*; and, *Frito-Lay North America, Inc. 376797*; the Board made the following orders:

Accent Bath Remodeling, 406678 (AS)

7-01-05 to 12-31-05, \$67,578.33

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

Lamps Plus, Inc., 401685 (AC)

1-01-07 to 4-01-07, \$102,500.02

Action: Approve the refund as recommended by staff.

Advance Business Graphics, 341259 (EH)

10-01-02 to 6-30-06, \$735,058.01

Action: Approve the refund as recommended by staff.

Nissan North America, Inc., 380206 (AS)

4-01-04 to 12-31-06, \$730,125.36

Action: Approve the refund as recommended by staff.

Visa U.S.A., Inc., 379212 (BH)

7-01-03 to 9-30-06, \$55,217.10

Action: Approve the refund as recommended by staff.

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Serb Systems, Inc., 400804 (CH)

10-01-06 to 12-31-06, \$77,405.37

Action: Approve the refund as recommended by staff.

Stater Brothers Markets, Inc., 406921 (EH)

6-25-01 to 6-27-04, \$109,554.77

Action: Approve the refund as recommended by staff.

Stanford University Hospital, 332029 (GH)

7-01-02 to 12-31-02, \$2,105,258.41

Action: Approve the refund as recommended by staff.

KHS a Division of Klochner KHS, 398834 (OHA)

10-1-05 to 12-31-05, \$55,512.81

Action: Approve the refund as recommended by staff.

Dang Vu, Inc., 405574 (EA)

1-01-07 to 3-31-07, \$86,959.20

Action: Approve the refund as recommended by staff.

Wells Fargo Service Company, 330484 (BH)

7-01-00 to 12-31-02, \$412,122.48

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

C.R. Bard, Inc., 202145 (OHB)

1-01-00 to 9-30-04, \$135,239.14

Action: Approve the refund as recommended by staff.

NCR Corporation, 373868 (OHA)

10-01-98 to 12-31-01, \$94,170.49

Action: Approve the refund as recommended by staff.

Cedars-Sinai Medical Center, 271116 (AS)

1-01-03 to 3-31-05, \$346,580.69

Action: Approve the refund as recommended by staff.

Frito-Lay North America, Inc. 376797 (OHC)

10-01-01 to 9-30-04, \$701,815.18

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

Mobile Systems Wireless, Inc., 405235 (FHB)

7-01-03 to 6-30-06, \$103,176.88

Action: Approve the refund as recommended by staff.

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Rancho Santa Fe Thrift & Loan, 305283 (FHB)

1-01-03 to 6-30-06, \$348,391.22

Action: Approve the refund as recommended by staff.

Questek, Inc., 383890 (GH)

7-1-03 to 6-30-06, \$114,716.11

Action: Approve the refund as recommended by staff.

John A. Roush, 379583 (KHO)

11-21-03 to 9-30-06, \$56,131.39

Action: Approve the refund as recommended by staff.

Fosber America, Inc., 398880 (OH)

7-1-06 to 9-30-06, \$164,522.24

Action: Approve the refund as recommended by staff.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD OCTOBER 2, 2007**

Domingo Chavez, Jr., 378262

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.

Donna Yarnovich, 345641

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.

Michael Edward Farrell and Christine Marie Farrell, 268382

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

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Kenneth Schweit, 342024

1988, \$5,718.38 Unpaid Interest

1989, \$2,771.38 Unpaid Interest

For Appellant: Appearance Waived

For Franchise Tax Board: Jane Perez, Tax Counsel

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

Issues: Whether the Franchise Tax Board abused its discretion in refusing to abate interest.

Whether the Board has jurisdiction to consider the propriety of the assessment of additional tax and penalties on amounts which became final.

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Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.14)

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.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD OCTOBER 2, 2007**

David H. Ward, 379737

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board denied the taxpayer's appeal.

Hseintai Meng and Shauming Mong, 333224

Final Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board modified the action of the Franchise Tax Board by valuing the common stock at 80 cents per share.

Leonard J. Saubel, 352452, 379738

Lonae J. Saubel, 355613

Leila J. Saubel, 355681

Final Action: Ms. Mandel moved to deny the taxpayers' appeals. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Mandel voting yes, Ms. Chu, Mr. Leonard and Ms. Steel voting no.

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

Berendo, Inc., 384277

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.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Kent Fitch and Katherine Fitch, 328497

1990, \$81,423.00 Tax, \$35,940.35 Penalties

1991, \$55,231.00 Tax, \$23,805.20 Penalties

For Appellant:

Appearance Waived

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 the Notice of Proposed Assessment, which are based on federal adjustments, are barred by the statute of limitations.

Tuesday, October 2, 2007

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.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD OCTOBER 2, 2007**

Yolanda King Family Trust, 357825

Mary L. Tunney Junior Trust, 357829

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

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

Paul L. Mickelsen and Patricia A. Mickelsen, 343108

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.

Karen J. Hodsdon, 383402

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 \$2,500.00 frivolous appeal penalty.

Mark Morgan, 378779

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 Roy, 307162, 341901

Final Action: Ms. Chu moved to sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty. Ms. Yee made a substitute motion to sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty. The substitute motion was seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

Jimmy Lui, 374768, 378419, 383325

Final Action: Ms. Chu moved to sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty. Ms. Yee made a substitute motion to sustain the action of the Franchise Tax Board and impose a \$500.00 frivolous appeal penalty for each year on appeal. The substitute motion was seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

Tuesday, October 2, 2007

Mr. Leonard directed staff to include information regarding frivolous appeal penalties in hearing summaries.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Patrick E. Galvin, 377389

1999, \$2,077.00 Tax, \$1,011.58 Penalties

For Appellant:

No Appearance

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 proposed assessment for 1999.

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

Whether the Board has jurisdiction to review respondent's imposition of the post-amnesty 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 \$2,500.00 frivolous appeal penalty.

The Board adjourned at 6:45 p.m.

*The foregoing minutes are adopted by the Board on February 1, 2008.*