

**Wednesday, July 17, 2013**

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:32 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

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

Carlos Castaneda and Michelle Castaneda, 626196

2003, \$278.00 Assessment

2004, \$830.00 Assessment

2005, \$336.00 Assessment

For Appellants:

Carlos Castaneda, Taxpayer

For Franchise Tax Board:

Marguerite Mosnier, Tax Counsel

Diane Ewing, Tax Counsel

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

Issue: Whether respondent's deficiency assessments for the 2003, 2004, and 2005 tax years are barred by the applicable statute of limitations.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 7.1](#))

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

Exhibits to these minutes are incorporated by reference.

Victor H. Boyd, 575575

2006, \$104,204.00 Assessment

For Claimant:

Victor H. Boyd, Taxpayer

Hugh M. Saddington, Representative

For Franchise Tax Board:

Jaclyn Appleby, Tax Counsel

Michael Cornez, Tax Counsel

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

Issues: Whether appellant has shown that Franchise Tax Board (FTB or respondent) improperly denied his claim for refund for additional losses claimed as a result of a purported Internal Revenue Service (IRS) adjustment.

Whether appellant has shown that respondent improperly denied his claim for refund for additional losses based on the recharacterization of prior year losses as passive losses rather than nonpassive losses.

Whether the duty of consistency bars appellant's claims on appeal.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner 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 parties' submissions and provide its recommendation to the Board.

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**Myles D. Hubers and Michelle R. Hubers, 534595**

2001, \$192,637.00 Assessment, \$77,055.00 Noneconomic Substance Transaction (NEST) Penalty, \$76,311.32 Interest-Based Penalty

2002, \$208,177.00 Assessment, \$83,271.00 NEST Penalty, \$64,973.64 Interest-Based Penalty

2003, \$298,861.00 Assessment, \$119,544.00 NEST Penalty, \$73,341.00 Interest-Based Penalty

For Appellants:

Elizabeth Van Clief, Attorney

For Franchise Tax Board:

Roman Johnston, Tax Counsel

Michael Cornez, Tax Counsel

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

Issues: Whether appellants have shown that respondent erred by disregarding appellant-husband's sale of Money Matters Management (MMM) stock to the MMM Employee Stock Ownership Plan (ESOP) as a legal impossibility and sham transaction.

Whether appellants have shown that respondent erred by disregarding appellant-husband's purchase of MMM, the management agreement between MMM and Mortgage Loan Specialists (MLS), and MMM's adoption of the Employee Stock Ownership Program and Trust Agreement and nonqualified deferred compensation plan as lacking business purpose and economic substance.

Whether appellants have shown that the noneconomic substance transaction (NEST) understatement penalty and the interest-based penalty should be abated.

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

**Vincent J. Maranto and Susan L. Maranto, 612999**

1998, \$285.00 Tax, \$100.00 Late Filing Penalty, \$93.72 Post-Amnesty Penalty

1999, \$11,259.00 Tax, \$2,766.00 Late Filing Penalty, \$2,659.62 Post-Amnesty Penalty

2000, \$9,971.00 Tax, \$1,344.97 Post-Amnesty Penalty

For Appellants:

Vincent J. Maranto, Taxpayer

James G. LeBloch, Attorney

For Franchise Tax Board:

Marguerite Mosnier, Tax Counsel

Diane Ewing, Tax Counsel

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

Issues: Whether the Franchise Tax Board's (respondent's or the FTB's) proposed assessments for the tax years at issue are barred by the statute of limitations.

Whether appellants established error in respondent's proposed assessments, which are based on final federal determinations for the tax years at issue.

Whether appellants have established reasonable cause for the late filing of their 1999 tax return to abate the late filing penalty.

Whether the Board has jurisdiction to review the proposed post-amnesty penalties.

Appellant's Exhibit: Letter and Court Decision with Stipulation Documents ([Exhibit 7.2](#))

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

The Board recessed at 12:06 p.m. and reconvened at 1:25 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

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Ms. Steel recognized the interns in the audience who work in her office: Christine Kim, Pepperdine University; Alexander Okashita, University of California, Los Angeles (UCLA); and, Jin Young “Peter” Kim, University of California, Berkeley.

## **PUBLIC HEARINGS**

### **Business Taxpayers’ Bill of Rights Hearings**

Todd Gilman, Chief, Taxpayers’ Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers’ Bill of Rights hearings. Individuals have the opportunity to present ideas, concerns, and recommendations regarding legislation, the quality of agency services, and other issues related to the Board’s administration of its tax programs, including sales and use taxes, environmental fees, fuel taxes, and excise taxes, and any problems identified in the Taxpayers’ Rights Advocate’s Annual Report ([Exhibit 7.3](#)).

Mr. Gilman entered into the record written comments from Gary P. Salamone ([Exhibit 7.4](#)).

Speakers: Gregory Jackson, Owner, Jackson Vending  
Jose (Joe) Agustin Fernandez, California Business Owner  
Rafael Eduardo Delgado, California Business Owner  
Alexander Orantes, California Business Owner  
William G. Morschauser, California Business Owner (spoke after the Property Taxpayers’ Bill of Rights Hearings)

Ms. Yee suggested staff increase the use of the taxpayer consultation education outreach program and spend some time with the new business owners in their first year of operation to provide more assistance, and consider expanding the availability of the program post audit as well.

Members discussed strategies for helping business owners, including promoting the outreach program.

Mr. Horton directed staff to inform Gregory Jackson, Owner, Jackson Vending, of the Offer in Compromise program and of payment options.

### **Property Taxpayers’ Bill of Rights Hearings**

Todd Gilman, Chief, Taxpayers’ Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Property Taxpayers’ Bill of Rights hearings. Individuals have the opportunity to present their ideas, concerns, and recommendations regarding legislation, the quality of agency services, and other issues related to the Board’s administration of its tax programs, including state and county property tax programs, and any problems identified in the Taxpayers’ Rights Advocate’s Annual Report ([see Exhibit 7.3](#)).

Mr. Gilman introduced Christina Scuipac, Property Owner’s Advocate, Los Angeles County Assessor’s Office, who was available to answer questions and provide assistance.

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Speakers: Lan Thi Hoang, Los Angeles County Property Owner ([Exhibit 7.5](#))  
 Mirna M. Miramontes, California Property Owner  
 Orié Vaughn, California Property Owner

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

Daxius Donald Gregory, 625150

2008, \$257.00 Tax, \$100.00 Late Filing Penalty

For Appellant: Daxius Gregory, Taxpayer

For Franchise Tax Board: Eric Yadao, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether appellant has established error in respondent's proposed 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. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 2:55 p.m. and reconvened at 3:02 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

### **SALES AND USE TAX APPEALS HEARINGS**

Ibrahim Said Mekhail, 445466, 473541 (AA)

1-1-05 to 6-30-05, \$24,529.98 Tax, \$0.00 Penalty

7-1-05 to 12-31-07, \$119,353.49 Tax, \$0.00 Penalty

Ibrahim Said Mekhail, 445467, 473537 (AA)

1-1-05 to 6-30-05, \$19,781.72 Tax, \$0.00 Penalty

7-1-05 to 12-31-07, \$72,362.90 Tax, \$0.00 Penalty

Ibrahim Said Mekhail, 445468, 473540 (AA)

1-1-05 to 6-30-05, \$18,763.13 Tax, \$0.00 Penalty

7-1-05 to 12-31-07, \$66,471.88 Tax, \$0.00 Penalty

Ibrahim Said Mekhail, 475476, 524559 (AS)

4-1-05 to 12-31-07, \$95,620.36 Tax, \$9,962.04 Finality Penalty, \$140,462.12 Claim for Refund

Ibrahim Said Mekhail, 475478, 524544 (AS)

4-1-05 to 12-31-07, \$86,284.54 Tax, \$8,628.45 Finality Penalty, \$92,266.88 Claim for Refund

Ibrahim Said Mekhail, 475481 (AP)

4-1-05 to 12-31-07, \$133,248.68 Tax, \$0.00 Penalty

Ibrahim Said Mekhail, 473538 (AP)

4-1-05 to 12-31-07, \$157,261.74 Tax, \$0.00 Penalty

Ibrahim Said Mekhail, 473539 (AS)

10-1-05 to 12-31-07, \$77,181.53 Tax, \$0.00 Penalty

For Taxpayer: Sam White, Representative

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

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

Issues: Whether further adjustments are warranted to the measure of understated gasoline sales.

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Whether further adjustments are warranted to the measure of understated taxable mini-mart sales.

Whether further adjustments are warranted to the measure of understated taxable repair shop sales.

Whether petitioner should be relieved of the finality penalties.

Whether the claims for refund should be granted in whole or in part.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision to the following day.

**William G. Morschauser, 225366, 255762, 341121, 530753 (AP)**

1-1-97 to 12-31-99, \$30,766.00 Claim for Refund

10-1-00 to 12-31-03, \$19,851.99 Tax, \$5,025.01 Fraud Penalty

10-1-00 to 12-31-03, \$71,794.79 Tax, \$7,228.88 Fraud Penalty

1-1-04 to 6-30-09, \$103,158.28 Tax, \$27,975.58 Fraud Penalty

For Petitioner/Claimant: William G. Morschauser, Taxpayer  
Ivan Vuich, Witness  
Lauren Abernathy, Witness

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

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

Issues: Whether tax was overpaid for the period January 1, 1997, through December 31, 1999.

Whether adjustments are warranted to unreported taxable sales for the period October 1, 2000, through December 31, 2003.

Whether the Department has met its burden to prove fraud by clear and convincing evidence.

*Issue in 530753 only:*

Whether adjustments are warranted to the unreported taxable sales of alcoholic beverages.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 5:05 p.m. and reconvened at 5:15 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

**Jose Agustin Fernandez, 549411, 553265 (AR)**

1-1-06 to 6-30-07, \$44,488.91 Tax, \$4,471.47 Negligence Penalty

7-1-07 to 5-30-10, \$57,928.69 Tax, \$5,833.79 Negligence Penalty

For Petitioner: Jose (Joe) Fernandez, Taxpayer

For Sales and Use Tax Department: Marc Alviso, Hearing Representative

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

Issues: Whether additional adjustments are warranted to the measure of unreported taxable sales calculated from vehicle inventory reports or to the measure of unreported taxable sales calculated based on missing Report of Sale forms.

Whether petitioner was negligent.

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Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Rafael Eduardo Delgado and Alexander Orantes, 549061 (AC)**

1-1-07 to 9-30-09, \$20,070.00 Tax

For Petitioners:

Rafael Eduardo Delgado, Taxpayer

Alexander Orantes, Taxpayer

For Sales and Use Tax Department:

Marc Alviso, Hearing Representative

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

Issue: Whether adjustments are warranted to the additional taxable sales reported on amended returns.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Irvine Photo Graphics, Inc., 557007 (EA)**

1-1-05 to 3-31-05, \$468,491.28 Tax, \$117,122.82 Fraud Penalty

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

Issues: Whether the refund was erroneous.

Whether the Department has established fraud by clear and convincing evidence.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

## **LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matter: *David Turner, 553045 (FH)*.

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

**420 For The People Cooperative, Inc., 572745 (AC)**

7-1-07 to 6-30-10, \$189,278.77 Tax, \$18,927.90 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

**Nyoka Edy, 563276 (STF)**

1-1-05 to 9-30-08, \$6,055.00 Tax

**Nyoka Edy, 563277 (STF)**

1-1-05 to 9-30-08, \$1,110.00 Tax

Action: Redetermine as recommended by the Appeals Division.

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Mohammad Faraz Islam, 482373 (EH)

4-1-05 to 3-31-08, \$1,777.08 Tax, \$4,976.65 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Kimmy's Investments, Inc., 553251 (EA)

3-1-08 to 3-31-10, \$160,188.56 Tax, \$16,018.87 Negligence Penalty

Pho Kimmy, Inc., 553906 (EA)

1-1-07 to 4-30-07, \$13,491.82 Tax, \$1,349.19 Negligence Penalty

Sau Thi Vu, 554321 (EA)

5-1-07 to 2-29-08, \$37,498.24 Tax, \$3,749.83 Negligence Penalty, \$3,749.82 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Vivian T. Lam, 553915 (AP)

7-3-03 to 7-22-03, \$6,817.00 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

M & W Home Sales, Inc., 550542 (EH)

4-1-06 to 9-30-09, \$16,868.49 Tax, \$16,086.87 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

James Arthur Mariani, 479529 (EH)

6-4-03 to 12-15-06, \$169,568.03 Tax, \$12,462.36 Negligence Penalty, \$4,225.90 Failure to File Penalty, \$16,956.80 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Palomino Motors, Inc., 495671 (EA)

10-1-05 to 12-15-08, \$69,053.85 Tax, \$6,591.55 Negligence Penalty, \$313.88 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Luis Fernando Rodriguez, 547500 (AA)

4-15-06 to 5-22-09, \$71,235.06 Tax

Action: Redetermine as recommended by the Appeals Division.

Robert Jay Sharp, Jr., 588206 (UT)

11/25/05, \$1,319.00 Tax, \$131.90 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

David Turner, 553045 (FH)

4-6-04, 9-3-04, and 3-8-07, \$1,971.00 Tax, \$197.10 Failure to File Penalty

Action: The Board took no action.

Kenny Wang and Le Nguyet To, 561881 (AA)

10-1-07 to 9-30-10, \$43,173.55 Tax, \$4,357.34 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

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Hong Thu Nguyen, 722819 (STF)

December 18, 2012 Seizure Date, \$1,736.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Jaspreet S. Dhillon, 709648 (STF)

December 3, 2012 Seizure Date, \$1,112.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Café 976, LLC, 479006, 504670 (FH)

10-1-99 to 12-31-02, \$19,565.07 Tax, \$1,926.91 Finality Penalty, \$1,916.91 Amnesty Double Finality Penalty, \$2,160.19 Amnesty Interest Penalty

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

Rafael Wholesale &amp; Distributor, Inc., 530276 (AA)

4-1-06 to 3-31-09, \$9,827.17 Tax

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

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**The Board deferred consideration of the following matter: *Ho B. Song, 597958.*

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

Deanne F. Deaville, 640307

2008, \$624.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Neil K. Aragaki, 609635

2010, \$1,304.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ronnell Areta, 569052

2001, \$191.47 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

N. Art Astor and Antonia Astor, 578492

2004, \$57,319.00 Tax

2005, \$13,463.00 Tax

2006, \$16,114.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Tammy Barnett, 593585

2003, \$1,141.92 Assessment

Action: Sustain the action of the Franchise Tax Board.

Robert Beck, 599564

2006, \$927.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Phillip M. Berry, 599629

2007, \$4,686.72 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Big Guy, LLC, 585860

2008, \$1.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Homero De Jesus, 601064

2004, \$840.00 Claim for Refund

2005, \$744.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jean-Pierre de St. Croix, 601267

2006, \$1,727.00 Tax

2007, \$1,543.00 Tax, \$361.25 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Noelle E. Forbes, 601390

2004, \$131.60 Accuracy-Related Penalty

2005, \$268.60 Accuracy-Related Penalty

2006, \$197.20 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

William C. Foxley and Katherine Foxley, 570368

2003, \$146,510.00 Claim for Refund

2004, \$122,950.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Catherine Giesecke, 349311

2001, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Bintu Y. Guy, 592428

2006, \$2,988.00 Tax, \$747.00 Late Filing Penalty

Action: Dismiss for lack of jurisdiction.

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Richard J. Heckmann and Mary M. Heckmann, 361517

1999, \$1.00 or more Claim for Refund

2000, \$1.00 or more Claim for Refund

2001, \$1.00 or more Claim for Refund

Action: Dismiss for lack of jurisdiction for tax year 1999 and sustain the action of the Franchise Tax Board for tax years 2000 and 2001.

Donald J. Hunt and Marian C. Hunt, 589291

2007, \$6,383.00 Assessment

Action: Sustain the action of the Franchise Tax Board as modified by its concession.

Shahrouz Jahanshahi, 600977

2005, \$11,669.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Gavin Keith and Karen Keith, 600594

2009, \$16,072.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jason Kowalski, 588431

2007, \$9,007.00 Tax

Action: Sustain the action of the Franchise Tax Board as modified by its concessions.

Jacob La France, 571877

2007, \$631.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Yutian Lei, 601021

2009, \$1,245.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Elizabeth Luna, 564993

2008, \$477.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Raj Kumar Malik, 600867

1999, \$6,954.00 Tax, \$1,318.72 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

George Marcussen, 587069

2007, \$2,499.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Alberto R. Martinez, 601804

2009, \$438.51 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Alfredo Mendoza, 575960

2007, \$1,609.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Brandon Quintana and Sallie Boggan, 601821

2006, \$1,658.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Stephen P. Rader and Anne W. Rader, 354285

1999, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Sandalwood Debt Fund B, LP, 597421

2007, \$20,131.56 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ho B. Song, 597958

2009, \$2,598.00 Tax, \$649.50 Late Filing Penalty

Action: The Board took no action.

Carol Sperry, 588411

2007, \$62.26 Assessment

Action: Sustain the action of the Franchise Tax Board.

Narantungalag Tumurbaatar and Moussa Camara, 562927

2007, \$590.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Bruce Wheaton, 579019

2008, \$756.34 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Wayne B. Witherspoon, 600140

2005, \$963.00 Tax

2006, \$3,441.00 Tax

Action: Sustain the action of the Franchise Tax Board.

James A. Haverkamp, 550350

2006, \$95.17 Claim for Refund

Action: Deny the petition for rehearing, and modify this Board's decision to order abatement of the \$95.17 interest amount by the Franchise Tax Board.

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**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES, DENIALS OF CLAIMS FOR REFUND AND GRANT-ONE DAY INTEREST RELIEF, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties, Denials of Claims for Refund and Grant-One Day Interest Relief, Consent Agenda, upon a single motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

A & P AG Structures, Inc., 513939 (DF)

7-1-05 to 6-30-08, \$256,132.56

Action: Approve the redetermination as recommended by staff.

Bridgestone Americas Tire Operation, LLC, 611314 (OH)

10-1-05 to 5-31-08, \$1,395,750.55

Action: Approve the redetermination as recommended by staff.

S.G.A.S., Inc., 547719 (AC)

4-1-07 to 3-31-10, \$171,627.83

Action: Approve the redetermination as recommended by staff.

Water Compass, Inc., 669840 (AA)

4-1-09 to 3-31-12, \$103,830.71

Action: Approve the redetermination as recommended by staff.

Cardinal Health 110, Inc., 729192 (OH)

7-1-06 to 12-31-09, \$151,903.47

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

Barnes & Noble Booksellers, Inc., 728918 (OH)

7-1-12 to 9-30-12, \$394,962.44

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

Intermetro Industries Corp., 572975 (OH)

10-1-06 to 9-30-09, \$209,599.00

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

Bowe Bell + Howe Company, 533627 (OH)

1-1-04 to 12-31-06, \$225,875.00

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

Owens & Minor Distribution, Inc., 569976 (OH)

1-1-08 to 3-31-11, \$270,973.19

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

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Ormco Corporation, 728337 (EA)

1-1-13 to 1-31-13, \$777.47 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Simons Petroleum, Inc., 728332 (OH)

7-1-12 to 9-30-12, \$551.16 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Corona Automotive Company, LLC, 728335 (EH)

1-1-13 to 1-31-13, \$1,479.83 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Oakland Automotive Company, LLC, 728339 (CH)

1-1-13 to 1-31-13, \$1,898.39 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

C &amp; C Food Enterprises, LLC, 728340 (AS)

1-1-13 to 1-31-13, \$52.89 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

P &amp; R Restaurant Enterprises, LLC, 728336 (EH)

10-1-12 to 12-31-12, \$66.04 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Jewel City Diner, LLC, 728328 (AP)

1-1-13 to 1-31-13, \$25.04 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Cellerant Therapeutics, Inc., 728334 (BH)

1-1-13 to 1-31-13, \$13.66 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Brian Thomas Luke, 728329 (KH)

7-1-12 to 9-30-12, \$14.59 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

Trattoria Amici/Americana, LLC, 728331 (AP)

1-1-13 to 1-31-13, \$22.62 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

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

The Board deferred consideration of the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, to later in the day.

Wednesday, July 17, 2013

**SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, AND GRANT-ONE DAY INTEREST RELIEF, CONSENT**

(Motion expunged later in the day.)

**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 Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

American E & S Insurance Brokers CA, Inc., 722842 (STF)

1-1-07 to 12-31-07, \$1,780,448.61

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

Liberty Mutual Fire Insurance Co., 414291 (STF)

1-1-06 to 12-31-06, \$3,518,765.00

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

Employers Insurance Co of Wausau, 414296 (STF)

1-1-06 to 12-31-06, \$317,140.10

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

Wausau Underwriters Insurance Company, 414302 (STF)

1-1-06 to 12-31-06, \$718,464.54

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

Wausau Business Insurance Company, 414305 (STF)

1-1-06 to 12-31-06, \$332,957.70

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

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Fence America, Inc., 479354 (KH)

Speaker: Thomas A. Razzano, Taxpayer

1-1-04 to 12-31-06, \$361,344.77 Tax

Considered by the Board: May 30, 2012

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

Action: The Board deferred consideration of this matter to later in the day.

Wednesday, July 17, 2013

Mobile Telesys, Inc., 486216 (FH)

4-1-02 to 6-30-03, \$450,257.41 Tax, \$45,025.75 Negligence Penalty

Considered by the Board: Summary Decision (Rev. & Tax. Code, § 40)

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

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the written summary decision as presented by staff.

### **TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

#### **OFFER-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offer in Compromise Recommendations of *BMR Group, Inc.*; *Safdar Brohi*; *Zoila Veronica Galeano*; *Galeano Group*; *Outdoor Living, Inc.*; *Lakhwinder Singh Sidhu*; *David Wayne Stephens*; and, *Charles Treister*; as recommended by staff.

### **ADMINISTRATIVE SESSION**

#### **ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**

##### **Business Taxes Committee—June 11, 2013**

Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the June 11, 2013 Business Taxes Committee report and the actions therein ([Exhibit 7.6](#)).

#### **OTHER ADMINISTRATIVE MATTERS**

##### **Executive Director's Report**

Cynthia Bridges, Executive Director, provided a report regarding time extensions to Amador, Colusa, Glenn, Inyo, Mendocino, Napa, Placer, San Benito, and San Joaquin Counties to complete and submit the 2013/14 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 ([Exhibit 7.7](#)).

Eric Steen, CROS Project Director, provided a report regarding the progress on the CROS project to replace BOE's two current tax legacy technology systems.

##### **Property and Special Taxes Deputy Director's Report**

David Gau, Deputy Director, Property and Special Taxes Department, introduced Joe Fitz, Chief, Research and Statistics Section, Legislative and Research Division, who presented staff's recommendation for the tax rate to be applied in 2013/14 to the value of private railroad cars ([Exhibit 7.8](#)).

Wednesday, July 17, 2013

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2013/14 private railroad car tax rate as recommended by staff.

David Gau, Deputy Director, Property and Special Taxes Department, introduced David Yeung, Principal Property Appraiser, State-Assessed Properties Division, Property and Special Taxes Department, who made introductory remarks regarding the 2013 private railroad car roll ([Exhibit 7.9](#)).

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2013 private railroad car roll as recommended by staff.

David Yeung, Principal Property Appraiser, State-Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding the 2013 state-assessed property roll ([Exhibit 7.10](#)).

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2013 state-assessed property roll as recommended by staff.

David Gau, Deputy Director, Property and Special Taxes Department, provided an update regarding the Fire Prevention Fee Program.

### **Administration Deputy Director's Report**

Liz Houser, Deputy Director, Administration Department, provided information regarding the Governor's 2013/14 Budget; and, provided an update on the bargaining unit contract.

Ms. Yee requested a summary of the number of employees who benefited from the professional development reimbursement provision from the prior contract.

### **SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT (CONTINUED)**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Disney Interactive Studios, Inc., 710796 (OH)*; *DirecTV, Inc., 611994 (AS)*; and, *Atlas Copco Construction Mining Tech USA, 719238 (OH)*; Ms. Mandel not participating in *Pacific Gas and Electric Company, 724094 (BH)*; the Board made the following orders:

Wednesday, July 17, 2013

Bobcat Central, Inc., 567295 (KH)

4-1-06 to 3-31-09, \$239,380.94

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

Rashed M. Rashed, 484708 (KH)

8-1-99 to 6-30-03, \$395,212.13

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

Jose L. Castaneda and Fidelina Mendoza Castaneda, 722824 (JH)

10-1-08 to 9-30-11, \$801,086.79

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

Pete B. Estrada and Jaime Gutierrez, 623983 (EH)

7-1-07 to 6-30-10, \$165,399.04

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

Disney Interactive Studios, Inc., 710796 (OH)

1-1-06 to 12-31-09, \$227,342.86

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

Alphatec Spine, Inc., 623750 (FH)

1-1-12 to 3-31-12, \$118,463.00

Action: Approve the refund as recommended by staff.

Professional Hospital Supply, Inc., 601159 (EH)

10-1-08 to 12-31-10, \$124,307.68

Action: Approve the refund as recommended by staff.

Dennis Uniform Mfg. Co., 699403 (OH)

7-1-12 to 9-30-12, \$293,025.00

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 726765 (KH)

12-19-12 to 3-22-13, \$376,610.00

Action: Approve the refund as recommended by staff.

Pine Ridge Winery, LLC, 729489 (JH)

7-1-10 to 9-30-10, \$101,410.00

Action: Approve the refund as recommended by staff.

United Rentals Northwest, Inc., 603329 (OH)

1-1-08 to 12-31-10, \$6,165,484.69

Action: Approve the refund as recommended by staff.

Wednesday, July 17, 2013

Pacific Gas and Electric Company, 724094 (BH)

1-1-08 to 6-30-11, \$3,085,346.96

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

General Electric Company, 623743 (OH)

7-1-11 to 9-30-11, \$1,542,180.00

Action: Approve the refund as recommended by staff.

Patelco Credit Union, 601226 (CH)

10-1-08 to 9-30-11, \$739,984.54

Action: Approve the refund as recommended by staff.

DirecTV, Inc., 611994 (AS)

1-1-06 to 6-30-07, \$1,651,449.88

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

Americredit Financial Service, Inc., 681941 (OH)

7-1-12 to 12-31-12, \$729,390.00

Action: Approve the refund as recommended by staff.

Challenge Financial Services, Inc., 577197 (EA)

1-1-08 to 3-31-11, \$132,308.59

Action: Approve the refund as recommended by staff.

Banana Republic, LLC, 722519 (BH)

4-1-07 to 9-30-11, \$627,674.35

Action: Approve the refund as recommended by staff.

Old Navy, LLC, 723127 (BH)

4-1-07 to 9-30-11, \$1,717,964.34

Action: Approve the refund as recommended by staff.

GPS Services, Inc., 723129 (BH)

7-1-07 to 9-30-11, \$884,186.61

Action: Approve the refund as recommended by staff.

The Gap, Inc., 719283 (BH)

1-1-08 to 9-30-11, \$1,755,555.08

Action: Approve the refund as recommended by staff.

The Gap, Inc., 697215 (BH)

1-1-12 to 3-31-12, \$171,637.00

Action: Approve the refund as recommended by staff.

Wednesday, July 17, 2013

Perry Ellis Menswear, LLC, 728297 (OH)

1-1-09 to 6-30-12, \$209,004.22

Action: Approve the refund as recommended by staff.

Medcal Sales, LLC, 570750 (EH)

4-1-08 to 12-31-10, \$194,947.71

Action: Approve the refund as recommended by staff.

Atlas Copco Construction Mining Tech USA, 719238 (OH)

1-1-06 to 9-30-09, \$189,186.76

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

Pentax of America, Inc., 608081 (OH)

10-1-07 to 12-31-10, \$154,059.11

Action: Approve the refund as recommended by staff.

Morgan Stanley Smith Barney Financing, LLC, 551288 (OH)

7-1-09 to 3-31-10, \$347,623.49

Action: Approve the refund as recommended by staff.

Southland Credit Union, 600648 (EA)

1-1-10 to 12-31-11, \$180,700.28

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, AND GRANT-ONE DAY INTEREST RELIEF, CONSENT**

With respect to the Special Taxes Matters, Relief of Penalties and Grant-One Day Interest Relief, Consent Agenda, upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that its previous motion be rescinded and expunged.

With respect to the Special Taxes Matters, Relief of Penalties and Grant-One Day Interest Relief, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel and Ms. Mandel not participating in accordance with Government Code section 87105 in *BP West Coast Products, LLC, 729214 (STF)*; the Board made the following orders:

BP West Coast Products, LLC, 729214 (STF)

2-1-12 to 2-29-12, \$151,122.11

Action: Approve the relief of penalty as recommended by staff. Ms. Steel and Ms. Mandel not participating in accordance with Government Code section 87105.

**Wednesday, July 17, 2013**

Bakersfield Investments, Inc., 725813 (STF)

7-1-12 to 9-30-12, \$123.89 Interest Adjustment

Action: Approve the one day interest relief as recommended by staff.

### **LEGAL APPEALS MATTER, ADJUDICATORY**

Fence America, Inc., 479354 (KH) (continued)

Action: Mr. Runner moved that the petition for rehearing be granted. The motion was seconded by Ms. Steel but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition for rehearing be denied.

### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD JULY 17, 2013**

Carlos Castaneda and Michelle Castaneda, 626196

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

Myles D. Hubers and Michelle R. Hubers, 534595

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

Vincent J. Maranto and Susan L. Maranto, 612999

Final Action: Upon motion of Mr. Runner, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner 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 parties' submissions and provide its recommendation to the Board.

Extra Inning Events, LLC, 577047

2004, \$52.00 Late Payment Penalty, \$50.00 LLC Late Filing Penalty, \$25.89 Interest

2005, \$50.00 LLC Late Filing Penalty

2006, \$50.00 LLC Late Filing Penalty, \$225.00 Late Filing Penalty, \$275.20 Interest

2007, \$50.00 LLC Late Filing Penalty, \$225.00 Late Filing Penalty, \$160.49 Interest

2008, \$50.00 LLC Late Filing Penalty, \$25.00 Late Filing Penalty, \$8.69 Interest

2009, \$88.00 Late Payment Penalty, \$39.38 Interest

For Claimant:

Waived Appearance

For Franchise Tax Board:

Karen Smith, Tax Counsel

Diane Ewing, Tax Counsel

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

**Wednesday, July 17, 2013**

Issues: Whether appellant has demonstrated reasonable cause for the refund of the late payment penalties under Revenue and Taxation Code (R&TC) section 19132.

Whether appellant has demonstrated reasonable cause for the refund of the LLC late filing penalties under R&TC section 19172.

Whether appellant has demonstrated reasonable cause for the refund of the late filing penalties under R&TC section 19131.

Whether appellant has shown that interest must be refunded.

Action: Ms. Steel moved to abate the late filing penalties for 2006-2008. Ms. Yee made a substitute motion to sustain the action of the Franchise Tax Board with its concession to abate the \$250 LLC late filing penalty. The substitute motion was seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes.

**Cheryl Martin, 595044**

2009, \$1,190.00 Assessment

For Appellant:

Waived Appearance

For Franchise Tax Board:

Eric Yadao, Tax Counsel

Diane Ewing, Tax Counsel

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

Issue: Whether appellant has shown that she is entitled to the head of household filing status for the 2009 tax year.

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

**Daxius Donald Gregory, 625150**

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

### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JULY 17, 2013**

**Mark Jeffrey Freed, 554113 (AC)**

1-1-06 to 12-31-08, \$84,946.39 Tax, \$93,981.26 Fraud Penalty

For Petitioner:

Waived Appearance

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether adjustments are warranted to the understatement of reported taxable sales established on a markup basis.

Whether the Department has established fraud by clear and convincing evidence.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

Wednesday, July 17, 2013

Beverly Bagels, Inc., 521440 (AS)

4-1-05 to 1-11-09, \$117,617.87 Tax

For Petitioner:

Waived Appearance

For Sales and Use Tax Department:

Erin Dendorfer, Tax Counsel

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

Issue: Whether petitioner is liable as a successor to Montana Avenue Restaurant, Inc.

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

William G. Morschauser, 225366, 255762, 341121, 530753 (AP)

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

Jose Agustin Fernandez, 549411, 553265 (AR)

Final Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the audited total sales be computed using average sales amounts of \$6,187 for 40 percent of the sales, \$3,500 for 40 percent of the sales, and \$1,000 for 20 percent of the sales, and that the petition otherwise be redetermined as recommended by the Appeals Division.

Rafael Eduardo Delgado and Alexander Orantes, 549061 (AC)

Final Action: Ms. Steel moved 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 parties' submissions and provide its recommendation to the Board. The motion failed for lack of a second.

Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the taxable sales for the audit period be reduced by \$3,000 per month, and that the petition otherwise be redetermined as recommended by the Appeals Division.

Irvine Photo Graphics, Inc., 557007 (EA)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division and that the matter not be held in abeyance pending the adoption of a summary decision for publication.

#### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 8:07 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Wednesday, July 17, 2013

**CLOSED SESSION**

The Board met to discuss settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 8:10 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

The Board recessed at 8:11 p.m.

*The foregoing minutes are adopted by the Board on October 29, 2013.*

Note: The following matters were removed from the calendar prior to the meeting: *John P. Martin, 614001; Ned Yamin and Haideh Yamin, 603221; and, Craig Norton, 693097.*

**Thursday, July 18, 2013**

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:37 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Mr. Horton shared some information and insight relative to compliance and the Taxpayer Bill of Rights Hearings. The Board of Equalization audits approximately 2 percent of all California businesses. Around 97 percent of those businesses are in full compliance, with no issues. The balance of those businesses, in relation to complaints received, is nominal. Mr. Horton complimented staff, noting that they care about the people they represent and they fully understand that their role is significant in generating funds for California citizens for vital services such as education, public safety, etc. Mr. Horton also noted that the BOE does not govern based on the exception to the rule.

Ms. Steel recognized the interns in the audience who work in her office: Alexander Jow, Princeton University; Claudia Chai, Smith College; Howard Lee, University of Southern California (USC); and, Christine Kim, Pepperdine University.

Mr. Horton recognized the interns in the audience who work in his office: Jason Shon and Joss-Tillard Gates.

### **SALES AND USE TAX APPEALS HEARINGS**

**Easy Life Furniture, Inc., 487694 (EA)**

1-1-05 to 12-31-07, \$123,931.79 Tax

For Petitioner:

Jimmy Hsieh, Taxpayer

Christopher Koo, Representative

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

Issue: Whether relief is warranted based on petitioner's expressed inability to pay the liability.

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, 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 parties' submissions and provide its recommendation to the Board.

**Maria Esther Polack, 556429 (EA)**

10-19-07 to 2-28-10, \$17,274.01 Tax, \$1,727.39 Negligence Penalty

For Petitioner:

Maria Esther Polack, Taxpayer

Brandon Polack, Witness

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether adjustments are warranted to the unreported taxable sales.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Thursday, July 18, 2013

**Nirvair Corporation, 529714 (EA)**

4-1-05 to 3-31-08, \$61,852.13 Tax, \$13,381.15 Negligence Penalty

For Petitioner: Poonam Gahlawat, Representative  
Moti Balyan, Representative

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Chiang. The contribution to Mr. Chiang was returned on July 10, 2013. No other contributions were disclosed.

Issues: Whether adjustments are warranted to the unreported sales.  
Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 11:50 a.m. and reconvened at 12:19 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Ms. Steel recognized an intern in the audience who works in her office: Sarah Kim, California State University, Fullerton.

**Elizabeth Shuttters, Inc., 538185 (EH)**

10-1-05 to 9-30-08, \$1.00 or more Claim for Refund

For Claimant: Dean Frost, Taxpayer

For Sales and Use Tax Department: Erin Dendorfer, Tax Counsel

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

Issue: Whether the amount of overpaid tax is greater than the amount established by audit.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the claim be submitted for decision.

**Vetco, Inc., 488964 (FH)**

4-1-04 to 6-30-07, \$0.00 Tax, \$40,815.38 Interest

For Petitioner: Gerald A. Vetterick, Taxpayer  
John H. Vetterick, Witness

For Sales and Use Tax Department: Marc Alviso, Hearing Representative

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

Issue: Whether relief of interest is warranted.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**BRMAWA Corporation, 426212 (AS)**

7-1-04 to 2-19-07, \$29,109.27 Tax, \$2,993.47 Negligence Penalty

For Petitioner: Johnny Walker, Representative  
George Bryant, Representative

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

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

Thursday, July 18, 2013

Issues: Whether additional adjustments to the amount of unreported taxable sales are warranted.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 2:15 p.m. and reconvened at 2:23 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JULY 18, 2013**

**Maria Esther Polack, 556429 (EA)**

Final Action: Ms. Steel moved that the average daily sales be calculated at \$262.00 per day with a 20 percent adjustment for exempt sales of cold food to go, the negligence penalty be abated, and inform the taxpayer of the Offer in Compromise Program. The motion was seconded by Mr. Runner but no vote was taken.

Upon motion of Ms. Steel, seconded by Mr. Runner and duly carried, Mr. Horton, Ms. Steel and Mr. Runner voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the average daily sales be calculated at \$262.00 per day with a 20 percent adjustment for exempt sales of cold food to go, and inform the taxpayer of the Offer in Compromise Program.

**Nirvair Corporation, 529714 (EA)**

Final Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, 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 parties' submissions and provide its recommendation to the Board.

**Elizabeth Shutters, Inc., 538185 (EH)**

Final Action: Mr. Runner moved that the claim be granted. The motion was seconded by Ms. Steel but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the claim be denied as recommended by the Appeals Division.

The Board referred the regulation and annotations cited in this case, relative to the issue of defining the different variables considered in determining fixtures versus materials, for the Business Taxes Committee to review.

**Vetco, Inc., 488964 (FH)**

Final Action: Ms. Steel moved that four months of interest be abated, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Runner but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Thursday, July 18, 2013

Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise program and of payment options, including a generous payment plan.

**Julia Barranco, 552756 (AP)**

10-1-06 to 12-31-09, \$9,342.29 Tax, \$934.28 Negligence Penalty

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Marc Alviso, Hearing Representative

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

Issues: Whether adjustments are warranted to the amount of unreported taxable sales.  
Whether petitioner was negligent.

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

**BRMAWA Corporation, 426212 (AS)**

Final Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the adjustment for nontaxable sales be increased to 20 percent, with adjustments of 2 percent for pilferage and 2 percent for self-consumption, and that the petition otherwise be redetermined as recommended by the Appeals Division.

### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JULY 17, 2013**

Ibrahim Said Mekhail, 445466, 473541 (AA)

Ibrahim Said Mekhail, 445467, 473537 (AA)

Ibrahim Said Mekhail, 445468, 473540 (AA)

Ibrahim Said Mekhail, 475476, 524559 (AS)

Ibrahim Said Mekhail, 475478, 524544 (AS)

Ibrahim Said Mekhail, 475481 (AP)

Ibrahim Said Mekhail, 473538 (AP)

Ibrahim Said Mekhail, 473539 (AS)

Final Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, 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 parties' submissions and provide its recommendation to the Board.

The Board adjourned at 3:00 p.m.

*The foregoing minutes are adopted by the Board on October 29, 2013.*

Note: The following matters were removed from the calendar prior to the meeting: *Maria B. Looney and Michael C. Mackellar, 519645 (UT)*, and, *Anwer Ali Jadhavji, 202563 (AC)*.