

**Tuesday, September 10, 2013**

The Board met in the Auditorium Room, at the California Public Utilities Commission's headquarters building at 505 Van Ness Avenue, San Francisco, at 10:05 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 introduced Honorable Carmen Chu, San Francisco City and County Assessor-Recorder, who welcomed Board Members and staff to San Francisco, and made complementary remarks regarding David Gau, Deputy Director, Property and Special Taxes Department, and Dean Kinnee, Chief, County-Assessed Properties Division, Property and Special Taxes Department, for their assistance and helpfulness. Ms. Yee congratulated Carmen Chu on her recent appointment to the position of San Francisco City and County Assessor-Recorder.

### **PUBLIC COMMENT**

Daniel Berko, Attorney, Law Office of Daniel Berko, made public comment regarding the Board's position in the Loeffler case pending before the California Supreme Court.

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

Jacques Delacroix and Krishna Delacroix, 626423

2008, \$9,456.00 Tax, \$1,891.20 Accuracy Related Penalty

For Appellants:

Jacques Delacroix, Taxpayer

Krishna Delacroix, Taxpayer

Samuel Kornhauser, Attorney

For Franchise Tax Board:

Christopher Haskins, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether appellants have demonstrated error in the proposed assessment of additional tax, which was based upon federal adjustments.

Whether appellants have shown reasonable cause for the abatement of the accuracy-related penalty.

Respondent's Exhibit: Tax, Penalty and Interest for 2008 through September 10, 2013

[\(Exhibit 9.1\)](#)

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.

The Board recessed at 11:50 a.m. and reconvened at 12:05 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

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Alfred Ding and Jocelyn Ding, 592135

2009, \$26,742.50 Claim for Refund

For Appellants:

Alfred Ding, Taxpayer

Michael Schinner, Attorney

For Franchise Tax Board:

Eric Yadao, Tax Counsel

Karen Smith, Tax Counsel

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

Issue: Whether appellants have shown reasonable cause for a refund of a late filing penalty.

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 submitted the appeal for decision.

Williams-Sonoma, Inc. & Subsidiaries, 519857

2002, \$42,499.00 Claim for Refund

2003, \$83,969.00 Claim for Refund

2004, \$37,792.00 Claim for Refund

For Appellant:

E. Scott Ewing, Representative

John Rucker, Representative

Benjamin Elliot, Representative

For Franchise Tax Board:

Irina Krasavtseva, Tax Counsel

Norman Scott, Tax Counsel

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

Issue: Whether the gross receipts from shipping fees, on goods sent to California customers from locations outside of California and which are charged to customers for the shipping of goods to customer-designated locations, should be included in appellant's California sales factor numerator, along with the gross receipts from the sale of those goods.

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 1:50 p.m. and reconvened at 3:12 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Jacqueline McKechnie, 683821

1993, \$3,661.81 Claim for Refund

For Claimant:

Jacqueline McKechnie, Taxpayer

Neil McKechnie, Witness

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 shown that the amnesty penalty should be abated;  
Whether appellant has shown that interest may be abated; and  
Whether appellant has shown that the collection cost recovery and lien fees should be abated.

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Appellant's Exhibit: Miscellaneous Documents ([Exhibit 9.2](#))

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 submitted the appeal for decision.

**Noe Sitan Sicajan, 678105**

2003, \$13,737.45 Claim for Refund

2004, \$20,211.95 Claim for Refund

For Claimant:

Noe Sitan, Taxpayer

For Franchise Tax Board:

Marguerite Mosnier, Tax Counsel

Karen Smith, Tax Counsel

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

Issue: Whether the Franchise Tax Board (FTB or respondent) properly determined that appellant's claims for refund for tax years 2003 and 2004 are barred by the statute of limitations.

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 submitted the appeal for decision.

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

**Francisco Halayay, Jr., 569173 (GH)**

7-1-06 to 6-30-09, \$22,208.63 Tax, \$2,220.87 Negligence Penalty

For Petitioner:

Frank Halayay, Taxpayer

Wendy Halayay, Taxpayer

Bradley W. Sullivan, Attorney

For Sales and Use Tax Department:

Marc Alviso, Hearing Representative

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

Issues: Whether adjustments to the amount of unreported taxable sales are warranted.  
We conclude no adjustments are warranted.

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.

**Bay Area High Reach, Inc., 374287 (CH)**

4-1-02 to 3-31-05, \$470,359.76 Tax

For Petitioner:

Brian Burns, Taxpayer

Chris Housh, Representative

Stephen M. Moskowitz, Attorney

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

Issue: Whether adjustments are warranted to the amount of unreported lease receipts.

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.

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RRS Johal Corporation, 511276 (CH)

1-1-05 to 3-31-08, \$49,532.73 Tax, \$0.00 Negligence Penalty

For Petitioner: Rajinder Johal, Taxpayer  
Butch Kruse, Representative

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

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

Issue: Whether adjustments are warranted to the understatement of reported taxable sales.

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.

Jethani &amp; Associates, Inc., 560580, 611299, 563266 (GH)

7-1-02 to 12-31-05, \$1,999.28 Claim for Refund

7-1-06 to 6-30-09, \$17,311.59 Tax, \$0.00 Negligence Penalty

For Petitioner/Claimant: Ram Jethani, Representative

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

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

*Issues in the matters of 560580, and 611299:*

Whether claimant is entitled to a refund based on adjustments to the audited understatement of taxable sales.

Whether claimant is entitled to a refund based on additional credits for unclaimed prepaid sales tax paid to fuel suppliers.

*Issue in the matter of 563266:*

Whether any additional adjustments to the amount of unreported taxable sales are 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.

The Board recessed at 6:01 p.m. and reconvened at 6:09 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

**PUBLIC HEARINGS****Proposed Adoption of Lumber Products Assessment Regulations 2000, *Retailer Reimbursement Retention*, and 2001, *Additional Allowed Retailer Reimbursement Retention***Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed adoption of Lumber Products Assessment Regulations 2000, *Retailer Reimbursement Retention*, and 2001, *Additional Allowed Retailer Reimbursement Retention*, to prescribe the amount of reimbursement retailers may retain pursuant to Public Resources Code section 4629.5 ([Exhibit 9.3](#)).

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Speakers: Ken Punham, Executive Director, West Coast Lumber & Building Material Association  
Jeff Pardini, CEO, Hills Flat Lumber Company  
Augie Venezia, President, Fairfax Lumber & Hardware

Action: (Motion expunged.)  
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 its previous motion be expunged.

Upon motion of Mr. Runner, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board adopted permanent Regulations 2000 and 2001 as recommended by staff.

The Board directed staff to gather data and report to the Board in April 2014 regarding the amount of lumber assessment reported as well as the number of retailers reporting the lumber product assessment.

#### **LEGAL APPEALS MATTERS, CONSENT**

With respect to the Legal Appeals Matters 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, the Board made the following orders:

All Star Tamales, Inc., 578981 (CH)

4-1-08 to 3-31-11, \$34,596.53 Tax

Action: Redetermine as recommended by the Appeals Division.

Juan Luis Carbajal and Antonio Carbajal, 561633, 606872 (JH)

1-1-07 to 3-31-10, \$61,981.26, \$4,314.06 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Daniel Reynoso De La Torre, 554179 (JH)

10-1-06 to 9-30-09, \$79,391.77 Tax, \$7,939.18 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Elaine Florence Gunnari, 572734 (CH)

1-1-09 to 12-31-09, \$18,942.00 Tax

Action: Redetermine as recommended by the Appeals Division.

John W. MacDonald, 549046 (JH)

4-1-07 to 6-30-07, \$0.00 Tax, \$4,471.20 Late Filing Penalty

Action: Redetermine as recommended by the Appeals Division.

Francis Odo, 561670 (CH)

7-1-06 to 9-30-09, \$42,418.50 Tax, \$4,241.89 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

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Chau Tat, 494145 (CH)

7-1-05 to 6-30-08, \$23,270.08 Tax, \$2,327.03 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Zahra Tavakol, 571780 (GH)

7-1-06 to 6-30-09, \$23,070.47 Tax

Action: Redetermine as recommended by the Appeals Division.

Russell E. Belttary, 484124 (UT)

10-16-07, \$115,500.00 Tax

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

Jeffrey Lloyd Macy, 556663 (EH)

8-23-07, \$402.00 Tax

Action: Grant 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: *Richard A. Hall*, 533898.

With respect to the Corporate Franchise and Personal Income Tax Matters 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, the Board made the following orders:

Alan Alpert and Sophie Alpert, 597444

2011, \$1,638.37 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Abdel Kader Ayesh, 603929

2008, \$4,841.00 Assessment, \$1,210.25 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

John Barsell and Sandra Barsell, 552835

2003, \$17,675.00 Tax

2006, \$32,769.00 Tax, \$8,192.00 Late Filing Penalty

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

Richard Bessey, 609916

2008, \$2,888.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Dennis Robert Bird, 599566

2009, \$1,093.00 Tax, \$273.25 Late Filing Penalty, \$273.25 Demand Penalty

Action: Sustain the action of the Franchise Tax Board.

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**Robert T. Breed, 559985**

2007, \$4,314.00 Tax, \$1,078.50 Late Filing Penalty, \$1,078.50 Notice and Demand Penalty  
Action: Sustain the action of the Franchise Tax Board as modified by its concession.

**Alejandro E. Cortez, 602358**

2009, \$1,058.00 Assessment  
Action: Sustain the action of the Franchise Tax Board.

**Steven Dancsecs and Anke-Karin Dancsecs, 587066**

2007, \$11,326.00 Tax  
Action: Sustain the action of the Franchise Tax Board as modified by its concession.

**Wanda L. Foreman, 612497**

2010, \$1,240.00 Tax  
Action: Sustain the action of the Franchise Tax Board.

**Paul Foster and Sabrina Foster, 612446**

2006, \$16,682.00 Claim for Refund  
Action: Sustain the action of the Franchise Tax Board.

**Andre Gaston, 589489**

2007, \$687.00 Assessment  
Action: Sustain the action of the Franchise Tax Board.

**Idania Hernandez, 606559**

2006, \$2,805.00 Assessment  
Action: Sustain the action of the Franchise Tax Board.

**Gary Ernest Leon, 603185**

2008, \$7,805.00 Tax, \$1,951.25 Late Filing Penalty  
Action: Sustain the action of the Franchise Tax Board.

**Phi Vu Mai, 609855**

2005, \$1,139.00 Assessment  
Action: Sustain the action of the Franchise Tax Board.

**Charles A. McConnell, 608455**

2008, \$2,734.00 Tax, \$546.80 Accuracy-Related Penalty  
Action: Sustain the action of the Franchise Tax Board as modified by its concession.

**Anna Ng, 343661**

2000, \$1.00 or more Claim for Refund  
Action: Sustain the action of the Franchise Tax Board.

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Mark Wilde, 597108

2008, \$338.48 Claim for Refund

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

Linjun Zhou and Xiaoying Yao, 574359

2007, \$4,424.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Mary Ann Ault, 534656

2007, \$13,895.00 Assessment, \$3,497.25 Late Filing Penalty

Action: Deny the petition for rehearing.

Richard A. Hall, 533898

2003, \$157,185.00 Assessment

Action: The Board took no action.

Erik L. Hayes, 606496

2008, \$28,619.00 Tax, \$7,179.50 Late Filing Penalty, \$7,179.50 Notice and Demand Penalty

Action: Deny the petition for rehearing.

Khosrow J. Motamedi, 592901

2007, \$5,789.00 Tax

Action: Deny the petition for rehearing.

Cornelis A. Van Diepen, 560406

2006, \$1,705.00 Tax, \$426.25 Late Filing Penalty

Action: Deny the petition for rehearing.

**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. Yee 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 *Juniper Networks, Inc., 468067 (GH)*; *Juniper Networks (US), Inc., 469260 (GH)*; and, *Pizza Hut, Inc., 613004 (OH)*; the Board made the following orders:

McGruders Vintage Parts, Inc., 626602 (AR)

4-1-09 to 12-31-10, \$200,736.78

Action: Approve the redetermination as recommended by staff.

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Juniper Networks, Inc., 468067 (GH)

7-1-01 to 6-30-05, \$151,789.81

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

Fresenius USA, Inc., 572714 (OH)

1-1-06 to 12-31-08, \$966,975.99

Action: Approve the redetermination as recommended by staff.

Juniper Networks (US), Inc., 469260 (GH)

7-1-01 to 6-30-05, \$127,233.33

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

Czarnowski Display Service, Inc., 625236 (OH)

7-1-07 to 6-30-10, \$520,305.12

Action: Approve the redetermination as recommended by staff.

Fanfare Media Works, Inc., 261985 (AR)

1-1-96 to 12-31-03, \$2,466,146.63

Action: Approve the redetermination as recommended by staff.

W.D. Young &amp; Sons Trucking &amp; Nursery, 626105 (EH)

4-1-04 to 6-30-04, \$196,263.15

Action: Approve the redetermination as recommended by staff.

W.D. Young &amp; Sons Trucking &amp; Nursery, 679621 (EH)

7-1-04 to 9-30-04, \$896,761.35

Action: Approve the redetermination as recommended by staff.

Acco Engineered Systems, Inc., 738683 (AC)

1-1-13 to 3-31-13, \$140,181.40

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

Norm Reeves, Inc., 739071 (AA)

1-1-13 to 3-31-13, \$102,660.00

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

Pizza Hut, Inc., 613004 (OH)

9-28-10 to 3-14-11, \$62,970.85

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

MetroPCS Wireless, Inc., 624519 (OH)

7-1-06 to 12-31-09, \$5,260,442.80

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

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SMC Networks, Inc., 595733 (EA)

10-1-10 to 6-30-11, \$76,339.30

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

Automotive Funding Group, Inc., 623614 (EA)

4-1-11 to 9-30-12, \$239,079.00

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

Franklin Capital Corporation, 597753 (OH)

1-1-09 to 3-31-12, \$153,834.81

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. Runner, seconded by Ms. Yee 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 *Pizza Hut, Inc., 613004 (OH)*; the Board made the following orders:

R. Michael James, 511452 (GH)

10-1-07 to 9-30-08, \$175,122.66

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

Ramon Ricabal, 737096 (AP)

1-1-08 to 12-2-08, \$103,350.74

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

Fotokem Industries, Inc., 522771 (AC)

10-1-06 to 9-30-11, \$103,932.86

Action: Approve the refund as recommended by staff.

Los Robles Regional Med Center, 594105 (AR)

7-1-08 to 6-30-11, \$254,109.96

Action: Approve the refund as recommended by staff.

Regents of the University of California, 741812 (AS)

1-1-05 to 3-31-08, \$322,715.38

Action: Approve the refund as recommended by staff.

Regents of the University of California, 556675 (BH)

10-1-02 to 12-31-05, \$398,848.23

Action: Approve the refund as recommended by staff.

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Thoratec Corporation, 577849 (CH)

4-1-08 to 9-30-11, \$464,194.62

Action: Approve the refund as recommended by staff.

California Steel Industries, Inc., 735172 (EH)

1-1-05 to 12-31-07, \$175,544.11

Action: Approve the refund as recommended by staff.

Ecco Equipment Corporation, 736753 (EA)

10-1-09 to 9-30-12, \$110,168.53

Action: Approve the refund as recommended by staff.

Pizza Hut, Inc., 613004 (OH)

9-28-10 to 3-14-11, \$274,457.15

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

St. Joseph Hospital, 577146 (JH)

4-1-08 to 3-31-11, \$586,599.31

Action: Approve the refund as recommended by staff.

John Matthew McEvoy, 755469 (FH)

7-1-08 to 5-31-09, \$421,621.82

Action: Approve the refund as recommended by staff.

LOP Automotive Company, LLC, 601362 (CH)

10-1-08 to 12-31-12, \$151,258.93

Action: Approve the refund as recommended by staff.

Servicon Systems, Inc., 530377(AS)

1-1-07 to 9-30-10, \$334,539.22

Action: Approve the refund as recommended by staff.

Intuitive Surgical, Inc., 599656 (GH)

10-1-08 to 9-30-11, \$278,748.23

Action: Approve the refund as recommended by staff.

SMC Networks, Inc., 595733 (EA)

10-1-10 to 6-30-11, \$214,285.50

Action: Approve the refund as recommended by staff.

Penegon West, Inc., 624412 (AS)

4-1-09 to 12-31-12, \$104,926.61

Action: Approve the refund as recommended by staff.

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International Business Machine Corp., 576134 (OH)

10-1-03 to 3-31-07, \$431,640.20

Action: Approve the refund as recommended by staff.

Valero Marketing and Supply Co., 451327 (OH)

4-1-07 to 6-30-08, \$529,896.30

Action: Approve the refund as recommended by staff.

Williams Lea, Inc., 570581 (OH)

1-1-08 to 6-30-11, \$173,185.88

Action: Approve the refund as recommended by staff.

Pernod Ricard USA, LLC, 731536 (OH)

7-1-06 to 12-31-10, \$406,916.15

Action: Approve the refund as recommended by staff.

Penegon Newport Beach, Inc., 624129 (EA)

4-1-09 to 12-31-12, \$113,817.97

Action: Approve the refund as recommended by staff.

Automotive Funding Group, Inc., 623614 (EA)

4-1-11 to 9-30-12, \$329,910.00

Action: Approve the refund as recommended by staff.

Wisdom Import Sales Co., LLC 632992 (OH)

4-1-12 to 6-30-12, \$127,187.00

Action: Approve the refund as recommended by staff.

Penegon West, Inc., 624406 (AS)

4-1-09 to 12-31-12, \$123,950.37

Action: Approve the refund as recommended by staff.

R C Foster Corporation, 715502 (EH)

7-1-09 to 6-30-12, \$111,434.56

Action: Approve the refund as recommended by staff.

HP Hood, LLC, 636350 (KH)

10-1-11 to 12-31-11, \$135,992.16

Action: Approve the refund as recommended by staff.

Franklin Capital Corporation, 597753 (OH)

1-1-09 to 3-31-12, \$302,265.77

Action: Approve the refund as recommended by staff.

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Cotherix, Inc., 612121 (BH)

1-1-09 to 9-30-09, \$121,051.42

Action: Approve the refund as recommended by staff.

Immunodiagnostic Systems, Inc., 736552 (OH)

7-25-07 to 9-30-10, \$231,544.00

Action: Approve the refund as recommended by staff.

GCL Solar Energy, Inc., 665532 (BH)

12-30-11 to 6-30-12, \$688,021.00

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, REDETERMINATIONS, CONSENT**

With respect to the Special Taxes Matters, Redeterminations, Consent Agenda, upon a single 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 made the following orders:

Sentry Select Insurance Company, 442740 (STF)

1-1-03 to 12-31-03, \$349,462.00

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

Sentry Insurance, A Mutual Co., 442754 (STF)

1-1-03 to 12-31-03, \$356,430.00

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

**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:

Philadelphia Indemnity Insurance Company, 446227 (STF)

1-1-03 to 12-31-03, \$192,820.53

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

State Farm Life Insurance Company, 728936 (STF)

1-1-08 to 12-31-11, \$2,059,227.33

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

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Anthem Blue Cross Life & Health Insurance Company, 735416 (STF)

1-1-10 to 12-31-11, \$2,834,548.00

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

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

Océ Financial Services, Inc., 473623 (OH)

1-1-04 to 12-31-06, \$380,177.77 Tax

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. Mandel, seconded by Mr. Runner 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.

#### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTER, ADJUDICATORY**

Ho B. Song, 597958

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

Considered by the Board: Presented for Separate Discussion

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

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 adopted a decision sustaining the action of the Franchise Tax Board.

#### **SPECIAL TAXES MATTERS, DENIAL OF CLAIM FOR REFUND, ADJUDICATORY**

California Insurance Company, 730385 (STF)

1-1-04 to 12-31-05, \$962,453.80

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel 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 approved the denial of claim for refund as recommended 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 *Ricardo Aguiar; Ryan Kelly Braithwaite; James Brian Eli; Wesco Manufacturing, Inc.; Glen Eugene Pearson III; Ransom Schley; Thermo Spas, Inc.; Mathew Alan Turner; Kimberly Lynn Turner; SmartSolutions Group; Mary L. Walker;* and, *Watson's Body & Paint Shop, Inc.;* as recommended by staff.

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**CHIEF COUNSEL MATTERS****RULEMAKING****Property Tax Rule 474, *Petroleum Refining Properties***

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the request for authorization to repeal and initiate rulemaking to readopt Rule 474 in response to a recently published opinion from the California Supreme Court ([Exhibit 9.4](#)).

Speaker: Gina Rodriquez, Vice President of State Tax Policy, California Taxpayers' Association

Robert E. Cooney, Appraiser Specialist, Los Angeles County, provided a written comment ([Exhibit 9.5](#)).

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board authorized staff to repeal and initiate rulemaking to readopt Rule 474, as recommended by staff.

**Property Tax Rules 263, *Roll Corrections*, 462.020, *Change in Ownership – Tenancies in Common*, 462.060, *Change in Ownership – Life Estates and Estates for Years*, 462.160, *Change in Ownership – Trusts*, 462.180, *Change in Ownership – Legal Entities*, 462.220, *Change in Ownership – Interspousal Transfers*, and 462.240, *The Following Transfers Do Not Constitute a Change in Ownership***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to make Rule 100 changes to make the rules listed above consistent with recent legislation, and make minor grammatical and formatting edits ([Exhibit 9.6](#)).

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 authorized staff to make Rule 100 changes as recommended by staff.

**ADMINISTRATIVE SESSION****ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative 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:

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Action: Adopt the following resolutions, extending its sincere and grateful appreciation to the retirees for their dedicated service to the State Board of Equalization and to the State of California, their congratulations on each retiree's well-earned retirement, and best wishes to them and their families for continued success, happiness and good health in the years to come ([Exhibit 9.7](#)).

Linden B. Edmondson, Business Taxes Specialist I, Sales and Use Tax  
Department, Houston Office  
Barbara Odiorne, Business Taxes Administrator I, Use Tax Administration  
Section, U.S. Custom Team, Sales and Use Tax Department  
Elaine Wood, Northern California Evidence Custodian and Property Controller,  
Investigations Division

Action: Approve the Board Meeting Minutes of February 26-28, March 12-13, and April 24-25, 2013.

Action: Approve the summons to annual meeting of the Board and county assessors ([Exhibit 9.8](#)).

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

##### **Business Taxes Committee**

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 August 13, 2013 Business Taxes Committee report and the actions therein ([Exhibit 9.9](#)).

#### **OTHER ADMINISTRATIVE MATTERS**

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

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.

##### **Sales and Use Tax Deputy Director's Report**

Jeff McGuire, Deputy Director, Sales and Use Tax Department, made introductory remarks regarding staff's request for approval of Revenue and Taxation Code section 6355, coins and bullion, "bulk" sale threshold ([Exhibit 9.10](#)).

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 approved the continuation of the current bulk sale exemption threshold of \$1,500 in Sales and Use Tax Regulation 1599, *Coins and Bullion* (Rev. & Tax. Code, §6355), as recommended by staff.

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

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

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David Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding staff's request for approval of 2014 Hazardous Substances Program Fees and Occupational Lead Poisoning Prevention Fee ([Exhibit 9.11](#)).

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel abstaining, the Board approved staff's recommendation for setting the hazardous substances program fees and the occupational lead poisoning prevention fee for the 2014 calendar year.

The Board directed staff to schedule for a future meeting the matter of formally delegating to the Executive Director certain rate setting adjustments that are administrative in nature.

Ms. Yee requested status reports at the next meeting regarding: lease on American Indian tribal land; and, embedded software.

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

Liz Houser, Deputy Director, Administration Department, provided an update on the Headquarters facilities at 450 N Street and the Department of General Services amended report: *Board of Equalization Relocation and Consolidation Preliminary Study* ([Exhibit 9.12](#)).

Liz Houser, Deputy Director, Administration Department, presented the following 2014/15 Budget Change Proposals (BCPs) for the Board's direction and approval for inclusion in the Governor's fiscal year 2014/15 budget: *Lumber Products Assessment, Tax Gap II, Intrusion Detection/Intrusion Prevention System, and, Managed Care Organization Tax* ([Exhibit 9.13](#)).

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 approved the BCPs as recommended by staff.

Liz Houser, Deputy Director, Administration Department, provided a bargaining unit contract update, including highlights on the bargaining units and tentative agreements.

### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD SEPTEMBER 10, 2013**

Jacques Delacroix and Krishna Delacroix, 626423

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 accuracy-related penalty be abated and otherwise sustained the action of the Franchise Tax Board.

Alfred Ding and Jocelyn Ding, 592135

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.

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**Williams-Sonoma, Inc. & Subsidiaries, 519857**

Final Action: Ms. Steel moved to reverse the action of the Franchise Tax Board. 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.

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 sustained the action of the Franchise Tax Board.

**Jacqueline McKechnie, 683821**

Final Action: Ms. Steel moved to modify the action of the Franchise Tax Board by abating interest that accrued after July 8, 1997 and reducing the amnesty penalty. Mr. Runner made a substitute motion to reverse the action of the Franchise Tax Board. The substitute motion was seconded by Ms. Steel and duly carried, Mr. Horton, Ms. Steel and Mr. Runner voting yes, Ms. Yee and Ms. Mandel voting no.

**Noe Sitan Sicajan, 678105**

Final 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 sustained the action of the Franchise Tax Board.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
SEPTEMBER 10, 2013**

**Francisco Halayay, Jr. 569173 (GH)**

Final Action: Upon 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 ordered that audited taxable sales be calculated based on average daily sales of \$850 per day, and that the petition otherwise be redetermined as recommended by the Appeals Division.

**Bay Area High Reach, Inc., 374287 (CH)**

Final 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 as recommended by the Appeals Division.

**RRS Johal Corporation, 511276 (CH)**

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.

**Jethani & Associates, Inc., 560580, 611299, 563266 (GH)**

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.

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### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 7:26 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

### **CLOSED SESSION**

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

The Board recessed at 7:29 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel present.

The Board adjourned at 7:30 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: *Charles Hanh Entertainment, LLC, 539706 (CH)*; and, *Ricky Alan Dumas, 547380 (KH)*.