

Tuesday, November 19, 2013

The Board met at its offices at 450 N Street, Sacramento, at 10:32 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.

## CHIEF COUNSEL MATTERS

### OTHER CHIEF COUNSEL MATTERS

#### **Report on Taxpayer Relief Following the California Supreme Court Decision in *Elk Hills Power, LLC v. State Board of Equalization***

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, reported methods certain state-assessed taxpayers may seek for relief for costs of emissions reduction credits added to their replacement cost indicator of value ([Exhibit 11.1](#)).

Mr. Horton referred to the Legislative Committee, the matter of considering potential legislation targeted to similarly situated taxpayers who did not file a petition.

Exhibits to these minutes are incorporated by reference.

#### **Request for Board Direction on Publication of Legal Annotation 880.0155.005, *Low-Income Housing***

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for the Board's direction on annotations regarding payments (PILOT payments) made by low-income housing developers to local governments for costs associated with the low-income housing property ([Exhibit 11.2](#)).

Speakers: Marina Wiant, Policy Director, California Housing Consortium  
Joel Rice, Attorney, California Council for Afford Housing  
Dan Goodwin, Ventura County Assessor  
James B. Rooney, Amador County Assessor, and  
President, California Assessors' Association

Mr. Horton read into the record a written public comment provided by Shamus Roller, Executive Director, Housing California ([Exhibit 11.3](#)).

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 directed staff to publish proposed Annotation 880.0155.005 and delete Annotation 880.0155 as recommended by staff.

The Board recessed at 11:22 a.m. and reconvened at 11:42 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

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**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Todd Bentley and Kate Bentley, 593582

2004, \$132,041.00 Assessment

2005, \$206,508.00 Assessment

For Appellants:

Todd Bentley, Taxpayer

Robert J. Chicoine, Attorney

Natasha Page, Tax Counsel

Fred Campbell-Craven, Tax Counsel

For Franchise Tax Board:

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

Issue: Whether appellants have shown that respondent erroneously assessed additional tax based on the sourcing to California of payments related to appellant-husband's settlement of a lawsuit with his employer.

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 12:23 p.m. and reconvened at 1:42 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Applied Companies, 526527

1991, \$15,744.05 Claim for Refund

1993, \$39,555.12 Claim for Refund

For Appellant:

Betsy Klinger, Taxpayer

Lou Barnet, Representative

Marcus Frishman, Representative

Mike Dooley, Representative

For Franchise Tax Board:

Karen Smith, Tax Counsel

Eric Brown, Tax Counsel

Roman Johnston, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: Disqualifying contributions to Mr. Horton and Ms. Yee were disclosed. Mr. Horton noted that his records disclosed no contributions from this taxpayer, his agent or participants within the preceding 12 months. Ms. Yee returned a \$6,800 contribution prior to this hearing and noted that her records disclosed no other contributions from this taxpayer, his agent or participants within the preceding 12 months. No other disqualifying contributions were disclosed.

Issues: Whether the FTB's proposed assessments, which are based on federal determinations and/or adjustments, are barred by the statute of limitations.

Whether appellant has substantiated its employee compensation deductions for the tax years ending March 31, 1991, and March 31, 1993.

Appellant's Exhibit: Affidavit of Terry Milne, EA, and Presentation ([Exhibit 11.4](#))

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.

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**SALES AND USE TAX APPEALS HEARING**

Joginder Lal, 496075 (KH)

1-1-05 to 12-31-07, \$36,584.67 Tax, \$3,849.42 Negligence Penalty

For Petitioner: George H. Fakhouri, Representative

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

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

Issues: Whether additional 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.

**PUBLIC HEARING****Proposed Adoption of Amendments to the Board of Equalization *Rules for Tax Appeals* (RTA)**

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments to incorporate, implement, and clarify Revenue and Taxation Code section 40, and address clean-up and housekeeping issues ([Exhibit 11.5](#)).

Speakers were invited to address the Board, but there were none.

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 the proposed amendments as recommended by staff.

**LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Frank Kenneth Worth, 534789 (GH)*; *Helen Laura Worth, 534792 (GH)*; *SacCity Blue, Inc., 553411, 603490 (KH)*; and, *S & C Motors, 468140 (BH)*.

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:

Abdelmajid M. Hamid, 463973, 463976 (STF)

1-1-05 to 3-24-08, \$349,421.73 Tax, \$87,355.45 Fraud Penalty, \$87,356.00 Penalty for Failure to Secure a License, \$34,942.17 Failure-to-File Penalty, \$34,942.17 Finality Penalty

2-1-04 to 8-31-04, \$50,485.84 Tax, \$12,621.46 Fraud Penalty, \$12,621.50 Penalty for Failure to Secure a License, \$5,048.59 Failure-to-File Penalty, \$00.00 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

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Frank Kenneth Worth, 534789 (GH)

10-1-03 to 3-31-06, \$15,464.58 Tax, \$373.60 Late Payment Penalties, \$1,274.80 Failure-to-File Penalties, \$1,274.80 Finality Penalties

Helen Laura Worth, 534792 (GH)

4-1-05 to 3-31-06, \$15,464.58 Tax, \$373.60 Late Payment Penalties, \$1,274.80 Failure-to-File Penalties, \$1,274.80 Finality Penalties

Action: The Board took no action.

Asish Singh, 490116 (JH)

7-1-05 to 9-30-08, \$38,413.24 Tax, \$4,186.79 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Mixserve, Inc., 491699, 597648 (AC)

10-1-05 to 9-6-08, \$67,800.50 Tax, \$6,865.38 Negligence Penalty, \$40,000.00 Claim for Refund

Action: Deny the claim for refund and redetermine as recommended by the Appeals Division.

American Bio Medica Corporation, 470329, 470334 (OH)

10-1-99 to 9-30-07, \$116,902.83 Tax, \$00.00 Penalty, \$55,389.24 Claim for Refund

Action: Deny the claim for refund and redetermine as recommended by the Appeals Division.

Cal-Door Enterprises of No. CA, 597964 (CH)

1-1-03 to 12-31-05, \$63,616.17 Tax, \$6,361.66 Negligence Penalty

Action: No further adjustments in the administrative protest as recommended by the Appeals Division.

SacCity Blue, Inc., 553411, 603490 (KH)

7-1-06 to 6-30-09, \$00.00 Tax, \$00.00 Penalties

7-1-06 to 12-31-09, \$244,177.71 Claim for Refund

Action: The Board took no action.

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: Grant the petition for rehearing as recommended by the Appeals Division.

S & C Motors, 468140 (BH)

7-1-01 to 12-31-02, \$214,572.66

Action: The Board took no action.

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

The Board deferred consideration of the following matter: *Diamond B Capital, Inc. 623488.*

With respect to the Corporate Franchise and Personal Income Tax 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:

**Francisco Acosta, 612838**

2004, \$336.00 Claim for Refund

2005, \$336.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Kristy Afraimi and David Afraimi, 607572**

2004, \$2,697.63 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Elizabeth Agan, 612482**

2002, \$898.00 Assessment

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

**Brad Beck and Glenda Beck, 574003**

2007, \$5,852.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**Carl E. Berg and Mary Ann Berg, 400129**

2000, \$809,062.41 Assessment, \$1,621,927.53 Claim for Refund, \$913.13 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Binford Road, LLC, 592029**

2002, \$400.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

**Mordechai Dayan, 574437**

2007, \$411,400.00 Tax, \$102,850.00 Late Filing Penalty

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

**Diamond B Capital, Inc. 623488**

2010, \$3,467.28 Claim for Refund

Action: The Board took no action.

**Aimee Marie Felker, 620573**

2007, \$771.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Michael J. Gorun, 598170

2006, \$1,360.70 Accuracy-Related Penalty

Action: Modify the action of the Franchise Tax Board.

Goya Foods of California, Inc., 613801

2010, \$2,373.47 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Mauro Frank Gutierrez and Nohemi Gutierrez, 606491

2006, \$1,813.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Gary Hansen, 598294

2007, \$1,514.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Kimberly K. House, 625181

2010, \$1,690.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jo-Renee Hunter, 608111

2006, \$228.34 Assessment

Action: Sustain the action of the Franchise Tax Board.

Audrey B. Jacobsen, 620571

2010, \$712.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

James Lamb and Wendy Lamb, 614065

2010, \$4,675.00 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Christian J. Lane, 613265

2008, \$2,352.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Richard A. Lopez, 575545, 592208

2006, \$516.00 Claim for Refund

2010, \$516.00 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Patricia McGraw, 597959

2009, \$666.25 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Candace Messer and Garth E. Messer, 605330

2008, \$363.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Luis A. Montes, 625006

2006, \$1,453.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

P.L.P. Global, Inc., 614340

2010, \$857.95 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Robert P. Riggs and Rita Young, 606389

2010, \$1,616.64 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Chiquitha Marie Shaw, 607044

2005, \$1,050.00 Claim for Refund

2006, \$1,050.00 Claim for Refund

2007, \$1,050.00 Claim for Refund

2008, \$1,050.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Anthony A. Touchette, 574780

2005, \$1,595.00 Assessment

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

**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, Ms. Mandel not participating in accordance with Government Code section 87105 in *Cisco Technology, Inc., 747305 (GH)*; the Board made the following orders:

Radioshack Corporation, 595706 (OH)

4-1-05 to 6-30-10, \$260,040.46

Action: Approve the redetermination as recommended by staff.

Scott Thomas Turner, 513953 (BH)

4-1-04 to 5-13-07, \$189,384.43

Action: Approve the redetermination as recommended by staff.

Superior Pool Products, LLC, 624596 (OH)

1-1-07 to 12-31-09, \$779,505.30

Action: Approve the redetermination as recommended by staff.

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Treasures, 551443 (FH)

4-1-06 to 3-31-09, \$502,197.81

Action: Approve the redetermination as recommended by staff.

SPX Corporation, 628371 (OH)

4-1-06 to 3-31-09, \$10,588,262.36

Action: Approve the redetermination as recommended by staff.

Cisco Technology, Inc., 747305 (GH)

1-1-13 to 3-31-13, \$129,251.20

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

State of California-California Lottery, 601925 (KH)

1-1-08 to 6-30-12, \$4,731,589.00

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

Illumina, Inc., 743936 (FH)

1-1-13 to 3-31-13, \$8,781.89

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 following matter: *R. R. C., 595740 (JH)*.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, 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 *Check Point Software Technologies, Inc., 722502 (BH)*; and, *Taco Bell, 739819 (OH)*; the Board made the following orders:

John Nick Petrillo, 747170 (AP)

10-1-08 to 12-31-09, \$105,664.91

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

Bax Global, Inc., 729690 (OH)

10-1-08 to 6-30-11, \$683,671.82

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

The Mobile Solution Corporation, 746347 (FH)

1-1-09 to 3-31-09, \$170,599.92

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

The Mobile Solution Corporation, 746348 (FH)

4-1-09 to 5-31-09, \$252,449.83

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

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Ryjac Computer Solutions, Inc., 595904 (EA)

7-1-08 to 12-31-10, \$1,008,762.35

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

Guaranty RV, Inc., 591926 (EH)

4-1-01 to 3-31-05, \$302,560.35

Action: Approve the refund as recommended by staff.

Nordstrom, Inc., 592159 (OH)

1-7-08 to 3-31-08, \$267,308.93

Action: Approve the refund as recommended by staff.

American Material Mgt. Allianc, Inc., 563037 (EH)

7-1-08 to 6-30-10, \$214,052.88

Action: Approve the refund as recommended by staff.

Idearc Media Corp., 738871 (OH)

4-1-09 to 6-30-12, \$107,836.07

Action: Approve the refund as recommended by staff.

Boston Scientific corporation, 614413 (OH)

4-1-07 to 12-31-11, \$128,421.33

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 743140 (KH)

12-19-12 to 7-12-13, \$285,634.00

Action: Approve the refund as recommended by staff.

Check Point Software Technologies, Inc., 722502 (BH)

7-1-12 to 9-30-12, \$273,916.49

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

Taco Bell, 739819 (OH)

6-10-09 to 10-02-12, \$347,929.75

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

The Glynhard Corporation, 588915 (AS)

7-1-08 to 6-30-11, \$237,761.26

Action: Approve the refund as recommended by staff.

Nuvision Financial Federal Credit Union, 578456 (EA)

4-1-08 to 12-31-12, \$773,573.80

Action: Approve the refund as recommended by staff.

Infinera Corporation, 714058 (GH)

10-1-09 to 3-31-11, \$313,510.18

Action: Approve the refund as recommended by staff.

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American Seating Company, 623753 (OH)

1-1-12 to 6-30-12, \$132,667.95

Action: Approve the refund as recommended by staff.

R. R. C., 595740 (JH)

10-1-08 to 9-30-11, \$134,439.57

Action: The Board took no action.

Enphase Energy, Inc., 703804 (JH)

1-1-12 to 3-31-12, \$39,182.05

Action: Approve the refund as recommended by staff.

Seamicro, Inc., 729693 (GH)

10-1-09 to 12-31-12, \$106,600.72

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, DENIAL OF CLAIM FOR REFUND, CONSENT**

With respect to the Special Taxes Matters, Denial of Claim for Refund, Consent Agenda, upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating, the Board made the following order:

US Telecom, Inc., 304389, 548379 (STF)

8-1-00 to 8-31-04, \$623,457.64

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating.

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

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, 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 made the following order:

The Wine Group, LLC, 741827 (STF)

6-1-13 to 6-30-13, \$144,383.40

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

**PROPERTY TAXES MATTERS, CONSENT**

With respect to the Property Taxes Matters, 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:

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**Petitions for Reassessment of Unitary Value****Golden State Water Company (101), 742934**

2013, \$611,100,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$608,900,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**Pacific Bell Telephone Company (279), 742888**

2013, \$6,882,100,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$6,520,100,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**Central California Traction Co. (818), 742893**

2013, \$7,820,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$7,680,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**Dynegy Moss Landing, LLC (1103), 743422**

2013, \$491,400,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$480,000,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**Cabrillo Power I, LLC (1106), 743435**

2013, \$116,800,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$116,700,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**GenOn Delta, LLC (1109), 743437**

2013, \$87,700,000.00 Unitary Value

Action: Deny the petition for reassessment of 2013 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**Reliant Energy Ormond Beach, LLC (1115), 743431**

2013, \$112,900,000.00 Unitary Value

Action: Deny the petition for reassessment of 2013 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**High Desert Power Trust 2000-A, LLC (1127), 742933**

2013, \$231,100,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$222,400,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**Delta Energy Center, LLC (1128), 742894**

2013, \$326,900,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$316,300,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

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**Pastoria Energy Facility, LLC (1131), 742895**

2013, \$363,600,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$352,800,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**Calpine Construction Finance Co., LP (1132), 742897**

2013, \$141,700,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$137,800,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**Metcalf Energy Center, LLC (1133), 742898**

2013, \$239,000,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$231,700,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**Otay Mesa Generating Company, LLC (1134), 742899**

2013, \$345,600,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$329,000,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**Sunrise Power Company, LLC (1137), 742939**

2013, \$184,200,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$177,900,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**Russell City Energy Company, LLC (1151), 742932**

2013, \$668,100,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$497,900,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**GenOn Marsh Landing, LLC (1157), 743433**

2013, \$544,800,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$542,600,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**El Segundo Energy Center, LLC (1158), 743429**

2013, \$216,100,000.00 Unitary Value

Action: Deny the petition for reassessment of 2013 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**CPV Sentinel, LLC (1160), 743419**

2013, \$682,500,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$649,400,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

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Cricket Communications, Inc. (2762), 745875

2013, \$86,400,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$73,600,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Zayo Group, LLC (7778), 742938

2013, \$49,200,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$37,200,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Americom Government Services, Inc. (7912), 742833

2013, \$570,000.00 Unitary Value

Action: Reduce the 2013 unitary value to \$264,000.00 as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**Petition for Penalty Abatement on Unitary Value**

Calaveras Telephone Company (210), 742794

2013, \$13,970,000.00 Penalty

Action: Approve the penalty abatement on 2013 unitary value as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

**Petition for Penalty Abatement on Unitary Escape Assessment**

MetroPCS Communications, Inc. (2733), 747165

2013, \$322,725,000.00 Penalty

Action: Approve the penalty abatement on 2013 unitary escape assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**LEGAL APPEALS PROPERTY TAXES MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Global Tel\*Link Corporation (7988), 747162.*

With respect to the Legal Appeals Property Taxes Matters, Consent Agenda, 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 made the following order:

**Petition for Penalty Abatement on Escape Assessment**

Global Tel\*Link Corporation (7988), 747162

2009-2012, \$580,000.00 Value, \$58,000.00 Penalty, \$130,200.00 Interest

Action: The Board took no action.

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**Penalty Abatement on Unitary Escape Assessment**

NTCH-CA, Inc. (2764), 522064

2007-2008, \$574,014.00 Value, \$57,400.00 Penalty, \$111,622.00 In-Lieu Interest

Action: Grant the petition for reassessment in part and reduce the total 2007 and 2008 Board-adopted values of \$743,036.00 to \$685,636.00 as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Safwat Tawadros Salib and Wafaa Salib, 534396 (EH)

1-1-06 to 3-31-09, \$00.00 Tax, \$00.00 Penalty

Considered by the Board: Hearing Notice Sent – Hearing Request Withdrawn

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, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Sonja M. Craighton, 558975 (KH)

10-1-07 to 6-30-10, \$46,355.03 Tax, \$4,635.53 Negligence Penalty

Considered by the Board: January 15, 2013

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, Mr. Runner and Ms. Mandel voting yes, 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.

East Coast Foods, Inc., 444779 (AS)

7-1-01 to 6-30-05, \$1,349,989.74 Tax, \$134,999.02 Negligence Penalty, \$46,060.60 Amnesty-Double Negligence Penalty, \$52,564.30 Amnesty Interest Penalty

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

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

Action: The Board deferred the matter to the following day to consider a revision.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY**

Richard A. Hall, 533898

Action: (Motion expunged.)

Myles D. Hubers and Michelle Hubers, 534595

Action: (Motion expunged.)

With respect to the Corporate Franchise and Personal Income Tax Matters Adjudicatory 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 ordered that its previous motion be expunged.

Tuesday, November 19, 2013

Richard A. Hall, 533898

2003, \$157,185.00 Assessment

Considered by the Board: February 27, 2013

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

Action: Ms. Yee moved to adopt a decision denying the petition for rehearing. The motion was seconded by Ms. Mandel. Ms. Steel made a substitute motion to grant the petition for rehearing. The substitute motion failed for lack of a second.

Upon a new substitute motion of Mr. Runner, seconded by Ms. Steel and duly carried, Ms. Steel, Mr. Runner and Ms. Mandel voting yes, Mr. Horton and Ms. Yee voting no, the Board granted the petition for rehearing.

Myles D. Hubers and Michelle 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

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

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, Mr. Runner and Ms. Mandel voting yes, the Board adopted the written summary decision as presented by staff.

### **SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY**

Pacmac, Inc., 699402 (OH)

10-1-97 to 9-30-05, \$971,535.40

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. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

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

#### **PROPERTY TAX MATTERS**

##### **Audits**

Crimson California Pipeline, LP (490)

2010-2012, \$2,100,000.00 Escaped Assessment, \$130,000.00 Penalties, \$321,000.00 In-lieu Interest

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 audit adjustments as recommended by staff.

Tuesday, November 19, 2013

**Smart City Networks, LP (2099)**

2009-2012, \$5,841,000.00 Escaped Assessment, \$584,100.00 Penalties, \$1,513,980.00 In-lieu Interest

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Yee and Mr. Runner voting yes, Ms. Steel not participating in accordance with Government Code section 87105, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

**McLeodUSA Telecommunications Services, Inc. (7914)**

2009-2011, \$751,000.00 Escaped Assessment, \$75,100.00 Penalties, \$251,070.00 In-lieu Interest

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 audit adjustments as recommended by staff.

**Limited Scope Audits (ERC)****San Diego Gas and Electric Company (141)**

2009-2012, \$43,900,000.00 Excessive Assessment, \$12,795,000.00 Assessment in lieu of Interest

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 limited scope audit adjustments as recommended by staff.

**Southern California Edison Company (148)**

2011-2012, \$19,500,000.00 Excessive Assessment, \$3,843,000.00 Assessment in lieu of Interest

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 limited scope audit adjustments as recommended by staff.

**Dynegy Moss Landing, LLC (1103)**

2009-2012, \$22,800,000.00 Excessive Assessment, \$6,093,000.00 Assessment in lieu of Interest

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 limited scope audit adjustments as recommended by staff.

**Dynegy Morro Bay, LLC (1104)**

2009, \$200,000.00 Excessive Assessment, \$84,000.00 Assessment in lieu of Interest

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 limited scope audit adjustments as recommended by staff.

Tuesday, November 19, 2013

**La Paloma Generating Company, LLC (1112)**

2009, \$10,700,000.00 Excessive Assessment, \$4,494,000.00 Assessment in lieu of Interest

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 limited scope audit adjustments as recommended by staff.

**GenOn Energy West, LP – Coolwater (1113)**

2009, \$100,000.00 Excessive Assessment, \$42,000.00 Assessment in lieu of Interest

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 limited scope audit adjustments as recommended by staff.

**GenOn Energy West, LP – Mandalay (1114)**

2009, \$100,000.00 Excessive Assessment, \$42,000.00 Assessment in lieu of Interest

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 limited scope audit adjustments as recommended by staff.

**GenOn Energy West, LP – Ormond Beach (1115)**

2009, \$300,000.00 Excessive Assessment, \$126,000.00 Assessment in lieu of Interest

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 limited scope audit adjustments as recommended by staff.

**GenOn Energy West, LP – Etiwanda (1116)**

2009, \$100,000.00 Excessive Assessment, \$42,000.00 Assessment in lieu of Interest

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 limited scope audit adjustments as recommended by staff.

**Mountainview Power Company, LLC (1119)**

2009, \$12,200,000.00 Excessive Assessment, \$5,124,000.00 Assessment in lieu of Interest

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 limited scope audit adjustments as recommended by staff.

Tuesday, November 19, 2013

**Elk Hills Power, LLC (1126)**

2009-2010, \$13,500,000.00 Excessive Assessment, \$5,004,000.00 Assessment in lieu of Interest  
Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Yee and Mr. Runner voting yes, Ms. Steel not participating in accordance with Government Code section 87105, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the limited scope audit adjustments as recommended by staff.

**High Desert Power Trust 2000-A (1127)**

2009-2012, \$17,600,000.00 Excessive Assessment, \$4,854,000.00 Assessment in lieu of Interest  
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 limited scope audit adjustments as recommended by staff.

**Delta Energy Center, LLC (1128)**

2009-2012, \$28,400,000.00 Excessive Assessment, \$8,013,000.00 Assessment in lieu of Interest  
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 limited scope audit adjustments as recommended by staff.

**Pastoria Energy Facility, LLC (1131)**

2009-2012, \$30,800,000.00 Excessive Assessment, \$8,823,000.00 Assessment in lieu of Interest  
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 limited scope audit adjustments as recommended by staff.

**Calpine Construction Finance Company, LP (1132)**

2009-2012, \$14,400,000.00 Excessive Assessment, \$4,230,000.00 Assessment in lieu of Interest  
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 limited scope audit adjustments as recommended by staff.

**Metcalf Energy Center, LLC (1133)**

2009-2012, \$20,700,000.00 Excessive Assessment, \$5,931,000.00 Assessment in lieu of Interest  
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 limited scope audit adjustments as recommended by staff.

Tuesday, November 19, 2013

**Otay Mesa Generating Company, LLC (1134)**

2010-2012, \$34,200,000.00 Excessive Assessment, \$8,046,000.00 Assessment in lieu of Interest  
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 limited scope audit adjustments as recommended by staff.

**Sunrise Power Company, LLC (1137)**

2009, \$9,100,000.00 Excessive Assessment, \$1,365,000.00 Assessment in lieu of Interest  
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 limited scope audit adjustments as recommended by staff.

**Unitary Land Escaped Assessments****Cellco Partnership (2559)**

2011-2012, \$236,585.00 Full Value  
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 unitary land escaped assessment as recommended by staff.

**Sprint Telephony PCS, LP (2720)**

2010-2013, \$4,136,686.00 Full Value  
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 unitary land and improvements escaped assessment, plus applicable penalty and interest, as recommended by staff.

**MetroPCS Communications (2733)**

2012, \$532,616.00 Full Value  
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 unitary land escaped assessment, plus applicable penalty and interest, as recommended by staff.

**Cricket Communications, Inc. (2762)**

2012, \$228,767.00 Full Value  
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 unitary land escaped assessment as recommended by staff.

Tuesday, November 19, 2013

**Allocation Adjustments****AT&T Mobility, LLC (2606)**

2010, Alameda County (\$202,482.00)

2010, San Francisco County \$202,482.00

2011, Alameda County (\$202,482.00)

2011, San Francisco County \$202,482.00

2012, Alameda County (\$202,482.00)

2012, San Francisco County \$202,482.00

**MetroPCS Communications (2733)**

2010, San Francisco County (\$211,610.00)

2010, San Mateo County \$211,610.00

2011, San Francisco County (\$211,610.00)

2011, San Mateo County \$211,610.00

2012, San Francisco County (\$211,610.00)

2012, San Mateo County \$211,610.00

**T-Mobile West Corporation (2748)**

2010, San Francisco County (\$132,582.00)

2010, Contra Costa County \$132,582.00

2011, San Francisco County (\$132,582.00)

2011, Contra Costa County \$132,582.00

2012, San Francisco County (\$211,610.00)

2012, Contra Costa County \$132,582.00

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 allocation adjustments as recommended by staff.

**Assessment Cancellations of Emission Reduction Credits****Pacific Gas and Electric Company (135)**

2013, \$11,000,000.00

**AES Alamos, LLC (1100)**

2013, \$200,000.00

**AES Redondo Beach, LLC (1101)**

2013, \$100,000.00

**AES Huntington Beach, LLC (1102)**

2013, \$100,000.00

**Dynegy Morro Bay, LLC (1104)**

2013, \$100,000.00

**Dynegy Oakland, LLC (1105)**

2013, \$10,000.00

**El Segundo Power (1110)**

2013, \$100,000.00

**La Paloma Generating Company (1112)**

2013, \$12,600,000.00

Tuesday, November 19, 2013

**Assessment Cancellations of Emission Reduction Credits (Continued)**

GenOn Energy West, LP - (RR) Energy Mandalay, Inc. (1114)

2013, \$100,000.00

GenOn Energy West, LP - RRI Energy Etiwanda, Inc. (1116)

2013, \$100,000.00

GWF Energy, LLC - Hanford (1122)

2013, \$200,000.00

GWF Energy, LLC - Henrietta (1123)

2013, \$200,000.00

GWF Energy, LLC - Tracy (1124)

2013, \$13,300,000.00

Elk Hills Power, LLC (1126)

2013, \$8,600,000.00

Gilroy Energy Center, LLC (1129)

2013, \$300,000.00

Blythe Energy, LLC (1136)

2013, \$5,300,000.00

Indigo Generation, LLC (1141)

2013, \$300,000.00

Larkspur Energy, LLC (1142)

2013, \$200,000.00

Harbor Cogeneration Company, LLC (1145)

2013, \$100,000.00

Inland Empire Energy Center, LLC (1148)

2013, \$18,100,000.00

Panoche Energy Center, LLC (1152)

2013, \$2,000,000.00

Starwood Power-Midway, LLC (1153)

2013, \$500,000.00

Bicent (California) Malburg, LLC (1154)

2013, \$3,800,000.00

Orange Grove Energy, LP (1155)

2013, \$400,000.00

Mariposa Energy, LLC (1159)

2013, \$1,900,000.00

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, Ms. Steel not participating in accordance with Government Code section 87105 in *Elk Hills Power, LLC (1126)*; the Board adopted the assessment cancellation of the portion of the assessment attributable to the inclusion of the replacement cost of emission reduction credits as recommended by staff.

Tuesday, November 19, 2013

**Board Roll Changes****2010, 2011, 2012 and 2013 State-Assessed Property Rolls**

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 approved corrections to the 2010, 2011, 2012 and 2013 Board Rolls of State-Assessed Property as recommended by staff ([Exhibit 11.6](#)).

**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 *Israel Diaz Guevara*; and, *Tamara Ann O'Dea*; as recommended by staff.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 3:38 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 settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 4:09 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

On behalf of the Board, Mr. Horton acknowledged the tragic Typhoon Haiyan in the Philippines and expressed compassion and support to BOE employees, as well as friends and relatives of those in the affected area.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD NOVEMBER 19, 2013****Todd Bentley and Kate Bentley, 593582**

Final Action: 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.

**Applied Companies, 526527**

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.

Tuesday, November 19, 2013

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
NOVEMBER 19, 2013**

SMF Energy Corporation, 556419, 557544 (OH)

4-1-05 to 3-31-08, \$375,809.47 Tax

12-15-06 to 10-31-10, \$618,483.00 Claim for Refund

For Petitioner/Claimant: Waived Appearance

For Sales and Use Tax Department: Andrew Kwee, Tax Counsel

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

Issue: Whether a portion of the selling price charged for fuel represents a fee charged by petitioner for nontaxable services.

Action: Upon motion of Ms. Mandel, 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.

Joginder Lal, 496075 (KH)

Final 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 the amount allowed for pilferage be adjusted to 2 percent, and that the petition otherwise be redetermined as recommended by the Appeals Division.

The Board recessed at 4:13 p.m.

*The foregoing minutes are adopted by the Board on March 25, 2014.*

Note: The following matters were removed from the calendar prior to the meeting: *Gregory Scott Smith, 532481 (GH); Amy Elaine Smith, 532485 (GH); Mordehay Rabinowiz, 489446 (AC); Richard M. Kerbel, 560503; and, Barry L. Weiss and Dorraine Gilbert Weiss, 605043.*

**Wednesday, November 20, 2013**

The Board met at its offices at 450 N Street, Sacramento, at 9:35 a.m., with Ms. Steel, Vice Chairwoman, and Ms. Yee present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

The Board recessed at 9:36 a.m. and reconvened at 10:04 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

## **SPECIAL PRESENTATION**

### **BOE Headquarters Building**

Liz Houser, Deputy Director, Administration Department, introduced James Derby, Assistant Deputy Director, Real Estate Division, Department of General Services, who provided an update on the Headquarters Facilities. The update included a general update on BOE's Headquarters' consolidation and the status of the Lease Request for Information (RFI) seeking options to address this facility need ([Exhibit 11.7](#)).

Speakers: Roger Dickinson, California State Assembly Member, 7th District  
 Ashley Martinez, Legislative Advocate, SEIU  
 Brenda Fleming, Chief Information Officer, Technology Services Department, BOE  
 George Alvarado, Manager, Local Area Network Administration and PC Support Unit, Technology Services Department, BOE  
 Rob Hunga, Manager, Network Support Section, Technology Services Department, BOE  
 Aaron Airozo, Manager, Server Application Support Unit, Technology Services Department, BOE  
 Dennis Baylis, Business Taxes Specialist, Compliance & Technology Section/ACMS Team, Sales & Use Tax Department, BOE  
 Linda Budge, Mayor, City of Rancho Cordova  
 Tabitha Hamilton, Digital Composition Specialist, Board Proceedings Division, BOE, representing SEIU Local 1000 District 14 Printing Trades

Exhibits to these minutes are incorporated by reference.

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

Tri Minh Phan, 539025 (KH)

4-1-07 to 12-31-09, \$10,024.65 Tax, \$1,002.49 Negligence Penalty

For Petitioner: Tri Minh Phan, Taxpayer

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.

**Wednesday, November 20, 2013**

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.

Mark J. Weidhaas and Richard A. Weiner, 577043 (UT)

9-10-10, \$33,250.00 Tax

For Petitioners:

Joe Micallef, Jr., Representative

Joe Micallef, Sr., Representative

For Sales and Use Tax Department:

Monica Silva, Tax Counsel

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

Issue: Whether petitioner's purchase and use of an aircraft is subject to use tax.

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.

Katherine E. Lett, 576171, 654996 (CH)

7-1-07 to 9-30-10, \$72,823.42 Tax, \$7,397.25 Negligence Penalty, \$7,397.25 Finality Penalty,

For Petitioner:

Katherine E. Lett, Taxpayer

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 any adjustments are warranted to the amount of unreported taxable cigarette rebates.

Whether taxpayer 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.

## **ADMINISTRATIVE SESSION**

### **ADMINISTRATIVE MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Effects of Proposition 10 on Cigarette and Tobacco Products Consumption; Proposed Revisions to Compliance Policy and Procedures Manual Chapter 7, Collections; and, Proposed Revision to Audit Manual, Chapter 4, General Audit Procedures.*

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:

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 11.8](#)).

Wednesday, November 20, 2013

Michael Barcena, Chief Information Security Officer, Information Security Office, Administration Department, Headquarters  
Irving James Buford III, Assistant Information Systems Analyst, Technology Services Department, Headquarters  
Margie F. Dean, Business Taxes Specialist I, Sales and Use Tax Department, Out-of-State Chicago Office  
Louie E. Feletto, Chief, Special Taxes Audit and Carrier Division, Property and Special Taxes Department, Headquarters  
Lynn M. Garcia, Business Taxes Specialist I, Program Policy and Administration Branch, Property and Special Taxes Department, Headquarters  
Theresa E. Hannan, Senior Investigator, Investigations and Special Operations Division, Legal Department  
Jesus (Jesse) Macias, Supervising Tax Auditor II, West Covina Office

Action: Adopt the 2014 Timberland Production Zone Values as recommended by staff ([Exhibit 11.9](#)).

Action: Approve Assessors' Handbook Section 581, *Equipment and Fixtures Index, Percent Good and Valuation Factors*, as recommended by staff ([Exhibit 11.10](#)).

Action: Approve proposed addition to Compliance Policy and Procedures Manual Chapter 10, *Statewide Compliance and Outreach Program*, as recommended by staff ([Exhibit 11.11](#)).

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

### **Business Taxes Committee**

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

## **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.

Randy Ferris, Chief Counsel, provided an update on the rate-setting delegation to the Executive Director to address concerns raised regarding the delegation of certain non-discretionary administrative rate-setting adjustments ([Exhibit 11.12](#)).

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

Jeff McGuire, Deputy Director, Sales and Use Tax Department, provided an update on the statewide expansion of the no cash policy parameters ([Exhibit 11.13](#)).

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**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.

**LEGAL APPEALS MATTER, ADJUDICATORY**

East Coast Foods, Inc., 444779 (AS) (Continued)

7-1-01 to 6-30-05, \$1,349,989.74 Tax, \$134,999.02 Negligence Penalty, \$46,060.60 Amnesty-Double Negligence Penalty, \$52,564.30 Amnesty Interest 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 Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the revised written summary decision as presented by staff.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD NOVEMBER 20, 2013**

Tri Minh Phan, 539025 (KH)

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 ordered that the negligence penalty be removed and that the petition otherwise be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise program.

Mark J. Weidhaas and Richard A. Weiner, 577043 (UT)

Final Action: Ms. Yee moved that the petition be redetermined as recommended by staff. The motion was seconded by Mr. Horton. Ms. Yee withdrew her motion.

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 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.

Katherine E. Lett, 576171, 654996 (CH)

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 negligence and finality penalties be removed and that the petition otherwise be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise program.

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**ADMINISTRATIVE SESSION**

**ADOPTION OF BOARD COMMITTEE REPORT AND APPROVAL OF COMMITTEE ACTIONS**

**Business Taxes Committee (Continued)**

Action: The Board deferred the matter to December 2013.

The Board adjourned at 2:34 p.m.

*The foregoing minutes are adopted by the Board on March 25, 2014.*

Note: The following matters were removed from the calendar prior to the meeting: *Special Presentation-Award Presentation; Schoettler Tire, Inc., 522013 (DF); Ricky Alan Dumas, 547380 (KH); James J. Barbera, Jr., 526563, 526564, 526565 (BH); Jafar Rezaian, 467747 (JH); Sheakh Sahib, 589643 (BH); Executive Director's Report: 2014 Board Calendar Update; and, Sales and Use Tax Deputy Director's Report: Security Deposit Program.*