

**Wednesday, December 14, 2011**

The Board met at its offices at 450 N Street, Sacramento, at 10:03 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Chiang present.

Kristine Cazadd, Executive Director, opened the meeting by sharing a scroll which was presented to the Board of Equalization on September 16, 2011 by the State-Owned Assets Supervision and Administration Commission of the State Council of China. This Chinese scroll was painted on silk in 1998 using a technique taught over 2,000 years ago and passed down through the generations. It depicts the magical eastern flower known as the Chinese cherry blossom. This type of scroll is presented to international friends, relations, and dignitaries.

Ms. Yee took a moment to thank members of the BOE staff and fellow colleagues for being such gracious hosts to the visiting delegations. Mr. Horton further thanked the delegation for the learning opportunity and commented on how impressed the delegation was with BOE employees.

## **PROPERTY TAXES HEARING**

### **Petition for Reassessment of Unitary Value**

Gill Ranch Storage, LLC (121), 577341  
2011, \$222,400,000.00 Unitary Value

For Petitioner:

Joe Molina, Representative

For Property and Special Taxes Department:

Matthew Burke, Tax Counsel

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

Issues: Whether respondent should exclude claimed construction cost overruns and approximately \$50 million of costs in certain infrastructure in calculating petitioner's reproduction cost less depreciation (ReproCLD) value indicator.

Whether respondent should allow petitioner's claimed adjustment for additional external obsolescence based upon an income shortfall method calculation.

Whether respondent should make an adjustment to allow for additional obsolescence based upon a comparison of the 2011 Board-adopted unitary values of its competitors.

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

## **PUBLIC HEARING**

### **2012 Timber Yield Tax Rate**

Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, made introductory remarks regarding section 38202 of the Revenue and Taxation Code, which requires an annual adjustment of the timber yield tax rate ([Exhibit 12.1](#)).

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board adopted the timber yield tax rate of 2.9 percent for 2012 as recommended by staff.

Exhibits to these minutes are incorporated by reference.

Wednesday, December 14, 2011

### FINAL ACTION ON PROPERTY TAXES HEARING HELD DECEMBER 14, 2011

Gill Ranch Storage, LLC (121), 577341

Final Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$200,400,000.00 in accordance with staff's revised recommendation.

### PROPERTY TAXES HEARING

#### Petition for Reassessment of Unitary Value

SureWest Telephone Company (294), 576966

2011, \$144,700,000.00 Unitary Value

For Petitioner: Waived Appearance

For Property and Special Taxes Department: Dan Paul, Tax Counsel

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

Issue: Whether petitioner has shown that the Board-adopted value fails to adequately account for all functional and economic obsolescence present in petitioner's property.

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$134,200,000.00 in accordance with staff's revised recommendation.

### PUBLIC HEARING

#### Timber Harvest Values

David Yeung, Principal Property Appraiser, County Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding the Timber Harvest Values. On or before December 31, 2011, the Board shall estimate the immediate harvest values of and adopt schedules for timber harvested between January 1, 2012 and June 30, 2012 (Rev. & Tax. Code, § 38204) ([Exhibit 12.2](#)).

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board adopted the timber harvest values as recommended by staff.

### LEGAL APPEALS MATTERS, CONSENT

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

Dade Behring, Inc., 195335 (OH)

4-1-95 to 3-31-09, \$513,340.00 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

Wednesday, December 14, 2011

Dade Behring, Inc., 261553, 261654, 261657 (OH)

4-1-99 to 6-30-02, \$542,230.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Kamaljit Singh Grewal, 589069 (ET)

August 4, 2011, \$170.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

John Lanh Ung and Susan Lao Ung, 588077 (ET)

July 28, 2011, \$95.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Sanitech Corporation, 477146 (OH)

4-1-03 to 9-30-07, \$9,272.97 Tax, \$927.35 Failure-to-File Penalty

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 matters: *Frank A. Tortorici, 557833*; and, *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 Mr. Chiang and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board made the following orders:

Frank A. Tortorici, 557833

2006, \$1,125.00 Assessment

Action: The Board took no action.

Margaret Bromley, 449347

1990, \$103,330.00 Innocent Spouse Relief Tax, \$101,154.98 Amnesty Penalty

Action: Modify the action of the Franchise Tax Board.

Kevin J. Everett, 538679

2003, \$31,444.59 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Rodger Grove and Mitzi Grove, 518409

2007, \$25,427.20 Claim for Refund

Action: Modify the action with concession by the Franchise Tax Board.

Richard A. Hall, 533898

2003, \$157,185.00

Action: The Board took no action.

Wednesday, December 14, 2011

Lorraine Hernandez, 535598

2007, \$275.00 Claim for Refund

2008, \$295.00 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Anthony J. Kadillak, 536353

2000, \$207,203.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Idris A. Kothari and Sakina H. Kothari, 479803

2001, \$23,723.78 Tax, \$4,328.35 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Cynthia D. Perry (Field), 507720

2004, \$679.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Frank Pisano, 539224

2006, \$6,219.00 Tax, \$1,243.80 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, AND DENIAL OF CLAIM FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations and Denial of Claim for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board made the following orders:

Cindy H. Im, 478091 (EA)

4-1-01 to 2-14-02, \$568,384.37

Action: Approve the redetermination as recommended by staff.

Joseph G. McGuire, 547491 (OH)

10-1-03 to 9-30-06, \$107,046.13

Action: Approve the redetermination as recommended by staff.

Boeing Satellite Systems, Inc., 288372 (AS)

1-1-96 to 9-30-00, \$1,199,985.42

Action: Approve the redetermination as recommended by staff.

MLP U.S.A., Inc., 562940 (OH)

10-1-08 to 12-31-08, \$180,187.50

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

Wednesday, December 14, 2011

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board made the following orders:

Aero-Space Southwest, Inc., 588300 (GH)

10-1-06 to 9-30-09, \$1,120,093.63

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

Lab Crafters, Inc., 528412 (OH)

10-1-02 to 12-31-07, \$247,002.93

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

Inter-Steel Structures, Inc., 488649 (OH)

10-1-02 to 12-31-02, \$424,399.32

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

Inter-Steel Structures, Inc., 573622 (OH)

1-1-03 to 12-31-03, \$123,711.62

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

LBS Financial Credit Union, 573599 (EA)

1-1-11 to 6-30-11, \$245,748.00

Action: Approve the refund as recommended by staff.

Fireside Bank, 572087 (CH)

10-1-10 to 6-30-11, \$1,738,817.00

Action: Approve the refund as recommended by staff.

Anheuser-Busch, Inc., 574024 (OH)

1-1-07 to 12-31-09, \$580,575.25

Action: Approve the refund as recommended by staff.

Stiles Machinery, Inc., 460247 (OH)

10-1-03 to 12-31-06, \$107,097.84

Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 588261 (OH)

12-8-10 to 8-9-11, \$931,000.57

Action: Approve the refund as recommended by staff.

Wednesday, December 14, 2011

Mercedes-Benz USA, LLC, 586737 (KH)

8-12-11 to 8-26-11, \$236,183.00

Action: Approve the refund as recommended by staff.

Toyota Motor Sales, U.S.A., Inc., 587777 (AS)

7-13-11 to 8-17-11, \$161,435.00

Action: Approve the refund as recommended by staff.

Rockwell Collins, Inc., 513019 (OH)

7-1-06 to 6-30-09, \$327,849.64

Action: Approve the refund as recommended by staff.

Avis Rent-A-Car System, Inc., 586266 (OH)

1-1-04 to 3-31-08, \$250,000.00

Action: Approve the refund as recommended by staff.

Travis Credit Union, 572974 (JH)

1-01-11 to 6-30-11, \$191,167.00

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 573595 (EA)

1-1-11 to 6-30-11, \$218,481.00

Action: Approve the refund as recommended by staff.

Kern County Employees Federal Credit Union, 568726 (AR)

1-1-10 to 3-31-10, \$105,912.00

Action: Approve the refund as recommended by staff.

ACC Capital Holdings Corporation, 556970 (EA)

1-1-07 to 9-30-07, \$179,913.15

Action: Approve the refund as recommended by staff.

Element Markets, LLC, 537218 (OH)

7-1-08 to 6-30-09, \$393,646.53

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, REDETERMINATION AND RELIEF OF PENALTY,  
CONSENT**

With respect to the Special Taxes Matters, Redetermination and Relief of Penalty, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board made the following orders:

Wednesday, December 14, 2011

21<sup>st</sup> Century Insurance Company, 444712 (ET)

1-1-03 to 12-31-03, \$629,964.00

Action: Approve the redetermination as recommended by staff.

ExxonMobil Oil Corporation, 578604 (MT)

9-1-08 to 6-30-09, \$252,447.52

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

### **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. Chiang and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board made the following orders:

Santa Fe Natural Tobacco Company, Inc., 562353 (ET)

2-8-11 to 2-8-11, \$130,615.65

Action: Approve the refund as recommended by staff.

Wellcare Prescription Insurance, Inc., 586885 (ET)

1-1-08 to 12-31-10, \$759,160.42

Action: Approve the refund as recommended by staff.

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

With respect to the Corporate Franchise and Personal Income Tax Matters Adjudicatory agenda, upon a single motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board approved staff recommendations.

Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board rescinded its prior vote and took the following actions:

Marsha E. Kakalia, 404650

2003, \$6,083.00 Tax, \$1,520.75 Failure to Provide Information Penalty

Considered by the Board: September 20, 2011

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

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and duly carried, Mr. Horton, Ms. Yee and Mr. Chiang voting yes, Ms. Steel voting no, Mr. Runner absent, the Board adopted a decision modifying the action of the Franchise Tax Board.

Wednesday, December 14, 2011

Thomas Najarian and Tamar Najarian, 522166

2003, \$24,217.00 Assessment

2004, \$15,575.00 Assessment

2005, \$17,917.00 Assessment

2006, \$13,719.00 Assessment

Considered by the Board: June 21, 2011

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

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Richard Palmquist, 526815

2005, \$7,467.00 Tax

Considered by the Board: June 22, 2011

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

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board adopted a decision modifying the action of the Franchise Tax Board, as conceded by the Franchise Tax Board on appeal.

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

Foss Maritime Company, 400433 (UT)

1-28-04 to 1-28-04, \$344,041.40

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

### **PROPERTY TAXES MATTERS, ADJUDICATORY**

#### **Petitions for Reassessment of Unitary Value**

El Paso Natural Gas Company (197), 576908

2011, \$73,700,000.00 Unitary Value

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 and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 Board-adopted unitary value be reduced to \$56,400,000.00 as recommended by staff.

Wednesday, December 14, 2011

Inland Empire Energy Center, LLC (1148), 576832

2011, \$811,400,000.00 Unitary Value

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 and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 Board-adopted unitary value be reduced to \$688,100,000.00 as recommend by staff.

## **LEGAL APPEALS PROPERTY TAX MATTERS**

### **Petitions for Reassessment of Unitary Value**

San Diego Gas and Electric Co. (141), 576905

2011, \$5,892,800,000.00 Unitary Value

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 Mr. Chiang duly carried, Mr. Horton, Ms. Yee and Mr. Chiang voting yes, Ms. Steel voting no, Mr. Runner absent, the Board ordered that the petition be denied as recommended by the Appeals Division.

Southern California Edison Co. (148), 576082

2011, \$17,083,200,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Horton. No other disqualifying contributions were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and duly carried, Ms. Yee and Mr. Chiang voting yes, Ms. Steel voting no, Mr. Horton not participating in accordance with Government Code section 15262, Mr. Runner absent, the Board ordered that the petition be denied as recommended by the Appeals Division.

Pacific Pipeline System, LLC (486), 576620

2011, \$47,500,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Yee and Mr. Chiang voting yes, Ms. Steel not participating in accordance with Government Code section 87105, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$38,000,000.00 as recommended by the Appeals Division.

### **Petition for Reallocation of Unitary Value**

Pacific Pipeline System, LLC (486), 576622

2011, \$47,500,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Wednesday, December 14, 2011

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Yee and Mr. Chiang voting yes, Ms. Steel not participating in accordance with Government Code section 87105, Mr. Runner absent, the Board ordered that petition for reassessment be partially granted and adopted the revised value which has been agreed upon by petitioner and respondent, reducing the 2011 Board-adopted unitary value to \$38,000,000.00 as recommended by the Appeals Division.

### **Petitions for Reassessment of Unitary Value**

GenOn Energy West, LP – Etiwanda (1116), 577046

2011, \$53,800,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$49,800,000.00 as recommended by the Appeals Division.

Elk Hills Power, LLC (1126), 576639

2011, \$312,700,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$297,600,000.00 as recommended by the Appeals Division.

Starwood Power-Midway, LLC (1153), 577048

2011, \$87,400,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$84,900,000.00 as recommended by the Appeals Division.

Los Angeles SMSA Ltd., Partnership (2532), 577339

2011, \$917,600,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$880,600,000.00 as recommended by the Appeals Division.

Wednesday, December 14, 2011

Cellco Partnership (2559), 577338

2011, \$1,136,700,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$1,118,900,000.00 as recommended by the Appeals Division.

Verizon Online, LLC (7871), 577335

2011, \$165,200,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$124,000,000.00 as recommended by the Appeals Division.

Cbeyond Communications, LLC (8049), 577340

2011, \$18,800,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$18,300,000.00 as recommended by the Appeals Division.

Charter Fiberlink CA-CCO, LLC (8061), 577087

2011, \$19,800,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$19,300,000.00 as recommended by the Appeals Division.

### **Petition for Reassessment and Penalty Abatement on Unitary Value**

Crimson California Pipeline, LP (490), 576627

2011, \$10,800,000.00 Unitary Value, \$1,080,000.00 Penalty

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$10,000,000.00, and reduced the penalty to 1,000,000.00 as recommended by the Appeals Division.

Wednesday, December 14, 2011

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

Charter Fiberlink CA-CCO, LLC (8061), 574516

2007-2010, \$29,800,000.00 Escaped Assessment, \$2,980,000.00 Penalty, \$8,259,000.00 In-lieu Interest

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the escaped assessment be reduced to \$7,200,000 assessment, \$1,360,000 penalty, and \$4,434,000 in-lieu interest as recommended by the Appeals Division.

**Petitions for Reassessment of Unitary Value**

Verizon California, Inc. (201), 577171

2011, \$3,407,900,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$3,132,900,000.00 as recommended by the Appeals Division.

MCI Communications Services, Inc. (2274), 577336

2011, \$397,000,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$372,000,000.00 as recommended by the Appeals Division.

Cricket Communications, Inc. (2762), 577573

2011, \$176,000,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board ordered that the 2011 unitary value be reduced to \$153,300,000.00 as recommended by the Appeals Division.

Wednesday, December 14, 2011

**PROPERTY TAX MATTERS****Audits****Flat West Wireless, LLC (2783)**

2010, \$3,060,000.00 Escaped Assessment, \$306,000.00 Penalties, \$459,000.00 In-lieu Interest

2011, \$2,360,000.00 Escaped Assessment, \$236,000.00 Penalties, \$141,600.00 In-lieu Interest

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board adopted the audit escaped assessment, plus penalties and in-lieu interest, as recommended by staff.

**Greatcall, Inc. (2784)**

2010, \$830,000.00 Excessive Assessment

2011, \$93,000.00 Escaped Assessment, \$9,300.00 Penalty, \$5,580.00 In-lieu Interest

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board adopted the audit escaped and excessive assessment, plus penalties and in-lieu interest, as recommended by staff.

**Astound Broadband, LLC (7832)**

2007, \$10,500,000.00 Excessive Assessment

2008, \$15,900,000.00 Excessive Assessment

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board adopted the audit excessive assessment as recommended by staff.

**Newpath Networks, LLC (8077)**

2008, \$1,081,000.00 Escaped Assessment, \$108,100.00 Penalties, \$356,730.00 In-lieu Interest

2009, \$290,000.00 Escaped Assessment, \$29,000.00 Penalties, \$69,600.00 In-lieu Interest

2010, \$1,000,000.00 Excessive Assessment

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board adopted the audit escaped and excessive assessment, plus penalties and in-lieu interest, as recommended by staff.

**Unitary Escaped Assessment****Mother Lode Internet, LLC (2787)**

2011, \$55,500.00 Escaped Assessment, \$5,550.00 Penalties

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board adopted the unitary escaped assessment, penalties, plus applicable interest as recommended by staff.

Wednesday, December 14, 2011

### OFFER-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Chiang voting yes, Mr. Runner absent, the Board approved the Offer in Compromise of *Terry Albertsen and Kathy Albertsen; Richard Allen Dimaggio; Gibson Enterprises, Inc.; Daryl Lee Hinnenberg and Maureen Kittel Hinnenberg; Edmund Joseph Irvine, Jr.*; and, *Amber I. Lao* as recommended by staff.

The Board recessed at 11:05 a.m. and reconvened at 11:47 a.m. with Mr. Horton, Ms. Steel and Ms. Yee present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Kamleshwar C. Gunsagar and Anita Gunsagar, 484764

2001, \$72,369.00 Tax, \$18,092.25 Failure to Furnish Information Penalty, \$4,379.60 Proposed Post-Amnesty Penalty

2003, \$53,370.00 Tax, \$13,342.50 Failure to Furnish Information Penalty

For Appellant: Kamleshwar C. Gunsagar, Taxpayer

Jeffrey B. Khan, Attorney

For Franchise Tax Board:

Raul Escatel, Tax Counsel

Bill Hilson, Tax Counsel

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

Issues: Whether appellants have established that they are entitled to their claimed worthless stock deductions for 2001 and/or 2003.

Whether appellants have established that they are entitled to exclude gains under Revenue and Taxation Code section 18152.5 (50 percent gain exclusion).

Whether appellants have provided reasonable cause for relief from the failure to furnish information penalties issued for 2001 and/or 2003.

Whether the Board has jurisdiction to consider a proposed post-amnesty penalty issued for 2001.

Appellant's Exhibit: Affidavit of S. S. Lin ([Exhibit 12.3](#))

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

The Board recessed at 12:31 p.m. and reconvened at 2:04 p.m. with Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel present.

### PUBLIC COMMENT

Speaker: William M. Connell, Military Veteran and owner of All American Surf Dog ([Exhibit 12.4](#))

Wednesday, December 14, 2011

### CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Leprino Foods Co., 481272

October 31, 2000, \$807,401.00 Notice Amount

October 31, 2001, \$330,942.00 Notice Amount

October 31, 2002, \$4,247,595.00 Notice Amount

October 31, 2003, \$12,178,175.00 Notice Amount

For Appellant:

Wm. Roger Ericson, Representative

Amy L. Silverstein, Attorney

Charles E. Olson, Attorney

For Franchise Tax Board:

Daniel Biedler, Tax Counsel

Bill Hilson, Tax Counsel

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

Issues: Whether appellant has shown that its electrical transformer assets are “qualified property” for purposes of Revenue and Taxation Code (R&TC) section 23649, and eligible for the Manufacturer’s Investment Credit (MIC).

Whether appellant has shown that its electrical generator assets are “qualified property” for purposed of R&TC section 23649, and eligible for the MIC.

Whether appellant has shown that its brick and tile coverings are “qualified property” for purposed of R&TC section 23649, and eligible for the MIC.

Appellant’s Exhibit: Miscellaneous Documents ([Exhibit 12.5](#))

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

### SALES AND USE TAX APPEALS HEARING

Saravana Bhavan, Inc., 522442 (BH)

10-1-04 to 12-31-07, \$19,339.09 Tax, \$1,933.92 Negligence Penalty, \$1,932.51 Finality Penalty

For Taxpayer:

Feroza Hamsath, Taxpayer

Jack Iyer, Representative

For Sales and Use Department:

Scott Lambert, Hearing Representative

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

Issues: Whether any adjustments are warranted to the additional taxable sales.

Whether taxpayer is negligent.

Whether the finality penalty should be relieved.

David Levine, Tax Counsel, Appeals Division, Legal Department, stated for the record that the finality penalty will not be applied because this administrative protest is being treated as a petition due to the discovery of information.

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

The Board recessed at 3:37 p.m. and reconvened at 3:39 p.m. with Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel present.

Wednesday, December 14, 2011

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD DECEMBER 14, 2011**

Kamleshwar C. Gunsagar and Anita Gunsagar, 484764

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

Leprino Foods Co., 481272

Final Action: Ms. Yee moved to grant the Manufacturer's Investment Credit (MIC) on the electrical transformer asset. The motion was seconded by Ms. Steel, but no vote was taken.

The Board deferred further consideration of the matter to the following day.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD DECEMBER 14, 2011**

Saravana Bhavan, Inc., 522442 (BH)

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

The Board recessed at 3:57 p.m.

*The foregoing minutes are adopted by the Board on February 29, 2012.*

Note: The following matters were removed from the calendar prior to the meeting: *Michael John Klemp, 568733; Santiago Rodriguez, 361129 (BH); Angela Leiva, 514980 (CH); Angela Leiva and Abundio Hernandez, 514979 (CH); and, Paul Glasson, 482541 (CH).*

Thursday, December 15, 2011

The Board met at its offices at 450 N Street, Sacramento, at 9:59 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, and Ms. Yee present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Mr. Horton, on behalf of the Board, began the meeting by taking a moment to thank the Executive Team for their work. The mailroom also received special acknowledgment and appreciation from Mr. Horton.

### SALES AND USE TAX APPEALS HEARINGS

Bear Data Solutions, Inc., 521430 (GH)

4-1-05 to 3-31-08, \$81,897.13 Tax

For Petitioner:

Richard B. Taylor, Representative

Carol Bertocchini, Representative

For Sales and Use Department:

Scott Lambert, Hearing Representative

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

Issues: Whether any further adjustments are warranted to the disallowed claimed nontaxable and exempt transactions.

Whether adjustments are warranted to the sampling method.

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

Phuong Thanh Kim and Van Thanh Nguyen, 505991 (CH)

1-1-06 to 3-31-09, \$16,452.07 Tax, \$1,645.21 Negligence Penalty

For Petitioners:

Phuong T. Kim, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

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

Whether petitioner was negligent.

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board ordered a reaudit.

Mr. Horton directed staff to explain options to the taxpayers including a payment plan.

### CHIEF COUNSEL MATTER

#### RULEMAKING

#### **Proposed Adoption of Amendments to Regulation 1807, *Petitions for Reallocation of Local Tax*, and, Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax***

Bradley Heller, Tax Counsel, Legal Department, made introductory remarks requesting the adoption of proposed amendments to Regulation 1807, *Petitions for Reallocation of Local Tax*, and, Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, with the changes authorized by the Board on November 15, 2011 ([Exhibit 12.6](#)).

Thursday, December 15, 2011

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board adopted the changed version of the amendments to Regulations 1807 and 1828 as published in the 15-day file.

Exhibits to these minutes are incorporated by reference.

## ADMINISTRATIVE SESSION

### ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, 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 12.7](#)).

James J. Anderson, Supervising Property Appraiser, County-Assessed Properties Division, Property and Special Taxes Department, Headquarters  
Kelli Harrison, Business Taxes Representative, Centralized Collection Section, Sales and Use Tax Department, Headquarters

Action: Approve the Board Meeting Minutes of September 20-21, 2011 and October 19, 2011.

Action: Approve proposed revisions to Audit Manual Chapter 1, *General Information* ([Exhibit 12.8](#)).

Action: Approve the publication of the 2012 revision of Assessors' Handbook Section 531, *Residential Building Costs* ([Exhibit 12.9](#)).

Action: Approve the publication of the 2012 revision of Assessors' Handbook Section 534, *Rural Building Cost* ([Exhibit 12.10](#)).

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

#### Legislative Committee

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board approved the Legislative Committee report and the actions therein ([Exhibit 12.11](#)).

#### Business Taxes Committee

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board approved the Business Taxes Committee report and the actions therein ([Exhibit 12.12](#)).

Thursday, December 15, 2011

Committee vote was as follows:

Upon motion by Mr. Horton, seconded by Ms. Yee, and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel voting no, Mr. Runner absent, the committee approved and authorized for publication the proposed amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*.

## **OTHER ADMINISTRATIVE MATTERS**

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

Kristine Cazadd, Executive Director, made introductory remarks requesting approval of nominees for the BOE Employee Recognition Award Program ([Exhibit 12.13](#)).

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board approved the nominees for the BOE Employee Recognition Award Program.

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 ([Exhibit 12.14](#)).

Mr. Horton directed staff to identify the incremental changes that will occur as a result of the CROS project.

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

Jeff McGuire, Deputy Director, Sales and Use Tax Department, provided a report regarding the proposed Collection Cost Recovery Fee for calendar year 2012. He requested approval of the annual rates based on the Stratified Flat Fee approach approved by the Board in 2010 ([Exhibit 12.15](#)).

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel voting no, Mr. Runner absent, the Board approved the proposed Collection Cost Recovery Fee for 2012 as recommended by staff.

Jeff McGuire, Deputy Director, Sales and Use Tax Department, provided an update on the review process for taxpayer notices ([Exhibit 12.16](#)).

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

Liz Houser, Deputy Director, Administration Department, made introductory remarks regarding the reimbursable Inter-Agency Agreement with the Department of Forestry and Fire Prevention to administer the State Responsibility Area Fire Prevention Fee ([Exhibit 12.17](#)).

Thursday, December 15, 2011

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel voting no, Mr. Runner absent, the Board approved the interagency agreement with the Department of Forestry and Fire Prevention as recommended by staff.

The Board recessed at 12:05 p.m. and reconvened at 12:08 p.m. with Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel present.

### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD DECEMBER 15, 2011**

Bear Data Solutions, Inc., 521430 (GH)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, 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.

### **FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD DECEMBER 14, 2011**

Leprino Foods Co., 481272

Final Action: Upon motion of Ms. Steel, seconded by Ms. Yee and duly carried, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Horton voting no, Mr. Runner absent, the Board granted the Manufacturer's Investment Credit (MIC) on the electrical transformer assets.

Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board granted the MIC on the electrical generator assets.

Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board sustained the action of the Franchise Tax Board in regards to the MIC on the brick and tile coverings assets.

### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 12:14 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner (via teleconference) 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 12:51 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel present.

**Thursday, December 15, 2011**

Kristine Cazadd, Executive Director, announced that the Board appointed Jaime Garza to the position of Deputy Director, External Affairs Department. Mr. Horton congratulated Mr. Garza on the Board's behalf.

Members of the Board thanked staff for another year of hard work and acknowledged staff's consistent generosity toward families in need.

The Board adjourned at 12:54 p.m.

*The foregoing minutes are adopted by the Board on February 29, 2012.*

Note: The following matter was removed from the calendar prior to the meeting: *Trimark Raygal, Inc., 257881 (EA)*.