

Tuesday, December 17, 2013

The Board met at its offices at 450 N Street, Sacramento, at 10:09 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.

## **SPECIAL PRESENTATIONS**

### **Award Presentation to BOE's Acquisitions Branch**

Cynthia Bridges, Executive Director, introduced Lynda Gledhill, Communication Deputy Secretary, Government Operation Agency, who presented to the BOE three State Agency Recognition Awards (SARAs), *Most Notable Improvement for DVBE Contracting*; *Silver Award Advocate of the Year* (Linda Fergurson); and, the *Secretary's Special Achievement Award*; among other honors ([Exhibit 12.1](#)).

Exhibits to these minutes are incorporated by reference.

### **Award Presentation to BOE's Technology Services Division**

Cynthia Bridges, Executive Director, introduced Carlos Ramos, Director and California State Chief Information Officer of the California Department of Technology, who presented to the BOE an award from the National Association of Chief Information Officers for the Electronic Services Expansion Project in the category of Digital Government: Government to Business.

The Board recessed at 10:26 a.m. and reconvened at 10:35 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang present.

## **PROPERTY TAXES HEARING**

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

GWF Energy, LLC – Hanford (1122), 743424

2013, \$41,100,000.00 Unitary Value

GWF Energy, LLC – Henrietta (1123), 743425

2013, \$35,800,000.00 Unitary Value

GWF Energy, LLC – Tracy (1124), 743427

2013, \$266,400,000.00 Unitary Value

For Petitioners:

Eric Miller, Representative

Kevin Buffington, Representative

Paul Bellon, Representative

Paul Mooney, Attorney

For Property and Special Taxes Department: Susan Galbraith, Tax Counsel

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

Issue: Whether petitioners have shown that respondent erred by disallowing petitioners' purchase price allocation of nontaxable intangible value to their power purchase agreements.

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

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**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, Mr. Runner and Mr. Chiang voting yes, Mr. Chiang not participating in *Pacific Gas and Electric Company (135), 305276*; *Sprint Communications Company, L.P. (2014), 305280*; and, *Sprint Spectrum, L.P. (2722), 301640*; the Board made the following orders:

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

Sierra Pacific Power Company (146), 306626

2003, \$150,000.00 Unitary Escape Assessment, \$15,000.00 Penalty, \$22,500.00 Interest

2004, \$150,000.00 Unitary Escape Assessment, \$15,000.00 Penalty, \$9,000.00 Interest

Action: Grant the petition, reducing the 2003 escape assessment by half with equivalent reductions in the penalty and interest, and reducing the 2004 escape assessment to zero as recommended by staff.

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

Pacific Gas and Electric Company (135), 305276

2003, \$1,876,535.00 Penalty

Action: Approve the penalty abatement and deny the request for abatement of the assessments in lieu of interest on 2003 unitary escape assessment as recommended by staff. Mr. Chiang not participating.

Sprint Communications Company, L.P. (2014), 305280

2002, \$2,750.00 Penalty

2003, \$2,750.00 Penalty

2004, \$2,750.00 Penalty

Action: Approve the penalty abatement and deny the request for abatement of the assessments in lieu of interest on 2002, 2003 and 2004 unitary escape assessment as recommended by staff. Mr. Chiang not participating.

Sprint Spectrum, L.P. (2722), 301640

2003, \$9,468.00 Penalty

2004, \$11,541.00 Penalty

Action: Approve the penalty abatement and deny the request for abatement of the assessments in lieu of interest on 2003 and 2004 unitary escape assessment as recommended by staff. Mr. Chiang not participating.

Omnipoint Communications, Inc., (2748), 405331

2007, \$91,579.00 Penalty

Action: Approve the penalty abatement on 2009 unitary escape assessment as recommended by staff.

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**PROPERTY TAXES MATTERS, ADJUDICATORY**

**Petitions for Reassessment of Unitary Value**

Central Valley Gas Storage, LLC (104), 745873

2013, \$107,600,000.00 Unitary Assessed 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. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the petition be granted in part reducing the 2013 unitary value to \$93,600.00 as recommended by staff.

MetroPCS Communications, Inc. (2733), 742925

2013, \$562,600,000.00 Unitary Assessed 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. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the petition be granted in part reducing the 2013 unitary value to \$473,680,000.00 as recommended by staff.

**LEGAL APPEALS PROPERTY TAXES MATTERS, ADJUDICATORY**

Action: (Motion expunged.)

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

**PROPERTY TAX MATTERS**

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

**LEGAL APPEALS PROPERTY TAXES MATTERS, ADJUDICATORY**

With respect to the Property Taxes Matters, Adjudicatory Agenda, upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that its previous motion be expunged.

**Petitions for Reassessment of Unitary Value**

San Diego Gas & Electric, Co. (141), 742917

2013, \$7,347,800,000.00 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. Runner and unanimously carried, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Mr. Horton not participating in accordance with Government Code section 87105, Mr. Chiang not participating, the Board ordered that the petition be granted in part reducing the 2013 Board-adopted unitary value to \$7,237,500,000.00 as recommended by the Appeals Division.

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**Southern California Edison, Co. (148), 741593**

2013, \$20,179,500,000.00 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 Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Mr. Chiang not participating, the Board ordered that the petition be granted in part reducing the 2013 Board-adopted unitary value to \$19,800,700,000.00 as recommended by the Appeals Division.

**Southern California Gas Company (149), 742913**

2013, \$3,463,200,000.00 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 Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Mr. Chiang not participating, the Board ordered that the petition be denied as recommended by the Appeals Division.

**Lodi Gas Storage, LLC (198), 742940**

2013, \$188,000,000.00 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 Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the petition be denied as recommended by the Appeals Division.

**Verizon California, Inc. (201), 742936**

2013, \$2,681,300,000.00 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. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the petition be granted in part reducing the 2013 Board-adopted unitary value to \$2,558,600,000.00 as recommended by the Appeals Division.

**SFPP, L.P. (461), 742935**

2013, \$431,900,000.00 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 Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the petition be granted in part reducing the 2013 Board-adopted unitary value to \$415,500,000.00 as recommended by the Appeals Division.

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Pacific Pipeline System, LLC (486), 742937

2013, \$39,700,000.00 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. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, Ms. Steel not participating, the Board ordered that the petition be granted in part reducing the 2013 Board-adopted unitary value to \$35,000,000.00 as recommended by the Appeals Division.

La Paloma Generating Company, LLC (1112), 742923

2013, \$333,300,000.00 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. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the petition be denied as recommended by the Appeals Division.

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

Global Tel\*Link Corporation (7988), 747162

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

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. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board ordered that the petition for penalty abatement be denied and that the total value of escaped assessments be reduced to \$520,000.00 value, \$52,000.00 penalty, and \$121,200.00 interest as recommended by the Appeals Division.

**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE****PROPERTY TAX MATTERS****Audits**

Wild Goose Storage, LLC (195)

2010-2013, \$1,300,000.00 Escaped Assessment, \$3,231,000.00 In-lieu Interest

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

Airespring, Inc., (7959)

2009-2012, \$662,000.00 Excessive Assessment, \$12,600.00 Penalties, \$41,580.00 In-lieu Interest

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

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inContact, Inc., (7985)

2009-2012, \$590,000.00 Excessive Assessment, \$29,000.00 Penalties, \$43,500.00 In-lieu Interest  
 Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board adopted the audit adjustments as recommended by staff.

Time Warner Cable Information Services (California), LLC (8063)

2009-2012, \$3,750,000.00 Escaped Assessment, \$375,000.00 Penalties, \$738,000.00 In-lieu Interest  
 Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Mr. Chiang not participating, the Board adopted the audit adjustments as recommended by staff.

### **Board Roll Changes**

2010, 2011, 2012 and 2013 State-Assessed Property Rolls

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Mr. Chiang voting yes, the Board approved corrections to the 2010, 2011, 2012 and 2013 Board Rolls of State-Assessed Property as recommended by staff ([Exhibit 12.2](#)).

### **FINAL ACTION ON PROPERTY TAXES HEARING HELD DECEMBER 17, 2013**

GWF Energy, LLC – Hanford (1122), 743424

GWF Energy, LLC – Henrietta (1123), 743425

GWF Energy, LLC – Tracy (1124), 743427

Final Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and duly carried, Mr. Horton, Ms. Yee and Mr. Chiang voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petitions be denied.

The Board recessed at 11:36 a.m. and reconvened at 12:15 p.m. with Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

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

Mason Jared Harrison, 623855

2008, \$1,587.00 Assessment

For Appellant:

Mason Harrison, Taxpayer

Jaimi Nakata, Representative

For Franchise Tax Board:

Leah Thyberg, Tax Counsel

Ron Hofsdal, Tax Counsel

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

Issue: Whether appellant has shown error in respondent's proposed assessment which is based on its determination that appellant retained his California domicile and was a California resident during 2008.

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

Astra Oil Company, Inc., 609368  
2004, \$154,630.00 Deficiency Amount  
2005, \$87,964.00 Deficiency Amount

For Appellant:

Scott D. Newman, Attorney

For Franchise Tax Board:

Craig Swieso, Tax Counsel

Carl Joseph, Tax Counsel

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

Issue: Whether appellant is liable for proposed deficiency assessments for appellant's portion of its combined reporting group's California-sourced apportionable business income.

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

The Board recessed at 1:18 p.m. and reconvened at 2:32 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

### **PUBLIC COMMENT**

Speaker: William M. Connell, Military Veteran and owner of All American Surf Dog  
([Exhibit 12.3](#))

Mr. Horton directed staff to schedule AB 919 for the January Legislative Committee Meeting, as requested by Ms. Yee.

### **SALES AND USE TAX APPEALS HEARING**

Florinda Garcia-San Antonio, 573678 (BH)  
10-1-07 to 12-31-10, \$47,588.80 Tax, \$6,770.68 Negligence Penalty

For Petitioner:

Florinda Garcia-San Antonio, Taxpayer

Aida Q. Torres, Representative

For Sales and Use Tax Department:

Marc Alviso, Hearing Representative

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

Issues: Whether a reduction to the amount of audited taxable sales is warranted.  
Whether petitioner was negligent.

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

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**PUBLIC HEARINGS****2014 Timber Yield Tax Rate**

David Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding section 38202 of the Revenue and Taxation Code, which requires an annual adjustment of the timber yield tax rate ([Exhibit 12.4](#)).

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

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the timber yield tax rate of 2.9 percent for 2014 as recommended by staff.

**Timber Harvest Values and Modified Harvest Values**

David Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding the timber harvest values and modified harvest values. On or before December 31, 2013, the Board shall estimate the immediate harvest values of and adopt schedules for timber harvested between January 1, 2014, and June 30, 2014. Additionally, the Board may modify immediate harvest values to reflect material changes in timber values that result from fire or other catastrophic cause for any area or part thereof in which damaged timber is located. (Rev. & Tax. Code, § 38204.) ([Exhibit 12.5](#).)

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 timber harvest values and modified harvest values as recommended by staff.

Ms. Yee thanked the Timber Advisory Committee for their good work.

**Proposed Adoption of Amendments to Sales and Use Tax Regulation 1502, Computers, Programs, and Data Processing**

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed amendments to Regulation 1502, which clarify the treatment of a backup copy of a computer program included in maintenance contract and that a taxable optional maintenance contract may be paired with a nontaxable electronic download or load-and-leave transaction ([Exhibit 12.6](#)).

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

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the proposed amendments to Regulation 1502 as recommended by staff.

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**Proposed Adoption of Amendments to Sales and Use Tax Regulation 1705, *Relief from Liability***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed amendments to Regulation 1705, which prescribe the circumstances under which Revenue and Taxation Code section 6596 relief is available to a person who reasonably relies on written advice the Board provided in a prior audit of a related person ([Exhibit 12.7](#)).

Mr. Heller described staff's recommended minor changes to the published version of the proposed amendments to Regulation 1705.

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

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 approved minor changes to the published version of Regulation 1705 and ordered that the changed version be placed in the 15 day file for public comment as recommended by staff.

**LEGAL APPEALS MATTERS, CONSENT**

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

Ken Keagy, 532422 (DF)

1-1-08 to 1-31-09, \$21,905.07 Tax

Action: Redetermine as recommended by the Appeals Division.

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

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

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

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

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

The Board deferred consideration of the following matter: *Jaclyn Nelson, 605359*.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single 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 made the following orders:

Michael Hillman, 613263

2008, \$664.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Vijaya Pratha and Raj Pratha, 592144

2003, \$37,263.00 Taxable Income, \$7,431.40 Accuracy-Related Penalty

2004, \$44,077.00 Taxable Income, \$8,815.40 Accuracy-Related Penalty

Surya, A Medical Corporation, 592147

2003, \$4,194.10 Tax, \$839.00 Accuracy-Related Penalty

2004, \$5,864.98 Tax, \$1,172.00 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Daniel Brodsky and Susan Brodsky, 575572

2004, \$8,622.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Cindy Ann Davis, 704844

2010, \$596.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Mark Dawson and Robin Dawson, 688082

2003, \$12,584.00 Tax, \$1,887.60 Accuracy-Related Penalty

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

Quentin Drew-King, 599561

2008, \$1,656.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Janet Gilbert Lambert, 593697

2008, \$1,115.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Russell P. Liles, 620853

2008, \$604.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

George Mak, 610342

2007, \$12,639.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Margate Properties, LLC, 592006

2009, \$338.28 Claim for Refund

2010, \$121.13 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Gavin K. Martinez, 627284

2009, \$525.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Raul Martinez, 593165, 605949

2006, \$704.00 Assessment

2007, \$546.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Thomas J. Moffett and Debra K. Moffett, 342475

1099, \$42,983.42 Claim for Refund

Michael G. Moffett and Mary T. Moffett, 342476

1999, \$42,741.27 Claim for Refund

Kelly C. Moffett and Michele M. Moffett, 342477

1999, \$42,741.27 Claim for Refund

Ronald K. Moler, 342478

1999, \$50,054.17 Claim for Refund

Michael C. Palmer and Debra M. Palmer, 342479

1999, \$8,285.00 Claim for Refund

2000, \$5,278.69 Claim for Refund

Robert Spears and Connie Spears, 342482

1999, \$111,707.00 Claim for Refund

2000, \$148,322.90 Claim for Refund

Robert D. Israel and Gail R. Israel, 342488

1999, \$92,363.29 Claim for Refund

2000, \$724.22 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Behrouz Moulayi, 612626

2008, \$359.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jaclyn Nelson, 605359

2006, \$27,408.00 Assessment

Action: The Board took no action.

Wendy Parsons, 626184

2008, \$564.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Ezzelino Pozzato, 604862

2007, \$24,520.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Athena Samaha, 636179

2010, \$797.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Steve W. Shomber and Melodie A. Shomber, 588484

2005, \$3,057.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Martin Tornil and Nicolynn Davis, 596175

2008, \$535.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Michael E. Villott and Janice M. Villott, 623523

2010, \$222.22 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Laura Widulski, 608438

2009, \$3,321.39 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Johnny Wilkins, 606871

2009, \$797.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**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 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:

Andrew Corporation, 670950 (OH)

7-1-06 to 8-28-08, \$175,673.72

Action: Approve the redetermination as recommended by staff.

The C.I.T. Group/Equipment Financing, 624851 (OH)

4-1-05 to 9-30-08, \$100,079.52

Action: Approve the redetermination as recommended by staff.

Guitar Center Stores, Inc., 595303 (AC)

7-1-02 to 6-30-05, \$457,171.48

Action: Approve the redetermination as recommended by staff.

Eastman Kodak Company, 623946 (OH)

1-1-06 to 1-18-12, \$12,947,197.54

Action: Approve the redetermination as recommended by staff.

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Elsevier, Inc., 611247 (OH)

1-1-07 to 3-31-11, \$1,313,730.10

Action: Approve the redetermination as recommended by staff.

J. R. Simplot Company, 760850 (OH)

4-1-13 to 6-30-13, \$205,356.70

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

Philips Electronics N.A. Corp., 760849 (OH)

1-1-13 to 3-31-13, \$123,829.90

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

Raytheon Company, 519903 (OH)

1-1-05 to 12-31-09, \$154,779.72

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

WM Bolthouse Farms, Inc., 570705 (DF)

1-1-08 to 12-31-11, \$793,619.23

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

John Berggruen Gallery, Inc., 759901 (BH)

5-1-13 to 6-15-13, \$753.98

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

Eureka Auto Wholesale, Inc., 759900 (JH)

1-1-13 to 1-31-13, \$33.37

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

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of 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:

Atlas Health &amp; Nutrition, Inc., 762131 (AA)

10-1-09 to 6-30-10, \$101,487.42

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

L &amp; L Sisters, Inc., 759953 (AA)

4-1-08 to 3-31-11, \$130,489.79

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

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Spectrum Quality Products, Inc., 597714 (AS)

1-1-08 to 3-31-11, \$214,857.23

Action: Approve the refund as recommended by staff.

Gulfstream Aerospace Corp. (CA), 573001 (OH)

7-1-07 to 9-30-12, \$184,190.17

Action: Approve the refund as recommended by staff.

Telamon Corporation, 711965 (OH)

10-1-09 to 12-31-10, \$600,934.97

Action: Approve the refund as recommended by staff.

Shasta Beverages, Inc., 551309 (OH)

7-1-07 to 9-30-10, \$116,492.37

Action: Approve the refund as recommended by staff.

Crevier Motors, Inc., 623594 (EA)

4-1-09 to 7-10-11, \$570,271.40

Action: Approve the refund as recommended by staff.

Nordstrom, Inc., 531533 (OH)

4-1-08 to 3-31-11, \$2,293,899.35

Action: Approve the refund as recommended by staff.

Pool & Electrical Products, Inc., 716220 (EH)

10-1-12 to 12-31-12, \$121,655.66

Action: Approve the refund as recommended by staff.

Raytheon Technical Services, Co., 681058 (OH)

1-1-12 to 3-31-12, \$186,105.07

Action: Approve the refund as recommended by staff.

Chrysler, LLC, 756783 (OH)

10-5-12 to 7-10-13, \$758,304.08

Action: Approve the refund as recommended by staff.

South Bay European, 776693 (AS)

10-1-08 to 12-31-12, \$639,035.75

Action: Approve the refund as recommended by staff.

August Technology Corporation, 668901 (OH)

7-1-12 to 9-30-12, \$147,000.00

Action: Approve the refund as recommended by staff.

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Johns Manville, 609223 (OH)

1-1-07 to 12-31-09, \$138,097.50

Action: Approve the refund as recommended by staff.

Raytheon Company, 519903 (OH)

1-1-05 to 12-31-09, \$2,000,611.42

Action: Approve the refund as recommended by staff.

Petco Animal Supplies Stores, Inc., 487416 (FH)

1-1-06 to 12-31-11, \$955,899.60

Action: Approve the refund as recommended by staff.

Dekra-Lite Industries, Inc., 747156 (EA)

10-1-07 to 12-31-10, \$142,571.00

Action: Approve the refund as recommended by staff.

Consumer Portfolio Services, Inc., 609302 (EA)

1-1-09 to 12-31-12, \$2,088,862.77

Action: Approve the refund as recommended by staff.

A-L Financial Corp., 731249 (EA)

1-1-13 to 6-30-13, \$188,195.00

Action: Approve the refund as recommended by staff.

Kellogg Sales Company, 744593 (OH)

7-1-08 to 3-31-13, \$1,071,978.42

Action: Approve the refund as recommended by staff.

WM Bolthouse Farms, Inc., 570705 (DF)

1-1-08 to 12-31-11, \$636,364.69

Action: Approve the refund as recommended by staff.

Midland Paper National, LLC, 729206 (OH)

1-1-12 to 12-31-12, \$745,373.00

Action: Approve the refund as recommended by staff.

Insync Marketing Solutions, LLC, 505726 (AA)

4-1-06 to 2-24-09, \$241,010.86

Action: Approve the refund as recommended by staff.

Owens Corning Roofing/Asphalt, LLC, 551235 (OH)

4-1-07 to 9-30-11, \$106,849.73

Action: Approve the refund as recommended by staff.

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Display Works, LLC, 745408 (EA)

10-1-08 to 9-30-11, \$512,852.36

Action: Approve the refund as recommended by staff.

Pag Santa Ana B1, Inc., 620554 (EA)

7-1-11 to 12-31-12, \$234,558.03

Action: Approve the refund 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. 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 7.9 in *BP West Coast Products, LLC, 570597*; the Board made the following orders:

Smoke Rings, Inc., 480995 (STF)

7-1-04 to 2-28-05, \$101,348.99

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

BP West Coast Products, LLC, 570597 (STF)

1-1-08 to 12-31-10, \$108,776.47

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

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Nirvair Corporation, 529714 (EA)

Speaker: Moti Balyan, Representative

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

Considered by the Board: July 18, 2013

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

Action: The Board deferred consideration of the matter to the March 2014 meeting in San Francisco to allow the parties to discuss new evidence, and directed staff to provide the Members with options relative to the rules.

Easy Life Furniture, Inc., 487694 (EA)

1-1-05 to 12-31-07, \$ 87,096.98 Tax

Considered by the Board: July 18, 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.

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Jose Agustin Fernandez, 549411, 553265 (AR)

1-1-06 to 6-30-07, \$4,647.54 Tax, \$487.32 Negligence Penalty

7-1-07 to 5-30-10, \$9,795.23 Tax, \$1,020.44 Negligence Penalty

Considered by the Board: July 17, 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 that the petition for rehearing be denied.

S & C Motors, 468140 (BH)

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

Considered by the Board: November 15, 2012

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 that the petition for rehearing be denied.

Irvine Photo Graphics, Inc., 557007 (EA)

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

Considered by the Board: Section 40 (AB 2323)

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.

David Turner, 553045 (FH)

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

Considered by the Board: Hearing Notice Sent – No Response

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

Action: Mr. Runner moved to grant the petition as to two 2004 transactions. The motion was seconded by Ms. Steel but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. 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 interest be removed, and that the petition otherwise be redetermined as recommended by the Appeals Division.

Mr. Horton directed staff to examine areas where BOE's recordkeeping requirements do not align among programs for statute of limitations purposes.

Ms. Steel renewed her request for a report regarding improvements to current practices that would expedite cases involving customs.

Tuesday, December 17, 2013

**SPECIAL TAXES MATTERS, ADJUDICATORY**

California Insurance Company, 730385 (STF)

1-1-06 to 12-31-05, \$962,453.80

Considered by the Board: Section 40 (AB 2323)

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

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

**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE****OFFER-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offer in Compromise Recommendations of *Apparation Media, LLC*; *Amanda Beckmann*; *Valley Athletic, Inc.*; *Michael Laross Coggan*; *John H. Hollman*; *Mariscos Chente's Restaurant, LLC*; *Sang Ho Nam*; *Powell's Place, LLC*; *Emmit A. Powell*; *Monica R. Ruiz*; *Rikki Paula West*; *Russell Lee Whitman*; *Mary Lou Whitman*; *Lloyd Willhite*; *Wilson Appliances, Inc.*; *Wilson Appliances, Inc.*; and, *Christopher James Wilson*; as recommended by staff.

**SPECIAL PRESENTATION****Presentation of Retirement Resolution**

Members congratulated Alan Giorgi, Business Taxes Administrator III, Executive Department, on his well-deserved retirement and made many complementary remarks as to their experiences working with Alan. Alan thanked Mr. Runner for the opportunities he had in working with his office as well as the executive office and members of the private sector. Cynthia Bridges, Executive Director, thanked Alan for the great work he did for her office.

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

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

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 12.8](#)).

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Alicia C. Azumbra, Office Technician (General), Cashiers Unit, Administration Department, Headquarters  
Jackie Chamberlin, Associate Governmental Program Analyst, Facility Services Unit, Administration Department, Headquarters  
Alan (Lorie) Giorgi, Advisor to Board Member George Runner, Second District  
Dolores M. Giorgi, Business Taxes Specialist II, Deputy Director's Office, Property and Special Taxes Department, Headquarters  
Scott Hicklin, Staff Information Systems Analyst, Technology Services Department, Headquarters  
Joe Ann Irvin, Tax Technician II, Sales and Use Tax Department, San Francisco District Office  
Cathy Smith, Tax Technician III, Return Analysis Unit, Sales and Use Tax Department, Headquarters  
James Sorenson, Business Taxes Specialist II, Data Analysis Section, Sales and Use Tax Department, Headquarters  
Linda F. Worth, Key Data Operator, Data Entry Unit, Administration Department, Headquarters

Action: Approve the 2014 revision of Assessors' Handbook Section 531, *Residential Building Costs*, as recommended by staff ([Exhibit 12.9](#)).

Action: Approve the 2014 revision of Assessors' Handbook Section 534, *Rural Building Costs*, as recommended by staff ([Exhibit 12.10](#)).

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

##### **Legislative Committee December 17, 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 approved the Legislative Committee report and the actions therein ([Exhibit 12.11](#)).

##### **Customer Services and Administrative Efficiency Committee December 17, 2013**

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 approved the Customer Services and Administrative Efficiency Committee report and the actions therein ([Exhibit 12.12](#)).

##### **Business Taxes Committee November 19, 2013**

Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the November 19, 2013 Business Taxes Committee report and the actions therein ([Exhibit 12.13](#)).

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**Business Taxes Committee December 17, 2013**

Action: Upon motion of Ms. Mandel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the December 17, 2013 Business Taxes Committee report and the actions therein ([Exhibit 12.14](#)).

**OTHER ADMINISTRATIVE MATTERS****Executive Director's Report**

Cynthia Bridges, Executive Director, provided a 2014 Board Calendar Update, stating that the March Board Meeting will be held at the California Public Utilities Commission building at 505 Van Ness Avenue, San Francisco.

Cynthia Bridges, Executive Director, requested the Board's approval of nominees for the BOE Employee Recognition Award Program ([Exhibit 12.15](#)).

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 approved the nominees as recommended by staff.

Eric Steen, CROS Project Director, was available to answer questions regarding the progress on the CROS project to replace BOE's two current tax legacy technology systems.

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

Mason Jared Harrison, 623855

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 reversed the action of the Franchise Tax Board.

Astra Oil Company, Inc., 609368

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

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD DECEMBER 17, 2013**

Florinda Garcia-San Antonio, 573678 (BH)

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 an adjustment for 15 days of nonoperation due to family illness, 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.

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Charles Hahn Entertainment, LLC, 539706 (CH)

1-1-07 to 12-31-09, \$86,094.05 Tax, \$8,609.40 Negligence Penalty

For Petitioner: Waived Appearance

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

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

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

Whether petitioner was negligent.

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

Andy's BP, Inc., 546362 (BH)

1-1-06 to 12-31-08, \$29,174.44 Tax, \$0.00 Negligence Penalty

For Petitioner: Waived Appearance

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

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

Issues: Whether adjustments to the deficiency measure for disallowed claimed exempt sales of food products are warranted.

Whether the deficiency measure for the cost of self-consumed taxable merchandise should be reduced.

Whether adjustments to the audited amount of unreported purchases subject to use tax are warranted.

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

Whether any reduction to the amount of overclaimed sales tax prepaid to suppliers for purchases of motor vehicle fuel (MVF) is warranted.

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

The Board adjourned at 4:15 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: *North Valley Bancorp, 664903; Elite Cert' Auto Service & Tires, 550595 (EA); City of Redondo Beach's Telephone, Gas, Electricity, Water, and Video Users' Tax Law; and, Closed Session.*