

Tuesday, April 22, 2014

The Board met at its offices at 450 N Street, Sacramento, at 10:02 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

Proposed Letter to Assessors regarding Property Tax Rule 21, *Taxable Possessory Interests-Valuation*

Richard Moon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed letter to assessors regarding the stated term of possession used to value taxable possessory interests ([Exhibit 4.1](#)).

Speakers: Mike Jacob, Vice President and General Counsel, Pacific Merchant Shipping Association
 Therese Twomey, Fiscal Policy Director, California Taxpayers' Association
 Deane Leavenwarth, Regional Vice President Government Relations, Time Warner Cable
 Larry W. Ward, President, California Assessors' Association, and Riverside County Assessor/Recorder/Clerk
 Charles W. Leonhardt, California Assessors' Association Standards Committee Chairman, and Plumas County Assessor
 Brian Donnelly, Chief Appraiser, Los Angeles County Assessor's Office
 Richard N. Benson, Marin County Assessor/Recorder/Clerk
 Albert Ramseyer, Principal Deputy County Counsel, Los Angeles County Counsel's Office, on behalf of the Los Angeles County Assessor
 Jim Lites, Executive Director, California Airports Council, and California Association of Port Authorities
 John Gamper, California Farm Bureau Federation
 Carolyn McIntyre, President, California Cable & Telecommunications Association

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 Letter to Assessors as presented by staff.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 10:42 a.m. and reconvened at 1:00 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

David Gau, Deputy Director, provided a report on the 2013 Holiday Food Drive resulting in over 157,000 pounds raised by the Board of Equalization ([Exhibit 4.2](#)).

Mr. Horton commended the Board of Equalization staff for their contributions to the food drive.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Robert J. Molinaro and Carol E. Molinaro, 715378

2005, \$81,297.00 Deficiency

2006, \$71,597.00 Deficiency

For Appellants:

Robert J. Molinaro, Taxpayer

Joseph A. Vinatieri, Attorney

Richard W. Craigo, Attorney

For Franchise Tax Board:

Cheryl Akin, Tax Counsel

David Gemmingen, Tax Counsel

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

Issue: Whether appellants have shown that respondent erred by disallowing claimed losses based on respondent's determination that appellants did not operate a business that generated the losses with the primary purpose of making a profit.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 4.3](#))Respondent's Exhibit: Miscellaneous Documents ([Exhibit 4.4](#))

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

The Board recessed at 2:00 p.m. and reconvened at 3:20 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Ms. Mandel stated that she would not participate in the matter of *Camino Medical Group, Inc., 719011*, and left the Boardroom.

Camino Medical Group, Inc., 719011

2005, \$1,028,094.13 Claim for Refund

For Appellant:

Joseph Lacy, Witness

Albert Wang, Representative

Mike Weatherford, Representative

Thomas Driscoll, Attorney

Dashiell C. Shapiro, Attorney

For Franchise Tax Board:

Daniel Biedler, Tax Counsel

Roman Johnston, Tax Counsel

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

Issue: Whether appellant has demonstrated error in respondent's determination that appellant had constructive receipt of \$10,179,648.00 in deferred compensation during the 2005 tax year.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 4.5](#))

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 absent and not participating, the Board submitted the appeal for decision.

Ms. Mandel returned to the Boardroom.

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ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Cynthia Bridges, Executive Director, provided a report on the Board of Equalization winning recognition from the California Association of Public Information Officials (CAPIO), for the redesigned Board website (Web Services Team) and the Use Tax Video Series (Media Production Services).

Mr. Horton and Mr. Runner made complimentary remarks and thanked the staff for their hard work.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Phillip E. Zepp, 710837, 728324, 741880

2007, \$1,118.00 Assessment

2008, \$1,032.00 Assessment

2009, \$826.00 Assessment

For Appellant:

Phillip E. Zepp, Taxpayer

For Franchise Tax Board:

Samantha Nguyen, Tax Counsel

Mary Yee, Tax Counsel

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

Issue: Whether appellant has demonstrated error in the Franchise Tax Board's assessments for tax years 2007-2009, which were based upon federal adjustments.

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 4.6](#))

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

SALES AND USE TAX APPEALS HEARINGS

R & G Schatz Farms, Inc., 547724, 588579, 592624 (KH)

07/01/05 to 06/30/06, \$7,841.31 Tax, \$0.00 Penalty

07/01/06 to 06/30/07, \$26,801.93 Tax

07/01/07 to 06/30/09, \$10,555.65 Tax, \$0.00 Penalty

For Petitioner:

Rodney R. Schatz, Taxpayer

Gayla Schatz, Taxpayer

For Sales and Use Tax Department:

Monica Silva, Tax Counsel

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

Issues: Whether the Notice of Determination was timely issued for the period July 1, 2005, through June 30, 2006.

Whether the Department properly asserted an increase to the tax liability for the period July 1, 2006, through June 30, 2007.

Whether adjustments are warranted to the disallowed partial farm equipment exemptions.

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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.

Nathan R. Duty, 534168 (KH)

Nathan R. Duty, 559940 (STF)

10/01/06 to 09/30/09, \$17,450.66 Tax

01/01/02 to 12/31/09, \$10,618.50 California Tire Fee

For Petitioner: Nathan Duty, Taxpayer

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

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

Issues: Whether adjustments are warranted to the disallowed claimed exempt sales in interstate commerce.

Whether adjustments are warranted to the disallowed claimed partial exempt sales in interstate commerce.

Whether adjustments are warranted to the audited difference between recorded and reported taxable sales.

Whether petitioner is liable for the California tire fee for the audit period.

Whether relief of interest is warranted.

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

Gregory Scott Smith, 532481 (GH)

10/01/06 to 03/31/07, \$36,137.39 Tax, \$3,609.30 Late Payment Penalties, \$101.00 Finality Penalty

Amy Elaine Smith, 532485 (GH)

10/01/06 to 03/31/07, \$36,137.39 Tax, \$3,609.30 Late Payment Penalties, \$101.00 Finality Penalty

For Petitioners: Gregory Scott Smith, Taxpayer

Amy Elaine Smith, Taxpayer

Steven C. Lynes, Attorney

For Sales and Use Tax Department: Monica Silva, Tax Counsel

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

Issue: Whether petitioners are personally liable as a responsible person for the unpaid liabilities of Stars & Stripes Telecom, Inc., pursuant to Revenue and Taxation Code section 6829.

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

The Board recessed at 6:11 p.m. and reconvened at 6:19 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

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Ricky Alan Dumas, 547380 (KH)

04/01/08 to 08/31/08, \$33,952.87 Tax, \$3,532.10 Late Payment Penalties

For Petitioner: Rick Dumas, Taxpayer

For Sales and Use Tax Department: Scott Claremon, Tax Counsel

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

Issues: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of Auto Expo pursuant to Revenue and Taxation Code section 6829.

Whether petitioner has established reasonable cause sufficient for relieving the late-payment penalties originally assessed against Auto Expo.

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 HEARINGS

Property Taxes - State Assesseees' Presentations on the Valuation of State-Assessed Properties

Ken Thompson, Chief, State-Assessed Properties Division, Property and Special Taxes Department, was available to answer questions regarding presentations on the valuation of state-assessed properties.

Speaker: Peter W. Michaels, Law Offices of Peter Michaels representing State Assessed Gas/Electric, Intercounty Pipeline, Telephone and Railroad Companies

Proposed Adoption of Amendments to Sales and Use Tax Regulation 1655, Returns, Defects and Replacements

Monica Silva, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed amendments, which clarify the regulation's provisions regarding restitution and replacement under the "Lemon Law" apply to use tax under specified circumstances ([Exhibit 4.7](#)).

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.

Proposed Adoption of Amendments to Special Taxes and Fees Regulation 4902, Relief from Liability

Pamela Mash, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed amendments, which extend relief to a person who relies on advice provided in a prior audit of a related person, under specific circumstances ([Exhibit 4.8](#)).

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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, 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 matter: *Ronald Avedisian, 434518 (AC)*.

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:

Ronald Avedisian, 434518 (AC)
04/01/04 to 02/13/07, \$2,805,008.60 Tax, \$702,002.21 Fraud Penalty
Action: The Board took no action.

Henry Vincent Guisande, 572290 (JH)
07/01/07 to 06/30/10, \$0.00 Tax, \$607.77 Finality Penalty
Action: Redetermine as recommended by the Appeals Division.

Beverly Raylene Kemp, 569723 (UT)
02/09/06, \$83,450.00 Tax, \$8,745.00 Failure to File Penalty, \$8,745.00 Finality Penalty
Action: Redetermine as recommended by the Appeals Division.

Howard E. Kemp, 569721 (UT)
02/09/06, \$83,450.00 Tax, \$8,745.00 Failure to File Penalty, \$8,745.00 Finality Penalty
Action: Redetermine as recommended by the Appeals Division.

Mohammad Khalid, 559974, 721406 (DF)
01/01/07 to 12/31/09, \$65,115.35 Tax, \$6,511.55 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Gal Lipkin, 553092 (AS)
11/09/05 to 12/31/07, \$6,157.02 Tax, \$2,169.40 Late Payment Penalty, \$8,388.33 Negligence Penalty, \$7,878.18 Finality Penalty
Action: Redetermine as recommended by the Appeals Division.

Howard E. Murray, 492365 (JH)
04/01/06 to 12/31/07, \$1,936.00 Claim for Refund
Action: Redetermine as recommended by the Appeals Division.

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Matt Ogden, 518459 (AS)

10/01/05 to 06/13/08, \$572,130.00 Tax, \$57,212.80 Late Payment Penalties

Action: Redetermine as recommended by the Appeals Division.

Rancho Marine Recycling, Inc., 559090 (KH)

10/01/06 to 09/30/09, \$76,700.98 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Jennifer Lynn Rosa, 586626 (DF)

09/01/05 to 05/31/06, \$13,041.87 Tax, \$3,260.48 Fraud Penalty

Action: Redetermine as recommended by the Appeals Division.

Fiori Florist, Inc., 600096 (BH)

07/01/05 to 06/30/08, \$320,337.29 Tax, \$32,033.76 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Rizalde V. Sandoval, 575874 (EH)

10/01/03 to 09/30/06, \$0.00 Tax, \$0.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Buckhorn Trading Post, Inc., 781903 (STF)

August 6, 2013 Seizure Date, \$23.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Cindy Nguyen, 745239 (STF)

May 22, 2013 Seizure Date, \$150.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Yousif Mousa Mousa, 745233 (STF)

May 14, 2013 Seizure Date, \$332.40 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Prabhjot S. Randhawa and Palwinder Kaur Randhawa, 745228 (STF)

May 21, 2013 Seizure Date, \$114.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

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

Carlos R. Abad, 608927

2009, \$1,115.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Lisa Boughamer, 611655

2008, \$953.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Dylan Baker and Melissa Marsch, 626188

2010, \$1,935.04 Late Payment Penalty, \$24.92 Tax Penalty

Action: Sustain the action of the Franchise Tax Board.

Bonita Buecker, 712952

2010, \$953.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Alvin A. Davies and Denise Davies, 604030

2007, \$1,944.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Steve Estifanos, 716904

2010, \$1,169.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Darryl Grayson, 694028

2007, \$3,966.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Nancy Henry, 627537

2010, \$547.00 Tax

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

Adrian Joven and Estela Garcia, 636074

2005, \$330.00 Claim for Refund

2006, \$284.00 Claim for Refund

2007, \$360.00 Claim for Refund

2008, \$465.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Charlotte Y. Keys, 729709

2008, \$3,273.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Danielle Keys, 711158

2009, \$1,725.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Deanna L. Kwan, 601923

2007, \$1,724.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ricardo Lakandula, 711208

2009, \$1,188.00 Assessment

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

David A. Le, 726932

2011, \$939.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Dee Ann Linker, 692610

2010, \$1,331.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Scott Mandel and Melodie L. Bitter Mandel, 716797

2008, \$266.42 Interest

Action: Modify the action of the Franchise Tax Board.

Todd K. Mavis, 629326

2006, \$11,730.00 Tax, \$2,932.50 Late Filing Penalty, \$1,950.13 Interest

Action: Sustain the action of the Franchise Tax Board.

Philip Moss and Laura Hatch, 699434

2008, \$258.00 Assessment

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

Miriam Musgun, 610340

2005, \$17,129.68 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Harold S. Parks, M.D., 670986

2008, \$227.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Paroda, LLC, 338978

1997, \$2,730.26 Interest Abatement

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

Horacio Rodriguez and Zoraida Rodriguez, 728745

2008, \$18,661.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Elaine M. Roe, 623648

2010, \$1,562.70 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Josephine C. Ross, 707196

2006, \$606.03 Claim for Refund

2007, \$1,087.28 Claim for Refund

2008, \$1,451.47 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jaime Sanchez and Gabriela Sanchez, 605951

2007, \$11,867.00 Assessment, \$2,373.40 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Seventy Seven, LLC, 657975

2003, \$11,790.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Carlos W. Smith, 664833

2010, \$771.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Scott Tolone, 726494

2010, \$204.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Edward Wadatz and Sandra McShea, 509192

1993, \$574.28 Assessment

1994, \$3,219.16 Assessment

Action: Reverse the action of the Franchise Tax Board.

Woodward Camp, Inc., 620760

10/01/09 to 09/30/10, \$25,767.63 Assessment, \$6,441.90 Late Filing Fee, \$6,441.90 Demand Penalty, \$2,000.00 Failure to Qualify in CA Penalty, \$104.00 Enforcement Cost Recovery Fee

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

Alex Fonseca, 611640

2010, \$2,051.00 Assessment

Action: Deny the petition for rehearing.

Carl K. Myers and Patricia Ann Myers, 620364

2005, \$10,724.13 Claim for Refund

2006, \$4,348.29 Claim for Refund

Action: Deny the petition for rehearing.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties, Denials of Claims for Refund, and, Grant-One Day Interest Relief, Consent Agenda, upon a single motion of Mr. Runner, seconded by Ms. 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 *Toyota Motor Sales, U.S.A., Inc., 491361 (AS)*, the Board made the following orders:

Toyota Motor Sales, U.S.A., Inc., 491361 (AS)

10/01/00 to 03/31/04, \$194,292.32

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

Louis Lilo Beuzieron, 624719 (AC)

06/01/05 to 06/30/08, \$148,194.24

Action: Approve the redetermination as recommended by staff.

Trammo Petroleum, Inc., 624830 (OH)

10/01/06 to 03/31/09, \$351,200.12

Action: Approve the redetermination as recommended by staff.

Intralase Corp., 487567 (EA)

01/01/04 to 12/31/07, \$768,653.04

Action: Approve the redetermination as recommended by staff.

Henri Raymond Traboulsi, 731235 (EA)

01/01/05 to 02/01/08, \$190,536.51

Action: Approve the redetermination as recommended by staff.

Gillig, LLC, 790812 (CH)

10/01/13 to 10/31/13, \$165,209.46

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

The Chivery, LLC, 782665 (OH)

04/12/11 to 03/31/13, \$65,939.53

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

Custom RV, Inc., 792323 (EH)

07/01/13 to 09/30/13, \$108.70

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

Diesel, A Bookstore, LLC, 792324 (CH)

07/01/13 to 09/30/13, \$314.99

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

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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. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Canon U.S.A., Inc., 756354 (OH)*; and, *Mitsubishi Power Systems Americas, Inc., 743879 (OH)* the Board made the following orders:

Timothy Allen Prero, 529011 (SO)

07/01/03 to 03/31/06, \$408,844.07

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

Icon Income Fund Ten, LLC, 791357 (OH)

10/01/08 to 12/31/11, \$145,992.80

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

Ivy Retail Market, Inc., 791356 (EH)

07/01/08 to 09/30/11, \$138,811.05

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

Graphic Color Systems, Inc., 488305 (AA)

01/01/06 to 03/31/09, \$701,764.34

Action: Approve the refund as recommended by staff.

Professional Hospital Supply, Inc., 608996 (EH)

01/01/09 to 03/31/12, \$271,582.69

Action: Approve the refund as recommended by staff.

Cubic Defense Applications, Inc., 786183 (FH)

01/01/09 to 06/30/12, \$205,073.77

Action: Approve the refund as recommended by staff.

Canon U.S.A., Inc., 756354 (OH)

04/01/13 to 06/30/13, \$140,912.73

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

Northrop Grumman Space & Mission Sys, 594630 (AS)

01/01/04 to 12/31/09, \$919,383.30

Action: Approve the refund as recommended by staff.

CEC Entertainment, Inc., 524918 (OH)

01/01/07 to 12/31/09, \$137,454.96

Action: Approve the refund as recommended by staff.

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Becton Dickinson & Company, 578654 (OH)

04/01/08 to 12/31/10, \$309,080.52

Action: Approve the refund as recommended by staff.

Marlin Leasing Corporation, 788377 (OH)

07/01/08 to 12/31/09, \$116,151.01

Action: Approve the refund as recommended by staff.

PGA Tour, Inc., 714299 (OH)

10/01/09 to 03/31/10, \$105,033.92

Action: Approve the refund as recommended by staff.

Long Beach Acceptance Corporation, 489997 (EA)

04/01/07 to 12/31/12, \$4,217,050.11

Action: Approve the refund as recommended by staff.

Biomarin Pharmaceutical, Inc., 788870 (JH)

07/01/08 to 09/30/11, \$612,775.81

Action: Approve the refund as recommended by staff.

Don Jordan Energy Systems, Inc., 608827 (OH)

07/01/09 to 03/31/13, \$117,859.76

Action: Approve the refund as recommended by staff.

Meadow Brook Meat Company, Inc., 592487 (OH)

07/01/08 to 09/30/11, \$547,250.84

Action: Approve the refund as recommended by staff.

Alcatel USA Sourcing, Inc., 665526 (OH)

10/01/07 to 10/31/08, \$233,367.21

Action: Approve the refund as recommended by staff.

J.B. Hunt Transport, Inc., 793947 (OH)

01/01/06 to 12/31/10, \$113,165.77

Action: Approve the refund as recommended by staff.

Tenet Healthsystem Desert, Inc., 577149 (EH)

07/01/08 to 12/31/11, \$398,350.69

Action: Approve the refund as recommended by staff.

Murata Electronics NA, Inc., 786840 (EA)

10/01/09 to 03/31/13, \$158,302.41

Action: Approve the refund as recommended by staff.

Kinecta Federal Credit Union, 740226 (AS)

01/01/10 to 12/31/12, \$230,271.00

Action: Approve the refund as recommended by staff.

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HSNI, LLC, 786839 (OH)

07/01/10 to 12/31/11, \$133,222.40

Action: Approve the refund as recommended by staff.

Minute Key, Inc., 724809 (GH)

01/01/11 to 03/31/12, \$133,982.24

Action: Approve the refund as recommended by staff.

The Chivery, LLC, 782665 (OH)

04/12/11 to 03/31/13, \$173,196.85

Action: Approve the refund as recommended by staff.

Mitsubishi Power Systems Americas, Inc., 743879 (OH)

04/01/13 to 06/30/13, \$3,287,851.00

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

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 and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Equilon Enterprises, LLC, 738586 (STF)

01/01/11 to 01/31/13, \$126,013.48

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

LEGAL APPEALS MATTERS, ADJUDICATORY

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

01/01/97 to 12/31/99, \$30,766 Claim for Refund

10/01/00 to 12/31/03, \$19,851.99 Tax, \$5,025.01 Penalties

10/01/00 to 12/31/03, \$71,794.79 Tax, \$7,228.88 Penalties

01/01/04 to 06/30/09, \$103,158.28 Tax, \$27,975.58 Penalty

Considered by the Board: July 17, 2013

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

Action: Ms. Steel moved to grant the petition for rehearing. The motion failed for lack of a second.

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 for rehearing be denied.

Tuesday, April 22, 2014

SMF Energy Corporation, 556419, 557544 (OH)

04/01/05 to 03/31/08, \$375,809.47 Tax

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

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 written summary decision as presented by staff.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Diamond B. Capital, Inc., 623488

2010, \$3,433.07 Claim for Refund

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 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 a decision sustaining the action of the Franchise Tax Board.

Applied Companies, 526527

1991, \$15,744.05 Claim for Refund

1993, \$39,555.12 Claim for Refund

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 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 a decision denying the petition for rehearing.

Myles D. Hubers and Michelle R. Huebers, 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: July 17, 2013

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

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 a decision granting the petition for rehearing.

Victor H. Boyd, 575575

2006, \$104,204.00 Claim for Refund

Considered by the Board: July 17, 2013

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

Tuesday, April 22, 2014

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 a decision sustaining the action of the Franchise Tax Board.

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

Sel Retail Operations, 735345 (OH)

07/01/02 to 06/30/05, \$5,296,062.94

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the credit and cancellation as recommended by staff.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Audits

Frontier Communications of America, (7512)

2011 to 2013, \$1,158,000.00 Excessive Assessment

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.

Audeamus, LLC (7824)

2013, \$116,000.00 Escaped Assessment, \$11,600.00 Penalties, \$6,960.00 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 audit adjustments as recommended by staff.

Telstra Incorporated, (7852)

2011 to 2012, \$2,350,000.00 Excessive Assessment

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, April 22, 2014

Reliance Globalcom Services, Inc., (7972)

2011 to 2013, \$3,160,000.00 Escaped Assessment, \$316,000.00 Penalties, \$455,100.00 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 audit adjustments as recommended by staff.

Greenfield Communications, Inc., (8004)

2010 to 2013, \$200,000.00 Excessive Assessment

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.

NewPath Networks, LLC, (8077)

2011 to 2012, \$1,900,000.00 Escaped Assessment

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.

Telecommunication Systems, Inc., (8090)

2010, \$428,000.00 Escaped Assessment, \$42,800.00 Penalties, \$141,240.00 In-lieu of Interest

2011, \$5,540,000.00 Excessive Assessment

2012, \$8,320,000.00 Excessive Assessment

2013, \$1,607,000.00 Excessive Assessment

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.

Unitary Land Escaped Assessments**Verizon California, (201)**

2010 to 2013, \$2,352,000.00 Unitary 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, April 22, 2014

AT&T Mobility, LLC, (2606)

2010 to 2013, \$572,462.00 Unitary 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.

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 4.9](#)).

CHIEF COUNSEL MATTERS

RULEMAKING

Section 100 Changes

Sales and Use Tax Regulations 1525.2, *Manufacturing Equipment*; and, 1525.3, *Manufacturing Equipment – Leases of Tangible Personal Property*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the staff request for authorization to complete Rule 100 changes to repeal Regulations 1525.2 and 1525.3 based on the repeal of Revenue and Taxation Code section 6377 by its own terms effective January 1, 2004 ([Exhibit 4.10](#)).

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved authorization to make Rule 100 changes to Regulations 1525.2 and 1525.3 as recommended by staff.

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, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Tuesday, April 22, 2014

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 4.11](#)).

Michael L. Hale, Business Tax Specialist II, Information Security Division,
Administration Department
Patricia Gouveia, Information Systems Technician Specialist I, Technology
Services Department
Carolee Johnstone, Tax Counsel III (Specialist), Tax and Fee Programs Division,
Legal Department
Elwyn C. Jones, Tax Technician III, Sales and Use Tax Department, Out-of-State
District Office
Roberta Ramirez, Administrative Assistant II, Technology Services Department
Yvette Wilson, Staff Information Systems Analyst, Compliance and Technology
Services Division, Sales and Use Tax Department

Action: Approve the Board Meeting Minutes of February 25-27, 2014 and March 25, 2014.

Action: Approve proposed revisions to the Compliance Policy and Procedures Manual Chapter 6, *Closeouts and Clearances* ([Exhibit 4.12](#)).

Action: Approve proposed revisions to the Audit Manual, Chapter 4, *General Audit Procedures* ([Exhibit 4.13](#)).

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Customer Services and Administrative Efficiency Committee

Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report and the actions therein ([Exhibit 4.14](#)).

Business Taxes Committee

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

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Cynthia Bridges, Executive Director, provided a report regarding time extensions to Orange, San Luis Obispo, Sierra and Ventura Counties to complete and submit the 2014/15 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 ([Exhibit 4.15](#)).

Tuesday, April 22, 2014

Cynthia Bridges, Executive Director, provided a report on staff protocols regarding media communications ([Exhibit 4.16](#)).

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Business Taxes Committee (Continued)

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 deferred adoption of the committee report to the May Board meeting and authorized publication of the proposed Regulation 1525.4, *Manufacturing and Research & Development Equipment*, as amended.

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.

Property and Special Taxes Deputy Director's Report

David Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding staff's recommendation for setting the 2014/15 fiscal year tobacco products tax rate ([Exhibit 4.17](#)).

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 set the tobacco products tax rate at 28.95 percent for Fiscal Year 2014/15 as recommended by staff.

Administration Deputy Director's Report

Liz Houser, Deputy Director, Administration Department, made introductory remarks regarding the following contracts over \$1 Million: Department of Toxic Substances Control contract for collection of fees pertaining to hazardous waste ([Exhibit 4.18](#)); Department of Motor Vehicles contract for collection of sales, use and/or special taxes pertaining to vehicles and undocumented vessels ([Exhibit 4.19](#)); and, Inter-Con Security Systems, Inc., contract provides unarmed security guard services for the Board ([Exhibit 4.20](#)).

Speaker: Randall F. Cheek, Legislative Advocate, SEIU Local 1000

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the contracts over \$1 million as recommended by staff and directed staff to enter into discussions with SEIU to develop a potential transition plan from private security contracts to civil service positions.

Ms. Yee directed staff to provide the cost comparison data to the Board.

Tuesday, April 22, 2014

The Board recessed at 7:29 p.m. and reconvened at 7:33 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD APRIL 22, 2014

Robert J. Molinaro and Carol E. Molinaro, 715378

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

Camino Medical Group, Inc., 719011

Final Action: Upon motion of Ms. Yee, seconded by Mr. Runner and duly carried, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Mr. Horton voting no, Ms. Mandel not participating, the Board reversed the action of the Franchise Tax Board.

Phillip E. Zepp, 710837, 728324, 741880

Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board. The Board directed staff to inform the taxpayer of the Offer in Compromise program.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD APRIL 22, 2014

R & G Schatz Farms, Inc., 547724, 588579, 592624 (KH)

Final Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be granted as to July 1, 2005 to June 30, 2006 and that the petition otherwise be redetermined as recommended by the Appeals Division.

Nathan R. Duty, 534168 (KH)

Nathan R. Duty, 559940 (STF)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise program.

Gregory Scott Smith, 532481 (GH)

Amy Elaine Smith, 532485 (GH)

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 ordered that the petition be redetermined as recommended by the Appeals Division.

Tuesday, April 22, 2014

Ricky Alan Dumas, 547380 (KH)

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

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 7:51 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CLOSED SESSION

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

The Board recessed at 7:56 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

The Board adjourned at 7:57 p.m.

The foregoing minutes are adopted by the Board on May 22, 2014.

Note: The following matters were removed from the calendar prior to the meeting: *Jaswinder Kaur, 537383, 699250; Rigoberto Lopez Nunez, 559883; H&O, Inc., 547859, 709260; H&O, Inc., 559975; Sandy Seybert, 598180; Sandy Seybert, 598183; and, SC Brokers, Inc., 600519.*