

Tuesday, August 5, 2014

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 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.

PUBLIC COMMENT

Speaker: William M. Connell, Military Veteran and owner of All American Surf Dog
([Exhibit 8.1](#))

Exhibits to these minutes are incorporated by reference.

Ms. Steel congratulated her intern, Isaac Joo for being accepted into the University of New York.

The Board recessed at 9:44 a.m. and reconvened at 10:04 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Richard N. Eisenberg and Anita Eisenberg, 610025
2007, \$562,524.00 Tax, \$112,504.80 Accuracy-Related Penalty

For Appellants:	Anita Eisenberg, Taxpayer Richard N. Eisenberg, Taxpayer Steve Mather, Attorney
For Franchise Tax Board:	Maria Brosterous, Tax Counsel Karen Smith, Tax Counsel

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

Issues: Whether appellants have shown error in respondent's (Franchise Tax Board or FTB) proposed assessment of additional tax based on the sourcing of a payment in which appellant-wife was entitled, pursuant to an employment contract.

Whether appellants have shown error in respondent's reduction of their itemized deductions.

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

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 8.2](#))

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.

The Board recessed at 11:38 a.m. and reconvened at 11:53 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Tuesday, August 5, 2014

John Kunak and Mary Fleming, 740944

2007, \$9,166.00 Tax, \$1,833.20 Accuracy-Related Penalties

2008, \$35,876.00 Tax, \$7,175.20 Accuracy-Related Penalties

2009, \$2,034.00 Tax, \$0.00 Accuracy-Related Penalties

For Appellants: John Kunak, Taxpayer

For Franchise Tax Board: Eric Yadao, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether appellants have shown error in respondent's assessments for 2007, 2008, and 2009, which are based on federal determinations.

Whether appellants have shown reasonable cause to abate the accuracy-related penalties for 2007 and 2008.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 8.3](#))

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.

Jeffrey A. Foresta, 762692, 763560, 763561

2008, \$4,135.50 Tax, \$1,033.75 Late Filing Penalty, \$1,033.75 Demand Penalty

2009, \$768.00 Tax, \$192.00 Late Filing Penalty, \$1,036.25 Demand Penalty

2010, \$1,453.00 Tax, \$363.25 Late Filing Penalty, \$363.25 Demand Penalty, \$88.00 Filing Enforcement Penalty

For Appellant: Jeffrey A. Foresta, Taxpayer

For Franchise Tax Board: Eric Yadao, Tax Counsel

Karen Smith, Tax Counsel

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

Issues: Whether appellant has demonstrated any error in the Franchise Tax Board's proposed assessments for tax years 2008, 2009, and 2010.

Whether appellant has demonstrated reasonable cause to abate the late filing penalties for tax years 2009 and 2010.

Whether appellant has demonstrated reasonable cause to abate the notice and demand penalties (demand penalties) imposed for tax years 2008, 2009, and 2010.

Whether the filing enforcement fee can be abated for tax year 2010.

Whether the Board should impose a frivolous appeal penalty.

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.

CHIEF COUNSEL MATTERS

RULEMAKING

Proposed Adoption of Amendments to Sales and Use Tax Regulation 1603, Taxable Sales of Food Products

Cary Huxsoll, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding amendments to Sales and Use Tax Regulation 1603, clarifying the application of tax to tips, gratuities, and service charges ([Exhibit 8.4](#)).

Tuesday, August 5, 2014

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

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the amendments to Regulation 1603 as published.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Nirvair Corporation, 529714 (EA)*.

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:

Eric Paul Leiss, 567149 (DF)

10/01/04 to 12/31/08, \$0.00 Tax, \$299.70 Late Payment Penalties, \$1,998.20 Late Payment of Returns Penalties, \$2,479.50 Finality Penalties

Action: Redetermine as recommended by the Appeals Division.

Manuel Rodriguez Luna, 595512 (EA)

01/01/05 to 01/24/07, \$579,123.72 Tax, \$144,780.99 Fraud Penalty, \$940.21 Failure-to-File Penalty

Action: Redetermine as recommended by the Appeals Division.

Beatriz Martinez, 556435 (AC)

07/01/06 to 06/30/09, \$15,761.64 Tax, \$1,591.15 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division

Franklin Evan Tyler, 606109 (FH)

Debbie Tyler, 606111 (FH)

07/01/08 to 06/30/09, \$16,720.14 Tax, \$1,875.10 Late Payments of Returns Penalties, \$9.10 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Mo Zarrabi and Azar Hassanabadi, 533538 (AP)

04/01/05 to 03/31/08, \$76,293.43 Tax, \$7,629.31 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Hamada A. Abdalla and Fryda A. Fernandez, 782699 (STF)

September 19, 2013, \$70.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Colton99, Yasmin Fallah and Karan Thakore, 782684 (STF)

September 9, 2013, \$455.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Tuesday, August 5, 2014

Green Century Liquor, Inc., 782697 (STF)

August 22, 2013, \$64.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Uni Cigs, Inc., 782690 (STF)

October 10, 2013, \$60.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Joginder Lal, 496075 (KH)

01/01/05 to 12/31/07, \$38,154.44 Tax, \$3,815.47 Negligence Penalty

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

Lasting Interiors, Inc., 554909 (EA)

04/01/05 to 03/31/08, \$167,248.47 Tax

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

Nirvair Corporation, 529714 (EA)

04/01/05 to 03/31/08, \$121,251.43 Tax, \$12,125.16 Negligence Penalty

Action: The Board took no action.

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. 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:

Gerardo O. Medina and Rowena Marcelino Medina, 737491

2006, \$4,888.10 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

A-L-L Magnetics, Inc., 707766

2011, \$255.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

American Orthodontics Corporation, 711153

2010, \$16,200.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Charles E. Dormady, 644423

2008, \$1,614.00 Tax, \$403.50 Late Filing Penalty, \$545.50 Demand Penalty, \$100.00 Filing Enforcement Fee

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

Tuesday, August 5, 2014

John F. Gilmartin and Beverly A. Gilmartin, 612091

2002, \$6,434.00 Assessment, \$311.87 Post-Amnesty Penalty

2003, \$795.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Bobby Johnson, 719071

2006, \$65,682.00 Tax, \$16,420.50 Late Filing Penalty, \$13,136.40 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Paul P. Le, 733446

2001, \$5,387.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Pauline C. Lingle, 717460

1996, \$467.46 Claim for Refund

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

Ford F. Mudgett D.D.S. and William L. Neff Jr., D.D.S., 670981, 711154

2010, \$432.00 Claim for Refund

2010, \$432.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Tsion Mulugeta, 768604

2009, \$1,093.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

William M. Sheedy and Patricia L. Sheedy, 710828

2008, \$49,442.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Derek Sipila, 745469

2009, \$415.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Catherine Turner, 743541

2008, \$574.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Gust Perlegos and Mary Perlegos, 599753

2010, \$34,929.00 Claim for Refund

Action: Deny the petition for rehearing.

Site Management Services, Inc., 713613

2003, \$22,633.00 Assessment

Action: Deny the petition for rehearing.

Tuesday, August 5, 2014

Kevin H. Sullivan and Claire K. Sullivan, 610943
2007, \$2,632.00 Assessment
2008, \$370,276.00 Assessment
Action: Deny the petition for rehearing.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES
AND GRANT-ONE DAY INTEREST RELIEF, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Grant-One Day Interest Relief, Consent Agenda, upon a single motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

S.A. Camp Pump Company, Inc., 605718 (DF)
01/01/08 to 12/31/10, \$338,068.62
Action: Approve the redetermination as recommended by staff.

Sanmina-Sci Corporation, 611389 (GH)
10/01/04 to 09/30/07, \$778,629.83
Action: Approve the redetermination as recommended by staff.

Anwer Ali Jadhavji, 202563 (AC)
08/01/96 to 09/30/00, \$61,860.70
Action: Approve the redetermination as recommended by staff.

Henry Schein, Inc., 811560 (OH)
01/01/14 to 01/31/14, \$153,575.34
Action: Approve the relief of penalty as recommended by staff.

M.R.P. Auto, Inc., 811563 (EA)
01/01/14 to 01/31/14, \$482.52
Action: Approve one day interest relief as recommended by staff.

Alvarado Auto Sales, Inc., 811562 (AC)
02/01/14 to 02/28/14, \$36.82
Action: Approve the one day interest relief as recommended by staff.

Food Pantry, LTD, 811565 (OH)
05/01/13 to 01/31/14, \$125.17
Action: Approve one day interest relief as recommended by staff.

Tuesday, August 5, 2014

**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 *ABC, Inc., 576107*, the Board made the following orders:

Chopras Restaurant, Inc., 812257 (AC)

04/01/08 to 03/31/11, \$118,057.81

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

A.N.W. Group, Inc., 569288 (AP)

05/01/06 to 12/31/07, \$298,989.11

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

L.A. Unified School District, 577439 (AC)

04/01/08 to 03/31/12, \$221,179.73

Action: Approve the refund as recommended by staff.

Sky Chefs, Inc., 726491 (OH)

10/01/07 to 12/31/10, \$258,480.90

Action: Approve the refund as recommended by staff.

Treasure Garden, Inc., 768613 (AP)

04/01/13 to 06/30/13, \$138,973.00

Action: Approve the refund as recommended by staff.

Kaiser Foundation Health Plan, Inc., 486635 (CH)

01/01/06 to 12/31/10, \$1,129,560.11

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 785251 (KH)

01/01/13 to 12/31/13, \$397,630.00

Action: Approve the refund as recommended by staff.

Hyundai Capital America, 710089 (EA)

01/01/11 to 12/31/13, \$972,648.78

Action: Approve the refund as recommended by staff.

United Aviation Fuels Corp., 570557 (OH)

01/01/08 to 12/31/10, \$7,479,075.19

Action: Approve the refund as recommended by staff.

Tuesday, August 5, 2014

Southwest Jet Fuel Company, 777662 (OH)
04/01/13 to 09/30/13, \$190,566.35
Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 807984 (OH)
07/01/13 to 01/02/14, \$800,713.85
Action: Approve the refund as recommended by staff.

DSC Telecom, Inc., 627541 (OH)
10/01/06 to 09/30/07, \$710,613.84
Action: Approve the refund as recommended by staff.

UPS Oasis Supply Corp., 340492 (OH)
10/01/01 to 03/31/07, \$2,621,369.75
Action: Approve the refund as recommended by staff.

Macy's West Stores, Inc., 804719 (OH)
01/01/10 to 06/30/13, \$1,885,524.78
Action: Approve the refund as recommended by staff.

Check Point Software Technologies, Inc., 782224 (BH)
04/01/13 to 06/30/13, \$247,384.00
Action: Approve the refund as recommended by staff.

Jay Robb Enterprises, Inc., 805300 (FH)
07/01/10 to 06/30/13, \$111,537.90
Action: Approve the refund as recommended by staff.

United Rentals Northwest, Inc., 746529 (OH)
01/01/08 to 03/31/08, \$230,878.88
Action: Approve the refund as recommended by staff.

Cintas Corporation No. 3, 623602 (OH)
01/01/08 to 12/31/10, \$191,042.27
Action: Approve the refund as recommended by staff.

Dream Products Incorporated, 777666 (AC)
07/01/10 to 06/30/13, \$109,894.00
Action: Approve the refund as recommended by staff.

Kaiser Foundation Hospitals, 809613 (CH)
01/01/11 to 12/31/12, \$561,355.93
Action: Approve the refund as recommended by staff.

Tuesday, August 5, 2014

ABC, Inc., 576107 (OH)

04/01/10 to 06/30/10, \$23,935.48

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

A & E Factory Services, LLC, 597117 (OH)

10/01/02 to 12/31/10, \$6,098,854.56

Action: Approve the refund as recommended by staff.

Defender Security Company, 801774 (OH)

10/01/10 to 12/31/12, \$108,773.72

Action: Approve the refund as recommended by staff.

Stags Leap Wine Cellars, LLC, 572035 (OH)

04/01/08 to 12/31/11, \$364,212.68

Action: Approve the refund as recommended by staff.

VCE Company, LLC, 636354 (OH)

04/01/12 to 06/30/12, \$102,624.00

Action: Approve the refund as recommended by staff.

Cardinal Health 200, LLC, 649581 (OH)

01/01/12 to 03/31/12, \$1,035,720.00

Action: Approve the refund as recommended by staff.

Universal Acceptance Corp. (CA), 736264 (OH)

11/29/12 to 03/31/13, \$15,322.87

Action: Approve the refund as recommended by staff.

LEGAL APPEALS MATTERS, ADJUDICATORY

Pahwa & Associates, Inc., 531030 (CH)

Speakers: Indy Pahwa, Associate, Pahwa & Associates, Inc.
Inder Pahwa, Pahwa & Associates, Inc.

04/01/06 to 03/31/09, \$30,826.26 Tax

Considered by the Board: July 17, 2014

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 using the average taxable sales ratio of 44.79 percent for the first quarter of 2009 and reducing this ratio proportionately by 1.25 percent for each previous quarter until installment of ovens and not zeroing out the credits in the first four quarterly periods of the audit.

Tuesday, August 5, 2014

WCN, Inc., 491680 (AS)

Speakers: Mike Shenassafar, Financial Consultant Associates, Inc.
Taraneh Torbati, Accountant, WCN, Inc.

07/01/04 to 12/31/07, \$40,979.31 Tax, \$4,097.95 Negligence Penalty

Considered by the Board: February 26, 2014

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

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.

Jialing Wang, 436517, 546372 (JH)

01/01/04 to 03/31/07, \$29,465.55 Tax, \$2,946.55 Negligence Penalty, \$2,946.34 Finality Penalty

04/01/07 to 03/31/10, \$7,908.80 Tax, \$790.91 Negligence Penalty

Considered by the Board: July 17, 2014

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

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 1) for the first audit period, audited taxable sales be computed using a credit card sales ratio of 31.99 percent, the negligence penalty abated, and the petition otherwise be redetermined as recommended by the Appeals Division; and, 2) for the second audit period, that credit card deposits be reduced by 3.23 percent for voluntary gratuities before computing audited taxable sales (no change to the credit card sales ratio of 31.99 percent). The Board directed staff to inform the taxpayer of the Offer in Compromise program.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Camino Medical Group, Inc., 719011

2005, \$1,028,094.13 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. Steel, seconded by Ms. Yee and duly carried, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Mr. Horton voting no, Ms. Mandel not participating, 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 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 Offer in Compromise Recommendations of *Hassan Yeganeh Amirhamzeh; Kin Sang Choi; A-1 M&M Enterprise, Inc. and Marwa Ahmad Harb; Young Suk Kim; Brittny Jessica Monciardini;* and, *Leonard Jacob Rosenberg;* as recommended by staff.

Tuesday, August 5, 2014

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, the Board extended its sincere and grateful appreciation to retiree Windie O. Scott, Tax Counsel III (Specialist), Settlement and Taxpayer Services Division, Legal Department, Headquarters, for her dedicated service to the State Board of Equalization and to the State of California. The retirement resolution was continued later in the day ([Exhibit 8.5](#)).

With respect to the Administrative Matters, Consent Agenda, the Board voted on the remaining matters separately as follows:

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 Board Meeting Minutes of June 24-26, 2014.

Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted proposed revisions to Audit Manual, Chapter 1, *General Information* ([Exhibit 8.6](#)).

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 adopted proposed revisions to Compliance Policy and Procedures Manual, Chapter 5, *Returns* ([Exhibit 8.7](#)).

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

Cynthia Bridges, Executive Director, made introductory remarks regarding the proposed change to the 2014 Board Meeting Calendar for November to add the annual Board/Assessors' meeting in San Rafael, California, and to request approval to summon county assessors to such meeting with the Board to discuss issues relating to property assessment administration ([Exhibit 8.8](#)).

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the summons to the annual meeting of the Board and county assessors in San Rafael and the change to the 2014 Board Meeting Calendar for the location of November 18 as recommended by staff.

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.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:09 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Tuesday, August 5, 2014

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 1:40 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

ADMINISTRATIVE SESSION

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 8.9](#)).

ADMINISTRATIVE MATTERS, CONSENT (CONTINUED)

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

Action: Adopt the following resolution, extending its sincere and grateful appreciation to the retiree for her dedicated service to the State Board of Equalization and to the State of California, their congratulations on the retiree's well-earned retirement, and best wishes to her and her family for continued success, happiness and good health in the years to come ([see Exhibit 8.5](#)).

Windie O. Scott, Tax Counsel III (Specialist), Settlement and Taxpayer Services
Division, Legal Department, Headquarters

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD AUGUST 5, 2014

Richard N. Eisenberg and Anita Eisenberg, 610025

Final Action: Ms. Steel moved to reverse the action of the Franchise Tax Board. The motion was seconded by Mr. Runner but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Ms. Yee moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Mandel. Mr. Runner offered an amendment to abate the accuracy-related penalty and otherwise sustain the action of the Franchise Tax Board. Mr. Runner's amendment was accepted by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes. The Board's decision was not held in abeyance pending adoption of a summary decision for publication.

Tuesday, August 5, 2014

John Kunak and Mary Fleming, 740944

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

Jeffrey A. Foresta, 762692, 763560, 763561

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 and imposed a \$500.00 frivolous appeal penalty for each tax year on appeal.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
AUGUST 5, 2014**

Nizar Taher Breiche, 575605 (EH)

08/01/07 to 06/30/08, \$6,058.50 Tax

American Planet, Inc., 575606 (EH)

07/01/08 to 09/30/10, \$25,134.66 Tax

For Petitioners:

Waived Appearance

For Sales and Use Tax Department:

Marc Alviso, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issue: Whether further adjustments to the amount of unreported taxable sales are warranted.

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

The Board recessed at 1:52 p.m.

The foregoing minutes are adopted by the Board on September 23, 2014.

Note: The following matters were removed from the calendar prior to the meeting: *Brent M. McMahon and Ramona M. Sears-McMahon, 727891; Robert S. Winet and Melinda Winet, 594610; and, 2015/16 Budget Change Proposal.*

Wednesday August 6, 2014

The Board met at its offices at 5901 Green Valley Circle, Culver City at 9:30 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.

SALES AND USE TAX APPEALS HEARING

Enyinnaya Christian Ojogho, 396268, 414889, 610607 (AS)
 01/01/97 to 03/31/05, \$93,811.95 Tax, \$3,010.07 Negligence Penalty, \$6,311.67 Failure-to-File Penalty, \$9,267.24 Finality Penalty, \$5,813.80 Amnesty Double Failure-to-File Penalty, \$5,699.75 Amnesty Double-Finality Penalty
 04/01/02 to 03/31/05, \$65,727.91 Tax, \$1,302.09 Amnesty Interest Penalty, \$6,651.81 Amnesty Double-Fraud Penalty, \$12,377.34 Fraud Penalty-25 percent, \$8,109.31 Fraud Penalty-50 percent
 For Taxpayer/Claimant: George Akwo, Attorney
 For Sales and Use Tax Department: Scott Lambert, Hearing Representative
 Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
 Issues: Whether additional adjustments to the amount of unreported taxable sales are warranted.

Whether relief of interest is warranted due to an unreasonable error or delay by an employee of the Board.

Whether the amnesty penalties applied to the first determination for periods prior to July 1, 2001, should be relieved.

Whether the penalty for failure to file returns for the periods January 1, 1997, through June 30, 2001, and January 1, 2003, through March 31, 2003, should be relieved.

Whether taxpayer was negligent.

Whether the finality penalty should be relieved.

Whether the collection cost recovery fee should be relieved.

Whether the second NOD was timely issued.

Whether there is clear and convincing evidence to support an assertion of the 50-percent penalty for knowingly operating without a permit for the purpose of evading tax for the period April 1, 2002, through March 31, 2003, and the 25-percent penalty for fraud for the period April 1, 2003, through March 31, 2005.

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.

The Board recessed at 10:04 a.m. and reconvened at 10:18 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Wednesday August 6, 2014

PETITION FOR RELEASE OF SEIZED PROPERTY

Timothy Mark Krug, 791354 (STF)

November 5, 2013 Seizure Date, \$3,819.75 Approximate Value

For Petitioner: Timothy Krug, Taxpayer

For Property and Special Taxes Department Pamela Mash, Tax Counsel

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

Issues: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b).

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.

PUBLIC COMMENTSSpeakers: Noraier Ghazarian, Owner, Anni Automotive
Dave Duce, Witness**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
AUGUST 6, 2014**

Enyinnaya Christian Ojogho, 396268, 414889, 610607 (AS)

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.

**FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HELD
AUGUST 6, 2014**

Timothy Mark Krug, 791354 (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 determined that staff properly seized the tobacco products.

The Board Members extended their congratulations to Isaac Joo, Ms. Steel's intern for being accepted into the University of New York.

The Board adjourned at 10:58 a.m.

The foregoing minutes are adopted by the Board on September 23, 2014.

Note: The following matter was removed from the calendar prior to the meeting: *Ronald J. Blomquist, 467934, 565903.*