

Tuesday, October 14, 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.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Rob Zakir and Raya Zakir, 624832

2007, \$8,126.00 Tax, \$1,643.20 Accuracy-Related Penalty

For Appellants:	Rob Zakir, Taxpayer George Chelius, Representative
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 demonstrated error in the proposed assessment, which was based upon federal adjustments.

Whether appellants have shown that the accuracy-related penalty should be abated.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 10.1](#))

Respondent's Exhibit: Correspondence between appellant and respondent ([Exhibit 10.2](#))

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.

Exhibits to these minutes are incorporated by reference.

Neville Bothwell and Ila Bothwell, 713600

2008, \$476.00 Assessment

For Appellants:	Floyd C. Geis, Representative
For Franchise Tax Board:	Maria Brosterhous, Tax Counsel Karen Smith, Tax Counsel

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

Issue: Whether appellants have shown error in respondent's proposed assessment on a traditional Individual Retirement Account (IRA) distribution.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 10.3](#))

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

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Tak Development, Inc., 765468
 2005, \$16,429.00 Claim for Refund
 2006, \$130.00 Claim for Refund
 2007, \$1,026.00 Claim for Refund
 2008, \$4,455.00 Claim for Refund
 2009, \$26,831.00 Claim for Refund

For Appellant:

Eric Anderson, Attorney
 Shail Shah, Attorney

For Franchise Tax Board:

Jason Riley, Tax Counsel
 David Gemmingen, Tax Counsel

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

Issue: Whether certain machines purchased by appellant are “qualified property,” within the meaning of Revenue and Taxation Code section 23612.2, subdivision (b), such that appellant is entitled to an additional amount of the enterprise zone sales and use tax credit.

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.

Catherine A. Zikakis, 767950
 2006, \$115,213.00 Tax

For Appellant:

Catherine A. Zikakis, Taxpayer
 Donald Segretti, Attorney

For Franchise Tax Board:

Judy Hirano, Tax Counsel
 David Gemmingen, Tax Counsel

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

Issue: Whether appellant has shown that the Franchise Tax Board erred in its determination that gain from the sale of real property should be included in appellant’s taxable income.

Appellant’s Exhibit: Additional Exhibits ([Exhibit 10.4](#))

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.

Arturo Lopez and Maria D. Lopez, 740943
 2006, \$87,262.00 Assessment
 2007, \$9,667.00 Assessment

For Appellants:

Arturo Lopez, Taxpayer
 Lynwood Ford, Representative

For Franchise Tax Board:

Todd Watkins, Tax Counsel
 David Gemmingen, Tax Counsel

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

Issue: Whether respondent correctly determined that appellants underreported their flow-through capital gains for the tax years at issue.

Respondent’s Exhibit: Additional Exhibits ([Exhibit 10.5](#))

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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 12:00 p.m. and reconvened at 1:14 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Debra Hackley, 728285

2002, \$476.00 Tax, \$100.00 Late Filing Penalty, \$95.20 Accuracy-Related Penalty, \$32.54 Post-Amnesty Penalty

For Appellant:

Debra Hackley, Taxpayer

Ann Doan, Representative

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 shown error in the Franchise Tax Board's proposed assessment, which is based on federal changes provided by the Internal Revenue Service.

Whether the late filing penalty should be abated.

Whether the accuracy-related penalty should be abated.

Whether the Board has jurisdiction to review respondent's assessment of the post-amnesty penalty.

Whether respondent's proposed assessment is barred by the statute of limitations.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 10.6](#))

Respondent's Exhibit: FTB copy of Taxpayers 2002 Tax Return ([Exhibit 10.7](#))

Anthony Epolite, Tax Counsel, Appeals Division, stated for the record that, prior to the hearing, appellant conceded as disallowed \$4,396 (i.e., \$8,101 - \$3,705) of the deductions previously claimed. In addition, Mr. Epolite stated for the record that the Franchise Tax Board allowed \$3,554 of the \$3,705 of the deductions remaining at issue as qualified medical expenses.

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 abated the late filing and accuracy-related penalties and reversed the action of the Franchise Tax Board as to the remaining amounts in dispute.

SALES AND USE TAX APPEALS HEARINGS

Mi Kyung Park and V. Young Rok Park, 620616 (AA)

07/01/08 to 12/31/11, \$24,069.31 Tax, \$2,473.91 Negligence Penalty

For Petitioner:

Young Rok Park, Taxpayer

Mi Kyung Park, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Jennifer Orrick, Hearing Representative

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

Issues: Whether additional adjustments are warranted to the amount of unreported taxable sales established on a markup basis.

Whether petitioner was negligent.

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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.

Sur Trading, Inc., 575609 (FH)

07/01/05 to 06/30/08, \$136,311.29 Tax, \$14,308.62 Negligence Penalty

For Petitioner: Mario Scolari, Taxpayer
John W. Trudell, Representative

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

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

Issues: Whether any adjustments are warranted to the amount of taxable rentals of furniture.

Whether adjustments are warranted to the amount of unrecorded taxable sales.

Whether further adjustments are warranted to the amount of disallowed claimed nontaxable sales.

Whether adjustments are warranted to the amount of understatement of reported taxable sales established in a reconciliation of accrued sales tax reimbursement and sales tax paid.

Whether further adjustments are warranted to the amount of unreported taxable sales based on sales recorded in sales journals.

Whether the understatement was the result of negligence.

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.

The Board recessed at 3:35 p.m. and reconvened at 3:53 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Corner House Coffee, LLC, 605968*.

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:

AA Toro Sushi, Inc., 569629 (EH)

07/01/07 to 06/30/10, \$206,349.44 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Advanced Inhalation Revolutions, Inc., 423633 (AS)

01/01/03 to 10/31/06, \$105,305.60 Tax

Action: Redetermine as recommended by the Appeals Division.

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American Pro Corp., 486037 (EA)

01/01/02 to 09/30/06, \$37,750.56 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

AMCC-Alternative Med. Col. Covina, 604797 (AP)

03/07/11 to 09/30/11, \$73,296.00 Tax, \$7,329.60 Failure-to-File Penalty

Action: Redetermine as recommended by the Appeals Division.

Firoza Bomi Bharucha, 560706 (SO)

03/01/07 to 09/30/09, \$26,396.89 Tax, \$2,639.69 Negligence Penalty, \$2,639.69 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Corner House Coffee, LLC, 605968 (GH)

04/01/08 to 03/31/11, \$39,075.94 Tax

Action: The Board took no action.

Gourgen Dalir, 625176 (AC)

01/01/08 to 12/31/10, \$20,278.25 Tax

Action: Redetermine as recommended by the Appeals Division.

David Joseph Fredette, 531948 (AA)

10/01/06 to 12/31/06, \$17,133.20 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Alice Y. Huang, 574144 (AA)

01/01/07 to 12/31/07, \$5,215.51 Tax, \$431.50 Late-Filing Penalty, \$583.90 Late-Payment Penalty

Action: Redetermine as recommended by the Appeals Division.

Jose H. Jensen, 436807 (AS)

10/01/01 to 12/31/01, \$25,231.78 Tax, \$3,114.83 Finality Penalty, \$1,580.42 Amnesty Double Finality Penalty, \$1,581.11 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division

Michael Kenner, 556754 (AS)

04/01/08 to 01/25/09, \$22,600.42 Tax, \$991.64 Late-Filing Penalty, \$1,219.00 Late-Payment Penalty, \$243.10 Failure-to-File Penalty, \$243.10 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Mohammad J. Malekzadeh, 598005 (EH)

07/01/08 to 12/31/10, \$28,027.00 Tax

Action: Redetermine as recommended by the Appeals Division.

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Richard Sean McGowan, 437584 (AS)

10/01/01 to 12/31/01, \$25,231.78 Tax, \$3,114.83 Finality Penalty, \$1,580.42 Amnesty Double Finality Penalty, \$1,581.11 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Alfredo Marroquin and Leticia Salcido, 631017 (AP)

04/01/09 to 05/31/11, \$32,788.73 Tax, \$3,278.79 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Super Color Digital, LLC, 596137, 795450 (EA)

01/01/07 to 12/31/09, \$19,879.60 Tax

Action: Redetermine as recommended by the Appeals Division.

Trilogynet Corporation, 614080 (AR)

07/01/06 to 06/30/08, \$19,052.71 Tax, \$1,905.27 Failure-to-File Penalty

Action: Redetermine as recommended by the Appeals Division.

Wide Open Excursions, LLC, 606103 (EA)

04/01/09 to 06/30/09, \$19,884.38 Tax, \$1,988.44 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

David Hoang, 715534 (UT)

09/06/03, \$4,823.00 Claim for Refund

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

Ali Mohamed Alkanshanly, 797626 (STF)

December 18, 2013 Seizure Date, \$41.58 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Bassam Hamood Mohamed Mohsin, 799447 (STF)

January 28, 2014 Seizure Date, \$917.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Hassan Tahir Nuru, 794287 (STF)

December 10, 2013 Seizure Date, \$70.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Harshadkumar Ramnlal Dave and Pragnaben Harshadkumar Dave, 794283 (STF)

November 26, 2013 Seizure Date, \$2,034.80 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Frances Diaz, 605995*.

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

CFL, LP, 764609

2008, \$800.00 Tax, \$200.00 Demand Penalty, \$200.00 Delinquent Filing Penalty, \$100.00 Late Filing Penalty, \$82.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board.

Pedro V. Dating and Simona V. Dating, 764257

2008, \$24,176.00 Assessment, \$4,835.20 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Frances Diaz, 605995

2006, \$12,550.00 Assessment

Action: The Board took no action.

Hilario D. Gonzales and Dawn N. Melkus Gonzales, 620569

2006, \$742.00 Claim for Refund

2007, \$4,460.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Tsegai Haile and Eden Haile, 711561

2008, \$488.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Paul Hansen, 678002

2010, \$868.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

John T. Harding, 712994

2010, \$818.94 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Neri D. Hernandez A., 785723

2011, \$710.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Andre Jackson, 741548

2006, \$4,207.00 Assessment

2007, \$4,017.00 Assessment

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

Seshayya Krishnamoorthy, 770932

2008, \$520.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Rose I. Logue, 737052

2008, \$375.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Roderick Keith Long, 727530

2008, \$2,386.00 Assessment

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

William MacDonald and Carroll MacDonald, 675505

2003, \$6,084.00 Tax, \$1,216.80 Accuracy-Related Penalty

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

Mostafa Mehrasa, 653287

2010, \$1,304.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Christina Moreno, 636174

2010, \$1,541.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Arne Ogaard and Linda Ogaard, 719271

2008, \$3,417.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ludino Papa, 623816

2006, \$308.00 Claim for Refund

2009, \$1,342.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Penoe, Inc., 785013

2010, \$1,962.40 Claim for Refund

2011, \$1,777.94 Claim for Refund

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

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Lawrence Pizinger and Lillian Pizinger, 764247

1994, \$1,138.72 Claim for Refund

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

Helmer Rauda and Beatrix Rauda, 643682

2007, \$1,020.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jerome J. Reso III, 631085

2008, \$6,111.00 Assessment, \$1,222.20 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Aziz Sehorewala, 625443

2007, \$2,015.00 Claim for Refund

2008, \$158.37 Claim for Refund

2009, \$359.63 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

William Tan and Ai-Lin Tsai, 790056

2011, \$3,598.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Andrew Villena, 624808

2010, \$547.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Todd Wallin and Patricia K. Evans Wallin, 735467

2006, \$64,166.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Alan H. Young and Britta B. Young, 557067

2005, \$5,350.00 Assessment

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

Nikolai A. Zarkevich, 729226

2008, \$100.10 Protest of Interest, \$657.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Robert L. Botello and Anselma Botello, 607350

2006, \$1,139.40 Assessment

2007, \$702.00 Assessment

2008, \$337.40 Assessment

Action: Deny the petition for rehearing.

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Deanna L. Kwan, 601923

2007, \$1,724.00 Assessment

Action: Deny the petition for rehearing.

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

With respect to the Sales and Use Tax Matters, 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 Mr. Runner 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 *AMC Showplace Theatres, Inc., 825489 (OH)*. Ms. Mandel not participating in *Seafood Village, Inc., 838226 (AP)*, Board made the following orders:

Main Electric Supply Co., 835515 (AS)

04/01/14 to 04/30/14, \$112,200.00

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

AMC Showplace Theatres, Inc., 825489 (OH)

07/01/10 to 12/31/12, \$883,139.01

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

Presidio Technology Capital, LLC, 731041 (OH)

07/01/07 to 06/30/09, \$320,638.00

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

Veros Credit, LLC, 623746 (EA)

12/21/10 to 06/30/12, \$338,684.31

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

Gibbs International, Inc., 835520 (AR)

01/01/14 to 03/31/14, \$1,047.56

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

Univar USA, Inc., 838220 (OH)

02/01/14 to 02/28/14, \$6,293.35

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

OC Metals, Inc., 828223 (EA)

04/01/14 to 04/30/14, \$113.03

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

J & Z Petroleum, Inc., 835521 (CH)

01/01/14 to 03/31/14, \$367.83

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

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Sacramento Petroleum, Inc., 838218 (KH)

01/01/14 to 03/31/14, \$180.55

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

Miracle Ear, Inc., 835517 (OH)

01/01/14 to 01/31/14, \$145.07

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

Seafood Village, Inc., 838226 (AP)

02/01/14 to 02/28/14, \$95.33

Action: Approve the one day interest relief as recommended by staff. Ms. Mandel not participating.

Everett Charles Technologies, LLC, 835516 (AP)

01/01/14 to 03/31/14, \$290.86

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 Mr. Runner 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 *American Multi-Cinema, Inc., 826235 (OH)*; and, *AMC Showplace Theatres, Inc., 825489 (OH)*; the Board made the following orders:

LCI Holdings, Inc., 588294 (OH)

10/01/05 to 09/30/08, \$407,204.60

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

Trojan Petroleum, Inc., 727514 (GH)

01/01/10 to 03/31/10, \$114,326.00

Action: Approve the refund as recommended by staff.

Earthgrains Baking Companies, Inc., 758247 (OH)

01/01/13 to 03/31/13, \$627,699.00

Action: Approve the refund as recommended by staff.

Bud Antle, Inc., 546995 (GH)

07/01/07 to 03/31/11, \$299,181.41

Action: Approve the refund as recommended by staff.

Riverside Community Hospital, 594102 (EH)

07/01/08 to 06/30/11, \$338,083.06

Action: Approve the refund as recommended by staff.

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American Material Mgt. Allianc, Inc., 630353 (EH)

01/01/11 to 12/31/12, \$359,781.00

Action: Approve the refund as recommended by staff.

Varni Brothers Corporation, 826828 (KH)

01/01/11 to 12/31/13, \$124,081.84

Action: Approve the refund as recommended by staff.

American Multi-Cinema, Inc., 826235 (OH)

07/01/09 to 06/30/13, \$5,749,428.47

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

Adtran, Inc., 613005 (OH)

01/01/12 to 03/31/12, \$110,275.63

Action: Approve the refund as recommended by staff.

Certainteed Corporation, 743841 (OH)

10/01/07 to 09/30/10, \$147,637.14

Action: Approve the refund as recommended by staff.

LCI Holdings, Inc., 794261 (OH)

10/01/05 to 09/30/08, \$545,790.85

Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 827703 (OH)

02/03/14 to 05/31/14, \$796,919.41

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 827640 (KH)

01/24/14 to 05/23/14, \$251,661.00

Action: Approve the refund as recommended by staff.

Links Unlimited, Inc., 741476 (OH)

01/01/07 to 12/31/09, \$248,252.98

Action: Approve the refund as recommended by staff.

Pacificare Health Plan Administrators, Inc., 837823 (EA)

01/01/06 to 06/30/06, \$146,690.94

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 822554 (OH)

01/01/14 to 03/31/14, \$456,807.00

Action: Approve the refund as recommended by staff.

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Lobel Financial Corporation, 815884 (EA)

01/01/14 to 03/31/14, \$413,937.00

Action: Approve the refund as recommended by staff.

Pernod Ricard USA, LLC, 624673 (OH)

01/01/11 to 03/31/12, \$155,077.91

Action: Approve the refund as recommended by staff.

Process Displays Company, 801773 (OH)

04/01/13 to 06/30/13, \$583,718.93

Action: Approve the refund as recommended by staff.

A-L Financial Corp., 774384 (EA)

07/01/13 to 03/31/14, \$333,842.00

Action: Approve the refund as recommended by staff.

Perficient, Inc., 809623 (OH)

07/01/13 to 09/30/13, \$153,183.58

Action: Approve the refund as recommended by staff.

AN Luxury Imports of San Diego, 554397 (OH)

07/01/07 to 12/31/13, \$183,908.41

Action: Approve the refund as recommended by staff.

AMC Showplace Theatres, Inc., 825489 (OH)

07/01/10 to 12/31/12, \$116,245.29

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

Veros Credit, LLC, 623746 (EA)

12/21/10 to 06/30/12, \$487,159.33

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties, 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 order:

Star Insurance Company, 836611 (STF)

10/01/13 to 12/31/13, \$120,545.40

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

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LEGAL APPEALS MATTERS, ADJUDICATORY

Andrew Steven Roganson, 538417, 737457 (AC)

Speaker: Andrew Roganson, Taxpayer

06/08/06 to 12/31/08, \$6,328.42 Tax, \$214.31 Failure-to-File Penalty

Considered by the Board: September 23, 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 its previous motion of June 25, 2014 be expunged.

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 ordered that the failure-to-file penalty be deleted and the petition otherwise be redetermined as recommended by the Appeals Division.

Penryn Lumber Company, 554162 (KH)

Speaker: Matthew F. Heinrich, Representative

10/01/06 to 09/30/09, \$45,528.82 Tax

Considered by the Board: September 23, 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.

Nirvair Corporation, 529714 (EA)

Speaker: Moti Bolyan, Representative

04/01/05 to 03/31/08, \$49,292.41 Tax, \$12,125.16 Negligence Penalty

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 for rehearing be denied as recommended by the Appeals Division.

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 *Patricia Salgado Brito; Sam Ath Chao; Gilbert Castillo Martinez; Bang Le Nguyen; Ricardo D. Ramirez;* and, *Maria E. Ramirez;* as recommended by staff.

Tuesday, October 14, 2014

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single 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 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 10.8](#))

Steven Michael Adams, Supervising Tax Auditor II, Petitions Section, Sales and Use Tax Department, Headquarters

Karen Berlin, Business Taxes Administrator I, Consumer Use Tax Section, Sales and Use Tax Department, Headquarters

Paul Trygve Erickson, Business Taxes Specialist I, Petitions Section, Sales and Use Tax Department, Headquarters

Coraleen Grace, Tax Technician III, Consumer Use Tax Section, Sales and Use Tax Department, Headquarters

Kristie Holton, Executive Secretary I, Policy and Compliance Division, Property and Special Taxes Department, Headquarters

Anita S. Joshi, Associate Tax Auditor, West Covina District Office

Action: Approve proposed revisions to Compliance Policy and Procedures Manual, Chapter 5, *Returns* ([Exhibit 10.9](#)).

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

Lynn Bartolo, Acting Deputy Director, Property and Special Taxes Department, reported that the Office of Emergency Services has determined the Emergency Telephone Users Surcharge rate will remain unchanged at 0.75 percent for 2015, and that the Board is to publish the fixed rate ([Exhibit 10.10](#)).

Administration Deputy Director's Report

Edna Murphy, Deputy Director, Administration Department, provided a report on the Legislative Budget Change Proposals.

Tuesday, October 14, 2014

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 4:34 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CLOSED SESSION

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

The Board recessed at 4:38 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD OCTOBER 14, 2014

Rob Zakir and Raya Zakir, 624832

Final Action: The Board continued the hearing to the December 2014 meeting in Sacramento.

Neville Bothwell and Ila Bothwell, 713600

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.

Tak Development, Inc., 765468

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

Upon motion of Ms. Mandel, seconded by Ms. Steel and duly carried, Mr. Horton, Mr. Runner and Ms. Mandel voting yes, Ms. Yee voting no, the Board allowed kitchen equipment as qualified property, otherwise sustained the action of the Franchise Tax Board.

Catherine A. Zikakis, 767950

Final Action: Ms. Steel moved to reverse the action of the Franchise Tax Board. The motion failed for lack of second.

Upon motion of Mr. Runner, seconded by Ms. Yee and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

Arturo Lopez and Maria D. Lopez, 740943

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.

Tuesday, October 14, 2014

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
OCTOBER 14, 2014**

Mi Kyung Park and V. Young Rok Park, 620616 (AA)

Final Action: Ms. Steel moved to grant innocence spouse relief to Mi Park. 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.

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 markup be reduced to 22.5 percent, the pilferage allowance be 2 percent, the negligence penalty be deleted, 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.

Sur Trading, Inc., 575609 (FH)

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

The Board recessed at 5:04 p.m.

The foregoing minutes are adopted by the Board on December 18, 2014.

Note: The following matters were removed from the calendar prior to the meeting: *Larry G. Dighera, 515547; Semyon Shekhter and Elena Shekhter, 740750; and, Millennium Dental Technologies, 747501.*

October 15, 2014

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:37 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, American Legion Post 49, owner of All American Surf Dog ([Exhibit 10.11](#))

Exhibits to these minutes are incorporated by reference.

SALES AND USE TAX APPEALS HEARINGS

Shri Ranchhod Corporation, 572114 (EH)

01/01/07 to 12/31/09, \$151,062.60 Tax, \$15,153.89 Negligence Penalty

For Petitioner: Marc Brandeis, Representative

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

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

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

Whether petitioner was negligent.

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

KNA CHO Corporation, 611137, 658121 (EH)

07/01/08 to 05/30/10, \$11,720.97 Tax, \$00.00 Penalties

06/01/10 to 06/30/11, \$8,180.39 Tax, \$00.00 Penalties

For Petitioner: Kyung Cho, Taxpayer

Sung Lee, Representative

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

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

Issue: Whether further reductions are warranted to the amounts of unreported taxable sales.

Ted Matthies, Business Taxes Specialist, Legal Department, stated for the record that the Appeals Division has a revised recommendation in regards to Case ID 611137, to delete the first two quarterly periods of the audit.

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.

October 15, 2014

Eva Marie Tice, 484005 (UT)

09/17/04 Purchase Date, \$10,395.00 Claim for Refund, \$1,039.50 Finality Penalty

For Claimant: Eva Marie Tice, Taxpayer

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

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

Issues: Whether use tax applies to claimant's purchase of the motor home.

Whether claimant is entitled to relief based upon reasonable reliance on written advice from the Board.

Whether relief of the finality penalty is warranted.

Whether relief of interest is warranted.

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.

The Board recessed at 11:18 a.m. and reconvened at 11:28 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD OCTOBER 15, 2014

KNA CHO Corporation, 611137, 658121 (EH)

Final Action: Ms. Steel moved that the unreported taxable catering sales be calculated by taking the average of the difference between the department's figure and the taxpayer's figure. 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.

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 submitted for decision at the December 2014 meeting in Sacramento, granting the petitioner 20 days to file supporting documents, the Department 20 days to respond, and the Appeals Division 20 days thereafter to review the parties' submissions and provide its recommendation to the Board.

The Wireless Solution Store, 530773 (FH)

10/01/04 to 07/31/08, \$191,059.99 Tax, \$19,230.81 Negligence Penalty

For Petitioner: Waived Appearance

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

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

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

Whether petitioner was negligent.

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

October 15, 2014

Shri Ranchhod Corporation, 572114 (EH)

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

Eva Marie Tice, 484005 (UT)

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

Garo Apo Garabedian, 522650 (AP)

01/01/05 to 02/15/08, \$50,039.79 Tax, \$5,003.99 Negligence Penalty

For Petitioner/Claimant: 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 any adjustment to the amount of unreported taxable sales of sunglasses is warranted.

Whether any adjustments to the unreported purchases of ophthalmic materials subject to use tax are warranted.

Whether any adjustments to the disallowed claimed tax-paid purchases resold deduction are warranted.

Whether petitioner was negligent.

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 redetermined as recommended by the Appeals Division.

FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD OCTOBER 15, 2014

Felicia Tawil, 594873 (STF)

Felicia Tawil, 594874 (STF)

01/01/07 to 09/30/08, \$757.00 Tax

01/01/07 to 09/30/08, \$115.00 Tax

For Petitioner: Waived Appearance

For Property and Special Taxes Department: Pamela Mash, Tax Counsel

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

Issues: Whether petitioner is liable for the excise tax on her distribution in California of untaxed cigarettes purchased from an out-of-state vendor.

Whether petitioner is liable for use tax because she purchased cigarettes from an out-of-state vendor for storage, use, or other consumption in California.

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

October 15, 2014

The Board adjourned at 11:58 a.m.

The foregoing minutes are adopted by the Board on December 18, 2014.

Note: The following matters were removed from the calendar prior to the meeting: *Allied Modular Building Systems, Inc., 506774 (EA)*; *Dastgir G. Omar, 609881 (EH)*; and, *PCS Wireless, Inc., 572015 (EA)*.