

Tuesday, January 15, 2013

The Board met at its offices at 450 N Street, Sacramento, at 10:05 a.m., with 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 HEARINGS**

Varuj, LLC, 538547 (EA)

4-1-09 to 12-31-09, \$13,193.40 Late Payment Penalty

Kassian, Inc., 538549 (EA)

1-1-07 to 12-31-08, \$15,100.70 Late Payment Penalty, \$7,459.90 Finality Penalty

Bistango-Irvine, 538551 (EA)

4-1-09 to 12-31-09, \$12,849.90 Late Payment Penalty

For Claimants:

Marc Ghoukassian, Taxpayer

Abe Golomb, Representative

For Sales and Use Tax Department:

Marc Alviso, Hearing Representative

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

Issue: Whether claimants are entitled to refunds of the late payment penalties or the finality penalty.

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 claims be submitted for decision.

Hardip Singh Sandhu, 533270 (KH)

4-1-06 to 3-31-09, \$56,915.71 Tax, \$8,267.71 Negligence Penalty

For Petitioner:

Gary Kimzey, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether adjustments are warranted to the unreported taxable sales.  
Whether petitioner was negligent.

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 submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

The Board recessed at 12:03 p.m. and reconvened at 1:33 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Sonja M. Craighton, 558975 (KH)

10-1-07 to 6-30-10, \$55,462.33 Tax, \$5,546.23 Negligence Penalty

For Petitioner:

Sonja M. Craighton, Taxpayer

For Sales and Use Tax Department:

Marc Alviso, Hearing Representative

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.

Tuesday, January 15, 2013

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 submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

The Board recessed at 2:46 p.m. and reconvened at 4:26 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

### LEGAL APPEALS MATTERS, CONSENT

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:

**Khimvilaiy Som, 553335 (KH)**

10-1-06 to 3-31-10, \$20,676.99 Tax, \$2,067.78 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

**Sacramento Holistic Healing Center, 561767, 572030 (KH)**

4-19-07 to 12-31-09, \$108,105.19 Tax, \$10,810.52 Negligence Penalty

4-1-10 to 6-31-10, \$14,757.00 Tax

Action: Redetermine as recommended by the Appeals Division.

**Chalateco Corporation, 567031 (GH)**

10-1-06 to 9-30-09, \$179,021.74 Tax, \$18,898.18 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

**Keith Looney, Ryan Looney, and Sean Looney, 437814 (KH)**

4-1-04 to 1-31-05, \$4,000.87 Tax

**Central California Railcar Repair, LLC, 458640 (KH)**

2-1-05 to 3-31-07, \$40,630.29 Tax

Action: Redetermine as recommended by the Appeals Division.

**LA E Tricolor, LLC, 559971 (CH)**

10-1-07 to 12-31-09, \$43,036.63 Tax

Action: Redetermine as recommended by the Appeals Division.

**Diana Huyenthanh Phan, 562003 (KH)**

1-1-08 to 3-31-10, \$43,831.07 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

**Keith Cummings, CPA, 559150 (KH)**

10-1-08 to 8-31-09, \$16,633.90 Tax, \$1,356.00 Late payment Penalties, \$1,188.19 Late Prepayment Penalties

Action: Redetermine as recommended by the Appeals Division.

Tuesday, January 15, 2013

Youngkon Corporation, 627497 (STF)

July 11, 2012 Seizure Date, \$30.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Salim I. Qaru and Marwan Qare, 627512 (STF)

July 18, 2012 Seizure Date, \$648.49 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Tho Phuoc Pham, 509278 (AP)

1-1-05 to 2-29-08, \$6,471.00 Tax

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

Northbay Wellness Group, 526954 (JH)

10-1-05 to 12-31-06, \$504,309.75 Tax,

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

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

The Board deferred consideration of the following matter: *Pharmagenesis, Inc.*, 550168.

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:

Derrick P. Landavazo, 601467

2003, \$15,504.00 Tax, \$3,100.80 Accuracy-Related Penalty, \$2,513.75 Late Filing Penalty

2004, \$607.00 Tax

2005, \$23,524.00 Tax, \$4,704.80 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

A.K. Investment Group, LLC, 572497

2006, \$800.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ametek, Inc., 585857

2009, \$35,252.27 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Raul A. Ayala, 595049

2007, \$170.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Tuesday, January 15, 2013

Monika Barbieri, 549104

2005, \$1,883.44 Assessment

Action: Sustain the action of the Franchise Tax Board.

Westley P. Busch and Deedra M. Busch, 576340

2007, \$45.67 Assessment

Action: Sustain the action of the Franchise Tax Board.

Tena Reaves Collins, 571468

2005, \$12,136.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Cooktec Limited Partnership, 595043

2009, \$100.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Thomas A. Day and Katherine T. Day, 586991

2006, \$368.88 Tax, \$80.40 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Kevin Herson, 573294

2000, \$195.83 Assessment

Action: Sustain the action of the Franchise Tax Board.

Penelope J. Hilburn, 592879

2008, \$939.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Janell A. Jann, 594184

2008, \$1,042.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

James E. Thompson, Inc., 569813

2007, \$57,848.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Spencer W. Kimball, 527783

2005, \$83,332.00 Tax, \$20,833.00 Late Filing Penalty

2006, \$46,967.00 Tax, \$11,741.75 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Rudolph J. Laskowski, 572069

2007, \$763.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Tuesday, January 15, 2013

Ronald Passmore, 589497

2006, \$5,641.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Pharmagenesis, Inc., 550168

2007, \$5,372.91 Claim for Refund

Action: The Board took no action.

Keith Ponthieux, 576508

2000, \$1,891.00 Tax, \$472.75 Late Filing Penalty, \$318.84 Post-Amnesty Penalty

2001, \$1,877.00 Tax, \$469.25 Late Filing Penalty, \$196.14 Proposed Post-Amnesty Penalty

2002, \$1,111.00 Tax, \$277.75 Late Filing Penalty, \$67.32 Proposed Post-Amnesty Penalty

2003, \$918.00 Tax, \$229.50 Late Filing Penalty

2004, \$2,831.00 Tax, \$707.75 Late Filing Penalty

Action: Modify the action with concession by the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Cynthia P. Robinette, 566380

2006, \$259.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Peter Westlund and Debra A. Westlund, 563243

2005, \$2,233.00 Tax, \$446.60 Accuracy-Related Penalty

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

Dixin Zheng, 575636

2008, \$1,460.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Irene C. Tritz, 592022

2006, \$19,353.00 Assessment

Action: Deny the petition for rehearing.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, 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:

Mark Steel Corporation, 573238 (OH)

1-1-08 to 6-30-08, \$261,281.67

Action: Approve the redetermination as recommended by staff.

Tuesday, January 15, 2013

Alien Technology Corporation, 446672 (GH)

1-1-98 to 9-30-04, \$413,427.60

Action: Approve the redetermination as recommended by staff.

Fusionstorm, 613620 (OH)

1-1-05 to 12-31-08, \$479,565.85

Action: Approve the redetermination as recommended by staff.

Arthrex, Inc., 611316 (OH)

7-1-08 to 6-30-11, \$163,808.46

Action: Approve the redetermination as recommended by staff.

Mossy Nissan, Inc., 649555 (FH)

8-1-12 to 8-3-12, \$102,894.12

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

Aeropostale West, Inc., 649557 (OH)

11-1-11 to 11-30-11, \$105,301.92

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

OfficeMax North America, Inc., 649556 (OH)

4-1-12 to 6-30-12, \$260,645.00

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

Zappos.com, Inc., 644424 (OH)

4-1-09 to 11-1-09, \$531,569.92

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

Quidsi, Inc., 644420 (OH)

4-1-09 to 4-1-11, \$825,336.22

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

Aoptix Technologies, Inc., 553639 (GH)

7-1-07 to 9-30-10, \$111,574.42

Action: Approve the denial of claim for refund 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. 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 *Buena Vista Home Video, 632725 (OH)*; *The Disney Channel, 632726 (OH)*; *Buena Vista Television, 634714 (OH)*; and, *American Broadcasting Companies, Inc., 634718 (OH)*; the Board made the following orders:

Tuesday, January 15, 2013

Country Time R.V., Inc., 644432 (EH)

7-1-06 to 8-29-06, \$107,217.18

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

Dastigir G. Omar, 639448 (EH)

4-1-08 to 12-31-08, \$349,223.52

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

Buena Vista Home Video, 632725 (OH)

1-1-06 to 12-31-09, \$2,337,325.30

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

Fotokem Industries, Inc., 522700 (AC)

7-1-06 to 6-30-11, \$265,137.95

Action: Approve the refund as recommended by staff.

Fotokem Industries, Inc., 522771 (AC)

10-1-06 to 9-30-11, \$613,299.86

Action: Approve the refund as recommended by staff.

The Disney Channel, 632726 (OH)

1-1-06 to 12-31-09, \$409,724.95

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

Buena Vista Television, 634714 (OH)

1-1-06 to 12-31-09, \$262,232.16

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

American Broadcasting Companies, Inc., 634718 (OH)

1-1-06 to 12-31-09, \$233,444.76

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

Primary Color Systems Corp., 603638 (EA)

10-1-11 to 12-31-11, \$142,842.19

Action: Approve the refund as recommended by staff.

The Regents of The University of California, 629950 (FH)

1-1-07 to 12-31-10, \$1,521,907.16

Action: Approve the refund as recommended by staff.

Tuesday, January 15, 2013

Professional Hospital Supply, Inc., 601488 (EH)

4-1-09 to 9-30-11, \$131,120.00

Action: Approve the refund as recommended by staff.

Siliconix Incorporated, 552489 (GH)

7-1-07 to 9-30-10, \$285,317.32

Action: Approve the refund as recommended by staff.

KHS, a Division of Klochner KHS, 607815 (OH)

10-1-11 to 12-31-11, \$293,364.00

Action: Approve the refund as recommended by staff.

Rec Solar, Inc., 610912 (GH)

7-1-08 to 12-31-11, \$849,711.69

Action: Approve the refund as recommended by staff.

Verenium Corporation, 538744 (FH)

1-1-07 to 12-31-09, \$102,710.56

Action: Approve the refund as recommended by staff.

Tesoro Refining and Marketing Company, 478413 (OH)

10-1-05 to 12-31-08, \$1,109,450.94

Action: Approve the refund as recommended by staff.

Magnolia Hi-Fi, Inc., 629959 (OH)

7-6-08 to 9-30-11, \$461,244.29

Action: Approve the refund as recommended by staff.

Alstom Power, Inc., 606055 (OH)

10-1-11 to 12-31-11, \$239,906.00

Action: Approve the refund as recommended by staff.

Save Mart Supermarkets, 631021 (KH)

3-27-06 to 9-26-10, \$429,556.12

Action: Approve the refund as recommended by staff.

Polydyne, Inc., 589947 (OH)

10-1-06 to 9-30-09, \$107,378.08

Action: Approve the refund as recommended by staff.

Balboa Thrift & Loan Association, 607372 (FH)

10-1-11 to 3-31-12, \$109,066.00

Action: Approve the refund as recommended by staff.

Tuesday, January 15, 2013

Affymetrix, Inc., 607225 (GH)

4-1-09 to 3-31-11, \$242,537.91

Action: Approve the refund as recommended by staff.

Infor Global Solutions (MI), Inc., 562942 (OH)

1-1-07 to 12-31-10, \$346,569.41

Action: Approve the refund as recommended by staff.

American Stores Company, LLC, 559120 (OH)

7-1-09 to 12-31-09, \$136,562.79

Action: Approve the refund as recommended by staff.

American Towers, Inc., 607369 (OH)

1-1-11 to 9-30-11, \$188,058.00

Action: Approve the refund as recommended by staff.

Convenience Retailers, LLC, 603349 (CH)

5-1-08 to 1-29-09, \$697,045.25

Action: Approve the refund as recommended by staff.

Mission Federal Credit Union, 605544 (FH)

1-1-09 to 12-31-09, \$373,572.74

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,  
CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. 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 7.9 in *The Wine Group, LLC, 630084, 642704 (STF)*; the Board made the following orders:

Staples The Office Superstore, LLC, 570427 (STF)

6-1-06 to 4-30-09, \$214,908.30

Action: Approve the refund as recommended by staff.

The Wine Group, LLC, 630084, 642704 (STF)

7-1-12 to 8-31-12, \$536,404.30

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

Tuesday, January 15, 2013

**PROPERTY TAXES MATTER, CONSENT**

With respect to the Property Taxes Matters, Consent Agenda, upon 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:

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

Cricket Communications, Inc. (2762), 608381  
2007-2010, \$18,100,000.00 Unitary Escaped Assessment, \$3,040,000.00 Penalty, \$5,325,000.00 Interest

Action: Reduce the 2007-2010 Board-adopted escaped assessment by \$24,600,000.00 to a \$6,500,000.00 excessive assessment and abate the full penalty and interest on the escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**LEGAL APPEALS MATTER, ADJUDICATORY**

Ralph Louis Tocci, 460529, 468214 (CH)  
7-1-04 to 12-31-04, \$0.00 Claim for Refund  
1-1-05 to 6-30-07, \$23,187.50 Tax  
Considered by the Board: June 27, 2012  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Speaker: Ralph Louis Tocci, Taxpayer

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 claim and the petition be submitted for decision.

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

James A. Haverkamp, 550350  
2006, \$95.17 Interest  
Considered by the Board: November 14, 2012  
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 reversed the action of the Franchise Tax Board.

J.N.D. Thomas Company, Inc., 563994  
2006, \$47,038.01 Assessment  
Considered by the Board: November 14, 2012  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Tuesday, January 15, 2013

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 a decision modifying the action of the Franchise Tax Board.

William Trevithick, 531169

1988, \$66,564.49 Claim for Refund

Considered by the Board: October 25, 2011

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

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 adopted a decision sustaining the action of the Franchise Tax Board.

### **PROPERTY TAXES MATTER, ADJUDICATORY**

#### **Petition for Reassessment and Penalty Abatement on Private Railroad Car Tax**

CML Metals, Inc. (6522), 632212

2012, \$5,675,086.00

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be granted reducing the 2012 Board-adopted value to \$1,156,610 as recommended by staff.

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

#### **PROPERTY TAX MATTERS**

##### **Audits**

Pay-Less Cellular, Inc. (2683)

2009-2011, \$3,532,800.00 Excessive Assessments

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

Globalstar USA, LLC (2772)

2009-2011, \$840,000.00 Escaped Assessments, \$217,000.00 Penalties, \$454,200.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit escaped assessments, plus penalties and in-lieu interest, as recommended by staff.

Tuesday, January 15, 2013

**Unitary Land Escaped Assessment****Pacific Gas and Electric Company (0135)**

2011, \$33,511.00 Full Value

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment, plus applicable penalty and interest, as recommended by staff.

**Los Angeles SMSA Ltd. (2532)**

2009-2012, \$6,569,795 Full Value

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment, plus applicable penalty and interest, as recommended by staff.

**Cellco Partnership (2559)**

2012, \$547,104.00 Full Value

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment, plus applicable penalty and interest, as recommended by staff.

**AT&T Mobility, LLC (2606)**

2011, \$271,095.00 Full Value

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment, plus applicable penalty and interest, as recommended by staff.

**Sprint Telephony PCS, LP. (2720)**

2009-2012, \$878,872.00 Full Value

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment, plus applicable penalty and interest, as recommended by staff.

**MetroPCS Communications (2733)**

2009-2011, \$1,496,092.00 Full Value

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary land escaped assessment, plus applicable penalty and interest, as recommended by staff.

Tuesday, January 15, 2013

**Board Roll Change**

## 2012 Board Roll of State-Assessed Property

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2012 Board Rolls of State-Assessed Property as recommended by staff ([Exhibit 1.1](#)).

Exhibits to these minutes are incorporated by reference.

**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 *Mohammed Fard; Alexe's State Jewelry, Inc.; Adam F. Gad; Barbara J. Sears-Gad; Shahnaz Rehman Khan; Ghazi Abdul Rehman Khan; Linwood Lee Sawyer; Mary Ellen Sawyer; and, Rosa Veronica Villanueva*; as recommended by staff.

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

With respect to the Administrative Matters, Consent Agenda, the Board took action later in the day.

**ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS****Customer Services and Administrative Efficiency Committee**

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 Customer Services and Administrative Efficiency Committee report and the actions therein ([Exhibit 1.2](#)).

The Legislative Committee report and Business Taxes Committee report will be presented to the Board for consideration at a later date.

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

Cynthia Bridges, Executive Director, expressed sadness for the recent loss of two BOE employees, Rosaura Zuniga and Pamela Molina, and conveyed condolences to their families and coworkers. Mr. Horton added his sympathy and announced that the meeting will adjourn in their memory at the end of the day.

Cynthia Bridges, Executive Director, made introductory remarks requesting approval of nominees for the BOE Employee Recognition Award Program.

Action: (Motion expunged later in the day.)

Tuesday, January 15, 2013

**ADMINISTRATIVE SESSION****ADMINISTRATIVE MATTERS, CONSENT (CONTINUED)**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Runner, 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:

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 1.3](#)).

La Donna M. Cooper, Tax Technician, Sales and Use Tax Department, Culver City District Office  
Eileen Frutos (Amendment), Business Taxes Representative, Sales and Use Tax Department, Ventura District Office  
Frank J. Hunssinger, Business Taxes Specialist I, Sales and Use Tax Department, Out-of-State Chicago Office  
Kenneth L. Pape, Associate Tax Auditor, Sales and Use Tax Department, Out-of-State Houston Office  
Rudy Perez, Associate Tax Auditor, Sales and Use Tax Department, Norwalk Office  
Rosangela M. Rosenbach, Associate Tax Auditor, Sales and Use Tax Department, Culver City Office  
Linda S. Sexton, Business Taxes Representative, Sales and Use Tax Department, San Diego Office  
Henrique Solis, Account Clerk II, Imaging and Mail Processing Center Unit, Administration Department, Headquarters

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

Eric Steen, CROS Project Director, provided a report regarding the progress of the CROS project to replace BOE's two current tax legacy technology systems.

Randy Ferris, Chief Counsel, noted for the record a procedural error in approving the nominees for the BOE Employee Recognition Award Program, and stated that the item will be on a future agenda.

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 to approve the nominees for the BOE Employee Recognition Award Program be rescinded and expunged.

Tuesday, January 15, 2013

### Property and Special Taxes Deputy Director's Report

David Gau, Deputy Director, Property and Special Taxes Department, provided an update regarding the Fire Prevention Fee Program ([Exhibit 1.4](#)).

David Gau, Deputy Director, Property and Special Taxes Department, provided an update on efforts to define the Embedded Software Project goals and to identify the working group members. Mr. Gau referenced a written public comment provided by Larry Stone, Santa Clara County Assessor ([Exhibit 1.5](#)).

Speaker: Gina Rodriguez, Vice President of State Tax Policy, California Taxpayers Association

Ms. Yee directed staff, with respect to the development of current practices regarding the valuation of embedded software, to look at what the counties are doing on the local level, including the processes and considerations used to determine the decisions that were made; and, what can be borrowed from the State-Assessed Properties Division's process and conclusions.

### Administration Deputy Director's Report

Liz Houser, Deputy Director, Administration Department, provided an update on the Headquarters Facilities; and, provided information regarding the Governor's 2013/14 Budget.

The Board recessed at 5:25 p.m. and reconvened at 5:36 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

### FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD JANUARY 15, 2013

Lawrence A. Gruber, Jr., 598287  
2009, \$ \$1,313.25 Claim for Refund

For Appellant:

Waived Appearance

For Franchise Tax Board:

Nancy Parker, Tax Counsel

Craig Scott, Tax Counsel

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

Issue: Whether appellant has shown reasonable cause for a refund of the notice and demand (demand) penalty.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 1.6](#))

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 sustained the action of the Franchise Tax Board.

### FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JANUARY 15, 2013

Varuj, LLC, 538547 (EA)

Kassian, Inc., 538549 (EA)

Bistango-Irvine, 538551 (EA)

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

Tuesday, January 15, 2013

**LEGAL APPEALS MATTER, ADJUDICATORY**

Ralph Louis Tocci, 460529, 468214 (CH) (Continued)

7-1-04 to 12-31-04, \$0.00 Claim for Refund

1-1-05 to 6-30-07, \$23,187.50 Tax

Considered by the Board: June 27, 2012

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

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

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 5:40 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 5:56 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Mr. Horton announced the appointment of Brock Wimberley to the position of Chief, Internal Audit Division.

The Board adjourned at 5:57 p.m. in memory of:

Rosaura Zuniga, Tax Technician III, West Covina District Office, who passed away on Thursday, December 27, 2012, at the age of 46 years old, and who began her state service with the BOE in October 1998; and,

Pamela R. Molina, Tax Technician I, Fresno District Office, who passed away on Friday, December 28, 2012, at the age of 56 years old, and who began her state service with the Department of Industrial Relations as a seasonal employee in May 1977 and worked for the BOE for 20 years.

*The foregoing minutes are adopted by the Board on August 13, 2013.*

Note: The following matters were removed from the calendar prior to the meeting: *Loucas Savvas Kakoullis, 571124 (CH); Eren Niazi, 482301 (GH) Orange Tree Fresh Fruit & Nuts, Inc., 527196 (STF); Orange Tree Fresh Fruit & Nuts, Inc., 527198 (STF); and, Orange Tree Fresh Fruit & Nuts, Inc., 527202 (STF).*