

Wednesday, April 24, 2013

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

James U. Hannon and Sandra J. Riddle, 613264

2007, \$10,879.00 Assessment

2008, \$2,321.00 Assessment

2009, \$3,288.00 Assessment

2010, \$3,286.00 Assessment

For Appellants:

James Hannon, Taxpayer

Roger Serna, Representative

For Franchise Tax Board:

Jaclyn Appleby, Tax Counsel

Ronald Hofsdale, Tax Counsel

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

Issues: Whether appellants have shown error in the Franchise Tax Board's (respondent's) determination that rental real estate activity losses are passive losses.

Whether respondent's proposed assessment for the 2007 tax year is barred by the statute of limitations.

Appellant's Exhibit: California Tax Quickfinder® Handbook, page 23-3 ([Exhibit 4.1](#))

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.

Eddie Glass, 573366

2006, \$1,825.00 Tax, \$453.25 Late Filing Penalty

For Appellant:

Eddie Glass, Taxpayer

For Franchise Tax Board:

Marguerite Mosnier, Tax Counsel

Suzanne Small, Tax Counsel

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

Issues: Whether appellant has demonstrated error in the underlying assessment, which was based upon federal adjustments.

Whether appellant has shown reasonable cause for the abatement of the late filing penalty.

Whether the proposed assessment was timely.

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.

Wednesday, April 24, 2013

Haig Tacorian and Gilda Tacorian, 621172
2010, \$49,905.76 Claim for Refund
For Appellants:

Allen Ullman, Representative

Allan Vizvary, Representative

For Franchise Tax Board:

Marguerite Mosnier, Tax Counsel

Suzanne Small, Tax Counsel

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

Issue: Whether appellants have established reasonable cause for an abatement of the late payment penalty imposed under Revenue and Taxation Code (R&TC) section 19132 for the tax year 2010.

Appellant's Exhibit: Letter from IRS ([Exhibit 4.2](#))

Ms. Mandel referred to the September 19, 2012 report by the Treasury Inspector General for Tax Administration titled: *Penalty Abatement Procedures Should Be Applied Consistently to All Taxpayers and Should Encourage Voluntary Compliance*, Reference Number: 2012-40-113 ([Exhibit 4.3](#)).

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.

SC Brokers, Inc., 600519
2007, \$7,174.00 Tax

For Appellant:

Alvaro Bautista, Taxpayer

For Franchise Tax Board:

Ronald Hofsdale, Tax Counsel

Suzanne Small, Tax Counsel

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

Issue: Whether appellant satisfied its burden of proof for increasing its cost basis in a parcel of real property.

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

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 ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 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 11:54 a.m. and reconvened at 1:25 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARING

Russell E. Belttary, 484124 (UT)
10-16-07, \$115,500.00 Tax

For Petitioner:

Russell E. Belttary, Taxpayer

Thomas A. Alston, Representative

For Sales and Use Tax Department:

Erin Dendorfer, Tax Counsel

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

Wednesday, April 24, 2013

Issue: Whether petitioner's purchase and use of the vessel purchased on October 16, 2007, is subject to use tax.
 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 2:41 p.m. and reconvened at 2:53 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

PUBLIC HEARINGS

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

Ken Thompson, Chief, State-Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding presentations on the valuation of state-assessed properties.

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

Proposed Amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*

Lawrence Mendel, Tax Counsel III, Appeals Division, Legal Department, made introductory remarks regarding staff's request for adoption of proposed amendments to Regulation 1685.5 to account for the new registration requirements imposed by Assembly Bill No. 155 (Stats. 2011, ch. 313) and recent registration activities ([Exhibit 4.5](#)).

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

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the proposed amendments to Regulation 1685.5 as recommended by staff.

Mr. Runner requested an update for the next meeting on what the federal bill on Internet sales that recently moved out of the Senate would require of the State of California if it becomes enacted.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Karen D. Hulse, 458251 (EH)*; and, *Jose Agustin Fernandez, 549411, 553265 (AR)*.

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:

Jill Ellen Malone, 518599 (DF)

4-1-09 to 6-30-09, \$35,613.00 Claim for Refund

Action: Deny the Claim for Refund as recommended by the Appeals Division.

Wednesday, April 24, 2013

Juan Antonio Castillo Uribe, 569687 (AC)

10-1-06 to 9-30-09, \$14,232.21 Tax

Action: Redetermine as recommended by the Appeals Division.

Larry M. Bakman, 509062 (UT)

4-27-05, \$2,475.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Karen D. Hulse, 458251 (EH)

7-1-06 to 12-31-07, \$50,236.00 Tax, \$5,023.60 Late Payment Penalty

Action: The Board took no action.

Mohammed Anwar Nurhussien, 568054 (EA)

7-1-07 to 9-30-09, \$8,321.91 Tax, \$0.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Earlrite Massage Tables, Inc., 539013 (FH)

1-1-06 to 12-31-08, \$99,328.60 Tax

Action: Redetermine as recommended by the Appeals Division.

Jose Agustin Fernandez, 549411, 553265 (AR)

1-1-06 to 6-30-07, \$44,488.91 Tax, \$4,471.47 Negligence Penalty

7-1-07 to 5-30-10, \$57,928.69 Tax, \$5,833.79 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. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Analytical Environmental Services, 566054

2005, \$104,923.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Antonio Arreguin, 569055

2008, \$1,965.00 Assessment

Action: Modified the action as conceded by the Franchise Tax Board.

Bryan G. Bordeaux and Lorri Bordeaux, 571434

2009, \$3,452.43 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Wednesday, April 24, 2013

Kenneth R. Erickson (Dec'd) and April A. Erickson, 556308
2006, \$535.00 Tax, \$100.00 Late Filing Penalty
Action: Sustain the action of the Franchise Tax Board.

S.E. Fisk and Sandy K. Fisk, 561277
2004, \$14,587.00 Tax, \$2,917.40 Accuracy-Related Penalty
Action: Sustain the action of the Franchise Tax Board.

Nick Flores, 569886
2008, \$935.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Zuo Lun Hua, 575053
2007, \$150.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Mahmood Karimi Manesh and Carelle L. Karimimanesh, 567197
2007, \$201,348.00 Tax, \$40,269.60 Accuracy Related Penalty
Action: Modified the action as conceded by the Franchise Tax Board.

Douglas H. Murray and Karen L. Murray, 573107
2007, \$530.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Frank Ornellas, 588398
2007, \$939.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Max D. Price, 574777
2009, \$1,430.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Lisa Seppi, 588501
2005, \$201.35 Assessment
Action: Modify the action as conceded by the Franchise Tax Board.

Howard N. Solomon, 536985
2006, \$1,758 Tax
Action: Sustain the action of the Franchise Tax Board.

Daniel Thiel, 593704
2009, \$45.50 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Wednesday, April 24, 2013

Hilaria Thomas, 557470

2008, \$1,322.88 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

David Woodward, 561825

2006, \$13,277 Assessment

Action: Modify the action as conceded by the Franchise Tax Board.

Scott Grossman, 566834

2007, \$6,817 Assessment

Action: Deny the petition for rehearing.

Howard B. Han and Seung W. Han, 577081

2006, \$78,376 Tax

Action: Deny the petition for rehearing.

Erik L. Hayes, 572579

2007, \$19,265.00 Tax, \$4,816.25 Late Filing Penalty, \$4,816.25 Demand Penalty

Carol Grant, 573205

2008, \$1,584 Tax, \$396 Late Filing Penalty, \$396 Demand Penalty

Eldo Klingenberg, 573235

2008, \$999.00 Tax, \$249.75 Late Filing Penalty, \$249.75 Demand Penalty

Action: Deny the petition for rehearing and affirm the frivolous appeal penalties in the following amounts: \$750 to *Erik Hayes, 572579*; \$5,000 to *Carol Grant, 573205*; and, \$5,000 to *Eldo Klingenberg, 573235*.

Sheila Kennedy, 530951

2007, \$791.00 Tax, \$197.75 Late Filing Penalty, \$239.75 Demand Penalty

Action: Deny the petition for rehearing and affirm the frivolous appeal penalty in the amount of \$750.00.

Douglas Samski, 559019

2008, \$1,131.00, \$282.75 Late Filing Penalty, \$282.75 Demand Penalty

Action: Deny the petition for rehearing and affirm the frivolous appeal penalty in the amount of \$2,500.00.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties, Denials of Claims for Refund, and Relief of one day interest, 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 *Business Objects Americas, 510427 (GH)*; the Board made the following orders:

Wednesday, April 24, 2013

Automobile Club of Southern California, 460251 (EA)

1-1-04 to 12-31-06, \$315,864.48

Action: Approve the redetermination as recommended by staff.

Business Objects Americas, 510427 (GH)

4-1-03 to 9-30-06, \$620,871.07

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

Wm. D. Young & Sons, Inc., 626106 (EH)

4-1-04 to 6-30-04, \$294,418.65

Action: Approve the redetermination as recommended by staff.

Renee L. Carey, 519309 (KH)

7-1-07 to 12-20-07, \$318,255.90

Action: Approve the redetermination as recommended by staff.

Universal Kitchen Doors, Inc., 507859 (EH)

10-1-05 to 3-31-09, \$309,063.20

Action: Approve the redetermination as recommended by staff.

South Valley Materials, Inc., 458615 (OH)

1-1-04 to 12-31-06, \$185,345.10

Action: Approve the redetermination as recommended by staff.

One & Company Design, Inc., 550591 (BH)

1-1-05 to 6-30-08, \$103,292.98

Action: Approve the redetermination as recommended by staff.

Del Taco, LLC, 702775 (EA)

7-1-12 to 9-30-12, \$233,466.30

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

Finance and Thrift Company, 488217 (DF)

1-1-06 to 12-31-08, \$348,589.49

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

Atascadero Glass, Inc., 711517 (GH)

7-1-12 to 9-30-12, \$106.59 Interest Adjustment

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

Ushio America, Inc., 711523 (EA)

10-1-10 to 12-31-10, \$423.57 Interest Adjustment

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

Wednesday, April 24, 2013

West Coast Medianews, LLC, 711520 (KH)

1-1-12 to 3-31-12, \$100.24 Interest Adjustment

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

B. W. Beverage Corporation, 711519 (AS)

7-1-12 to 9-30-12, \$1,172.20 Interest Adjustment

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

Wireless Advocates, LLC, 711522 (OH)

7-1-12 to 9-30-12, \$376.11 Interest Adjustment

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

Martin Auto Color, Inc., 711516 (AC)

1-1-12 to 3-31-12, \$353.46 Interest Adjustment

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

Laurel M. Hirschmann, 711521 (AS)

4-1-12 to 6-30-12, \$16.52 Interest Adjustment

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

Emperor Supply, Inc., 711518 (CH)

10-1-12 to 10-31-12, \$170.47 Interest Adjustment

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

Bill Eads RV's, Inc., 711515 (KH)

7-1-12 to 9-30-12, \$183.82 Interest Adjustment

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

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Disney Worldwide Services, 692585 (OH)*; and, *Buena Vista International, Inc., 690079 (OH)*; the Board made the following orders:

Julian & Kayla's, Inc., 701941 (FH)

10-1-07 to 2-20-08, \$142,306.76

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

Hisamitsu America, Inc., 594095 (AS)

10-1-09 to 9-30-11, \$164,447.66

Action: Approve the refund as recommended by staff.

Wednesday, April 24, 2013

Disney Worldwide Services, 692585 (OH)

1-1-06 to 12-31-09, \$749,600.26

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

Dako North America, Inc., 568552 (GH)

10-1-07 to 12-31-10, \$1,325,937.19

Action: Approve the refund as recommended by staff.

Trojan Petroleum, Inc., 595721 (GH)

12-1-08 to 6-30-11, \$634,821.51

Action: Approve the refund as recommended by staff.

Silvas Oil Company, Inc., 589364 (AR)

1-1-09 to 3-31-12, \$228,164.96

Action: Approve the refund as recommended by staff.

Karen Dale Caillier, 678103 (AR)

1-1-11 to 12-31-11, \$215,303.20

Action: Approve the refund as recommended by staff.

Viasat, Inc., 700767 (FH)

10-1-08 to 9-30-11, \$166,280.80

Action: Approve the refund as recommended by staff.

Bank of the West, 561618 (CH)

10-1-07 to 9-30-10, \$6,749,334.31

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 627527 (KH)

4-1-12 to 9-30-12, \$172,536.00

Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 705979 (OH)

6-1-12 to 11-1-12, \$870,111.73

Action: Approve the refund as recommended by staff.

Verizon Business Purchasing, LLC, 561829 (OH)

1-1-08 to 12-31-08, \$168,883.71

Action: Approve the refund as recommended by staff.

Miramax Film Corporation, 710920 (OH)

10-1-04 to 12-31-04, \$140,580.98

Action: Approve the refund as recommended by staff.

Wednesday, April 24, 2013

Nissan-Infiniti, Lt., 568189 (OH)
1-1-08 to 9-30-09, \$3,847,203.42
Action: Approve the refund as recommended by staff.

Misys International Banking Systems, Inc., 625410 (OH)
10-1-09 to 6-30-11, \$125,311.98
Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 632227 (OH)
1-1-09 to 6-30-11, \$220,153.00
Action: Approve the refund as recommended by staff.

GTE Communication Systems Corporation, 710865 (AP)
7-1-04 to 3-31-99, \$3,546,656.98
Action: Approve the refund as recommended by staff.

Ameron International Corporation, 522665 (EH)
1-1-07 to 12-31-07, \$174,422.25
Action: Approve the refund as recommended by staff.

Oracle America, Inc., 697187 (BH)
10-1-98 to 12-31-01, \$3,236,505.07
Action: Approve the refund as recommended by staff.

Logicalis, Inc., 554413 (OH)
1-1-07 to 12-31-08, \$932,855.65
Action: Approve the refund as recommended by staff.

Finance and Thrift Company, 488217 (DF)
1-1-06 to 12-31-08, \$147,469.09
Action: Approve the refund as recommended by staff.

Uag Los Gatos, Inc., 531128 (GH)
1-1-07 to 3-31-12, \$178,205.52
Action: Approve the refund as recommended by staff.

Medcal Sales, LLC, 593651 (EH)
4-1-11 to 6-30-11, \$666,440.93
Action: Approve the refund as recommended by staff.

Uag Stevens Creek II, Inc., 531103 (GH)
1-1-07 to 3-31-12, \$191,147.83
Action: Approve the refund as recommended by staff.

Wednesday, April 24, 2013

Burlington Coat Factory of California, LLC, 534492 (OH)

10-1-07 to 9-30-10, \$112,241.73

Action: Approve the refund as recommended by staff.

Buena Vista International, Inc., 690079 (OH)

1-1-08 to 12-31-09, \$910,643.44

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

Molina Healthcare, Inc., 552829 (EA)

1-1-07 to 12-31-10, \$420,389.80

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATION AND RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Redetermination and Relief of Penalties, 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 *Partnership HealthPlan of California, 636876; Community Health Group Partnership Plan, 640300; MillerCoors, LLC, 688008; and, AXA Equitable Life Insurance Company, 715366*; the Board made the following orders:

Tesoro Refining and Marketing Company, 560281 (STF)

4-1-05 to 3-31-08, \$179,755.20

Action: Approve the redetermination as recommended by staff.

Partnership HealthPlan of California, 636876 (STF)

7-1-11 to 9-30-11, \$383,486.70

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

Community Health Group Partnership Plan, 640300 (STF)

4-1-11 to 6-30-11, \$106,183.40

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

MillerCoors, LLC, 688008 (STF)

6-1-12 to 6-30-12, \$235,339.03

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

Wednesday, April 24, 2013

AXA Equitable Life Insurance Company, 715366 (STF)

1-1-11 to 3-31-12, \$318,592.50

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

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

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, 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 made the following order:

Northwestern Mutual Life Insurance Company, 586977 (STF)

1-1-10 to 12-31-10, \$439,006.00

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

PUBLIC COMMENT

Speaker: James J. Martin, 574254, Taxpayer ([Exhibit 4.6](#))

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

Cam Painting, Inc., 531722

2004, \$89,570.50 Assessment

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. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision sustaining the modified action of the Franchise Tax Board.

Daniel R. Marcotte, 589131

2006, \$31,470.00 Assessment

Considered by the Board: July 24, 2012

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

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

James J. Martin, 574254

2005, \$29,856.00 Assessment

Considered by the Board: July 24, 2012

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

Wednesday, April 24, 2013

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

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 *Robert Lee Borden; Giacomo Jack Pietro Campagna; Monique Marie Cook; Bassem Youssef Ghobrial; Khosrow Hosseini; Carmen L. Jessup; Armenak Lakisyan; Ock Ja Cho Lee; Dimas Macias, Jr. and Dolores Macias; Cynthia Jo Russell;* and, *Christopher C. Wolford and Sierra Machinery Services, Inc.*; as recommended by staff.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Cynthia Bridges, Executive Director, presented a proposal for an alternate Board meeting site that would substitute the September 2013 Culver City Board meeting with a Board meeting in San Francisco, California ([Exhibit 4.7](#)).

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

Cynthia Bridges, Executive Director, presented a proposal to add the annual meeting of the Board with county assessors (annual Board/Assessors' meeting) to the 2013 Board meeting calendar for October 22, 2013 in Redding, California ([Exhibit 4.8](#)).

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the annual Board/Assessors' meeting date and location as recommended by staff.

Ms. Yee requested staff to keep Members informed of costs associated with holding Board Meetings in San Francisco, including group rate hotel accommodations.

Cynthia Bridges, Executive Director, provided an update regarding the Fire Prevention Fee Program.

Ms. Yee requested an update on pending bills related to the fire prevention fee.

Wednesday, April 24, 2013

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.

Mr. Runner requested a report on potential staffing hurdles for the more challenging temporary positions associated with the CROS Project and what the solutions might be.

Administration Deputy Director's Report

Liz Houser, Deputy Director, Administration Department, introduced Edna Murphy, Chief, Financial Management Division, Administration Department, who made introductory remarks regarding the 2013/14 Budget Change Proposal (BCP) generated as part of the May revise process: *Hazardous Waste Control Account Fee Reform*, which requests resources to address the proposed statutory changes by the Department of Toxic Substances Control to the Hazardous Waste Program ([Exhibit 4.9](#)).

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board approved the BCP *Hazardous Waste Control Account Fee Reform*, as amended.

The Board directed staff to draft language that codifies assurances that the BOE will have adequate time to educate and notify tax and fee payers of new rates that are required by law.

Ms. Yee requested that staff bring this back with the two DTSC Programs, to the extent that they become public, at the next meeting.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD APRIL 24, 2013

James U. Hannon and Sandra J. Riddle, 613264

Final 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.

Edie Glass, 573366

Final 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 and directed staff to inform the taxpayer of the Offer in Compromise Program.

Haig Tacorian and Gilda Tacorian, 621172

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

Wednesday, April 24, 2013

Michael Zapara and Gina Zapara, 252128

1993, \$32,027.00 Assessment

1994, \$1,048.00 Assessment

1995, \$4,416.00 Assessment

For Appellants:

Waived Appearance

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Suzanne Small, Tax Counsel

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

Issues: Whether appellants have demonstrated error in the proposed assessment which is based on a federal assessment.

Whether there are court decisions or proceedings precluding the assessment of additional taxes for the tax years at issue.

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

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD APRIL 24, 2013

Russell E. Belttary, 484124 (UT)

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

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

KHN, Inc., 457530 (FH)

7-1-04 to 6-30-07, \$11,770.81 Tax, \$0.00 Negligence Penalty

For Petitioner:

Waived Appearance

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issue: Whether adjustments are warranted to the audited understatement of reported taxable sales.

Jeff Angeja, Tax Counsel IV, Appeals Division, Legal Department, advised of the revised recommendation of the Appeals Division to delete the negligence penalty.

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 in accordance with the revised recommendation of the Appeals Division.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 4:03 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Wednesday, April 24, 2013

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 4:06 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

The Board recessed at 4:07 p.m.

The foregoing minutes are adopted by the Board on September 10, 2013.

Note: The following matters were removed from the calendar prior to the meeting: *Vincent J. Maranto and Susan L. Maranto, 612999; Cheryl Martin, 595044; Amihan A. Evidente, 593648; and, Irvine Photo Graphics, Inc., 557007 (EA).*

Thursday, April 25, 2013

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:38 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 4.10](#))

Mr. Horton directed staff to work with the author of AB 919 and bring the bill back for Board position.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 9:43 a.m. and reconvened at 11:35 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CHIEF COUNSEL MATTERS

OTHER CHIEF COUNSEL MATTERS

Request for Authorization to file Amicus Curiae Brief: *EHP Glendale, LLC, and Eagle Hospitality Properties Trust, Inc. v. County of Los Angeles, Court of Appeal, Second Appellate District, Div. Eight, Case No. B 244494 (Los Angeles County Superior Court Case No. BC 385925)*

Richard Moon, Tax Counsel IV, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to file amicus curiae brief that explains and clarifies Assessors' Handbook section 502 guidance on application of the income approach to value in local property tax cases where nontaxable assets have increased the property's gross operating income ([Exhibit 4.11](#)).

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 authorized the filing of amicus curiae brief as recommended by staff.

Mr. Horton directed staff to monitor the court case in this matter and minimize the need for future amicus curiae briefs to further clarify this issue.

Exhibits to these minutes are incorporated by reference.

SALES AND USE TAX APPEALS HEARINGS

Blue Baroness, LLC, 519591 (UT)
10-27-06, \$66,595.00 Tax

For Petitioner:

Tammy Ross-Stern, Representative
S. Roger Rombro, Attorney

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

Thursday, April 25, 2013

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

Issue: Whether petitioner timely elected to pay its use tax liability based on fair rental value of the vessel.

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.

Deanna Lewis, 510327 (AA)

7-1-07 to 5-15-08, \$44,165.00 Tax, \$4,113.10 Late Payment Penalty, \$303.40 Finality Penalty
For Taxpayer: Deanna Lewis, Taxpayer

For Sales and Use Tax Department: Pamela Mash, Tax Counsel

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

Issue: Whether taxpayer is personally liable as a responsible person for the unpaid liabilities of Gold Coast Associates, Inc. pursuant to Revenue and Taxation Code section 6829.

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

The Board recessed at 12:38 p.m. and reconvened at 1:04 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

ADMINISTRATIVE SESSION

ADOPTION OF BOARD COMMITTEE REPORT AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee

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 Legislative Committee report and the actions therein as amended ([Exhibit 4.12](#)).

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD APRIL 25, 2013

Blue Baroness, LLC, 519591 (UT)

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.

Deanna Lewis, 510327 (AA)

Final Action: Upon 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 ordered that the last quarter liability be relieved and that otherwise no further adjustment be made in the administrative protest as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise program and of payment options.

Thursday, April 25, 2013

Jeffrey Lloyd Macy, 556663 (EH)

8-23-07, \$402.00 Tax

For Petitioner:

Waived Appearance

For Sales and Use Tax Department:

Kevin Smith, Tax Counsel

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

Issues: Whether the Notice of Determination was timely issued.

Whether petitioner owes use tax on the storage, use, or other consumption of the motorcycle kits imported from China, and, if so, whether the use tax liability was discharged in petitioner's personal bankruptcy.

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

The Board adjourned at 1:12 p.m. in memory of Jeffrey Reynolds, who passed away on Sunday, March 31, 2013, at age 70, of lung cancer. Jeff retired from state service in 1999, as Chief of the Research and Statistics Division, after 30 years with the Board of Equalization, returning as a retired annuitant from 1999 to 2002. He is survived by his wife Judy, son David and daughter Sharon.

The foregoing minutes are adopted by the Board on September 10, 2013.

Note: The following matter was removed from the calendar prior to the meeting: *Elizabeth Shutters, Inc., 538185 (EH)*.