

**Monday, June 25, 2012**

The Board met at its offices at 450 N Street, Sacramento, at 10:04 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.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 10:05 a.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 personnel matters (Gov. Code § 11126(a)).

The Board recessed at 11:10 a.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

The Board recessed at 11:11 a.m.

*The foregoing minutes are adopted by the Board on December 19, 2012.*

Tuesday, June 26, 2012

The Board met at its offices at 450 N Street, Sacramento, at 11:33 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 HEARING**

Henry F. Lenartz and Nona M. Lenartz, 524571

2004, \$60,812 Assessment

For Appellants:

Michael Lenartz, Representative

For Franchise Tax Board:

Ann Hodges, Tax Counsel

Ting Lee, Auditor

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

Issues: Whether appellants' stock met the "active business requirements" of Revenue and Taxation Code (R&TC) section 18152.5, such that appellants qualify for the 50 percent exclusion from gain on the sale of "qualified small business stock" (hereinafter sometimes "QSBS") under R&TC section 18152.5.

Whether appellants' stock met the "active business requirements" of R&TC section 18152.5, such that appellants qualify for the deferral of gain on the sale of "qualified small business stock" under R&TC section 18038.5.

Whether the Board has jurisdiction to consider the constitutionality of R&TC sections 18152.5 and 18038.5 and, if so, whether the statutes violate the Commerce Clause of the United States Constitution.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 6.1](#))

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.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 12:47 p.m. and reconvened at 2:07 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

### **PUBLIC HEARINGS**

#### **Business Taxpayers' Bill of Rights Hearings**

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers' Bill of Rights hearings. Individuals have the opportunity to present ideas, concerns, and recommendations regarding legislation, the quality of agency services, and other issues related to the Board's administration of its tax programs, including sales and use taxes, environmental fees, fuel taxes, and excise taxes, and any problems identified in the Taxpayers' Rights Advocate's [Annual Report](#).

Speakers: Jesse W. McClellan, Partner, McClellan Davis LLC, Associated Sales Tax Consultants

Myron Sidie, President, Faces, Inc.

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**Property Taxpayers' Bill of Rights Hearings**

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Property Taxpayers' Bill of Rights hearings. Individuals have the opportunity to present their ideas, concerns, and recommendations regarding legislation, the quality of agency services, and other issues related to the Board's administration of its tax programs, including state and county property tax programs, and any problems identified in the Taxpayers' Rights Advocate's [Annual Report](#).

Speakers: Joel Butler, Yolo County Assessor  
Kathleen Kelleher, Sacramento County Assessor

**Proposed adoption of amendments to Regulation 1618, *United States Government Supply Contracts***

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for adoption of the proposed amendments to regulation to Regulation 1618, which make the regulation consistent with the Federal Acquisition Regulation (FAR) and clarify the requirements for sales for resale to the United States ([Exhibit 6.2](#)).

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

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

**LEGAL APPEALS MATTERS, CONSENT**

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:

Kingdom Holdings, LLC, 464450, 535888 (EA)

2-1-05 to 12-31-07, \$12,177.82 Tax

Action: No adjustment be made in the administrative protest and the claim for refund be denied as recommended by the Appeals Division.

Hue V. Nguyen, 512848 (CH)

7-1-06 to 6-30-09, \$14,823.27 Tax, \$1,482.35 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Julie Trinh To, 528697 (CH)

4-1-07 to 9-30-09, \$6,696.01 Tax, \$669.63 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Manjit Kumar, 605920 (ET)

January 20, 2012, \$178.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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Vu Haduong, 605941 (ET)

January 31, 2012, \$26.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Mohinder Singh Aulakh and Hardip Kaur Aulakh, 607222 (ET)

February 14, 2012, \$202.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Ms. Steel requested a study for possible policy change with respect to 6015 retailers where catering houses would collect the tax, rather than catering/food trucks.

Ms. Yee requested staff to provide outreach to the catering/food truck industry, especially when English is not the primary language of the business owner or representative.

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

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

James E. Butler, 492945

2006, \$1,206.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Robin Beale Cameron, 552840

2006, \$2,676.67 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

James D. Crawford, 550717

2007, \$943.00 Tax

Action: Sustain the action of the Franchise Tax Board.

DF &amp; RW, Inc., 563141

2007, \$25,915.00 Claim for Refund

2008, \$29,465.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Donald Ferris, 559100

2008, \$663.00 Tax, \$165.75 Late Filing Penalty, \$165.75 Notice and Demand Penalty, \$113.00 Filing Enforcement Fee

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

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Inja Han, 535228

1997, \$6,537.00 Tax, \$2,033.60 Post Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Hiyasmin Harper, 569284

2007, \$470.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Mark E. Holm, 554215

2007, \$539.00 Tax, \$134.75 Late Filing Penalty, \$134.75 Demand Penalty, \$113.00 Filing Enforcement Fee

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

Janice Tickner Leonard, 515738

2006, \$2,366 Assessment

Action: Sustain the action of the Franchise Tax Board.

Kien D. Nguyen, 550763

2005, \$19,840.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Julie A. Smith, 560396

2003, \$10,023.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Guadalupe Isabel Vollowitz, 577721

2008, \$1,368.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Williams-Sonoma, Inc. & Subsidiaries, 519857

2002, \$42,499.00 Claim for Refund

2003, \$83,969.00 Claim for Refund

2004, \$37,792.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Justin Wilson, 550371

2006, \$3,454.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Fariba Zaeni, 575031

2007, \$325.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Kamleshwar C. Gunsagar and Anita Gunsagar, 484764  
2001, \$72,369.00 Tax, \$18,092.25 Failure to Furnish Information Penalty, \$4,379.60 Proposed  
Post-Amnesty Penalty  
2003, \$53,370.00 Tax, \$13,342.50 Failure to Furnish Information Penalty  
Action: Deny the petition for rehearing.

Reyad Sarraj and Nouzat Kanbar, 495511  
2003, \$18,009.00 Tax, \$3,601.80 Accuracy-Related Penalty  
Action: Deny the petition for rehearing.

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

With respect to the Sales and Use Tax Matters, Redeterminations 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, Ms. Mandel not participating in accordance with Government Code section 87105 in *Cellco Partnership, 493217 (OH)*; the Board made the following orders:

VF Imagewear (West), Inc., 576306 (OH)  
1-1-07 to 12-31-09, \$178,371.07  
Action: Approve the redetermination as recommended by staff.

Goosebumps, LLC, 459822 (GH)  
10-1-03 to 9-30-06, \$808,407.50  
Action: Approve the redetermination as recommended by staff.

Nissan Motor Acceptance Corporation, 531176 (OH)  
1-1-09 to 3-31-10, \$2,313,949.92  
Action: Approve the denial of claim for refund as recommended by staff.

Toro Petroleum Corporation, 569989 (GH)  
1-1-09 to 12-31-10, \$329,831.38  
Action: Approve the denial of claim for refund as recommended by staff.

Hyundai Capital America, 539349 (EA)  
4-1-07 to 12-31-10, \$413,229.45  
Action: Approve the denial of claim for refund as recommended by staff.

KCI USA, Inc., 459612 (OH)  
4-1-05 to 12-31-07, \$120,850.10  
Action: Approve the denial of claim for refund as recommended by staff.

Bloomberg, LP, 602935 (OH)  
1-1-06 to 12-31-07, \$89,715.00  
Action: Approve the denial of claim for refund as recommended by staff.

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Cellco Partnership, 493217 (OH)

7-1-04 to 9-30-10, \$1,631,156.72

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

Oracle USA, Inc., 539350 (CH)

7-1-04 to 2-14-10, \$1,120,144.76

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. 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 *Cellco Partnership, 493217 (OH)*, the Board made the following orders:

Victor Sampson, 510321 (AC)

1-1-95 to 3-31-98, \$384,634.92

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

Nhon V. Ha, 606428 (CH)

1-1-05 to 12-31-07, \$110,395.50

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

Saeed Shadravan, 521439 (AA)

7-1-02 to 12-31-08, \$581,716.14

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

Nissan Motor Acceptance Corporation, 531176 (OH)

1-1-09 to 3-31-10, \$3,425,697.80

Action: Approve the refund as recommended by staff.

Toro Petroleum Corporation, 569989 (GH)

1-1-09 to 12-31-10, \$2,120,629.64

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 567530 (BH)

1-1-03 to 6-30-10, \$179,308.75

Action: Approve the refund as recommended by staff.

Vanderbeek Motors, Inc., 553177 (KH)

7-1-07 to 12-31-10, \$226,190.81

Action: Approve the refund as recommended by staff.

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Western Digital Technologies, Inc., 605744 (EA)

12-26-09 to 7-1-11, \$197,925.47

Action: Approve the refund as recommended by staff.

Hyundai Capital America, 539349 (EA)

4-1-07 to 12-31-10, \$1,082,237.94

Action: Approve the refund as recommended by staff.

CEC Entertainment, Inc., 524918 (OH)

1-1-07 to 12-31-09, \$116,829.50

Action: Approve the refund as recommended by staff.

KCI USA, Inc., 459612 (OH)

4-1-05 to 12-31-07, \$329,477.68

Action: Approve the refund as recommended by staff.

Bloomberg, LP, 602935 (OH)

1-1-06 to 12-31-07, \$181,998.75

Action: Approve the refund as recommended by staff.

Ivy Hill Corporation, 531331 (OH)

1-1-07 to 4-8-09, \$570,100.61

Action: Approve the refund as recommended by staff.

Earnhardt Aviation, LLC, 595083 (UT)

1-5-11 to 1-5-11, \$231,000.00

Action: Approve the refund as recommended by staff.

Westinghouse Electric Company, LLC, 531012 (OH)

10-1-07 to 9-30-08, \$379,454.87

Action: Approve the refund as recommended by staff.

Cellco Partnership, 493217 (OH)

7-1-04 to 9-30-10, \$3,714,067.09

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

Sam International Information Technology, Inc., 536225 (GH)

1-1-08 to 3-31-08, \$102,097.85

Action: Approve the refund as recommended by staff.

Vision Advertising, Inc., 496576 (AS)

4-1-06 to 6-30-09, \$212,602.56

Action: Approve the refund as recommended by staff.

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Sierra Central Credit Union, 594076 (KH)

10-1-09 to 6-30-11, \$339,417.18

Action: Approve the refund as recommended by staff.

International Communications, Inc., 486228 (AA)

1-1-08 to 6-30-08, \$407,784.48

Action: Approve the refund as recommended by staff.

Applied Aerospace Structures Corporation, 606063 (KH)

10-1-04 to 9-30-07, \$117,933.33

Action: Approve the refund as recommended by staff.

Oracle USA, Inc., 539350 (CH)

7-1-04 to 2-14-10, \$1,628,258.56

Action: Approve the refund as recommended by staff.

Family Products, LLC, 604034 (AC)

7-1-05 to 3-31-09, \$328,018.56

Action: Approve the refund as recommended by staff.

Verint Americas, Inc., 589721 (OH)

7-1-06 to 6-30-10, \$149,357.18

Action: Approve the refund as recommended by staff.

Premier Auto Credit, 466582 (AC)

7-1-05 to 3-31-10, \$419,773.14

Action: Approve the refund as recommended by staff.

ATS Automation Tooling System, Inc., 578096 (OH)

1-1-11 to 3-31-11, \$103,679.91

Action: Approve the refund as recommended by staff.

Summit Entertainment, LLC, 593637 (AS)

4-1-08 to 12-31-08, \$104,600.45

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 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:

Blue Cross of California PTN Plan, 604898 (ET)

1-1-09 to 12-31-09, \$633,307.50

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**

Eric Anthony Guidice, 380212 (ET)

6-1-00 to 11-30-05, \$107,718.67 Tax, \$8,030.29 Failure to File Penalty

Considered by the Board: February 1, 2012

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

Speaker: Eric Anthony Guidice, Taxpayer  
James Han, CPA, Representative, Total Sales Tax Solutions

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 until later in the day.

Malvinder Sonny Matharu, 515190 (MT)

7-1-06 to 12-31-08, \$14,065.97 Fees

Considered by the Board: February 1, 2012

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

Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Yee. Ms. Mandel withdrew her motion.

The Board deferred consideration of the matter to a later date to allow verification of a signature.

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

Reginald D. Davis and Rebecca J. Joslin-Davis, 534788

2006, \$16,817.25 Claim for Refund

Considered by the Board: Waived Appearance

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

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

**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE****PROPERTY TAX MATTERS****Board Roll Changes**

2008, 2009, 2010 and 2011 State-Assessed Property Rolls

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 2008, 2009, 2010 and 2011 Board Rolls of State-Assessed Property as recommended by staff ([Exhibit 6.3](#)).

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**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 *David Paul Curtis; Joan M. Dandoy; Harry Fred Koelling; Kuo Tai Lei; Samer Naim Musharbash; Jacob Peter Schildgen; Gloria Lynn Stoddard;* and, *Martin Bryce Wolter;* as recommended by staff.

**LOCAL TAX REALLOCATION MATTERS**

Cities of Anaheim, Antioch, Brea, Chula Vista, Concord, Corona, El Cajon, Escondido, Fairfield, Fresno, Modesto, Oceanside, Pomona, Redding, Richmond, Riverside, Roseville, Sacramento, San Bernardino, San Diego, San Jose, San Leandro, Santa Ana, Santa Clara, Santa Clarita, Santa Rosa, Simi Valley, Stockton, Tustin, Vallejo, and County of Sacramento, 510883, 510895, 511174, 511175, 511178, 511193, 511194, 511196, 511456, 511627

10-1-90 to 9-20-99, \$1,014,951 Tax

Considered by the Board: Appearance Waived

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 denied as recommended by the Appeals Division.

The Board recessed at 3:11 p.m. and reconvened at 3:21 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Eric Anthony Guidice, 380212 (ET) (Continued)

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.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD JUNE 26, 2012**

Henry F. Lenartz and Nona M. Lenartz, 524571

Final 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.

Tuesday, June 26, 2012

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
JUNE 26, 2012**

Rajesh Prakash Sharma and Zarina Ali Sharma, 267189 (KH)

7-1-00 to 6-30-03, \$92,385.97 Tax, \$9,780.21 Negligence Penalty

For Petitioners: 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 adjustments are warranted to the amount of unreported taxable store sales.

Whether the amount of unreported gas sales is excessive.

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. The Board directed staff to inform the taxpayer of the Offer in Compromise Program.

Bruce Sam Chhuth and Bopha Tep, 401822, 420939 (KH)

4-1-03 to 6-30-04, \$47,881.75 Tax, \$4,804.16 Negligence Penalty

7-1-04 to 11-13-06, \$89,346.05 Tax, \$8,964.45 Negligence Penalty

For Petitioners: 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 adjustments are warranted to the audited understatement of fuel sales.

Whether adjustments are warranted to the audited understatement of reported taxable mini-mart sales.

Whether petitioner was negligent.

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.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 3:52 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

**CLOSED SESSION**

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

The Board recessed at 4:07 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

**Tuesday, June 26, 2012**

The Board recessed at 4:09 p.m. in memory of Jonathan (Jon) Alan Nakanishi, Attorney and candidate for Lassen County Superior Court judge, who passed away Thursday, June 21, 2012, at age 42. Jon was a husband and father of three daughters, and the son of Sue and Lodi City Councilman Alan Nakanishi.

*The foregoing minutes are adopted by the Board on December 19, 2012.*

Note: The following matter was removed from the calendar prior to the meeting: *Point of Contact, Inc., 494400 (CH)*.

**Wednesday, June 27, 2012**

The Board met at its offices at 450 N Street, Sacramento, at 9:35 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.

### **SPECIAL PRESENTATION**

#### **Presentation of Board Resolution to Jonathan (Jon) Alan Nakanishi (Deceased)**

On behalf of the Board, Mr. Horton presented a Board Resolution in memory of Jonathan (Jon) Alan Nakanishi, Attorney and candidate for Lassen County Superior Court judge, who passed away Thursday, June 21, 2012, at age 42. Joann Richmond, Chief, Board Proceedings Division, read the resolution into the record ([Exhibit 6.4](#)).

Exhibits to these minutes are incorporated by reference.

### **SALES AND USE TAX APPEALS HEARINGS**

Ralph Louis Tocci, 460529, 468214 (CH)

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

7-1-04 to 6-30-07, \$15,836.34 Claim for Refund

For Petitioner/Claimant: Ralph Tocci, Taxpayer

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

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

Issue: Whether adjustments are warranted to the audited measure of use tax collected, but not reported, with respect to sales of vessels.

David Levine, Tax Counsel IV, Appeals Division, Legal Department, advised of the revised recommendation of the Appeals Division to grant the claim for refund and to allow a credit for certain transactions.

Action: Mr. Runner moved that the petition and claim for refund be granted. Ms. Mandel made a substitute motion 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 substitute motion was seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes.

Hung Van Pham, 486918 (BH)

1-1-05 to 9-14-06, \$37,864.00 Tax, \$4,772.65 Negligence Penalty

For Petitioner: Hung Van Pham, Taxpayer

Ngoc Le, 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 audited understatement of reported sales.

Whether petitioner was negligent.

**Wednesday, June 27, 2012**

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, granting the Department 60 days to perform an investigation and the petitioner to file supporting documents, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board. The Board directed staff to discuss with taxpayer the payment plan program and to inform the taxpayer of the Offer in Compromise Program.

### **SPECIAL TAXES APPEALS HEARINGS**

California Insurance Company, 457613 (ET)

1-1-04 to 12-31-05, \$603,385.00 Tax

For Petitioner: Jeffrey Silver, Attorney  
 For Property and Special Taxes Department: Carolee Johnstone, Tax Counsel  
 For Department of Insurance: Laszlo Komjathy, Staff Counsel

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

Issue: Whether the insurance transactions at issue are subject to California's Tax on Insurers.

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 ordered that the petition be submitted for decision.

Hamid Maghsoudi and Ghazal Valiyee, 438138 (MT)

10-2-03 to 9-9-04, \$7,681.59 Tax, \$768.16 Failure to File Penalty, \$768.16 Finality Penalty

For Taxpayers: Hamid Maghsoudi, Taxpayer  
 Ghazal Valiyee, Taxpayer

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

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

Issues: Whether feepayer is liable for the underground storage tank maintenance fees.  
 Whether relief of the failure-to-file and finality penalties is warranted.  
 Whether relief of interest is warranted.

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

### **ADMINISTRATIVE SESSION**

#### **ADMINISTRATIVE MATTERS, CONSENT**

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

Wednesday, June 27, 2012

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 6.5](#)).

Peggy Robinson, Associate Governmental Program Analyst, Administration Department, Headquarters  
Shirley Smith, Office Technician (Typing), Mail Services Unit, Tax Revenue Branch, Administration Department, Headquarters  
Georgia Warner, Senior Personnel Specialist, Health and Safety Section, Human Resources Division, Administration Department, Headquarters  
Kaylyn Warren, Business Taxes Compliance Supervisor II, Centralized Collection Section, Sales and Use Tax Department, Headquarters

Action: Approve the Board Meeting Minutes of March 20-21, 2012.

Action: Approve the Board Meeting date change for the annual Board/Assessors' Meeting from August 8, 2012 (Olympic Valley) to November 15, 2012 (State Capitol Building in Sacramento) as recommended by staff ([Exhibit 6.6](#)).

#### **ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**

##### **Legislative Committee**

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 Legislative Committee report and the actions therein ([Exhibit 6.7](#)).

##### **Customer Services and Administrative Efficiency Committee**

Action: The Board deferred consideration of the matter to a later date.

##### **Business Taxes Committee**

Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein ([Exhibit 6.8](#)).

#### **OTHER ADMINISTRATIVE MATTERS**

##### **Executive Director's Report**

Kristine Cazadd, Executive Director, provided a report regarding time extensions to Alpine, Amador, Colusa, El Dorado, Inyo, Mendocino, Monterey, Plumas, San Luis Obispo, Sierra, Sonoma, and Tehama Counties to complete and submit the 2012/13 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 ([Exhibit 6.9](#)).

Wednesday, June 27, 2012

Mr. Horton stated for the record that the following items are deferred to a later meeting: Executive Director's Report—*CROS Project Update and Actions*; and, *Introduction of Proposed Customer Service Improvements Initiative*; Sales and Use Tax Deputy Director's Report—*2013 Collection Cost Recovery Fee Rates*; Property and Special Taxes Deputy Director's Report—*Fire Prevention Fee Program*; and, Administration Deputy Director's Report—*Headquarters Facilities Update; 2012/13 Budget Update; and, 2013/14 Budget Concepts*.

### **Administration Deputy Director's Report**

Liz Houser, Deputy Director, Administration Department, presented a contract over \$1 million with Microsoft for productivity software products and services under a 5-year enterprise agreement for products used by all BOE employees ([Exhibit 6.10](#)).

Ms. Steel requested staff provide a comparison of the private company purchase price of Microsoft productivity software products to the state-leveraged purchase price.

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 87105, the Board approved the contract as recommended by staff.

### **FINAL ACTION ON SPECIAL TAXES APPEALS HEARINGS HELD JUNE 27, 2012**

California Insurance Company, 457613 (ET)

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

Hamid Maghsoudi and Ghazal Valiyee, 438138 (MT)

Final Action: Upon motion of Ms. Steel, seconded by Mr. Runner and duly carried, Mr. Horton, Ms. Steel and Mr. Runner voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the interest and penalties be relieved and that no further adjustments be made in the administrative protest. The Board directed staff to inform the taxpayer of the Offer in Compromise Program.

The Board recessed at 1:00 p.m. and reconvened at 1:29 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 1:30 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Wednesday, June 27, 2012

### CLOSED SESSION

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

The Board recessed at 3:22 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 appointments of Robert Tucker to the position of Chief, Tax and Fee Programs Division, Legal Department, effective immediately; and, Cynthia Bridges to the position of Executive Director, effective August 1, 2012.

The Board adjourned at 3:24 p.m.

*The foregoing minutes are adopted by the Board on December 19, 2012.*

Note: The following matters were removed from the calendar prior to the meeting: *James Michael Duggan, 441787 (UT)*; and, *External Affairs Deputy Director's Report: BOE Logo Presentation*.