

Tuesday, November 15, 2011

The Board met at its offices 450 N Street, Sacramento, at 10:27 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**

Kent H. Baker, 551816  
2006, \$2,753.00 Proposed Assessment  
For Appellant:

Kent Baker, Taxpayer  
Poonam Dayalji, Representative  
Byron Wong, Tax Counsel  
Ciro Immordino, Tax Counsel  
Jozel Brunett, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issues: Whether respondent Franchise Tax Board (FTB) properly disallowed appellant's claimed casualty and theft loss deduction.

Whether appellant has shown that the FTB abused its discretion by denying appellant's request for interest abatement.

Appellant's Exhibit: 2006 Miscellaneous Itemized Deductions Statement ([Exhibit 11.1](#))

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.

Exhibits to these minutes are incorporated by reference.

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

William M. Buchanan, 458690  
1-1-01 to 12-31-01, \$76,766.00 Tax, \$9,199.00 Late Payment Penalties, \$11,139.03 Amnesty Interest Penalties

For Taxpayer: No Appearance

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

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

Issues: Whether taxpayer is personally liable pursuant to Revenue and Taxation Code section 6829 for the unpaid liabilities of Wholesale Lighting, Inc.

Whether the penalties imposed on WLI should be relived.

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.

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GMRI, Inc., 433701  
 GMRI, Inc., 434928  
 1-1-02 to 12-31-04, \$399,178.02 Tax  
 1-1-02 to 12-31-04, \$189,127.72 Tax  
 For Petitioner:

Trudy Blakeman, Representative  
 Craig B. Fields, Attorney  
 Carley A. Roberts, Attorney  
 Cary Huxsoll, Tax Counsel

For Sales and Use Department:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
 Issues: Whether the tips at issue were mandatory tips and therefore includable in taxable gross receipts.

Whether the amnesty interest penalty should be relieved.

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 11:58 a.m. and reconvened at 1:20 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Mr. Horton congratulated Kristine Cazadd, Executive Director, on becoming a grandmother.

## PUBLIC HEARINGS

### **Proposed Adoption of Amendments to Regulation 1616, *Federal Areas***

Bradley Heller, Tax Counsel, Legal Department, made introductory remarks regarding the adoption of proposed amendments clarifying the types of transactions with governments of federally-recognized Indian tribes that are exempt under Revenue and Taxation Code, section 6352 ([Exhibit 11.2](#)).

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

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 adopted amendments to Regulation 1616 as recommended by staff.

### **Proposed Adoption of Amendments to Regulation 1807, *Petitions for Reallocation of Local Tax*, and, Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax***

Bradley Heller, Tax Counsel, Legal Department, made introductory remarks regarding the adoption of proposed amendments to improve the Board's review of local sales and use tax and district transactions and use tax petitions ([Exhibit 11.3](#)).

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Speakers: Robin Sturdivant, Local Government Advocate, The HdL Companies  
Johan Klehs, President, Johan Klehs & Company, Representing City of  
Livermore

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 further changes to the published version of regulations 1807 and 1828 and ordered that the changed version be placed in the rulemaking file for 15 days.

### LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals 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:

#### Tirebusters, Inc., 390462 (CH)

2-1-93 to 12-31-03, \$644,280.69 Tax, \$63,912.70 Failure to File Penalty, \$1,288.96 Fraud Penalty, \$319,563.02 Knowingly Operating without a Permit Penalty

Action: Redetermine as recommended by the Appeals Division.

#### High Technology Packaging, Inc., 484487 (CH)

7-1-00 to 6-30-08, \$281,174.77 Tax, \$140,587.69 Fraud Penalty, \$28,117.52 Failure to File Penalty, \$28,177.48 Finality Penalty, \$7,428.99 Amnesty Double Fraud Penalty, \$1,485.77 Amnesty Double Failure to File Penalty, \$1,485.78 Amnesty Double Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

#### Huy Ngoc Huynh, 505920 (CH)

7-1-06 to 3-31-09, \$10,196.91 Tax, \$1,019.77 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

#### Hung Van Pham, 486918 (BH)

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

Action: Redetermine as recommended by the Appeals Division.

#### Kun Ok Yi, 347727 (GH)

7-1-01 to 12-31-04, \$20,900.44 Tax, \$2,240.26 Negligence Penalty, \$1,120.22 Amnesty Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

#### Boris Khodzhoyan, 405900 (AP)

1-1-03 to 12-31-05, \$175,472.37 Tax, \$17,584.31 Negligence Penalty

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

#### Antique Portraiture, Inc., 351260, 374301 (AA)

10-1-01 to 9-30-04, \$54,041.61 Tax, \$5,404.25 10% Negligence Penalty

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

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Karen Renee Cullinane, 470168 (EH)

2-15-07 to 10-31-07, \$32,768.00 Tax, \$3,276.80 Late Payment Penalty

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

Jamshid Daryanabard, 467994 (GH)

10-1-04 to 9-30-06, \$0.00 Tax, \$10,908.24 Fraud Penalty.

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

### **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:

Sherman Mazur and Michelle Mazur, 29519, 89002465770, 89002465780

1987, \$66,480.00 Claim for Refund

1988, \$28,607.00 Claim for Refund

1989, \$860,985.00 Tax

1992, \$291,662.00 Tax, \$72,927.00 Late Filing Fee, \$72,927.00 Failure to Furnish Information Penalty

Action: Sustain the action of the Franchise Tax Board.

Anthony Wiest, 526977

2007, \$8,434.00 Tax, \$2,108.50 Late Filing Penalty, \$119.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Rodney Walker, 546795

2006, \$2,635.00 Tax, \$658.75 Late Filing Penalty, \$658.75 Demand Penalty, \$113.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$1,250.00 frivolous appeal penalty.

Benjamin Killen, 550137

2006, 1,061.00 Tax, \$265.25 Late Filing Penalty, \$265.25 Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Bonny Goselin, 550654

2006, \$5,072.00 Tax, \$1,268.00 Late Filing Penalty

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

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**Rodney Walker, 550307**

2005, \$2,011.00 Tax, \$502.75 Late Filing Penalty, \$502.75 Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$1,250.00 frivolous appeal penalty.

**Judith Walther, 550310**

2007, \$985.00 Tax, \$246.25 Late Filing Penalty, \$962.25 Demand Penalty, \$113.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

**Karl Eisenhammer, 553499**

2008, \$9,809.00 Tax, \$2,452.25 Late Filing Penalty, \$2,452.25 Demand Penalty, \$113.00 Filing Enforcement.

Action: Modify the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

**Steven Ertelt, 547169**

2006, \$3,053.00 Tax, \$763.25 Late Filing Penalty, \$763.25 Demand Penalty, \$113.00 Filing Enforcement Fee.

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

**Gary Rettig and Shawn Rettig, 554609**

2003, \$149,407.00 Proposed Assessment

Action: Sustain the action of the Franchise Tax Board.

**Art-Wave International, Inc., 489486**

2006, \$13,643.07 Tax, \$2,481.01 Late Filing Fee, \$3,410.76 Notice and Demand Penalty, \$203.00 Filing Enforcement Fee.

Action: Sustain the action of the Franchise Tax Board.

**Howard Bagley, 538581**

2008, \$196.00 Proposed Assessment, \$49.00 Late Filing Penalty, \$126.25 Demand Penalty

Action: Sustain the action of the Franchise Tax Board.

**Richard Castaldi, 557010**

2006, \$222.67 Abatement of Interest

Action: Sustain the action of the Franchise Tax Board.

**George Chavez, 548125**

2008, \$957.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Greg Erickson, 527803

2002, \$111,499.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Richard J. Jackson and Deborah J. Cross, 532190

2005, \$3,572.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Kera Enterprises, Inc., 523034

2006/2007, \$855.58 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Richard M. Nicholas and Penny K. Nicholas, 550270

2007, \$2,416.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Howard Brief, 530872

2004, \$182,673.00 Assessment

Action: Deny the petition for rehearing.

Alison Buerger, 536228

2007, \$434.00 Tax, \$108.50 Late Filing Penalty, \$108.50 Notice and Demand Penalty, \$113.00 Filing Enforcement Fee

Action: Deny the petition for rehearing.

Estate of Eva M. Lindskog (Dec'd), 466455

2002, \$175,063.00 Tax, \$7,869.44 Penalty

Action: Deny the petition for rehearing.

Elias Gallegos III, 547977

2007, \$749.00 Tax, \$179.75 Penalties

Action: Deny the petition for rehearing.

David Jones and Jamie Jones, 525089

2005, \$486.00 Assessment

Action: Deny the petition for rehearing.

Jack S. Kannry and Joyce F. Kannry, 490556

2004, \$502.35 Assessment

Action: Deny the petition for rehearing.

Charles E. Kohlhase, Jr., 547973

2000, \$1,181.00 Claim for Refund

2001, \$1,355.00 Claim for Refund

2002, \$1,559.00 Claim for Refund

Action: Deny the petition for rehearing.

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Patrick T. Mead and Melissa A. Mead, 520063  
2006, \$5,973.25 Claim for Refund  
Action: Deny the petition for rehearing.

Donald Stanners and Elizabeth Stanners, 495508  
2007, \$3,272.83 Claim for Refund  
Action: Deny the petition for rehearing.

### **SALES AND USE TAX MATTERS, REDETERMINATIONS AND RELIEF OF PENALTY/INTEREST, CONSENT**

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

Brooks Automation, Inc., 562964 (OH)  
1-1-05 to 12-31-07, \$200,187.28  
Action: Approve the redetermination as recommended by staff.

Heritage Door, Inc., 551890 (EH)  
10-1-06 to 9-30-09, \$122,290.00  
Action: Approve the redetermination as recommended by staff.

SCP Auctions, Inc., 532135 (EA)  
4-1-05 to 3-31-08, \$340,286.34  
Action: Approve the redetermination as recommended by staff.

Road Machinery, LLC, 546360 (OH)  
1-1-06 to 12-31-08, \$752,588.90  
Action: Approve the redetermination as recommended by staff.

CG Holdings, Inc., 530945 (OH)  
7-1-06 to 6-30-09, \$142,477.33  
Action: Approve the redetermination as recommended by staff.

ATS Systems Oregon, Inc., 415960 (OH)  
7-1-03 to 9-30-06, \$358,422.49  
Action: Approve the redetermination as recommended by staff.

Farmers Services, LLC, 579055 (AS)  
1-1-10 to 12-31-10, \$190,291.60  
Action: Approve the relief of penalty as recommended by staff.

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**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 *Lexus, Toyota Motor Sales, USA, Inc., 578152*, the Board made the following orders:

West Valley Technology, LLC, 585589 (EA)

2-4-04 to 3-5-04, \$111,630.76

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

Marcus Cable Associates, L.P., 586181 (OH)

10-1-05 to 3-26-09, \$705,167.78

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

Urigen Pharmaceuticals, Inc., 585501 (CH)

7-1-06 to 12-31-08, \$808,491.93

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

OCE Financial Services, Inc., 578600 (OH)

1-1-04 to 12-31-06, \$291,149.80

Action: Approve the refund as recommended by staff.

Deluxe Laboratories, Inc., 351131 (AS)

1-1-03 to 12-31-05, \$400,906.05

Action: Approve the refund as recommended by staff.

Technology Credit Union, 531153 (GH)

1-1-07 to 12-31-09, \$220,269.45

Action: Approve the refund as recommended by staff.

BMW of North America, 579072 (OH)

7-27-11 to 8-2-11, \$103,082.00

Action: Approve the refund as recommended by staff.

Lexus, Toyota Motor Sales, USA, Inc., 578152 (AS)

6-28-11 to 7-8-11, \$297,436.00

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

Thomson Broadcast/Media Solutions, 522673 (KH)

10-1-06 to 3-31-07, \$279,643.24

Action: Approve the refund as recommended by staff.

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Wind River Sales Company, Inc., 577614 (CH)

7-1-06 to 6-30-09, \$229,698.92

Action: Approve the refund as recommended by staff.

Brocade Communications Systems, Inc., 533170 (GH)

4-1-07 to 12-31-09, \$2,884,121.99

Action: Approve the refund as recommended by staff.

EchoStar Satellite, LLC, 578536 (OH)

4-1-08 to 6-30-08, \$130,920.56

Action: Approve the refund as recommended by staff.

Atspid, Inc., 551283 (GH)

7-1-07 to 9-30-10, \$102,135.24

Action: Approve the refund as recommended by staff.

Oshkosh Speciality Vehicles, Inc., 568871 (OH)

10-1-10 to 12-31-10, \$116,759.00

Action: Approve the refund as recommended by staff.

**PROPERTY TAXES MATTERS, CONSENT**

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

**Petition for Penalty Abatement on Unitary Value**

Cox California Telecom, LLC (7640), 574413

2011, \$103,900,000.00 Value, \$10,390,000.00 Penalty

Action: Approve the penalty abatement on 2011 unitary value as recommended by staff.  
Ms. Mandel not participating in accordance with Government Code section 7.9.**Petitions for Reassessment of Unitary Value**

Pacific Bell Telephone Company (279), 576234

2011, \$7,907,800.00 Unitary Value

Action: Reduce the 2011 unitary value to \$7,599,300,000.00 as recommended by staff.  
Ms. Mandel not participating in accordance with Government Code section 7.9.

MetroPCS Communications, Inc. (2733), 577089

2011, \$481,200,000.00 Unitary Value

Action: Reduce the 2011 unitary value to \$461,300,000.00 as recommended by staff.  
Ms. Mandel not participating in accordance with Government Code section 7.9.

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**LEGAL APPEALS MATTERS, ADJUDICATORY**

Juan Manuel Gallardo, 466120 (BH)

7-1-04 to 6-30-07, \$42,842.44 Tax, \$5,912.59 Negligence Penalty

Considered by the Board: April 26, 2011

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

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 petition for rehearing be denied as recommended by the Appeals Division.

Media Management Service, Inc., 294859, 391611 (EA)

6-1-00 to 3-31-03, \$59,617.64 Tax, \$5,961.76 Finality Penalty, \$5,888.84 Amnesty-Double

Finality Penalty, \$7,674.33 Amnesty Interest Penalty

Considered by the Board: April 27, 2011

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

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 petition for rehearing be denied as recommended by the Appeals Division.

Orasure Technologies, Inc., 334390 (OH)

10-1-01 to 12-31-04, \$66,882.00 Claimed Refund

Considered by the Board: May 24, 2011

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

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

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

Reyad Sarraj and Nouzat Kanbar, 495511

2003, \$18,009.00 Tax, \$3,601.80 Accuracy-Related Penalty

Considered by the Board: November 15, 2011

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.

Stephen A. Schwarzman, 521940

2007, \$43,713.32 Claim for Refund

Considered by the Board: November 15, 2011

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.

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Terrie Williams and Richard E. Williams, 550352

2006, \$2,139.00 Tax

Considered by the Board: November 15, 2011

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.

Gerald J. Marcil and Carol L. Marcil, 458832

2001, \$307,466.00 Tax, \$14,591.81 Post-Amnesty Penalty

Considered by the Board: June 22, 2011

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

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision granting the petition for rehearing.

#### **SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY**

PB Municipal Funding, Inc., 576427 (OH)

6-1-99 to 12-31-02, \$2,404,896.95

Considered by the Board: Presented for Separate Discussion

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

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 credit and cancellation as recommended by staff.

#### **LEGAL APPEALS PROPERTY TAX MATTERS ADJUDICATORY**

##### **Petition for Penalty Abatement on Unitary Value**

&amp;TV Communications, Inc. (8115), 576434

2011, \$1,620,000.00 Unitary Value, \$162,000 Penalty

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 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 for penalty abatement on unitary value be denied as recommended by Appeals Division.

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**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE****PROPERTY TAX MATTERS****Private Railroad Car Roll Changes**

## 2011 Private Railroad Car Roll Changes

Action: Upon motion of Mr. Runner, 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 2011 Private Railroad Car Roll as recommended by staff ([Exhibit 11.4](#)).

**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 of *Mehdi Behmard; Michael Thomas Icaza; Jarrouche Corporation*; and, *Alice Tabera*; as recommended by staff.

**CHIEF COUNSEL MATTERS****RULEMAKING****Section 100 Changes to Sales and Use Tax Regulations 1532, *Teleproduction or Other Postproduction Service Equipment*; 1533.1, *Farm Equipment and Machinery*; 1534, *Timber Harvesting Equipment and Machinery*; and, 1535, *Racehorse Breeding Stock***

Bradley Heller, Tax Counsel, Legal Department, requested authorization to make Rule 100 changes to conform the regulations to the 1 percent state tax rate decrease that took effect July 1, 2011 ([Exhibit 11.5](#)).

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 the Section 100 Changes as recommended by staff.

**Section 100 Changes to Sales and Use Tax Regulation 1570, *Charitable Organizations***

Bradley Heller, Tax Counsel, Legal Department, requested authorization to make Rule 100 changes to conform to the regulation to the inventory exemption and delete the deadline for annually claiming the welfare exemption ([Exhibit 11.6](#)).

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the Section 100 Changes as recommended by staff.

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**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:

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 11.7](#)).

Margaret C. Baum, Business Taxes Specialist I, Special Taxes and Fees Division, Property and Special Taxes Department, Headquarters

Barbara Beck, Chief, Internal Security and Audit Division, Headquarters

Donald L. Jackson, Principal Property Appraiser, State-Assessed Properties Division, Property and Special Taxes Department, Headquarters

Daniel Jenkinson, Senior Specialist Auditor Appraiser, Property and Special Taxes Department, State-Assessed Properties Division, Redding District Office.

Geoffrey E. Lyle, Supervising Tax Auditor III, Business Taxes Committee and Training Section, Headquarters

Connie N. Norton, Supervising Tax Auditor I, Riverside District Office

Betty J. Overrocker, Office Technician (General), Cashier Section, Tax Revenue Branch, Headquarters

Linda Patrick-Myler, Business Taxes Committee Supervisor II, Motor Carrier Office, Property and Special Taxes Department, Headquarters.

Pamela Rochelle Samuel, Associate Tax Auditor, Norwalk District Office

Victor W. Waddel, Business Taxes Specialist II, Audit and Information Section, Sales and Use Tax Department, Headquarters.

Action: Approve the Board Meeting Minutes of August 23, 2011.

Action: Approve the Assessors' Handbook Section 581, *Equipment and Fixtures Index, Percent Good and Valuation Factors* ([Exhibit 11.8](#)).

Action: Adopt the *Change in Ownership Statement*, form BOE-502-AH ([Exhibit 11.9](#)).

Action: Approve the 2012 Timberland Production Zone Values ([Exhibit 11.10](#)).

Action: Approve the Effects of Proposition 10 on Cigarette and Tobacco Products Consumption ([Exhibit 11.11](#)).

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**OTHER ADMINISTRATIVE MATTERS****Sales and Use Tax Deputy Director's Report**

Jeff McGuire, Deputy Director, Sales and Use Tax Department, made introductory remarks and introduced Todd Gilman, Taxpayer Rights Advocate, Taxpayers' Rights Advocate Office, Executive Department, who discussed the suggestion to provide guidelines on the standard of proof regarding sales and use tax matters ([Exhibit 11.12](#)).

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

**Executive Director's Report**

Eric Steen, CROS Project Director, provided an update on the CROS Project progress to replace BOE's two current tax legacy technology systems.

Mr. Horton directed staff to report to the Board on the status of the online registration or cancellation of the sellers permit and how it will relate to the CROS Project.

**Administration Deputy Director's Report**

Liz Houser, Deputy Director, Administration Department, provided information on the Governor's 2011/12 Budget, pending 2012/13 Budget Change proposals and Governor's Executive Orders.

Mr. Horton thanked BOE staff for their sacrifice in the participation of the 2010 Personal Leave Program (PLP).

Caroline Cabias, Chief, Financial Management Division, Administration Department, provided an update on two efficiency projects: 1) the Check 21/Cashier Project to modernize and streamline the tax return cashiering function; and 2) the Taxpayer Records Unit Scanning Project to transition all existing files from paper to digital format. Information was provided on plans to transition employees during this change.

Speakers: Crystal Casey, SEIU Local 1000 Representative  
Ed Perez, SEIU Local 1000 Representative

Liz Houser, Deputy Director, Administration Division announced that in the future the Administrative Department Efficiency Projects will be presented at the Customer Service and Administrative Efficiency Committee meetings.

Tuesday, November 15, 2011

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARING HELD NOVEMBER 15, 2011**

Kent H. Baker, 551816

Action: Ms. Yee moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Mandel. Ms. Steel made a substitute motion to abate the interest for the period of September 1, 2009 to July 6, 2010, otherwise sustain the action of the Franchise Tax Board. The substitute motion was seconded by Mr. Runner but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. 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.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
NOVEMBER 15, 2011**

William M. Buchanan, 458690

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

GMRI, Inc., 433701

GMRI, Inc., 434928

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

Upon motion of Mr. Horton, seconded by Mr. Runner and duly carried, Mr. Horton, Mr. Runner and Ms. Mandel voting yes, Ms. Steel and Ms. Yee voting no, the Board ordered to treat the variance in gratuity, whether higher or lower than specified in the contract, as optional, and that the petition otherwise be redetermined as recommended by the Appeals Division.

**SALES AND USE TAX APPEALS HEARING**

Pretty-Pretty Props, Inc., 487570

1-1-05 to 12-31-07, \$16,242.58 Tax

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.

Issues: Whether petitioner has established that any adjustments are warranted to the understated taxable rentals.

Whether petitioner has established that any adjustments are warranted to the unreported purchases of supplies.

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

Tuesday, November 15, 2011

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 2:42 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 4:15 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

The Board welcomed the 2011-2012 Executive Fellows from the Center for California Studies at the California State University, Sacramento.

The Board recessed at 4:18 p.m.

*The foregoing minutes are adopted by the Board on January 11, 2012.*

Note: The following matter was removed from the calendar prior to the meeting: *Paul N. Winkler, 539074.*

**Wednesday, November 16, 2011**

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

Mr. Horton stated for the record that the local tax reallocation petition of *Cities of Santa Fe Springs and Fillmore, 468761*, has been withdrawn and is therefore dismissed.

## **ADMINISTRATIVE SESSION**

### **OTHER ADMINISTRATIVE MATTERS**

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

Randy Silva, Acting Chief, Investigations and Special Operations Division, Legal Department, made introductory remarks regarding the proposed California Centralized Intelligence Partnership (CIP), which is based on the concept of a central collaborative structure to comprehensively address the underground economy and capitalize on each agency's enforcement efforts and investigative resources ([Exhibit 11.13](#)).

Mr. Runner requested staff to provide information on the statutory bearers with regard to the prohibition of sharing information between agencies.

Mr. Horton directed staff to draft proposed legislation for the creation of a California Underground Economy Centralized Intelligence Partnership.

Exhibits to these minutes are incorporated by reference.

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

### **Local Tax Reallocation Hearing**

City of Fillmore, 466375

April 1, 2007, \$695,898.00 Tax

For Petitioner:

Joseph A. Vinatieri, Attorney

Theodore J. Schneider, Attorney

For Notified Jurisdiction City of Burbank:

Robin Sturdivant, Representative

For Sales and Use Tax Department:

Cary C. Huxsoll, Tax Counsel

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

Issue: Whether the taxpayer incorrectly reported the local tax as sales tax to the office located in Fillmore.

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 11:58 a.m. and reconvened at 1:07 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Wednesday, November 16, 2011

### SALES AND USE TAX APPEALS HEARINGS

Blowfish, LLC, 484932 (BH)  
Blowfish SR., LLC, 479540 (GH)  
7-1-04 to 6-30-07, \$18,255.40  
10-1-03 to 12-31-06, \$14,862.45

For Petitioners:

Nick Monsen, Witness  
Jesse McClellan, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether the disputed gratuities were mandatory.  
Whether further adjustments are warranted to unreported sales.

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

Data Physics Corporation, 425711, 473226 (GH)

1-1-04 to 12-31-06, \$9,408.46 Tax

For Petitioner:

Ken Fowler, Representative  
Sabine Castagnet, Representative  
David Herzl, Representative

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

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

Issue: Whether petitioner used certain equipment that was withdrawn from resale inventory for use other than demonstration and display.

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 a reaudit.

The Board recessed at 2:14 p.m. and reconvened at 2:20 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Star Cellular, Inc., 520976 (GH)

4-1-06 to 3-31-09, \$11,301.04 Tax

For Petitioner:

PJ Chawla, Taxpayer  
Kitty Chawla, Representative

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

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

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.

**Wednesday, November 16, 2011**

Robert Chang Soung, 462258 (GH)

7-1-06 to 4-16-07, \$4,029.00 Tax

For Petitioner:

Robert Chang Soung, Taxpayer

Doua Xiong, Witness

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

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

Issue: Whether petitioner's final sale of 14 vending machines was subject to sales tax.

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.

## **PROPERTY TAXES HEARING**

### **Petition for Abatement of Penalty**

Trans Bay Cable LLC (119), 577086

2011, \$511,000,000.00 Unitary Value, \$20,000,000.00 Penalty

For Petitioner:

Donna Burke, Representative

Michael Hornstein, Attorney

For Property and Special Taxes Department:

Mary Anne Tooke, Tax Counsel

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

Issue: Whether petitioner has presented evidence sufficient to abate the 10-percent penalty imposed for petitioner's failure to timely file a property statement.

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.

The Board congratulated Don Jackson, Principal Property Appraiser, State-Assessed Properties Division, Property and Special Taxes Department, on his retirement. The Members made favorable remarks regarding their experiences working with Mr. Jackson.

## **ADMINISTRATIVE SESSION**

### **ADOPTION OF BOARD COMMITTEE REPORTS 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 ([Exhibit 11.14](#)).

Committee votes were as follows:

A recommendation to approve the consent agenda unanimously passed with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes.

These items are as follow:

Amend Revenue and Taxation Code section 6591.5

Amend Revenue and Taxation Code sections 6480.1 and 60116

**Wednesday, November 16, 2011**

Add Revenue and Taxation Code section 6593.7  
Add Revenue and Taxation Code section 7093.8  
Amend Revenue and Taxation Code sections 7261 and 7262  
Amend Revenue and Taxation Code section 6355

A recommendation to adopt amendment to Revenue and Taxation Code, section 6757 unanimously passed with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes.

A recommendation to adopt amendment to Revenue and Taxation Code, section 7093.6 unanimously passed with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes.

A recommendation to add section 22175 to the Public Contract Code duly passed with Mr. Horton, Ms. Yee and Mandel voting yes, Ms. Steel and Mr. Runner voting no.

### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD NOVEMBER 16, 2011**

City of Fillmore, 466375

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 and 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 denied the petition and reallocate the local tax to the countywide pool.

Blowfish, LLC, 484932 (BH)

Blowfish SR., LLC, 479540 (GH)

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 a reaudit.

Ms. Yee requested that the reaudit focus on 10 percent tips that were likely assessed as a result of a mandatory tip policy on take-out menus.

Star Cellular, Inc., 520976 (GH)

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

### **SALES AND USE TAX APPEALS HEARING**

Timothy Scot Bohl and Wendy Lee Bohl, 396620 (KH)

10-1-02 to 9-30-05, \$11,317.69 Tax

For Petitioner:

Waived Appearance

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Wednesday, November 16, 2011

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

Issues: Whether additional adjustments are warranted to the audited understatement of taxable sales.

Whether the amnesty interest penalty should be relieved.

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

### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD NOVEMBER 16, 2011**

Robert Chang Soung, 462258 (GH)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered to adjust the audit to reflect the discount in the sales price of the machines, and to allow for the sale of inventory as a nontaxable sale for resale. The Board directed staff to inform the taxpayer of the Offer and Compromise Program.

### **FINAL ACTION ON PROPERTY TAXES APPEALS HEARING HELD NOVEMBER 16, 2011**

#### **Petition for Abatement of Penalty**

Trans Bay Cable LLC (119), 577086

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 for abatement of penalty be granted.

The Board adjourned at 3:42 p.m. in memory of Brian Eagan and Senator Teresa Hughes. Brian Eagan was an employee of the Board of Equalization who passed on Monday, November 7, 2011. He served the Board for four years as a Staff Information Systems Analyst in the Technology Service Division at Headquarters. The Board offered their condolences to the family of Brian Eagan. Senator Teresa Hughes passed on November 15, 2011. She was a dear friend and mentor to many, specifically Mr. Horton, who sent his deepest sympathies to her husband, Dr. Frank Staggers, and family.

*The foregoing minutes are adopted by the Board on January 11, 2012.*

Note: The following matters were removed from the calendar prior to the meeting: *Jasvir Singh Shahi, 303529 (CH); A-Plus Storage Containers, Inc., 511088, 511095; and, Gill Ranch Storage, LLC (121), 577341.*