

Wednesday, March 25, 2015

The Board met at its offices at 450 N Street, Sacramento, at 10:09 a.m., with Mr. Horton, Chairman, Mr. Runner, Vice Chairman, Ms. Ma and Ms. Harkey present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mr. Runner.

The Board recessed at 10:10 a.m. and reconvened at 2:07 p.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

SPECIAL PRESENTATION

GOVERNOR'S EMPLOYEE SAFETY AWARD

Cynthia Bridges, Executive Director, presented the Governor's Employee Safety Award to five Board of Equalization employees ([Exhibit 3.1](#)).

The Board Members congratulated and extended their appreciation and gratitude to the five BOE staff members who received awards for their exemplary actions.

Exhibits to these minutes are incorporated by reference.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Esther Korman, 680322
2004, \$293,037.00 Assessment
For Appellant:

Bradley Marsh, Attorney
Tom Sheehy, Attorney
Ciro Immordino, Tax Counsel
David Gemmingen, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether a valid Internal Revenue Code (IRC) section 1031 exchange was executed such that appellant is not required to recognize pass-through gain from the sale of real property.

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 3.2](#))

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

Peter St. Geme and Polly Plumer St. Geme, 693089

2000, \$914,847.00 Assessment

For Appellants:

Peter St. Geme, Taxpayer
Marguerite Mosnier, Tax Counsel
Diane Ewing, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether respondent's proposed assessment was timely.

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Whether appellants have shown error in respondent's proposed assessment of tax which was based on a federal adjustment.

Whether appellants have shown that they are entitled to further interest abatement.

Respondent's Exhibit: Exhibit E to FTB's Opening Brief ([Exhibit 3.3](#))

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

Johnnie F. Lau and Gay L. Lau, 739838

2007, \$640,416.00 Assessment

2008, \$409,580.00 Assessment

For Appellants:

Johnnie F. Lau, Taxpayer

Gay L. Lau, Taxpayer

Rex Halverson, Attorney

For Franchise Tax Board:

Brian Miller, Tax Counsel

Ron Hofsdal, Tax Counsel

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

Issue: Whether appellants have established error in respondent Franchise Tax Board's determination that appellants were residents of California for the entire year of 2007 and of 2008.

Appellant's Exhibit: Miscellaneous Exhibits ([Exhibit 3.4](#))

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

The Board recessed at 5:47 p.m. and reconvened at 6:00 p.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

Ehud Yuhjtman and Dalia Yuhjtman, 772960

2007, \$18,379.40 Assessment

For Appellants:

Ehud Yuhjtman, Taxpayer

For Franchise Tax Board:

Andy Amara, Tax Counsel

Mary Yee, Tax Counsel

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

Issue: Whether appellants have shown reasonable cause to abate the accuracy-related penalty.

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

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Rago Development Corporation, 735761

2003, \$30,249.00 Assessment

Fredrick M. Wooster and Mary L. Wooster, 727483

2003, \$64,081.00 Assessment

2005, \$10,545.00 Assessment

Paul H. Verriere and Patricia R. Verriere, 727493

2003, \$156,096.00 Assessment

Michael J. Smith and Lynn M. Smith, 725834

2003, \$152,162.00 Assessment

Louis Rago and June E. Rago, 725839

2003, \$174,472.00 Assessment

Martin Bramante and Estate of Velia Bramante, 632713

2003, \$130,720.00 Assessment

Frank Sabella, 633944

2003, \$128,533.00 Assessment

Louis La Torre Living Family Trust, Louis La Torre Trustee, 633028

2003, \$128,074.00 Assessment

For Appellants:

Edward Kaplan, Attorney

Donald L. Feurzeig, Attorney

Melvyn I. Mark, Attorney

For Franchise Tax Board:

David Gemmingen, Tax Counsel

Ciro Immordino, Tax Counsel

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

Issues: Whether appellants have shown error in respondent's determination denying appellants' claimed deferral of gain pursuant to an attempted like-kind exchange under Internal Revenue Code (IRC) section 1031.

Whether appellants have shown respondent abused its discretion in determining whether to abate interest.

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 3.5](#))

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

Kamaldip S. Ghei, 796875

2011, \$2,509.75 Claim for Refund Penalty

For Claimant:

Kamaldip S. Ghei, Taxpayer

Kellen Furlin, Representative

For Franchise Tax Board:

Joel Smith, Tax Counsel

Mary Yee, Tax Counsel

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

Issue: Whether appellant has established reasonable cause for the abatement of the notice and demand (demand) penalty.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 3.6](#))

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

PUBLIC HEARINGS

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

Bradley Heller, Tax Counsel, Tax & Fee's Programs Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments to update the definition of the average state, local, and district sales and use tax rate ([Exhibit 3.7](#)).

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

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board adopted the amendments to Regulation 1685.5 as published.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Rodriguez Enterprise, Inc., 566739 (FH)*.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Harkey, seconded by Ms. Stowers and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board made the following orders:

Nasser Abo Abdo, 595707 (EA)
07/01/03 to 06/30/06, \$8,537.64 Tax, \$853.76 Finality Penalty
Action: Redetermine as recommended by the Appeals Division.

Hafid Alaoui, 588302 (EH)
07/01/08 to 12/31/10, \$15,914.59 Tax, \$1,604.20 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Abdulla Abdo Alnajar, 766851 (CH)
01/01/10 to 12/31/12, \$28,636.40 Tax, \$2,905.20 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Gilbert Mark Berhold, 536919 (KH)
07/01/03 to 06/30/07, \$12,223.57 Tax, \$2,544.90 Late Payment Penalties, \$1,938.16 Late Filing Penalty, \$266.76 Late Prepayment Penalty, \$750.80 Failure to File Penalty, \$750.80 Finality Penalty
Action: Redetermine as recommended by the Appeals Division.

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CBS Food Store, Inc., 576217 (DF)

01/01/08 to 12/31/10, \$1,544.95 Tax

Action: Redetermine as recommended by the Appeals Division.

Celebrity Vault, Inc., 547194 (AC)

10/01/06 to 10/31/08, \$38,894.27 Tax, \$3,716.29 Negligence Penalty, \$173.18 Failure-to-file Penalty

Action: Redetermine as recommended by the Appeals Division.

Malin Dell'Amico, 529566 (AS)

04/01/05 to 01/11/09, \$399,167.04 Tax, \$22,909.97 Negligence Penalty, \$69,196.93 Failure to Remit Collected Tax Penalty, \$40,209.20 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Grand Saz Global, Inc., 524911, 538316 (AF)

02/01/05 to 12/31/06, \$36,315.65 Tax, \$3,631.56 Negligence Penalty

01/01/07 to 12/31/09, \$73,650.43 Tax, \$7,365.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Ralph Joseph Haas, 530183 (EH)

01/01/06 to 12/31/08, \$1,050.22 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Ben Kanter, 373937 (EH)

01/18/02 to 12/31/05, \$48,374.57 Tax

Action: Redetermine as recommended by the Appeals Division.

Manh Van Le, 538190 (KH)

01/01/07 to 12/31/09, \$10,403.22 Tax, \$1,040.34 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Brian Charles Lutz, 635956 (EA)

07/01/08 to 06/30/11, \$34,889.80 Tax

Action: Redetermine as recommended by the Appeals Division.

Mexico Bakery, Inc., 611420 (GH)

10/01/07 to 09/30/10, \$118,935.48 Tax, \$11,893.68 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

McCall & Smith, LLC, 601096, 767949 (JH)

10/01/06 to 03/31/10, \$15,231.86 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

David Everette McCall, 601100, 767947 (JH)

04/01/07 to 03/31/10, \$9,500.85 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

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Aris Manukian, 572575 (STF)

01/01/02 to 03/31/09, \$148,689.51 Fee, \$14,868.95 Failure-to-File Penalty

Action: Redetermine as recommended by the Appeals Division.

Christopher Michael Paolini and Diane Carol Paolini, 586761 (EH)

07/01/07 to 08/27/08, \$38,772.00 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Heather Ann Perini, 529565 (AS)

04/01/05 to 01/11/09, \$399,167.04 Tax, \$22,909.97 Negligence Penalty, \$69,196.93 Failure to Remit Collected Tax, \$40,209.20 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Rizza Marie Cancio Punzalan and Max Leung, 554317 (BH)

01/01/07 to 12/31/09, \$30,433.48 Tax, \$3,043.33 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Rodriguez Enterprise, Inc., 566739 (FH)

01/01/07 to 12/31/09, \$00.00 Tax, \$12,402.31 Fraud Penalty

Action: No Action was taken.

Adel Saman Safi, 589953 (EH)

10/01/07 to 12/31/10, \$174,496.78 Tax, \$17,528.46 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Vatthana Sirisouk, 610386 (JH)

01/01/08 to 12/31/10, \$13,815.21 Tax, \$1,381.57 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Mary Christiane Taylor, 609419 (AC)

04/01/08 to 09/30/08, \$4,512.00 Tax, \$451.20 Late Filing Penalty

Action: Redetermine as recommended by the Appeals Division.

Jose Carmen Magallanes Velador, 608302 (AS)

01/01/08 to 12/31/10, \$45,944.18 Tax, \$4,636.19 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Mohammad Abdizadeh and William G. Morschauser, 490121 (STF)

10/01/00 to 08/06/03, \$34,707.52 Fee, \$2,982.01 Failure-to-File Penalty, \$488.75 Late Payment Penalty, \$3,470.75 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Peter Fong, 486373 (STF)

01/01/07 to 12/31/07, \$3,701.00 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

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LMS International, Inc., 609875 (STF)

01/24/04 to 10/31/06, \$998,787.06 Tax, \$249,696.79 Fraud Penalty

Action: Redetermine as recommended by the Appeals Division.

Sor Lo, 854778 (KH)

October 13, 2014 Seizure Date, \$350.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Phong H. Phung, 855517 (STF)

October 8, 2014 Seizure Date, \$108.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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. Harkey, seconded by Mr. Runner and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board made the following orders:

Henry Liu and Marsha M. Valencia, 804856

2005, \$17,212.00 Tax, \$1,721.20 Accuracy-related Penalty

2006, \$5,601.00 Tax, \$560.10 Accuracy-related Penalty

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

Shirley A. Warren and Chester L. Warren, 795262

2009, \$3,218.00 Tax, \$643.60 Accuracy-related Penalty

Action: Sustain the action of the Franchise Tax Board.

David C. Williams, 780911

2011, \$8,399.00 Assessment, \$2,099.75 Late Filing Penalty, \$2,099.75 Demand Penalty, \$82.00 Filing Enforcement Fee

Rodney Walker, 779775

2011, \$1,810.00 Tax, \$452.50 Late Filing Penalty, \$452.50 Demand Penalty, \$82.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose frivolous appeal penalties on the above appellants in the amounts of \$2,500.00 and \$5,000.00, respectively.

Tristan Abbott and Lisa Abbott, 771805

2009, \$1,213.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Kathy Bell, 812216

2009, \$990.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Robert Brock and Megan Brock, 809851

2009, \$450.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Capcom, U.S.A., Inc., 790662

2011, \$218,140.66 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jesus Castro, 605759

2007, \$2,341.00 Assessment

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

Mary Rose Cruz, 766854

2009, \$1,758.67 Assessment

2010, \$543.53 Assessment

Action: Sustain the action of the Franchise Tax Board.

Olusoji Fanoiki, 793925

2011, \$1,655.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Julie L. Grau, 790543

2008, \$3,754.80 Assessment

Action: Sustain the action of the Franchise Tax Board.

Christine Loughridge (Stouffer), 600512

2006, \$25,753.00 Assessment

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

Chelsea Matthews, 795627

2009, \$5,079.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Kevin Jay Myers, 809893

2009, \$605.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Jung H. Park and Gabrea Park, 529805

2001, \$119,151.00 Tax, \$90,507.28 Penalties

2002, \$234,521.00 Tax, \$158,951.21 Penalties

2003, \$310,269.00 Tax, \$190,136.00 Penalties

Action: Modify the action of the Franchise Tax Board.

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Fatoumata Sillah, 807766

2009, \$1,629.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Michael Verheyden, 819031

2003, \$3,389.34 Claim for Refund

2004, \$12,340.98 Claim for Refund

2005, \$10,411.67 Claim for Refund

2006, \$2,159.01 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Shih Jung Bai and Claudia Y. Bai, 717459

2008, \$1,885.00 Tax

Action: Deny the petition for rehearing.

Daxius Gregory, 740006

2009, \$512.00 Tax, \$128.00 Late Filing Penalty

Action: Deny the petition for rehearing.

Andre Jackson, 741548

2006, \$4,207.00 Tax, \$1,051.75 Demand Penalty

2007, \$4,017.00 Tax, \$1,004.25 Demand Penalty

Action: Deny the petition for rehearing.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Denials of Claims for Refund, and, Grant-One Day Interest Relief, Consent Agenda, upon a single motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board made the following orders:

Sunway Floors, Inc., 625834 (BH)

04/01/08 to 03/31/11, \$172,627.24

Action: Approve the redetermination as recommended by staff.

ACME Furniture Industry, Inc., 613312 (AP)

01/01/06 to 12/31/08, \$753,790.60

Action: Approve the redetermination as recommended by staff.

Los Altos Meat Market, Inc., 790639 (EH)

10/01/09 to 09/30/12, \$959,125.47

Action: Approve the redetermination as recommended by staff.

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Cardinal Health Solutions, Inc., 553663 (FH)

01/01/08 to 09/30/10, \$58,332.74

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

Norman's Men & Boys, Inc., 856310 (AA)

08/01/14 to 08/31/14, \$330.95

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

Megan Gutierrez, 856317 (GH)

07/01/14 to 09/30/14, \$58.56

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

Aeroglide Corporation, 856313 (OH)

08/01/14 to 08/31/14, \$280.80

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

A.P. Scott, Inc., 856311 (AR)

07/01/14 to 09/30/14, \$16.78

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

Conergy, Inc., 856314 (OH)

07/01/14 to 09/30/14, \$1,194.81

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

West Coast Professional Door, Inc., 856315 (JH)

10/01/14 to 10/31/14, \$233.20

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

Peju Family Operating Partnership, LP, 856312 (JH)

07/01/14 to 09/30/14, \$322.40

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. Harkey, seconded by Ms. Stowers and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board made the following orders:

Euro-Asian Furnishings, Inc., 854607 (EA)

07/01/09 to 06/30/12, \$325,909.31

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

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Auto America, Inc., 852859 (KH)

07/01/08 to 09/05/08, \$191,946.44

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

Center Automotive, Inc., 773998 (AC)

07/01/10 to 06/30/14, \$249,709.76

Action: Approve the refund as recommended by staff.

Trend Offset Printing Servs, Inc., 850070 (EA)

01/01/14 to 09/30/14, \$258,548.00

Action: Approve the refund as recommended by staff.

Hoag Memorial Hosp. Presbyterian, 763898 (EA)

07/01/10 to 12/31/12, \$194,268.22

Action: Approve the refund as recommended by staff.

Duralum Products, Inc., 850038 (KH)

01/01/12 to 03/31/12, \$121,688.88

Action: Approve the refund as recommended by staff.

Veolia Transportation Maintenance & Infrastructure, 851486 (UT)

08/30/13, \$184,812.00

Action: Approve the refund as recommended by staff.

BTE Equipment, LLC, 852841 (OH)

01/01/11 to 12/31/13, \$165,136.72

Action: Approve the refund as recommended by staff.

Mansfield Oil Co. of Gainsville, Inc., 594152 (OH)

01/01/09 to 09/30/12, \$457,843.36

Action: Approve the refund as recommended by staff.

Owens & Minor Distribution, Inc., 714319 (OH)

01/01/10 to 03/31/14, \$107,459.00

Action: Approve the refund as recommended by staff.

Eplus Technology, Inc., 821903 (OH)

07/01/11 to 06/30/14, \$108,227.84

Action: Approve the refund as recommended by staff.

Pacific Gas and Electric Company, 852681 (BH)

07/01/11 to 06/30/13, \$403,399.23

Action: Approve the refund as recommended by staff.

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American Airlines, Inc., 786560 (OH)

10/01/04 to 09/30/08, \$1,476,344.60

Action: Approve the refund as recommended by staff.

United Healthcare Services, Inc., 607812 (OH)

10/01/07 to 12/31/10, \$594,561.37

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 851600 (EA)

07/01/14 to 09/30/14, \$475,025.00

Action: Approve the refund as recommended by staff.

Schneider Electric Buildings, LLC, 852680 (OH)

04/01/11 to 03/31/14, \$157,576.04

Action: Approve the refund as recommended by staff.

Cardinal Health Solutions, Inc., 553663 (FH)

01/01/08 to 09/30/10, \$1,641,105.31

Action: Approve the refund as recommended by staff.

Carfinance Capital, LLC, 852226 (EA)

07/01/14 to 09/30/14, \$141,106.00

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS, CONSENT

With respect to the Special Taxes Matters, Redeterminations, Consent Agenda, upon a single motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board made the following order:

Chevron Marine Products, LLC, 567001 (STF)

01/01/03 to 03/31/08, \$133,618.73

Action: Approve the redetermination as recommended by staff.

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Harkey, seconded by Ms. Stowers and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board made the following orders:

Convenience Retailers, LLC, 594156 (STF)

06/01/10 to 06/30/11, \$107,357.44

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

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Larizadeh Properties, LLC, 591952, 596444, 636038, 727992, 758121 (STF)
05/18/01 to 03/31/03, \$102,174.04

Action: Approve the refund as recommended by staff.

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

Frances Diaz, 605995

2006, \$12,550.00 Assessment

Considered by the Board: October 14, 2014

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

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

Camille Mahan, 785311

2009, \$104.00 Assessment

Considered by the Board: January 21, 2015

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

Action: Upon motion of Ms. Ma, seconded by Ms. Harkey and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers 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

Audits

Cabrillo Power I, LLC (1106)

2010 - 2012, \$700,000.00 Escaped Assessment, \$70,000.00 Penalties, \$240,000.00 In-lieu Interest

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

NRG Delta, LLC (1109)

2010 - 2012, \$1,600,000.00 Escaped Assessment, \$160,000.00 Penalties, \$519,000.00 In-lieu Interest

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

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NRG California South LP – Ormond Beach (1115)

2010 - 2012, \$2,100,000.00 Excessive Assessment, \$00.00 Penalties, \$195,347.00 In-lieu Interest

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

NRG California South LP – Etiwanda (1116)

2010 - 2012, \$400,000.00 Escaped Assessment, \$40,000.00 Penalties, \$159,000.00 In-lieu Interest

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

High Desert Power Trust (1127)

2010 - 2012, \$21,000,000.00 Excessive Assessment, \$00.00 Penalties, \$7,749,000.00 In-lieu Interest

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

Sunrise Power Company, LLC (1137)

2010 - 2012, \$33,600,000.00 Excessive Assessment, \$00.00 Penalties, \$6,641,325.00 In-lieu Interest

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

Cybernet Communications, Inc., (7516)

2011 - 2014, \$77,000.00 Excessive Assessment, \$00.00 Penalties, \$00.00 In-lieu Interest

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

Telmex USA, LLC (7866)

2011 - 2014, \$1,340,000.00 Escaped Assessment, \$280,000.00 Penalties, \$660,300.00 In-lieu Interest.

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

Wednesday, March 25, 2015

Ponderosa Cablevision (7894)

2011 - 2014, \$130,000.00 Escaped Assessment, \$00.00 Penalties, \$00.00 In-lieu Interest
Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

Cable and Wireless Americas Operations, Inc. (8005)

2011 - 2014, \$128,000.00 Escaped Assessment, \$16,100.00 Penalties, \$43,320.00 In-lieu Interest
Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

Vertex Telecom, Inc. (8057)

2011 - 2014, \$632,000.00 Excessive Assessment, \$00.00 Penalties, \$00.00 In-lieu Interest
Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

Board Roll Changes**2011, 2012, 2013 and 2014 State-Assessed Property Rolls**

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2011, 2012, 2013 and 2014 Board Rolls of State-Assessed Property as recommended by staff ([Exhibit 3.8](#)).

OFFER-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Mr. Runner, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board approved the Offer in Compromise Recommendations of *Donald James Chamberlin; Eric Anthony Guidice; Michael Hamid Hedayat; Dharmendra Kumar; Thy Thi Le and Phi Nam Nguyen; Alicia Gavino Paras; Pink Bridal & Lingerie, Inc.; Maria Esther Polack; and, V & G Collective*; as recommended by staff.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD MARCH 25, 2015**Esther Korman, 680322**

Final Action: Upon motion of Ms. Stowers, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board sustained the action of the Franchise Tax Board.

Wednesday, March 25, 2015

Peter St. Geme and Polly Plumer St. Geme, 693089

Final Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and duly carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes. Ms. Stowers voting no, the Board reversed the action of the Franchise Tax Board.

Johnnie F. Lau and Gay L. Lau, 739838

Final Action: Upon motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board ordered that the hearing be continued to a later date, 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.

Ehud Yuhjtman and Dalia Yuhjtman, 772960

Final Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board reversed the action of the Franchise Tax Board.

Rago Development Corporation, 735761

Fredrick M. Wooster and Mary L. Wooster, 727483

Paul H. Verriere and Patricia R. Verriere, 727493

Michael J. Smith and Lynn M. Smith, 725834

Louis Rago and June E. Rago, 725839

Martin Bramante and Estate of Velia Bramante, 632713

Frank Sabella, 633944

Louis La Torre Living Family Trust, Louis La Torre Trustee, 633028

Final Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board reversed the action of the Franchise Tax Board.

Kamaldip S. Ghei, 796875

Final Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board sustained the action of the Franchise Tax Board.

Rago Development Corporation, 735761 (Continued)

Fredrick M. Wooster and Mary L. Wooster, 727483 (Continued)

Paul H. Verriere and Patricia R. Verriere, 727493 (Continued)

Michael J. Smith and Lynn M. Smith, 725834 (Continued)

Louis Rago and June E. Rago, 725839 (Continued)

Martin Bramante and Estate of Velia Bramante, 632713 (Continued)

Frank Sabella, 633944 (Continued)

Louis La Torre Living Family Trust, Louis La Torre Trustee, 633028 (Continued)

Members discussed their reasoning and indicated that they might vote to adopt a formal opinion on this matter once a decision is prepared for their review. Staff advised that it would draft a proposed summary decision that the Board would have the opportunity to review.

Wednesday, March 25, 2015

Ms. Stowers requested a written analysis of relevant case law regarding like-kind exchanges, including relevant cases presented on appeal by both parties after the close of briefing.

The Board recessed at 8:19 p.m.

The foregoing minutes are adopted by the Board on April 29, 2015.

Note: The following matters were removed from the calendar prior to the meeting: *Joseph W. Valva and Marilyn K. Valva, 719017*; and, *Thomas L. Wilson, 780908*.

Thursday, March 26, 2015

The Board met at its offices at 450 N Street, Sacramento, at 9:32 a.m., with Mr. Runner, Vice Chairman, Ms. Ma and Ms. Harkey present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

The Board recessed at 9:33 a.m. and reconvened at 12:40 p.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

SALES AND USE TAX APPEALS HEARINGS

Dora, LLC, 513022 (DF)

01/01/04 to 12/31/07, \$206,393.87 Tax, \$51,598.77 Fraud Penalty

For Petitioner:

Pedro Jimenez, Taxpayer

Juan Benavides, Representative

Reynaldo Mora, Witness

Framta Saechao, Attorney

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 sales.

Whether the Department has established fraud by clear and convincing evidence.

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

CHIEF COUNSEL MATTERS

RULEMAKING

Petition to repeal Sales and Use Tax Regulation 1585, Cellular Telephones, Pagers, and Other Wireless Telecommunication Devices

Bradley Heller, Tax Counsel, Tax & Fee's Programs Division, Legal Department, made introductory remarks regarding a petition to repeal Regulation 1585 in its entirety or, alternatively, to repeal subdivisions (a)(3) and (4), (b)(3) through (6), and (c) of Regulation 1585 ([Exhibit 3.9](#)).

Speakers:

Daniel Hattis, Attorney, Hattis Law

Ed Howard, California Tax Reform Association

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board denied the petition as recommended by staff.

Exhibits to these minutes are incorporated by reference.

Thursday, March 26, 2015

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

In honor of Women's History Month the Board recognized American women of every race, class, and ethnic background that have made historic contributions in every area to the growth and strength of our Nation in countless recorded and unrecorded ways. Mr. Horton read the Board Resolution into the record ([Exhibit 3.10](#)).

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

Cynthia Bridges, Executive Director, introduced Ruth Ignont, Assistant Information Systems Analyst, Technology Services Department, who provided a report regarding the 2014/15 State Employee Food Drive Results ([Exhibit 3.11](#)).

The Board Members extended their congratulations to everyone who participated for making this year's food drive so successful.

ADMINISTRATIVE MATTERS, CONSENT (CONTINUED)

The Board deferred consideration of the following matter: *Proposed Revisions to Compliance Policy and Procedures Manual (CPPM) Chapter 1, General*.

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers 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 3.12](#)).

Patricia A. Borden, Associate Business Management Analyst, Administration
Department's Space and Lease Management Section, Headquarters
Marilyn Byrne, Tax Technician III, San Francisco District Office
Keith S. Chatprapachai, Tax Consultant II, Board Member Michelle Steel's
Office

Action: Approve the Board Meeting Minutes of February 24-26, 2015.

Action: Adopt Proposed Revisions to Compliance Policy and Procedures Manual (CPPM) Chapter 6, *Closeouts and Clearances* and Chapter 7, *Collections* ([Exhibit 3.13](#)).

Thursday, March 26, 2015

Action: Approve the 2015-2018 Timber Advisory Committee Appointments ([Exhibit 3.14](#)).

Action: Adopt Board Resolution recognizing Women's History Month ([see Exhibit 3.10](#)).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

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

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee

Action: This matter was taken up later in the day.

Customer Services and Administrative Efficiency Committee

Action: Upon motion of Ms. Harkey, seconded by Ms. Stowers and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report and the actions therein as reflected by the committee members' votes ([Exhibit 3.15](#)).

Property Tax Committee

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board approved the Property Tax Committee report and the actions therein as reflected by the committee members' votes ([Exhibit 3.16](#)).

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD MARCH 26, 2015

Dora, LLC, 513022 (DF)

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

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 3:05 p.m. and reconvened immediately in closed session with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

Thursday, March 26, 2015

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 4:14 p.m. and reconvened immediately in open session with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

Mr. Horton announced the appointment of Sandra Mayorga to the position of Chief, Human Resources Division, Administration Department.

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee

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

The Board adjourned at 4:18 p.m. in memory of Lisa Buchanan, Research Program Specialist, Research and Statistics Section, who passed away on Sunday, March 22, 2015, at age 40, and is survived by husband Dwight and daughters Naomi and Monica.

The foregoing minutes are adopted by the Board on April 29, 2015.

Note: The following matters were removed from the calendar prior to the meeting: *Rohan and Sagar, Inc., 561882 (CH)* and *Sagar Emporium, Inc., 562126 (CH)*; *Surjit Singh and Kanwalpreet Singh, 547502, 562417 (DF)*; *Imran Mullick, 690128 (BH)*; *Balwant Singh, 601072 (KH)*; and *Administration Deputy Director's Report: Inter-Con Security Systems, Inc. Contract Update.*