

Tuesday, February 23, 2016

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:34 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 Ms. Ma.

The Board recessed at 9:35 a.m. and reconvened at 9:56 a.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Administration Deputy Director's Report

Sandra Mayorga, Chief, Human Resources Division, Administration Department, provided a report regarding recruitment and retention efforts.

Speakers: Margarita Maldonado, Vice President, SEIU 1000 ([Exhibit 2.1](#))
James Zoes, Business Tax Specialist I, Board of Equalization
Donna Vanschijndel, SEIU 1000, Franchise Tax Board
Ronald Lee, Program Specialist III, Franchise Tax Board
Dolly Avila, SEIU 1000, Franchise Tax Board

Exhibits to these minutes are incorporated by reference.

The Board recessed at 11:14 a.m. and reconvened at 11:29 a.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

Executive Director's Report

Mark Durham, Chief, Research and Statistics Section, Legislative and Research Division, presented staff's recommendation for the fiscal year 2016-17 excise tax rate setting for motor vehicle fuel and diesel fuel (fuel tax swap) ([Exhibit 2.2](#)).

Speakers: Don Pofa, Assistant Supervisor, TLMC
Joseph Cruz, Legislative Advocate, California State Council of Laborers
Ronald Berdugo, Legislative Representative, League of California Cities
Angela Driscoll, Government Relations Representative, Los Angeles County
Public Works
Christopher Lee, Legislative Analyst, California State Association of Counties
Patricia Romo, Assistant Director, Riverside County

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Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and duly carried, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Mr. Horton and Ms. Stowers voting no, the Board set the excise tax rate for the period of July 1, 2016 through June 30, 2017 on: motor vehicle fuel at \$0.278 per gallon; and, diesel fuel at \$0.16 per gallon, as recommended by staff.

Mark Durham, Chief, Research and Statistics Section, Legislative and Research Division, presented staff's recommendation for setting the fiscal year 2016-17 diesel fuel tax rate for interstate users component b ([Exhibit 2.3](#)).

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 adopted a diesel fuel tax rate for interstate users component b of \$0.240 per gallon for fiscal year 2016-17 as recommended by staff.

Mark Durham, Chief, Research and Statistics Section, Legislative and Research Division, presented staff's recommendation for the prepayment rate for sales tax on motor vehicle fuel, diesel fuel and jet fuel distributions for the period July 1, 2016 through June 30, 2017 ([Exhibit 2.4](#)).

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 set the prepayment rate of sales tax on motor vehicle fuel, diesel fuel and jet fuel distributions, for the period July 1, 2016 through June 30, 2017 at \$0.05 per gallon, \$0.17 per gallon, and \$0.07 per gallon, respectively, as recommended by staff.

The Board recessed at 12:33 p.m. and reconvened at 1:38 p.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

PUBLIC HEARINGS

Proposed Amendments to Sales and Use Tax Regulation 1668, *Sales for Resale*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to clarify that a sale or purchase of counterfeit goods by a convicted seller or purchaser is subject to tax, regardless of whether the sale or purchase was for resale ([Exhibit 2.5](#)).

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

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 adopted the amendments to Regulation 1668 as published.

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Property Taxes - State Assesseees' Presentations on Capitalization Rates and Other Factors Affecting Values

Ken Thompson, Chief, State Assessed Properties Division, Property Tax Department, made introductory remarks regarding 1) state assesseees' presentations on capitalization rates and other factors and procedures affecting fiscal year 2016-17 property values of California public utilities, railroads, and pipelines; and, 2) private railroad car assesseees' presentations on factors and procedures affecting fiscal year 2016-17 taxable values of private railroad cars.

Speakers: Peter Michaels, Law Office of Peter Michaels

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Curtice R. Booth and Evelyn Booth, 824057

2008, \$2,687.10 Assessment

2009, \$46,248.24 Assessment

2010, \$13,747.80 Assessment

Patrick J. O'Grady and Laurel O'Grady, 848643

2008, \$2,379.10 Assessment

2009, \$34,438.23 Assessment

2010, \$13,531.24 Assessment

For Appellants:

Gregory G. Wilson, Representative

For Franchise Tax Board:

Eric Yadao, Tax Counsel

Marguerite Mosnier, Tax Counsel

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

Grant Thompson, Tax Counsel, Appeals Division, Legal Department, stated for the record that in the matter of the Patrick J. O'Grady and Laurel O'Grady, the Franchise Tax Board has agreed to abate interest from July 26, 2013 to January 28, 2014.

Eric Yadao, Tax Counsel, Franchise Tax Board, stated for the record that the abatement is exclusive to the Patrick J. O'Grady and Laurel O'Grady appeal for tax year 2010.

Gregory G. Wilson, Representative, stated for the record that his clients agreed to the abatement.

Issue: Whether appellants are entitled to interest abatement for the years at issue.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 2.6](#))

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

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John M. Kling, 847081

2004, \$262.19 Tax

2005, \$347,752.81 Tax, \$44,173.74 Penalties

2006, \$1,536.38 Tax, \$240.35 Penalties

2007, \$1,446.39 Tax, \$255.04 Penalties

2008, \$1,343.24 Tax, \$258.84 Penalties

2009, \$872.19 Tax, \$244.05 Penalties

2010, \$1,192.62 Tax, \$233.07 Penalties

For Appellant:

A. Lavar Taylor, Attorney

For Franchise Tax Board:

Marguerite Mosnier, Tax Counsel

Maria Brosterhous, Tax Counsel

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

Issue: Whether appellant has established error in the determination of respondent Franchise Tax Board that appellant was properly assessed as a transferee for the liabilities of taxpayer/transferor, Fire X-Tinguisher Service Co., Inc. for the tax years March 31, 2004 through March 31, 2010.

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.

Edward Lavi, 861784

2007, \$211,461.00 Assessment, \$18,911.00 Accuracy-Related Penalty, \$52,865.25 Late Filing Penalty

For Appellant:

Edward Lavi, Taxpayer

For Franchise Tax Board:

Bradley Kragel, Tax Counsel

Michael Cornez, Tax Counsel

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

Issues: Whether respondent erred in determining appellant's distributive share of partnership items from a limited partnership.

Whether respondent erred in disallowing appellant's claimed deduction for legal expenses.

Whether the Board has jurisdiction to determine whether the proposed assessment has been discharged through bankruptcy.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 2.7](#))

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.

David Haller and Vanessa Chau Haller, 872918

2012, \$11,895.00 Claim for Refund

For Appellants:

David Haller, Taxpayer

Bich Loan Nguyen, Representative

For Franchise Tax Board:

Maria Brosterhous, Tax Counsel

Marguerite Mosnier, Tax Counsel

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

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Issues: Whether the Board has jurisdiction to hear this appeal.
 Whether appellants have shown that the Franchise Tax Board (respondent) erred in denying their claim for refund, which is based on a claimed new jobs credit.
 Whether appellants have shown reasonable cause for the late filing of their 2002 California income tax return.
 Whether appellants have demonstrated that respondent erred by not abating the underpayment of estimated tax penalty.
 Whether interest should be abated.

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.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Ma, 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:

Pisces International, Incorporated, 358265, 792538 (STF)
 06/01/04 to 03/31/06, \$8,351,980.84 Tax, \$2,087,995.25 Fraud Penalty, \$832,665.44 Finality Penalty
 06/01/04 to 03/31/06, \$138,849.15 Tax, \$34,712.30 Fraud Penalty
 Action: Redetermine as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *James Strizich, 852251.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single 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 made the following orders:

Cheryl A. Savage, 874840
 2004, \$74,558.00 Tax, \$55,918.50 Fraud Penalty
 Action: Sustain the action of the Franchise Tax Board.

Berc Agopoglu, 848646
 2010, \$2,682.00 Tax
 Action: Sustain the action of the Franchise Tax Board.

David Brennan, 852170
 2010, \$4,253.00 Tax
 Action: Sustain the action of the Franchise Tax Board.

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Yanina Cartagena, 762688

2011, \$985.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Ryan L. Harkey and Jennifer R. Harkey, 812721

2009, \$1,716.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Richard Liqun He and Sheri Xiaochun Liu, 663709

Sheri Xiaochun Liu and Richard Liqun He, 744889

2008, \$175.00 Tax

2009, \$1,786.00 Tax

Action: Modify the action of the Franchise Tax Board.

Jennifer Herbert, 839022

2010, \$7,940.39 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Stanley A. Kopp and Kimberly A. Kopp, 807700

2005, \$2,847.00 Tax

2006, \$4,353.00 Tax

2007, \$825.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Eric Lee, 835871

2010, \$3,297.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Priscilla V. Ludd, 740007

2007, \$350.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Peter H. Nguyen and Kimphung T. Nguyen, 856885

2010, \$50,038.00 Tax, \$10,007.60 Accuracy-Related Penalty

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

Marie Prevot, 852525

2012, \$620.61 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

James Strizich, 852251

2012, \$17,963.00 Tax, \$4,490.75 Late Filing Penalty, \$4,490.75 Demand Penalty, \$78.00 Filing Enforcement Fee

Action: The Board took no action.

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Kevin S. Tait, 792430

2009, \$1,690.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Brantley W. White, 857550

2011, \$3,636.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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. 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:

Mark J. Miller, 509262 (AP)

04/01/06 to 04/23/07, \$543,291.80

Action: Approve the redetermination as recommended by staff.

David McMillan Garthwaite, 569157 (EH)

10/01/04 to 09/02/09, \$338,839.79

Action: Approve the redetermination as recommended by staff.

Lourdes Maria Garthwaite, 569159 (EH)

10/01/04 to 09/02/09, \$338,839.79

Action: Approve the redetermination as recommended by staff.

David McMillan Garthwaite, 569165 (EH)

10/01/04 to 09/02/09, \$260,643.20

Action: Approve the redetermination as recommended by staff.

Lourdes Maria Garthwaite, 569166 (EH)

10/01/04 to 09/02/09, \$260,643.20

Action: Approve the redetermination as recommended by staff.

Jerel Berkov, 611182 (CH)

10/01/03 to 12/13/08, \$1,299,622.41

Action: Approve the redetermination as recommended by staff.

Darrin Scott Mirolla, 780906 (AA)

04/01/09 to 08/03/10, \$553,557.90

Action: Approve the redetermination as recommended by staff.

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El Rancho Steak House, Inc., 551913 (CH)

07/01/04 to 06/30/07, \$202,018.55

Action: Approve the redetermination as recommended by staff.

Enterprise FM Trust, 668125 (OH)

01/01/08 to 12/31/10, \$2,622,394.38

Action: Approve the redetermination as recommended by staff.

IGT, 838764 (OH)

01/01/11 to 12/31/11, \$69,522.36

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

Abdul Ardekani, 926471 (EA)

07/01/09 to 06/30/10, \$105,655.68

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

Mark J. Wattles, 868368 (EH)

07/01/10 to 02/10/11, \$138,062.24

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

Farmost Insuring Company, 927297 (SO)

04/01/09 to 03/31/12, \$102,579.44

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

Super Products, LLC, 873247 (OH)

01/01/10 to 12/31/12, \$122,506.27

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

Childrens Hospital of Los Angeles, 608447 (AC)

01/01/09 to 12/31/12, \$501,548.98

Action: Approve the refund as recommended by staff.

Karl Storz Imaging, Inc., 874046 (GH)

10/01/14 to 03/31/15, \$158,653.00

Action: Approve the refund as recommended by staff.

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Professional Hospital Supply, Inc., 849388 (EH)

07/01/11 to 09/30/14, \$276,218.77

Action: Approve the refund as recommended by staff.

Sharp Memorial Hospital, 817213 (FH)

01/01/12 to 09/30/13, \$404,966.68

Action: Approve the refund as recommended by staff.

Grossmont Hospital Corporation, 817211 (FH)

01/01/12 to 09/30/13, \$281,963.70

Action: Approve the refund as recommended by staff.

Safety-Kleen Systems, Inc., 775230 (OH)

07/01/06 to 06/30/09, \$221,746.36

Action: Approve the refund as recommended by staff.

BMW of North America, 925697 (OH)

02/10/14 to 08/10/15, \$2,075,196.98

Action: Approve the refund as recommended by staff.

Presidio Networked Solutions, Inc., 554765 (OH)

01/01/07 to 12/31/09, \$279,838.54

Action: Approve the refund as recommended by staff.

Good Samaritan Hospital, LP, 850438 (GH)

07/01/11 to 12/31/13, \$210,914.45

Action: Approve the refund as recommended by staff.

Total Renal Care, Inc., 926646 (OH)

04/01/09 to 03/31/13, \$572,963.35

Action: Approve the refund as recommended by staff.

Niagara Bottling, LLC, 881245 (RC)

07/01/14 to 09/30/14, \$560,383.20

Action: Approve the refund as recommended by staff.

Raytheon Company, 918686 (OH)

01/01/10 to 12/31/12, \$2,497,247.50

Action: Approve the refund as recommended by staff.

DVA Healthcare Renal Care, Inc., 926648 (OH)

04/01/10 to 03/31/13, \$111,490.36

Action: Approve the refund as recommended by staff.

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Mission Pharmacal Company, 920671 (OH)
01/01/12 to 12/31/14, \$105,153.09
Action: Approve the refund as recommended by staff.

Advanced Lab Concepts, Inc., 926269 (EA)
04/01/11 to 03/31/14, \$116,044.23
Action: Approve the refund as recommended by staff.

RMS Lifeline, Inc., 927222 (OH)
04/01/10 to 03/31/13, \$334,506.28
Action: Approve the refund as recommended by staff.

IGT, 838764 (OH)
01/01/11 to 12/31/11, \$239,202.91
Action: Approve the refund as recommended by staff.

Harley-Davidson Credit Corp., 917688 (OH)
04/01/15 to 06/30/15, \$103,555.00
Action: Approve the refund as recommended by staff.

Optimedica Corporation, 841647 (GH)
04/01/13 to 06/30/13, \$135,495.68
Action: Approve the refund as recommended by staff.

Citigroup, Inc. & Subsidiaries and Affiliates, 717884 (OH)
07/01/12 to 12/31/12, \$220,475.23
Action: Approve the refund as recommended by staff.

QG, LLC, 851234 (OH)
01/01/11 to 03/31/14, \$324,431.16
Action: Approve the refund as recommended by staff.

Dailycandy Commerce, LLC, 777660 (OH)
11/02/09 to 12/31/11, \$276,359.39
Action: Approve the refund as recommended by staff.

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

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Harkey , seconded by Mr. Runner 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 made the following orders:

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Nationwide Mutual Insurance Co., 863428 (STF)

01/01/13 to 12/31/13, \$170,072.00

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

Nationwide Mutual Fire Insurance Co., 864799 (STF)

01/01/13 to 12/31/13, \$170,072.00

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

LEGAL APPEALS MATTER, ADJUDICATORY

G & C Equipment Corporation, 373826 (AS)

04/01/02 to 03/31/05, \$108,346.95 Tax, \$1,655.20 Amnesty Interest Penalty

Considered by the Board: November 17, 2015

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

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and duly carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers voting no, the Board ordered that the petition for rehearing be granted.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

DeVetus Jones and Samantha Jones, 841654

2011, \$11,424.50 Claim for Refund

Considered by the Board: January 26, 2016

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

Action: Ms. Harkey moved to reverse the action of the Franchise Tax Board. The motion failed for lack of second.

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

Robert H. Lowe and Sheryl L. Berkoff, 571973

2005, \$714,686.00 Assessment, \$178,671.50 Failure to Furnish Information Penalty

Considered by the Board: November 17, 2015

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

Action: Upon motion of Ms. Ma, seconded by Mr. Runner and duly carried, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Mr. Horton and Ms. Stowers voting no, the Board modified the action of the Franchise Tax Board by determining an adjusted basis for the property of \$12,167,208.00 computed by deducting \$1,358,792.00 in claimed capitalization mortgage interest from the taxpayers' reported basis of \$13,526,000.00.

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LEGAL APPEALS PROPERTY TAXES MATTERS, ADJUDICATORY

Liberty Utilities (Calpeco Electric), LLC (163), 903788

2015, \$144,200,000.00 Unitary Value, \$14,420,000.00 Penalty

Considered by the Board: December 16, 2015 Summary Decision (Rev. & Tax. Code, § 40)

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

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 written summary decision as presented by staff.

Verizon California, Inc. (201), 903737

2015, \$2,715,200,000.00 Unitary Value

Considered by the Board: December 16, 2015 Summary Decision (Rev. & Tax. Code, § 40)

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

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 written summary decision as presented by staff.

Panoche Energy Center, LLC (1152), 908350

2015, \$312,300,000.00 Unitary Value

Considered by the Board: December 16, 2015 Summary Decision (Rev. & Tax. Code, § 40)

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

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 written summary decision as presented by staff.

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TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**OFFER-IN-COMPROMISE RECOMMENDATIONS**

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 Offer in Compromise Recommendations of *Alma J. Abouraya; Syed Khizer Ahmed; Dan Eugene Craig; Darren Tyler Daily, Crystal E. Daily and Daily Enterprises, Inc.; Dino-Co, Inc. and Bashar Jamil Alhajjar; Charlene Marie Duarte and Manolo Duarte; Hyduke's Valley Motors, Inc.; Brian O'Connor; Puro Nundi, Inc.; Jesus Saldana; Dick Wolfgang Saller; Ransford Maurice Samuda; San Diego Sports Flyers; Krishna P. Vemuri and K & N, Inc.; and, Phuong Bich Vu*, as recommended by staff.

CHIEF COUNSEL MATTERS**RULEMAKING****Section 100 Changes****Rules for Tax Appeals Regulations 5600, Definitions, Board Hearing Procedures; Taxes Affected by This Article, 5601, Eligible Claims, and 5603, Claim Procedure**

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to make Rule 100 changes to update and clarify cross references in Regulation 5600, and make Regulations 5601 and 5603 consistent with Revenue and Taxation Code section 21013 ([Exhibit 2.8](#)).

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 authorization to make Rule 100 changes to Regulations 5600, 5601 and 5603 as recommended by staff.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

Members made complimentary remarks about William Connell, and expressed appreciation for his work with the Board of Equalization and the Veterans. He will be missed by all.

With respect to the Administrative Matters, Consent Agenda, upon a single 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 made the following orders:

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Action: Adopt the following resolution, extending its sincere and grateful appreciation to the retiree for her dedicated service to the State Board of Equalization and to the State of California, their congratulations on the retiree's well-earned retirement, and best wishes to her and her family for continued success, happiness and good health in the years to come ([Exhibit 2.9](#)).

Linda S. Knox, Administrative Assistant II, Administration Department's Deputy Director's Office, Headquarters

Action: Adopt Board Resolution for William Connell, Military Veteran, American Legion Post 49, owner of All American Surf Dog as recommended by staff ([Exhibit 2.10](#)).

Action: Adopt the Board Meeting Minutes of January 26, 2016.

Action: Approve proposed revisions to Audit Manual Chapter 1, *General Information*; Compliance Policy and Procedures Manual Chapter 1, *General* and Chapter 7, *Collections* as recommended by staff ([Exhibit 2.11](#)).

Action: Approve proposed revisions to Audit Manual Chapter 4, *General Audit Procedures* and Chapter 5, *Penalties*; Compliance Policy and Procedures Manual Chapter 7, *Collections* as recommended by staff ([Exhibit 2.12](#)).

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee

Action: The Board deferred the matter to February 24, 2016.

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 2.13](#)).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Cynthia Bridges, Executive Director, provided an update on actions to resolve the findings in the SCO Review Report of the Board of Equalization's Internal Accounting and Administrative Controls ([Exhibit 2.14](#)).

David Gau, Chief Deputy Director, provided a report regarding the progress on the CROS project to replace BOE's two current legacy technology tax administration systems.

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Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, presented an Annual Report highlighting the Taxpayers' Rights Advocate Office accomplishments, involvement in projects, current issues, and examples of cases illustrating services provided ([Exhibit 2.15](#)).

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD FEBRUARY 23, 2016

Curtice R. Booth and Evelyn Booth, 824057

Patrick J. O'Grady and Laurel O'Grady, 848643

Final Action: Upon motion of Ms. Ma, seconded by Ms. Stowers 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 as modified by its concessions.

John M. Kling, 847081

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.

Edward Lavi, 861784

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 sustained the action of the Franchise Tax Board.

David Haller and Vanessa Chau Haller, 872918

Final Action: Ms. Harkey moved to reverse the action of the Franchise Tax Board. Ms. Harkey withdrew her motion.

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 continued the hearing to the April Board meeting in Culver City.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD FEBRUARY 23, 2016

West Coast Storm, Inc., 627343, 805282 (EH)

10/01/08 to 12/31/11, \$234,560.00 Tax, \$00.00 Finality Penalty

For Taxpayer/Claimant: Waived Appearance

For Sales and Use Tax Department: Nenita DeLaCruz, Hearing Representative

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

Issue: Whether any additional adjustments to the amount of unreported taxable sales are warranted.

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 ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

Tuesday, February 23, 2016

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 5:24 p.m. and reconvened immediately in closed session with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

CLOSED SESSION

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

The Board recessed at 5:49 p.m. and reconvened immediately in open session with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

The Board recessed at 5:50 p.m.

The foregoing minutes are adopted by the Board on March 30, 2016.

Note: The following matters were removed from the calendar prior to the meeting: *Craig Wheeler and Dani Wheeler, 852861; Brenda J. Daly, 854545; Rodney L. Gleicher and Renay Gregg, 877786; Larry Russ, 731267; Joseph A. Sciarretta, 809250; Cesar Z. Lugo, 790947; Aadonix Corporation, 892108; and, Marvin E. Catchings and Winnie V. Catchings, 881694.*

Wednesday, February 24, 2016

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:35 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.

SALES AND USE TAX APPEALS HEARINGS

Jantex Inks & Beyond, Inc., 712415, 797612, 816214 (AP)

01/01/08 to 12/31/10, \$67,984.50 Tax

For Petitioner/Claimant:

Janet Springer, Taxpayer

Opal Mata, Taxpayer

Jesse W. McClellan, Attorney

For Sales and Use Tax Department:

Monica Silva, Tax Counsel

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

Issue: Whether adjustments are warranted to the disallowed claimed nontaxable sales for resale.

Action: Upon motion of Ms. Stowers, seconded by Mr. Runner 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.

The Board recessed at 10:46 a.m. and reconvened at 11:02 a.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

Brian Scott Gerstein, 606328 (EA)

07/01/07 to 06/30/11, \$23,026.47 Tax, \$00.00 Negligence Penalty

For Petitioner:

Brian Scott Gerstein, Taxpayer

James M. Garbo, Representative

For Sales and Use Tax Department:

Scot Claremon, Tax Counsel

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

Issue: Whether adjustments are warranted to the amount of disallowed claimed nontaxable sales.

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 ordered that the petition be submitted for decision.

PCS Wireless, Inc., 572015 (EA)

01/01/08 to 12/31/10, \$126,147.86 Tax, \$12,614.34 Negligence Penalty

For Petitioner:

Andrew B. Mai, Taxpayer

Hai V. Dang, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

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

Issues: Whether any adjustments to the amount of unreported taxable sales are warranted.

Whether petitioner was negligent.

Wednesday, February 24, 2016

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 ordered that the petition be submitted for decision.

The Board recessed at 12:24 p.m. and reconvened at 1:31 p.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

Allied Modular Building Systems, Inc., 506774 (EA)

07/01/05 to 06/30/08, \$56,124.47 Tax, \$6,393.96 Negligence Penalty

For Petitioner: Kevin Peithman, Taxpayer
Frances Sullivan Lewis, Taxpayer
Jim Fier, Representative

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

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

Issues: Whether adjustments are warranted to the disallowed amounts of nontaxable sales for resale or exempt sales to the U. S. Government.

Whether petitioner was negligent.

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 ordered that the petition be submitted for decision.

The Board recessed at 2:43 p.m. and reconvened at 2:54 p.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

Phillip Andres Anacker, Maura Stanley Harrington, and Jake Anthony Whiteley, 611321 (JH)

07/01/07 to 06/30/10, \$23,791.29 Tax

Phillip Andres Anacker, Maura Stanley Harrington, and Jake Anthony Whiteley, 611322 (JH)

07/01/07 to 06/30/10, \$16,795.44 Tax

For Petitioners: Phillip Andres Anacker, Taxpayer
Graham Hoad, Representative

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

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

Issue: Whether adjustments to the amount of unreported taxable sales are warranted.

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 submitted for decision.

Mr. Horton welcomed Gloria Apiecioneck, Hearing Reporter, to the Board.

Wednesday, February 24, 2016

Robert Ramos, 612720 (EA)

01/01/08 to 12/31/10, \$13,467.88 Tax, \$00.00 Negligence Penalty

For Petitioner: Robert Ramos, Taxpayer
Joseph Swift, Jr., Representative

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

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

Issue: Whether any adjustments to the amount of disallowed claimed exempt sales of food are warranted.

Action: Upon motion of Ms. Ma, seconded by Mr. Runner 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.

Elton Justin Hoiles, 794727 (AS)

07/01/09 to 06/13/12, \$27,958.00 Tax, \$00.00 Negligence Penalty

For Petitioner: Michael W. Hoiles, Taxpayer

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

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

Issue: Whether adjustments are warranted to the disallowed claimed exempt sales.

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 nontaxable sale ratio be increased to 40 percent, and that the petition otherwise be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise program. The Board also directed staff to discuss with the taxpayer any options for collections to be transferred to Michael Hoiles, if the law allows.

SPECIAL TAXES APPEALS HEARING

Petition For Release of Seized Property

Kerolos H. Guirguis, 873783 (STF)

February 25, 2015 Seizure Date, \$3,533.82 Approximate Value

For Petitioner: Kerolos Guirguis, Taxpayer
Elizabeth Elgergawe, Representative

For Special Tax and Fees Department: Pamela Mash, Tax Counsel

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

Issue: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b).

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 ordered that the petition be submitted for decision.

The Board recessed at 5:55 p.m. and reconvened at 6:08 p.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

Wednesday, February 24, 2016

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
FEBRUARY 24, 2016**

Jantex Inks & Beyond, Inc., 712415, 797612, 816214 (AP)

Final Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and duly carried, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Mr. Horton and Ms. Stowers voting no, the Board ordered that the petition be granted, and the tax be redetermined accordingly.

Brian Scott Gerstein, 606328 (EA)

Final Action: Ms. Harkey moved to allow four transactions (three for \$100.00 and one for \$150.00) as nontaxable sales, and tax the drop-shipment separately as a non-recurring item, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Runner. Ms. Harkey withdrew her motion.

Ms. Harkey moved to allow four transactions (three for \$100.00 and one for \$150.00) as nontaxable sales, and tax the drop-shipment separately as a non-recurring item, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Runner but failed to carry, Mr. Runner and Ms. Harkey voting yes, Mr. Horton, Ms. Ma and Ms. Stowers voting no.

Ms. Harkey moved to allow four transactions (three for \$100.00 and one for \$150.00) as nontaxable sales, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Runner but failed to carry, Mr. Runner and Ms. Harkey voting yes, Mr. Horton, Ms. Ma and Ms. Stowers voting no.

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

PCS Wireless, Inc., 572015 (EA)

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 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.

Allied Modular Building Systems, Inc., 506774 (EA)

Final Action: Mr. Runner moved to grant the petition. The motion failed for lack of second.

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 negligence penalty be deleted, and that the petition otherwise be redetermined as recommended by the Appeals Division.

Wednesday, February 24, 2016

Phillip Andres Anacker, Maura Stanley Harrington, and Jake Anthony Whiteley, 611321 (JH)

Phillip Andres Anacker, Maura Stanley Harrington, and Jake Anthony Whiteley, 611322 (JH)

Final Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and duly carried, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Mr. Horton and Ms. Stowers voting no, the Board ordered that the petition be granted, and the tax be redetermined accordingly.

Robert Ramos, 612720 (EA)

Final Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and duly carried, Mr. Horton, Mr. Runner, Ms. Harkey and Ms. Stowers voting yes, Ms. Ma voting no, the Board ordered that the nontaxable sales ratio be increased to 46.94 percent, and that the petition otherwise be redetermined as recommended by the Appeals Division.

FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD FEBRUARY 24, 2016

Kerolos H. Guirguis, 873783 (STF)

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 determined that staff properly seized the tobacco products.

ADMINISTRATIVE SESSION

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee

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 approved the Legislative Committee report and the actions therein as reflected by the committee members' votes ([Exhibit 2.16](#)).

Exhibits to these minutes are incorporated by reference.

ORGANIZATION OF THE BOARD

Action: Mr. Horton moved to elect Ms. Harkey as Board Chair. The motion was seconded by Ms. Harkey. Mr. Runner made a substitute motion to rotate the Chair. The substitute motion failed for lack of a second. The original motion failed to carry, Mr. Horton and Ms. Harkey voting yes, Mr. Runner, Ms. Ma and Ms. Stowers voting no.

Upon motion of Ms. Stowers, seconded by Mr. Runner and duly carried, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton and Ms. Harkey voting no, the Board elected Ms. Ma as Chair effective contemporaneous to the motion.

Wednesday, February 24, 2016

Action: Upon motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board ordered that Members may add any item to the agenda by submitting it to the Executive Director, pursuant to the following process: Chief Counsel will review it for legality and, if item is legally proper, confirm that the Member and the Executive Director have consulted with the affected Department(s), which will provide their perspective on the item to the Member, and that based on this input, the Member has affirmed the decision to have the item placed on a public agenda notice in accordance with the Bagley-Keene Open Meeting Act.

Randy Ferris, Chief Counsel, provided options for rotating the office of the Chair between the Board Members ([Exhibit 2.17](#)).

Action: Upon motion of Mr. Horton, seconded by Mr. Runner and duly carried, Mr. Horton, Mr. Runner and Ms. Harkey voting yes, Ms. Ma and Ms. Stowers voting no, the Board ordered that the Chair will rotate annually.

Mr. Runner moved to rotate the Chair annually by Equalization Districts in this order: 2, 1, 4, 3. The motion was seconded by Ms. Harkey. Mr. Horton offered an amendment to rotate the Chair annually at the conclusion of the February Meeting by Equalization Districts in this order: 2, 4, 1. The amended motion was seconded by Ms. Harkey and duly carried, Mr. Horton, Mr. Runner and Ms. Harkey voting yes, Ms. Ma and Ms. Stowers voting no.

Action: Upon motion of Mr. Runner, seconded by Mr. Horton and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board elected Ms. Harkey as Board Vice Chair. The Board also chose to rotate the Vice Chair at the same time with the Member slated to become Chair the following year.

Action: Upon motion of Mr. Horton, seconded by Ms. Harkey and duly carried, Mr. Horton, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, Mr. Runner voting no, the Board ordered that the Chair will recommend Committee Chairs, which will then be ratified by the Board in open session.

Mr. Horton adjourned the Board meeting at 7:43 p.m. in memory of William Connell, Military Veteran, American Legion Post 49, owner of All American Surf Dog.

The foregoing minutes are adopted by the Board on March 30, 2016.

Note: The following matters were removed from the calendar prior to the meeting: *Hector Ramirez Navarro, 578948 (AP); Paedick Gharapanianse, 568598 (AC); and, Yeshitila Wuhib, 728749 (AS).*