Tuesday, October 14, 2014

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Rob Zakir and Raya Zakir, 624832
2007, $8,126.00 Tax, $1,643.20 Accuracy-Related Penalty
For Appellants: Rob Zakir, Taxpayer
George Chelius, Representative
For Franchise Tax Board: Eric Yadao, Tax Counsel
Karen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues:
Whether appellants have demonstrated error in the proposed assessment, which was based upon federal adjustments.
Whether appellants have shown that the accuracy-related penalty should be abated.
Appellant’s Exhibit: Miscellaneous Documents (Exhibit 10.1)
Respondent’s Exhibit: Correspondence between appellant and respondent (Exhibit 10.2)
Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

Neville Bothwell and Ila Bothwell, 713600
2008, $476.00 Assessment
For Appellants: Floyd C. Geis, Representative
For Franchise Tax Board: Maria Brosterhous, Tax Counsel
Karen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellants have shown error in respondent’s proposed assessment on a traditional Individual Retirement Account (IRA) distribution.
Appellant’s Exhibit: Miscellaneous Documents (Exhibit 10.3)
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.
Tak Development, Inc., 765468
2005, $16,429.00 Claim for Refund
2006, $130.00 Claim for Refund
2007, $1,026.00 Claim for Refund
2008, $4,455.00 Claim for Refund
2009, $26,831.00 Claim for Refund
For Appellant: Eric Anderson, Attorney
Shail Shah, Attorney
For Franchise Tax Board: Jason Riley, Tax Counsel
David Gemmingen, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether certain machines purchased by appellant are “qualified property,” within the meaning of Revenue and Taxation Code section 23612.2, subdivision (b), such that appellant is entitled to an additional amount of the enterprise zone sales and use tax credit.
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Catherine A. Zikakis, 767950
2006, $115,213.00 Tax
For Appellant: Catherine A. Zikakis, Taxpayer
Donald Segretti, Attorney
For Franchise Tax Board: Judy Hirano, Tax Counsel
David Gemmingen, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant has shown that the Franchise Tax Board erred in its determination that gain from the sale of real property should be included in appellant’s taxable income.
Appellant’s Exhibit: Additional Exhibits (Exhibit 10.4)
Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Arturo Lopez and Maria D. Lopez, 740943
2006, $87,262.00 Assessment
2007, $9,667.00 Assessment
For Appellants: Arturo Lopez, Taxpayer
Lynwood Ford, Representative
For Franchise Tax Board: Todd Watkins, Tax Counsel
David Gemmingen, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether respondent correctly determined that appellants underreported their flow-through capital gains for the tax years at issue.
Respondent’s Exhibit: Additional Exhibits (Exhibit 10.5)
Tuesday, October 14, 2014

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

The Board recessed at 12:00 p.m. and reconvened at 1:14 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Debra Hackley, 728285
2002, $476.00 Tax, $100.00 Late Filing Penalty, $95.20 Accuracy-Related Penalty, $32.54 Post-Amnesty Penalty
For Appellant: Debra Hackley, Taxpayer
Ann Doan, Representative
For Franchise Tax Board: Eric Yadao, Tax Counsel
Karen Smith, Tax Counsel

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

Issues: Whether appellant has shown error in the Franchise Tax Board’s proposed assessment, which is based on federal changes provided by the Internal Revenue Service.
Whether the late filing penalty should be abated.
Whether the accuracy-related penalty should be abated.
Whether the Board has jurisdiction to review respondent’s assessment of the post-amnesty penalty.
Whether respondent’s proposed assessment is barred by the statute of limitations.

Appellant’s Exhibit: Miscellaneous Documents (Exhibit 10.6)
Respondent’s Exhibit: FTB copy of Taxpayers 2002 Tax Return (Exhibit 10.7)

Anthony Epolite, Tax Counsel, Appeals Division, stated for the record that, prior to the hearing, appellant conceded as disallowed $4,396 (i.e., $8,101 - $3,705) of the deductions previously claimed. In addition, Mr. Epolite stated for the record that the Franchise Tax Board allowed $3,554 of the $3,705 of the deductions remaining at issue as qualified medical expenses.

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 abated the late filing and accuracy-related penalties and reversed the action of the Franchise Tax Board as to the remaining amounts in dispute.

SALES AND USE TAX APPEALS HEARINGS

Mi Kyung Park and V. Young Rok Park, 620616 (AA)
07/01/08 to 12/31/11, $24,069.31 Tax, $2,473.91 Negligence Penalty
For Petitioner: Young Rok Park, Taxpayer
Mi Kyung Park, Taxpayer
For Sales and Use Tax Department: Scott Lambert, Hearing Representative
Jennifer Orrick, Hearing Representative

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

Issues: Whether additional adjustments are warranted to the amount of unreported taxable sales established on a markup basis.
Whether petitioner was negligent.
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 submitted for decision.

Sur Trading, Inc., 575609 (FH)
07/01/05 to 06/30/08, $136,311.29 Tax, $14,308.62 Negligence Penalty
For Petitioner: Mario Scolari, Taxpayer
John W. Trudell, 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 are warranted to the amount of taxable rentals of furniture.
Whether adjustments are warranted to the amount of unrecorded taxable sales.
Whether further adjustments are warranted to the amount of disallowed claimed nontaxable sales.
Whether adjustments are warranted to the amount of understatement of reported taxable sales established in a reconciliation of accrued sales tax reimbursement and sales tax paid.
Whether further adjustments are warranted to the amount of unreported taxable sales based on sales recorded in sales journals.
Whether the understatement was the result of negligence.
Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 3:35 p.m. and reconvened at 3:53 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: Corner House Coffee, LLC, 605968.

With respect to the Legal Appeals 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:

AA Toro Sushi, Inc., 569629 (EH)
07/01/07 to 06/30/10, $206,349.44 Tax, $00.00 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Advanced Inhalation Revolutions, Inc., 423633 (AS)
01/01/03 to 10/31/06, $105,305.60 Tax
Action: Redetermine as recommended by the Appeals Division.
American Pro Corp., 486037 (EA)
01/01/02 to 09/30/06, $37,750.56 Tax, $00.00 Penalty
Action: Redetermine as recommended by the Appeals Division.

AMCC-Alternative Med. Col. Covina, 604797 (AP)
03/07/11 to 09/30/11, $73,296.00 Tax, $7,329.60 Failure-to-File Penalty
Action: Redetermine as recommended by the Appeals Division.

Firoza Boni Bharucha, 560706 (SO)
03/01/07 to 09/30/09, $26,396.89 Tax, $2,639.69 Negligence Penalty, $2,639.69 Finality Penalty
Action: Redetermine as recommended by the Appeals Division.

Corner House Coffee, LLC, 605968 (GH)
04/01/08 to 03/31/11, $39,075.94 Tax
Action: The Board took no action.

Gourgen Dalir, 625176 (AC)
01/01/08 to 12/31/10, $20,278.25 Tax
Action: Redetermine as recommended by the Appeals Division.

David Joseph Fredette, 531948 (AA)
10/01/06 to 12/31/06, $17,133.20 Tax, $00.00 Penalty
Action: Redetermine as recommended by the Appeals Division.

Alice Y. Huang, 574144 (AA)
01/01/07 to 12/31/07, $5,215.51 Tax, $431.50 Late-Filing Penalty, $583.90 Late-Payment Penalty
Action: Redetermine as recommended by the Appeals Division.

Jose H. Jensen, 436807 (AS)
10/01/01 to 12/31/01, $25,231.78 Tax, $3,114.83 Finality Penalty, $1,580.42 Amnesty Double Finality Penalty, $1,581.11 Amnesty Interest Penalty
Action: Redetermine as recommended by the Appeals Division

Michael Kenner, 556754 (AS)
04/01/08 to 01/25/09, $22,600.42 Tax, $991.64 Late-Filing Penalty, $1,219.00 Late-Payment Penalty, $243.10 Failure-to-File Penalty, $243.10 Finality Penalty
Action: Redetermine as recommended by the Appeals Division.

Mohammad J. Malekzadeh, 598005 (EH)
07/01/08 to 12/31/10, $28,027.00 Tax
Action: Redetermine as recommended by the Appeals Division.
Richard Sean McGowan, 437584 (AS)
10/01/01 to 12/31/01, $25,231.78 Tax, $3,114.83 Finality Penalty, $1,580.42 Amnesty Double Finality Penalty, $1,581.11 Amnesty Interest Penalty
Action: Redetermine as recommended by the Appeals Division.

Alfredo Marroquin and Leticia Salcido, 631017 (AP)
04/01/09 to 05/31/11, $32,788.73 Tax, $3,278.79 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Super Color Digital, LLC, 596137, 795450 (EA)
01/01/07 to 12/31/09, $19,879.60 Tax
Action: Redetermine as recommended by the Appeals Division.

Trilogynet Corporation, 614080 (AR)
07/01/06 to 06/30/08, $19,052.71 Tax, $1,905.27 Failure-to-File Penalty
Action: Redetermine as recommended by the Appeals Division.

Wide Open Excursions, LLC, 606103 (EA)
04/01/09 to 06/30/09, $19,884.38 Tax, $1,988.44 Finality Penalty
Action: Redetermine as recommended by the Appeals Division.

David Hoang, 715534 (UT)
09/06/03, $4,823.00 Claim for Refund
Action: Deny the claim for refund as recommended by the Appeals Division.

Ali Mohamed Alkanshanly, 797626 (STF)
December 18, 2013 Seizure Date, $41.58 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Bassam Hamood Mohamed Mohsin, 799447 (STF)
January 28, 2014 Seizure Date, $917.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Hassan Tahir Nuru, 794287 (STF)
December 10, 2013 Seizure Date, $70.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Harshadkumar Ramnlal Dave and Pragnaben Harshadkumar Dave, 794283 (STF)
November 26, 2013 Seizure Date, $2,034.80 Approximate Value
Action: Determined that staff properly seized the tobacco products.
CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: Frances Diaz, 605995.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Steel, 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:

CFL, LP, 764609
2008, $800.00 Tax, $200.00 Demand Penalty, $200.00 Delinquent Filing Penalty, $100.00 Late Filing Penalty, $82.00 Filing Enforcement Fee
Action: Sustain the action of the Franchise Tax Board.

Pedro V. Dating and Simona V. Dating, 764257
2008, $24,176.00 Assessment, $4,835.20 Accuracy-Related Penalty
Action: Sustain the action of the Franchise Tax Board.

Frances Diaz, 605995
2006, $12,550.00 Assessment
Action: The Board took no action.

Hilario D. Gonzales and Dawn N. Melkus Gonzales, 620569
2006, $742.00 Claim for Refund
2007, $4,460.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Tsegai Haile and Eden Haile, 711561
2008, $488.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Paul Hansen, 678002
2010, $868.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

John T. Harding, 712994
2010, $818.94 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Neri D. Hernandez A., 785723
2011, $710.00 Assessment
Action: Sustain the action of the Franchise Tax Board.
Andre Jackson, 741548  
2006, $4,207.00 Assessment  
2007, $4,017.00 Assessment  
Action: Sustain the action of the Franchise Tax Board and impose a $750.00 frivolous appeal penalty.

Seshayya Krishnamoorthy, 770932  
2008, $520.00 Tax  
Action: Sustain the action of the Franchise Tax Board.

Rose I. Logue, 737052  
2008, $375.00 Assessment  
Action: Sustain the action of the Franchise Tax Board.

Roderick Keith Long, 727530  
2008, $2,386.00 Assessment  
Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

William MacDonald and Carroll MacDonald, 675505  
2003, $6,084.00 Tax, $1,216.80 Accuracy-Related Penalty  
Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

Mostafa Mehrasa, 653287  
2010, $1,304.00 Assessment  
Action: Sustain the action of the Franchise Tax Board.

Christina Moreno, 636174  
2010, $1,541.00 Assessment  
Action: Sustain the action of the Franchise Tax Board.

Arne Ogaard and Linda Ogaard, 719271  
2008, $3,417.00 Assessment  
Action: Sustain the action of the Franchise Tax Board.

Ludino Papa, 623816  
2006, $308.00 Claim for Refund  
2009, $1,342.00 Claim for Refund  
Action: Sustain the action of the Franchise Tax Board.

Penoe, Inc., 785013  
2010, $1,962.40 Claim for Refund  
2011, $1,777.94 Claim for Refund  
Action: Sustain the action of the Franchise Tax Board as modified by its concessions.
Lawrence Pizinger and Lillian Pizinger, 764247
1994, $1,138.72 Claim for Refund
Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

Helmer Rauda and Beatrix Rauda, 643682
2007, $1,020.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Jerome J. Reso III, 631085
2008, $6,111.00 Assessment, $1,222.20 Accuracy-Related Penalty
Action: Sustain the action of the Franchise Tax Board.

Aziz Sehorewala, 625443
2007, $2,015.00 Claim for Refund
2008, $158.37 Claim for Refund
2009, $359.63 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

William Tan and Ai-Lin Tsai, 790056
2011, $3,598.50 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Andrew Villena, 624808
2010, $547.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Todd Wallin and Patricia K. Evans Wallin, 735467
2006, $64,166.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Alan H. Young and Britta B. Young, 557067
2005, $5,350.00 Assessment
Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

Nikolai A. Zarkevich, 729226
2008, $100.10 Protest of Interest, $657.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Robert L. Botello and Anselma Botello, 607350
2006, $1,139.40 Assessment
2007, $702.00 Assessment
2008, $337.40 Assessment
Action: Deny the petition for rehearing.
Deanna L. Kwan, 601923
2007, $1,724.00 Assessment
Action: Deny the petition for rehearing.

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

With respect to the Sales and Use Tax Matters, Relief of Penalties, Denials of Claims for Refund, and, Grant-One Day Interest Relief, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Runner 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 AMC Showplace Theatres, Inc., 825489 (OH). Ms. Mandel not participating in Seafood Village, Inc., 838226 (AP), Board made the following orders:

Main Electric Supply Co., 835515 (AS)
04/01/14 to 04/30/14, $112,200.00
Action: Approve the relief of penalty as recommended by staff.

AMC Showplace Theatres, Inc., 825489 (OH)
07/01/10 to 12/31/12, $883,139.01
Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Presidio Technology Capital, LLC, 731041 (OH)
07/01/07 to 06/30/09, $320,638.00
Action: Approve the denial of claim for refund as recommended by staff.

Veros Credit, LLC, 623746 (EA)
12/21/10 to 06/30/12, $338,684.31
Action: Approve the denial of claim for refund as recommended by staff.

Gibbs International, Inc., 835520 (AR)
01/01/14 to 03/31/14, $1,047.56
Action: Approve the one day interest relief as recommended by staff.

Univar USA, Inc., 838220 (OH)
02/01/14 to 02/28/14, $6,293.35
Action: Approve the one day interest relief as recommended by staff.

OC Metals, Inc., 828223 (EA)
04/01/14 to 04/30/14, $113.03
Action: Approve the one day interest relief as recommended by staff.

J & Z Petroleum, Inc., 835521 (CH)
01/01/14 to 03/31/14, $367.83
Action: Approve the one day interest relief as recommended by staff.
Sacramento Petroleum, Inc., 838218 (KH)
01/01/14 to 03/31/14, $180.55
Action: Approve the one day interest relief as recommended by staff.

Miracle Ear, Inc., 835517 (OH)
01/01/14 to 01/31/14, $145.07
Action: Approve the one day interest relief as recommended by staff.

Seafood Village, Inc., 838226 (AP)
02/01/14 to 02/28/14, $95.33
Action: Approve the one day interest relief as recommended by staff. Ms. Mandel not participating.

Everett Charles Technologies, LLC, 835516 (AP)
01/01/14 to 03/31/14, $290.86
Action: Approve the one day interest relief as recommended by staff.

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Runner 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 American Multi-Cinema, Inc., 826235 (OH); and, AMC Showplace Theatres, Inc., 825489 (OH); the Board made the following orders:

LCI Holdings, Inc., 588294 (OH)
10/01/05 to 09/30/08, $407,204.60
Action: Approve the credit and cancellation as recommended by staff.

Trojan Petroleum, Inc., 727514 (GH)
01/01/10 to 03/31/10, $114,326.00
Action: Approve the refund as recommended by staff.

Earthgrains Baking Companies, Inc., 758247 (OH)
01/01/13 to 03/31/13, $627,699.00
Action: Approve the refund as recommended by staff.

Bud Antle, Inc., 546995 (GH)
07/01/07 to 03/31/11, $299,181.41
Action: Approve the refund as recommended by staff.

Riverside Community Hospital, 594102 (EH)
07/01/08 to 06/30/11, $338,083.06
Action: Approve the refund as recommended by staff.
American Material Mgt. Allianc, Inc., 630353 (EH)
01/01/11 to 12/31/12, $359,781.00
Action: Approve the refund as recommended by staff.

Varni Brothers Corporation, 826828 (KH)
01/01/11 to 12/31/13, $124,081.84
Action: Approve the refund as recommended by staff.

American Multi-Cinema, Inc., 826235 (OH)
07/01/09 to 06/30/13, $5,749,428.47
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Adtran, Inc., 613005 (OH)
01/01/12 to 03/31/12, $110,275.63
Action: Approve the refund as recommended by staff.

Certainteed Corporation, 743841 (OH)
10/01/07 to 09/30/10, $147,637.14
Action: Approve the refund as recommended by staff.

LCI Holdings, Inc., 794261 (OH)
10/01/05 to 09/30/08, $545,790.85
Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 827703 (OH)
02/03/14 to 05/31/14, $796,919.41
Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 827640 (KH)
01/24/14 to 05/23/14, $251,661.00
Action: Approve the refund as recommended by staff.

Links Unlimited, Inc., 741476 (OH)
01/01/07 to 12/31/09, $248,252.98
Action: Approve the refund as recommended by staff.

Pacificare Health Plan Administrators, Inc., 837823 (EA)
01/01/06 to 06/30/06, $146,690.94
Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 822554 (OH)
01/01/14 to 03/31/14, $456,807.00
Action: Approve the refund as recommended by staff.
Lobel Financial Corporation, 815884 (EA)
01/01/14 to 03/31/14, $413,937.00
Action: Approve the refund as recommended by staff.

Pernod Ricard USA, LLC, 624673 (OH)
01/01/11 to 03/31/12, $155,077.91
Action: Approve the refund as recommended by staff.

Process Displays Company, 801773 (OH)
04/01/13 to 06/30/13, $583,718.93
Action: Approve the refund as recommended by staff.

A-L Financial Corp., 774384 (EA)
07/01/13 to 03/31/14, $333,842.00
Action: Approve the refund as recommended by staff.

Perficient, Inc., 809623 (OH)
07/01/13 to 09/30/13, $153,183.58
Action: Approve the refund as recommended by staff.

AN Luxury Imports of San Diego, 554397 (OH)
07/01/07 to 12/31/13, $183,908.41
Action: Approve the refund as recommended by staff.

AMC Showplace Theatres, Inc., 825489 (OH)
07/01/10 to 12/31/12, $116,245.29
Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Veros Credit, LLC, 623746 (EA)
12/21/10 to 06/30/12, $487,159.33
Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT**

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following order:

Star Insurance Company, 836611 (STF)
10/01/13 to 12/31/13, $120,545.40
Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.
LEGAL APPEALS MATTERS, ADJUDICATORY

Andrew Steven Roganson, 538417, 737457 (AC)

Speaker: Andrew Roganson, Taxpayer

06/08/06 to 12/31/08, $6,328.42 Tax, $214.31 Failure-to-File Penalty

Considered by the Board: September 23, 2014
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 ordered that its previous motion of June 25, 2014 be expunged.

Penryn Lumber Company, 554162 (KH)

Speaker: Matthew F. Heinrich, Representative

10/01/06 to 09/30/09, $45,528.82 Tax

Considered by the Board: September 23, 2014
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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 failure-to-file penalty be deleted and the petition otherwise be redetermined as recommended by the Appeals Division.

Nirvair Corporation, 529714 (EA)

Speaker: Moti Bolyan, Representative

04/01/05 to 03/31/08, $49,292.41 Tax, $12,125.16 Negligence Penalty

Considered by the Board: July 18, 2013
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 ordered that the petition for rehearing be denied as recommended by the Appeals Division.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

OFFER-IN-COMpromise RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offer in Compromise Recommendations of Patricia Salgado Brito; Sam Ath Chao; Gilbert Castillo Martinez; Bang Le Nguyen; Ricardo D. Ramirez; and, Maria E. Ramirez; as recommended by staff.
ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single 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 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 10.8)

Steven Michael Adams, Supervising Tax Auditor II, Petitions Section, Sales and Use Tax Department, Headquarters
Karen Berlin, Business Taxes Administrator I, Consumer Use Tax Section, Sales and Use Tax Department, Headquarters
Paul Trygve Erickson, Business Taxes Specialist I, Petitions Section, Sales and Use Tax Department, Headquarters
Coraleen Grace, Tax Technician III, Consumer Use Tax Section, Sales and Use Tax Department, Headquarters
Kristie Holton, Executive Secretary I, Policy and Compliance Division, Property and Special Taxes Department, Headquarters
Anita S. Joshi, Associate Tax Auditor, West Covina District Office

Action: Approve proposed revisions to Compliance Policy and Procedures Manual, Chapter 5, Returns (Exhibit 10.9).

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.

Property and Special Taxes Deputy Director’s Report

Lynn Bartolo, Acting Deputy Director, Property and Special Taxes Department, reported that the Office of Emergency Services has determined the Emergency Telephone Users Surcharge rate will remain unchanged at 0.75 percent for 2015, and that the Board is to publish the fixed rate (Exhibit 10.10).

Administration Deputy Director’s Report

Edna Murphy, Deputy Director, Administration Department, provided a report on the Legislative Budget Change Proposals.
ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 4:34 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 settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 4:38 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD OCTOBER 14, 2014

Rob Zakir and Raya Zakir, 624832
Final Action: The Board continued the hearing to the December 2014 meeting in Sacramento.

Neville Bothwell and Ila Bothwell, 713600
Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Tak Development, Inc., 765468
Final Action: Mr. Runner moved to reverse the action of the Franchise Tax Board. The motion was seconded by Ms. Steel but failed to carry, Mr. Runner and Ms. Steel voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Steel and duly carried, Mr. Horton, Mr. Runner and Ms. Mandel voting yes, Ms. Yee voting no, the Board allowed kitchen equipment as qualified property, otherwise sustained the action of the Franchise Tax Board.

Catherine A. Zikakis, 767950
Final Action: Ms. Steel moved to reverse the action of the Franchise Tax Board. The motion failed for lack of second.

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

Arturo Lopez and Maria D. Lopez, 740943
Final Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.
FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
OCTOBER 14, 2014

Mi Kyung Park and V. Young Rok Park, 620616 (AA)
Final Action: Ms. Steel moved to grant innocence spouse relief to Mi Park. 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 Ms. Steel, 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 markup be reduced to 22.5 percent, the pilferage allowance be 2 percent, the negligence
penalty be deleted, 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.

Sur Trading, Inc., 575609 (FH)
Final Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried,
Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that
the negligence penalty be deleted, and that the petition otherwise be redetermined as
recommended by the Appeals Division.

The Board recessed at 5:04 p.m.

The foregoing minutes are adopted by the Board on December 18, 2014.

Note: The following matters were removed from the calendar prior to the meeting: Larry G.
Dighera, 515547; Semyon Shekhter and Elena Shekhter, 740750; and, Millennium Dental
Technologies, 747501.
The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:37 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

PUBLIC COMMENT

Speaker: William M. Connell, Military Veteran, American Legion Post 49, owner of All American Surf Dog (Exhibit 10.11)

Exhibits to these minutes are incorporated by reference.

SALES AND USE TAX APPEALS HEARINGS

Shri Ranchhod Corporation, 572114 (EH)
01/01/07 to 12/31/09, $151,062.60 Tax, $15,153.89 Negligence Penalty
For Petitioner: Marc Brandeis, Representative
For Sales and Use Tax Department: Scott Lambert, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether additional adjustments are warranted to the amount of unreported taxable sales. Whether petitioner was negligent.
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 submitted for decision.

KNA CHO Corporation, 611137, 658121 (EH)
07/01/08 to 05/30/10, $11,720.97 Tax, $00.00 Penalties
06/01/10 to 06/30/11, $8,180.39 Tax, $00.00 Penalties
For Petitioner: Kyung Cho, Taxpayer
Sung Lee, Representative
For Sales and Use Tax Department: Scott Lambert, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether further reductions are warranted to the amounts of unreported taxable sales.

Ted Matthies, Business Taxes Specialist, Legal Department, stated for the record that the Appeals Division has a revised recommendation in regards to Case ID 611137, to delete the first two quarterly periods of the audit.
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.
Eva Marie Tice, 484005 (UT)
09/17/04 Purchase Date, $10,395.00 Claim for Refund, $1,039.50 Finality Penalty
For Claimant: Eva Marie Tice, Taxpayer
For Sales and Use Tax Department: Erin Dendorfer, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether use tax applies to claimant’s purchase of the motor home.
Whether claimant is entitled to relief based upon reasonable reliance on written advice from the Board.
Whether relief of the finality penalty is warranted.
Whether relief of interest is warranted.
Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 11:18 a.m. and reconvened at 11:28 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD OCTOBER 15, 2014

KNA CHO Corporation, 611137, 658121 (EH)
Final Action: Ms. Steel moved that the unreported taxable catering sales be calculated by taking the average of the difference between the department’s figure and the taxpayer’s figure. 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. Runner, 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 at the December 2014 meeting in Sacramento, granting the petitioner 20 days to file supporting documents, the Department 20 days to respond, and the Appeals Division 20 days thereafter to review the parties’ submissions and provide its recommendation to the Board.

The Wireless Solution Store, 530773 (FH)
10/01/04 to 07/31/08, $191,059.99 Tax, $19,230.81 Negligence Penalty
For Petitioner: Waived Appearance
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 amount of unreported taxable sales.
Whether petitioner was negligent.
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.
Shri Ranchhod Corporation, 572114 (EH)
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.

Eva Marie Tice, 484005 (UT)
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.

Garo Apo Garabedian, 522650 (AP)
01/01/05 to 02/15/08, $50,039.79 Tax, $5,003.99 Negligence Penalty
For Petitioner/Claimant: 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 any adjustment to the amount of unreported taxable sales of sunglasses is warranted.
Whether any adjustments to the unreported purchases of ophthalmic materials subject to use tax are warranted.
Whether any adjustments to the disallowed claimed tax-paid purchases resold deduction are warranted.
Whether petitioner was negligent.
Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD OCTOBER 15, 2014

Felicia Tawil, 594873 (STF)
Felicia Tawil, 594874 (STF)
01/01/07 to 09/30/08, $757.00 Tax
01/01/07 to 09/30/08, $115.00 Tax
For Petitioner: Waived Appearance
For Property and Special Taxes Department: Pamela Mash, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether petitioner is liable for the excise tax on her distribution in California of untaxed cigarettes purchased from an out-of-state vendor.
Whether petitioner is liable for use tax because she purchased cigarettes from an out-of-state vendor for storage, use, or other consumption in California.
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 be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise program.
October 15, 2014

The Board adjourned at 11:58 a.m.

The foregoing minutes are adopted by the Board on December 18, 2014.

Note: The following matters were removed from the calendar prior to the meeting: Allied Modular Building Systems, Inc., 506774 (EA); Dastigir G. Omar, 609881 (EH); and, PCS Wireless, Inc., 572015 (EA).