

**Tuesday, October 25, 2016**

The Board met at its offices at 450 N Street, Sacramento, at 9:02 a.m., with Ms. Ma, Chairwoman, Ms. Harkey, Vice Chair, Mr. Runner and Mr. Horton 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 Thor Dunn, Chief, Customer Service and Publishing Division, External Affairs Department. He served in the US Marine Corps and Air Force Reserves.

The Board recessed at 9:03 a.m. and reconvened at 9:10 a.m. with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 9:13 a.m. and reconvened immediately in closed session with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

### **CLOSED SESSION**

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

The Board recessed at 9:53 a.m. and reconvened in open session at 1:36 p.m. with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

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

Emad Kamal Sweidan, 710620 (KH)

07/01/09 to 06/30/12, \$9,227.45 Tax, \$0.00 Negligence Penalty

For Petitioner:

Emad Sweidan, Taxpayer

Ahmed A. Ali, Representative

For Business Tax and Fee Department:

Scott Lambert, Hearing Representative

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

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

Action: Ms. Harkey moved to reduce the unreported taxable sales by the estimated amount of event fees of \$8,224, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Runner, but failed to carry, Ms. Harkey and Mr. Runner voting yes, Ms. Ma, Mr. Horton and Ms. Stowers voting no.

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

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Randy Christopher Irvine, 855188 (KH)

10/01/11 to 12/31/11, \$13,648.54 Tax, \$1,365.70 Late-Payment Penalty

For Petitioner:

Randy C. Irvine, Taxpayer

Jason Manning, Representative

For Business Tax and Fee Department:

Monica Silva, Tax Counsel

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

Issues: Whether petitioner is personally liable for the unpaid tax liabilities of Missouri Station Market, Inc. (Missouri Station Market) (SR KH 97-199749) for the period October 1, 2011, through December 31, 2011.

Whether relief of the penalty incurred by Missouri Station Market for late filing/late payment of the 4Q11 return is warranted.

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

## PUBLIC HEARINGS

### **Proposed Amendments to Sales and Use Tax Regulation 1703, *Interest and Penalties***

Scott Claremon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to clarify the Board's long-standing policy that a negligence penalty should not generally be imposed on a deficiency determined in a taxpayer's first audit ([Exhibit 10.1](#)).

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

Action: Upon motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board adopted the amendments to Regulation 1703, *Interest and Penalties*, as published.

Exhibits to these minutes are incorporated by reference.

## LEGAL APPEALS MATTERS, CONSENT

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

Capitol Leasing, Inc., 536181 (AP)

01/01/02 to 06/30/07, \$312,934.29 Tax, \$132,750.95 Knowingly Operating Without Permit Penalty, \$12,888.59 Fraud Penalty, \$31,705.65 Failure-to-File Penalty, \$25,513.47 Amnesty-Double Knowingly Operating Without Permit Penalty, \$5,102.69 Amnesty Double Failure-to-File Penalty, \$4,337.30 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

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RQ Construction, Inc., 824609 (FH)

07/01/08 to 12/31/11, \$20,153.82 Tax

Action: Redetermine as recommended by the Appeals Division.

Soares Lumber &amp; Fencing, Inc., 497370 (DF)

01/01/05 to 12/31/07, \$163,934.82 Tax, \$57,339.92 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Samer Samaan and Nadine Samaan, 960984 (STF)

May 16, 2016 Seizure Date, \$1.98 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Yahia Ibrahim Assad, et al., 352128 (STF)

07/01/00 to 08/31/00, \$35,608.79 Tax, \$3,560.88 Failure-to-File Penalty, \$3,560.88 Finality Penalty

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

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

The Board deferred consideration of the following matter: *Allan Taylor and Suzan Taylor, 718131.*

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

Charles O'Cairns, 813247

2007, \$320,673.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Cheery Lynn Interactive, LLC, 864551

2010, \$4,103.26 Tax, \$1,025.81 Late Filing Penalty, \$1,025.81 Demand Penalty, \$96.00 Filing Enforcement Fee

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

Ralph Govea and Heather Govea, 717021

2007, \$547.05 Assessment

Action: Sustain the action of the Franchise Tax Board.

Andre Jackson, 841166

2011, \$7,325.00 Tax, \$1,831.25 Late Filing Penalty, \$1,831.25 Demand Penalty, \$78.00 Filing Enforcement Fee

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

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Andrew K. Jung and Susan S. Jung, 892225

2010, \$950.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Heino Kristall, 870724

2010, \$9,562.00 Tax

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

Cathleen M. Maninang and Vincent M. Maninang, 739083

2007, \$48,959.00 Tax

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

Shanna L. Martin, 788392

2012, \$676.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Geta Murar and Augustin Murar, 797518

2008, \$13,746.86 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Sean A. Nicholson and Leslie S. Nicholson, 859630

2005, \$5,773.00 Tax, \$1,154.60 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Recruiting Partners GP, Inc., 852836

2009, \$800.00 Tax, \$200.00 Late Filing Penalty, \$200.00 Demand Penalty, \$34.98 Estimated Tax Penalty

Action: Sustain action of the Franchise Tax Board.

Allan Taylor and Suzan Taylor, 718131

2008, \$1,351.00 Tax

Action: The Board took no action.

Michael Anthony White, 710086

2010, \$1,304.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

XRAD Services, 850188

2008, \$3,300.00 Claim for Refund

2009, \$6,800.00 Claim for Refund

2010, \$6,800.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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**PROPERTY TAXES MATTERS, CONSENT.**

With respect to the Property Taxes Matters, Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Harkey and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner and Mr. Horton voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board made the following orders:

**Petitions for Reassessment of Unitary Value**

Lodi Gas Storage, LLC (198), 961442

2016, \$124,200,000.00 Unitary Value

Action: Reduce the 2016 unitary value to \$122,800,000.00 as recommended by staff.

Ms. Stowers not participating in accordance with Government Code section 7.9.

Calnev Pipe Line, LLC (402), 962201

2016, \$63,500,000.00 Unitary Value

Action: Reduce the 2016 unitary value to \$56,000,000.00 as recommended by staff.

Ms. Stowers not participating in accordance with Government Code section 7.9.

Chevron USA, Inc. (429), 960732

2016, \$94,800,000.00 Unitary Value

Action: Reduce the 2016 unitary value to \$89,900,000.00 as recommended by staff.

Ms. Stowers not participating in accordance with Government Code section 7.9.

Panoche Energy Center, LLC (1152), 961487

2016, \$272,900,000.00 Unitary Value

Action: Reduce the 2016 unitary value to \$265,400,000.00 as recommended by staff.

Ms. Stowers not participating in accordance with Government Code section 7.9.

Ponderosa Cablevision (7894), 960762

2016, \$5,370,000.00 Unitary Value

Action: Reduce the 2016 unitary value to \$2,020,000.00 as recommended by staff.

Ms. Stowers not participating in accordance with Government Code section 7.9.

Time Warner Cable Information Services (California), LLC (8063), 960746

2016, \$110,700,000.00 Unitary Value

Action: Reduce the 2016 unitary value to \$107,800,000.00 as recommended by staff.

Ms. Stowers not participating in accordance with Government Code section 7.9.

**Petitions for Penalty Abatement on Unitary Value**

Valero Refining Company – California (407), 961358

2016, \$76,800.00 Penalty

Action: Approve the penalty abatement on 2016 unitary value as recommended by staff.

Ms. Stowers not participating in accordance with Government Code section 7.9.

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Smart City Networks, LP (2099), 962226

2016, \$583,000.00 Penalty

Action: Approve the penalty abatement on 2016 unitary value as recommended by staff.  
Ms. Stowers not participating in accordance with Government Code section 7.9.

X2 Telecom, LLC (8159), 962525

2016, \$353,000.00 Penalty

Action: Approve the penalty abatement on 2016 unitary value as recommended by staff.  
Ms. Stowers not participating in accordance with Government Code section 7.9.

**Petitions for Penalty Abatement on Unitary Escaped Assessment**

Network Telephone Services, Inc. (7636), 955041

2012-2015, \$143,000.00 Penalty

Action: Approve the penalty abatement on 2012-2015 unitary escaped assessment as recommended by staff. Ms. Stowers not participating in accordance with Government Code section 7.9.

**LEGAL APPEALS MATTER, ADJUDICATORY**

Thelma J. Harris and Terry D. Harris, 734703 (CH)

01/01/09 to 12/31/11, \$42,160.06 Tax, \$4,216.05 Negligence Penalty

Considered by the Board: March 29, 2016

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

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

**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE****PROPERTY TAX MATTERS****Audit**

NewPath Networks, LLC (8077)

2015, \$1,700,000.00 Escaped Assessment, \$170,000.00 Penalty, \$255,000.00 In-lieu Interest

2014, \$5,900,000.00 Excessive Assessment

2013, \$4,100,000.00 Excessive Assessment

2012, \$1,600,000.00 Excessive Assessment

Action: Upon motion of Mr. Horton, seconded by Ms. Harkey and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner and Mr. Horton 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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**Board Roll Changes****2016 State-Assessed Property Roll**

Action: Upon motion of Mr. Horton, seconded by Ms. Harkey and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner and Mr. Horton voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2016 Board Roll of State-Assessed Property as recommended by staff ([Exhibit 10.2](#)).

**OFFER-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Mr. Runner, seconded by Mr. Horton and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board approved the Offer in Compromise Recommendations of *Sia Amiri, Ummba1, LLC; Yahya Benkhelouf; Raymond David Boyda, Digital Universe, Inc.; Ronald Dale Clough, Clough Flooring, Inc.; Casey K. Crane; Alan Eddy, Tensor Imaging, Inc.; Lane Edward Frates; Hossein Gharai; Julio S. Guillen; Tae Joon Kwon; Gary Robert McCarroll, Theresa June Vasquez; Elizabeth Molina Miller; Erwin Anthony Pascua; Michael Resk; Ernestina Rodriguez; Bryan Dale Rust, Daly Glass & Mirror, Inc.; Ibrahim Musaid Saleh; Hamid Zekavat Sharifi, Rec Rooms Plus, Inc.; Super Star Stations, LLC, Super Star Stations, Inc.; Therapeutic Holistic Care, Inc. and West Coast Collective Health Services, Inc.*; as recommended by staff.

**CHIEF COUNSEL MATTERS****RULEMAKING****Readoption of Proposed Prepaid Mobile Telephony Services Regulation 2460, Administration**

Andrew Kwee, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed readoption of Regulation 2460 after making sufficiently related changes to address the Office of Administrative Law's issues with subdivision (b) ([Exhibit 10.3](#)).

Action: Upon motion of Ms. Ms. Stowers, seconded by Mr. Horton and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board approved staff recommendation to readopt the proposed regulation as published in the 15-day file.

**ADMINISTRATIVE SESSION****ADMINISTRATIVE MATTERS, CONSENT**

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

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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 10.4](#)).

Harry Asuncion, Supervising Tax Auditor I, Ventura District Office  
Martha J. Brenneman, Business Taxes Specialist I, San Jose District Office  
Kathleen Crew, Business Taxes Compliance Specialist, Use Tax Administration  
Section, Headquarters  
Eloise Holdahl, Business Tax Representative, Sacramento District Office  
Jennifer Irwin, Tax Technician III, Out-of-State District Sacramento Office

Action: Approve the Board Meeting Minutes of September 27-28, 2016.

Action: Approve the 2017 Timberland Production Zone Values as recommended by staff ([Exhibit 10.5](#)).

Action: Approve proposed revisions to Compliance Policy and Procedures Manual Chapters 5, *Returns*, and 7, *Collections*; and Audit Manual Chapters 4, *General Audit Procedures*, 9, *Grocers*, and 12, *Construction Contractors*, as recommended by staff ([Exhibit 10.6](#)).

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

### Business Taxes Committee

Action: Upon motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board approved the Business Taxes Committee report and the actions therein as reflected by the committee members' votes ([Exhibit 10.7](#)).

### Property Tax Committee

Action: Upon motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton 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 10.8](#)).

## OTHER ADMINISTRATIVE MATTERS

### Business Tax and Fee Deputy Director's Report

Susanne Buehler, Deputy Director, Business Tax and Fee Department, reported that the Office of Emergency Services determined the Emergency Telephone Users Surcharge rate will remain unchanged at 0.75 percent for 2017, and that the Board is to publish the fixed rate ([Exhibit 10.9](#)).

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**Administration Deputy Director's Report**

Edna Murphy, Deputy Director, Administration Department, introduced Chris Holtz, Chief, Business Management Division, Administration Department, who presented the following 2017-18 Budget Change Proposals (BCPs) for the Board's direction and approval for inclusion in the Governor's fiscal year 2017-18 budget: 2017-18 Centralized Revenue Opportunity System (CROS) ([Exhibit 10.10](#)), and AB 2153 Lead-Acid Battery Fee ([Exhibit 10.11](#)).

Action: Upon motion of Ms. Harkey, seconded by Mr. Horton and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board approved the 2017-18 BCPs as presented.

**Technology Deputy Director's Report**

Chris Caietti, CROS Project Director, and Trista Gonzalez, Business Taxes Administrator, provided a report regarding the progress on the CROS project to replace BOE's two current legacy-technology tax administration systems.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 3:45 p.m. and reconvened immediately in closed session with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

**CLOSED SESSION (CONTINUED)**

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

The Board recessed at 3:53 p.m. and reconvened immediately in open session with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

The Board adjourned at 3:54 p.m.

*The foregoing minutes are adopted by the Board on November 29, 2016.*

Note: The following matters were removed from the calendar prior to the meeting: *Steven M. Willens and Rhonda D. Willens, 812265; Yuan-Daw Tsai and Jean H. Tsai, 926932; Cities of Adelanto, et al., 587732; and, Legg, Inc., 838929.*