

Tuesday, October 24, 2017

The Board met at its offices at 450 N Street, Sacramento, at 9:32 a.m., with Ms. Harkey, Chairwoman, Mr. Runner, Vice Chair, Ms. Ma 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 Mr. Runner.

### CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Himanshu Joglekar, 759259  
2006, \$2,375.00 Tax

For Appellant:

Himanshu Joglekar, Taxpayer

For Franchise Tax Board:

Libby Rodoni, Tax Counsel

Natasha Page, Tax Counsel Contribution

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

Issue: Whether appellant has demonstrated error in the assessment, which is based upon a federal adjustment.

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

### SALES AND USE TAX APPEALS HEARINGS

Charles R. Marshall, 875259 (KH)

01/01/02 to 12/31/10, \$201,989.00 Claim for Refund

For Claimant:

Charles R. Marshall, Taxpayer

For Business Tax and Fee Department:

Brad Heller, Tax Counsel

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

Issue: Whether claimant is a qualified itinerant vendor pursuant to Revenue and Taxation Code section 6018.3 and a refund of self-assessed sales tax reported and remitted with claimant's sales and use tax returns is warranted.

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

Robin Groth-Hill, 814350 (CH)

10/01/08 to 08/24/11, \$1,913,195.34 Tax, \$725,775.60 Failure to Remit Collected Tax Penalty, \$191,085.36 Finality Penalty, \$465.04 Late-Payment Penalty, \$7,885.20 Negligence Penalty, \$1,755.55 Failure-to-File Penalty

For Petitioner:

Robin Groth, Taxpayer

For Business Tax and Fee Department:

Scott Claremon, Tax Counsel

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

Issues: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of Groth Bros. Oldsmobile, Inc. (Groth), pursuant to Revenue and Taxation Code section 6829.

Tuesday, October 24, 2017

Whether adjustments are warranted to the tax assessed in the determinations issued to Groth.

Whether the 40-percent penalty for failure to report collected sales tax reimbursement is supported by clear and convincing evidence.

Whether relief of the penalties assessed against Groth and included in petitioner's liability under section 6829 is warranted.

Whether Groth was negligent during the liability period 1Q11 through May 17, 2011.

Whether relief of interest is warranted.

Action: Ms. Harkey moved to grant the petition except for the self-assessed first quarter of 2011. The motion failed for lack of a second.

Mr. Runner moved to abate the 40-percent failure to remit collected tax and finality penalties, and that the petition otherwise be redetermined as recommended by the Appeals Bureau. The motion failed for lack of a second.

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

The Board recessed at 12:19 p.m. and reconvened at 1:10 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

**Abdu Abdulalim and Kheria Yusuf Hamid, 733282 (CH)**

04/01/09 to 03/31/12, \$48,551.57 Tax, \$4,918.83 Negligence Penalty

For Petitioners: Abdu Abdulalim, Taxpayer

Hugh Goodwin, Representative

For Business Tax and Fee Department: Scott Lambert, Hearing Representative

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

Issues: Whether further adjustments are warranted to the unreported taxable sales.

Whether petitioner was negligent.

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

**AngioDynamics, Inc., 609588 (OH)**

01/01/09 to 06/30/11, \$34,912.41 Claim for Refund

For Claimant: Jacob Bholat, Representative

For Business Tax and Fee Department: Scott Claremon, Tax Counsel

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

Issue: Whether claimant's sales of medical products to SFMC were exempt sales of medicines.

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

Tuesday, October 24, 2017

24hourspc.com, Inc., 803446 (CH)

01/01/10 to 06/30/12, \$68,578.96 Tax, \$6,857.95 Negligence Penalty

For Petitioner: Dean Lloyd, Attorney

Tae Hyung Lee, Taxpayer

For Business Tax and Fee Department: Andrew Kwee, Tax Counsel

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.

Action: The Board continued the hearing to the December 2017 Sacramento meeting.

The Board recessed at 3:11 p.m. and reconvened at 3:18 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

Sillapere, Inc., 859413 (BH)

01/01/10 to 12/31/12, \$67,377.92 Tax, \$597,030 Disallowed Claimed Non-taxable Labor

For Petitioner: Nicole Sillapere, Taxpayer

John Betteo, Witness

Diana Maldonado, Representative

For Business Tax and Fee Department: Kevin Smith, Tax Counsel

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

Issues: Whether adjustments to the amount of disallowed claimed nontaxable labor are warranted.

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

Action: Ms. Harkey moved to remove invoice number 847 (Survey Monkey) from the projection, and assess tax on it on an actual basis. The motion was seconded by Mr. Runner. Ms. Harkey withdrew her motion.

Upon motion of Ms. Harkey, seconded by Mr. Runner and duly carried, Ms. Harkey, Mr. Runner and Ms. Ma voting yes, Mr. Horton and Ms. Stowers voting no, the Board ordered that invoice number 847 (Survey Monkey) be accepted as a non-error transaction, and that the petition otherwise be redetermined as recommended by the Appeals Bureau.

The Board recessed at 4:35 p.m. and reconvened at 4:42 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

Saravana Bhavan, Inc., 625256 (BH)

10/01/08 to 03/31/12, \$20,757.69 Tax, \$2,075.82 Negligence Penalty

For Petitioner: Feroza Hamsath, Taxpayer

Jack Iyer, Representative

For Business Tax and Fee Department: Nenita DeLaCruz, Hearing Representative

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

Issues: Whether petitioner's liability should be limited to periods occurring prior to September 1, 2010, because ownership of the business was transferred to an LLC on that date.

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

Tuesday, October 24, 2017

Whether petitioner was negligent.

Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the deficiency be recomputed using a credit card sales ratio of 81.91 percent.

Upon motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the negligence penalty be deleted.

### **SPECIAL TAXES APPEALS HEARING**

Yahia Ibrahim Assad, 352128 (STF)

07/01/00 to 08/31/00, \$35,608.79 Tax, \$00.00 Penalty

For Petitioner: Yahia I. Assad, Taxpayer

For Business Tax and Fee Department: Joshua Aldrich, Tax Counsel

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

Issues: Whether petitioner is liable for the cigarette and tobacco products tax because it distributed in California untaxed tobacco products that it had purchased from an out-of-state vendor.

Whether adjustments are warranted to the amount of unreported distributions for purchases of non-tobacco products and for shipping costs included in the wholesale cost.

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that twelve years of interest be relieved, and that the petition otherwise be redetermined as recommended by the Appeals Bureau. The Board directed staff to inform the taxpayer of the Offer in Compromise program.<sup>1</sup>

### **LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Luis Diaz, 875803 (FH)*; *Zacharij Greenfield, 742030 (EH)*; and, *Thaivan Greenfield, 742846 (EH)*.

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

Vine Chavol-Lavy, 774027 (SO)

01/01/10 to 07/02/11, \$112,500.00 Tax, \$11,250.00 Finality Penalty

Action: Redetermine as recommended by the Appeals Bureau.

Luis Diaz, 875803 (FH)

04/01/11 to 03/31/14, \$76,625.39 Tax, \$7,662.54 Negligence Penalty

Action: The Board took no action.

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<sup>1</sup> The Board rescinded this action the next day.

Tuesday, October 24, 2017

Mama Dou Diop, 864804 (EH)

10/01/11 to 09/30/14, \$12,174.04 Tax, \$1,217.44 Negligence Penalty

Action: Redetermine as recommended by the Appeals Bureau.

ETC Global, LLC, 838478 (EA)

01/01/10 to 09/11/12, \$140,472.84 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Bureau.

Zacharij Greenfield, 742030 (EH)

Thaivan Greenfield, 742846 (EH)

04/01/08 to 08/31/09, \$15,773.37 Tax, \$1,577.34 Finality Penalty, \$1,621.40 Failure-to-File Penalty, \$1,687.22 Late-Payment Penalty

Action: The Board took no action.

Mario A. Guerrero, 553044 (EA)

07/01/06 to 06/30/09, \$9,406.37 Tax

Action: Redetermine as recommended by the Appeals Bureau.

Lepore Brothers, LLC, 730956 (AS)

01/01/09 to 12/31/11, \$20,845.11 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Bureau.

The Middy Corporation, 860534 (AC)

04/01/11 to 09/30/14, \$71,514.58 Tax, \$22,802.31 40-Percent Penalty, \$1,341.91 Failure-to-File Penalty

Action: Redetermine as recommended by the Appeals Bureau.

Runt's Trucking, Inc., 683822 (FH)

04/01/09 to 03/31/12, \$153,851.13 Tax

Action: Redetermine as recommended by the Appeals Bureau.

South Coast Auto House, Inc., 745447 (EA)

04/01/10 to 09/30/11, \$88,602.94 Tax

Action: Redetermine as recommended by the Appeals Bureau.

Trillions Investment Group, Inc., 904480 (RC)

01/01/12 to 12/31/14, \$41,204.40 Tax

Action: Redetermine as recommended by the Appeals Bureau.

Keith Timothy Whitehead, 358966 (EH)

10/01/98 to 12/31/01, \$73,174.76 Tax, \$7,317.48 Finality Penalty

Action: Redetermine as recommended by the Appeals Bureau.

Tuesday, October 24, 2017

STW Universal, Inc., 603647 (EH)  
01/01/08 to 12/31/10, \$53,382.12 Tax, \$5,440.53 Negligence Penalty  
STW Universal, Inc., 856103 (EH)  
01/01/11 to 12/31/13, \$56,035.99 Tax, \$00.00 Negligence Penalty  
Action: Redetermine as recommended by the Appeals Bureau.

Roger L. Baer, 792069, 841686 (RC)  
01/01/01 to 12/01/02, \$5,506.04 Tax, \$400.00 Failure-to-File Penalty, \$185.60 Late-Payment  
Penalty, \$400.00 Finality Penalty, \$639.87Amnesty Interest Penalty  
Action: Redetermine as recommended by the Appeals Bureau.

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

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

Jeremy Jialai He, 942866  
2013, \$925.00 Tax  
Action: Sustain the action of the Franchise Tax Board.

Moustafa Nasr and Samia Nasr, 818415  
2007, \$485,283.00 Tax, \$13,406.00 Accuracy-Related Penalty  
Action: Sustain the action of the Franchise Tax Board.

645 Harper, LLC, 982924  
2013, \$648.00 Claim for Refund  
Action: Sustain the action of the Franchise Tax Board.

Aura Insurance Services, LLC, 975852  
2013, \$800.00 Claim for Refund  
Action: Sustain the action of the Franchise Tax Board.

Fadil A. M. Al Bakari, 762698  
2009, \$519.20 Tax, \$100.00 Late Filing Penalty  
Action: Sustain the action of the Franchise Tax Board.

Joann Benintende, 939422  
2009, \$11,412.00 Tax  
2010, \$574.76 Tax  
2011, \$227.00 Tax  
Action: Sustain the action of the Franchise Tax Board.

Tuesday, October 24, 2017

Jeffery Brown, 930839

2009, \$1,349.74 Tax

Action: Sustain the action of the Franchise Tax Board.

Celluphone of Texas, Inc., 981131

2011, \$1,521.32 Claim for Refund

2012, \$1,519.58 Claim for Refund

2013, \$2,381.96 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Sjofinar Masri Do, 866592

2010, \$263,252.00 Tax, \$52,650.40 Accuracy-Related Penalty

2011, \$196.00 Tax

2012, \$31,540.00 Tax, \$6,308.00 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Dolores Lake Park, LLC, 920398

2013, \$562.30 Claim for Refund

G &amp; GF Enterprise, LLC, 922861

2014, \$106.51 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Duel Vineyards Management, Inc., 927062

2012, \$219.38 Claim for Refund

2013, \$897.88 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Richard Guggenhime and Judith Guggenhime, 991312

2014, \$4,768.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Happy Hour Creative, LLC, 980272

2014, \$1,095.63 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Larthia Holdings, Inc., 980165

2010, \$231.63 Claim for Refund

2011, \$228.27 Claim for Refund

2012, \$225.96 Claim for Refund

2013, \$221.94 Claim for Refund

2014, \$221.96 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Kathryn Ischinger, 984259

2014, \$777.84 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Tuesday, October 24, 2017

La Fonda De San Mateo, Inc., 988489

2012, \$800.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Prateek Lal and Kristen Beierlein Lal, 980295

2014, \$2,981.65 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Darren J. Moll and Cristina Moll, 956337

2011, \$22,235.00 Tax

Action: Sustain the action of the Franchise Tax Board.

John Nguyen, 983530

2012, \$1,538.80 Accuracy-Related Penalty Protest

Action: Modify the action of the Franchise Tax Board.

Edward L. Ripley, 611701

2007, \$1,383.70 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ronna J. Robertson, 929976

2013, \$1,192.00 Tax, \$298.00 Late Filing Penalty, \$1,000.00 Demand Penalty, \$76.00 Filing Enforcement Penalty

Action: Sustain the action of the Franchise Tax Board.

Armando Moreno Salazar, 984793

2012, \$854.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Kendra Stringfellow, 946236

2013, \$1,360.00 Tax, \$340.00 Late-Filing Penalty, \$845.25 Demand Penalty, \$79.00 Filing Enforcement Penalty

Action: Sustain the action of the Franchise Tax Board.

**PROPERTY TAXES MATTERS, CONSENT**

With respect to the Property Taxes Matters, Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma 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**

Central Valley Gas Storage, LLC (104), 1019376

2017, \$77,900,000.00 Unitary Value

Action: Reduce the 2017 unitary value to \$61,800,000.00 as recommended by staff. Ms. Stowers not participating in accordance with Government Code section 7.9.

Tuesday, October 24, 2017

Gill Ranch Storage, LLC (121), 1018203

2017, \$112,200,000.00 Unitary Value

Action: Reduce the 2017 unitary value to \$86,200,000.00 as recommended by staff.

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

Consolidated Communications of California Company (294), 1019385

2017, \$126,900,000.00 Unitary Value

Action: Reduce the 2017 unitary value to \$124,900,000.00 as recommended by staff.

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

AT&amp;T Mobility, LLC (2606), 1017417

2017, \$2,996,600,000.00 Unitary Value

Action: Reduce the 2017 unitary value to \$2,815,400,000.00 as recommended by staff.

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

T-Mobile West Corporation (2748), 1017402

2017, \$1,800,500,000.00 Unitary Value

Action: Reduce the 2017 unitary value to \$1,762,000,000.00 as recommended by staff.

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

Consolidated Communications Enterprise Services (7707), 1019389

2017, \$97,000,000.00 Unitary Value

Action: Reduce the 2017 unitary value to \$91,500,000.00 as recommended by staff.

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

Global Tel\*Link Corporation (7988), 1019383

2017, \$20,400,000.00 Unitary Value

Action: Reduce the 2017 unitary value to \$19,900,000.00 as recommended by staff.

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

Sunesys, LLC (8067), 1017453

2017, \$153,500,000.00 Unitary Value

Action: Reduce the 2017 unitary value to \$125,600,000.00 as recommended by staff.

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

**Petitions for Penalty Abatement on Unitary Value**

Cal-Ore Telephone, Co. (328), 1019378

2017, \$713,000.00 Penalty

Action: Approve the penalty abatement on 2017 unitary value as recommended by staff.

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

Northwestern Pacific Railroad Company (827), 1017390

2017, \$263,000.00 Penalty

Action: Approve the penalty abatement on 2017 unitary value as recommended by staff.

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

Tuesday, October 24, 2017

Quincy Railroad Company (861), 1014833

2017, \$40,800.00 Penalty

Action: Approve the penalty abatement on 2017 unitary value as recommended by staff.

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

Edison Carrier Solutions (7997), 1017401

2017, \$6,040,000.00 Penalty

Action: Approve the penalty abatement on 2017 unitary value as recommended by staff.

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

LIT San Leandro, LLC (8171), 1017398

2017, \$10,700.00 Penalty

Action: Approve the penalty abatement on 2017 unitary value as recommended by staff.

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

ATC Outdoor DAS, LLC (8196), 1014831

2017, \$307,000.00 Penalty

Action: Approve the penalty abatement on 2017 unitary value as recommended by staff.

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

**Petitions for Reassessment and Penalty Abatement on Unitary Value**

Legent Communications Corporation (7978), 1014835

2017, \$7,600.00 Unitary Value, \$760.00 Penalty

Action: Reduce the 2017 unitary value to \$00.00 and approve penalty abatement as recommended by staff. Ms. Stowers not participating in accordance with Government Code section 7.9.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Shawn Victor Bachor, 771334 (EH)

01/01/07 to 12/31/12, \$389,936.19 Tax, \$00.00 Penalty

Considered by the Board: July 28, 2017, Memorandum Opinion (Rev. &amp; Tax. Code, § 40) Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and duly carried, Ms. Harkey, Mr. Runner and Ms. Ma voting yes, Mr. Horton and Ms. Stowers voting no, the Board adopted the Memorandum Opinion under Revenue and Taxation Code section 40 as presented by staff.

Key Events, Inc., 600095 (BH)

07/01/01 to 12/31/09, \$52,313.03 Tax, \$887.18 Amnesty Interest Penalty

Key Events, Inc., 953675 (BH)

04/01/10 to 07/31/14, \$40,615.76 Tax

Considered by the Board: August 30, 2017, Memorandum Opinion

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

Tuesday, October 24, 2017

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and duly carried, Ms. Harkey, Mr. Runner and Ms. Ma voting yes, Mr. Horton and Ms. Stowers voting no, the Board adopted the Memorandum Opinion as presented by staff.<sup>2</sup>

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

Susan Bostwick, 979364

2014, \$1,087.00 Assessment, \$271.75 Late Filing Penalty

Considered by the Board: May 23, 2017

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

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

### **TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

#### **PROPERTY TAX MATTERS**

##### **Audits**

Consolidated Communications of California Company (294)

2013, \$3,600,000.00 Excessive Assessment

2014, \$4,000,000.00 Excessive Assessment

2015, \$4,700,000.00 Excessive Assessment

2016, \$4,800,000.00 Excessive Assessment

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

Consolidated Communications Enterprise Services, Inc. (7707)

2016, \$33,200.00 Excessive Assessment

Action: Upon motion of Mr. Horton, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma 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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<sup>2</sup> The Board rescinded this action the next day.

Tuesday, October 24, 2017

**SureWest Televideo (7961)**

2013, \$4,600,000.00 Excessive Assessment

2014, \$4,900,000.00 Excessive Assessment

2015, \$5,400,000.00 Excessive Assessment

2016, \$5,700,000.00 Excessive Assessment

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

**Board Roll Changes****2017 State-Assessed Property Roll**

Action: Upon motion of Mr. Horton, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Mr. Horton voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2017 Board Roll of State-Assessed Property as recommended by staff ([Exhibit 10.1](#)).

Exhibits to these minutes are incorporated by reference.

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

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

Action: Approve the Board Meeting Minutes of August 29-31, 2017.

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

David J. Gau, Executive Director, provided a report regarding the status of pending and upcoming organizational issues.

David Gau, Executive Director, presented the 2018 Board Workload Plan for approval. The plan consists of the 2018 Board meeting calendar, annual property tax calendars, and significant dates considered in setting Board meeting dates ([Exhibit 10.2](#)).

Action: Upon motion of Mr. Runner, seconded by Mr. Horton and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board adopted January 25, 2018 to hold its annual meeting of the Board and County Assessors, removed the January 30 date, and otherwise adopted staff recommendation.

Tuesday, October 24, 2017

### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 6:26 p.m. and reconvened immediately in closed session with Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers present.

### **CLOSED SESSION**

The Board met to discuss personnel matters (Gov. Code § 11126(a)).

The Board recessed at 7:02 p.m. and reconvened immediately in open session with Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers present.

The Board recessed at 7:03 p.m.

*The foregoing minutes are adopted by the Board on December 11, 2017.*

Note: The following matters were removed from the calendar prior to the meeting: *SRN, Inc.*, 847860; and, *Gems Unlimited, Inc.*, 727090.

**Wednesday, October 25, 2017**

The Board met at its offices at 450 N Street, Sacramento, at 9:31 a.m., with Ms. Harkey, Chairwoman, Mr. Runner, Vice Chair, Ms. Ma and Mr. Horton present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

### **SPECIAL TAXES APPEALS HEARING (CONTINUED FROM OCTOBER 24, 2017)**

Yahia Ibrahim Assad, 352128 (STF)

Action: Upon motion of Ms. Stowers, seconded by Mr. Horton and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board rescinded its action of Tuesday, October 24, 2017.

Upon motion of Ms. Stowers, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that interest be relieved for the period of October 21, 2002 to October 24, 2017, and that the petition otherwise be redetermined as recommended by the Appeals Bureau. The Board directed staff to inform the taxpayer of the Offer in Compromise program.

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

Dale Peter Hanley, 775287 (BH)

08/01/05 to 09/03/07, \$91,229.16 Tax, \$00.00 Penalty

Re-Leaf Herbal Center, 775285 (BH)

09/04/07 to 06/30/08, \$125,339.57 Tax, \$00.00 Penalty

For Petitioners: Matthew Kumin, Attorney

For Business Tax and Fee Department: Brad Heller, Tax Counsel

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

Issues: Whether petitioners' sales of medical marijuana are subject to tax.

Whether any further interest relief is warranted.

Action: Upon motion of Ms. Stowers, seconded by Ms. Ma and duly carried, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Ms. Harkey and Mr. Horton voting no, the Board ordered that interest be relieved for the period of August 1, 2005 thru July 16, 2008.

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

LM Prop 923-931 Pacific Ave., LLC, 713421 (GH)

04/01/09 to 03/31/12, \$58,512.21 Tax, \$5,876.22 Negligence Penalty

For Petitioner: Douglas Millan, Taxpayer

Valerie D. Whittington, Representative

For Business Tax and Fee Department: Scott Lambert, Hearing Representative

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

Issues: Whether a reduction to the amount of unreported taxable sales is warranted.

Whether petitioner was negligent.

**Wednesday, October 25, 2017**

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the unreported taxable measure be reduced to \$433,065.00, the negligence penalty be removed, and that the petition otherwise be redetermined as recommended by the Appeals Bureau.

**Bill Dee Landrum, 604029 (CH)**

10/01/07 to 07/31/08, \$243,494.25 Tax, \$1,552.90 Finality Penalty, \$26,656.50 Late-Payment Penalty

For Petitioner: Bill Landrum, Taxpayer

Rex Halverson, Attorney

For Business Tax and Fee Department: Joseph Boniwell, Tax Counsel

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

Issues: Whether petitioner is personally liable for the unpaid liabilities of Western Shower Door, Inc. (WSD) pursuant to Revenue and Taxation Code section 6829.

Whether further relief of interest is warranted.

Action: Ms. Harkey moved to remove the penalty and to assess interest for the period of October 1, 2007 to July 31, 2008 only, and that the petition otherwise be redetermined as recommended by the Appeals Bureau. The motion was seconded by Ms. Ma but no vote was taken.

Upon motion of Ms. Harkey, seconded by Ms. Ma and duly carried, Ms. Harkey, Mr. Runner, Ms. Ma and Mr. Horton voting yes, Ms. Stowers voting no, the Board ordered that interest be assessed for the period of October 1, 2007 to July 31, 2008 only, and that the petition otherwise be redetermined as recommended by the Appeals Bureau.

Ms. Harkey moved to relieve all penalties. The motion was seconded by Mr. Runner. Ms. Harkey withdrew her motion.

Upon motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the late-payment penalty be relieved.

The Board recessed at 1:14 p.m. and reconvened at 1:52 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

### **LEGAL APPEALS MATTERS, ADJUDICATORY (CONTINUED FROM OCTOBER 24, 2017)**

Key Events, Inc., 600095 (BH)

Key Events, Inc., 953675 (BH)

Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board rescinded its action of Tuesday, October 24, 2017, and continued this matter to the November 2017 Board Meeting in Culver City for revision.

Wednesday, October 25, 2017

### SALES AND USE TAX APPEALS HEARINGS

Amerivine Corp. and David Coleman, 797838 (UT)

11/11/10 Date of Purchase, \$3,915.00 Tax, \$00.00 Penalty

For Petitioner: David Coleman, Taxpayer  
Ayn Coleman, Witness

For Business Tax and Fee Department: Kevin Smith, Tax Counsel

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

Issue: Whether petitioner's purchase and use of the vehicle in California is subject to use tax.

Action: Mr. Runner moved to waive interest for the period of October 11, 2010 (date of sale) to October 10, 2017 (date of payment). The motion was seconded by Ms. Harkey but no vote was taken.

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

Narendra Prasad, 882552 (KH)

01/01/09 to 03/31/12, \$00.00 Tax, \$1,222.52 Finality Penalty, \$130.00 Late-Payment Penalty

For Petitioner: Narendra Prasad, Taxpayer

For Business Tax and Fee Department: Scott Claremon, Tax Counsel

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

Issues: Whether there is reasonable cause to relieve the finality and late-payment penalties assessed against RNP and included in the determination issued to petitioner.

Whether relief of interest is warranted.

Action: Upon motion of Ms. Harkey, seconded by Mr. Horton and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the taxpayer be relieved of liability for the third quarter 2009 thru third quarter 2011, and that the petition otherwise be redetermined as recommended by the Appeals Bureau.

Upon motion of Ms. Harkey, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the penalties be relieved.

The Board adjourned at 3:13 p.m. in memory of Teresa Nicol Kimura, Business Taxes Compliance Specialist, Irvine District Office, who was tragically killed in the Las Vegas shooting on Sunday, October 1, 2017.

*The foregoing minutes are adopted by the Board on December 11, 2017.*