

Tuesday, January 26, 2016

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

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Ms. Harkey.

The Board recessed at 10:13 a.m. and reconvened at 10:36 a.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

SPECIAL PRESENTATION

On behalf of the Board, Mr. Horton presented to Jeffrey McGuire, Executive Sponsor, Transformation Projects Division, a resolution, extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California. The Board Members congratulated Mr. McGuire on his appointment to Chief Deputy Director, Department of General Services, and extended their appreciation and gratitude for his thirty-two years of service to the Board of Equalization.

The Board recessed at 10:41 a.m. and reconvened at 12:08 p.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

ORGANIZATION OF THE BOARD

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 ordered the *Organization of the Board* be scheduled for the February 23-25, 2016 Board meeting.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Michael J. Barkley and Laura Ann Barkley, 852234

2008, \$25,795.51 Claim for Refund

For Appellants:

Michael J. Barkley, Taxpayer

For Franchise Tax Board:

Brad Coutinho, Tax Counsel

Marguerite Mosnier, Tax Counsel

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

Issue: Whether appellants' claim for refund is barred by the statute of limitations pursuant to Revenue and Taxation Code section 19306.

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 appeal for decision.

The Board recessed at 12:34 p.m. and reconvened at 1:50 p.m. with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

Tuesday, January 26, 2016

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:51 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 2:53 p.m. and reconvened immediately in open session with Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Robert W. Holman and Margaret E. Holman, 856805
2004, \$182,376.00 Assessment

For Appellants:

Robert W. Holman, Taxpayer
John B. Mulligan, Attorney

For Franchise Tax Board:

Sonia Woodruff, Tax Counsel
Adam Susz, Tax Counsel

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

Issues: Whether appellants have shown that respondent's proposed assessment is barred by the statute of limitations because the notice of proposed assessment (NPA) was sent to appellants and not to the Holman Charitable Remainder Unitrust 02 (the Trust).

Whether appellants have shown error in respondent's determination that appellants are liable for tax on the capital gain based on respondent's finding that the Trust was not a qualified charitable trust.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 1.1](#))

Respondent's Exhibit: 2004 Income from Passthroughs ([Exhibit 1.2](#))

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

Exhibits to these minutes are incorporated by reference.

SALES AND USE TAX APPEALS HEARING

New NGC, Inc., 485164, 547426 (OH)
04/01/05 to 03/31/08, \$227,599.00 Claim for Refund
10/07/07 to 12/31/08, \$114,451.00 Claim for Refund

For Claimant:

Gopalakrishnan Sethuraman, Taxpayer
Linda Falcone, Representative

For Sales and Use Tax Department:

Joseph A. Vinatieri, Attorney
Monica Silva, Tax Counsel

Tuesday, January 26, 2016

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

Issue: Whether there is any overpayment of tax with respect to claimant's purchases of five specific materials, which it alleges were physically incorporated into its manufactured product.

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 claim for refund be submitted for decision.

PUBLIC HEARINGS

Proposed Amendments to Emergency Telephone Users Surcharge Regulations 2401, Definitions, 2413, Exemptions from Surcharge, and 2422, Returns and Payment

Andrew Kwee, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding amendments to Regulations 2401 and 2422 clarifying direct sellers' prepaid mobile telephony service surcharge reporting requirements, and amendments making Regulation 2413 consistent with guidance from the U.S. Department of State, Office of Foreign Missions ([Exhibit 1.3](#)).

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

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 adopted the amendments to Regulations 2401 *Definitions*, 2413 *Exemptions from Surcharge*, and 2422 *Returns and Payment*, as published.

Proposed Adoption of Prepaid Mobile Telephony Services Regulations 2460, Administration, 2461, Exemptions, Deductions, Credits, and Specific Applications of Tax, and 2462, Refunds of Excess Charges Collected

Andrew Kwee, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of new regulations to implement, interpret, and make specific the prepaid mobile telephony services (MTS) surcharge and local charges imposed on prepaid MTS ([Exhibit 1.4](#)).

Speaker: Brenda Narayan, MuniServices, LLC

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 adopted the new Regulations 2460 *Administration*, 2461 *Exemptions, Deductions, Credits, and Specific Applications of Tax*, and 2462 *Refunds of Excess Charges Collected*, as published.

Tuesday, January 26, 2016

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Qaisara Malik, 793207 (KH)*; *Morrison Auto Corporation, 765464 (KH)*; and, *Rizza Marie Cancio Punzalan and Max Leung, 554317 (BH)*.

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

Anthony Oladipupo Banjo, 609416 (CH)
01/11/08 to 06/30/10, \$74,279.44 Tax, \$7,428.00 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Dhaliwals, Inc., 576178 (KH)
08/07/07 to 06/30/10, \$7,476.93 Tax, \$00.00 Negligence Penalty
Action: Redetermine as recommended by the Appeals Division.

Inderjit Kalia and Joy Mukherji, 812440 (JH)
10/01/09 to 11/09/12, \$16,703.74 Tax
Action: Redetermine as recommended by the Appeals Division.

Cliff H. Koon, 743646 (EA)
07/01/08 to 03/31/10, \$152,087.14 Tax, \$18,227.10 Late-Filing of Returns Penalty, \$9,753.25
Late Payment on Returns Penalty, \$1,584.52 Failure to Make Timely Prepayment Penalty
Action: Redetermine as recommended by the Appeals Division.

Qaisara Malik, 793207 (KH)
10/01/08 to 09/30/11, \$14,376.49 Tax, \$1,468.14 Negligence Penalty
Action: The Board took no action.

Morrison Auto Corporation, 765464 (KH)
07/01/09 to 12/31/11, \$37,020.33 Tax
Action: The Board took no action.

Rizza Marie Cancio Punzalan and Max Leung, 554317 (BH)
01/01/07 to 12/31/09, \$30,433.48 Tax, \$3,043.33 Negligence Penalty
Action: The Board took no action.

Adnan K. Abusharkh, 923633 (STF)
August 25, 2015 Seizure Date, \$1,280.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Mohinder Singh Nahal, 923638 (STF)
May 6, 2015 Seizure Date, \$225.00 Approximate Value
Action: Determined that staff properly seized the tobacco products.

Tuesday, January 26, 2016

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Devetus Jones and Samantha Jones, 841654*; and, *Robert E. Valdez and Judy M. Valdez, 819052*.

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

David Batres, 850346

2012, \$1,189.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Bertha Colbert, 854548

2009, \$1,425.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Jolene S. Engel, 793790

1998, \$2,389.00 Tax, \$597.25 Late Filing Penalty, \$1,791.75 Fraudulent Failure to File Penalty, \$1,163.08 Post-Amnesty Penalty

1999, \$33,156.00 Tax, \$8,289.00 Late Filing Penalty, \$24,867.00 Fraudulent Failure to File Penalty, \$12,575.04 Post-Amnesty Penalty

2000, \$715,283.00 Tax, \$178,820.75 Late Filing Penalty, \$536,462.25 Fraudulent Failure to File Penalty, \$192,967.42 Post-Amnesty Penalty

2001, \$409,684.00 Tax, \$24,793.11 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Susan D. Gries, 807744

2012, \$1,250.08 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Abdul Hanif and Saleszni Devi, 800506

2009, \$1,829.00 Tax

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

James J. Jenkins, 843074

2010, \$621.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Michael J. Johnstone, 823485

2008, \$3,041.00 Tax, \$824.50 Late Filing Penalty

2009, \$6,856.00 Tax, \$1,763.50 Late Filing Penalty, \$823.00 Accuracy-Related Penalty

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

Tuesday, January 26, 2016

Devetus Jones and Samantha Jones, 841654

2011, \$11,424.50 Claim for Refund

Action: The Board took no action.

Valerie Jonesbrice, 841450

2010, \$796.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Neal Katyal and Joanna Rosen, 813239

2012, \$1,134.44 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Lansmont Corporation, 805002

2007, \$7,647.00 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Regina R. McGill, 809493

2009, \$808.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Denis L. Jost, 796313

2011, \$1,096.00 Tax, \$274.00 Late Filing Penalty, \$274.00 Demand Penalty, \$82.00 Filing Enforcement Fee

Action: Deny the petition for rehearing.

Clovus M. Sykes, 817237

2011, \$5,349.00 Tax, \$1,337.25 Late Filing Penalty, \$1,337.25 Demand Penalty, \$78.00 Filing Enforcement Fee

Action: Deny the petition for rehearing.

Arlene Ursino, 788761

2007, \$457.00 Tax

2008, \$457.00 Tax

Action: Deny the petition for rehearing.

Robert E. Valdez and Judy M. Valdez, 819052

2007, \$1,362.00 Claim for Refund

2008, \$1,858.00 Claim for Refund

Action: The Board took no action.

Tuesday, January 26, 2016

SALES AND USE TAX MATTERS, REDETERMINATIONS, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations, 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:

Richard York, 563213 (AR)

07/01/06 to 12/21/07, \$180,608.00

Action: Approve the redetermination as recommended by staff.

Darrell Schmitt Design Associates, Inc., 595732 (AS)

04/01/07 to 09/30/10, \$111,991.33

Action: Approve the redetermination as recommended by staff.

Fun Fish Market, Inc., 626547 (AS)

04/01/09 to 03/31/12, \$595,197.66

Action: Approve the redetermination as recommended by staff.

H.K. Seafood, Inc., 626549 (AS)

04/01/08 to 06/30/11, \$262,996.96

Action: Approve the redetermination as recommended by staff.

R. B. Pier Seafood, Inc., 626545 (AS)

04/01/09 to 03/31/12, \$730,917.68

Action: Approve the redetermination as recommended by staff.

Polydyne, Inc., 783409 (OH)

10/01/09 to 09/30/12, \$134,719.14

Action: Approve the redetermination as recommended by staff.

Squat and Gobble Café, LLC, 627111 (BH)

04/01/09 to 03/31/12, \$100,422.16

Action: Approve the redetermination as recommended by staff.

Anat Broslavski, 875776 (AS)

01/01/11 to 12/31/13, \$405,587.50

Action: Approve the redetermination as recommended by staff.

Autobids, 728259 (EA)

10/01/08 to 09/30/11 \$916,180.26

Action: Approve the redetermination as recommended by staff.

Tuesday, January 26, 2016

Pier Mont, Inc., 626548 (AS)

04/01/09 to 03/31/12, \$640,394.81

Action: Approve the redetermination as recommended by staff.

Cole Retail, Inc., 852212 (BH)

07/01/10 to 06/30/13, \$127,795.79

Action: Approve the redetermination 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 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:

Oreco Duct Systems, Inc., 923448 (AP)

01/01/13 to 07/05/13, \$607,640.46

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

Blanca N. Duran, 923095 (AA)

01/01/08 to 12/31/13, \$137,261.12

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

Alejandro Estrada Ortiz, 925123 (CH)

04/01/09 to 06/30/11, \$123,043.14

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

Draeger Safety Diagnostics, Inc., 923143 (OH)

10/01/10 to 09/30/13, \$411,727.96

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

KST Data, Inc., 836397 (AS)

04/01/08 to 03/31/11, \$1,915,618.36

Action: Approve the refund as recommended by staff.

Sylvania Lighting Services Corporation, 765476 (OH)

10/01/10 to 06/30/14, \$371,600.06

Action: Approve the refund as recommended by staff.

Alphatec Spine, Inc., 794115 (FH)

10/01/10 to 12/31/13 \$352,852.03

Action: Approve the refund as recommended by staff.

Tuesday, January 26, 2016

Professional Hospital Supply, Inc., 840779 (EH)
04/01/12 to 03/31/14, \$229,614.70
Action: Approve the refund as recommended by staff.

Shinko Electric America, Inc., 808601 (GH)
10/01/11 to 09/30/14, \$105,819.63
Action: Approve the refund as recommended by staff.

Federal Express Corporation, 856746 (OH)
10/01/06 to 09/30/09, \$658,034.61
Action: Approve the refund as recommended by staff.

Total Renal Care, Inc., 744118 (OH)
04/01/06 to 03/31/09, \$322,481.14
Action: Approve the refund as recommended by staff.

PFCCB Equipment, LLC, 874389 (OH)
10/01/10 to 09/30/13, \$121,537.14
Action: Approve the refund as recommended by staff.

Seneca Foods, LLC, 850312 (KH)
01/01/14 to 06/30/14, \$120,128.00
Action: Approve the refund as recommended by staff.

Pacific Gas and Electric Company, 926468 (BH)
07/01/04 to 12/31/07, \$1,629,209.20
Action: Approve the refund as recommended by staff.

General Electric Capital Corporation, 923825 (OH)
04/01/04 to 12/31/09, \$1,718,584.63
Action: Approve the refund as recommended by staff.

Dorel Juvenile Group, Inc., 920597 (OH)
07/01/11 to 06/30/14, \$144,256.08
Action: Approve the refund as recommended by staff.

Harley-Davidson Credit Corporation, 790073 (OH)
01/01/13 to 09/30/14, \$711,609.34
Action: Approve the refund as recommended by staff.

T-Mobile Resources Corporation, 846349 (OH)
04/01/09 to 03/31/13, \$11,694,391.11
Action: Approve the refund as recommended by staff.

Tuesday, January 26, 2016

Square Peg Packaging & Printing, LLC, 744094 (FH)

04/01/10 to 06/30/13, \$344,015.45

Action: Approve the refund as recommended by staff.

1-800 Contacts, Inc., 922304 (OH)

04/01/12 to 03/31/15, \$2,274,430.48

Action: Approve the refund as recommended by staff.

Millercoors, LLC, 593688 (OH)

07/01/08 to 06/30/13, \$2,272,384.90

Action: Approve the refund as recommended by staff.

Team Solar, Inc., 857813 (OH)

04/01/14 to 06/30/14, \$646,272.00

Action: Approve the refund as recommended by staff.

Carfinance Capital, LLC, 900926 (EA)

01/01/15 to 06/30/15, \$242,553.00

Action: Approve the refund as recommended by staff.

Lecip, Inc., 912870 (OH)

01/01/14 to 03/31/14, \$325,993.00

Action: Approve the refund as recommended by staff.

JTI Electrical & Instrumentation, LLC, 892212 (DF)

07/01/13 to 09/30/14, \$132,513.00

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS, CONSENT

With respect to the Special Taxes Matters, Redeterminations, Consent Agenda, upon a single motion of Ms. 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 order:

JFC Construction, Inc., 446444 (STF)

03/01/00 to 12/31/07, \$343,705.70

Action: Approve the redetermination as recommended by staff.

Tuesday, January 26, 2016

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

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, 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 made the following orders:

The Wine Group, LLC, 918647 (STF)

08/01/15 to 08/31/15, \$343,722.10

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

Constellation Brands U.S. Operations, Inc., 919574 (STF)

08/01/15 to 08/31/15, \$133,443.80

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

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, 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 made the following orders:

Dusan Polovin, 880780 (HQ)

02/01/91 to 12/31/91, \$2,213,467.07

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

Dusan Polovin , 880780 (HQ)

02/01/91 to 12/31/91, \$2,213,467.07

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

Dusan Polovin, 926733 (HQ)

01/01/92 to 08/17/93, \$2,242,679.28

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

Vesna Lazic, 926731 (HQ)

01/01/92 to 08/17/93, \$2,242,679.28

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

Tuesday, January 26, 2016

LEGAL APPEALS MATTER, ADJUDICATORY

G & C Equipment Corporation, 373826 (AS)

04/01/02 to 03/31/05, \$477,923.44 Tax

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 Mr. Horton and duly carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers voting no, the Board rescinded its November 17, 2015 vote.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

David Bental and Karen Bental, 823501

2011, \$41,001.50 Claim for Refund

Considered by the Board: Presented for Separate Discussion

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

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 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**

Long Beach Generation, LLC (1111)

2012 to 2014, \$19,500,000.00 Escaped Assessment

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

Nextlink Wireless, LLC (2775)

2015, \$440,000.00 Escaped Assessment, \$26,400.00 In-lieu Interest

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

Tuesday, January 26, 2016

Pacific Centrex Services, Inc. (7735)

2012 to 2015, \$3,500,600.00 Escaped Assessment, \$350,060.00 Penalties, \$712,542.00 In-lieu Interest

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

Splice Communications, Inc. (8146)

2012 to 2015, \$224,300.00 Escaped Assessment, \$22,430.00 Penalties, \$38,442.00 In-lieu Interest

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

Kingstone Telecommunications, Inc. (8177)

2013 to 2015, \$105,300.00 Escaped Assessment, \$10,530.00 Penalties, \$17,505.00 In-lieu Interest

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

Board Roll Changes**2014 and 2015 State-Assessed Property Rolls**

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Ms. Stowers not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2014 and 2015 Board Rolls of State-Assessed Property as recommended by staff ([Exhibit 1.5](#)).

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 *Steven Arbizio; Kolina G. Babikian; Kyung Ja Bak, Phillip Younteack Bak and Baks USA, Inc.; Donald Wayne Brown, Emma Jean Brown and Top Deck Deli Café, LLC; Rosa Mirian Cabrera; Moshe M. Chomoshe; Marie Coe; Michelle Davis Conti; Ahmed Abdel Elhamid Elguindi and Northern Start Investment Corp.; Carlos Martin Escobar; Syed Mahmood Ghayas; Dhia H. Mansour; Jennifer Leah McDonald; Virginia S. Morris; Manuel Fuentes Pacis and Rosita Tomes Pacis; Donald Lee Robinson; and, Khaled M. Shatnawi and Kim Kathleen Shatnawi*; as recommended by staff.

Tuesday, January 26, 2016

CHIEF COUNSEL MATTERS**RULEMAKING****Petition to amend Sales and Use Tax Regulation 1569, *Consignees and Lienors of Tangible Personal Property for Sale***

Scott Claremon, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the petition to amend Regulation 1569 to add language that would allow the original pledger to redeem personal property from a pawnbroker within six months of the expiration of the grace period as a non-taxable event ([Exhibit 1.6](#)).

Speaker: Bill Duplissea, Lobbyist, California Pawn Brokers Association

Action: Ms. Harkey moved to grant the petition to amend Regulation 1569. The motion was seconded by Ms. Ma. Ms. Harkey withdrew her motion.

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 referred the petition to the Legislative Committee on concept to expedite legislation that accomplishes the goal.

Fee Collection Procedures Regulation 3500, *Application of the Fee Collection Procedure Law*

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 add references to the Lumber Products Assessment and the Prepaid Mobile Telephony Services Surcharge and Local Charges required to be collected by sellers other than direct sellers ([Exhibit 1.7](#)).

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 approved authorization to make Rule 100 changes to Regulation 3500 as recommended by staff.

ADMINISTRATIVE SESSION

In honor of the *California Women Lead* and the *2016 Woman of the Year* recipients, the Board recognized Toni Atkins, Kristin Olsen and Nancy McFadden who have each been instrumental in demonstrating the extraordinary capabilities of women in leadership in California government ([Exhibit 1.8](#)).

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

Tuesday, January 26, 2016

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 1.9](#)).

Carol Egstad, Business Taxes Representative, Return Analysis Unit,
Headquarters
Peter Lee, Business Taxes Specialist II, Appeal Division, Legal Department,
Headquarters
Althea H. Mitchell, Office Technician (Typing), Riverside District Office
Oscar Villasenor, Associate Tax Auditor, San Diego District Office

Action: Adopt the Board Resolution for Jeffrey L. McGuire, Executive Sponsor, Transformation Projects ([Exhibit 1.10](#)).

Action: Approve the Board Meeting Minutes of December 16, 2015.

Action: Approve proposed revisions to Compliance Policy and Procedures Manual Chapter 2, *Registration*; Chapter 5, *Returns*; Chapter 7, *Collections*; and, Chapter 8, *Consumer Use Tax*, as recommended by staff ([Exhibit 1.11](#)).

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee

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 approved the Legislative Committee report and the actions therein as reflected by the committee members' votes ([Exhibit 1.12](#)).

Business Taxes Committee

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 approved the Business Taxes Committee report and the actions therein as reflected by the committee members' votes ([Exhibit 1.13](#)).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Cynthia Bridges, Executive Director, provided an update on actions to resolve the findings in the State Controller's Office review report of the Board of Equalization's internal accounting and administrative controls ([Exhibit 1.14](#)).

Tuesday, January 26, 2016

Randy Silva, Chief, Investigations and Special Operations Division, Legal Department, provided status updates on the Revenue Recovery and Collaborative Enforcement (RRCE) Act, including highlights of a progress report submitted by the Department of Industrial Relations to the Legislature, as well as the Tax Recovery and Criminal Enforcement Team (TRaCE) (Pilot Project), which has expanded enforcement operations into the Los Angeles area ([Exhibit 1.15](#)).

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.

David Gau, Chief Deputy Director, provided a report regarding BOE's budget, including information on the Governor's Proposed Budget for Fiscal Year 2016-17.

Administration Deputy Director's Report

Edna Murphy, Deputy Director, Administration Department, provided an update on the Headquarters Facilities, which included the Department of General Services (DGS) and the consulting firm of Hammel, Green and Abrahamson (HGA) *Process Improvements Study* PowerPoint presentation related to the BOE Headquarter 450 N Street building ([Exhibit 1.16](#)).

Speakers: David Paeper, Senior Planner, Hammel, Green, and Abrahamson
Sean Bergstedt, Industrial Engineer, Hammel, Green, and Abrahamson

Edna Murphy, Deputy Director, Administration Department, presented the following Spring Finance Letters: *Centralized Revenue Opportunity System (CROS) Project Implementation Phase*; *AB 1717 Prepaid Mobile Telephony Services (MTS) Surcharge*; and, *SB 84 Regional Railroad Accident Preparedness and Immediate Response*; for Board approval to submit to Department of Finance for possible inclusion in the Governor's Fiscal Year 2016-17 Budget ([Exhibit 1.17](#)).

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board approved the Fiscal Year 2016-17 Spring Finance Letters.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD JANUARY 26, 2016

Zongrong Liu and Ying Ma, 796330

2008, \$4,303.00 Assessment

2009, \$6,297.00 Assessment

2010, \$4,406.00 Assessment

For Appellants:

Waived Appearance

For Franchise Tax Board:

Brian Miller, Tax Counsel

Ciro Immordino, Tax Counsel

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

Tuesday, January 26, 2016

Issues: Whether appellants qualified as traders in securities, as defined in Internal Revenue Code (IRC) section 475, for the years at issue.

Whether, if appellants were traders in securities for the years at issue, they made a valid mark-to-market election for the years at issue.

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 sustained the action of the Franchise Tax Board.

Michael J. Barkley and Laura Ann Barkley, 852234

Final 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 sustained the action of the Franchise Tax Board.

Robert W. Holman and Margaret E. Holman, 856805

Final Action: Ms. Harkey moved to reverse the action of the Franchise Tax Board. 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 voting no, Ms. Harkey abstaining, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JANUARY 26, 2016

New NGC, Inc., 485164, 547426 (OH)

Final Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and duly carried, Mr. Runner, Ms. Ma and Ms. Harkey voting yes, Mr. Horton and Ms. Stowers voting no, the Board ordered that the claim for refund be denied as to the chemical Versenex and otherwise be granted, and the Board ordered a reaudit to redetermine the tax accordingly.

The Board adjourned at 7:28 p.m.

The foregoing minutes are adopted by the Board on February 23, 2016.

Note: The following matters were removed from the calendar prior to the meeting: *Jacek Pasternak, 493152, 526562*; and, *Laura D. Muller, 835863*.