

Tuesday, April 26, 2016

The Board met at its offices at 5901 Green Valley Circle, Culver City at 9:01 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 staff members of the Field Operations Department, Culver City District Office: Sergeant Authurine Clay, Army National Guard and Tax Technician; and, Staff Sergeant Rigo E. Nieves, Air Force Reserves and Business Taxes Representative.

### CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Irvin J. Himmelberg and Peggy Jo Himmelberg, 866627  
2007, \$4,679.20 Claim for Refund  
2008, \$3,840.00 Claim for Refund

For Appellants:	Irvin J. Himmelberg, 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 have demonstrated that they are entitled to interest abatement for the tax years at issue.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 4.1](#))

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 4.2](#))

Member's Exhibit: Ms. Harkey's Spreadsheet ([Exhibit 4.3](#))

Brad Coutinho, Tax Counsel, Franchise Tax Board, noted for the record that concession of \$991.11 for tax years 2007 and 2008.

Action: Ms. Harkey moved to abate interest in the amount of \$3,056 for tax years 2007 and 2008. 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. Horton and Ms. Stowers voting yes, Ms. Harkey and Mr. Runner voting no, the Board sustained the action of the Franchise Tax Board as modified by its concessions.

Exhibits to these minutes are incorporated by reference.

Edward A. Galigher, 824270  
2004, \$6,152.00 Assessment

For Appellant:	Edward A. Galigher, Taxpayer
For Franchise Tax Board:	Eric Brown, Tax Counsel
	Diane Ewing, Tax Counsel, Tax Counsel

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

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

Action: The Board postponed this matter to July 14, 2016 in Orange County.

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The Board recessed at 10:29 a.m. and reconvened at 10:48 a.m. with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

### SPECIAL PRESENTATIONS

Ms. Ma made introductory remarks regarding the Board of Equalization's *Employee Recognition Award Program*. On behalf of the Board, she thanked the recipients for their dedication and commitment to the organization. David Gau, Executive Director, presented the awards for cycle 2015-16. Robert McPherson, Associate Management Analyst, Executive Projects & Services Section, External Affairs Department, read the names of the award recipients and their achievements into the record. Each Member of the Board gave a special thanks to the awardees for their hard work and efficiency.

The Board recessed at 11:03 a.m. and reconvened at 1:30 p.m. with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

Brian N. Khoury, 867810

2006, \$492,858.00 Tax, \$164,127.94 Interest-based Penalty, \$178,003.00 NEST Penalty

Jason B. Khoury and Lisa B. Khoury, 867855

2006, \$501,883.00 Tax, \$167,133.39 Interest-based Penalty, \$181,263.00 NEST Penalty

Noelle K. Ludwig and Timothy S. Ludwig, 867874

2006, \$500,697.00 Tax, \$166,738.43 Interest-based Penalty, \$180,834.00 NEST Penalty

For Appellants:

Tawfiq N. Khoury, Witness

Richel G. Khoury, Witness

Kenneth Van Damme II, Representative

Michael C. Hamersley, Attorney

For Franchise Tax Board:

Roman Johnston, Tax Counsel

Michael Cornez, Tax Counsel

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

Issues: Whether appellants' consent to the extension of the statute of limitations is valid and enforceable such that the Franchise Tax Board timely issued its Notices of Proposed Assessment.

Whether appellants' installment sale transaction should be disallowed under the economic substance doctrine or other judicial standards.

Whether Internal Revenue Code section 453(e) applies to disallow installment sale treatment.

Whether the partnership anti-abuse regulations apply to appellants' transaction.

Whether the NEST (noneconomic substance transaction) penalty applies and, if it applies, whether it should be reduced to 20 percent on the basis of adequate disclosure.

Whether the interest-based penalty applies.

Whether interest suspension applies.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 4.4](#))

Member's Exhibit: Ms. Harkey's Spreadsheet ([Exhibit 4.5](#))

Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and duly carried, Ms. Ma, Ms. Harkey and Mr. Runner voting yes, Mr. Horton and Ms. Stowers voting no, the Board reversed the action of the Franchise Tax Board.

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**PUBLIC HEARINGS****Property Taxes - State Assesseees' Presentations on the Valuation of State-Assessed Properties**

Ken Thompson, Chief, State-Assessed Properties Division, Property Tax Department, made introductory remarks regarding the presentations on the valuation of state-assessed property.

Speaker: Peter W. Michaels, Law Offices of Peter Michaels representing State Assessed Gas/Electric, Intercounty Pipeline, Telephone and Railroad Companies

**Business Taxpayers' Bill of Rights Hearings**

Todd Gilman, Taxpayer's Rights Advocate, Taxpayer's Rights Advocates Office, made introductory remarks regarding the Business Taxpayers' Bill of Rights hearings. Individuals have the opportunity to present ideas, concerns, and recommendations regarding legislation, the quality of agency services, and other issues related to the Board's administration of its tax programs, including sales and use taxes, environmental fees, fuel taxes, and excise taxes, and any problems identified in the Taxpayers' Rights Advocate's Annual Report ([Exhibit 4.6](#)).

Speakers: Michael Zaldivar, CPA, Zaldivar Sattar & Associates  
Marc Brandeis, CPA, Brandeis & Associates  
Edna Moreno, representing small business owners in the San Fernando Valley  
Joseph Broyles, Tax Professional  
Carmen Kane, representative for Antique Portraiture, Inc.

**Property Taxpayers' Bill of Rights Hearings**

Todd Gilman, Taxpayer's Rights Advocate, Taxpayer's Rights Advocates Office, made introductory remarks regarding the Property Taxpayers' Bill of Rights hearings. Individuals have the opportunity to present their ideas, concerns, and recommendations regarding legislation, the quality of agency services, and other issues related to the Board's administration of its tax programs, including state and county property tax programs, and any problems identified in the Taxpayers' Rights Advocate's Annual Report ([Exhibit 4.7](#)).

Speaker: Alvin Christman, Representative, property in Marina del Rey

**LEGAL APPEALS MATTERS, CONSENT**

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

Mahmoud M. Attaalla, 932874 (STF)  
November 13, 2015 Seizure Date, \$14.84 Approximate Value  
Action: Determined that staff properly seized the tobacco products.

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

Himanshu Joglekar, 759259

2006, \$2,375.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Tracey L. Bahlo, 603241

2003, \$262,906.05 Tax

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

Mark J. Becker, 862120

2012, \$907.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Wenes H. Chung and Bonnie Chung, 843026

2010, \$4,585.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Scott Davis, 854558

2010, \$269.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Hue Hospitality, Inc., 841156

2011, \$79,699.94 Tax, \$19,924.98 Late-filing Penalty, \$19,924.98 Demand Penalty, \$96.00

Filing Enforcement Fee

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

Scott M. King, 859649

2012, \$777.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Vivienne Ko, 870537

2010, \$1,795.00 Tax

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

Richard F. Marston, Jr., 839210

2009, \$658.00 Tax

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

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Ronald D. Mass and Pamela S. Mass, 874820

2010, \$60,222.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Mervyn A. Pipersburgh, Sr., 852685

2009, \$2,346.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Edward D. Rodriguez, 809241

2009, \$10,930.00 Tax, \$1,087.80 Accuracy-related Penalty

Action: Sustain the action of the Franchise Tax Board.

Silicon Color, Inc., 782765

2006, \$215,029.76 Tax

Action: Sustain the action of the Franchise Tax Board.

Debra A. Smither, 852547

1999, \$5,212.49 Tax

Action: Sustain the action of the Franchise Tax Board.

Southern California Diagnostic Imaging, Inc., 851574

2009, \$36,381.00 Tax

Action: Sustain the action of the Franchise Tax Board.

William R. Dobkin and Donya Dobkin, 728014

2006, \$181,348.00 Tax, \$36,269.60 Accuracy-Related Penalty

Deborah M. Dobkin, 725828

2006, \$121,923.00 Tax

Action: Deny the petition for rehearing.

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

Action: Upon motion of Mr. Horton, seconded by Ms. Stowers and unanimously carried, Ms. Ma, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, Ms. Harkey absent, the Board approved the Offer in Compromise Recommendations of *Veronica Diaz; Alvin Irwin Horwitz; Joanne Annabelle Ricklin; Ramin Khaloo; Kathleen R. Parisia; John Thomas Perez; Prototypes Plus, Inc.; Quality One Test Fixturing, Inc.; Mark Richard Bartholomew; Heriberto Garcia Rico; Maria S. Garcia; James Andrew Shoemaker; Mary Shoemaker; Coastal Pizza; and, Watsonville Pizza, Inc.*; as recommended by staff.

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**CHIEF COUNSEL MATTERS****OTHER CHIEF COUNSEL MATTERS****Resolution Conferring Powers on the Executive Director**

Randy Ferris, Chief Counsel, Legal Department, made introductory remarks regarding the adoption of the resolution conferring powers on the Executive Director and provided a revised version of the resolution ([Exhibit 4.8](#)).

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 revised resolution as recommended by staff.

**ADMINISTRATIVE SESSION**

David Gau, Executive Director, presented a certificate of commendation from the Los Angeles County Board of Supervisors to Mr. Horton in honor of the Board of Equalization's Volunteer Income Tax Assistance (VITA) events ([Exhibit 4.9](#)).

**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single 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 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 4.10](#)).

Carlos Caderon, Associate Tax Auditor, Riverside District Office  
Colleen Castile, Business Taxes Administrator II, Oakland District Office  
Deborah A. Cumins, Business Taxes Specialist III, Appeals Division, Legal Department, Headquarters  
Donna Foster, Tax Technician III, Oakland District Office  
May F. Hui, Business Taxes Specialist I, West Covina District Office  
Bill Kimsey, Business Taxes Administrator III, Business Tax and Fee Department, Appeals and Data Analysis Branch, Headquarters  
Brenda Ramirez, Tax Technician II, State-Assessed Properties Division, Property Tax Department, Headquarters  
Kathryn Saunders, Business Taxes Specialist I, Business Taxes Committee and Training section, Headquarters  
Benjamin Velasco, Business Taxes Representative, Special Operations Branch, Headquarters  
Wun-chi Wang, Tax Research Specialist III, Research and Statistics Section, Legislative and Research Division, Headquarters

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Action: Approve the Board Meeting Minutes of March 29-30, 2016.

Action: Approve proposed revisions to Compliance Policy and Procedures Manual Chapter 2, *Registration*; Chapter 3, *Account Maintenance*; Chapter 4, *Security*; Chapter 5, *Returns*; and Chapter 7, *Collections* as recommended by staff ([Exhibit 4.11](#)).

Action: Approve time extension to Trinity County to complete and submit fiscal year 2016-17 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 as recommended by staff ([Exhibit 4.12](#)).

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

##### **Business Taxes Committee**

Action: Upon motion of Mr. Horton, seconded by Ms. Harkey 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 4.13](#)).

#### **OTHER ADMINISTRATIVE MATTERS**

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

Richard Parrott, Acting Chief, Special Taxes Policy and Compliance Division, made introductory remarks regarding staff's recommendation for setting the fiscal year 2016-17 tobacco products tax rate ([Exhibit 4.14](#)).

Action: Upon motion of Ms. Stowers, seconded by Mr. Runner and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board set the tobacco products tax rate at 27.30 percent for fiscal year 2015-16 as recommended by staff.

##### **Administration Deputy Director's Report**

Edna Murphy, Deputy Director, Administration Department, provided an update regarding Board of Equalization's budget and the budget process.

Julia F. Findley, Acting Chief, Financial Management Division, 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.

Sandra Mayorga, Chief, Human Resources Division, Administration Department, provided an update regarding the bargaining process.

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### Technology Deputy Director's Report

Brenda Fleming, Chief Information Officer, 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 5:09 p.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 settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 6:35 p.m. and reconvened immediately in open session with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

Ms. Ma announced the appointment of Richard Parrott, Chief, Special Taxes Policy and Compliance Division, Business Tax and Fee Department, effective immediately. Ms. Ma also announced that the Board extended the position of Cynthia Bridges, Special Consultant, through October 3, 2016.

The Board recessed at 6:36 p.m.

*The foregoing minutes are adopted by the Board on May 25, 2016.*

Note: The following matters were removed from the calendar prior to the meeting: *Nicholas L. Alford and Shannon M. Alford, 788398; Stephen E. Avoyer and Pamela G. Avoyer, 788396; Kenneth J. Flocke and Janice M. Flocke, 788395; David L. Malcolm and Annie Malcolm, 788399; Dietmar Schott, 788400; Roger Swift and Sharon M. Swift, 788401; William R. Thaxton and Van Thaxton, 788402; Estate of John M. Tworoger (Dec'd) and Brenda K. Tworoger, 788403; and, Marsha A. Wilkerson, 857552.*



Wednesday, April 27, 2016

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:03 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.

### SALES AND USE TAX APPEALS HEARINGS

Richard Clark Farrell, 600710 (EA)

01/01/05 to 03/31/05, \$468,489.52 Tax, \$117,122.82 Fraud Penalty

For Petitioner: Richard Farrell, Taxpayer

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

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

Issue: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of Irvine Photo Graphics, Inc., pursuant to Revenue and Taxation Code section 6829.

Action: The Board postponed this matter to July 14, 2016 in Orange County.

Durman, Inc., 605242 (SO)

11/15/08 to 06/30/11, \$121,739.56 Tax, \$12,173.99 Negligence Penalty

For Petitioner: Waved Appearance

For Business Tax and Fee Department: Nenita DeLa Cruz, Hearing Representative

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

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

Whether petitioner was negligent.

Jeff Angeja, Tax Counsel, Appeals Division, Legal Department, provided a revised recommendation of the Appeals Division to reduce the tax from \$121,739.56 to \$29,737.00 and reduce the penalty to \$2,973.70.

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

Rodney L. Odom, 807267, 865046 (UT)

03/20/08, \$1,360.91 Claim for Refund

03/20/08, \$74.09 Claim for Refund

For Claimant: Rodney L. Odom, Taxpayer

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

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

Issues: Whether a reduction is warranted to the amount of use tax due on claimant's purchase of a vehicle.

Whether relief of the finality penalty is warranted.

Whether relief of interest is warranted for the periods August 1, 2008, through August 17, 2010, and September 15, 2011, through May 30, 2014.

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Jeff Angeja, Tax Counsel, Appeals Division, Legal Department, provided a revised recommendation of the Appeals Division to relieve interest for the period October 1, 2008 to May 31, 2010.

Action: Ms. Stowers moved to abate the finality penalty and that the petition otherwise be redetermined in accordance with the revised recommendation of the Appeals Division. The motion was seconded by Mr. Horton. Ms. Harkey made a substitute motion to relieve the interest and the finality penalty and to remove the lien from the taxpayer's property, and otherwise deny the claim for refund. Mr. Horton withdrew his second on the original motion. The substitute motion was seconded by Ms. Stowers and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes.

The Board recessed at 10:24 a.m. and reconvened at 11:06 a.m. with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

### **SPECIAL TAXES APPEALS HEARING**

Sahak Jeiranian, 841617 (STF)  
01/01/01 to 05/12/03, \$743,023.50 Tax, \$185,755.88 Fraud Penalty, \$59,207.85 Failure-to-File Penalty, \$74,302.35 Finality Penalty

For Taxpayer: Jeiranian Sahak, Taxpayer

For Business Tax and Fee Department: Pamela Mash, Tax Counsel

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

Issues: Whether taxpayer is liable for the tax at issue.

Whether Investigation and Special Operations Division has established fraud by clear and convincing evidence.

Whether relief of the failure-to-file and finality penalties is warranted.

Whether relief of the collection cost recovery fee 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.

The Board adjourned at 11:57 p.m.

*The foregoing minutes are adopted by the Board on May 25, 2016.*

Note: The following matters were removed from the calendar prior to the meeting: *Vincent Carneau and Devrim Roesch, 851841*, and, *High Desert Food Mart, Inc., 594562*.