

Tuesday, August 30, 2016

The Board met at its offices at 450 N Street, Sacramento, at 9:04 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 Randy Ferris, Former Chief Counsel, Legal Department.

SPECIAL PRESENTATIONS

Presentation of Board Resolution: Honorable Senator Sharon Runner (Deceased)

On behalf of the Board, Ms. Ma read into the record a Board Resolution in memory of Senator Sharon Runner. Senator Runner, who passed away July 14, 2016, was a dedicated public servant and a devoted wife to Mr. Runner. She was an advocate for public safety, education, and children's issues, and has had remarkable achievements throughout her career. She will be deeply missed ([Exhibit 8.1](#)).

Exhibits to these minutes are incorporated by reference.

Presentation of Retirement Resolution: Randy Ferris, Former Chief Counsel, Legal Department

On behalf of the Board, Ms. Ma presented to Randy Ferris, Former Chief Counsel, Legal Department, a retirement resolution, extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California. Members made complementary remarks regarding their experiences with Mr. Ferris and his exceptional work with the Board of Equalization and wished him well in his retirement and future endeavors. Mr. Ferris thanked the Members for their kind words, and for putting their trust and confidence in him to serve and assist them. And he thanked former Executive Directors Timothy Boyer and Kristine Cazadd for supporting his career. He also thanked Randy Silva, Chief, Investigations and Special Operations Division, and the Executive Team, Assistant Chief Counsels, and legal staff for their support ([Exhibit 8.2](#)).

Report from Selvi Stanislaus, Executive Director, Franchise Tax Board

Ms. Ma introduced Selvi Stanislaus, Executive Director, Franchise Tax Board, who provided a report on the 2015 Earned Income Tax Credit and VITA Program.

Members made complementary remarks to all the participants of the VITA Program, commending them for their good work. Mr. Horton commended Governor Jerry Brown's wisdom and understanding of the return on the investment of this program.

The Board recessed at 9:37 a.m. and reconvened at 9:43 a.m. with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Paula Trust, 759422
2007, \$150,655.00 Assessment
For Appellant:

Andrew McCullough, Representative
Sam Doolittle, Representative
Edwin P. Antolin, Attorney
Prentiss Willson, Attorney
Sonia Woodruff, Tax Counsel
Doug Powers, Tax Counsel
Natasha Page, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant Paula Trust was subject to California income tax on all of its income as California source income, as contended by respondent Franchise Tax Board (FTB), or, alternatively, whether appellant's amended return correctly apportioned 50 percent of its income to California on the basis that only one of its two fiduciaries was a California resident.
Appellant's Exhibit: Power Point on Issue ([Exhibit 8.3](#))
Respondent's Exhibit: Miscellaneous Documents ([Exhibit 8.4](#))
Action: Upon motion of Mr. Horton, seconded by Ms. Stowers and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board sustained the action of the Franchise Tax Board.

John A. Mattson and Tara L. Mattson, 816470
2006, \$21,372.00 Assessment
2007, \$20,190.00 Assessment
2008, \$34,166.00 Assessment
2009, \$23,004.00 Assessment

For Appellants:

John A. Mattson, Taxpayer
Jason Riley, Tax Counsel
David Gemmingen, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issues: Whether appellants have shown error in respondent's determination that appellants' rental real estate activities did not qualify as a trade or business for the years at issue.
Whether respondent erred in determining that appellants' rental real estate activities are passive activities, such that losses from those activities may only offset their passive income for the years at issue.
Appellant's Exhibit: PowerPoint Presentation and Other Exhibits ([Exhibit 8.5](#))
Respondent's Exhibit: PowerPoint Presentation ([Exhibit 8.6](#))
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 sustained the action of the Franchise Tax Board.

The Board recessed at 11:48 a.m. and reconvened at 1:34 p.m. with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Yee present.

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ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Administration Deputy Director's Report

Edna Murphy, Deputy Director, Administration Department, presented a contract over \$1 million with a vendor for the CROS Project to replace BOE's two current legacy-technology tax administration systems. David Gau, Executive Director, provided a brief background of the project. Mr. Gau complimented BOE staff on their good work and service to taxpayers in light of the challenges of the current BOE technology.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Yee voting yes, the Board approved the contract with FAST Enterprises.

Members congratulated FAST Enterprises for winning the bid for the CROS Project contract. Members made complementary comments, thanking Brenda Fleming, CIO; David Gau; Edna Murphey; and employees involved in making the CROS Project a success.

Ms. Yee left the Boardroom and Ms. Stowers entered on behalf of Ms. Yee in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Frances C. Dandy and Estate of Stanford Dandy (Dec'd), 924692

2009, \$149,637.00 Assessment

2010, \$141,064.00 Assessment

2011, \$146,176.00 Assessment

For Appellants:

Craig A. Houghton, Attorney

For Franchise Tax Board:

Maria Brosterhous, Tax Counsel

Natasha Page, Tax Counsel

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

Issues: Whether the Franchise Tax Board (FTB or respondent) properly determined that appellant-wife's wages and per capita distributions are not exempt from California income tax.

Whether appellants have shown that they are entitled to interest abatement.

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 sustained the action of the Franchise Tax Board.

The Board recessed at 2:57 p.m. and reconvened at 2:59 p.m. with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

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PUBLIC HEARINGS**Proposed Amendments to Sales and Use Tax Regulation 1702.5, *Responsible Person Liability***

Christine Bisauta Castillo, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to clarify and provide guidance regarding the Board's historical interpretations of Revenue and Taxation Code section 6829 and the regulation ([Exhibit 8.7](#)).

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 1702.5 as published.

LEGAL APPEALS MATTERS, CONSENT

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

Zain H. Azzghayer and Adla Azzghayer, 814036 (BH)

01/01/11 to 06/30/13, \$142,795.97 Tax, \$14,279.63 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Rosita A. Carrillo, 848210 (DF)

08/08/13 to 03/31/14, \$38,986.34 Tax, \$3,898.63 Failure-to-File Penalty, \$3,898.63 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Paul Jorge Carvalho, 760098 (CH)

10/01/09 to 09/30/12, \$55,414.95 Tax, \$5,594.64 Finality Penalty

Action: Redetermine as recommended by the Appeals Division.

Mark Holden, 611392 (AR)

10/01/08 to 03/01/09, \$92,354.00 Tax, \$5,937.90 Late-Payment Penalty

Action: Redetermine as recommended by the Appeals Division.

Adil Saleh Ali Isa, 839003 (CH)

10/01/10 to 09/30/13, \$25,087.88 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

JMJ Wholesale Autos, 758216 (UT)

03/03/07, \$19,584.36 Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

Levitz Furniture, LLC, 461479 (OH)

07/01/01 to 12/31/05, \$2,618,569.92 Tax, \$29,436.20 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

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Sam's Market, Inc., 948258 (STF)

January 28, 2016 Seizure Date, \$382.88 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Precise Auto, 952078 (STF)

March 22, 2016 Seizure Date, \$301.25 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Salattar Corporation, 949925 (STF)

February 12, 2016 Seizure Date, \$577.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Salattar Corporation, 949926 (STF)

February 23, 2016 Seizure Date, \$1,969.25 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Napa Valley Limoncello Company, 954628 (STF)

April 19, 2016, \$4,923.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Berc Agopoglu, 848646; Robert H. Lowe and Sheryl L. Berkoff, 571973; and, Michael McGuire, 709207.*

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

Suzanne E. Afflalo, 856407

2007, \$15,085.24 Claim for Refund

2008, \$9,862.36 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Allen Road JK Investment, LLC, 867230

2008, \$800.00 Tax, \$200.00 Late Payment Penalty

2009, \$800.00 Tax, \$200.00 Late Payment Penalty

2010, \$800.00 Tax, \$200.00 Late Payment Penalty

2011, \$800.00 Tax, \$168.00 Late Payment Penalty

2012, \$800.00 Tax, \$120.00 Late Payment Penalty

2013, \$800.00 Tax, \$128.00 Late Payment Penalty

Action: Sustain the action of the Franchise Tax Board.

Michael Alvarez and Siobhan Alvarez, 863620

2010, \$1,533.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Steven M. Brown and Carie E. Strahorn-Brown, 856355

2009, \$2,380.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Robert B. Bryson and Elizabeth Mullarkey, 867260

2013, \$1,777.11 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Butler Heritage, LLC, 865000

2011, \$432.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ronald Corbet, 852304

2008, \$19,047.00 Claim for Refund

2009, \$17,929.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Diane Daniels, 850281

2012, \$161.00 Tax, \$135.00 Late Filing Penalty, \$40.25 Demand Penalty, \$78.00 Filing Enforcement Fee

Action: Modify the action of the Franchise Tax Board.

David Wittrock CPA, LLP, 868443

2010, \$549.39 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Troy G. Farshi, 878275

2013, \$2,131.90 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Yogesh Goradia and Ranjan Y. Goradia, 791767

2006, \$99,416.00 Tax

2007, \$90,886.00 Tax, \$10,871.50 Late Filing Penalty

2008, \$1,509.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Jonathan D. Gordon, 854750

2010, \$7,103.00 Tax, \$1,775.75 Late Filing Penalty, \$1,775.75 Demand Penalty, \$88.00 Filing Enforcement Cost Recovery Fee

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

Jay K. Hahn, 859340

2006, \$6,803.56 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jared H. Hoog and Lori A. Hoog, 819085

2008, \$9,719.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Lake Isabella Enterprises, II, a California Limited Partnership, 856792

2012, \$635.41 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Fariborz Lavaei and Ayelet Lavaei, 866434

2006, \$428,454.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Steven G. Philp and Lori Lynn Philp, 892917

2013, \$1,876.69 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Paula Plotkin, 842557

2010, \$452.00 Assessment, \$90.40 Accuracy-related Penalty

Action: Sustain the action of the Franchise Tax Board.

Preferred Manufacturing Services, Inc., 847179

2010, \$9,582.90 Claim for Refund

2011, \$10,472.07 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Loren L. Ritter and Nancy L. Ritter, 809262

2005, \$101,875.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Rafat Rob and Tahany Qwareeq, 865625

2012, \$1,086.72 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

John Sadolin, 919153

2013, \$1,005.54 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Scartphil, Inc., 869284

2012, \$764.65 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Amany Soliman, 864687

2012, \$982.00 Tax, \$245.50 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Thomas C. Street, 818692

2010, \$1,488.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Eric Walker and M. Lynn Walker, 796762

1999 to 2004, \$1,995.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Alexey G. Zharikov and Darya A. Morozova, 819010

2008, \$19.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Berc Agopoglu, 848646

2010, \$2,682.00 Tax

Action: The Board took no action.

Robert H. Lowe and Sheryl L. Berkoff, 571973

2005, \$714,686.00 Assessment, \$178,671.50 Failure to Furnish Information Penalty

Action: The Board took no action.

Michael McGuire, 709207

2007, \$563.00 Tax, \$140.75 Late Filing Penalty

Action: The Board took no action.

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, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board approved the Offer in Compromise Recommendations of *Phillip Hickernell; PRH Investments, Inc.; Jeremy M. Maul; ICooperative Patients' Association, Inc.; Jonathon L. McKellar; Parties by Panache, Inc.*; and, *Savas Wholesale, Inc.*; as recommended by staff.

LOCAL TAX REALLOCATION MATTER

Cities of Ontario, Palm Springs, San Diego, Santa Barbara, and Counties of Sacramento and San Mateo, 525325, 525326

03/01/04 to 12/31/07, \$12,276,670.00 Tax

Considered by the Board: March 29, 2016, Summary Decision (Rev. & Tax. Code, § 40)

Action: Ms. Harkey moved to adopt the written summary decision Alternative B with modifications. The motion failed for lack of a second.

The Board deferred this matter to August 31, 2016.

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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. 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 8.8](#)).

Barbara Bolda, Supervising Tax Auditor III, Out-of-State Chicago District Office
Elizabeth Buelna, Data Processing Manager III, Technology Services
Department, Headquarters

Aaron Caldwell, Associate Tax Auditor, Out-of-State District Office

Ronald W. Halliburton, Business Taxes Specialist II, Computer Audit Specialist
Section, Headquarters

Michael Martinez, Business Taxes Specialist I, Riverside District Office

Amanda Narvaez-Albertolli, Tax Technician II, Santa Rosa District Office

Mary Riggs, Assistant Clerk, Imaging and Mail Processing Center,
Administration Department, Headquarters

Alice Scott, Business Taxes Representative, Sacramento District Office

Charles R. Whitten, Business Taxes Specialist I, Santa Rose District Office

Action: Adopt the Board Resolution honoring the life of Senator Sharon Runner ([see Exhibit 8.1](#)).

Action: Approve the Board Meeting Minutes of July 14, 2016.

Action: Approve proposed revisions to Audit Manual Chapters 2, *Preparation of Field Audit Reports*; 4, *General Audit Procedures*; and 6, *Vehicle, Vessel and Aircraft Dealers*; and Compliance Policy and Procedures Manual Chapters 8, *Consumer Use Tax* and 9, *Miscellaneous* as recommended by staff ([Exhibit 8.9](#)).

Action: Approve proposed revisions to Compliance Policy and Procedures Manual Chapters 1, *General*, 2, *Registration*, 4, *Security*, 5, *Returns*, and 7, *Collections* as recommended by staff ([Exhibit 8.10](#)).

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**Business Taxes Committee**

The Board deferred this matter to August 31, 2016.

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OTHER ADMINISTRATIVE MATTERS**Administration Deputy Director's Report**

Edna B. Murphy, Deputy Director, Administration Department, introduced Chris Holtz, Chief, Business Management Division, Administration Department, and Julia Findley, Chief, Financial 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: *Special Tax and Fee Programs* ([Exhibit 8.11](#)); *Augmentation for Accounting Workload Increase* ([Exhibit 8.12](#)); and, *2017-18 Budget and Vacancy Master Plan (Concept Paper)* ([Exhibit 8.13](#)).

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 2017-18 BCPs as presented.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 3:52 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 4:06 p.m. and reconvened immediately in open session with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

The Board recessed at 4:07 p.m.

The foregoing minutes are adopted by the Board on September 27, 2016.

Note: The following matter was removed from the calendar prior to the meeting: *David Chan and Suzanne Nagy-Chan, 605761.*

Wednesday, August 31, 2016

The Board met at its offices at 450 N Street, Sacramento, at 9:05 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

Solvay USA, Inc., 812187 (OH)

07/01/09 to 09/30/12, \$382,437.87 Tax

For Petitioner:

Susan Bittick, Attorney

For Business Tax and Fee Department:

Scott Claremon, Tax Counsel

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

Issue: Whether petitioner was entitled to claim a deduction on its third quarter 2009 return for amounts overpaid for the first and second quarters of 2009.

Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and duly carried, Ms. Ma, Ms. Harkey, Mr. Runner and Ms. Stowers voting yes, Mr. Horton voting no, the Board ordered that the petition be granted and the tax be redetermined accordingly.

Nagib Abdulsaeed Shariff, 715384 (CH)

04/01/09 to 11/17/11, \$53,237.20 Tax, \$5,608.33 Negligence Penalty

For Petitioner:

Hassen Mohsen, Representative

For Business Tax and Fee Department:

Scott Lambert, Hearing Representative

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

Issues: Whether additional adjustments are warranted to the audited understatement of reported taxable sales.

Whether petitioner was negligent.

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 as recommended by the Appeals Division.

Jacek Pasternak, 493152 (CH)

04/01/07 to 12/31/07, \$24,384.26 Tax, \$8,518.90 Late Payment Penalty, \$13,168.59 Interest

For Petitioner:

Jacek Pasternak, 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 Espectro Corporation pursuant to Revenue and Taxation Code section 6829.

Whether petitioner has established reasonable cause sufficient for relieving the late payment penalties originally assessed against Espectro.

Whether relief of interest is warranted.

Jarrett Noble, Tax Counsel, Appeals Division, Legal Department, provided a revised recommendation of the Appeals Division to relieve interest for the period June 1, 2016 to August 31, 2016.

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Action: Ms. Harkey moved that the late payment penalty for the second quarter of 2007 be abated and that the petition otherwise be redetermined in accordance with the revised recommendation of the Appeals Division. The motion failed for lack of a second.

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 in accordance with the revised recommendation of the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise program.

The Board recessed at 10:47 a.m. and reconvened at 10:52 a.m. with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

Solarcity Corporation, 668911 (BH)

01/01/07 to 12/31/09, \$131,592.00 Claim for Refund

For Claimant: Damon Franz, Witness
 Jeffrey M. Vesely, Attorney
 Richard E. Nielsen, Attorney

For Business Tax and Fee Department: Monica Silva, Tax Counsel

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

Issue: Whether the solar energy rebates received by claimant are gross receipts subject to tax.

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 ordered that the petition be submitted for decision.

Rodolfo Dagoberto Carranza, 623951 (BH)

01/01/09 to 12/31/11, \$45,287.07 Tax, \$4,528.76 Negligence Penalty

For Petitioner: Rodolfo D. Carranza, Taxpayer
 Linda Carranza, Witness

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

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: Upon 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 ordered that the audited unreported taxable sales be reduced to \$255,135.00, that the negligence penalty be abated, and that the petition otherwise be redetermined as recommended by the Appeals Division.

The Board recessed at 12:40 p.m. and reconvened at 12:52 p.m. with Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers present.

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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
AUGUST 31, 2016**

Solarcity Corporation, 668911 (BH)

Final Action: Upon 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 ordered that the claim for refund be granted.

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

LOCAL TAX REALLOCATION MATTER

Cities of Ontario, Palm Springs, San Diego, Santa Barbara, and Counties of Sacramento and San Mateo, 525325, 525326 (Continued from 8/30/16)

03/01/04 to 12/31/07, \$12,276,670.00 Tax

Considered by the Board: March 29, 2016, Summary Decision (Rev. & Tax. Code, § 40)

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 adopted the written summary decision Alternative B with modifications.

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Business Taxes Committee

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 approved the Business Taxes Committee report and the actions therein as reflected by the committee members' votes ([Exhibit 8.14](#)).

Exhibits to these minutes are incorporated by reference.

The Board adjourned at 1:08 p.m.

The foregoing minutes are adopted by the Board on September 27, 2016.

Note: The following matter was removed from the calendar prior to the meeting: *Easy Fuel, Inc., 716685*.