

Tuesday, June 20, 2017

The Board met at its offices at 450 N Street, Sacramento, at 9:03 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 Julia Findley, Chief, Financial Management Division, Administration Department.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Charles Harper, 942651
2009, \$486,316.00 Assessment
For Appellant:

Charles Harper, Taxpayer
Roy E. Crawford, Attorney
Denis Retoske, Attorney

For Franchise Tax Board:

Richard Tay, Tax Counsel
Ciro Immordino, Tax Counsel

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

Issue: Whether appellant may exclude the gain from the sale of stock as qualified small business stock (QSBS) pursuant to Revenue and Taxation Code (R&TC) section 18152.5.

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 6.1](#))

Action: Upon motion of Ms. Ma, 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.

Exhibits to these minutes are incorporated by reference.

David Chan and Suzanne Nagy-Chan, 605761
2004, \$80,991.00 Assessment, \$2,842.00 Penalties
2005, \$149,567.00 Assessment, \$17,007.00 Penalties

For Appellants:

David Chan, Taxpayer
Suzanne Nagy, Taxpayer

For Franchise Tax Board:

Ciro Immordino, Tax Counsel
Teresa Wignall, Tax Counsel

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

Issues: Whether appellants have shown that their Schedule C gross receipts were overstated for 2004 and 2005.

Whether appellants have shown error in the Franchise Tax Board's disallowance of Schedule C business expenses for 2004 and 2005.

Action: Upon motion of Ms. Stowers, seconded by Ms. Ma 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.

The Board recessed at 10:34 a.m. and reconvened at 10:42 a.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

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Peter S. Magnusson, 971924
2013, \$32,194.79 Claim for Refund
For Appellant:

Peter S. Magnusson, Taxpayer
Ronald H. Cohen, Representative
Mira Patel, Tax Counsel
Marguerite Mosnier, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Issue: Whether appellant has shown that the notice and demand penalty should be abated.

Action: Ms. Harkey moved to sustain the action of the Franchise Tax Board as to the amount due on the deficiency of \$784.00, and to otherwise grant the appeal. The motion failed for lack of a second.

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

PUBLIC HEARING

Timber Harvest Values

Mike Harris, Manager, State-Assessed Properties Division, Property Tax Department, made introductory remarks regarding the timber harvest values. On or before June 30, 2017, the Board shall estimate the immediate harvest values of and adopt schedules for each species or sub-classification of timber harvested between July 1 and December 31, 2017. Additionally, the Board may modify immediate harvest values to reflect material changes in timber values that result from fire or other catastrophic cause for any area or part thereof in which damaged timber is located. Revenue and Taxation Code section 38204 ([Exhibit 6.2](#)).

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

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 approved the timber harvest values as recommended by staff.

The Board recessed at 11:17 a.m. and reconvened at 11:51 a.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *LM Prop 923-931 Pacific Ave., LLC, 713421 (GH)*.

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

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Ardyssa California, Inc., 560909 (AA)

01/01/07 to 12/31/07, \$13,211.40 Tax

Ardyss International, Inc., 561575 (EH)

01/01/07 to 13/31/09, \$164,477.09 Tax

Action: Redetermine as recommended by the Appeals Division.

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

Action: The Board took no Action.

Syed Tanveer Sadiq, 850969 (JH)

10/01/09 to 12/31/13, \$108,879.57 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Ralph Thompson, 564435, 746525 (EH)

07/01/06 to 6/30/07, \$11,368.67 Tax, \$2,702.70 Late-Payment Penalty

Action: Redetermine as recommended by the Appeals Division.

Wu's International Trade, LLC, 745471 (BH)

07/01/08 to 06/30/11, \$32,192.66 Tax

Action: Redetermine as recommended by the Appeals Division.

Shiraz Petroleum Corporation, 465945 (CH)

01/01/05 to 12/31/05, \$24,937.55 Tax

Malek S. Naderpour, 465946 (CH)

01/01/06 to 12/31/07, \$52,275.69 Tax

Action: Redetermine as recommended by the Appeals Division.

Zanos Pizza, LLC, 609803 (AR)

10/01/07 to 09/30/10, \$38,358.95 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

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. Runner, 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:

944 Market Street, LLC, 924445

2013, \$1,372.54 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Angie Diane Holt Insurance Services, LLC, 736548

2008, \$1,330.05 Claim for Refund

2009, \$1,154.48 Claim for Refund

2010, \$1,140.28 Claim for Refund

2011, \$927.66 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Parvaneh Hamedei Mojarad Araghi, 724071

2006, \$5,686.58 Assessment

2007, \$414.18 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jay P. Atkinson and Julie Lyn Lipscomb Atkinson, 869294

2013, \$865.76 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Paul Bailey, 869491

2010, \$2,934.00 Tax

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

Bluemist Nominees PTY, Ltd., 863606

2008, \$200.00 Claim for Refund

2009, \$200.00 Claim for Refund

2010, \$200.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Bungie, Inc., 875814

2013, \$9,077.40 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Tyler S. Burgraff and Kimberly Burgraff, 884832

2010, \$268.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Richard Caires and Stephanie Caires, 810246

2007, \$11,031.00 Tax

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

Roger Caldwell, 927093

2010, \$1,566.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Caleb Energy, Inc., 918143

2013, \$408.23 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Donna C. Carpenter and Anthony S. Carpenter, 939642

2014, \$496.69 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Richard B. Codner, 937923

2007, \$23,055.68 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Mike Czajkowski, 919435

2011, \$1,697.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Roberta V. Davis, 876696

2012, \$5,884.00 Tax, \$1,471.00 Late Filing Penalty, \$1,476.50 Demand Penalty, \$76.00 Filing Enforcement Fee

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

William DeVille and Bernadette DeVille, 856437

2009, \$13,785.00 Claim for Refund

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

Kyle Donovan and Jillian Donovan, 822220

2010, \$636.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Luke S. Eagle, 932875

2011, \$123.11 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Lauren Hawes, 855747

2008, \$2,798.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Andre Jackson, 876260

2012, \$8,177.00 Tax, \$2,044.25 Late Filing Penalty, \$2,044.25 Demand Penalty, \$78.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

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La-Four, Inc., 881681

2012, \$648.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Thomas M. Leahy, 869827

2002, \$1,672.92 Claim for Refund

2003, \$953.60 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Tyler Katherine Lee, 937496

2011, \$269.00 Tax

Action: Sustain the action of the Franchise Tax Board.

William L. Lee, 937423

2013, \$3,005.00 Tax, \$751.25 Late Filing Penalty, \$2,122.00 Demand Penalty, \$76.00 Filing Enforcement Fee

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

Charles Liang, 868102

2012, \$1,623.99 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Therese A. Lim, 800017

2007, \$5,743.00 Tax, \$1,148.60 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Eva M. Lindskog (Dec'd), 838213

2002, \$175,063.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Carla Lucero, 930767

2004, \$3,961.45 Tax

Action: Sustain the action of the Franchise Tax Board.

Mahmoud Matin, 932773

2001, \$4,400.07 Denial of Interest Abatement

Action: Sustain the action of the Franchise Tax Board.

Lawrence F. McQuaide, 858959

2012, \$1,718.00 Tax, \$429.50 Failure to Furnish Information Penalty

Action: Sustain the action of the Franchise Tax Board.

Lorraine A. Middleton, 874090

2012, \$1,029.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Jing Mo and Nianyu Mo, 901578

2007, \$3,873.00 Tax, \$774.60 Accuracy-Related Penalty

2008, \$8,029.00 Tax, \$1,605.80 Accuracy-Related Penalty

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

John Moore and Kerri Moore, 925988

2013, \$2,044.07 Claim for Refund, \$74.31 Underpayment Estimated Tax Penalty, \$194.00 Cost Recovery Fee

Action: Sustain the action of the Franchise Tax Board.

Richard W. Motske and Karen A. Motske, 937364

2014, \$3,647.18 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Mason Thuong Nguyen and Phuong Pham, 943445

2011, \$153.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Bruce Northrop and Doris Northrop, 931856

2011, \$983.27 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Eduardo Perez, 636176

2006, \$17,697.00 Tax, \$4,424.25 Late Filing Penalty, \$3,539.40 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Marshall Reddick, 827716

2003, \$86,454.00 Tax, \$36,795.00 Noneconomic Substance Penalty, \$39,279.98 Interest-Based Penalty

2004, \$403,617.00 Tax, \$161,447.00 Noneconomic Substance Penalty, \$159,240.24 Interest-Based Penalty

2005, \$552,003.00 Tax, \$199,365.00 Noneconomic Substance Penalty, \$179,661.57 Interest-Based Penalty

2006, \$259,170.00 Tax, \$96,095.00 Noneconomic Substance Penalty, \$60,876.18 Interest-Based Penalty

Action: Modify the action of the Franchise Tax Board.

Reynaldo Riego and Josephine Riego, 867247

2010, \$2,319.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Edelmiro Rosas, 922769

2013, \$50,144.00 Tax, \$12,536.00 Late Filing Penalty, \$12,536.00 Demand Penalty, \$76.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board.

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Samuel Saavedra and Chona Geronaga Saavedra, 852172
2009, \$4,010.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Jamin Seid and Deborah Jaffe, 869308
2013, \$1,494.40 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Sandy M. Singer and Sue Ann Singer, 941501
2014, \$37,602.48 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

SKH, LLC, 921951
2010, \$432.00 Claim for Refund
2011, \$432.00 Claim for Refund
2012, \$432.00 Claim for Refund
2013, \$432.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Cynthia Villasenor, 936103
2011, \$438.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Kathleen B. Vinson, 878232
2012, \$3,767.00 Tax, \$941.75 Late Filing Penalty
Action: Sustain the action of the Franchise Tax Board.

Ananthan Visvanathan, 892911
2010, \$937.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Welcome Express, 933494
2013, \$540.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, GRANT-ONE DAY INTEREST RELIEF, CONSENT

With respect to the Sales and Use Tax Matters, Grant-One Day Interest Relief, Consent Agenda, upon a single 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 made the following orders:

CSU Fullerton Auxiliary Services, 1003606 (EA)
07/01/16 to 07/31/16, \$209.58
Action: Approve the one day interest relief as recommended by staff.

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KS Delight, LLC, 1003608 (CH)

02/01/17 to 02/28/17, \$17.32

Action: Approve the one day interest relief as recommended by staff.

Ontel Products Corporation, 1003610 (OH)

10/01/16 to 12/31/16, \$547.66

Action: Approve the one day interest relief as recommended by staff.

Pax Holdings, 1003612 (OH)

10/01/16 to 12/31/16, \$238.05

Action: Approve the one day interest relief as recommended by staff.

LEGAL APPEALS MATTER, ADJUDICATORY

Public Motors Los Angeles, LLC, 564308 (EA)

01/01/06 to 12/31/08, \$1,198,480.62 Tax, \$119,848.12 Negligence Penalty

Considered by the Board: March 28, 2017 Summary Decision (Rev. & Tax. Code, § 40)

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

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 the written summary decision as presented by staff.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Ilona Foyer, 569037

2001, \$24,296.00 Tax, \$4,859.00 Accuracy-Related Penalty, \$1,542.74 Post-Amnesty Penalty

2002, \$13,731.00 Tax, \$2,746.00 Accuracy-Related Penalty, \$798.67 Post-Amnesty Penalty

Considered by the Board: January 25, 2017

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

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 adopted a decision denying the petition for rehearing.

Ahmad Ghaderi and Susan L. Ghaderi, 773301

2006, \$74,684.00 Assessment, \$13,987.50 Late Filing Penalty

2007, \$207,588.00 Assessment, \$46,623.81 Late Filing Penalty

Considered by the Board: November 29, 2016

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

Action: Upon motion of Mr. Runner, 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 as modified by its concessions on appeal.

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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. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board approved the Offer in Compromise Recommendations of *Hsin-Yao Chou; Timothy James Cullen; Rosa Maria Ferreyra*; and, *Premium Organic Treatments PCA*; as recommended by staff.

CHIEF COUNSEL MATTERS**RULEMAKING****Section 100 Changes****Sales and Use Tax Regulation 1707, *Electronic Funds Transfer***

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 Regulation 1707 to incorporate and make the regulation consistent with the provisions of section 6479.3 of the Revenue and Taxation Code allowing dispensaries, as defined, to remit taxes or prepayments by means other than electronic funds transfer ([Exhibit 6.3](#)).

Action: Upon motion of Mr. Horton, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board approved authorization to make Rule 100 changes to Regulation 1707, *Electronic Funds Transfer*, as recommended by staff.

The Board recessed at 12:03 p.m. and reconvened at 1:39 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single 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 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 6.4](#)).

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Robert T. Kelly, Business Taxes Specialist II, Field Operations Department, Out-of-State New York District Office
 Lauren D. Simpson, Business Taxes Specialist III, Taxpayers' Rights Advocate Office, Headquarters
 Gilbert A. Smith, Business Taxes Administrator III/Assistant Chief, Field Operations Department, El Segundo Office
 Susan K. Sweeney, Associate Governmental Program Analyst, Settlement and Taxpayer Services Division, Legal Department, Headquarters

Action: Approve proposed revisions to Compliance Policy and Procedures Manual chapters 2, *Registration*; 5, *Returns*; 7, *Collections*; and 8, *Consumer Use Tax* and Audit Manual chapter 14, *Appeals Procedures*, as recommended by staff ([Exhibit 6.5](#)).

Action: Acknowledged receipt of the report on time extensions for Del Norte, Inyo, Lake, Lassen, Mendocino, Monterey, Shasta, Sierra, Tehama, and Tuolumne Counties to complete and submit fiscal year 2017-18 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 ([Exhibit 6.6](#)).

Action: Adopt the property tax forms as presented by staff ([Exhibit 6.7](#)).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

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

Technology Deputy Director's Report

Scott Capulong, Acting Chief Technology Officer, provided a report regarding the progress on the CROS project to replace BOE's two current legacy-technology tax administration systems.

SALES AND USE TAX APPEALS HEARING

Mohammad A. Ghazali and Rozina Ghazali, 468075 (KH)
 07/01/03 to 12/31/06, \$68,412.15 Tax, \$00.00 Negligence Penalty

Mohammad A. Ghazali and Rozina Ghazali, 552485 (KH)
 01/01/07 to 11/24/08, \$45,252.81 Claim for Refund

For Petitioners/Claimants: Mohammad Ghazali, Taxpayer
 Edward P. Hiskail, 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 to the understatement of reported taxable sales are warranted.

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Whether claimant's payments represent an overpayment of tax on the amount of unreported taxable sales and the amount of unreported taxable costs of self-consumed merchandise.

Jeff Angeja, Tax Counsel, Appeals Division, Legal Department, advised of the revised recommendation of the Appeals Division for the first audit period to delete the measure of tax related to the unreported cost of self-consumed merchandise, which was discharged in bankruptcy; it is approximately a \$371.00 reduction of tax.

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 petition be redetermined in accordance with the revised recommendation of the Appeals Division. The Board directed staff to inform the taxpayers of the Offer in Compromise program.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Joseph West and Patricia A. West, 923264
2005, \$6,686.00 Assessment

For Appellants:

No Appearance

For Franchise Tax Board:

Brian Werking, Tax Counsel

Marguerite Mosnier, Tax Counsel

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

Issues: Whether the proposed assessment, which is based on a federal adjustment, is barred by the statute of limitations.

Whether appellants have demonstrated any error in the proposed assessment of additional tax, which was based on a federal adjustment.

Action: Ms. Harkey moved to sustain the action of the Franchise Tax Board. The motion was seconded by Mr. Runner but no vote was taken.

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 sustained the action of the Franchise Tax Board.

SALES AND USE TAX APPEALS HEARINGS

McFlower Corporation, 647417 (SO)

01/01/08 to 06/30/11, \$161,025.98 Tax, \$24,362.01 Negligence Penalty

For Petitioner:

Mitchell Stradford, Representative

Jesse McClellan, Attorney

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 to the amount of unreported taxable sales are warranted.

Whether petitioner was negligent.

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Action: Ms. Harkey moved to use the average number of customers per hour as noted in the full 10-hour test period, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion failed for lack of a second.

Ms. Harkey moved to use the average number of customers per hour as noted in the full 10-hour test period, remove the negligence penalty, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Runner but no vote was taken.

Upon motion of Ms. Harkey, seconded by Mr. Runner and duly carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton voting no, the Board ordered that the average number of customers per hour as noted in the full 10-hour test period be used, and that the petition otherwise be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Harkey, seconded by Mr. Runner and duly carried, Ms. Harkey, Mr. Runner, Ms. Ma and Mr. Horton voting yes, Ms. Stowers voting no, the Board ordered that the negligence penalty be removed.

Ray Klammer, 798813, 905104 (BH)

07/01/12 to 06/30/13, \$3,475.65 Claim for Refund

For Claimant: Ray Klammer, Taxpayer

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

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

Issue: Whether claimant is entitled to a refund.

Action: Ms. Harkey moved to deny the claim for refund as recommended by the Appeals Division and to direct the department to offset the LLC liability. The motion was seconded by Mr. Runner. Ms. Stowers offered an amendment to grant the claim for refund in the amount of \$366.00, and otherwise deny the claim for refund as recommended by the Appeals Division, and to direct the department to offset the LLC liability. The amended motion was seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes.

SJCBC, LLC, 576954, 655010 (GH)

07/18/09 to 06/30/11, \$196,709.13 Tax, \$35,897.22 Failure to Timely Remit Collected Sales Tax Reimbursement Penalty, \$9,950.43 Failure-to-File Penalty

For Petitioner: David Hodges, Taxpayer

Liana Held, Witness

Editte Dalya Lerman, Attorney

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

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

Issues: Whether the unreported taxable sales represent gross receipts subject to tax.

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

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 petition be redetermined as recommended by the Appeals Division.

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

Action: Upon motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, 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 6.8](#)).

Property Tax Committee

Action: Upon motion of Ms. Stowers, seconded by Ms. Harkey and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board approved the Property Tax Committee report and the actions therein as reflected by the committee members' votes ([Exhibit 6.9](#)).

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 5:37 p.m. and reconvened immediately in closed session with Ms. Harkey, Mr. Runner, Ms. Ma, 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 5:50 p.m. and reconvened immediately in open session with Ms. Harkey, Ms. Ma, Mr. Horton and Ms. Stowers present.

The Board adjourned at 5:51 p.m.

The foregoing minutes are adopted by the Board on July 27, 2017.

Note: The following matters were removed from the calendar prior to the meeting: *Adoption of Resolution Conferring Powers on the Executive Director; Board Consideration of the provisions of AB 1210; Deerpoint Group, Inc., 861189; and, Bhopinder Singh Sandhu, 804558.*