

Monday, December 11, 2017

The Board met at its offices at 450 N Street, Sacramento, at 9:40 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 David Dodge, Senior Information System Analyst, Technology Services Department, California Department of Tax and Fee Administration, and was a member of the US Army Old Guard for four years.

Members discussed an email that reported a conversation between a Government Operations (GovOps) executive and Board Proceedings staff who would soon transfer to the Office of Tax Appeals (OTA), regarding OTA's workload and rehearing December cases. Members directed Henry D. Nanjo, Chief Counsel, to contact Kristen Kane, Chief Counsel, Office of Tax Appeals, to obtain its legal opinion on the word "final" as it relates to the Board's authority to hear cases before January 1, 2018, and report back to the Board later in the day.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Peter Pau and Susanna Pau, 959931

2007, \$2,278,306.00 Assessment

For Appellants:

Peter Pau, Taxpayer

Johan Klehs, Representative

Edwin P. Antolin, Attorney

For Franchise Tax Board:

Carolyn Kuduk, Tax Counsel

Ciro Immordino, Tax Counsel

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

Issues: Whether appellants executed a valid Internal Revenue Code (IRC) section 1031 exchange of certain real property located in Santa Clara and Cupertino, California (collectively, Tantau Properties).

Whether appellants executed a valid IRC section 1031 exchange of a motel located in Cupertino, California (Wolfe Property).

Appellant's Exhibit: WOLFE Exchange Transaction ([Exhibit 12.1](#))

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

Exhibits to these minutes are incorporated by reference.

The Board recessed at 10:45 a.m. and reconvened at 10:55 a.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

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Keyshawn Johnson and Shikiri Johnson, 786255

1996, \$218,857.00 Assessment

2000, \$579,900.00 Assessment, \$43,978.42 Post-Amnesty Penalty

2001, \$571,747.00 Assessment, \$34,381.97 Post-Amnesty Penalty

2002, \$42,197.00 Assessment, \$2,045.37 Post-Amnesty Penalty

2003, \$288,794.00 Assessment,

2004, \$493,783.00 Assessment

For Appellants:

Keyshawn Johnson, Taxpayer

Mardiros H. Dakessian, Attorney

Ruben Sislyan, Attorney

For Franchise Tax Board:

Jason Riley, Tax Counsel

Ron Hofsdal, Tax Counsel

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

Issues: Whether respondent's proposed assessment for the 1996 tax year is barred by the statute of limitations.

Whether income earned in the years at issue is California taxable income based on the laws of domicile and residency.

Whether the post-amnesty penalties may be abated.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 12.2](#))

Respondent's Exhibit: Timeline of Property Interests ([Exhibit 12.3](#))

Action: Upon motion of Ms. Ma, seconded by Ms. Harkey and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board reversed the action of the Franchise Tax Board with the exception of the 1996 tax year.

The Board recessed at 12:46 p.m. and reconvened at 1:50 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers present.

SALES AND USE TAX APPEALS HEARINGS

Bernardo/Tocchetto Enterprises, Inc., 915702 (JH)

04/01/11 to 12/31/14, \$278,088.23 Tax, \$27,808.93 Negligence Penalty

For Petitioner:

Gaspere Bernardo, Taxpayer

Rosie Bernardo, Witness

For Business Tax and Fee Department:

Scott Lambert, Hearing Representative

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

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

Whether petitioner was negligent.

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 submitted for decision.

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Kyung Ho Min, 742143 (GH)

07/01/09 to 06/30/12, \$34,005.69 Tax, \$00.00 Negligence Penalty

For Petitioner:

Kyung Ho Min, Taxpayer

H. Kenneth Ahn, Attorney

For Business Tax and Fee Department:

Nenita DeLaCruz, Hearing Representative

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

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

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 ordered that the petition be redetermined as recommended by the Appeals Bureau.

Members continued the discussion regarding an email that reported a conversation between a Government Operations (GovOps) executive and Board Proceedings staff who would soon transfer to the Office of Tax Appeals (OTA), regarding OTA's workload and rehearing December cases. Henry D. Nanjo, Chief Counsel, stated for the record that Kristen Kane, Chief Counsel of the OTA, will address this matter by the end of the hearings.¹

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

Auto Net Enterprises, Inc., 882044 (EH)

09/26/11 to 06/30/14, \$34,434.78 Tax, \$3,443.46 Negligence Penalty

Action: Redetermine as recommended by the Appeals Bureau.

Corporate Refreshment Svcs, LLC, 863915 (FH)

01/01/11 to 12/31/13, \$25,756.84 Tax

Action: Redetermine as recommended by the Appeals Bureau.

Lewis K. Eisaguirre, 741340 (UT)

06/04/09 Purchase Date, \$3,930.00 Tax

Action: Redetermine as recommended by the Appeals Bureau.

Mark Malatesta, 729199 (UT)

04/03/12 Purchase Date, \$527.00 Tax, \$52.70 Negligence Penalty

Action: Redetermine as recommended by the Appeals Bureau.

¹ This discussion was concluded on Tuesday, December 12, 2017.

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MMM Delgado Corp., 888141 (EH)
07/01/11 to 09/30/14, \$100,941.23 Tax, \$00.00 Penalty
Action: Redetermine as recommended by the Appeals Bureau.

Skorpion Enterprises, 804335 (EH)
07/01/09 to 06/30/12, \$105,136.47 Tax
Action: Redetermine as recommended by the Appeals Bureau.

Yolanda M. Soper, 857496 (RC)
04/01/11 to 03/31/14, \$11,257.13 Tax, \$00.00 Penalty
Action: Redetermine as recommended by the Appeals Bureau.

David Dornan and Stacey Jill Dornan, 876689 (CH)
07/01/11 to 06/30/14, \$45,356.97 Tax, \$00.00 Penalty
Alborz Walnut Creek, Inc., 876690 (CH)
07/01/11 to 06/30/14, \$36,638.49 Tax, \$00.00 Penalty
Action: Redetermine as recommended by the Appeals Bureau.

Yiu Fun Lee, 881003 (GH)
01/01/10 to 12/31/12, \$214,640.74 Tax, \$21,464.10 Negligence Penalty
Action: Redetermine as recommended by the Appeals Bureau.

Gurinder Sira, 710077 (UT)
02/25/12 Transaction Date, \$2,195.00 Tax, \$00.00 Penalty
Action: Redetermine as recommended by the Appeals Bureau.

N&S Mansour Bros., Inc., 522926 (DF)
04/01/04 to 06/30/07, \$605,500.04 Tax, \$60,550.03 Negligence Penalty
Action: Redetermine as recommended by the Appeals Bureau.

ZAP, 496989 (JH)
10/01/03 to 09/30/06, \$27,881.56 Tax
Action: Redetermine as recommended by the Appeals Bureau.

Premier Power Renewable Energy, Inc., 851784 (KH)
04/01/06 to 03/31/09, \$70,171.08 Tax, \$7,017.11 Negligence Penalty
Action: Redetermine as recommended by the Appeals Bureau.

NBS Design, Inc., 585506, 746929, 863991 (GH)
01/01/07 to 12/31/09, \$157,941.26 Tax, \$00.00 Penalty
01/01/07 to 12/31/09, \$54,215.45 Claim for Refund
04/01/10 to 10/25/13, \$504,119.80 Tax, \$57,316.66 Finality Penalty
Action: Redetermine as recommended by the Appeals Bureau.

Monday, December 11, 2017

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 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:

Charles K. Lwanga, 981752

2014, \$251.00 Tax, \$135.00 Late Filing Penalty, \$65.75 Demand Penalty, \$79.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board.

Ranbir Sahni and Rekha Sahni, 981510

2003, \$52,056.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Christopher Walworth and Cari Walworth, 916636

2010, \$1,689.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Anne Titus, 996247

2006, \$87,308.51 Assessment

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

Melese Adamu, 793835

2010, \$11,280.00 Tax, \$2,256.00 Accuracy-Related Penalty

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

Advent Engineering Partners, 995888

2005, \$200.00 Claim for Refund

2006, \$200.00 Claim for Refund

2007, \$200.00 Claim for Refund

2008, \$200.00 Claim for Refund

2009, \$200.00 Claim for Refund

2010, \$864.00 Claim for Refund

2011, \$864.00 Claim for Refund

2012, \$864.00 Claim for Refund

2013, \$1,080.00 Claim for Refund

2014, \$648.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

John N. Alphson, 815755

2008, \$5,458.00 Tax, \$1,091.60 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

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Maria Barajas, 987711

2015, \$1,056.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michelle G. Barhaghi, MD, PC, 982846

2015, \$386.81 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Patricia H. Crews, 949732

2011, \$13,733.00 Tax, \$3,433.25 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Leah DeLeon, 926561

2010, \$2,884.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Equative, Inc., 987575

2010, \$5,503.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Family Pacific 8, LLC, 985524

2013, \$1,080.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Tony Faryniarz and Susan Faryniarz, 978047

2014, \$726.53 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Amir Fathie and Shideh Shafi, 994800

2015, \$1,480.07 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Thomas Fisher, 979947

2011, \$1,172.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Edward P. Fiszer, 957458

2008, \$58,415.00 Tax, \$43,811.25 Fraud Penalty

2009, \$82,967.00 Tax, \$81,370.95 Late Filing and Fraud Penalties

Action: Sustain the action of the Franchise Tax Board.

Forbes Global Holdings, Inc., 975854

2014, \$17,257.97 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Robert Joseph Frisz, 932136

2013, \$2,336.00 Tax, \$880.00 Demand Penalty, \$584.00 Late Filing Penalty, \$76.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board.

Sergey Frolov and Liliya Rymar, 892918

2010, \$7,093.00 Tax

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

Joseph T. Fugate and Alice J. Reddy, 922309

2008 to 2009, \$7,922.51 Assessment

Action: Reverse the action of the Franchise Tax Board in accordance with its position on appeal.

Dorothy J. George, 929694

2012, \$884.25 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Gustavo Gonzalez, 979153

2013, \$1,500.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Gerald Grenier and Kathy Grenier, 978681

2005, \$101.75 Claim for Refund

2007, \$15,825.39 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Dax Hock and Sarah A. Breck, 993832

2015, \$504.68 Tax

Action: Sustain the action of the Franchise Tax Board.

Hydropot Grow Juice, LLC, 974109

2010, \$648.00 Claim for Refund

2011, \$200.00 Claim for Refund

2012, \$848.00 Claim for Refund

2013, \$800.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board

Julie Isom, 950082

2011, \$1,043.00 Tax

2012, \$2,279.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Deandre D. Kimble, 981852

2010, \$3,834.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Grant Layton, 843054

2012, \$8,320.00 Tax, \$2,080.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Wendla L. Liljestrand Irrevocable Trust, 984523

2005 to 2010, \$1.00 or more

Action: Dismiss for lack of jurisdiction.

Suzette C. Manalang, 948822

2013, \$1,661 Tax

Action: Sustain the action of the Franchise Tax Board.

Solomon R. Mangolini, 975543

2011, \$3,530.00 Tax

Action: Sustain the action of the Franchise Tax Board.

William J. McDonald and Judith Mcdonald, 949056

2009, \$66,085.27 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Media Capital Associates, LLC, 984393

1997 to 2012, \$4,952.44 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Terry J. Morris, 951302

2012, \$200.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Patricia (Taylor) Ogden and Francis L. Taylor, 944667

2013, \$3,752.00 Tax, \$665.61 Late Filing Penalty, \$194.00 Collection Fee, \$22.00 Federal Offset Fee

Action: Sustain the action of the Franchise Tax Board.

Pacrim Venture Partners 1-Q L.P., 974189

2012, \$10,372.06 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

William Pelzer, Jr. and Beth Pelzer, 980187

2010, \$20,034.00 Tax

2011, \$47,593.00 Tax

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

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Michele Poste, 927501

2013, \$1,530.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Ameir Rasheed, 596465

2005, \$849.00 Tax

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

Desiree Robinson Moody, 850993

2009, \$2,893.00 Tax

Action: Sustain the action of the Franchise Tax Board.

David A. Rowe, 937498

2009, \$186,240.00 Tax

2010, \$49,588.00 Tax

Action: Sustain the action of the Franchise Tax Board.

SF Real Estate, Inc., 991115

2013, \$216.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Rolando Solano, 941435

2014, \$1,419.00 Tax

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

Gary Sparks and Karla Sparks, 974032

2013, \$417.25 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Clifford Traylor and Evangelina Barroso Traylor, 950897

2011, \$436.92 Assessment

Action: Sustain the action of the Franchise Tax Board.

John A. Vertullo and Barbara J. Vertullo, 910370

2009, \$326,306.00 Tax, \$65,261.20 Accuracy-Related Penalty

2010, \$237,189.00 Tax, \$47,437.80 Accuracy-Related Penalty

2011, \$204,500.00 Tax, \$40,900.00 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Owen T. Viola and EVA Marie Viola, 848294

2009, \$4,581.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Frederick Scott Walmsley, 994542

2014, \$907.00 Tax, \$226.75 Late Filing Penalty, \$226.75 Demand Penalty, \$79.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board.

Richard T. Warman, 738839

2008, \$7,118.00 Tax, \$1,423.60 Accuracy-Related Penalty

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

Roy Williams, 994545

2012, \$1,266.00 Claim for Refund

2013, \$7,635.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jay Wollenhaupt, 866861

2009, \$6,122.00 Tax, \$1,224.40 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Ching Yea Wu and Hsi Wen Wu, 988761

2012, \$437.00 Tax

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

Lin Xiang, 990294

2007, \$9,858.02 Tax

Action: Sustain the action of the Franchise Tax Board.

Jiwei Yang and Zhanghua Yan, 950083

2010, \$1,135.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Yingli Green Energy Americas, Inc., 935950

2013, \$55,899.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Margaret C. Yung and Wai Yung, 974811

2014, \$584.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Paul Zraggen and Helen M. Zraggen, 994537

2007, \$21,013.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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LEGAL APPEALS MATTERS, ADJUDICATORY

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

Considered by the Board: June 20, 2017

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

Action: Upon motion of Mr. Horton, 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 for rehearing be denied as recommended by the Appeals Bureau.

Zimmer US, Inc., 773995, 801742 (EA)

04/01/08 to 03/31/11, \$2,166,903.00 Claim for Refund

04/01/11 to 09/30/13, \$1,494,199.00 Claim for Refund

Considered by the Board: August 30, 2017 Summary Decision (Rev. & Tax. Code, § 40)

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

Action: Upon motion of Ms. Harkey, seconded by Mr. Runner and duly carried, Ms. Harkey, Mr. Runner and Ms. Ma voting yes, Mr. Horton and Ms. Stowers voting no, the Board adopted the written summary decision as presented by staff.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Jeffrey Moffatt and Staretta Moffatt, 878764

2008, \$17,946.00 Assessment

Considered by the Board: July 27, 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, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, Mr. Runner not participating, the Board adopted a decision denying the petition for rehearing.

Kimothy Sampson, 800048

2010, \$1,486.00 Tax, \$371.50 Late Filing Penalty, \$371.50 Demand Penalty, \$82.00 Filing Enforcement Fee

Considered by the Board: July 27, 2017

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

Action: Upon motion of Mr. Horton, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board adopted a decision denying the petition for rehearing.

Monday, December 11, 2017

Richard Schotts, Jr., 798666

1999, \$91,277.00 Tax, \$67,275.07 Penalties

2000, \$49,779.00 Tax, \$33,282.79 Penalties

Andrea Schotts, 800099

1999, \$89,585.00 Assessment, \$66,027.98 Penalties

2000, \$48,024.00 Assessment, \$32,109.37 Penalties

Considered by the Board: July 27, 2017

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

Action: Upon motion of Mr. Horton, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board adopted a decision denying the petition for rehearing.

ADMINISTRATIVE SESSION

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

Action: Adopt the following resolution, extending its sincere and grateful appreciation to the retiree for his dedicated service to the State Board of Equalization and to the State of California, their congratulations on the retiree's well-earned retirement, and best wishes to him and his families for continued success, happiness and good health in the years to come ([Exhibit 12.4](#)).

David J. Gau, Executive Director, Headquarters

Action: Approve the Board Meeting Minutes of October 24-25, 2017.

Action: Approve the 2018 revision of Assessors' Handbook Section 531, *Residential Building Costs* as recommended by staff ([Exhibit 12.5](#)).

Action: Approve the 2018 revision of Assessors' Handbook Section 534, *Rural Building Costs* as recommended by staff ([Exhibit 12.6](#)).

Action: Approve the 2018 revision of Assessors' Handbook Section 581, *Equipment and Fixtures Index, Percent Good and Valuation Factors* as recommended by staff ([Exhibit 12.7](#)).

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OTHER ADMINISTRATIVE MATTERS

Executive Director's Report²

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

ANNOUNCEMENT OF CLOSED SESSION

Ms. Harkey rescheduled Closed Session to Thursday, December 14, 2017 as requested by Henry D. Nanjo, Chief Counsel.

The Board recessed at 3:43 p.m.

The foregoing minutes are adopted by the Board on February 27, 2018.

Note: The following matter was removed from the calendar prior to the meeting: *Barron DuPont Kidd, 692607*; and, *Other Chief Counsel Matters: Contract over \$1 million*.

² The Executive Director's Report on *Board Meeting Day Addition* was rescheduled to December 14, 2017.

Tuesday, December 12, 2017

The Board met at its offices at 450 N Street, Sacramento, at 9:35 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.

Members continued the discussion regarding an email that reported a conversation between a Government Operations (GovOps) executive and Board Proceedings staff who would soon transfer to the Office of Tax Appeals (OTA), regarding OTA's workload and rehearing December cases. Henry D. Nanjo, Chief Counsel, provided the response from Kristen Kane, Chief Council, OTA, which is that OTA will consider petitions for rehearing from any parties in accordance with the law.

Ms. Ma spoke about the passing of Edwin (Ed) Mah Lee, San Francisco Mayor, noting that he will be greatly missed. Ms. Ma said many kind words about him and extended deepest condolences to his families and loved ones. Ms. Harkey stated that the meeting will adjourn in his memory at the end of the day, Thursday, December 14, 2018.

SALES AND USE TAX APPEALS HEARINGS

First American Title Insurance Company, 612003 (EA)

10/01/07 to 09/30/11, \$785,450.39 Claim for Refund

For Claimant:

Stan Tarbell, Taxpayer
 Karri Rozario, Representative
 Joseph A. Vinatieri, Attorney
 Leighton M. Anderson, Attorney

For Business Tax and Fee Department:

Robert Tucker, Tax Counsel

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

Issue: Whether claimant is entitled to a refund for amounts it paid to lessors during the claim period.

Action: Upon motion of Ms. Harkey, seconded by Ms. Ma and duly carried, Ms. Harkey, Mr. Runner, Ms. Ma and Mr. Horton voting yes, Ms. Stowers voting no, the Board ordered that the claim for refund be granted as to Banc of America Leasing and EMC as being use tax, and that the claim for refund otherwise be denied as recommended by the Appeals Bureau.

Body Wise International, LLC, 552589 (EA)

04/01/05 to 12/31/09, \$62,862.00 Tax, \$00.00 Negligence Penalty

For Petitioner:

Jesse W. McClellan, Attorney

For Business Tax and Fee Department:

Scott Claremon, Tax Counsel

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

Issue: Whether excess tax reimbursement that petitioner collected on sales in interstate or foreign commerce must be paid to this state.

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 postponed the hearing to the Office of Tax Appeals as requested by the taxpayer.

Tuesday, December 12, 2017

The Board recessed at 11:38 a.m. and reconvened at 12:47 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers present.

Medimarts, Inc., 763614 (GH)

01/01/10 to 12/31/12, \$292,960.82 Tax, \$00.00 Negligence Penalty

For Petitioner: David Armstrong, Taxpayer

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

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

Issue: Whether adjustments to the measure of unreported taxable sales are warranted.

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 ordered that the petition be redetermined as recommended by the Appeals Bureau.

Tomassian Enterprises, Inc., 873502 (GH)

07/01/10 to 06/30/13, \$676,215.01 Tax, \$270,485.92 Failure to Remit Collected Tax Penalty

For Petitioner: Greg Tomassian, Taxpayer

Jesse W. 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 a reduction to the unreported taxable sales is warranted.

Whether the penalty for unremitted sales tax reimbursement collections is supported by clear and convincing evidence.

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

Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the measure be reduced by 20 percent, and that the remainder of the petition otherwise be redetermined as recommended by the Appeals Bureau.

Gourmet 88 Management, Inc., 850780, 870558, 907579, 908779 (AC)

07/01/11 to 09/30/11, \$1,491.10 Tax, \$00.00 Penalty

10/01/11 to 03/31/12, \$4,489.03 Tax, \$00.00 Penalty

04/01/12 to 06/30/14, \$21,400.93 Tax, \$00.00 Penalty

07/01/11 to 06/30/14, Amount Unstated

For Petitioner/Claimant: Marc Brandeis, Representative

Greg Reynolds, Representative

For Business Tax and Fee Department: Robert Tucker, Tax Counsel

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

Issue: Whether petitioner is the retailer of food sold to customers using online ordering and food delivery services.

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 ordered that the petition be redetermined as recommended by the Appeals Bureau.

Tuesday, December 12, 2017

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
DECEMBER 12, 2017**

Bernardo/Tocchetto Enterprises, Inc., 915702 (JH)

Final Action: The Board deferred the matter to the following day.

The Board recessed at 3:30 p.m.

The foregoing minutes are adopted by the Board on February 27, 2018.

Note: The following matter was removed from the calendar prior to the meeting: *Hamdiah Saleh Aldahebi, 939596.*

Wednesday, December 13, 2017

The Board met at its offices at 450 N Street, Sacramento, at 9:38 a.m., with Ms. Harkey, Chairwoman, Mr. Runner, Vice Chair and Ms. Ma present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
DECEMBER 11, 2017**

Bernardo/Tocchetto Enterprises, Inc., 915702 (JH) (Continued from 12/12/17)

Final Action: Upon motion of Ms. Harkey, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton absent, the Board ordered that the taxable measure be reduced by 17.01 percent for optional tips, and that the petition otherwise be redetermined as recommended by the Appeals Bureau.

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

SALES AND USE TAX APPEALS HEARINGS

Robert Warren Rosenbaum, 532193 (DF)

07/01/03 to 12/31/06, \$180,523.57 Tax, \$18,052.39 Negligence Penalty

For Petitioner: Stephen L. Labiak, Attorney

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

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

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

Whether further adjustments to the measure of disallowed claimed bad debts are warranted.

Whether petitioner is entitled to relief based on alleged erroneous written advice received from a prior audit.

Whether petitioner was negligent.

Whether further relief of interest is warranted

Action: Mr. Runner moved that the bad debt be increase by \$3.5 million and the negligence penalty be removed. The motion was seconded by Ms. Harkey. Mr. Runner withdrew his motion.

Upon motion of Ms. Ma, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton absent, the Board ordered that \$2,541,245.00 be accepted as bad debt deduction, the negligence penalty be removed, and that the petition otherwise be redetermined as recommended by the Appeals Bureau.

Doomid, Inc., 416893, 552763 (DF) (Continued from 11/16/17)

04/01/05 to 09/30/08, \$118,830.40 Tax, \$00.00 Penalty

04/01/05 to 09/30/08, \$67,859.00 Claim for Refund

For Petitioner/Claimant: Shawn Nazari, Representative

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

Wednesday, December 13, 2017

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 has made an overpayment of \$67,859, representing prepayments of sales tax on sales of diesel fuel that petitioner was unable to collect from the purchaser.

Action: Upon motion of Ms. Harkey, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton absent, the Board ordered a bad debt credit of \$29,132.46 in tax, and that the petition otherwise be redetermined as recommended by the Appeals Bureau.

Doomid, Inc., 626011, 681012 (DF) (Continued from 11/16/17)

01/01/09 to 06/30/12, \$492,441.57 Tax, \$49,244.17 Negligence Penalty

01/01/09 to 06/30/12, \$532.00 Claim for Refund

For Petitioner/Claimant: Shawn Nazari, Representative

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

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

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

Whether petitioner was negligent.

Action: Upon motion of Ms. Harkey, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton absent, the Board ordered that the tax be reduced to \$355,622.00, the negligence penalty be removed, and that the petition otherwise be redetermined as recommended by the Appeals Bureau.

The Board recessed at 11:02 a.m. and reconvened at 11:15 a.m. with Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers present.

Century House, LLC, 869612 (CH)

04/01/11 to 03/31/14, \$42,438.98 Tax, \$4,367.97 Negligence Penalty

Century House, LLC, 596676, 785032, 979759 (CH)

07/01/06 to 09/30/10, \$23,805.14 Tax, \$5,241.11 Finality Penalty

For Taxpayer/Claimant: Mitchell Stradford, Representative

Jesse W. McClellan, Attorney

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

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

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

Additional issue in the matter of 869612:

Whether petitioner was negligent.

Additional issues in the matters of 596676, 785032, 979759:

Whether taxpayer has established reasonable cause for relief of the finality penalty.

Whether any additional relief of interest is warranted.

Wednesday, December 13, 2017

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton absent, the Board ordered that the items of leases that were tax-paid be removed, the finality and negligence penalties be removed, and that the petition otherwise be redetermined as recommended by the Appeals Bureau.

The Board recessed at 11:55 a.m. and reconvened at 1:01 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers present.

Koch Supplies, Inc., 554415 (OH)

07/01/07 to 09/30/10, \$18,854.00 Claim for Refund

For Claimant: Joan Armenta-Roberts, Representative
Reed Schreiter, Representative

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

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

Issue: Whether certain sales to DFV's Soledad facility qualify for the partial exemption for farm equipment and machinery.

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

Partnership of Mary Jo Robinson and Deborah Ann Ibey, 607538 (FH)

01/01/01 to 08/18/02, \$10,806.46 Tax, \$00.00 Penalty

Arrangements Unlimited, Inc., 607541 (FH)

08/19/02 to 12/31/09, \$203,077.08 Tax, \$00.00 Penalty

For Petitioners: Mary Jo Robinson, Taxpayer
Deborah A. Ibey, Taxpayer
Jesse W. McClellan, Attorney

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

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

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

Additional issue in the matter of 607538:

Whether the Notice of Determination issued to petitioner was timely.

Additional issue in the matter of 607541:

Whether the Notice of Determination issued to petitioner for the period

August 19, 2002, through December 31, 2002, was timely.

Action: Upon motion of Ms. Stowers, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, the Board ordered that the petition be granted and the tax be redetermined accordingly.

Dabney Bixel, Inc., 770560 (AC)

01/01/03 to 12/31/11, \$300,844.75 Tax

For Petitioner: Jesse W. McClellan, Attorney

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

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

Wednesday, December 13, 2017

Issue: Whether additional adjustments to the measure of unreported taxable sales are warranted.

Action: Upon motion of Ms. Stowers, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton absent, the Board ordered that the petition be granted and the tax be redetermined accordingly.

Patti Roscoe & Associates, Inc., 611281, 851908, 926981, 926982, 943152 (FH)

01/01/01 to 12/31/10, \$2,583,192.66 Tax, \$28,064.33 Amnesty Interest Penalty

01/01/12 to 12/31/14 \$1.00 or more Claim for Refund

01/01/11 to 06/30/11, \$167,727.29 Tax, \$16,731.43 Finality Penalty

01/01/12 to 12/31/14, \$115,731.02 Tax, \$11,389.70 Finality Penalty

01/01/15 to 03/23/16 \$1.00 or more Claim for Refund

For Taxpayer/Claimant: Jesse W. McClellan, Attorney

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

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

Issues: Whether the Notice of Determination (NOD) issued on October 7, 2015, for the period January 1, 2011, through June 30, 2011, was issued timely.

Whether additional adjustments to the measure of unreported taxable sales are warranted.

Whether additional adjustments to the measure of unreported ex-tax purchases of assets are warranted.

Whether additional relief of interest is warranted.

Action: Upon motion of Ms. Stowers, seconded by Ms. Harkey and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton absent, the Board ordered that the petition and claim be granted and the tax be redetermined accordingly.

SPECIAL TAXES APPEALS HEARING

Tobacco Republic Incorporated, 727806 (STF)

01/01/09 to 06/30/11, \$13,406.19 Tax, \$1,340.62 Finality Penalty

For Taxpayer: Oneida Morgan Hawley, Taxpayer

Victoria Reyes, Witness

Angelique Reyes, Witness

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

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

Issue: Whether further adjustments are warranted to the measure of unreported taxable distributions of tobacco products.

Action: Upon motion of Mr. Runner, seconded by Ms. Stowers and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton absent, the Board ordered that the finality penalty be abated if the tax due is paid in full within 30 days of the notice of the Board's decision, and relieved interest for the periods July 1, 2012 to January 31, 2013 and September 1, 2013 to July 31, 2015, and that the petition otherwise be redetermined as recommended by the Appeals Bureau.

Wednesday, December 13, 2017

PETITION FOR RELEASE OF SEIZED PROPERTY HEARING

Jason Allen Kagawa, 1015726

April 27, 2017 Seizure Date, \$380.00 Approximate Value

For Petitioner: Jason Kagawa, Taxpayer

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

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

Issue: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22974.3, subdivision (b).

Action: Upon motion of Ms. Stowers, seconded by Ms. Ma and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers voting yes, Mr. Horton absent, the Board determined that staff properly seized the tobacco products.

The Board recessed at 2:56 p.m.

The foregoing minutes are adopted by the Board on February 27, 2018.

Note: The following matters were removed from the calendar prior to the meeting: *Scott Alex Perez, 585515*; and, *Farmers Insurance Exchange, 495241*.

Thursday, December 14, 2017

The Board met at its offices at 450 N Street, Sacramento, at 9:33 a.m., with Ms. Harkey, Chairwoman, Mr. Runner, Vice Chair, Ms. Ma, Mr. Horton and Ms. Yee present.

SPECIAL PRESENTATION

Presentation of Retirement Resolution: David Gau, Executive Director

On behalf of the Board, Ms. Harkey read into the record and presented a retirement resolution to David Gau, Executive Director, extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California.

Mr. Gau thanked the Members for the recognition and opportunities. He acknowledged and thanked former Members who gave him the opportunity to serve this Board in an appointed capacity: Ernest J. Dronenburg Jr., Dean Andal, Johan Klehs, John Chiang and Betty T. Yee, and Deputy Controllers Marcy Jo Mandel and Yvette Stowers. He also acknowledged and thanked the following: former BOE staff Bob McCarroll, Bruce Michener, Margaret Shedd, Dick Johnson, the late Kathie Newton, Sherrie Kinkle, Tim Boyer, Jim Speed, and Ray Hirsig; California County Assessors, taxpayers and practitioners that worked collaboratively with him over the years; Board Meeting staff Joann Richmond and her Board Proceedings team, the Media Services team, California Highway Patrol Officers, security staff, and DGS; countless dedicated staff of the BOE and now CDTFA; staff he worked closely with for many years Laura SooHoo, Yvette Butler, Lorie Giorgi, Ladeena Ford, Brenda Fleming, Dean Kinnee, Chris Lee and Mark Alviso. Mr. Gau thanked his wife Terry, for being his biggest supporter, and wished her a happy 32nd wedding anniversary on this day. And lastly, he wished the Members and staff of BOE and CDTFA a Merry Christmas and happy holidays.

Members made many personal complementary remarks regarding their experiences with Mr. Gau and his exceptional work with the Board of Equalization, and wished him well in his retirement and future endeavors.

PROPERTY TAXES HEARINGS

La Paloma Generating Company, LLC (1112), 1017428
2017, \$62,600,000.00 Unitary Value

For Petitioner:

C. Stephen Davis, Taxpayer

For Property Tax Department:

Sarah Garrett, Tax Counsel

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

Issues: Whether La Paloma Generating Company, LLC (petitioner) has shown that the State-Assessed Properties Division (respondent) failed to account for all obsolescence in petitioner's 2017 Board-adopted unitary value.

Whether petitioner has shown that respondent erred in calculating the Capitalized Earnings Approach (CEA) value indicator.

Whether petitioner has shown that respondent failed to place proper reliance on the value indicators in determining petitioner's 2017 Board-adopted unitary value.

Whether petitioner has shown that respondent improperly included petitioner's land value in the Replacement Cost Less Depreciation (ReplCLD) value indicator.

Thursday, December 14, 2017

Petitioner's Exhibit: Miscellaneous Documents ([Exhibit 12.8](#))

Action: Ms. Harkey moved to reduce the cost to \$75,000,000.00 and then weight equally the income and cost approach for this time period. The motion failed for lack of a second.

Upon motion of Ms. Yee, seconded by Mr. Horton and duly carried, Ms. Harkey, Ms. Ma, Mr. Horton and Ms. Yee voting yes, Mr. Runner voting no, the Board ordered that the value be reduced to \$59,700,000.00 as recommended by the Appeals Bureau.

Lodi Gas Storage, LLC (198), 1017430

2017, \$123,400,000.00 Unitary Value

For Petitioner:

C. Stephen Davis, Taxpayer

For Property Tax Department:

Julia Himovitz, Tax Counsel

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

Issues: Whether Lodi Gas Storage, LLC (petitioner) has shown that the State-Assessed Properties Division (respondent) failed to account for all obsolescence in petitioner's 2017 Board-adopted unitary value.

Whether petitioner has shown that respondent failed to place proper reliance on the value indicators in determining petitioner's 2017 Board-adopted unitary value.

The Board recessed at 11:35 a.m. and reconvened at 11:47 a.m. with Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Yee present.

Lodi Gas Storage, LLC (198), 1017430 (Continued)

Action: Upon motion of Ms. Harkey, seconded by Mr. Horton and duly carried, Ms. Harkey, Mr. Horton and Ms. Yee voting yes, Mr. Runner and Ms. Ma voting no, the Board ordered that the value be reduce to \$83,900,000.00 as recommended by the Appeals Bureau; and, directed staff to follow-up on the PG&E right-of-way to allow an adjustment if it should be allocated to PG&E and not to this taxpayer, so that the right-of-way will not be double assessed.

SPECIAL TAXES MATTERS, GRANT-ONE DAY INTEREST RELIEF, CONSENT

With respect to the Special Taxes Matters, Grant-One Day Interest Relief, Consent Agenda, upon a single motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Yee voting yes, the Board made the following order:

Epic Ventures, Inc., 1037414 (STF)

02/01/17 to 02/28/17, \$640.00

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

PROPERTY TAXES MATTERS, ADJUDICATORY

Petitions for Reassessment of Unitary Value

Trans Bay Cable, LLC (119), 1019384

2017, \$485,700,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Thursday, December 14, 2017

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Yee voting yes, the Board ordered that the value be reduced to \$467,900,000.00, as recommended by staff.

Torrance Valley Pipeline Company (409), 1019388

2017, \$313,400,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Yee voting yes, the Board ordered that the value be reduced to \$255,400,000.00, as recommended by staff.

LEGAL APPEALS PROPERTY TAXES MATTERS, ADJUDICATORY

Petitions for Reassessment of Unitary Value

California Northern Railroad (810), 1018162

2017, \$37,000,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

Central Oregon & Pacific Railroad (802), 1018159

2017, \$4,100,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

San Joaquin Valley Railroad Company (897), 1018157

2017, \$19,000,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

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

Crimson California Pipeline, LP (490), 1017339

2017, \$120,600,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Thursday, December 14, 2017

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

Frontier California, Inc. (201), 1017434

2017, \$3,003,100,000.00 Unitary Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Yee voting yes, the Board ordered that the value be reduced to \$2,798,100,000.00 as recommended by the Appeals Bureau.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Audits

Zayo Group, LLC (7778)

2016, \$26,300,000.00 Escaped Assessment, \$2,630,000.00 Penalties, \$3,945,000.00 In-lieu Interest

2015, \$14,800,000.00 Escaped Assessment, \$1,480,000.00 Penalties, \$3,552,000.00 In-lieu Interest

2014, \$12,000,000.00 Excessive Assessment

2013, \$5,800,000.00 Escaped Assessment, \$580,000.00 Penalties, \$2,436,000.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Yee voting yes, the Board adopted the audit adjustments as recommended by staff.

Conterra Ultra Broadband, LLC (8089)

2016, \$2,000,000.00 Escaped Assessment, \$200,000.00 Penalties, \$300,000.00 In-lieu Interest

2015, \$1,810,000.00 Escaped Assessment, \$181,000.00 Penalties, \$434,400.00 In-lieu Interest

2014, \$270,000.00 Escaped Assessment, \$27,000.00 Penalties, \$89,100.00 In-lieu Interest

2013, \$150,000.00 Escaped Assessment, \$15,000.00 Penalties, \$63,000.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Yee voting yes, the Board adopted the audit adjustments as recommended by staff.

Board Roll Changes

2017 State-Assessed Property Roll

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Yee voting yes, the Board approved corrections to the 2017 Board Roll of State-Assessed Property as recommended by staff ([Exhibit 12.9](#)).

Thursday, December 14, 2017

The Board recessed at 12:20 a.m. and reconvened at 1:01 p.m. with Ms. Harkey, Mr. Runner, Ms. Ma and Mr. Horton present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Property Tax Deputy Director's Report

David Yeung, Chief, County-Assessed Properties Division, Property Tax Department, made introductory remarks regarding staff's recommendation and alternatives for the 2018 tax year for the assessment of aircraft operated by certificated air carriers, pursuant to Revenue and Taxation Code section 1153, as presented in Issue Paper 17-005, *Aircraft Representative Period* ([Exhibit 12.10](#)).

Speakers: Larry Stone, Santa Clara County Assessor
Joe Lang, Advocate, Airlines for America (A4A)
Eric J. Miethke, Partner, Nielsen Merksamer
Kathryn Reese, Southwest Airlines
George Renkei, Los Angeles County Assistant Assessor

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and duly carried, Ms. Harkey, Mr. Runner and Ms. Ma voting yes, Mr. Horton and Ms. Stowers voting no, the Board adopted the week of January 14-20, 2018 as the representative period for 2018, directed staff to initiate the interested parties process, complete its report in June 2018 and present it to the Board in July 2018.

Upon motion of Mr. Horton, seconded by Mr. Runner and unanimously carried, Ms. Harkey, Mr. Runner, Ms. Ma, Mr. Horton and Ms. Stowers voting yes, the Board directed staff to initiate the Request for Information Process to solicit information on a 365-day representative period.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 2:00 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 personnel matters (Gov. Code § 11126(a)).

The Board recessed at 2:25 p.m. and reconvened immediately in open session with Ms. Harkey, Mr. Runner, Ms. Ma and Ms. Stowers present.

Ms. Harkey announced the appointment of Dean R. Kinnee to the position of Executive Director, effective December 30, 2017.

Thursday, December 14, 2017

ADMINISTRATIVE SESSION**OTHER ADMINISTRATIVE MATTERS****Executive Director's Report (Rescheduled from December 11, 2017)**

David J. Gau, Executive Director, and Henry D. Nanjo, Chief Counsel, were available to answer questions regarding a proposal to add December 28, 2017 Sacramento to the 2017 Board Meeting Calendar ([Exhibit 12.11](#)).

Action: The Board determined that it completed its business so the additional meeting was not needed and took no action on the matter.

Ms. Harkey made closing remarks regarding the transition from the old California State Board of Equalization (BOE) to the future of tax matters at the new BOE, the new California Department of Tax and Fee Administration (CDTFA), and the new Office of Tax Appeals (OTA). On behalf of the Board, Ms. Harkey expressed many thanks and appreciation to all those responsible for planning and constant coordination to make sure the meetings run smoothly: Joann Richmond and her Board Proceedings team, the Media Services team, Information Technology staff, the Appeals Bureau, Department staff, Court Reporters, California Highway Patrol Officers, security staff, district staff, and Selvi Stanislaus, Executive Director, Franchise Tax Board.

The Board adjourned at 2:30 p.m. in memory of Edwin (Ed) Mah Lee, San Francisco Mayor, who passed away suddenly on Tuesday, December 12, 2017 at age 65, after more than 25 years of public service.

The foregoing minutes are adopted by the Board on February 27, 2018.