STATE OF CALIFORNIA

FRANCHISE TAX BOARD

PUBLIC MEETING

WEDNESDAY, MAY 14, 2025

1:09 P.M.

GERALD GOLDBERG AUDITORIUM

9646 BUTTERFIELD WAY

SACRAMENTO, CALIFORNIA

STENOGRAPHICALLY REPORTED BY:
EMILY SAMELSON
CSR NO. 14043

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APPEARANCES

BOARD MEMBERS

MALIA M. COHEN
State Controller
(Chairperson of the Board)

MICHELE PERRAULT
Chief Deputy Director, Policy
Department of Finance

TED GAINES
Chairperson
Board of Equalization

HASIB EMRAN
Deputy State Controller, Taxation

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STAFF

SELVI STANISLAUS
Executive Director

CRISTINA RUBALCAVA
Board Liaison

JACLYN ZUMAETA
Deputy Chief Counsel

SHANE HOFELING
Chief Counsel

HANNA CHO

DELINDA TAMAGNI

MEGAN WAHL

JAME EISERMAN

KIM KOHLI

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APPEARANCES CONTINUED

ALSO PRESENT

JON SPERRING, PricewaterhouseCoopers
CHRIS WHITNEY, PricewaterhouseCoopers
CHRISTINE GRAB (via telephone)
JAMES COUNTS, II

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Sacramento, California

Wednesday, May 14, 2025; 1:09 p.m.

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CHAIRPERSON COHEN: Good afternoon, ladies and gentlemen. I'm gaveling down at 1- -- 1:09, Wednesday, May 14th.

I want to welcome you to the regular scheduled Franchise Tax Board meeting. My name is Malia Cohen. I'm the State Controller and Chair of this body.

To my left is State -- former State Senator, retired State Senator Ted Gaines, who is president of the Board of Equalization.

To my right, we've got Deputy Controller Hasib Emran. And my further right, we've got Ms. Michele Perrault, who is going to be representing the Department of Finance.

Are you guys ready to get started?

(Audience response.)

CHAIRPERSON COHEN: Thank you for the enthusiasm. That is exactly what I'm looking for, because we've got a wonderful lineup for you today.

This -- let's see here.

Madam Clerk, could you please -- let's start with the Pledge of Allegiance. And then after that, we'll start with the roll call. Is that okay? All right.

Thank you.

Ladies and gentlemen, if you're able, please join me by rising, placing your right hand over your heart, and repeat after me.

(Pledge of Allegiance stated in unison.)

CHAIRPERSON COHEN: Thank you very much.

Now will the Board Liaison please call the roll to determine if there is a quorum present.

MS. RUBALCAVA: Member Gaines?

MEMBER GAINES: Here.

MS. RUBALCAVA: Member Perrault?

MEMBER PERRAULT: Present.

MS. RUBALCAVA: And Chair Controller Malia Cohen?

CHAIRPERSON COHEN: Present.

Thank you. Okay. There are at least two members or designated representatives that are here and that represent a quorum. The Franchise Tax Board is now in session.

Okay. Thank you, everyone, and good afternoon. Welcome to the May 14th Franchise Tax Board meeting.

The public has a right to comment on each item. If there are any members of the public wishing to speak on an item, please come forward when the item is called, and you will have three minutes to address this Board. Not a minute over, though.

For today's meeting, members of the public who wish to comment via teleconference, please call 844-767-5651 and enter the access code 8835965. That's access code 8835965. And, again, please be aware that there's a short delay between the web live stream and the live event.

If there are any members of the public wishing to speak on an item and you are using a translator or translation service, you will have six minutes to address this body. All speakers will be asked to identify themselves just for the record.

Okay. We are going to start with our Board meeting today with a Section 25137 Petition requested by Jack in the Box, Inc., as well as their Subsidiaries.

And appearing on behalf of the petitioners, Jack in the Box, Inc., and Subsidiaries are counsels Jon Sperring and Chris Whitney.

Okay. Appearing on behalf of the Franchise Tax Board staff will be Hanna Cho -- where are you, Hanna? Okay -- and Delinda Tamagni.

MS. TAMAGNI: Thank you.

CHAIRPERSON COHEN: Thank you.

All right. Now here are the rules of engagement. Petitioners will have 20 minutes to make their presentation to the -- presentation. The Franchise Tax

Board staff will have 20 minutes to reply. Petitioners will then have 10 minutes for a rebuttal.

Counsel for Jack in the Box, you may proceed with your 20 minutes of the allotted time.

Welcome, and we are ready for you.

MR. SPERRING: Good afternoon, Madam Chair and honorable Board Members. For the record, I'm Jon Sperring with PricewaterhouseCoopers on behalf of petitioner, Jack in the Box Corporation.

Today we have an extreme case where the standard apportionment formula does not fairly reflect taxpayers' in-state activities. Mr. Whitney and I are going to walk through the fundamental underlying activity that drives Jack in the Box's profits and demonstrate how the standard formula is not fairly reflecting this activity in California.

Finally, we will propose two reasonable remedies to address the distortion created by the inconsistent treatment of Jack in the Box's revenues in the standard apportionment formula.

San Diego-based Jack in the Box is being punished for being a restaurant operator in California who expanded through the franchise model outside of California. This is because the standard apportionment formula does not fully account for the gross receipts for more than 2,100 restaurants. These 2,100 restaurants represent more than 90 percent of Jack in the Box's systemwide restaurants and the vast majority of Jack in the Box's profits. Not fully accounting for franchise restaurants underweights the main driver of Jack in the Box's profits. That is its national franchisor activity, in comparison to 109 company-owned stores.

Jack in the Box's mostly out-of-state franchise locations are underrepresented in the apportionment formula because they are treated differently than the company's legacy California-owned restaurants. In 2019, only 40 percent of Jack in the Box locations were in California; yet the standard formula seeks to tax 60 percent of Jack in the Box's total income. The increase in California apportionment from 40 to 60 percents distorts Jack in the Box's activity in California by 50 percent.

The goal of the standard apportionment formula is to measure business activity in California. If 40 percent of the business activity is occurring in California, then roughly 40 percent of the income should be apportioned here.

The California standard apportionment formula apportions income to the state by dividing California's receipts by everywhere sales receipts to arrive at the apportionment percentage. California is only permitted to tax California-sourced income. The apportionment formula can be adjusted if the formula doesn't fairly represent the activities of the taxpayer.

In 1951, Jack in the Box opened its first San Diego restaurant. Now it operates one of the nation's largest hamburger chains, with approximately 2,200 restaurants across 22 states.

While Jack in the Box operates as a single brand, it does own some restaurants, but most are franchised. Here is a pie chart showing the distribution of the number of total restaurants for 2019.

Out of the 2,243 restaurants, 2,106 were franchised -- that's about 94 percent of the total restaurant count -- compared to 137 company-owned restaurants, which is only 6 percent of the Jack in the Box systemwide restaurants. As you can see, Jack in the Box's primary business is that of a franchisor, not a restaurant operator.

Jack in the Box is a single brand, regardless of whether the restaurants are company owned or franchised. For franchised restaurants, Jack in the Box earns around 15 percent of the franchise sales for rents and royalties. The customer experience is the same at both company-owned and franchised restaurants. For example, in this picture of a Jack in the Box restaurant, we cannot tell whether it is a franchisee location or a company-owned restaurant. By design, the customer experience is the same. That includes the branding, decor, menu, food, ingredients, equipment, fixtures, supply, software, and even employee uniforms.

Here is a copy of Jack in the Box's most recent quarterly report to investors. The first three page headlines -- or excuse me. The first three headlines out of this multipage document highlights systemwide sales, and there is no distinction between franchised and company-owned.

If you look at any other quarterly report, the headlines always highlight systemwide sales. The reason for this is simple. Systemwide sales data is the key metric used by investors to evaluate the company.

It should come as no surprise that in Jack in the Box's annual report, it discloses franchised restaurant sales information and notes that such information has, and I quote, "a direct effect on the company's profitability."

By 2019, Jack in the Box earned more than four times the amount of income from franchising as it did from operating its company restaurants. In fact, as FTB acknowledges in their brief, the percentage of Jack in the Box restaurants that are franchised has increased over time. The reason for this is simple. Franchising is more profitable than operating restaurants.

Here is a copy of the franchise disclosure document that clearly indicates that franchised restaurants are required to use company-specific point-of-sales systems that will capture all sales data.

Jack in the Box even has a security interest in the franchisee's bank accounts, as clearly indicated in their franchise disclosure document.

For company-owned locations, total gross receipts are included in the standard formula. As for franchise location, total gross receipts are not included in the formula. However, the underlying business activity that drives Jack in the Box profits is the same, food and beverage sales.

For example, consider one company-owned restaurant with $1 million in food and beverage sales. In this situation, the amount included in the apportionment formula is $1 million.

Now consider a second restaurant with $1 million in food and beverage sales, but this time the restaurant is franchised. The amount represented in the apportionment formula is now just 150,000.

As you can see, the standard formula includes 15 percent of the franchised restaurant sales and 100 percent of the company restaurant sales. We have two restaurants with different amounts represented in the formula. However, the underlying amount of activity is the same.

Mixing net franchise receipts with gross company store receipts causes geographic distortion when, one, the franchised restaurants are disproportionately located outside the state and/or, two, the company-owned restaurants are disproportionately located inside the state. We have both in this case.

61 percent of all franchised locations are outside of California. In contrast, 80 percent of company-owned locations are in California.

The result of the partial inclusion of the franchised receipts combined with the geographic misalignment between company restaurants and franchised restaurants lead to a situation where we have the tail, in this case the 109 California company restaurants, wagging the proverbial dog, the 2,106 franchised restaurants. And the result is, even though most of Jack in the Box's restaurants are outside of California, the standard apportionment formula says otherwise.

As we know, 40 percent of the total restaurant locations are in California, but the standard apportionment formula includes apportionment of 60 percent business activity in California. As you can see, this is the mere opposite of reality. The standard formula's mixing of total gross receipts of the company restaurants with the partial gross receipts of franchised restaurants fails to accurately represent Jack in the Box's actual business activities.

I will now turn the presentation over to my colleague, Mr. Chris Whitney.

MR. WHITNEY: Okay. Thank you, Jon. And thank you, Members of the Board.

I wanted to spend a few minutes here building on some of the points that Jon made in demonstrating that the standard apportionment formula is not fairly reflecting Jack in the Box, or JIB's activities in California. And I wanted to do that by starting out with a straightforward example and then changing the facts a little bit to illustrate how in extreme situations and facts, like we have in Jack in the Box, the standard apportionment formulas applied by the FTB can actually also be unfair for the State. So it can cut both ways.

So in this example it's a restaurant chain consisting of two restaurants, one in Arizona, one in

California. They're both company owned. They're both identical. They both produce $1 million of gross receipts. And I think it would come as no surprise that we have a 50 percent apportionment percentage in California, and I think that we would all agree that that's expected and fair.

Now let's change the facts a little bit and make the restaurant in California a franchised restaurant. Now what we find is that even though the underlying activity is the same -- we've got 1 million in burger sales in California, 1 million in burger sales in California -- the apportionment factor has dropped from 50 down to only 13 percent in California, with the same underlying activity producing the same burger sales and generating comparable profits, you know, at both. This would not be fair to California.

So what happened here? You know, again, in both situations, the underlying activity is the same. We have, in this case, a national restaurant brand, albeit a small one, just two restaurants, one in Arizona, one in California. They're operating, you know, the same way, producing the same $1 million in burger sales. Why do we have a 13 percent California apportionment in the second example, when the profit, you know, that we're generating is comparable to what we did before?

And the reason is, is because under the standard apportionment formula, as Jon explained, you only include the net receipts, the net royalty and percentage rent, or approximately 15 percent of the franchised restaurant revenues. And so that's -- you know, again, despite that the underlying activity is the same.

Now, you know, this standard apportionment approach may work fine in most, maybe even nearly all situations. Because usually, when you have company-owned and you have franchised restaurants, they're going to be distributed more or less evenly among the various states.

What's not working in this -- you know, this example here is that all of the company-owned restaurants are being reflected at gross and they're all located in Arizona. And so they're overpowering the receipts that are being generated in California.

Those are extreme facts, obviously, 100 percent, you know, in one state and, you know, 0 in the other, but that's not far from what we have. We have extreme facts, where 80 percent of the company-owned restaurants are in a single state. The only difference is it's California and not Arizona.

And so that concentration of the company-owned restaurants coupled with including the gross receipts on the company-owned, which are heavily in California, and net for the franchised restaurants, which are outside of California predominantly, that's what's creating the distortion and turning the situation upside down, where instead of 40 percent and 60 percent outside, we're winding up with 60 percent being attributed to California.

Now, fortunately, Section 25137 provides a solution here. What it says is, is if a taxpayer can demonstrate a situation like this where the standard apportionment formula isn't fairly stating in-state activity, then your Board can grant permission to use an adjusted or altered formula.

This is fully consistent with U.S. Supreme Court precedent in the Container decision. The Court said that the factors have to reflect a reasonable sense of how income is generated. And that's what we're seeking to do here.

In our situation, restaurant burger sales, whether at company-owned restaurants or franchised restaurants, are the underlying activity that drive JIB profits. But franchised restaurants are not being reflected in the formula. The gross sales are not being reflected. While the company-owned restaurants, which are predominantly 80 percent in California, are being reflected at gross, and they're overpowering the contribution of 94 percent of our restaurants which are franchised. And that's how we're winding up with 60 when the underlying burger sale activity is actually 40 percent in California.

Now, our situation was foretold by the California Supreme Court and warned against in the Microsoft decision in 2006. In that case, the shoe was on the other foot. It was the FTB that was seeking to modify the standard apportionment formula. Their objection was, was that there were large amounts of gross receipts concentrated in a single state, Washington, that were producing a teeny tiny amount of income, about 2 percent of total income.

And what they correctly said is, is that having that much in the way of gross receipts all loaded up in one state that contributes so little income is siphoning away all of the income that really was generated from California activity, from the software and other activity that was sold in California.

And so the Court agreed with the FTB and said we need to modify the formula and reflect this very high receipt and low profit margin activity at net.

However, in doing that, the Court correctly foresaw and warned about the opposite situation, in other words, the situation that we have in Jack in the Box. What the Court said is, is that contrary to this situation, we need to be aware of situations where out-of-state activity may actually be the one that produces the larger amount of profit. And in those situations, reflecting that activity at net while reflecting the in-state activity at gross would not do justice to the out-of-state activity and the profit that that brings to the table.

So what the Court warned about was in mixing, this mixing of net receipts for out-of-state activities with gross receipts from other transactions that are in state. And that mixture, particularly when the out-of-state activities are reflected at net and are actually contributing a substantial portion of income, unlike the income that was at issue in that case -- it was only 2 percent -- if it's a really big piece of income, then it's not fair to record that at net and record the in-state activity at gross.

So the situation at Microsoft the Court warned about basically boiled down to two conditions, both of which we have in this case.

The first condition is, are there substantial activities going on outside the state that are being reflected at net in the formula, while at the same time there's activity going on in the state, California, which are being reflected at gross?

And that clearly, we meet that, that requirement. 80 percent of our company-owned restaurants are located in California and are being reflected at gross. On the other hand, 94 percent of our restaurants are franchised, and the large majority of those are outside of California and being reflected at net. So we've got the gross-net disparity.

Second, do the out-of-state activities -- contrary to the facts of Microsoft, do they actually contribute substantial profits to the bottom line? And here, the answer is clearly yes for Jack in the Box. Income from franchising accounts for four times the operating profit for Jack in the Box as that small number of company-owned restaurants do. So it is a huge contributor. In fact, in some years, it's been upwards of 88 percent.

So our facts are extreme. They're very atypical. We have 6 percent of Jack in the Box restaurants being company owned, 80 percent of those being located in one state, California, and being reflected at net -- at gross. And as a result of being reflected at gross, they're accounting for about half of the overall apportionment formula.

That leaves the other half, for the 94 percent of the restaurants that are franchised, which are predominantly outside the state and are contributing four times the operating profit as the in-state restaurants. And that's the distortion sort of in a nutshell.

So what Jon and I have done is demonstrated that, you know, we have a situation where the underlying burger sales are what generate the profit for the restaurant system as a whole, and this is the activity that's driving JIB's profit forward.

The standard formula is giving short shrift to the 94 percent of the restaurants that are franchised that are contributing the lion's share of the profit, and that's not a fair reflection of the actual underlying reality.

MS. RUBALCAVA: Mr. Whitney, I'm sorry. You have two minutes left.

MR. WHITNEY: Okay. Thank you for the reminder.

And so we've proposed two alternative remedies. Under the first, it's a simple restaurant ratio, a ratio of California restaurants to total restaurants, and apply that.

The other solution would be a ratio of systemwide sales at both company-owned and also franchised restaurants in California over the total systemwide revenues total that are collected in our IT systems and reported in our financial statements.

I think either of these things would address the issue. I think, if anything, Option 1 is a little simpler. It's just a restaurant count ratio, really easy to implement and verify.

With that, I'll stop here. And, Madam Chair, if it pleases the Board, I would like to reserve the remainder of my time for rebuttal, if that's okay.

CHAIRPERSON COHEN: You mean in addition to the 10 minutes? I don't believe there's any leftover time.

Is there leftover time?

MS. RUBALCAVA: About a minute and a half.

CHAIRPERSON COHEN: A minute? Sure. You can have it.

MR. WHITNEY: I'll take it. Thank you.

CHAIRPERSON COHEN: No problem. Okay.

Okay. Well, at this time, we're going to hear from the Franchise Tax Board.

MS. CHO: Thank you.

CHAIRPERSON COHEN: Yes.

MS. CHO: Good afternoon, Board Members. My name is Hanna Cho, Attorney IV with the Franchise Tax Board's Legal Division. With me is Delinda Tamagni, Assistant

Chief Counsel of the Multistate Tax Bureau.

During the Section 25137 petition hearing presentation, we will first discuss taxpayer's business activities and revenue streams in California.

I just want to make a note that I think we need the left side.

Then we'll discuss how the standard apportionment formula is working in relation to taxpayer's business.

Next, we'll discuss why taxpayer's petition for alternative apportionment should be denied by showing that the taxpayer failed to meet its burden to prove that the standard formula does not fairly reflect its business activities in the state.

And, finally, we will go over why taxpayer's proposed alternative should be rejected.

For the years at issue, taxpayer had two primary business activities in California. One was operating its Jack in the Box quick service restaurants and two was franchising the Jack in the Box brand to third-party franchisees.

Taxpayer's revenue streams reflect these activities and include revenue from the sales of food and beverages or burger sales from its retail restaurant operations and revenue from royalties, franchise fees, and rent from its franchisor operations.

To generate its burger sales revenue, taxpayer operated and was directly responsible for the day-to-day operations at its own restaurants. To generate its royalty and franchisee revenue, taxpayer licensed its proprietary business knowledge, processes, and trademarks to third-party franchisees. And to generate its rental revenue, taxpayer leased real property to its franchisees.

Under California law, the burden of proving by clear and convincing evidence that the standard apportionment provisions do not fairly represent the extent of the taxpayer's business activity in the state and that a proposed alternative is reasonable is on the party requesting relief.

Here, the parties agree that standard apportionment provisions require the use of a single sales factor apportionment formula under Section 25128.7. In addition, taxpayer's activities, as described in Slide 4, were assigned to California pursuant to Sections 25135, 25136, and California Code of Regulations Section 25137-3.

Under these rules, taxpayer's sales of food and beverages were assigned to California if the property was delivered within the state. Taxpayer's franchised rental receipts were assigned to California if the property was located in the state. And taxpayer's royalties and franchise fees were assigned to California if the franchisee's place of business was located in the state.

This simplified example illustrates how the taxpayer's income and activities are reflected on the taxpayer's tax return under the standard provisions. As shown here, taxpayer's two income-generating activities, its retail activities and its franchisor activities, are both properly included in its income tax base as well as its apportionment formula.

For example, the $100 of income derived from its retail activities is properly reported in taxpayer's income tax base, and the corresponding sales derived from its retail activities are also properly reported as gross receipts in its sales factor apportionment formula.

Similarly, the $200 of income from taxpayer's franchisor activities is also properly included in its income tax base, and the gross receipts are included in the sales factor apportionment formula.

Accordingly, taxpayer's standard formula properly reflects the activities that generated taxpayer's income in California.

Despite this, taxpayer argues that the standard formula is distortive because it does not include any of the activities of its unrelated third-party franchisees. However, as the following slides will show, taxpayer fails to demonstrate how such an exclusion from the standard formula is an unfair reflection of the taxpayer's business activities in the state.

First, the law is clear that to invoke Section 25137, taxpayer must show that the standard provisions do not fairly represent the extent of the taxpayer's business activity in the state.

Here, the franchisees are third parties that are unrelated to taxpayer. They are not part of taxpayer's unitary group and are not part of taxpayer's combined report. They are completely independent and separate taxpayers and are required to report their own income and apportionment factors on their own separate tax returns.

To illustrate, this slide demonstrates how the unrelated franchisee would report its income and tax liability on its own tax return. The franchisee's revenue is derived from the franchisee's burger sales at its own franchised restaurants. As such, the income and gross receipts from the sale of burgers by the franchisee are properly reported on its own separate tax return. In other words, the sales of burgers by the franchisees are attributable to the franchisee and are not the activities of the taxpayer.

As depicted on this slide, the third-party franchisee's income from its burger sales is included in its income tax base. To the extent the franchisee conducts its business within and without the state and is required to apportion its income, its gross receipts from those corresponding sales are appropriately included in its own apportionment formula.

As a comparison, this slide clearly shows that the income and gross receipts derived from taxpayer's business activities are included in the taxpayer's return, and the income and gross receipts derived from the unrelated third-party franchisee's business activities are included in the franchisee's own separate tax return.

What taxpayer argues, however, is that the standard formula's exclusion of the franchisee's sales in taxpayer's apportionment formula causes distortion. However, there is no evidence to show how the proper exclusion of receipts that are unrelated to the generation of income to the taxpayer causes an unfair reflection as to the taxpayer's business activities in the state. In fact, the exclusion of those receipts as per the standard apportionment provisions is proper.

Long-standing case law provides that an apportionment formula should reflect a reasonable sense of how the income is generated.

As depicted on this slide, an inclusion of the third-party franchisee's receipts in the taxpayer's apportionment formula without the corresponding income inclusion would cause a serious mismatch between the income and the formula that seeks to apportion that income. Thus, taxpayer's argument that the exclusion of receipts from unrelated taxpayer causes distortion is contrary to law and unsupported by evidence.

For instance, taxpayer erroneously asserts that the exclusion of third-party franchisee receipts from its apportionment formula causes distortion because the underlying burger sales activities of the taxpayer and the franchisees are the same. However, the fact that the restaurant operations were conducted by the taxpayer and the franchisees in similar ways or that they use the same point-of-sale system or that the customer experience was identical is irrelevant for Section 25137 purposes.

What is relevant is the taxpayer's activities. The fact that an unrelated entity conducts similar activities as the taxpayer does not make them the activities of the taxpayer and, therefore, does not prove distortion.

Taxpayer also argues that because certain fees were based on a percentage of the franchisee's gross sales, that they generated income to the taxpayer or directly contributed to its profits. This is misleading and inaccurate. A fee structure, even if it is calculated based on a third party's gross sales, does not change the underlying activity that generated that income.

Here, the taxpayer's activities that generated the fee income are its licensing activities. That licensing activity is what generated the franchise fee, not the franchisee's burger sales, as the taxpayer argues. Consequently, there is no evidence to support taxpayer's position that the standard provisions are unfairly reflecting taxpayer's business activities in the state.

Taxpayer also relies on various numerical metrics to argue that the standard formula is distortive. However, taxpayer's calculations which compare various sales figures, operating income amounts, or the number of store locations do not distinguish between the activities of the taxpayer and the activities of the third-party franchisees and, therefore, fail to prove distortion.

For example, taxpayer asserts that the standard formula is distortive because, while the franchised restaurants account for 90 percent of the Jack in the Box's systemwide sales, the franchised restaurants' gross receipts are not properly reflected in the formula. However, this statement is misleading, as it implies that the franchisee's burger sales should be included in taxpayer's apportionment formula, which is incorrect.

The franchised restaurant sales as phrased by taxpayer here are derived from the franchisee's burger sales activities and are properly reported on the franchisee's own return. Those sales are not included in taxpayer's income and, therefore, are properly excluded from taxpayer's apportionment formula.

The 90 percent figure here shows how much of the franchisee's burger sales contribute to the total systemwide sales, which include both taxpayer's burger sales and the franchisee's burger sales. Such a figure does not measure the taxpayer's business activities and therefore does not show how the taxpayer's business activity is unfairly reflected by the standard formula.

Similarly, taxpayer's assertion that it is unfair to tax 60 percent of taxpayer's income when only 40 percent of its systemwide locations are in California is also misleading.

The number of systemwide locations does not distinguish between taxpayer's burger sales and the franchisee's burger sales. This number essentially treats all restaurants as if they generate the same type of income to the taxpayer, which is inappropriate.

In fact, any analysis using such figures is nothing more than a mere showing of the difference between what the law sets as taxpayer's tax liability and what taxpayer argues its tax liability should be. Such a showing has been rejected by the Board of Equalization as a means of proving distortion.

For purposes of Section 25137, the Board of Equalization has held that a simple comparison of their varying levels of taxation from differing apportionment methods by itself does not demonstrate that the standard formula unfairly reflects the extent of a taxpayer's activity in the state.

In addition, the Board of Equalization has also found that Section 25137 does not authorize deviations from standard apportionment provisions merely because a purportedly better approach exists.

Thus, without evidence to show how these numerical metrics actually measure the taxpayer's business activities, taxpayer's argument is circuitous and is simply an attempt to offer a preferred alternative which is insufficient to show distortion.

Taxpayer also asserts that inclusion of third-party franchisee activity is appropriate in this case because other FTB statutes and regulations use third-party activity. However, this argument is again circular and does not prove distortion.

The various examples of FTB statutes and regulations provided by taxpayer, as listed on this slide, are all standard provisions that are not applicable to the taxpayer. While these examples show that there are various circumstances, when the law allows for the consideration of different factors, to properly apportion a taxpayer's income to the state under the standard provisions, there is no statute or regulation which allows a franchisor like taxpayer to include unrelated third-party receipts of its franchisees in its own sales factor.

Since taxpayer agrees it cannot receive this treatment under the standard provisions, it attempts to seek this treatment under Section 25137. However, to invoke Section 25137, taxpayer must first show how the standard formula is an unfair reflection of its business activities in California. Examples of other standard provisions that are not applicable to taxpayer do nothing to show how the standard formula that is applicable to taxpayer is distortive.

When looking at the standard formula that is applicable to taxpayer, it appears to be properly reflecting taxpayer's business activities in the years at issue. As shown here, the taxpayer sales factor apportionment formula remain fairly consistent until fiscal year ending 2018, when taxpayer experienced an increase to its apportionment formula. The increase in the taxpayer's apportionment percentage in 2018 appears to have resulted from strategic business decisions made by the taxpayer in that year rather than any distortion caused by the standard formula itself.

First, taxpayer implemented its refranchising strategy, whereby it increased its franchise ownership by selling taxpayer-operated restaurants to its franchisees. As shown on the slide, this refranchising strategy had the effect of increasing the percentage of taxpayer-operated locations in California, which generated retail sales revenue, while its percentage of franchised locations in California, which generated royalty revenue, remained more or less the same at 39 percent.

When considering that taxpayer's retail sales activity generates more gross receipts than its franchisor activities per location, the increase in the proportion of taxpayer-operated stores in California had the effect of increasing taxpayer's apportionment percentage in the state.

In addition, taxpayer also sold its QDOBA restaurant chain in March of 2018. Taxpayer stated that this sale causes California apportionment to rise drastically due to the QDOBA locations primarily being located outside of California when it was sold.

This demonstrates that the increase in the apportionment formula in that year was also due to its business strategy to sell its out-of-state QDOBA locations rather than the formula itself unfairly reflecting taxpayer's business activities in the state.

An important point to consider here is that if taxpayer's argument were to succeed, any taxpayer who has a franchise business could petition the Board to include the receipts of unrelated third-party franchisees whenever the taxpayer's business strategy causes an increase to its apportionment formula. To do so would be absurd and is not permitted under California law.

Section 25137 is a relief provision available when a taxpayer can show that its business activities are not fairly reflected by the standard formula and should not be subject to manipulation.

We now turn to why taxpayer has not met its burden to prove that its proposed alternative apportionment formulas are reasonable.

First, taxpayer's formula based on the ratio of restaurant locations is not reasonable because it fails to distinguish between the activities of the taxpayer and the activities of unrelated third-party franchisees. It also does not account for the differences in taxpayer's activities of both operating its own restaurants and franchising its brand to its franchisees.

Second, taxpayer's proposed alternative to include the gross receipts of its third-party franchisees in its own sales factor is not reasonable because taxpayer has not provided any evidence to show why the exclusion of the receipts is distortive and has not provided any supporting documents or calculations to support what the formula would be.

Finally, before I conclude, I would like to highlight some closing items.

First, the parties do not dispute that the standard formula does not include third-party franchisee receipts.

Next, there is no evidence that the standard formula does not fairly reflect the extent of the taxpayer's business activities in the state. Assertions that the taxpayer and the third-party franchisee share the same underlying business activities or that certain fees are based on a percentage of third-party sales are irrelevant for Section 25137 purposes.

Assertions based on numerical metrics that are merely a showing of a preferred alternative or assertions to other FTB provisions that are not applicable to taxpayer are also insufficient to show distortion. In fact, the changes to taxpayer's apportionment formula appear to be the result of changes to taxpayer's business activities, which are properly being reflected in the apportionment formula.

And, finally, taxpayer has not demonstrated that its proposed alternatives are reasonable.

For these reasons, taxpayer has failed to meet its burden of proving by clear and convincing evidence to invoke Section 25- --

MS. RUBALCAVA: Excuse me, Ms. Cho. You have two minutes left.

MS. CHO: Thank you.

-- to invoke Section 25137.

Accordingly, FTB respectfully requests that taxpayer's petition be denied.

That concludes our presentation. Thank you for your time. We are happy to answer any questions you may have.

CHAIRPERSON COHEN: All right. Thank you. Thank you. We have no -- we have no questions at this time.

I'm going to pivot to petitioner. You have 10 minutes, plus 1.

MR. WHITNEY: Okay. Thank you, Madam Chair. And thank you for the opportunity to respond to the FTB today.

So what you've heard the FTB argue today is that JIB's receipts from franchisees are from different underlying activity and that the franchisee activities don't generate income to the taxpayer -- those burger sales -- nor contribute to taxpayer's profits. This is incorrect.

JIB maintains a very close business relationship with its franchisees, which operate restaurants as part of a national restaurant system that's overseen by JIB. Every dollar of every hamburger sale at every restaurant, whether company-owned or franchised throughout the system, generates profits for JIB.

In fact, JIB typically receives 15 percent of the franchisee hamburger sales, as Jon mentioned, in the form of royalties and percentage rents. Franchisee hamburger sales are captured in JIB's point-of-sale IT system, reported on its financial statements; and the above fees are drawn directly from the franchisee bank accounts, in which JIB maintains a security interest.

The franchised restaurants are 94 percent of the system store count and 90 percent of systemwide sales and contribute four times the profit to JIB, to Jack in the Box, as the company-owned restaurants operated by Jack in the Box.

So the franchised restaurants are, therefore, not just a direct contributor to JIB's profits. They are, in fact, the principal driver of JIB's profits, is that franchised activity. And yet the contributions under the standard formula do not give full effect for that franchise activity.

Ironically, the auditor got it right. They understood this and acknowledged that in their Audit Report in 2023, where they said that both revenue streams, both franchise fees as well as the operation of company restaurants, are derived from the same underlying restaurant activity and that the two are engaged in an integrated relationship with one another.

Now, the FTB has also argued that our remedies are inappropriate because the franchisees are unrelated third parties, despite the very close business relationship that we have with them, and that third-party activity can't be taken into account in the taxpayer's formula. This is not correct.

What we provided was a number of examples that showed them where the FTB has, in fact, required third-party activity to be included in a taxpayer's apportionment formula. And I'll walk through this.

In addition, the statute itself doesn't put any restriction on your Board. It is very broad, very flexible. It says that the employment of any other method to effectuate an equitable allocation of a taxpayer's income is within your power to grant. So there's no restriction.

We can agree that the standard apportionment formula doesn't include third-party franchisee activity in it. That's why we're here with a special apportionment petition to the Board, because the standard formula doesn't include this. But to say that third-party activity is not included when they're replete within the FTB's regulations, rulings, even the Audit Manual and case law examples of where you were required to do exactly that.

One example is independent contractors. For decades, California sourced that activity based upon where the taxpayer's -- and I'm going to emphasize the word "taxpayer's" -- underlying activities took place. I emphasize that because that is the exact same language in 25137 that they're pointing to to say that you can't take into account third-party activity.

So despite that, that language in the underlying statute, in ascertaining where the taxpayer's activities took place, the FTB's regulations required that third-party unrelated independent contractor activity be taken into account by the taxpayer.

Now, certainly, the contractor took into account their own activity for apportioning their own income separately, but so did the taxpayer. They're helping the taxpayer. Their activities are germane to how the taxpayer is generating income. The regulations FTB issued said that you have to take those into account.

Even to this day in the market-based sourcing regulations, things like dividends from third-party corporate dividend payors are sourced based upon the activity of that third-party corporation, not the taxpayer.

In Legal Ruling 2022-01, the FTB said that claims processing service revenues should be sourced based upon the location of the customer's unrelated third-party policyholders.

Use of property owned by others, third-party property, if you use it, even if you don't pay rent, there are court cases going back decades, BOE decisions. And now the regulations have been modified to require inclusion of that third-party property.

As another example, taxpayers may engage in integrated business activities with third parties that are unrelated via partnerships. And when they do that, under FTB's regulations, they are required to pick up the underlying activity of the partnership. In other words, they don't include the net distributions but rather the underlying activities of the third-party partnership.

Freight forwarders. Freight forwarders coordinate the activity of third-party trucking companies. They don't do the trucking. They just coordinate it.

In the FTB's Audit Manual, it says it may be appropriate to modify the standard formula because they're engaged in an integrated service offering.

They're coordinating the trucking. The customer just wants things to go from Point A to Point B, just like when I go to a Jack in the Box restaurant, I don't care if it's a franchised restaurant or company owned. I expect the same service, the same product, you know, everything the same. And that's what you get. It's integrated, as the auditor acknowledged.

And so the trucking company would include their mileage in apportioning their income but so would the freight forwarder as well, according to the FTB in the Audit Manual.

The FTB has said that we're creating a mismatch and we're being inconsistent. Nothing could be farther from the truth. They're saying that we're picking up the apportionment without the underlying income.

In none of those examples -- and there are many others. These are the examples that we offered. In none of those example do you pick up the income and pay double tax on a third party's income. The third party takes into account their activity for apportioning their income and paying tax on it, but then their activity is also relevant for apportioning the taxpayer's activity as well and paying tax on their separate income.

There's nothing inconsistent in what we're doing. On the other hand, our experience in the audit with the FTB, as depicted on this slide, is that we've had a lot of inconsistency from the FTB in terms of how our activities and business operations are reflected.

When we sell a restaurant, a Jack in the Box restaurant in California, typically, that proceeds is included in the factor. But when we sell QDOBA restaurants, those are not included in the factor. We include the restaurant sales for the restaurants we own but not take into account the franchisee restaurant sales. We're told that we're supposed to pick up the net fees that we receive from the franchisees but then told that the marketing fees we get from franchisees can't be included, nor can the receipts from QDOBA transitional employee service income.

So this is a patchwork approach that we've gotten. It's inconsistent and only consistent in one way, that all of these positions serve to increase our tax at the end of the day. Our positions, on the other hand, are simple.

Our positions in these alternatives that we've recommended are consistent, and they are fair because they get us to what is the underlying activity that's generating all this profit, whether it's the franchise fees, which is based on sales, or the burger sales, which, in the company-owned restaurants, the more burger sales that you have, the more profit you have from that. So they're both related to the burger sales, and this -- our remedies are consistent with that.

And with that, I'll turn it over to Jon to address the other comments.

MR. SPERRING: Thank you, Chris.

Madam Chair and honorable Board Members, you heard the Franchise Tax Board say that it was the taxpayer's own business decision that led to its -- to its apportionment formula to be out of whack and that if you open the flood gates to taxpayers changing their apportionment formula based on their business decisions, you know, a parade of horribles could happen.

But, you know, the California Supreme Court was very clear on the standard. And there's no discussion of blame. I'm going to quote from the California Supreme Court in Microsoft, which says "the statutory touchstone remains an inquiry into whether the formula fairly represents a unitary business's activities in a given state. When it does not, the relief provision may apply."

That's the standard. It has nothing to do with who is to blame or its taxpayer's fault.

And second and most significantly, staff is conflating two separate restaurant business activities owned by --

MS. RUBALCAVA: Mr. Sperring, this is your two-minute warning.

MR. SPERRING: Oh, thank you.

And this petition is about Jack in the Box, not the other restaurant system. Jack in the Box owned a smaller and largely out-of-state quick service Mexican restaurant system for the first years of this petition.

Staff, by focusing on the overall apportionment percentage of the combined Jack in the Box restaurant system, is including receipts which are unrelated to the apportionment remedies in Jack in the Box's petitions.

As you can see, QDOBA is located almost entirely outside of California, and as a result, we did not include them in our remedy. Our remedy is Jack in the Box-only store count. If you included them in the remedy, QDOBA, then Jay has a 40 percent California store count. QDOBA only has 1 percent. So it would go lower.

So when you saw those earlier years with an apportionment formula at 30 percent -- or excuse me -- 40 percent, that was including QDOBA, you know. And so they were saying, "Well, what are you complaining about? You have 40 percent store count for Jack in the Box, and your combined QDOBA/Jack in the Box apportionment is 40. Don't complain."

But if we were to include QDOBA in the store count ratio, it would go below 40. And to be clear, that's not our remedy. That's not what we're requesting. We're just pointing out, if you're going to do the comparison, please compare apples to apples and not apples to oranges.

And lastly, we have the Jack in the Box restaurant apportionment broken out by year, and we have the restaurant apportionment broken out by year. And what you see is the distortion percentage range is between 30 and -- 36 and 50 percent, which is a far cry from the 8 percent that the Court of Appeals said in General Mills is unfair apportionment.

So with that --

MS. RUBALCAVA: Mr. Sperring --

MR. SPERRING: -- I rest my case. Thank you.

MS. RUBALCAVA: -- time has expired.

CHAIRPERSON COHEN: All right. Thank you very much. I appreciate you both making your case.

I am going to now open up for questions to see if my colleagues have any questions. I know I have a few.

Senator Gaines, I'm going to start with you.

MEMBER GAINES: Yes, if I could.

I would just like to clarify the comments that were made --

CHAIRPERSON COHEN: You got to speak into the mic.

MEMBER GAINES: -- that were made by Mr. Whitney in terms of the correlation between franchisees and Jack in the Box and that it's a relationship.

See, I would agree with you. I don't see these as independent entities. I see them as closely tied to one another. A franchisee cannot operate without a franchisor. If you're getting revenue based on sales, there's a clear link, in my mind, in that relationship between the franchisees and the franchisor. A franchisee cannot operate independently.

And when you see disputes between a franchisor and a franchisee, they may break away and then they change the name of their entity, and they may be an independent business that has no affiliation with the franchisor.

So I just -- I guess I want to make a statement that I agree with that argument in terms of that relationship not being totally independent. An independent relationship would be an independent business that has no affiliation with a franchisor.

So I don't know if you want to make any additional comments to that or not, but that's something that stuck out in my mind in your rebuttal.

MR. WHITNEY: I completely agree with what you said, and I don't think I can improve on that.

They are a closely related business. You know, we provide the trade names, the trademarks, the method of operation. We dictate, you know, what they effectively can and can't do. We provide even the real estate that they use to operate the business, the IT systems that they use.

I guess I'm just agreeing, you know, with what you said.

MEMBER GAINES: All right. That's it for now. Thank you.

CHAIRPERSON COHEN: Thank you.

Member Perrault.

MEMBER PERRAULT: Yeah. Actually, I would like to sort of piggyback on Senator Gaines's comments.

I don't disagree that, yes, the two can't exist -- right? They do have -- they are linked. However, I think part of where I -- I don't want to say I'm struggling, but I do think we need a little bit more information around, is, you're correct, they are -- the franchisee can't exist without the -- without the company, without Jack in the Box company at large.

However, in my mind, that doesn't necessarily mean that what Jack in the Box is responsible for is 100 percent of the franchisee's revenue and income. I'm not sure that we can give it an apples-to-apples. And I guess maybe we need a little bit more understanding of how that relationship works.

And I appreciate the information that was provided, but I think for me, I'm still wondering a little bit about -- I'm not 100 percent convinced around the fact that you would assign 100 percent liability to Jack in the Box for their franchisees at the same level we would their company stores. And by "liability," I mean as far as their tax, what they're liable tax-wise or what we assign that they receive.

So I'm not sure I'm articulating that really, really well, but I agree with you that the franchisees have to be, you know, considered to a certain extent. I'm just not sure it's 100. I'm not sure it's an apples-to-apples. I'm not sure that it's the same for both company stores and franchisees.

So perhaps -- and I don't know if FTB staff wants to respond to that and Jack in the Box would like to do the same, but I just -- I think we need a little bit more understanding.

And I think, FTB, you touched on it a little bit, but maybe you can talk a little bit more about that.

MS. CHO: Yeah, I would be happy to expand on that a little bit.

We do agree that there are -- there is a relationship between the franchisor and the franchisee that is evident in their franchise agreement. However, for tax purposes, Jack in the Box is required to report their own activities on their own tax return, their income and their activities. The franchisees file their own separate tax returns, which includes their income from the burger sales and their gross receipts as applicable on their own tax returns.

So for tax purposes -- so it does -- it does matter for tax purposes what -- what the taxpayer's activities are versus -- and this is why we referred to them as unrelated third parties, because they're unrelated to the taxpayer for taxpayer's tax return purposes.

MEMBER PERRAULT: Can I ask a follow-up?

CHAIRPERSON COHEN: Yes, please.

MEMBER PERRAULT: So would it be fair to say -- and, please, absolutely correct me if I'm wrong.

Would it be fair to say that -- if we allowed for a larger portion of the franchisee's income revenue to be considered as part of the apportionment for the taxpayer, would that mean that it's being considered twice? Because it's being considered both by the taxpayer and by the franchisees when they themselves submit their own -- for tax purposes, their own --

MS. CHO: Right.

MEMBER PERRAULT: All right. Okay.

MS. CHO: That is essentially what would be happening, is we would be including additional activities into the taxpayer's apportionment formula when the corresponding income is not being included.

MEMBER PERRAULT: Thank you. That's helpful. That's at least helpful for me.

CHAIRPERSON COHEN: Oh, that's good.

I have a couple questions for -- for PWC as well as for the FTB staff.

So to gentlemen, the staff indicates that the outcome of the apportionment formula is a direct reflection on JIB's -- which, by the way, I think is very clever. Thank you, Chris -- JIB's decision, business decisions and further reasons that are before 2018 for your client's standard apportionment formula.

What was the reasoning behind the taxpayer's apportionment change in 2018?

MR. WHITNEY: Do you want me to -- yeah.

So the FTB, I think, misdiagnosed what caused the increase in the apportionment in 2018.

CHAIRPERSON COHEN: I see.

MR. WHITNEY: And they ascribed it to the refranchising that occurred. And then they acknowledged that the refranchising was going on in 2014, '15, '16, and '17.

Agree, there was refranchising going on in those years, but the apportionment doesn't change in those years. It's 2018 that the apportionment jumps up.

So what was different about 2018? We sold QDOBA in 2018. QDOBA, as Jon pointed out, was 99 percent outside of California. And so, yes, when you include QDOBA in, that was, you know, having an effect on the apportionment. When you sell it, the apportionment goes up to the 60, 63 percent, you know, apportionment based on Jack in the Box alone.

I don't know if that answers your question.

CHAIRPERSON COHEN: So the standard apportionment formula was roughly equal to the ratio of the restaurants' location within and without California?

MR. WHITNEY: Only when you do an apples-to-oranges comparison.

So the apportionment included QDOBA, but the restaurant count that they picked up was Jack in the Box only.

CHAIRPERSON COHEN: Uh-huh.

MR. WHITNEY: And what Jon's point was, is that, hey, we got to be fair here. If you want to do a comparison of with QDOBA, then you also have to change the restaurant count.

And when 99 percent of the QDOBA restaurants are outside of California, that would drop that ratio down.

So it would be like, you know, 40, 40-something down to maybe like 30 or something like that.

CHAIRPERSON COHEN: I see. So, I mean, it's just been an inconsistent comparison?

MR. WHITNEY: Yeah. They made -- yeah, I'm not ascribing any motive or anything, but it was a mistake. Yeah.

CHAIRPERSON COHEN: Okay. I understand.

MR. WHITNEY: They're comparing apples and oranges.

CHAIRPERSON COHEN: Okay. I'm going to move on.

What's the nature of the taxpayer's responsibility over the franchisees as opposed to company-run stores?

This is a question that I had in my mind the entire time of the presentation.

What is that responsibility exactly?

MR. WHITNEY: Well, I mean, they kind of sink or rise together. They're kind of in a national restaurant system where the franchisees have to operate in a certain manner. You know, I believe even if you are a franchisee that has one location, you're subject to things like the higher minimum wage, you know, provision in California, which applies to chains of 60 or more.

So you're not really viewed as an independent --

CHAIRPERSON COHEN: Hold on. Let me ask a question.

MR. WHITNEY: Yeah.

CHAIRPERSON COHEN: Is that the chains of 60 -- chains that have 60 or more inside the state of California or 60 and more across the U.S., period?

MR. WHITNEY: I think -- you know, I'm not a labor attorney by any stretch, but I believe it's 60 across the U.S. if you're a chain.

CHAIRPERSON COHEN: Okay.

MR. WHITNEY: And so imagine that franchisee. It's like, "Wow, I have one location."

CHAIRPERSON COHEN: Right.

MR. WHITNEY: But you're affiliated with Jack in the Box.

CHAIRPERSON COHEN: Right.

MR. WHITNEY: And Jack in the Box has 2,200. So we're all in this together, basically, and we're going to rise and fall. So they have to operate to standards. Otherwise, you know, that's a problem for Jack in the Box.

You know, we strive to have a uniform system where you don't know -- I certainly don't know when I go to a Jack in the Box restaurant. And frankly, I don't care, you know, whether it's franchised or operated because I know I'm going to get the same product, the same service, the same -- everything the same.

CHAIRPERSON COHEN: You hope.

MR. WHITNEY: As far as I know.

CHAIRPERSON COHEN: Okay. So maybe you could discuss how the profit motive element is crucial to the General Mills case -- I think that's the case that you cited. I think, Jon, you might have cited it -- and how it applies to the Jack in the Box situation.

The FTB contends that the profit margin disparity didn't show any quantitative distortion.

Yeah, I'll rest there. Okay. So --

MR. SPERRING: Yeah, I can take that.

So in General Mills, you had low profit margin hedging activity that was, by the standard formula, included at gross. So you have serial sales and hedging all included at gross.

What the Court said was, yeah, we can treat them differently because they have different profit margins.

Here, we have franchising revenue treated at net and we have the stores at gross, but yet we have the same profit margin.

So the point is they should be treated the same. Treat them at gross. We're doing the same thing that the Court did in General Mills.

CHAIRPERSON COHEN: All right. FTB.

Oh, sure. Member Perrault.

MEMBER PERRAULT: Thank you, Controller.

I just want to ask a clarifying question.

You're referring to the profit for the company-owned stores as gross, and you're referring to what you receive from your franchisees as net.

I guess I'm not quite following why you think that the portion from the franchisees is net. Is that just because that's the portion that the corporation gets, that 15 percent?

MR. SPERRING: Yeah. And it doesn't include the cost --

MEMBER PERRAULT: So you think it's net, it's considered net?

MR. SPERRING: Yeah. Because it doesn't include the cost to goods sold.

MEMBER PERRAULT: But isn't it technically still gross, because it's what you, the company, gets?

MR. SPERRING: Yeah. But it doesn't include the cost to goods sold; right? And so that is the vast majority -- okay -- of, you know, the dollar of receipts, gross receipts coming in. Right?

MEMBER PERRAULT: Okay.

MR. SPERRING: So all the cost of food, labor.

Yeah. Okay.

MEMBER PERRAULT: Yeah, I kind of -- I'm not sure I agree with that analysis, but I understand what you're saying. It's just that the company is getting 15 percent-ish. I mean, I know that that's what is their average or the amount, the average amount. Yet the franchisee gets the remaining 85 percent. They're the ones, you know, doing all the sales, running the company.

I understand that there are costs that are going to the company from the franchisee so that they can model, they can use Jack in the Box's, you know, name.

So I guess I'm just not quite -- I'm just not quite following the net analysis.

MR. SPERRING: Maybe think about it this way.

MEMBER PERRAULT: That's all.

MR. SPERRING: You can have two stores, right, one that is franchised and one that is company owned. Okay? The net profit coming from both can be equal. In fact, right, franchising is more profitable than running company-owned stores. That's why they're getting out of running company-owned stores. You may make less on your company-owned store than your franchised store.

So that's why it doesn't make sense not to treat them both as gross.

CHAIRPERSON COHEN: Well, you can't see what I can see, Mr. Sperring, but you've got a lot of confused faces in here.

I'm going to go back to my second question and I'm going to have to drill down, because I need to get a firm understanding about the taxpayer's responsibility over the franchise as opposed to the company-run stores.

So in your example, you've got a franchisee and then you have a company-run store. You said that they're net-net. They can make the same amount of money; right? But it's to the franchisee -- the company's -- it's in the company's best interest to franchise because they make more money, but yet the franchisee is doing the work.

Right? Do I understand that correctly?

MR. WHITNEY: Right.

CHAIRPERSON COHEN: Okay. So -- but what is the company's responsibility to the franchisee? What does the corporation have to do?

I know they do branding; right? I know that they do marketing. What else do they do?

MR. WHITNEY: Yeah. They provide the real estate; so the building and the underlying land on which the --

CHAIRPERSON COHEN: Do they negotiate the contract for the real estate?

MR. WHITNEY: Well, very often, Jack in the Box will own the real estate. And so they enter into a contract with the franchisee where percentage rent, you know, that 10 percent, roughly, of sales is paid to Jack in the Box for the real estate that the franchisee uses.

We also provide the trade name; the trademark; the method of operation; you know, the IT systems that account, including, like, you know, mobile payment systems and credit card systems and everything. We have a secure interest in all of the assets.

So it's not a passive, sort of remote affair. We are very intimately involved and kind of partnering. You know, it may not be a formal partnership, but it's a franchise agreement where we're in business with our franchisees.

CHAIRPERSON COHEN: What independence does a franchisee have the ability to exercise?

MR. WHITNEY: You know, I --

MR. SPERRING: I would say hiring and firing.

MR. WHITNEY: Yeah, hiring and firing.

MR. SPERRING: Yeah. First and foremost, hiring and firing staff.

CHAIRPERSON COHEN: Okay. Anything else?

MR. SPERRING: I think they can set the prices.

CHAIRPERSON COHEN: Oh, really?

MR. SPERRING: Yeah.

CHAIRPERSON COHEN: Okay. I thought those were set by corporate.

MR. SPERRING: They may have some parameters, but they do have some flexibility in pricing.

CHAIRPERSON COHEN: Okay. All right. All right. Let me move on. I'm going to move on to the FTB.

Hi, ladies. Question for you.

So how do you address the taxpayer's argument that independent contractors were used for decades to apportion a taxpayer's service income under -- this is under CCR Section 25136 -- and -- and determined that the independent contractor's business activity drives the service income tax by the state?

And I just want to know how that is different here.

MS. CHO: Sure. I would be happy to answer that.

CHAIRPERSON COHEN: Thank you.

MS. CHO: The special role for independent contractors recognizes that these independent contractors are acting on behalf of the taxpayer in an agent-type capacity.

So, therefore, the income that's being generated by the taxpayer with these special provisions, we're trying to determine how much of that income is sourced to California and what are taxpayer's activities. And that special provision uses -- recognizes that those activities are attributable to the taxpayer.

CHAIRPERSON COHEN: Okay. Colleagues, any follow-up questions or anything for clarification?

(No response.)

CHAIRPERSON COHEN: No? Okay.

My second question is how do you distinguish the taxpayer's freight forwarders example that they use mileage driven by third parties to fairly reflect business activities in the apportionment formula?

MS. CHO: Sure. We disagree with taxpayer's characterization of how those receipts are sourced.

CHAIRPERSON COHEN: Uh-huh.

MS. CHO: There are cases where freight forwarders provide the service of arranging the transportation, and generally, even in those instances, we source those kind of on a -- we determine that the activities that are -- the activities the taxpayer is performing to generate that income is 50 percent source-able to the place of origin and then 50 percent to the place of the destination.

CHAIRPERSON COHEN: Uh-huh.

MS. CHO: And then I believe what taxpayer may be referring to is in the case where freight forwarders are providing their own transportation.

And in those instances, we may look to the mileage ratio. But that would be the taxpayer performing their own transportation services.

CHAIRPERSON COHEN: Okay. So how does this fail to equate to this case?

MS. CHO: So it's different because we -- well, in all of these examples that are provided by the taxpayer, these provisions are being used to properly determine how much income is California sourced. None of these examples are doing what taxpayer is trying to do, which is to include third-party receipts without corresponding income.

CHAIRPERSON COHEN: Okay.

MS. TAMAGNI: And if I could add one more thing.

There is a regulation that directly addresses franchisors. We have 25137-3. And at this time, what the taxpayer is asking for, that was not part of the regulation.

So there is a special regulation that directly applies to the taxpayer.

CHAIRPERSON COHEN: All right. Thank you.

I want to go back to PWC over here.

So what's your preferred apportionment formula?

You had two up there. You said you could go either way. And I want to understand why.

MR. WHITNEY: Yeah. I think that the store count ratio is very straightforward. It's easy to verify.

CHAIRPERSON COHEN: Is that the first one?

MR. WHITNEY: Yeah. The first one, Option 1.

CHAIRPERSON COHEN: And the reasons why you believe that it's so straightforward and easy to understand?

MR. WHITNEY: I mean, just one simple number. I mean, we do have the sales data, you know, for the systemwide restaurants. You know, it might be a little extra pull to figure out, you know, how much is in California relative to the other states. It's not like a huge additional lift.

But it seems like the store count is super easy to verify, super easy to pull. So I think from a compliance standpoint, maybe a little bit easier.

CHAIRPERSON COHEN: Okay. All right. Thank you.

Let me check in.

Colleagues, do you have any other follow-up questions that you wanted to ask? If not, we're going to -- we're going to keep moving on.

Okay. This is what I want to do. I'm wondering if there is any way that we can continue to move this conversation, the two attorneys continue to talk and come to some kind of an agreement.

What I would like to do, colleagues, for you to consider is continuing this item and bringing it back in September so that there may be an opportunity here to come to an agreement that's mutually beneficial for both parties.

MEMBER PERRAULT: Controller, I don't disagree with you. In fact, if I could maybe add on to your thinking --

CHAIRPERSON COHEN: Yes.

MEMBER PERRAULT: -- as well.

I mean, I would like to hold the item under submission. That would be my recommendation as well.

CHAIRPERSON COHEN: Okay.

MEMBER PERRAULT: So I agree with you on that, to September.

Because I do think -- you know, based on kind of hearing both of the arguments, I do think that it would be helpful to have a better understanding of kind of the taxpayer's business model as it relates to their franchisees.

And I also think that, you know, this decision -- I do think that it's going to have an impact on maybe potentially a broader -- broader swath of California franchisors. And so I think we need a little bit more information about that model before we can --

CHAIRPERSON COHEN: I agree with you.

MEMBER PERRAULT: -- before I can make a decision. Let's put it that way.

CHAIRPERSON COHEN: I completely agree with you. So we're going to hold back.

If it's all right with you, I'll make a motion to take the matter under submission and the Board will bring back this matter for further discussion in September.

MEMBER PERRAULT: I'll second that.

CHAIRPERSON COHEN: All right. So just let the record reflect the motion was made by Controller Cohen, seconded by Member Perrault.

Can we take a roll call vote, please.

MS. RUBALCAVA: Member Gaines?

MEMBER GAINES: Aye.

MS. RUBALCAVA: Member Perrault?

MEMBER PERRAULT: Aye.

MS. RUBALCAVA: Chair Controller Malia Cohen?

CHAIRPERSON COHEN: Aye.

All right. Thank you. This motion passes unanimously.

All right. We'll see you both back in September.

Thank you very much.

Okay. Let's continue moving on. See, I told you we had a great lineup for you today. Look at that democracy in action. You get a front-row seat.

So our next item is a closed session item. The Board is going to go into closed session at this time to discuss Agenda Item A in a neighboring room just down the hall.

We will return to the auditorium upon the conclusion of the closed section.

We ask that the audience remain seated. We ask that the audience remain seated while the Board members exit for closed session. Thank you.

(Closed Session commenced from 2:26 to 2:43 p.m.)

CHAIRPERSON COHEN: Good afternoon, ladies and gentlemen. I would like to call the meeting back into order. It's 2:43, May 14th. We are back in open session.

The Board met in closed session to discuss pending litigation.

The next item is Item Number 2. Members, it's the approval of the minutes. Excuse me.

May I have -- we have minutes from the March 24th, 2025, Franchise Tax Board meeting.

Members, I just want to check in to see if there are any questions or additions.

(No response.)

CHAIRPERSON COHEN: None? Okay.

Is there any member of the public that would like to speak on this item? Or if there's any member of the public that's on the conference line that would like to speak on this item, please come on up.

(No response.)

Seeing none in the chamber, online?

PHONE MODERATOR: Thank you.

Members of the public on the phone lines, if you would like to place yourself in queue for public comment, as a reminder, please press 1, followed by 0, at this time. 1, followed by 0.

(No response.)

PHONE MODERATOR: No members of the public are queueing up at this time. Please continue.

CHAIRPERSON COHEN: All right. Thank you.

Seeing that there's no member of the public, we will keep -- we'll keep moving on.

May I have a motion for approval of the minutes?

All right. Motion --

MEMBER GAINES: So moved.

CHAIRPERSON COHEN: Thank you. Motion made by Senator Gaines and seconded by --

MEMBER PERRAULT: Second.

CHAIRPERSON COHEN: -- Member Perrault. We can take this without objection.

All right. Without objection, the minutes pass unanimously.

Can we do that without objection, or do I need to do a Board roll call?

MR. HOFELING: You can do that without objection.

CHAIRPERSON COHEN: Okay. That's what I thought. All right. Great.

We're just going to move on. Next item is Agenda Item Number 3. We have a presentation regarding FTB's 2024 employee awards, one of my favorite highlights.

Hello, Megan Wahl.

This is an informational item, ladies and gentlemen.

Megan, I turn it back over to you. Thank you.

MS. WAHL: Thank you, Madam Chair. Good afternoon, Board Members.

I'm Megan Wahl, the Board Meeting Production Manager in the Administrative Services Division.

Today, I have the privilege to present a slideshow that celebrates the FTB employees, supervisors, and teams recognized for outstanding achievements in 2024.

Annually, the FTB acknowledges exceptional service to the enterprise and ultimately to the State of California through the Superior and Sustained Superior Accomplishment Awards, Large Team Awards, and Supervisory Bonus Awards. These awards recognize employees, teams, and supervisors for achievements that go above and beyond their job responsibilities to provide innovative solutions, strengthen the workforce; enhance service delivery; or uphold the Department's mission, goals, and values.

As with any year, 2023/2024 fiscal year presented challenges to solve and identified areas we could improve. FTB employees responded with innovation and awareness. Here are a few examples.

To more efficiently contact potentially eligible taxpayers, a member of the Technology Services Division developed a program to more easily identify and send outreach materials to Californians who may be eligible for the Earned Income Tax Credit.

During the Receiving and Data Storage System transition from paper to computer-based workloads, one employee helped design and produce an extensive training manual, benefitting the entire business area and increasing efficiency and accuracy in implementation.

And, finally, related to the EDR2 project we hear so much about, 161 online trainings and curriculums were created and released, allowing staff to gain necessary knowledge and trainings effectively and efficiently.

While FTB has informal programs that recognize employee achievements throughout the year, this program celebrates those individuals and teams that have made significant contributions to support our strategic plan’s four goals.

The employees, supervisors, and teams you will see today provide exceptional service to our customers, administer effective compliance strategies, develop programs that emphasize the importance of investing in a strong organization, and focus on operational excellence.

I'm excited to join you as we watch this presentation and recognize the hard work and dedication of the FTB employees featured here.

(Slideshow played.)

MS. WAHL: Thank you for allowing us to share our accomplishments. Thank you.

(Applause.)

CHAIRPERSON COHEN: Ms. Wahl, do we have any of the folks that we highlighted? Are they in the chamber with us today?

MS. WAHL: Yes, ma'am.

CHAIRPERSON COHEN: Can we make them stand up?

MS. WAHL: We can.

CHAIRPERSON COHEN: Stand up, please, so we can recognize you. Thank you so much.

(Applause.)

CHAIRPERSON COHEN: Outstanding. Outstanding. I hope you're not embarrassed by this, but this is just a small token of our appreciation. You make California work. You're making the Franchise Tax Board work, and we could not do it without you. And we just want to say thank you. We're very grateful. Congratulations on your accomplishment.

Does this mean pay raises for everyone, Selvi? No? Okay.

Sorry. Sorry. False alarm. All we can do is give you applause and say thank you. Now get back to work.

Okay. Colleagues, is there anything that you would like to say to these wonderful employees?

MEMBER PERRAULT: Yes. I'll just -- all kidding aside, but I will echo the Controller's thanks. She's exactly correct, that the state of California would not run without individuals like you committed to public service. And in a world that I know is becoming increasingly more difficult to be a public servant, I just want to say that we thank you and we appreciate all the hard work that you do to continue to move the work forward.

I'm sure many of you, particularly because this is FTB, are doing it in an environment where you're not always talking and interacting with the most friendliest of individuals. And so to that, we thank you even more, because that -- we understand that the work is even harder.

And I just -- I want to say again -- and, again, echoing the Controller's comments before we started this item -- this is one of my favorite items every year.

And I personally have the privilege of sitting on a good number of boards for the State, and I wish every single one of them and their agencies would do something like this and recognize the work of their staff, because I think it's important. I think it's important for each and every one of you to understand how you fit into the larger picture and how important you are to our work.

So thank you.

CHAIRPERSON COHEN: Well said. Very well said. Thank you.

How about you, Senator?

MEMBER GAINES: Yes. I would just like to thank you for recognition within an organization that is well run. I've had an opportunity to tour the Franchise Tax Board and then I was here on Tax Day.

And so thank you, Executive Officer, for that opportunity to see how it works on Tax Day.

And I was blown away at how busy it was and how much -- how much money was flowing in per day that was -- I believe it was not electronic. I think it was -- I think those were checks coming in, like 70 or 80 million a day, and I'm going, wow. I'm so happy that we've got competent people that know how to track all this.

And I'm glad that you have a taxpayer advocate, you've got a team so that, if someone has an issue, they can get that addressed. Because I think it's so important that we have the best relationship that we can with taxpayers.

And those are tough situations. I understand it because I'm from the insurance business, and people don't want to talk about insurance and they don't want to talk about taxes; right? But they want competent people.

And what I thought was very interesting -- I don't know how many years you've had this for -- but this opportunity on Tax Day, I guess maybe -- maybe it's year-round. I don't know all the specifics. But if someone calls in and you get a busy line, they'll say, "Hey, can we call you back?"

And that is really a nice touch that I think the private sector -- I see it sometimes in the private sector. But, man, that could be implemented across our economy and you would have a lot less frustrated Californians.

So thank you for what you do. We appreciate it. And we need good public servants that are willing to go down this career path to keep California the best it's ever been. And let's try to keep making it better. I love this state.

So thank you.

CHAIRPERSON COHEN: All right. Thank you very much.

Ms. Wahl, are there any other comments from you?

MS. WAHL: No. If you have any questions, I'm happy to answer them, though.

CHAIRPERSON COHEN: Thank you. I don't think -- we're speechless. There's no questions.

I would like to open up the public comment to see if anyone would like to comment, say something nice about your colleague.

(No response.)

CHAIRPERSON COHEN: All right. Anyone online who would like to comment on the Item Number 3, Mr. Operator?

PHONE MODERATOR: Members of the phone -- thank you.

Members of the phone line -- on the phone lines, if you would like to place yourself in queue for public comment, as a reminder, please press 1, followed by 0, at this time. 1, followed by 0.

(No response.)

PHONE MODERATOR: And no members of the public are queueing up at this time. Please continue.

CHAIRPERSON COHEN: All right. Thank you very much.

So, colleagues, this is an informational item; so there's no action that needs to be taken.

We're going to go on and keep moving forward to Item Number 4.

Item Number 4 is a presentation of the 2025 Filing Season Update -- oh, my gosh. Get ready. I love this portion too -- of the Filing Season Update. It's going to be presented by Jame Eiserman and Kim Kohli.

Welcome.

MR. EISERMAN: Good afternoon, Madam Chair and Board Members.

My name is Jame Eiserman, and I am from the

Filing Compliance Bureau in the Filing Division. Today I'm here with Kim Kohli from the Special Programs Bureau in the Accounts Receivable Management Division to share information about the 2025 filing season.

As you know, the filing deadline for most California taxpayers was April 15th. However, Los Angeles County individuals and businesses impacted by the recent fires were granted a postponement to file and pay their taxes until October 15th, 2025. While many taxpayers had until October 15th to file, most impacted taxpayers filed by the April 15th deadline.

At FTB, the planning efforts for the filing season involve multiple areas across the Department. We support each other’s operations to ensure a smooth filing experience for our customers. This extensive coordination and planning resulted in a successful April 15th.

At this time, I would like to share some statistics to demonstrate the magnitude of what we have achieved.

Our general customer service phone line and chat were extended one additional hour, until 6:00 p.m., from April 1st through April 15th.

Our Tax Practitioners Hotline was also open one additional hour, until 6:00 p.m., from March 3rd through

March 17th and April 1st through April 15th.

These service channels were available on the March 31st holiday for Cesar Chavez Day and Saturday, April 12th, from 8:00 to 5:00.

Our online service options remained available 24 hours a day and 7 days a week.

For those who do not choose to use our customer contact center, FTB offers detailed filing instructions; helpful information on its website; and various self-service tools, including MyFTB and online payment options.

These efforts continue to produce results, as taxpayers successfully visited our website 16 million times. They accessed our Web Pay application 1.6 million times. Our Check Your Refund app had 3.1 million views. And our MyFTB Application was accessed 2 million times.

We continue to look for ways to encourage using our self-service options and will continue to include this as a focus for our upcoming 2025 tax filing season.

Next, I'll cover some return processing highlights.

FTB continued to see increased use of our electronic filing options as taxpayers filed by the April due date.

15.5 million personal income tax returns were filed, 98 percent of which were filed electronically, which is a slight increase from last year.

In addition to processing returns, 12 million refunds were issued, 88 percent by direct deposit.

And 4.5 million taxpayers were -- sorry.

4.5 million tax payments were received, 75.2 percent electronically, compared to 72 percent last year.

As an essential service for our customers, our contact center provides exceptional customer experience. We do recognize that during the busiest times of year, on occasion, taxpayers find it difficult to connect with a contact center agent. Still, we are always trying to improve our level of access, which is the percentage of taxpayer contacts we can serve against the total amount of contacts made.

Recruitment and retention for our customer service positions has been challenging. The good news is that we are engaged in some pilot efforts to accelerate the time it takes to hire qualified applicants dramatically. We hope we'll be able to hire and keep more critical customer service staff.

Just last month, we held a one-day hiring event here on the FTB campus where prospective candidates could come in and ask questions, fill out applications, and interview all at once. Over 400 people attended the event, including 76 walk-ins. We held over 200 interviews during the event and interviewed the rest of them the following Thursday. And I'm happy to add that we are offering -- making tentative offers this week on 65 positions.

As I mentioned a short while ago, the filing season is truly a team effort here, and much of the hard work and planning have helped us achieve our goal of a smooth filing season.

Those efforts paid off, and I would like to share with you some feedback that we received from our customers during the filing season.

“Namreeta at Station 2473 was excellent. She gave me a thorough response without me having to ask additional follow-up questions. She was respectful and professional, and I want to say that I appreciate her. Thank you so much."

"Live Chat was easy to use. Kayla was very helpful and friendly and made sure to keep me posted on her status. She was able to resolve my issues quickly. I am very satisfied with the experience! Great job!"

I now want to turn the presentation over to my partner, Kim Kohli. She will share information about our public counters, how we have helped those impacted by disasters, and our programs designed to aid California taxpayers.

MS. KOHLI: Thank you, Jame.

Good afternoon, Madam Chair and esteemed Board Members. I'm honored to present this update to you today.

Our public counters are essential to our operations and have had many noteworthy accomplishments this year, which I'm very excited to highlight on behalf of the division.

As of April 25th, our public counters have served over 24,000 customers during this filing season. Our appointment system has enhanced the customer experience and decreased overall wait times. We are proud to have maintained 93 percent approval rating from our customer -- public counter customers and receive frequent positive feedback, with a four-and-a-half star rating on the appointment scheduling experience.

Our Field Office Public Counter Teams frequently seek opportunities to provide the best support to our customers. For example, the field team has created a quick reference guide, including screenshots and step-by-step instructions, to assist customers making credit card payments at the kiosks in the field offices.

This helps customers correctly populate the required information to ensure their payment is processed accurately and timely.

FTB Field Offices have also improved their training strategy for new Public Counter Team Members. New team members are hired at least two weeks before beginning their formal classroom training, which allows new staff to job shadow seasoned staff while assisting customers in our field offices. When our new team members said this strategy was beneficial in reinforcing their understanding and retention of the information they learned in classroom training, it was formally adopted as a key component of onboarding and training.

This filing season, FTB also collaborated with other state agencies at Local Assistance Centers, LACs, and Disaster Recovery Centers, DRCs, to aid taxpayers affected by disasters.

At these centers, FTB employees offer survivors a range of information, such as guidance on claiming disaster losses, acquiring copies of tax returns and forms, or updating their addresses.

For the current fiscal year, as of April 25th, 28 FTB staff members supported 5,984 taxpayers at 13 LACs and DRCs. As of April 23rd, we've answered and responded to 1,168 calls and emails from a dedicated phone line and email address for taxpayers affected by the Los Angeles County fires.

The Franchise Tax Board continued participating in the Volunteer Income Tax, VITA, program that provides federal and state tax return filing services to taxpayers in their local communities. This year, there were 1,479 trained volunteers and site coordinators, including 108 FTB employees. 32 of these individuals were first-time volunteers.

The volunteers participated in over 17 local in-person events. As of April 16th, FTB volunteers prepared approximately 4,432 federal and state tax returns.

Moving to our next program, the California Earned Income Tax Credit, or CalEITC, provides a tax credit for those earning up to $31,950 per year. Over 2.4 million returns were filed this year claiming CalEITC.

In addition, over 319,000 claimed the Young Child Tax Credit, and over 4,000 taxpayers also claimed the Foster Youth Tax Credit. These credit programs allowed over $1 billion to taxpayers who qualified.

CalFile is another important application that provides free filing options for California tax returns. As of April 29th, CalFile has received 87,674 returns.

As FTB celebrates the completion of another very successful filing season, we are proud to look back at all we've accomplished and have immense gratitude for the opportunity to serve our taxpayers. The collaborative partnership between the Filing and the Accounts Receivable Management Division's contact centers ensures the best service and utmost support to California taxpayers.

We continue to serve the citizens of California with the excellent customer experience received at our public counters, assisting disaster survivors at Local Assistance and Disaster Recovery Centers, and providing help with preparation of federal and state tax returns by our VITA volunteers.

We sincerely appreciate our dedicated team members who make this possible and look forward to continuing these efforts.

Thank you for allowing us time to present our Filing Season achievements that benefit California taxpayers and highlight our dedicated employees' efforts. We truly value your ongoing support and are happy to answer any questions.

CHAIRPERSON COHEN: Thank you very much. Actually, we do have a couple questions.

Anyone in this room that helped participate in making sure that Tax Day was phenomenal, thank you.

Highly detailed, very competent work. I appreciate it.

This is now my fifth year serving on the Franchise Tax Board, and I just love to see how the organization continues to grow. More powerful each year.

In 2023, it showed us what we're capable of in the most unprecedented times. When you think about those, that was the time of the -- was it the rains? -- severe weather storms.

And then in 2024, we had -- let's see. 2024 put us back on our normal course of business, doing what we do best. But then we had fires in 2025 also.

So it's been a really interesting tax season. I guess technically we may be still in tax season, because you've got the extension from L.A. County. And I just love how this organization is able to roll with the punches and just continue to offer stellar service.

The federal IRS works closely with us because they see the capabilities and the potential here in the state of California. And I'm thanking my good friend on the Board of Equalization. Member Sally Lieber always talks about the File -- what is it called? The CalFile -- CalFile being a really strong instrument to help Californians file their taxes in a seamless way.

I am saddened to learn that the federal

government has eliminated or at least put a pause on that particular program. I'm hopeful that it will be able to be resolved or resumed very quickly here in the state of California.

I want to talk about Slide Number 5. This is the customer service highlights.

The level of access dropped by 3 percent. I just wanted to know -- it dropped 3 percent, from 50 percent last year to 47 this year.

How are we going to be able to reverse that? And I know it's a small percentage drop, but I do think that we should understand exactly where these gaps are happening so that we don't continue to see it.

MR. EISERMAN: You know, a lot of that has to do with our vacancies. And so by this current -- the hiring process that we just went through will, you know, start us off at the beginning of the fiscal year fully staffed in our contact centers.

CHAIRPERSON COHEN: Okay.

MR. EISERMAN: We'll also have more positions if they become available. That hiring effort that we did last month will still be there for us to reach into as needed.

So we think we're putting our best foot forward and in a good place.

CHAIRPERSON COHEN: Okay. Does FTB implement any AI technology in its customer service platform, such as Chatbox -- I think we do have a Chatbox feature -- to help bring down wait times?

MR. EISERMAN: I'm unaware of AI being used.

CHAIRPERSON COHEN: Okay.

MR. EISERMAN: Sorry.

CHAIRPERSON COHEN: It's coming, I'm sure. Somebody is thinking about it within this organization.

Please, Selvi.

EXECUTIVE OFFICER STANISLAUS: Yes, we are. But we haven't sort of zeroed in on exactly what we are doing. But we looked at some demos. Some companies have come. Like, last Friday, Deloitte was here, and they showed us some wonderful techniques. So that's in our future.

CHAIRPERSON COHEN: Yep. See, I told you somebody is thinking about it. Okay.

I want to talk a little bit about the Foster Youth Credit. The Foster Youth Credit -- it's like a resource that's untapped, you know. And we already know that it's a proven antipoverty measure, but only 20 percent of those deemed eligible were actually claiming credit.

So how can we leverage the resources to make more foster youth -- make sure that more foster youth are claiming this tax credit?

MR. EISERMAN: We currently send out letters for anybody that we believe is eligible for those -- you know, for those credits when we get that information. And --

CHAIRPERSON COHEN: Hold on.

Where do you get the list of folks that you believe are eligible?

MR. EISERMAN: We work with advocacy groups to --

CHAIRPERSON COHEN: So these are nonprofit organizations?

MR. EISERMAN: Yes.

CHAIRPERSON COHEN: But aren't these wards of the state? Wouldn't we have their contact information somewhere in some database?

MR. EISERMAN: We may. I'm not aware of that.

CHAIRPERSON COHEN: Hmm. It's not as easy as that, I'm told?

MEMBER PERRAULT: No.

CHAIRPERSON COHEN: Okay. All right. So we need to do better. The partnering with nonprofit and the advocacy groups is certainly one avenue, but we should be -- when you look at the Earned Income Tax Credit, how many people utilize that one, that is years, I think, of being diligent, relentless.

Yes, partnerships with nonprofit organizations, but the foster youth of the state of California are the ones that are probably in the greatest need of this tax credit. And these tax credits ultimately put money back in these young people's pockets as they transition from youth into adulthood.

I know I'm probably speaking to the choir. You probably are of like mind. But perhaps we can start to think about this as a Board and come up with additional suggestions.

Senator, you might have even some contacts back from your days in the legislature of just ways that we can continue to get the word out about this Foster Youth Tax Credit.

I'm going to move on. I want to talk a little bit about L.A. County.

As I said earlier in my remark, it has extended the deadline to file their personal and business tax return.

I was wondering if you had any advice that you could share for L.A. residents who may be listening to ensure that a smooth tax -- that they will have a smooth tax filing experience.

MR. EISERMAN: The only thing I can say is that we are here for them, you know, on our call centers to help them in any way possible.

CHAIRPERSON COHEN: And I would have to echo that. You certainly are here for them. The whole organization was on the ground at the Disaster Relief Centers shortly after the fires were put out, both in the Palisades and then an additional site in -- in Pasadena.

So I had a chance to go down there. I know Senator Gaines had a chance to go down there and meet with Franchise Tax Board employees, and it was phenomenal -- the morale, the excitement for such a serious matter. So I'm grateful for that.

Okay. Colleagues, do you have any other questions about the presentation for Item -- for this item?

MEMBER GAINES: Yes.

CHAIRPERSON COHEN: Please.

MEMBER GAINES: If I could.

CHAIRPERSON COHEN: You can take it away.

MEMBER GAINES: Yeah. Great. Thank you very much.

So I'm just trying to reflect on the tax season we just went through. And is there anything that you gleaned from it that would be helpful in preparation of the next tax year?

Were there -- were there issues or challenges that you looked at and said, "Hey, maybe we could make the adjustment for the next tax season"?

MR. EISERMAN: I would say that every tax year is different and with different challenges, and we just, here at FTB, need to be prepared for that and ready to act when appropriate. Because as the Madam Chair just spoke, right, we had years where nothing -- no two years are the same.

So we just have to be prepared and ready to -- ready for change.

MEMBER GAINES: Great. Wonderful.

And just amplify what the Controller mentioned about the Foster Youth program.

Was there a directive by you to try to follow up on that and dig in and find out why we don't have better penetration in terms of participation?

CHAIRPERSON COHEN: That's an interesting approach. No. I was just merely making a casual conversation. But we certainly could make a formal action from this body to direct staff to come up with a -- develop a strategy.

MEMBER GAINES: Yes.

CHAIRPERSON COHEN: That's what I'm hearing.

MEMBER GAINES: Yeah.
CHAIRPERSON COHEN: To develop a strategy to reach, to improve maybe from 20 percent, double it to 40 percent in the next filing season.
MEMBER GAINES: Yeah.
CHAIRPERSON COHEN: I would support that.
MEMBER GAINES: Would it be possible to get a review of what we're doing currently and then maybe suggestions in terms of how we could get better participation?
EXECUTIVE OFFICER STANISLAUS: Absolutely, Board Member. And we'll bring it back in September, if not in December, with some strategy and some good numbers.
CHAIRPERSON COHEN: Thank you.
MEMBER GAINES: Okay. Wonderful.
CHAIRPERSON COHEN: That's a great idea. Are we in -- I think we're all in agreement on that.
MEMBER PERRAULT: Yeah. I might just add to that that I recognize some of the constraints about identifying foster -- particularly foster youth who then are coming out of the foster system and then into their adulthood, that they were former foster youth, as it relates to the program. But there are several other entities in the state working in this same frame.
The HOPE Board and Scholarship Board in

particular already have done some work in this space to identify those individuals, and I think they work directly with some of our other State agencies that monitor them. So that might also be just another avenue of collaboration, if nothing else, about outreach.

And so I just throw that out there, for what it's worth. But I would agree with my fellow Board Members. It would be nice to sort of see this group of individuals be able to really be able to take advantage of this program. And I think a lot of it does just come down to knowing it's available and then the how; right? How do I do it?

So -- but, yes, I would agree with both my other Board Members about getting a little bit more information about it and how we can move the needle.

CHAIRPERSON COHEN: All right. Does that conclude your remarks? All right. Thank you.

MEMBER GAINES: Yeah. Thank you.

CHAIRPERSON COHEN: All right. Thank you very much for your presentation.

Again, this is an action -- this is an informational. So this is not an action item.

I'm going to open up to public comment to see if there's anyone that would like to speak on this item in the chamber.

(No response.)

CHAIRPERSON COHEN: All right. Seeing none, I'm going to go to the online operator.

Mr. Operator, is there anyone in the queue?

PHONE MODERATOR: Members of the public on the phone lines, if you would like to place yourself in the queue for public comment, as a reminder, please press 1, followed by 0, at this time.

And, Christine Grab, your line is open. Please go ahead.

CHAIRPERSON COHEN: Great.

MS. GRAB: Hi. In March of 2023, FTB gave itself a 25 million budget increase in order to hire more customer service staff and give more raises and bonuses to existing staff.

It looks like, from the records of the public that the Disclosure Office gave me, FTB, from '22 -- 2022 and 2023 combined, gave 128 people bonuses totaling 14,500, which is an average of 113 per person for bonus. Meanwhile, it looks like Selvi Stanislaus got $79,000 in bonuses.

And you guys didn't answer my question that I had emailed asking you to disclose how many customer service agents are employed now versus March 2023, when you guys gave yourself that large budget increase. So my assumption is that you haven't increased the customer service staff by any substantial amount.

So whose pockets did that $25 million go into? Where did that $25 million go? Your customer service numbers have gone down, not up. Selvi certainly does not deserve a bonus for customer service numbers going down.

Also, FTB consistently fails to disclose very important information that we taxpayers have a right to know. For example, what percent of issues are resolved via chat? I know when I call in, when I try to chat, they usually tell me they can't help me; I need to call in.

What is the wait time and percentage of calls that are answered in the Tax Practitioner Line? What's the wait time and number of calls that are answered in the Collections Department Line?

I know that I had a very hard time getting through to the Collections Department. I was constantly hung up on by the Collections Department. Why aren't those numbers disclosed to show your excellent customer service?

And how much preferential treatment do the Tax Practitioners get over the average taxpayer versus the people in the Collections Department?

Like, there's clearly a tiered customer service system, where you discriminate against certain groups. Like, the Collections Department, for example, are discriminated against. Because I am going to bet a lot of money the Tax Practitioner Hotline has a much higher percentage of calls answered than the Collections Department does.

What is the average number of calls taken per day per agent in each of the departments? How have those numbers changed since FTB gave itself that $25 million budget increase? What are the abandonment rates for phone calls? And can you tell whether FTB hung up on the taxpayer, which is what usually happened to me, or whether the taxpayer hung up?

You know --

MS. RUBALCAVA: Controller, time has expired.

MS. GRAB: -- I have -- okay. Thank you.

CHAIRPERSON COHEN: Thank you.

Operator, are there any other comments.

PHONE MODERATOR: And no -- presently, no members of the public are queueing up. Please continue.

CHAIRPERSON COHEN: All right. Thank you very much. Well, that was exciting.

Thank you for your presentation. We're going to move on. Okay.

MR. EISERMAN: Thank you.

CHAIRPERSON COHEN: Thank you.

Item 5 on the agenda is the Executive Officer's Time.

And at this time, I'll turn it over to Ms. Selvi Stanislaus.

EXECUTIVE OFFICER STANISLAUS: Thank you, Madam Chair, and good afternoon, Board Members.

For my time today, I would like to give you an update on some FTB events we have coming up.

I would like to begin by thanking the Controller first for attending our Wellness Fair last month. We really appreciated your active participation in the many presentations and exhibits. Your presence meant a great deal to our employees and highlighted the importance of wellness in the workplace.

FTB is very much looking forward to our "Come Grow With Us" Career Expo and Career Awareness and Resources Event happening on Wednesday, May 28th, from 10:00 a.m. to 2:00 p.m. here in the Town Center.

This event offers internal and external candidates and attendees a chance to learn more about career opportunities at FTB with presentations, hands-on support from our staff, and direct access to our recruitment teams.

We also have something very exciting coming forward, and our Missions and Values Team is hosting the "FTB Values YOU" event on Wednesday, July 30th, from 11:00 to 1:00.

This event celebrates the individuality of all our employees through food and music and art and personal expression. Exhibits will be held in the Golden State Rooms A and B, and live performances will take place here in the Goldberg Auditorium. We're hoping for great participation across the Department.

So, once again, thank you to the Controller and the Board Members for your ongoing support and partnership. These events reflect the vibrant, inclusive, and forward-thinking culture you have built at FTB. Thank you.

CHAIRPERSON COHEN: All right. Thank you very much. It was a pleasure to be with you on the Wellness Fair. Very nice, very nicely done. My compliments to the entire team that put it together.

All right. Colleagues, do you have any questions for Ms. -- yes.

MEMBER GAINES: Yeah. I'm just curious about, in terms of priority for FTB, what would be, in your mind, the top priority in terms of what we ought to be working on at the FTB? In terms of I'm always looking for areas of weakness and areas that we can improve and, you know, provide better service.

We had a constituent call complaining about calls. I don't know -- I don't know much about that. But I think shedding a little light would be helpful, just in terms of we're hearing good responses. I love this idea where, you know, they can call you back.

I don't know if there's differentiation between one department or another. I think that would be helpful to know, just so we have an idea that we are providing the best customer service as we can.

But also taking a look at, hey, where can we improve, to be self-reflective in that sense. And where should we be working, what areas should we be working.

I know we're talking about -- I've had some discussion about, you know, how are we from a cybersecurity standpoint. And I appreciate the reaching out to me. And so I'm going to have an opportunity to meet and find out more about that. And it's such a challenge in both the public and the private sector about people's data being taken.

But I'm just trying to -- trying to kind of do what I think I should be doing, sitting here in this chair, in terms of trying to make the FTB as best as it can be and making sure that we're addressing concerns of our constituents.

EXECUTIVE OFFICER STANISLAUS: Thank you, Member Gaines.

So one of the areas of challenges, of course, as you heard, is our call centers. Our call centers are impacted.

We've just hired a very vibrant group of employees now. And so always continuously trying to fill positions. So that's an area of challenge for FTB.

MEMBER GAINES: Okay.

EXECUTIVE OFFICER STANISLAUS: You were speaking about the Virtual Hold, which is, you know, very impressive, that we can -- people can leave their phone numbers and we'll call them back.

MEMBER GAINES: Yes.

EXECUTIVE OFFICER STANISLAUS: So you saw the demo firsthand.

We also have a very vibrant chat feature, where our agents can chat to four and five people at the same time.

MEMBER GAINES: Okay.

EXECUTIVE OFFICER STANISLAUS: So we are doing all we can, you know, within our budgetary concerns, to still make sure that we're reaching out to customers. Because customer service is, as -- you know, as the

Board has said, is our number-one priority.

MEMBER GAINES: Okay. And would it be -- do you think it's -- do you think we're handling it from department to department in a similar response time, or are there certain departments where it's taking longer to get a call back or a longer wait time? Because we were given, I think it was -- I wrote down 12 minutes for the average wait time.

But I don't know. You know, what is that coming from? Could that be dramatically different from one department to the next?

EXECUTIVE OFFICER STANISLAUS: So that's during the filing season. There's a longer, you know, wait time.

MEMBER GAINES: Yes.

EXECUTIVE OFFICER STANISLAUS: The nonfiling season, of course, we answer the phone calls, you know, more sooner.

MEMBER GAINES: Right. And it's hard to get good people; right?

EXECUTIVE OFFICER STANISLAUS: Well, we get the best.

MEMBER GAINES: Yeah. But, I mean, in terms of -- in terms of hiring.

EXECUTIVE OFFICER STANISLAUS: Yeah. Yes.

MEMBER GAINES: Right? So you're trying to hire more folks.

I think you probably have challenges during tax season in terms of ramping up part-time. And I know that, through technology improvements, we're not relying on that as much as we have in the past.

But what is the -- how successful can you be in terms of hiring someone to answer phones for a few months of the year? I don't even know if you can find an employee that would do that, because you have to have so much expertise to handle a question. It sounds like that's more of a full-time position with someone that has some experience.

EXECUTIVE OFFICER STANISLAUS: Right. So when we hire them, we have a very robust training program that they go through. And then thereafter, they are, you know, on the job, being trained.

And so FTB is a little mini city. You know, we have a lot of employees here.

MEMBER GAINES: Yes.

EXECUTIVE OFFICER STANISLAUS: So we want them to be promoted. And so they will stay on maybe a year or two years and then they get promoted.

MEMBER GAINES: Sure.

EXECUTIVE OFFICER STANISLAUS: Which we agree and we encourage.

So it's constantly a revolving circle of trying to hire people, train them; then they get promoted and hire new people. So it is challenging. And we are not budgeted to answer the calls 100 percent. We are not budgeted.

MEMBER GAINES: Okay. So then you got to figure out how do we operate more efficiently to handle that load --

EXECUTIVE OFFICER STANISLAUS: Yes.

MEMBER GAINES: -- without more money.

EXECUTIVE OFFICER STANISLAUS: Exactly. And what we do during the filing season is we have the Collection folks. You know, they come to the Filing and they answer phone calls, or vice versa. So we always are trying to figure out how we can best serve our customers.

MEMBER GAINES: Very good. Thank you. I appreciate it.

CHAIRPERSON COHEN: All right. Thank you very much.

Let's move to public comment to see if there's any comment on Item Number 5.

Sir, please just make your way to the podium.

MR. COUNTS: My name is James Counts. I'm a

CPA --

CHAIRPERSON COHEN: Just a minute, Mr. James.

Can we turn on his mic so we can hear him? We're going to -- great. Thank you for your help. All right.

MR. COUNTS: My name is James Counts. I'm a CPA representing myself.

And as a CPA, I'm interested in numbers, but I need to relate them to them so I can better understand the number. So, for instance, comments about "We just hired X number of people," you know, to work in some area.

Well, what would be handy to know is -- well, let me make up some numbers. If, say, that unit got 200 people and we just hired 25 people, well, that gives me some relationship of what if, in the last year, we've lost 20 people? Well, all you're doing with 25 is sort of replacing the 20 that left. And yeah, you got 5 more, but then how soon are more leaving, if you've already lost 20 in the last year?

See, so all you may be doing is just bringing them in for the same service. But let's say you lost none in the last year and you've added 25. Well, that sounds good. You're increasing the service.

So on the face of it, just saying you've had a certain number that you recently hired and, you know, you're trying to bring them online for whatever their service is doesn't give the full picture. So if somehow, in providing numbers, it would be handy if more detail could be provided to better understand.

Thank you.

CHAIRPERSON COHEN: Thank you. That's good feedback. Context matters.

All right. Is there anyone else that would like to share some of their thoughts or feedback, comments?

(No response.)

CHAIRPERSON COHEN: All right. We'll go to the operator online. Anyone online?

PHONE MODERATOR: Members of the public on the phone lines, if you would like to place yourself in the queue for public comment, as a reminder, you may press 1 and then 0 at this time.

And no members of the public are queueing up at this time. Please continue.

CHAIRPERSON COHEN: All right. Thank you very much.

We are going to go on to Item Number 6. Item Number 6 is Board Members' Time.

Colleagues, do you have anything to share?

You do? Let's start with you, Senator.

MEMBER GAINES: Thank you. I appreciate it.

I wanted to, if I could, just do a little review and then I've got a couple questions, and it has to do with the Pomrehn decision that was made earlier this month. And it was Pomrehn filed for a tax refund in the 2018 tax year. The FTB denied the refund because the original statute of limitations had expired in April of 2023 and Pomrehn filed in October of 2023.

Then it went to appeal at the OTA, and the FTB's decision to the OTA was reversed by the OTA. And the OTA found that Pomrehn was eligible for an extension of the statute of limitations due to severe weather in the storms of 2023, which we actually talked about a little bit here, that impacted his county of residence.

The extension pushed the statute of limitations to November of 2023, making Pomrehn's October filing timely.

The outcome was the OTA ruled in favor of Pomrehn, ordering a refund of nearly $3,800 for the 2018 tax year, which is all good. The system worked; right?

And so the questions that I have is that is that now a precedent that's been established, and what is the follow-up from the FTB staff to make sure it's applied to all taxpayers that were in a similar situation?

So you had one -- one taxpayer that objected, went through OTA, went through the process, and the OTA supported that. I just want to make sure that everybody else that was in a similar situation would be treated in a similar fashion.

MS. ZUMAETA: I'll go ahead and address that question. Thank you very much for the question.

The Pomrehn decision is indicative of what FTB's position on this issue was from the start. So it is not a change in FTB's policy or procedure. Unfortunately, it was an oversight. It was a mistake on our part.

So we did, after getting that decision, go back through all of our cases that are pending and all of the claim denials that were made for that time period and made sure that any of them that had been denied erroneously through that time period were reversed and that those claims were treated as timely.

MEMBER GAINES: Excellent. That's great. Thank you. That's what I wanted to hear. I just want to make sure it's equal application of the decision or the statute or law or whatever.

So if similar cases like that occur in the future, they would be treated in a similar fashion that anybody else that got caught, whether it was a timely issue or whatever?

MS. ZUMAETA: Correct. Yes. And we are in the process, also, of making some changes to our external website and our internal guidance for our staff to make sure that it's clearer that these extensions exist and what those extensions extend and operate for.

MEMBER GAINES: That's great. Wonderful. Thank you. Appreciate it.

CHAIRPERSON COHEN: All right. I'm going to go ahead and jump in here.

I am not going to see you for Memorial Day; so I just want to recognize and wish you all a very happy Memorial Day. I'm the daughter of a Vietnam War vet, and so Memorial Day is actually a pretty big deal in our family. This -- the United States Armed -- United States Armed Services and Forces have people who have dedicated their lives to step in harm's way to protect our way of life, and I just wanted to acknowledge that ahead of Memorial Day coming up this -- at the end of this month.

Also, this month is API Heritage Month. And for those members that are here in the FTB community that find themselves part of the API heritage -- or API community, I want to celebrate you this May. This is -- this is an incredible legacy that you have, that the API community comes from but also what they gave to the state of California.

And last but not least, I want to recognize and pay tribute to a former Los Angeles County Councilman and State Senator, Nate Holden, who passed away last Wednesday at the age of 95. Senator Holden had over 30 years in the public sector as a City Councilmember. He served as a State Senator and as an Assistant Chief Deputy to former L.A. Supervisor Kenneth Hahn.

Holden -- Mr. Holden or Senator Holden was born on June 19th, 1929, in Macon, Georgia; raised in Elizabeth, New Jersey; served in the U.S. Army during World War II; and was a member of the Military Police Corps, serving in Germany and Italy.

He was elected to the California Senate in 1974, where he served until '78. And during his term, Senator Holden helped author California's Housing Financial Discrimination Act, or the Holden Act. And this act simply prohibited financial institutions from discriminating based on race, religion, sex, or marital status.

He then went on to serve for nearly two decades on the L.A. City Council from 1987 to 2023 -- excuse me -- to 2003. His initiatives included introducing publicly funded programs that reduce illegal firearms in Los Angeles through a unique buyback effort in coordination with LAPD. Also, he was the driving force behind the rebuilding of the Crenshaw areas following the Los Angeles riots in 1992.

So Nate Holden -- he leaves behind an incredible legacy of service and strength, a dedicated public servant who was committed to serving the lives of residents of south Los Angeles. And I just wanted to publicly acknowledge that my thoughts, my heart, and my prayers are with the Holden family during this time.

If I'm not mistaken, I think you served with his son.

MEMBER GAINES: That's what I was going to ask.

CHAIRPERSON COHEN: Yeah.

MEMBER GAINES: Yeah. So that was his son that I served with in the legislature. Yeah.

CHAIRPERSON COHEN: That's right. So it's quite a legacy the Holden family has in the state of California, and I just wanted to uplift it.

MEMBER GAINES: Great family. Yeah. Thank you.

CHAIRPERSON COHEN: Thank you.

Member Perrault, do you have any closing remarks?

MEMBER PERRAULT: No remarks, other than to say -- and this is in my world -- happy May Revise Day. For those of you who are interested, we did -- the Governor did present his May revision earlier today.

And so if you're dying of interest to know all the details, it is now available online for folks to dig in and see that our revenue -- I will just say, you know, despite the volatility we're seeing on the federal level, certainly, California's revenue remains strong. We did see an increase in our revenue coming in.

And, again, I'm just going to wrap that back around to our earlier time in presentation of awards and acknowledge and thank those of you who are here working in the capacities that you are at the FTB for your role in collecting that revenue and helping the citizens of California be able to finalize and complete their taxes.

So -- but just to note that, yes, the May revision is out, if folks are wanting to know where we -- where we are headed.

CHAIRPERSON COHEN: I'm so excited. I can't wait to go home and read it and pore all over the budget.

MEMBER PERRAULT: Yes. Just a little nighttime reading for you, Controller.

CHAIRPERSON COHEN: This is going to be so great. It's going to be amazing. Thank you, Member Perrault.

Let's go to public comment on Item 6.

Any member of the chamber who would like to speak on Item 6, public comment?

(No response.)

CHAIRPERSON COHEN: All right. Seeing none, Mr. Operator, is there any member of the public that would like to speak?

PHONE MODERATOR: Members of the public on the phone lines, if you would like to place yourself in the queue for public comment, as a reminder, you may press 1 and then 0 at this time.

(No response.)

PHONE MODERATOR: No members of the public are queueing up at this time. Please continue.

CHAIRPERSON COHEN: All right. Thank you very much.

Ladies and gentlemen, it is 3:40, and this meeting is adjourned. Thank you.

(Proceedings concluded at 3:40 p.m.)

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CERTIFICATE OF REPORTER

I, EMILY SAMELSON, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing proceedings were reported, to the best of my ability, in shorthand by me, Emily Samelson, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th of May, 2025.

EMILY SAMELSON, CSR
Certified Shorthand Reporter
License No. 14043

E R R A T A   S H E E T

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