

WORKLOAD NARRATIVE

FIELD OPERATIONS

August 2016

Workload: August was a busy month. Intake for all cases [20,251] exceeded 20,000 for the first time since October and was 8% greater than the average intake this year. Dispositions [20,264] were at the highest level since March and 9% above the norm. The open inventory [29,078] fell by 96 cases but remains 2% greater than the average for 2016. The overall open balance has been very stable for the last five months.

UI. In August, the number of new UI cases [18,807 cases; 11,059 appellants] was 8% above the average for 2016 and represented the largest intake since October 2015. Meanwhile, closed cases [18,700 cases; 10,996 appellants] were 9% above the calendar year norm and represented the highest output since March. The open balance [18,246 cases; 10,729 appellants] rose by 40 cases during the month. The caseload is now 7% above the calendar year average and at its highest level since January 2015. The inventory of extension cases fell to 4.6% of the entire UI workload.

DI. In August, DI verifications [1,013] were 5% above the average for this year and represented the largest intake since March. Dispositions [967] were 1% below the 2016 average and trailed intake for the first time in five months. As a result, the open inventory [1,520] rose by 45 cases, but remains 7% smaller than the calendar year average.

Tax, Rulings, Other. In tax, the field issued 264 decisions, which was 23% greater than the average for 2016. Unfortunately, we received 269 new petitions, which was 32% higher than average and represented the highest intake this year. The open inventory [4,453] is 5% smaller than the calendar year norm. For rulings, intake [142] was 41% smaller than usual, while output [320] was 50% above the norm. The open inventory [4,823] is now the smallest it has been since December.

Case Aging and Time Lapse. The field continued to struggle with time lapse. Both the 30-day [59.9%] and the 45-day [78.9%] percentages were slightly below DOL regulations. Both measures are in compliance so far this federal reporting year. Average case age [28.1] fell as we received a huge influx of new cases and was below the federal threshold for the seventh straight month. The July results for extension cases were mixed.

53.3% of those cases were resolved within 30 days, which is up from 44.1% in June. The average case age for extension cases fell to 32 days. However, the 45-day percentage [71.5%] fell slightly.

ALL PROGRAM FY TRENDS - FO

NEW OPENED CASES

FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2013	35,188	32,990	35,462	34,280	35,060	30,208	31,649	31,789	26,509	29,993	24,703	26,488	374,319	31,193			
2014	30,651	25,592	27,945	32,463	28,565	26,278	26,130	23,655	23,363	22,861	17,201	21,439	306,143	25,512	82%	-5,681	
2015	18,740	17,502	21,282	23,417	19,659	21,153	21,735	20,095	18,915	20,481	17,478	18,717	239,174	19,931	78%	-5,581	
2016	17,776	17,454	19,674	19,886	18,686	19,413	17,474	20,251					150,614	18,827	94%	-1,104	
Multi	5												11	2015	94%	92%	
	1												4	2014	74%	68%	
	1												11	2013	60%	56%	
	1												11	chg 2016 avg	chg 2016 YTD		

All Programs registrations to date are down 8% from 2015, down 32% from 2014, and down 44% from 2013
 All Programs registrations monthly average is down 6% from 2015, down 26% from 2014, and down 40% from 2013

CLOSED CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	Avg.	% Chg of Avg	Yr-Yr AvgChg			
2013	34,777	34,753	39,525	30,992	31,139	27,467	37,227	35,005	31,214	29,718	25,437	24,098	381,352	31,779					
2014	27,304	26,789	28,051	28,143	28,600	26,672	27,086	25,897	22,225	25,206	18,498	20,377	304,848	25,404	80%	-6,375			
2015	20,925	22,273	22,494	21,249	20,206	20,759	21,282	19,088	18,743	20,234	16,605	18,285	242,143	20,179	79%	-5,225			
2016	17,072	18,476	20,754	17,301	18,814	19,300	17,075	20,264					149,056	18,632	92%	-1,547			
Multi	1/10												2/10	1/6	2/4	2015	92%	89%	
	1												10	2014	73%	68%			
	1												10	2013	59%	55%			
	1												10	chg 2016 avg	chg 2016 YTD				

All Programs dispositions to date are down 11% from 2015, down 32% from 2014, and down 45% from 2013
 All Programs dispositions average is down 8% from 2015, down 27% from 2014, and down 41% from 2013

BALANCE OPEN CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	Avg.	% Chg of Avg	Yr-Yr AvgChg						
2013	40,368	38,419	34,291	37,401	41,214	43,875	38,202	34,844	30,062	30,217	29,380	31,701		35,831								
2014	34,463	33,209	33,026	37,269	37,183	36,725	35,656	33,331	34,401	31,980	30,632	31,633		34,126	95%	-1,706						
2015	29,381	24,557	23,290	25,400	24,815	25,127	25,470	26,422	26,541	26,756	27,619	27,986		26,114	77%	-8,012						
2016	28,622	27,547	26,376	28,924	28,751	28,831	29,174	29,078						28,413	109%	2,299						
Multi	9												9	12	13	12	4	15	2015	109%	111%	
	9												9	12	13	12	4	15	2014	83%	81%	
	9												9	12	13	12	4	15	2013	79%	74%	
	9												9	12	13	12	4	15	chg 2016 avg	chg 2016 YTD		

All Programs balance to date is up 11% from 2015, down 19% from 2014, and down 26% from 2013
 All Programs balance monthly average is up 9% from 2015, down 17% from 2014, and down 21% from 2013

RULING-OTHER FY TRENDS - FO

Program Codes 9, 13, 14, 19, 21, 22, 40, 44

NEW OPENED CASES

FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	292	280	201	234	589	585	432	380	219	89	135	112	3,548	296		
2014	156	223	402	791	601	228	231	217	190	119	71	133	3,362	280	95%	-16
2015	97	152	329	464	396	294	247	254	123	144	228	380	3,108	259	92%	-21
2016	316	249	210	418	148	229	314	162					2,046	256	99%	-3
													2015	99%	92%	
													2014	91%	72%	
													2013	86%	68%	
														chg 2016 avg	chg 2016 YTD	

Ruling/Other registrations to date are down 8% from 2015, down 28% from 2014, and down 32% from 2013
 Ruling/Other registrations monthly average is down 1% from 2015, down 9% from 2014, and down 14% from 2013

CLOSED CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	242	250	424	278	254	248	329	322	574	598	162	223	3,904	325		
2014	204	383	288	130	156	113	174	106	269	209	160	284	2,476	206	63%	-119
2015	116	139	915	243	286	206	271	176	196	193	186	95	3,022	252	122%	46
2016	120	118	220	219	238	308	290	333					1,846	231	92%	-21
													2015	92%	78%	
													2014	112%	119%	
													2013	71%	79%	
														chg 2016 avg	chg 2016 YTD	

Ruling/Other dispositions to date are down 22% from 2015, up 19% from 2014, and down 21% from 2013
 Ruling/Other dispositions monthly average is down 8% from 2015, up 12% from 2014, and down 29% from 2013

BALANCE OPEN CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	4,182	4,212	3,988	3,943	4,275	4,613	4,716	4,776	4,423	3,914	3,887	3,776	4,225		
2014	3,724	3,566	3,667	4,329	4,775	4,892	4,914	5,022	4,942	4,851	4,761	4,597	4,503	107%	278
2015	4,580	4,591	4,002	4,221	4,332	4,420	4,396	4,473	4,398	4,349	4,387	4,673	4,402	98%	-102
2016	4,869	5,000	4,989	5,186	5,091	5,011	5,035	4,859					5,005	114%	603
													2015	114%	114%
													2014	111%	115%
													2013	118%	115%
														chg 2016 avg	chg 2016 YTD

Ruling/Other balance to date is up 14% from 2015, up 15% from 2014, and up 15% from 2013
 Ruling/Other balance monthly average is up 14% from 2015, up 11% from 2014, and up 18% from 2013

TAX FY TRENDS - FO

Program Codes 15, 17, 18, 32, 45, 46, 47, 48, 49

NEW OPENED CASES

FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	223	245	299	199	243	321	233	264	247	242	307	411	3,234	270		
2014	232	320	285	230	222	217	217	234	255	178	253	253	2,896	241	90%	-28
2015	124	197	271	194	189	300	247	235	177	136	268	270	2,608	217	90%	-24
2016	127	244	253	141	254	170	169	269					1,627	203	94%	-14
Tax registrations to date are down 7% from 2015, down 17% from 2014, and down 20% from 2013													2015	94%	93%	
Tax registrations monthly average is down 6% from 2015, down 16% from 2014, and down 25% from 2013													2014	84%	83%	
													2013	75%	80%	
													chg 2016 avg		chg 2016 YTD	

CLOSED CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	299	222	475	590	375	301	214	263	352	231	151	185	3,658	305		
2014	208	265	232	129	257	300	200	149	195	174	145	120	2,374	198	65%	-107
2015	81	150	143	212	252	272	196	93	64	76	81	139	1,759	147	74%	-51
2016	121	73	141	164	160	285	512	264					1,720	215	147%	68
Tax dispositions to date are up 23% from 2015, down 1% from 2014, and down 37% from 2013													2015	147%	123%	
Tax dispositions monthly average is up 47% from 2015, up 9% from 2014, and down 29% from 2013													2014	109%	99%	
													2013	71%	63%	
													chg 2016 avg		chg 2016 YTD	

BALANCE OPEN CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2013	3,606	3,629	3,453	3,062	2,930	2,949	2,967	2,965	2,861	2,872	3,028	3,253	3,131			
2014	3,276	3,328	3,381	3,482	3,447	3,363	3,379	3,463	3,523	3,526	3,633	3,766	3,464	111%	333	
2015	3,808	3,854	3,979	3,961	3,897	3,923	3,969	4,112	4,223	4,283	4,470	4,574	4,088	118%	624	
2016	4,580	4,742	4,853	4,830	4,918	4,802	4,458	4,453					4,705	115%	617	
Tax balance to date is up 19% from 2015, up 39% from 2014, and up 47% from 2013													2015	115%	119%	
Tax balance monthly average is up 15% from 2015, up 36% from 2014, and up 50% from 2013													2014	136%	139%	
													2013	150%	147%	
													chg 2016 avg		chg 2016 YTD	

DI FY TRENDS - FO
Program Codes 7, 10, 11, 12, 16 & 20

NEW OPENED CASES

FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	982	811	995	971	970	884	1,043	991	1,046	1,086	941	945	11,665	972		
2014	1,004	958	979	1,158	1,088	1,131	1,352	1,027	1,113	1,102	815	1,062	12,789	1,066	110%	94
2015	1,104	990	1,035	1,085	1,019	1,141	1,205	1,158	1,004	992	871	921	12,525	1,044	98%	-22
2016	861	995	1,140	979	944	974	790	1,013					7,696	962	92%	-82
													2015	92%	88%	
													2014	90%	88%	
													2013	99%	101%	
														chg 2016 avg	chg 2016 YTD	

DI registrations to date are down 12% from 2015, down 12% from 2014, and up 1% from 2013
DI registrations monthly average is down 8% from 2015, down 10% from 2014, and down 1% from 2013

CLOSED CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	1,083	906	1,186	734	758	860	1,026	1,098	1,223	1,298	749	822	11,743	979		
2014	835	891	958	927	1,047	1,038	1,024	1,101	1,241	1,165	965	1,073	12,265	1,022	104%	44
2015	1,144	1,230	1,376	1,045	939	978	1,149	1,052	906	1,034	850	964	12,667	1,056	103%	33
2016	927	964	852	1,111	1,096	1,062	864	967					7,843	980	93%	-75
													2015	93%	88%	
													2014	96%	100%	
													2013	100%	103%	
														chg 2016 avg	chg 2016 YTD	

DI dispositions to date are down 12% from 2015, even with 2014, and up 3% from 2013
DI dispositions monthly average is down 7% from 2015, down 4% from 2014, and even with 2013

BALANCE OPEN CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2013	1,277	1,182	991	1,227	1,437	1,462	1,481	1,374	1,198	986	1,177	1,300		1,258		
2014	1,469	1,536	1,557	1,788	1,830	1,922	2,250	2,176	2,048	1,984	1,834	1,823		1,851	147%	
2015	1,782	1,542	1,198	1,237	1,318	1,480	1,534	1,639	1,737	1,694	1,715	1,672		1,546	83%	
2016	1,605	1,636	1,924	1,791	1,638	1,549	1,475	1,520						1,642	106%	
														2015	106%	112%
														2014	89%	90%
														2013	131%	126%
															chg 2016 avg	chg 2016 YTD

DI balance to date is up 12% from 2015, down 10% from 2014, and up 26% from 2013
DI balance monthly average is up 6% from 2015, down 11% from 2014, and up 31% from 2013

UI FY TRENDS - FO

Program Codes 1, 2, 3, 4, 5, 6, 8, 23, 24, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42

NEW OPENED CASES

FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg			
2013	33,691	31,654	33,967	32,876	33,258	28,418	29,941	30,154	24,997	28,576	23,320	25,020	355,872	29,656					
2014	29,259	24,091	26,279	30,284	26,654	24,702	24,330	22,177	21,805	21,462	16,062	19,991	287,096	23,925	81%	-5,731			
2015	17,415	16,163	19,647	21,674	18,055	19,418	20,036	18,448	17,611	19,209	16,111	17,146	220,933	18,411	77%	-5,514			
2016	16,472	15,966	18,071	18,348	17,340	18,040	16,201	18,807					139,245	17,406	95%	-1,005			
Multi:	5												1	4	11				
UI registrations to date are down 8% from 2015, down 33% from 2014, and down 45% from 2013																			
UI registrations monthly average is down 5% from 2015, down 27% from 2014, and down 41% from 2013																			
CLOSED CASES																			
FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg			
2013	33,153	33,375	37,440	29,390	29,752	26,058	35,658	33,322	29,065	27,591	24,375	22,868	362,047	30,171					
2014	26,057	25,250	26,573	26,957	27,140	25,221	25,688	24,541	20,520	23,658	17,228	18,900	287,733	23,978	79%	-6,193			
2015	19,584	20,754	20,060	19,749	18,729	19,303	19,666	17,767	17,577	18,931	15,488	17,087	224,695	18,725	78%	-5,253			
2016	15,904	17,321	19,541	15,807	17,320	17,645	15,409	18,700					137,647	17,206	92%	-1,519			
Multi:	1/10												2/10	1/6	2/4				
UI dispositions to date are down 12% from 2015, down 34% from 2014, and down 47% from 2013																			
UI dispositions monthly average is down 8% from 2015, down 28% from 2014, and down 43% from 2013																			

BALANCE OPEN CASES

FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg				
2013	31,303	29,396	25,859	29,169	32,572	34,851	29,038	25,729	21,580	22,445	21,288	23,364		27,216						
2014	25,994	24,779	24,421	27,670	27,131	26,548	25,113	22,670	23,888	21,619	20,404	21,447		24,307	89%	-2,909				
2015	19,211	14,570	14,111	15,981	15,268	15,304	15,571	16,198	16,183	16,430	17,047	17,067		16,078	66%	-8,229				
2016	17,568	16,169	14,610	17,117	17,104	17,469	18,206	18,246						17,061	106%	983				
Multi:	9												9	12	13	12	4	15		
UI balance to date is up 8% from 2015, down 33% from 2014, and down 43% from 2013																				
UI balance monthly average is up 6% from 2015, down 30% from 2014, and down 37% from 2013																				

AO REPORT TO BOARD -- MONTH OF AUGUST 2016

	# Cases	Last Month	Cal Yr 2016 Avg	2015Avg	2011 Avg
REGISTRATIONS	1059	1059	1141	1331	3318
DISPOSITIONS	1401	965	1093	1420	2994
OPEN BALANCE	1395	1738	1201	1610	5814

CASE AGING (40days) 37.7

TIME LAPSE	
45 Days (50%)	28.00%
75 Days (80%)	91.00%
150 Days (95%)	100.00%

OTHER INFORMATION

FO to AO Transfer Rate	1.69
FO ALLs working in AO	0
Appeal Rate FO to AO	6.20%
Retired Annuitants	2

APPELLATE OPERATIONS ~ REPORT SUMMARY

APPELLATE		July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Average	AO Current Mo. % of Avg.	TOTAL	Appellants Current Mo.
WORKLOAD																	
Registrations																	
UI TL		996												996	100%	996	
DI		41												41	100%	41	
Ruling & T-R		7												7	100%	7	
Tax		15												15	100%	15	
Other		0												0	0%	0	
Total		1,059	0	0	0	0	0	0	0	0	0	0	0	1,059	100%	1,059	620
	Multi Cases																
Dispositions																	
UI TL		923												923	100%	923	
DI		31												31	100%	31	
Ruling & T-R		4												4	100%	4	
Tax		7												7	100%	7	
Other		0												0	0%	0	
Total		965	0	0	0	0	0	0	0	0	0	0	0	965	100%	965	491
	Multi Case/Ch																
Balance - Open Cases																	
UI TL		1,631												1,631	100%		
DI		65												65	100%		
Ruling & T-R		9												9	100%		
Tax		32												32	100%		
Other		1												1	100%		
Total		1,738	0	0	0	0	0	0	0	0	0	0	0	1,738	100%		992
	Multi Cases																Estimate
FO to AO Appeal Rate																	
UI TL		5.6%												5.6%	100%		
DI		3.9%												3.9%	100%		
Ruling & T-R		2.4%												2.4%	100%		
Tax		5.3%												5.3%	100%		
Other		0.0%												0.0%	0%		
Overall Rate		5.5%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.5%	1200%		

APPELLATE OPERATIONS ~ REPORT SUMMARY

APPELLATE	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Average	AO Current Mo. % of Avg.	TOTAL	Appellants Current Mo.
WORKLOAD																
Registrations																
UI TL	937	967	1,345	1,211	960	1,322	996						1,105	90%	7,738	
DI	41	33	60	44	46	60	41						46	88%	325	
Ruling & T-R	2	2	0	1	3	2	7						2	288%	17	
Tax	9	1	6	4	8	11	15						8	194%	54	
Other	0	0	1	0	1	2	0						1	0%	4	
Total	989	1,003	1,412	1,260	1,018	1,397	1,059	0	0	0	0	0	1,163	91%	8,138	620
Multi Cases																
Dispositions																
UI TL	1,168	799	1,359	919	1,221	678	923						1,010	91%	7,067	
DI	39	31	61	37	48	47	31						42	74%	294	
Ruling & T-R	1	1	3	0	0	1	4						1	280%	10	
Tax	9	11	6	1	3	5	7						6	117%	42	
Other	0	0	0	1	1	1	0						0	0%	3	
Total	1,217	842	1,429	958	1,273	732	965	0	0	0	0	0	1,059	91%	7,416	491
Multi Cases/Ct																
Balance - Open Cases																
UI TL	713	878	902	1,185	917	1,560	1,631						1,112	147%		
DI	36	38	38	44	43	55	65						46	143%		
Ruling & T-R	3	4	1	2	5	6	9						4	210%		
Tax	19	9	9	12	17	23	32						17	185%		
Other	0	0	1	0	0	1	1						0	233%		
Total	771	929	951	1,243	982	1,645	1,738	0	0	0	0	0	1,180	147%		992
Multi Cases																
FO to AO Appeal Rate																
UI TL	5.5%	6.1%	7.8%	6.2%	6.1%	7.6%	5.6%						6.4%	88%		
DI	4.3%	3.6%	6.2%	5.2%	4.1%	5.5%	3.9%						4.7%	83%		
Ruling & T-R	2.8%	2.2%	0.0%	0.5%	1.5%	0.9%	2.4%						1.5%	162%		
Tax	6.5%	0.8%	8.2%	2.8%	4.9%	6.9%	5.3%						5.1%	104%		
Other	0.0%	0.0%	5.9%	0.0%	5.3%	25.0%	0.0%						5.2%	0%		
Overall Rate	5.4%	5.9%	7.6%	6.1%	5.9%	7.4%	5.5%						6.3%	88%		

AO REPORT TO BOARD -- MONTH OF JULY 2016

	# Cases	Last Month	Cal Yr 2016 Avg	2015Avg	2011 Avg
REGISTRATIONS	1059	1397	1153	1331	3318
DISPOSITIONS	965	732	1049	1420	2994
OPEN BALANCE	1738	1645	1173	1610	5814

CASE AGING (40days) 33.1

TIME LAPSE	
45 Days (50%)	40.00%
75 Days (80%)	89.00%
150 Days (95%)	100.00%

OTHER INFORMATION

FO to AO Transfer Rate 1.9

FO ALLs working in AO 0

Appeal Rate FO to AO 6.10%

Retired Annuitants 2

ALL PROGRAM FY TRENDS - FO

NEW OPENED CASES

FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	Avg.	% Chg of Avg	Yr-Yr AvgChg		
2013	35,188	32,990	35,462	34,280	35,060	30,208	31,649	31,789	26,509	29,993	24,703	26,488	374,319	31,193				
2014	30,651	25,592	27,945	32,463	28,565	26,278	26,130	23,655	23,363	22,861	17,201	21,439	306,143	25,512	82%	-5,681		
2015	18,740	17,502	21,282	23,417	19,659	21,153	21,735	20,095	18,915	20,481	17,478	18,717	239,174	19,931	78%	-5,581		
2016	17,776	17,454	19,674	19,886	18,686	19,413	17,474						130,363	18,623	93%	-1,308		
Multi	5												1	4				
	All Programs registrations to date are down 9% from 2015, down 34% from 2014, and down 44% from 2013												2015	93%	91%			
	All Programs registrations to date are down 9% from 2015, down 34% from 2014, and down 44% from 2013												2014	73%	66%			
	All Programs registrations to date are down 9% from 2015, down 34% from 2014, and down 44% from 2013												2013	60%	56%			
	All Programs registrations to date are down 9% from 2015, down 34% from 2014, and down 44% from 2013												chg 2016 avg		chg 2016 YTD			

CLOSED CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	Avg.	% Chg of Avg	Yr-Yr AvgChg			
2013	34,777	34,753	39,525	30,992	31,139	27,467	37,227	35,005	31,214	29,718	25,437	24,098	381,352	31,779					
2014	27,304	26,789	28,051	28,143	28,600	26,672	27,086	25,897	22,225	25,206	18,498	20,377	304,848	25,404	80%	-6,375			
2015	20,925	22,273	22,494	21,249	20,206	20,759	21,282	19,088	18,743	20,234	16,605	18,285	242,143	20,179	79%	-5,225			
2016	17,072	18,476	20,754	17,301	18,814	19,300	17,075						128,792	18,399	91%	-1,780			
Multi	1/10												2/10	1/6	2/4				
	All Programs dispositions to date are down 14% from 2015, down 33% from 2014, and down 45% from 2013												2015	91%	86%				
	All Programs dispositions to date are down 14% from 2015, down 33% from 2014, and down 45% from 2013												2014	72%	67%				
	All Programs dispositions to date are down 14% from 2015, down 33% from 2014, and down 45% from 2013												2013	58%	55%				
	All Programs dispositions to date are down 14% from 2015, down 33% from 2014, and down 45% from 2013												chg 2016 avg		chg 2016 YTD				

BALANCE OPEN CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg				
2013	40,368	38,419	34,291	37,401	41,214	43,875	38,202	34,844	30,062	30,217	29,380	31,701	35,831						
2014	34,463	33,209	33,026	37,269	37,183	36,725	35,656	33,331	34,401	31,980	30,632	31,633	34,126	95%	-1,706				
2015	29,381	24,557	23,290	25,400	24,815	25,127	25,470	26,422	26,541	26,756	27,619	27,986	26,114	77%	-8,012				
2016	28,622	27,547	26,376	28,924	28,751	28,831	29,174						28,318	108%	2,204				
Multi	9												9	12	13	12	4		
	All Programs balance to date is up 11% from 2015, down 20% from 2014, and down 28% from 2013												2015	108%	111%				
	All Programs balance to date is up 11% from 2015, down 20% from 2014, and down 28% from 2013												2014	83%	80%				
	All Programs balance to date is up 11% from 2015, down 20% from 2014, and down 28% from 2013												2013	79%	72%				
	All Programs balance to date is up 11% from 2015, down 20% from 2014, and down 28% from 2013												chg 2016 avg		chg 2016 YTD				

RULING-OTHER FY TRENDS - FO
Program Codes 9, 13, 14, 19, 21, 22, 40, 44

NEW OPENED CASES

FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	292	280	201	234	589	585	432	380	219	89	135	112	3,548	296		
2014	156	223	402	791	601	228	231	217	190	119	71	133	3,362	280	95%	-16
2015	97	152	329	464	396	294	247	254	123	144	228	380	3,108	259	92%	-21
2016	316	249	210	418	148	229	314						1,884	269	104%	10
													2015	104%	95%	
													2014	96%	72%	
													2013	91%	72%	
														chg 2016 avg	chg 2016 YTD	

Ruling/Other registrations to date are down 5% from 2015, down 28% from 2014, and down 28% from 2013
Ruling/Other registrations monthly average is up 4% from 2015, down 4% from 2014, and down 9% from 2013

CLOSED CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	242	250	424	278	254	248	329	322	574	598	162	223	3,904	325		
2014	204	383	288	130	156	113	174	106	269	209	160	284	2,476	206	63%	-119
2015	116	139	915	243	286	206	271	176	196	193	186	95	3,022	252	122%	46
2016	120	118	220	219	238	308	290						1,513	216	86%	-36
													2015	86%	70%	
													2014	105%	104%	
													2013	66%	75%	
														chg 2016 avg	chg 2016 YTD	

Ruling/Other dispositions to date are down 30% from 2015, up 4% from 2014, and down 25% from 2013
Ruling/Other dispositions monthly average is down 14% from 2015, up 5% from 2014, and down 34% from 2013

BALANCE OPEN CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2013	4,182	4,212	3,988	3,943	4,275	4,613	4,716	4,776	4,423	3,914	3,887	3,776	4,225			
2014	3,724	3,566	3,667	4,329	4,775	4,892	4,914	5,022	4,942	4,851	4,761	4,597	4,503	107%	278	
2015	4,580	4,591	4,002	4,221	4,332	4,420	4,396	4,473	4,398	4,349	4,387	4,673	4,402	98%	-102	
2016	4,869	5,000	4,989	5,186	5,091	5,011	5,035						5,026	114%	624	
													2015	114%	115%	
													2014	112%	118%	
													2013	119%	118%	
														chg 2016 avg	chg 2016 YTD	

Ruling/Other balance to date is up 15% from 2015, up 18% from 2014, and up 18% from 2013
Ruling/Other balance monthly average is up 14% from 2015, up 12% from 2014, and up 19% from 2013

TAX FY TRENDS - FO
 Program Codes 15, 17, 18, 32, 45, 46, 47, 48, 49

NEW OPENED CASES

FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	223	245	299	199	243	321	233	264	247	242	307	411	3,234	270		
2014	232	320	285	230	222	217	217	234	255	178	253	253	2,896	241	90%	-28
2015	124	197	271	194	189	300	247	235	177	136	268	270	2,608	217	90%	-24
2016	127	244	253	141	254	170	169						1,358	194	89%	-23
													2015	89%	89%	
													2014	80%	79%	
													2013	72%	77%	
														chg 2016 avg	chg 2016 YTD	

Tax registrations to date are down 11% from 2015, down 21% from 2014, and down 23% from 2013
 Tax registrations monthly average is down 11% from 2015, down 20% from 2014, and down 28% from 2013

CLOSED CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	299	222	475	590	375	301	214	263	352	231	151	185	3,658	305		
2014	208	265	232	129	257	300	200	149	195	174	145	120	2,374	198	65%	-107
2015	81	150	143	212	252	272	196	93	64	76	81	139	1,759	147	74%	-51
2016	121	73	141	164	160	285	512						1,456	208	142%	61
													2015	142%	111%	
													2014	105%	92%	
													2013	68%	59%	
														chg 2016 avg	chg 2016 YTD	

Tax dispositions to date are up 11% from 2015, down 8% from 2014, and down 41% from 2013
 Tax dispositions monthly average is up 42% from 2015, up 5% from 2014, and down 32% from 2013

BALANCE OPEN CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	3,606	3,629	3,453	3,062	2,930	2,949	2,967	2,965	2,861	2,872	3,028	3,253	3,131		
2014	3,276	3,328	3,381	3,482	3,447	3,363	3,379	3,463	3,523	3,526	3,633	3,766	3,464	111%	333
2015	3,808	3,854	3,979	3,961	3,897	3,923	3,969	4,112	4,223	4,283	4,470	4,574	4,088	118%	624
2016	4,580	4,742	4,853	4,830	4,918	4,802	4,458						4,740	116%	653
													2015	116%	121%
													2014	137%	140%
													2013	151%	147%
														chg 2016 avg	chg 2016 YTD

Tax balance to date is up 21% from 2015, up 40% from 2014, and up 47% from 2013
 Tax balance monthly average is up 16% from 2015, up 37% from 2014, and up 51% from 2013

DI FY TRENDS - FO
Program Codes 7, 10, 11, 12, 16 & 20

NEW OPENED CASES

FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	982	811	995	971	970	884	1,043	991	1,046	1,086	941	945	11,665	972		
2014	1,004	958	979	1,158	1,088	1,131	1,352	1,027	1,113	1,102	815	1,062	12,789	1,066	110%	94
2015	1,104	990	1,035	1,085	1,019	1,141	1,205	1,158	1,004	992	871	921	12,525	1,044	98%	-22
2016	861	995	1,140	979	944	974	790						6,683	955	91%	-89
DI registrations to date are down 12% from 2015, down 13% from 2014, and even with 2013													2015	91%	88%	
DI registrations monthly average is down 9% from 2015, down 10% from 2014, and down 2% from 2013													2014	90%	87%	
													2013	98%	100%	
													chg 2016 avg chg 2016 YTD			

CLOSED CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	1,083	906	1,186	734	758	860	1,026	1,098	1,223	1,298	749	822	11,743	979		
2014	835	891	958	927	1,047	1,038	1,024	1,101	1,241	1,165	965	1,073	12,265	1,022	104%	44
2015	1,144	1,230	1,376	1,045	939	978	1,149	1,052	906	1,034	850	964	12,667	1,056	103%	33
2016	927	964	852	1,111	1,096	1,062	864						6,876	982	93%	-73
DI dispositions to date are down 13% from 2015, up 2% from 2014, and up 5% from 2013													2015	93%	87%	
DI dispositions monthly average is down 7% from 2015, down 4% from 2014, and even with 2013													2014	96%	102%	
													2013	100%	105%	
													chg 2016 avg chg 2016 YTD			

BALANCE OPEN CASES

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2013	1,277	1,182	991	1,227	1,437	1,462	1,481	1,374	1,198	986	1,177	1,300		1,258		
2014	1,469	1,536	1,557	1,788	1,830	1,922	2,250	2,176	2,048	1,984	1,834	1,823		1,851	147%	
2015	1,782	1,542	1,198	1,237	1,318	1,480	1,534	1,639	1,737	1,694	1,715	1,672		1,546	83%	
2016	1,605	1,636	1,924	1,791	1,638	1,549	1,475							1,660	107%	
DI balance to date is up 15% from 2015, down 6% from 2014, and up 28% from 2013													2015	107%	115%	
DI balance monthly average is up 7% from 2015, down 10% from 2014, and up 32% from 2013													2014	90%	94%	
													2013	132%	128%	
													chg 2016 avg chg 2016 YTD			

UI FY TRENDS - FO

Program Codes 1, 2, 3, 4, 5, 6, 8, 23, 24, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42

NEW OPENED CASES

FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg		
2013	33,691	31,654	33,967	32,876	33,258	28,418	29,941	30,154	24,997	28,576	23,320	25,020	355,872	29,656				
2014	29,259	24,091	26,279	30,284	26,654	24,702	24,330	22,177	21,805	21,462	16,062	19,991	287,096	23,925	81%	-5,731		
2015	17,415	16,163	19,647	21,674	18,055	19,418	20,036	18,448	17,611	19,209	16,111	17,146	220,933	18,411	77%	-5,514		
2016	16,472	15,966	18,071	18,348	17,340	18,040	16,201						120,438	17,205	93%	-1,206		
Multi	5												1	4				
UI registrations to date are down 9% from 2015, down 35% from 2014, and down 46% from 2013																		
UI registrations monthly average is down 7% from 2015, down 28% from 2014, and down 42% from 2013																		
CLOSED CASES																		
FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg		
2013	33,153	33,375	37,440	29,390	29,752	26,058	35,658	33,322	29,065	27,591	24,375	22,868	362,047	30,171				
2014	26,057	25,250	26,573	26,957	27,140	25,221	25,688	24,541	20,520	23,658	17,228	18,900	287,733	23,978	79%	-6,193		
2015	19,584	20,754	20,060	19,749	18,729	19,303	19,666	17,767	17,577	18,931	15,488	17,087	224,695	18,725	78%	-5,253		
2016	15,904	17,321	19,541	15,807	17,320	17,645	15,409						118,947	16,992	91%	-1,732		
Multi	1/10												2/10	1/6	2/4			
UI dispositions to date are down 14% from 2015, down 35% from 2014, and down 47% from 2013																		
UI dispositions monthly average is down 9% from 2015, down 29% from 2014, and down 44% from 2013																		

BALANCE OPEN CASES

FY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg			
2013	31,303	29,396	25,859	29,169	32,572	34,851	29,038	25,729	21,580	22,445	21,288	23,364		27,216					
2014	25,994	24,779	24,421	27,670	27,131	26,548	25,113	22,670	23,888	21,619	20,404	21,447		24,307	89%	-2,909			
2015	19,211	14,570	14,111	15,981	15,268	15,304	15,571	16,198	16,183	16,430	17,047	17,067		16,078	66%	-8,229			
2016	17,568	16,169	14,610	17,117	17,104	17,469	18,206							16,892	105%	813			
Multi	9												9	12	13	12	4		
UI balance to date is up 7% from 2015, down 35% from 2014, and down 44% from 2013																			
UI balance monthly average is up 5% from 2015, down 31% from 2014, and down 38% from 2013																			

FY UI TRENDS-AO

Program Codes 1, 2, 3, 4, 5, 6, 8, 23, 24, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42

REGISTRATIONS

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	1,997	1,978	2,276	2,233	1,541	1,591	1,620	1,608	1,558	1,883	1,572	1,743	21,600	1,800		
14/15	1,790	1,676	1,563	1,795	1,234	1,332	1,027	1,225	1,534	1,518	1,394	1,056	17,144	1,429	79%	-371
15/16	1,583	1,480	999	1,070	1,114	1,142	937	967	1,345	1,211	960	1,322	14,130	1,178	82%	-251
16/17	996												996	996	85%	-182
UI registrations Jan to date are down 37% from 15/16, down 44% from 14/15, and down 50% from 13/14 UI registration monthly average is down 15% from 15/16, down 30% from 14/15, and down 45% from 13/14													15/16	85%	63%	
													14/15	70%	56%	
													13/14	55%	50%	
													chg 14/15 avg chg 14/15 YTD			

DISPOSITIONS

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	2,173	2,602	2,040	1,787	1,582	2,083	1,443	1,490	1,689	1,817	1,599	1,548	21,853	1,821		
14/15	1,518	1,752	1,871	1,503	1,381	1,571	1,348	1,285	1,212	1,271	1,231	1,733	17,676	1,473	81%	-348
15/16	1,782	1,527	1,318	1,139	907	1,345	1,168	799	1,359	919	1,221	678	14,162	1,180	80%	-293
16/17	923												923	923	78%	-257
UI dispositions Jan to date are down 48% from 15/16, down 39% from 14/15, and down 58% from 13/14 UI disposition monthly average is down 22% from 15/16, down 37% from 14/15, and down 49% from 13/14													15/16	78%	52%	
													14/15	63%	61%	
													13/14	51%	42%	
													chg 14/15 avg chg 14/15 YTD			

BALANCE OPEN CASES

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Avg.	% Chg of Avg	Yr-Yr AvgChg	
13/14	2,329	1,684	1,923	2,373	2,360	1,827	1,994	2,106	1,936	1,986	1,979	2,166	2,055			
14/15	2,432	2,349	2,047	2,340	2,181	1,937	1,613	1,549	1,873	2,120	2,277	1,599	2,026	99%	-29	
15/16	1,394	1,342	1,021	949	1,161	943	713	878	902	1,185	917	1,560	1,080	53%	-946	
16/17	1,631												1,631	151%	551	
UI balance of open cases to date are up 17% from 15/16, down 33% from 14/15, and down 30% from 13/14 UI balance monthly average is up 51% from 15/16, down 20% from 14/15, and down 21% from 13/14													15/16	151%	117%	
													14/15	80%	67%	
													13/14	79%	70%	
													chg 14/15 avg chg 14/15 YTD			

FY DI TRENDS-AO
Program Codes 7, 10, 11, 12, 16 & 20

REGISTRATIONS

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	37	61	74	88	55	43	35	45	36	60	48	57	639	53		
14/15	55	39	59	69	52	71	59	54	57	72	56	51	694	58	109%	5
15/16	52	91	72	37	38	54	41	33	60	44	46	60	628	52	90%	-6
16/17	41												41	41	78%	-11
													15/16	78%	79%	
													14/15	71%	75%	
													13/14	77%	111%	

DI registrations Jan to date are down 21% from 15/16, down 25% from 14/15, up 11% from 13/14.
 DI registration monthly average is down 22% from 15/16, down 29% from 14/15, and down 23% from 13/14.

DISPOSITIONS

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	53	69	52	44	56	78	59	37	38	50	45	46	627	52		
14/15	45	50	50	55	45	56	59	74	53	59	74	52	672	56	107%	4
15/16	80	56	101	87	34	55	39	31	61	37	48	47	676	56	101%	0
16/17	31												31	31	1502%	-25
													15/16	55%	39%	
													14/15	55%	69%	
													13/14	59%	58%	

DI dispositions Jan to date are down 61% from 15/16, down 31% from 14/15, down 42% from 13/14.
 DI disposition monthly average is down 45% from 15/16, down 45% from 14/15, and down 41% from 13/14.

BALANCE OPEN CASES

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	55	49	71	116	115	79	52	61	60	68	71	82	73		
14/15	92	81	91	106	112	82	127	107	111	125	109	106	104	142%	31
15/16	77	112	82	32	37	34	36	38	38	44	43	55	52	142%	-52
16/17	65												65	40%	13
													15/16	124%	84%
													14/15	62%	71%
													13/14	89%	118%

Open Balance of DI case to date is down 16% from 15/16, down 29% from 14/15, and up 18% from 13/14.
 Open Balance monthly average up 24% from 15/16, down 38% from 14/15, and down 11% from 13/14.

chg 14/15 avg chg to 14/15 YTD

FY TAX TRENDS-AO
 Program Codes 15, 17, 18, 32, 45, 46, 47, 48

REGISTRATIONS

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	12	12	5	42	9	27	24	11	18	9	1	8	178	15		
14/15	0	5	10	5	11	9	3	8	9	5	6	1	72	6	40%	-9
15/16	6	5	10	5	2	4	9	1	6	4	8	11	71	6	99%	0
16/17	15												15	15	254%	9
													15/16	254%	250%	
													14/15	250%		
													13/14	101%	125%	

Tax registrations Jan to date are 150% up from 15/16 and up 25% from 13/14
 Tax registration monthly average is up 154% from 15/16, up 150% from 14/15, and up 1% from 13/14

DISPOSITIONS

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	28	38	18	20	13	39	8	16	12	7	13	32	244	20		
14/15	6	10	0	5	7	5	5	13	0	12	10	3	76	6	31%	-14
15/16	7	9	4	11	4	4	9	11	6	1	3	5	74	6	97%	0
16/17	7												7	7	114%	1
													15/16	114%	100%	
													14/15	111%	117%	
													13/14	34%	25%	

Tax dispositions Jan to date are equal to 15/16, up 17% from 14/15 and down 75% from 13/14.
 Tax disposition monthly average is up 14% from 15/16, up 11% from 14/15, and down 66% from 13/14.

BALANCE OPEN CASES

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	82	58	48	67	68	51	74	63	69	71	59	35	62		
14/15	22	18	28	27	31	35	33	28	37	30	26	25	28	46%	-34
15/16	24	20	26	20	19	19	19	9	9	12	17	23	18	64%	-10
16/17	32												32	177%	14
													15/16	177%	133%
													14/15	113%	145%
													13/14	52%	39%

Tax balance of open cases to date is up 33% from 15/16, up 45% from 14/15, and down 61% from 13/14
 Tax balance monthly average is up 77% from 15/16, up 13% from 14/15, and down 48% from 13/14

15/16	177%	133%
14/15	113%	145%
13/14	52%	39%

chg 14/15 avg chg 14/15 YTD

FY OTHER TRENDS-AO
Program Codes 9,13, 14, 19, 21,22, 40, 44

REGISTRATIONS

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	11	4	4	14	7	4	2	2	8	7	2	4	69	6		
14/15	2	9	4	4	1	5	6	1	5	13	14	8	72	6	104%	0
15/16	1	10	7	2	2	6	2	2	1	1	4	4	42	4	58%	-3
16/17	7												7	7	200%	4
													15/16	200%	700%	
													14/15	117%	350%	
													13/14	122%	64%	

Other registrations Jan to date is are up 600% from 15/16, up 250% from 14/15, and down 36% from 13/14.
 Other registration monthly average is up 100% from 15/16, up 17% from 14/15, and up 22% from 13/14.

DISPOSITIONS

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	4	7	10	2	9	8	7	2	4	3	4	8	68	6		
14/15	6	1	4	5	5	5	3	5	4	4	5	10	57	5	84%	-1
15/16	19	5	9	5	2	9	1	1	3	1	1	2	58	5	102%	0
16/17	4												4	4	83%	-1
													15/16	83%	21%	
													14/15	84%	67%	
													13/14	71%	100%	

Other dispositions Jan to date are down 79% from 15/16, down 33% from 14/15, and equal to 13/14.
 Other disposition monthly average down 17% from 15/16, down 16% from 14/15, and down 29% from 13/14.

BALANCE OPEN CASES

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	18	13	7	19	19	13	1	1	9	13	11	7		11		
14/15	3	11	11	10	6	7	10	6	7	15	24	22		11	101%	0
15/16	4	9	8	5	5	2	3	4	2	2	5	7		5	42%	-6
16/17	10													10	214%	5
													15/16	214%	250%	
													14/15	91%	333%	
													13/14	92%	56%	

Other balance of open cases is up 150% from 15/16, up 233% from 14/15, and down 44% from 13/14.
 Other balance monthly average is up 114% from 15/16, down 9% from 14/15, and down 8% from 13/14.

15/16	214%	250%
14/15	91%	333%
13/14	92%	56%

FY ALL PROGRAM TRENDS-AO

REGISTRATIONS

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	2,057	2,055	2,359	2,377	1,612	1,665	1,681	1,666	1,620	1,959	1,623	1,812	22,486	1,874		
14/15	1,847	1,729	1,636	1,873	1,298	1,417	1,095	1,288	1,605	1,608	1,470	1,116	17,982	1,499	80%	-375
15/16	1,642	1,586	1,088	1,114	1,156	1,206	989	1,003	1,412	1,260	1,018	1,397	14,871	1,239	83%	-259
16/17	1,059												1,059	1,059	85%	-180
													15/16	85%	64%	
													14/15	71%	57%	
													13/14	57%	51%	

Registrations Jan to date down 36% from 15/16, down 43% from 14/15, and down 49% from 13/14.

Registration monthly average down 15% from 15/16, down 29% from 14/15, and down 43% from 13/14.

DISPOSITIONS

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	2,258	2,716	2,120	1,853	1,660	2,208	1,517	1,549	1,743	1,877	1,661	1,634	22,796	1,900		
14/15	1,583	1,813	1,925	1,568	1,438	1,637	1,415	1,377	1,269	1,346	1,320	1,798	18,489	1,541	81%	-359
15/16	1,888	1,597	1,432	1,242	947	1,413	1,217	842	1,429	958	1,273	732	14,970	1,248	81%	-293
16/17	965												965	965	946%	-283
													15/16	77%	51%	
													14/15	63%	61%	
													13/14	51%	43%	

Dispositions Jan to date are down 49% from 15/16, down 39% from 14/15, and down 57% from 13/14.

Disposition monthly average is down 23% from 15/16, down 37% from 14/15, and down 49% from 13/14.

BALANCE OPEN CASES

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
13/14	2,948	2,758	2,509	2,863	2,894	2,340	2,057	2,452	1,910	2,509	2,625	2,671		2,545		
14/15	2,484	1,804	2,049	2,575	2,562	1,970	1,783	1,690	2,028	2,290	2,436	1,752		2,119	83%	-426
15/16	1,499	1,483	1,137	1,006	1,222	998	771	929	951	1,243	982	1,645		1,156	862%	-963
16/17	1,738													1,738	963%	583
													15/16	150%	116%	
													14/15	82%	70%	
													13/14	68%	59%	

Open Balance to date is up 16% from 15/16, down 30% from 14/15, and down 41% from 13/14.

Open Balance monthly average is up 50% from 15/16, down 18% from 14/15, and down 32% from 13/14.

APPELLATE OPERATIONS TL & Case Aging TRENDS

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Avg.
Standard Day 45-	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Standard Day 75-	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%
Standard 150-Day	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%
Standard Case Age	40	40	40	40	40	40	40	40	40	40	40	40	40
10/11 45-Day	83.1%	80.3%	80.9%	81.5%	83.4%	86.7%	85.9%	77.0%	48.1%	28.8%	11.4%	12.9%	63.3%
10/11 75-Day	97.5%	98.2%	97.5%	98.0%	96.9%	97.2%	98.4%	97.7%	95.6%	89.3%	88.1%	90.1%	95.4%
10/11 150-Day	99.8%	99.9%	99.9%	100.0%	99.4%	99.9%	99.7%	99.8%	99.7%	99.9%	99.6%	99.8%	99.8%
Case Aging	26	28	27	27	25	28	28	33	38	38	36	34	31
11/12 45-Day	5.2%	6.9%	4.6%	10.1%	10.6%	10.5%	11.6%	11.7%	17.2%	16.6%	47.9%	70.0%	18.6%
11/12 75-Day	89.2%	87.9%	60.8%	43.9%	40.0%	43.1%	72.7%	86.4%	89.5%	85.5%	91.0%	90.8%	73.4%
11/12 150-Day	99.7%	99.4%	99.4%	97.3%	98.9%	99.0%	98.9%	99.2%	99.5%	99.3%	99.3%	99.1%	99.1%
Case Aging	39	45	43	47	48	44	39	38	39	37	32	30	40
12/13 45-Day	66.4%	57.4%	20.5%	12.8%	28.7%	40.7%	25.5%	22.1%	14.3%	13.1%	24.0%	53.3%	31.6%
12/13 75-Day	94.0%	91.8%	81.7%	80.9%	80.6%	76.4%	75.4%	83.2%	75.3%	82.7%	76.6%	90.6%	82.4%
12/13 150-Day	99.3%	99.5%	99.4%	99.7%	99.2%	99.0%	99.0%	99.6%	98.3%	99.7%	99.8%	99.7%	99.4%
Case Aging	31	38	44	48	44	49	45	45	41	41	35	29.1	41
13/14 45-Day	62.3%	76.0%	72.4%	56.6%	77.4%	80.5%	74.5%	52.4%	52.5%	51.0%	59.1%	77.1%	66.0%
13/14 75-Day	92.1%	94.4%	90.7%	90.3%	94.8%	96.3%	97.3%	93.1%	92.3%	91.6%	93.3%	96.3%	93.5%
13/14 150-Day	99.7%	99.7%	99.8%	99.8%	99.6%	99.9%	99.9%	99.5%	99.6%	99.4%	99.6%	99.9%	99.7%
Case Aging	30.1	31.0	32.2	30.1	28.4	24.0	31.1	35.0	33.8	31.8	27.8	29.3	30.4
14/15 45-Day	77.9%	79.7%	69.8%	42.1%	48.6%	56.9%	38.5%	39.7%	42.4%	45.1%	20.5%	57.5%	51.6%
14/15 75-Day	96.9%	96.4%	95.7%	96.1%	90.6%	93.4%	91.3%	88.8%	82.1%	67.8%	77.4%	93.6%	89.2%
14/15 150-Day	99.2%	99.8%	99.8%	99.8%	99.7%	99.8%	99.5%	99.5%	99.0%	99.9%	99.8%	99.8%	99.6%
Case Aging	28.3	30.3	32.3	35.1	35.9	37.6	36.0	41.1	38.8	41.5	33.4	33.9	35.4
15/16 45-Day	43.2%	21.1%	35.1%	40.2%	69.0%	68.4%	82.5%	81.0%	73.4%	72.8%	77.7%	79.8%	62.0%
15/16 75-Day	92.4%	94.6%	87.9%	89.1%	95.3%	94.6%	96.4%	97.3%	97.6%	96.6%	93.4%	94.6%	94.1%
15/16 150-Day	99.6%	99.8%	99.8%	99.4%	99.8%	98.9%	99.4%	99.5%	99.8%	99.7%	99.2%	99.8%	99.6%
Case Aging	37.3	40.9	42.2	33.1	32.9	29.8	29.6	31.5	30.8	31.2	29.2	25.0	32.8
16/17 45-Day	77.4%	78.9%	62.1%	47.7%									66.5%
16/17 75-Day	98.0%	95.2%	92.3%	95.1%									95.1%
16/17 150-Day	99.7%	99.4%	99.7%	100.0%									99.7%
Case Aging	29.0	33.4	32.3	40.1									33.7

APPELLATE OPERATIONS - REPORT SUMMARY

APPELLATE	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Average	AO Current Mo. % of Avg.	TOTAL	Appellants Current Mo.
WORKLOAD																
Registrations																
UI TL	996	986											991	99%	1,982	
DI	41	51											46	111%	92	
Ruling & T-R	7	4											6	73%	11	
Tax	15	15											15	100%	30	
Other	0	3											2	200%	3	
Total	1,059	1,059	0	0	0	0	0	0	0	0	0	0	1,059	100%	2,118	619
Multi Cases																
Dispositions																
UI TL	923	1,325											1,124	118%	2,248	
DI	31	65											48	135%	96	
Ruling & T-R	4	5											5	111%	9	
Tax	7	3											5	60%	10	
Other	0	3											2	200%	3	
Total	965	1,401	0	0	0	0	0	0	0	0	0	0	1,183	118%	2,366	846
Multi Cases/Ct																
Balance - Open Cases																
UI TL	1,631	1,291											1,461	88%		
DI	65	51											58	88%		
Ruling & T-R	9	8											9	94%		
Tax	32	44											38	116%		
Other	1	1											1	100%		
Total	1,738	1,395	0	0	0	0	0	0	0	0	0	0	1,567	89%		797
Multi Cases																Estimate
FO to AO Appeal Rate																
UI TL	5.6%	6.4%											6.0%	106%		
DI	3.9%	5.9%											4.9%	121%		
Ruling & T-R	2.4%	1.4%											1.9%	75%		
Tax	5.3%	2.9%											4.1%	72%		
Other	0.0%	23.1%											11.5%	200%		
Overall Rate	5.5%	6.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.0%	637%		

APPELLATE OPERATIONS ~ REPORT SUMMARY

APPELLATE		July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Average	AO Current Mo. % of Avg.				
TIME LAPSE																			
	45 Day-50 %	48	28											38	74%				
	75 Day-80 %	95	91											93	98%				
	150 Day- 95 %	100	100											100	100%				
CASE AGE																			
	Avg Days-UI (mean)	40.1	37.7											38.9	97%				
	Avg Days-UI (median)	38.0	34.0											36.0	94%				
														40	0%				
Over 120 days old																			
	UI Cases	3	3											3	100%				
	UI %	0%	0%											0%	133%				
	UI % w/out Multis	0%	0%											0%	133%				
NET PYS USED																			
	ALJ	7.49												7.5	100%				
	AO Non ALJ	19.11												19.1	100%				
	CTU Non ALJ	1.90												1.9	100%				
	Net Pys	28.50	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	28.5	100%				
RATIOS																			
	AO w/o transcribers	2.55												2.55	100%				
	AO with transcribers	2.81												2.81	100%				
TRANSCRIPTS																			
	PAGES	26	28											27	104%				54
	AVG PGS Per T/S	2,028	1,861											1,945	96%				3,889
		78	66																
PRODUCTIVITY																			
	ALJ Disp/wk	29.3												#DIV/0!	#DIV/0!				
	Trans Pgs/day	48.52												#DIV/0!	#DIV/0!				

APPELLATE OPERATIONS ~ REPORT SUMMARY

APPELLATE		Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Average	AO Current Mo. % of Avg.
TIME LAPSE															
	45 Day- 50 %	73	78	80	77	79	62	48	28					66	42%
	75 Day- 80 %	97	93	95	98	95	92	95	91					95	96%
	150 Day- 95 %	100	99	100	100	99	100	100	100					100	100%
CASE AGE															
	Avg Days-UI (mean)	31.2	29.2	25.0	29.0	33.4	32.3	40.1	37.7					32.2	117%
	Avg Days-UI (median)	27.0	26.0	22.0	26.0	32.0	30.0	38.0	34.0					29.4	116%
Over 120 days old															
	UI Cases	3	0	1	1	4	1	3	3					2	
	UI %	0%	0%	0%	0%	0%	0%	0%	0%					0%	
	UI % w/out Multis	0%	0%	0%	0%	0%	0%	0%	0%					0%	
NET PYS USED															
	ALJ	9.74	7.94	7.30	8.36	8.54	7.59	7.49						8.1	92%
	AO Non ALJ	17.33	19.30	19.29	19.62	18.32	19.95	19.11						19.0	101%
	CTU Non ALJ	3.33	2.52	2.89	2.34	2.43	2.15	1.90						2.5	76%
	Net Pys	30.40	29.76	29.48	30.32	29.29	29.69	28.50	0.00	0.00	0.00	0.00	0.00		96%
RATIOS															
	AO w/o transcribers	1.78	2.43	2.64	2.35	2.15	2.63	2.55						2.33	109%
	AO with transcribers	2.12	2.75	3.04	2.63	2.43	2.91	2.81						2.64	106%
TRANSCRIPTS															
		37	49	38	38	26	34	26	28					35	81%
PAGES															
	AVG PGS Per T/S	2,917	2,683	2,749	1,955	1,620	2,363	2,028	1,861					2,272	82%
		79	55	72	51	62	70	78	66					64	103%
PRODUCTIVITY															
	ALL Disp/wk	32.9	26.5	46.6	26.0	37.3	21.9	29.3						32.9	89%
	Trans Pgs/day	46.10	53.23	45.30	37.98	33.33	49.96	48.52						46.1	1.0523327

California Unemployment Insurance Appeals Board
Board Appeal Summary Report
Average Days in Transfer from FO Received Date to Date Received at AO

	August, 2016	July, 2016	June, 2016	May, 2016
	Average Days in Transfer			
	Case Count	Case Count	Case Count	Case Count
Fr	1.26	0.84	1.64	1.98
	57	62	73	99
Ing	1.98	2.07	3.09	2.84
	96	134	166	135
Inl	0.41	2.20	3.05	1.35
	87	183	169	139
LA	1.66	2.30	2.70	1.22
	96	125	161	161
Oak	3.15	3.15	3.15	4.84
	61	52	67	104
OC	0.53	1.23	1.31	1.13
	62	124	121	110
Ox	0.44	0.63	0.52	1.08
	55	89	94	83
Pas	4.50	8.93	5.19	5.69
	32	70	54	91
Sac	0.90	2.23	1.38	1.28
	30	64	86	39
SD	3.33	2.91	3.06	4.14
	73	57	88	71
SF	1.70	3.57	0.75	2.88
	20	49	69	51
SJ	0.74	1.35	0.64	2.07
	23	37	44	46
Tax				16.00
				1
Total	1.69	2.44	2.31	2.48
	692	1046	1192	1130

APPELLATE OPERATIONS TL & Case Aging TRENDS

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Avg.
Standard 45-Day	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Standard 75-Day	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%
Standard 150-Day	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%
Standard Case Age	40	40	40	40	40	40	40	40	40	40	40	40	40
10/11 45-Day	83.1%	80.3%	80.9%	81.5%	83.4%	86.7%	85.9%	77.0%	48.1%	28.8%	11.4%	12.9%	63.3%
10/11 75-Day	97.5%	98.2%	97.5%	98.0%	96.9%	97.2%	98.4%	97.7%	95.6%	89.3%	88.1%	90.1%	95.4%
10/11 150-Day	99.8%	99.9%	99.9%	100.0%	99.4%	99.9%	99.7%	99.8%	99.7%	99.9%	99.6%	99.8%	99.8%
Case Aging	26	28	27	27	25	28	28	33	38	38	36	34	31
11/12 45-Day	5.2%	6.9%	4.6%	10.1%	10.6%	10.5%	11.6%	11.7%	17.2%	16.6%	47.9%	70.0%	18.6%
11/12 75-Day	89.2%	87.9%	60.8%	43.9%	40.0%	43.1%	72.7%	86.4%	89.5%	85.5%	91.0%	90.8%	73.4%
11/12 150-Day	99.7%	99.4%	99.4%	97.3%	98.9%	99.0%	98.9%	99.2%	99.5%	99.3%	99.3%	99.1%	99.1%
Case Aging	39	45	43	47	48	44	39	38	39	37	32	30	40
12/13 45-Day	66.4%	57.4%	20.5%	12.8%	28.7%	40.7%	25.5%	22.1%	14.3%	13.1%	24.0%	53.3%	31.6%
12/13 75-Day	94.0%	91.8%	81.7%	80.9%	80.6%	76.4%	75.4%	83.2%	75.3%	82.7%	76.6%	90.6%	82.4%
12/13 150-Day	99.3%	99.5%	99.4%	99.7%	99.2%	99.0%	99.0%	99.6%	98.3%	99.7%	99.8%	99.7%	99.4%
Case Aging	31	38	44	48	44	49	45	45	41	41	35	29.1	41
13/14 45-Day	62.3%	76.0%	72.4%	56.6%	77.4%	80.5%	74.5%	52.4%	52.5%	51.0%	59.1%	77.1%	66.0%
13/14 75-Day	92.1%	94.4%	90.7%	90.3%	94.8%	96.3%	97.3%	93.1%	92.3%	91.6%	93.3%	96.3%	93.5%
13/14 150-Day	99.7%	99.7%	99.8%	99.8%	99.6%	99.9%	99.9%	99.5%	99.6%	99.4%	99.6%	99.9%	99.7%
Case Aging	30.1	31.0	32.2	30.1	28.4	24.0	31.1	35.0	33.8	31.8	27.8	29.3	30.4
14/15 45-Day	77.9%	79.7%	69.8%	42.1%	48.6%	56.9%	38.5%	39.7%	42.4%	45.1%	20.5%	57.5%	51.6%
14/15 75-Day	96.9%	96.4%	95.7%	96.1%	90.6%	93.4%	91.3%	88.8%	82.1%	67.8%	77.4%	93.6%	89.2%
14/15 150-Day	99.2%	99.8%	99.8%	99.8%	99.7%	99.8%	99.5%	99.5%	99.0%	99.9%	99.8%	99.8%	99.6%
Case Aging	28.3	30.3	32.3	35.1	35.9	37.6	36.0	41.1	38.8	41.5	33.4	33.9	35.4
15/16 45-Day	43.2%	21.1%	35.0%	40.2%	69.0%	68.4%	82.5%	81.0%	73.4%	72.8%	77.7%	79.8%	62.0%
15/16 75-Day	92.4%	94.6%	88.0%	89.1%	95.3%	94.6%	96.4%	97.3%	97.6%	96.6%	93.4%	94.6%	94.1%
15/16 150-Day	99.6%	99.8%	100.0%	99.4%	99.8%	98.9%	99.4%	99.5%	99.8%	99.7%	99.2%	99.8%	99.6%
Case Aging	37.3	40.9	42.2	33.1	32.9	29.8	29.6	31.5	30.8	31.2	29.2	25.0	32.8
16/17 45-Day	77.4%	78.9%	62.1%	47.7%	27.8%								
16/17 75-Day	98.0%	95.2%	92.3%	95.1%	91.1%								
16/17 150-Day	99.7%	99.4%	99.7%	100.0%	100.0%								
Case Aging	29.0	33.4	32.3	40.1	37.7								

OTHER TRENDS-AO
 Program Codes 9,13, 14, 19, 21,22, 40, 44

REGISTRATIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	2	4	6	9	13	5	11	4	4	14	7	4	83	7		
2014	2	2	8	7	2	4	2	9	4	4	1	5	50	4	60%	-3
2015	6	1	5	13	14	8	1	10	7	2	2	6	75	6	150%	2
2016	2	2	1	1	4	4	7	7					28	4	56%	-3
Other registrations Jan to date are down 52% from 2015 and down 22% from 2014, and down 58% from 2013													2015	56%	48%	
Other registration monthly average down 44% from 2015, down 16% from 2014, and down 49% from 2013													2014	84%	78%	
													2013	51%	52%	
													chg to '14 avg		chg to '14 YTD	

DISPOSITIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	4	3	3	2	15	4	4	7	10	2	9	8	71	6		
2014	7	2	4	3	4	8	6	1	4	5	5	5	54	5	76%	-1
2015	3	5	4	4	5	10	19	5	9	5	2	9	80	7	148%	2
2016	1	1	3	1	1	2	4	8					21	3	39%	-4
Other dispositions Jan to date are down 62% from 2015, down 40% from 2014, and down 50% from 2013													2015	39%	38%	
Other disposition monthly average down 61% from 2015, down 42% from 2014, and down 56% from 2013													2014	58%	60%	
													2013	44%	50%	
													chg to '14 avg		chg to '14 YTD	

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	End of yr Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	0	2	2	5	2	11	18	13	7	19	19	13	13	9		
2014	1	1	9	13	11	7	3	11	11	10	6	7	7	8	81%	-2
2015	10	6	7	15	24	22	4	9	8	5	5	2	2	10	130%	2
2016	3	4	2	2	5	7	10	9						5	54%	-5
Other balance of open cases is down 57% from 2015, down 25% from 2014, and up 21% from 2013													2015	54%	43%	
Other balance monthly average down 46% from 2015, down 30% from 2014, and down 43% from 2013													2014	70%	75%	
													2013	57%	79%	
													chg to '14 avg		chg to '14 YTD	

TAX TRENDS-AO
 Program Codes 15, 17, 18, 32, 45, 46, 47, 48

REGISTRATIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	27	0	0	53	24	17	12	12	5	42	9	27	228	19		
2014	24	11	18	9	1	8	0	5	10	5	11	9	111	9	49%	-10
2015	3	8	9	5	6	1	6	5	10	5	2	4	64	5	58%	-4
2016	9	1	6	4	8	11	15	15					69	9	162%	3
													2015	162%	160%	
													2014	93%	91%	
													2013	45%	48%	

Tax registrations Jan to date are up 60% from 2015, down 9% from 2014, and down 52% from 2013
 Tax registration monthly average is up 62% from 2015, down 7% from 2014, and down 55% from 2013

DISPOSITIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	25	11	15	16	15	10	28	38	18	20	13	39	248	21		
2014	8	16	12	7	13	32	6	10	0	5	7	5	121	10	49%	-11
2015	5	13	0	12	10	3	7	9	4	11	4	4	82	7	68%	-3
2016	8	11	6	1	3	5	7	3					44	6	80%	-1
													2015	80%	75%	
													2014	55%	42%	
													2013	27%	28%	

Tax dispositions Jan to date are up 25% from 2015, down 58% from 2014 and down 72% from 2013
 Tax disposition monthly average is down 20% from 2015, down 45% from 2014, and down 73% from 2013

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	72	61	46	83	92	97	82	58	48	67	68	51	51	69		
2014	74	63	69	71	59	35	22	18	28	27	31	35	35	44	64%	-24
2015	33	28	37	30	26	25	24	20	26	20	19	19	19	26	58%	-19
2016	19	9	9	12	17	23	32	44						21	81%	-5
													2015	81%	74%	
													2014	47%	40%	
													2013	30%	28%	

Tax balance of open cases Jan to date is down 26% from 2015, down 60% from 2014, and down 72% from 2013
 Tax balance monthly average is down 19% from 2015, down 53% from 2014, and down 70% from 2013

	End of yr Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2015	51	69		
2014	35	44	64%	-24
2013	19	26	58%	-19
		21	81%	-5

chg to '14 avg chg to '14 YTD

DI TRENDS-AO
Program Codes 7, 10, 11, 12, 16 & 20

REGISTRATIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	52	121	55	118	84	46	37	61	74	88	55	43	834	70		
2014	35	45	36	60	48	57	55	39	59	69	52	71	626	52	75%	-17
2015	59	54	57	72	56	51	52	91	72	37	38	54	693	58	111%	6
2016	41	33	60	44	46	60	41	51					376	47	81%	-11
													2015	81%	76%	
													2014	90%	100%	
													2013	68%	66%	

DI registrations Jan to date down 24% from 2015, equal to 2014, down 34% from 2013.
DI registration monthly average down 19% from 2015, down 10% from 2014, and down 32% from 2013.

chg to '14 avg chg to '14 YTD

DISPOSITIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	69	60	117	88	71	65	53	69	52	44	56	78	822	69		
2014	59	37	38	50	45	46	45	50	50	55	45	56	576	48	70%	-21
2015	59	74	53	59	74	52	80	56	101	87	34	55	784	65	136%	17
2016	39	31	61	37	48	47	31	65					359	45	69%	-20
													2015	69%	71%	
													2014	93%	97%	
													2013	66%	61%	

DI dispositions Jan to date down 29% from 2015, down 3% from 2014, down 39% from 2013.
DI disposition monthly average down 31% from 2015, down 7% from 2014, and down 34% from 2013.

chg to '14 avg chg to '14 YTD

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	End of yr Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	51	110	50	78	91	72	55	49	71	116	115	79	79	78		
2014	52	61	60	68	71	82	92	81	91	106	112	127	127	84	107%	6
2015	127	107	111	125	109	106	77	112	82	32	37	34	34	88	106%	5
2016	36	38	38	44	43	55	65	51						46	52%	-42
													2015	52%	42%	
													2014	55%	65%	
													2013	59%	67%	

Open Balance of DI Jan to date down 58% from 2015, down 35% from 2014, and down 33% from 2013.
Open Balance monthly average down 48% from 2015, down 45% from 2014, and down 41% from 2013.

chg to '14 avg chg to '14 YTD

UI TRENDS-AO
Program Codes 1, 2, 3, 4, 5, 6, 8, 23, 24, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42

REGISTRATIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	2,708	2,596	2,942	3,223	2,614	2,014	1,997	1,978	2,276	2,233	1,541	1,591	27,713	2,309		
2014	1,620	1,608	1,558	1,883	1,572	1,743	1,790	1,676	1,563	1,795	1,234	1,332	19,374	1,615	70%	-695
2015	1,027	1,225	1,534	1,518	1,394	1,056	1,583	1,480	999	1,070	1,114	1,142	15,142	1,262	78%	-353
2016	937	967	1,345	1,211	960	1,322	996	986					8,724	1,091	86%	-171
													2015	86%	81%	
													2014	68%	65%	
													2013	47%	43%	

UI registrations Jan to date are down 19% from 2015, down 35% from 2014, and down 57% from 2013

UI registration monthly average is down 14% from 2015, down 32% from 2014, and down 53% from 2013

chg to '14 avg chg to '14 YTD

DISPOSITIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	2,823	2,240	3,363	2,704	2,504	1,920	2,173	2602	2040	1787	1582	2083	27,821	2,318		
2014	1,443	1,490	1,689	1,817	1,599	1,548	1,518	1,752	1,871	1,503	1,381	1,571	19,182	1,599	69%	-720
2015	1,348	1,285	1,212	1,271	1,231	1,733	1,782	1,527	1,318	1,139	907	1,345	16,098	1,342	84%	-257
2016	1,168	799	1,359	919	1,221	678	923	1,325					8,392	1,049	78%	-293
													2015	78%	74%	
													2014	66%	65%	
													2013	45%	41%	

UI dispositions Jan to date are down 26% from 2015, down 35% from 2014, and down 59% from 2013

UI disposition monthly average is down 22% from 2015, down 34% from 2014, and down 55% from 2013

chg to '14 avg chg to '14 YTD

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	End of yr Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2013	1,933	2,279	1,809	2,336	2,432	2,491	2,329	1,684	1,923	2,373	2,360	1,827	1,827	2,148		
2014	1,994	2,106	1,936	1,986	1,979	2,166	2,432	2,349	2,047	2,340	2,181	1,937	1,937	2,121	99%	-27
2015	1,613	1,549	1,873	2,120	2,277	1,599	1,394	1,342	1,021	949	1,161	1,161	1,161	1,505	71%	-616
2016	713	878	902	1,185	917	1,560	1,631	1,291					9,077	1,135	75%	-370
													2015	75%	66%	
													2014	53%	54%	
													2013	53%	52%	

UI balance of open cases Jan to date are down 34% from 2015, down 46% from 2014, and down 48% from 2013

UI balance monthly average is down 25% from 2015, down 47% from 2014, and down 47% from 2013

chg to '14 avg chg to '14 YTD

APPELLATE OPERATIONS TL & Case Aging TRENDS

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Avg.
Standard 45-Day	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Standard 75-Day	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%
Standard 150-Day	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%
Standard Case Age	40	40	40	40	40	40	40	40	40	40	40	40	40
10/11 45-Day	83.1%	80.3%	80.9%	81.5%	83.4%	86.7%	85.9%	77.0%	48.1%	28.8%	11.4%	12.9%	63.3%
10/11 75-Day	97.5%	98.2%	97.5%	98.0%	96.9%	97.2%	98.4%	97.7%	95.6%	89.3%	88.1%	90.1%	95.4%
10/11 150-Day	99.8%	99.9%	99.9%	100.0%	99.4%	99.9%	99.7%	99.8%	99.7%	99.9%	99.6%	99.8%	99.8%
Case Aging	26	28	27	27	25	28	28	33	38	38	36	34	31
11/12 45-Day	5.2%	6.9%	4.6%	10.1%	10.6%	10.5%	11.6%	11.7%	17.2%	16.6%	47.9%	70.0%	18.6%
11/12 75-Day	89.2%	87.9%	60.8%	43.9%	40.0%	43.1%	72.7%	86.4%	89.5%	85.5%	91.0%	90.8%	73.4%
11/12 150-Day	99.7%	99.4%	99.4%	97.3%	98.9%	99.0%	98.9%	99.2%	99.5%	99.3%	99.3%	99.1%	99.1%
Case Aging	39	45	43	47	48	44	39	38	39	37	32	30	40
12/13 45-Day	66.4%	57.4%	20.5%	12.8%	28.7%	40.7%	25.5%	22.1%	14.3%	13.1%	24.0%	53.3%	31.6%
12/13 75-Day	94.0%	91.8%	81.7%	80.9%	80.6%	76.4%	75.4%	83.2%	75.3%	82.7%	76.6%	90.6%	82.4%
12/13 150-Day	99.3%	99.5%	99.4%	99.7%	99.2%	99.0%	99.0%	99.6%	98.3%	99.7%	99.8%	99.7%	99.4%
Case Aging	31	38	44	48	44	49	45	45	41	41	35	29.1	41
13/14 45-Day	62.3%	76.0%	72.4%	56.6%	77.4%	80.5%	74.5%	52.4%	52.5%	51.0%	59.1%	77.1%	66.0%
13/14 75-Day	92.1%	94.4%	90.7%	90.3%	94.8%	96.3%	97.3%	93.1%	92.3%	91.6%	93.3%	96.3%	93.5%
13/14 150-Day	99.7%	99.7%	99.8%	99.8%	99.6%	99.9%	99.9%	99.5%	99.6%	99.4%	99.6%	99.9%	99.7%
Case Aging	30.1	31.0	32.2	30.1	28.4	24.0	31.1	35.0	33.8	31.8	27.8	29.3	30.4
14/15 45-Day	77.9%	79.7%	69.8%	42.1%	48.6%	56.9%	38.5%	39.7%	42.4%	45.1%	20.5%	57.5%	51.6%
14/15 75-Day	96.9%	96.4%	95.7%	96.1%	90.6%	93.4%	91.3%	88.8%	82.1%	67.8%	77.4%	93.6%	89.2%
14/15 150-Day	99.2%	99.8%	99.8%	99.8%	99.7%	99.8%	99.5%	99.5%	99.0%	99.9%	99.8%	99.8%	99.6%
Case Aging	28.3	30.3	32.3	35.1	35.9	37.6	36.0	41.1	38.8	41.5	33.4	33.9	35.4
15/16 45-Day	43.2%	21.1%	35.0%	40.2%	69.0%	68.4%	82.5%	81.0%	73.4%	72.8%	77.7%	79.8%	62.0%
15/16 75-Day	92.4%	94.6%	88.0%	89.1%	95.3%	94.6%	96.4%	97.3%	97.6%	96.6%	93.4%	94.6%	94.1%
15/16 150-Day	99.6%	99.8%	100.0%	99.4%	99.8%	98.9%	99.4%	99.5%	99.8%	99.7%	99.2%	99.8%	99.6%
Case Aging	37.3	40.9	42.2	33.1	32.9	29.8	29.6	31.5	30.8	31.2	29.2	25.0	32.8
16/17 45-Day	77.4%	78.9%	62.1%	47.7%	27.8%								
16/17 75-Day	98.0%	95.2%	92.3%	95.1%	91.1%								
16/17 150-Day	99.7%	99.4%	99.7%	100.0%	100.0%								
Case Aging	29.0	33.4	32.3	40.1	37.7								

Monthly Board Meeting Litigation Report - August 2016

AGENDA ITEM 9

<u>LITIGATION CASES PENDING</u>	TOTAL = 105
SUPERIOR COURT: Claimant Petitions.....	74
Employer Petitions.....	11
EDD Petitions.....	0
Non-benefit Court Cases	4
APPELLATE COURT: Claimant Appeals.....	12
Employer Appeals.....	2
EDD Appeals.....	0
Non-benefit Court Cases	0
ISSUES: UI.....	84
DI.....	11
Tax.....	4
Non-benefit Court Cases	6

2016 CALENDAR YEAR ACTIVITY - Benefit & Tax Cases

<u>LITIGATION CASES FILED</u>	<u>YTD</u>	<u>August</u>
SUPERIOR COURT: Claimant Petitions.....	18	3
Employer Petitions.....	5	1
EDD Petitions.....	0	0
APPELLATE COURT: Claimant Appeals.....	3	0
Employer Appeals.....	1	0
EDD Appeals.....	0	0
 <u>LITIGATION CASES CLOSED</u>	 <u>YTD</u>	 <u>August</u>
SUPERIOR COURT: Claimant Petitions.....	50	8
Employer Petitions.....	10	2
EDD Petitions.....	0	0
APPELLATE COURT: Claimant Appeals.....	3	2
Employer Appeals.....	0	0
EDD Appeals.....	0	0

2016 Decision Summary

<u>Claimant Appeals</u>		<u>Employer Appeals</u>		<u>CUIAB Decisions</u>		
Win: 2	Loss: 48	Win: 0	Loss: 6	Affirmed: 54	Reversed: 2	Remanded: 0

Monthly Board Meeting Litigation Report - July 2016

AGENDA ITEM 9

LITIGATION CASES PENDING

TOTAL = 116

SUPERIOR COURT:	Claimant Petitions.....	79
	Employer Petitions.....	11
	EDD Petitions.....	0
	Non-benefit Court Cases	7
APPELLATE COURT:	Claimant Appeals.....	14
	Employer Appeals.....	2
	EDD Appeals.....	0
	Non-benefit Court Cases	0
ISSUES:	UI.....	89
	DI.....	14
	Tax.....	3
	Non-benefit Court Cases	10

2016 CALENDAR YEAR ACTIVITY - Benefit & Tax Cases

LITIGATION CASES FILED

	<u>YTD</u>	<u>July</u>
SUPERIOR COURT: Claimant Petitions.....	15	2
Employer Petitions.....	3	1
EDD Petitions.....	0	0
APPELLATE COURT: Claimant Appeals.....	3	1
Employer Appeals.....	1	0
EDD Appeals.....	0	0

LITIGATION CASES CLOSED

	<u>YTD</u>	<u>July</u>
SUPERIOR COURT: Claimant Petitions.....	42	5
Employer Petitions.....	8	0
EDD Petitions.....	0	0
APPELLATE COURT: Claimant Appeals.....	1	0
Employer Appeals.....	0	0
EDD Appeals.....	0	0

2016 Decision Summary

<u>Claimant Appeals</u>		<u>Employer Appeals</u>		<u>CUIAB Decisions</u>		
Win: 2	Loss: 38	Win: 0	Loss: 5	Affirmed: 43	Reversed: 2	Remanded: 0

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

AUGUST 2016 PERFORMANCE INDICATORS

FIELD OPERATIONS

MEETING DOL STANDARDS

UI TIMELAPSE CASES

	<u>Closed</u>	<u>DOL Standard</u>
Closed Cases		
% Closed in <= 30 Days	59.9%	≥60%
% Closed in <= 45 Days	78.9%	≥80%

	<u>Avg. Days</u>	<u>DOL Standard</u>
Pending Cases		
Case Aging	28.1	≤30

WORKLOAD

	<u>UI</u>	<u>ALL</u>
Opened	18,807	20,251
Closed	18,700	20,264
Balance of Open Cases	18,246	29,078

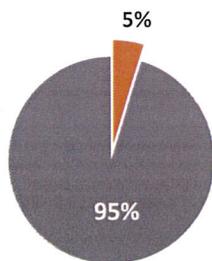
CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

	<u>Days</u>
UI Timelapse Appeals	40
DI Appeals (including PFL)	77
All Programs	63

UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	95%
UI Extensions as % of All UI	5%

UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 5% of UI Open Balance, and Regular UI cases made up 95%.

APPELLATE OPERATIONS

MEETING DOL GUIDELINES & STANDARDS

UI TIMELAPSE CASES

	<u>Closed</u>	<u>DOL Guideline</u>
Closed Cases		
% Closed in <= 45 Days	27.8%	≥50%
% Closed in <= 75 Days	91.1%	≥80%

	<u>Avg. Days</u>	<u>DOL Standard</u>
Pending Cases		
Case Aging	37.7	≤40

WORKLOAD

	<u>UI</u>	<u>ALL</u>
Opened	986	1,059
Closed	1,325	1,401
Balance of Open Cases	1,291	1,395

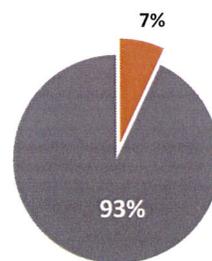
CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

	<u>Days</u>
UI Timelapse Appeals	58
DI Appeals (including PFL)	45
All Programs	57

UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	91%
UI Extensions as % of All UI	9%

UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 7% of UI Open Balance, and Regular UI cases made up 93%.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

JULY 2016 PERFORMANCE INDICATORS

FIELD OPERATIONS

MEETING DOL STANDARDS

UI TIMELAPSE CASES

	<u>Closed</u>	<u>DOL Standard</u>
Closed Cases		
% Closed in <= 30 Days	57.7%	≥60%
% Closed in <= 45 Days	79.9%	≥80%

	<u>Avg. Days</u>	<u>DOL Standard</u>
Pending Cases		
Case Aging	29.1	≤30

WORKLOAD

	<u>UI</u>	<u>ALL</u>
Opened	16,201	17,474
Closed	15,409	17,075
Balance of Open Cases	18,206	29,174

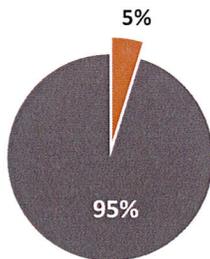
CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

	<u>Days</u>
UI Timelapse Appeals	40
DI Appeals (including PFL)	75
All Programs	66

UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	95%
UI Extensions as % of All UI	5%

UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 5% of UI Open Balance, and Regular UI cases made up 95%.

APPELLATE OPERATIONS

MEETING DOL GUIDELINES & STANDARDS

UI TIMELAPSE CASES

	<u>Closed</u>	<u>DOL Guideline</u>
Closed Cases		
% Closed in <= 45 Days	47.7%	≥50%
% Closed in <= 75 Days	95.1%	≥80%

	<u>Avg. Days</u>	<u>DOL Standard</u>
Pending Cases		
Case Aging	40.1	≤40

WORKLOAD

	<u>UI</u>	<u>ALL</u>
Opened	996	1,059
Closed	923	965
Balance of Open Cases	1,631	1,738

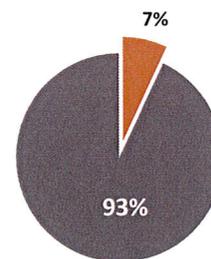
CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

	<u>Days</u>
UI Timelapse Appeals	53
DI Appeals (including PFL)	48
All Programs	53

UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	89%
UI Extensions as % of All UI	11%

UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 7% of UI Open Balance, and Regular UI cases made up 93%.

California Unemployment Insurance Appeals Board
FO Cycle Time Summary Report
For Cases Closed in August 2016

UI Timelapse CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	35	4	12	13	1
Inglewood	40	6	14	12	2
Inland	37	3	11	16	2
Los Angeles	37	3	10	15	2
Oakland	45	5	16	17	1
Orange County	38	4	12	15	2
Oxnard	40	3	13	17	1
Pasadena	36	3	13	12	2
Sacramento	41	3	15	16	2
San Diego	47	4	21	15	1
San Francisco	43	3	19	13	2
San Jose	40	3	17	14	0
Statewide	40	4	14	15	1

ALL CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	36	4	13	13	1
Inglewood	85	7	18	14	4
Inland	56	4	26	16	2
Los Angeles	78	3	12	16	2
Oakland	54	5	17	18	2
Orange County	66	4	13	15	2
Oxnard	61	3	32	18	1
Pasadena	41	3	14	13	2
Sacramento	55	3	18	18	2
San Diego	70	4	21	17	1
San Francisco	46	4	20	13	2
San Jose	43	3	18	14	0
Tax Office	394	N/A	N/A	44	236
Statewide	63	4	18	16	2

**California Unemployment Insurance Appeals Board
FO Cycle Time Summary Report
For Cases Closed in July 2016**

UI Timelapse CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	34	3	11	13	1
Inglewood	41	6	12	13	2
Inland	38	3	13	16	1
Los Angeles	40	3	14	15	2
Oakland	42	6	16	14	1
Orange County	40	4	13	14	1
Oxnard	35	3	11	16	0
Pasadena	40	2	14	15	1
Sacramento	45	3	20	15	1
San Diego	44	4	19	14	1
San Francisco	40	4	16	13	2
San Jose	44	3	23	13	0
Statewide	40	4	15	14	1

ALL CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	35	4	11	13	1
Inglewood	81	7	19	15	3
Inland	61	3	38	16	1
Los Angeles	71	4	15	15	2
Oakland	81	6	23	17	2
Orange County	63	5	15	15	2
Oxnard	47	3	14	17	0
Pasadena	43	3	14	15	1
Sacramento	53	3	22	16	1
San Diego	59	4	20	14	1
San Francisco	43	4	16	14	2
San Jose	49	3	24	13	0
Tax Office	341	N/A	N/A	32	11
Statewide	66	4	20	15	1

California Unemployment Insurance Appeals Board
FO Cycle Time Summary Report
For Cases Closed in August 2016

PFL CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	53	5	9	27	2
Inglewood	61	7	28	12	1
Inland	50	6	31	13	4
Los Angeles	43	4	20	15	0
Oakland	71	6	39	12	5
Orange County	56	5	13	14	0
Oxnard	62	5	44	16	4
Pasadena	78	6	43	14	4
Sacramento	151	8	169	90	0
San Diego	64	9	33	15	2
San Francisco	51	5	15	15	7
San Jose	62	4	44	14	1
Statewide	62	6	35	16	3

DI CASES (No PFL)	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	52	6	18	13	4
Inglewood	80	10	26	14	11
Inland	70	6	33	14	8
Los Angeles	67	7	28	15	3
Oakland	86	7	41	18	5
Orange County	96	8	46	14	11
Oxnard	89	8	42	16	2
Pasadena	77	9	30	13	3
Sacramento	98	7	56	22	2
San Diego	74	7	38	14	5
San Francisco	63	7	21	14	7
San Jose	77	6	34	14	3
Statewide	78	7	34	15	6

California Unemployment Insurance Appeals Board
FO Cycle Time Summary Report
For Cases Closed in July 2016

PFL CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	55	5	28	12	8
Inglewood	85	10	15	11	31
Inland	69	5	41	17	1
Los Angeles	42	4	14	15	0
Oakland	45	7	40	20	0
Orange County	90	11	45	14	11
Oxnard	54	5	26	13	0
Pasadena	-	-	-	-	-
Sacramento	77	4	42	15	1
San Diego	68	6	30	15	1
San Francisco	63	10	29	14	5
San Jose	73	5	38	14	1
Statewide	65	6	33	14	4

DI CASES (No PFL)	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	47	7	14	13	2
Inglewood	59	13	14	12	6
Inland	76	5	44	15	3
Los Angeles	59	7	22	15	3
Oakland	76	6	34	16	2
Orange County	95	10	43	15	8
Oxnard	85	8	39	14	0
Pasadena	75	8	24	16	2
Sacramento	132	5	72	28	1
San Diego	68	8	31	13	3
San Francisco	64	8	33	12	2
San Jose	78	8	35	13	1
Statewide	76	8	34	15	3

CUIAB 15/16 Fiscal Year Paid Overtime/Lump Sum Payout - SCO Report
Final - July 2015 through June 2016

15/16 Fiscal Year-to-Date Overtime Expenditure									
Branch	FY Y-T-D Hours	Decision Typing ¹ Pay	FY Y-T-D Hours	CTU Typing Pay	FY Y-T-D Hours	Registration Pay	FY Y-T-D Hours	Other Pay	
Appellate	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	6.40	\$129.80	
Admin	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	
IT	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	233.00	\$11,613.60	
Exec	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	
Field	0.00	\$118.56	0.00	\$0.00	5.60	\$119.22	0.00	\$0.00	
Total	0.00	\$118.56	0.00	\$0.00	5.60	\$119.22	239.40	\$11,743.40	

¹ Pay adjustment SFY 2012-13

15/16 Fiscal Year-to-Date Total Overtime Expenditures										CTO Expenditures		Final Over/Under
Branch	15/16 FY Allocation	Year-to-Date Hours	Year-to-Date Position Equivalent	Year-to-Date Pay	Allocation Balance	Hours	Estimated Pay	Estimated Expenditures	Over/Under			
Appellate	\$124.00	6.40	0.01	\$129.80	-\$5.80	0.04	\$15.25	\$15.25	-\$21			
Admin	\$1,269.00	0.00	0.00	\$0.00	\$1,269.00	14.00	\$691.81	\$691.81	\$577			
IT	\$33,057.00	233.00	0.34	\$11,613.60	\$21,443.40	335.75	\$18,818.23	\$18,818.23	\$2,625			
Exec	\$0.00	0.00	0.00	\$0.00	\$0.00	0.00	\$0.00	\$0.00	\$0			
Field Operations	\$1,044.00	5.60	0.01	\$237.78	\$806.22	0.00	\$0.00	\$0.00	\$806			
Total	35,494.00	245.00	0.12	\$11,981.18	\$23,512.82	349.79	\$19,525.29	\$19,525.29	\$3,988			
Actual Monthly Average Personnel Year										0.12	0.17	

15/16 Fiscal Year-to-Date Lump Sum Payout										Final Over/Under	
Branch	Year-to-Date Hours	Year-to-Date Position Equivalent	Year-to-Date Pay	15/16 Allocation	Allocation Balance	Final Over/Under					
Appellate	587.80	0.28	\$20,627	\$164,018	\$143,392	\$143,392	\$3,459	\$3,459	\$9,502		
Admin	0.00	0.00	\$0	\$3,459	\$3,459	\$3,459	\$9,502	\$9,502	\$36,271		
IT	-47.00	-0.02	-\$1,959	\$7,544	\$9,502	\$9,502	\$36,271	\$36,271	\$37,805		
Exec	986.00	0.47	\$22,211	\$58,482	\$36,271	\$36,271	\$37,805	\$37,805	\$230,429		
Field Operations	13,669.30	6.57	\$737,423	\$775,228	\$775,228	\$775,228	\$230,429	\$230,429	\$230,429		
Total	15,196.10	7.31	\$778,301	\$1,008,730	\$230,429	\$230,429	\$230,429	\$230,429	\$230,429		

8/4/16 vg



STATE OF CALIFORNIA – GOVERNOR
EDMUND G. BROWN, JR.

LABOR AND WORKFORCE DEVELOPMENT AGENCY
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

Post Office Box 944275
Sacramento, CA 94244-2750
Phone: (916) 263-6803
FAX: (916) 263-6837

August 23, 2016

Proposal to Adopt as Precedent the Board's Previously Issued Decision in Case No. AO-380199 Concerning the Issues of whether:

- (1) workers were performing service for Petitioner as employees, pursuant to California Unemployment Insurance Code section 621, subdivision (b), to whom wages for employment were payable pursuant to Unemployment Insurance Code section 926;
- (2) workers' entire service, performed for Petitioner both within and without CA, was employment localized in CA pursuant to Unemployment Insurance Code section 603 or otherwise subject to coverage in CA pursuant to Unemployment Insurance Code section 602;
- (3) Petitioner is an employer liable for contributions to the CA Unemployment Fund and withholdings for Personal Income Taxes (PIT), plus interest, as assessed by EDD pursuant to Unemployment Insurance Code section 1127; and,
- (4) EDD's assessment against Petitioner is preempted by the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. section 14501(c).

By decision issued on July 29, 2016, in Case No. AO-380199, copy enclosed, the Appeals Board addressed Petitioner's Petitioner for Reassessment. The Board found that California resident "owner-operator" tractor drivers were performing services as employees of Petitioner during the audit period, to whom wages for employment were payable, based on common law tests and criteria subsequently developed in case law. The Board held the drivers' base of operations was in California and therefore their entire service was subject to coverage in California pursuant to Unemployment Insurance Code section 602 (b)(1). The Board concluded that Petitioner is an employer liable for contributions to the California Unemployment Fund and withholdings for Personal Income Taxes (PIT), plus interest, as assessed by the Employment Development Department. The decision acknowledged that, pursuant to code section 1127, the Employment Development Department is permitted to compute the

assessment and estimate the amount to be paid on the basis of the information available to it. The decision rejected Petitioner's argument that the assessment was preempted by the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. section 14501(c).

The California Unemployment Insurance Code, section 409 provides, in pertinent part:

The appeals board, acting as a whole, may designate certain of its decisions as precedents. Precedent decisions of the appeals board are subject to Section 11425.60 of the Government Code. The appeals board, acting as a whole, may, on its own motion, reconsider a previously issued decision solely to determine whether or not the decision shall be designated as a precedent decision. Decisions of the appeals board acting as a whole shall be by a majority vote of its members. The director [of the Employment Development Department] and the appeals board administrative law judges shall be controlled by those precedents except as modified by judicial review. If the appeals board issues decisions other than those designated as precedent decisions, anything incorporated in those decisions shall be physically attached to and be made a part of the decisions. The appeals board may make a reasonable charge as it deems necessary to defray the costs of publication and distribution of its precedent decisions and index of precedent decisions.

Government code section 11425.60 governs criteria for designating decision as a precedent and provides, in pertinent part:

An agency may designate a decision or part of a decision that contains a significant or policy determination of general application that is likely to recur. (Gov. Code, § 11425.60, subd. (b).)

CUIAB regulations go further in setting out the criteria we must apply in determining whether a case is an appropriate vehicle for a precedent decision:

§ 5109. Precedent Decision.

(a) A majority of the board acting as a whole may designate all or part of a decision as a precedent decision if it contains a significant legal or policy determination of general application that is likely to recur.

(b) A legal or policy determination is significant if it establishes a new rule of law or policy, resolves an unsettled area of law, or overrules, modifies, refines, clarifies, or explains a prior precedent decision.

(c) A legal or policy determination is of general application if the facts are sufficiently common to give guidance to future cases, clearly illuminate the legal or policy determination, and are significant to the parties, the public, the taxpayers, or the operation of the department or the agency.

(d) A legal or policy determination is likely to recur if it is of continuing public interest because of the frequency or the ongoing likelihood of occurrence.

(e) A precedent decision shall be clearly identified as such and published in such a manner as to make it available for public use. Information identifying any party, except the party's name, shall be removed prior to publication.

(f) The agency shall maintain an index of significant legal and policy determinations made in precedent decisions, in accordance with the requirements of Government Code section 11425.60.

(Cal. Code. Regs, tit. 22, § 5109.)

*The Board will consider whether the above-referenced decision meets the criteria set forth in the California Unemployment Insurance Code and section 5109 of title 22, California Code of Regulations for a precedent decision. The matter will be presented to the Board at its upcoming meeting **on September 13, 2016**. Interested parties may submit public comment at the board meeting and/or submit written comments regarding the advisability of the Board's adopting this case as a precedent decision. Written comments are requested to be received by the Appeals Board no later than **5 p.m. on September 7, 2016**. Those comments should be entitled, "Comments on Case No. AO-380199 Being Designated a Board Precedent" and mailed to Elise S. Rose, Chief Administrative Law Judge, Appellate Operations, California Unemployment Insurance Appeals Board, 2400 Venture Oaks Way, Suite 310, Sacramento, CA 95833 or faxed to Elise S. Rose, Chief, Appellate Operations, California Unemployment Insurance Appeals Board at 916-263-6837. Any written comments by the parties to this case should include a certification that you have mailed a copy of your comments to each of the other addressees on the following list of entities that have participated in this particular case.*

Enc.

Cc:
RWI TRANSPORTATION LLC
PO BOX 721668
NEWPORT, KY 41072-1668

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FACD CENTRAL OPERATIONS
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EDD - LEGAL DIVISION - MIC 53
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FAX TRANSMITTAL

Date: 09-07-16

Number of pages, including transmittal: 7

TO:	FROM:
Name: <u>CUIAB</u>	Name: <u>Blake Bandy</u>
Company: _____	EDD Office: <u>Legal</u>
Phone #: () _____	Phone #: <u>(916) 654-8410</u>
Fax #: <u>(916) 263-6837</u>	Fax #: <u>(916) 654-9069</u>

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MESSAGE:

In the matter of RWI Transportation LLC, AO-380199

California Labor and Workforce Development Agency



Edmund G. Brown Jr.
Governor

September 7, 2016

Elise S. Rose, Chief Administrative Law Judge
Appellate Operations
California Unemployment Insurance Appeals Board
2400 Venture Oaks Way, Suite 310
Sacramento, CA 95833

Via U.S. Mail & Fax (916) 263-6837

Re: Comments on Case No. AO-380199 Being Designated a Board Precedent

Dear Chief Administrative Law Judge Rose:

The Employment Development Department ("EDD") supports designating Case No. AO-380199 as a precedent decision because it would clarify numerous uncertainties as to the application of current law and provide significant guidance for future legal determinations.

In its decision in Case No. AO-380199 ("Decision"), the California Unemployment Insurance Appeals Board ("Board") held that tractor drivers engaged by RWI Transportation LLC ("Petitioner") performed services as employees during the audit period, based on the common law tests and subsequent case law. The Board further held that the base of operations of those drivers was in California, and therefore, their service within and without the state was subject to coverage in California, pursuant to section 602(b)(1) of the California Unemployment Insurance Code ("CUIC"). Finally, the Board held that the Federal Aviation Administration Authorization Act ("FAAAA") did not preempt the EDD's tax assessment against the Petitioner.

"The appeals board, acting as a whole, may designate certain of its decisions as precedents. Precedent decisions of the appeals board are subject to Section 11425.60 of the Government Code." (Unempl. Ins. Code, § 409.) "An agency may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur." (Gov. Code, § 11425.60, subd. (b).) Board regulations further define the criteria for determining whether a decision should be made a precedent:

A legal or policy determination is *significant* if it establishes a new rule of law or policy, resolves an unsettled area of law, or overrules, modifies, refines, clarifies, or explains a prior precedent decision. A legal or policy determination is of *general application* if the facts are sufficiently common to give guidance to future cases, clearly illuminate the legal or policy determination, and are significant to the parties, the public, the taxpayers, or the operation of the department or the agency. A legal or policy determination is *likely to recur* if it is of continuing public interest because of the frequency or the ongoing likelihood of occurrence.

(Cal. Code Regs., tit. 22, § 5109, subs. (b)--(d), emphasis added.)

Judge Rose
September 7, 2016
Page two

As set forth in detail below, the EDD supports designating AO-380199 as a precedent decision because it contains "significant legal . . . determination[s] of general application that [are] likely to recur."

1. The Board's holding that the tractor drivers at issue were employees of the Petitioner was "a significant legal . . . determination of general application that is likely to recur."

- a. Significant Legal Determination

The Board's determination that the tractor drivers at issue performed services as employees was significant because it sheds light on employment status in the interstate tractor driver context. Although the common law tests are well-settled as authoritative, some uncertainty remains in the specific application of the common law tests to tractor drivers.

Under common law, the primary test is whether the alleged employer has the right to direct and control the manner and means of accomplishing the desired result. (*Empire Star Mines Co., Ltd. v. California Employment Commission* (1946) 28 Cal.2d 33, 43.) However, the right of a motor carrier to direct and control tractor drivers performing interstate transportation services is not always readily apparent, and it is generally unnecessary for motor carriers to exercise an extensive amount of *actual* control over tractor drivers for several reasons. Motor carriers using an "owner-operator" business model engage a large pool of eligible drivers, who are only paid for the amount of services rendered. As a result, such motor carriers need not impose any minimum performance standards because there is no shortage of motivated drivers willing to accept transportation assignments. Additionally, the motor carriers' interests in safety and quality are served by way of government enforcement of its transportation regulations. Any requirements to comply with government regulations are attributed to the government rather than the motor carrier.

In AO-380199, the Board highlighted key facts relevant to determining a motor carrier's right to control its tractor drivers. Specifically, the Board found that "Petitioner directed drivers where to pick up and drop off produce and by when, subjected drivers to a twice-daily check-in requirement, required them to submit paperwork containing information beyond what was required of Petitioner by the USDOT, and mandated the use of certain stations via which drivers had to submit paperwork which was required to complete the job and receive payment." (Decision, pg. 10.) The Board's right-to-control determination resolves ambiguity by clearly indicating that when a motor carrier "retain[s] control over these significant details of the work" it "strongly indicates employment." (*Ibid.*)

Judge Rose
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Additionally, the common law secondary factors have produced inconsistent results in motor carrier cases, depending on who is applying them and how much weight is allotted to each factor. For instance, motor carriers often contend that a great deal of weight should be assigned towards independence when a driver has an established "DBA" or "LLC". That same assertion was made by Petitioner in this case. However, the Board explained that this fact alone is "insufficient to conclude those drivers were not functioning as employees of Petitioner" and held that "the only business [the] drivers were engaged in was the Petitioner's business," in part, because they "drove exclusively and continuously for Petitioner." (Decision, pg. 12.)

Another ambiguity relates to the importance of skill level. Here, "Petitioner argued that drivers were engaged in a high-skill occupation, which indicates they were independent contractors." However, the Board noted that "even where skill is required, if the occupation is one which ordinarily is considered an incident of the business establishment of the employer, there is an inference that the actor is a servant." (Decision, pg. 12, citing Rest.2d Agency, § 220, pg. 489.) This adoption of language from the Second Restatement of Agency instructs us to view skill level in the context of how that particular skill corresponds with services provided by the employer's business. Thus, a law firm is likely the employer of an attorney engaged to provide legal services to the firm's customers, while a bakery business is likely *not* the employer of an attorney engaged to defend the business against a tort action. This is because an attorney would not "ordinarily [be] considered an incident of" a baking business.

Next, the Board found that "[d]rivers did not have to possess, acquire or bring any significant resource into the relationship with Petitioner in order to perform services for it[.]" given the evidence "that Petitioner paid for or advanced funds to drivers for almost everything necessary for them to perform services, later deducting some payments or advances from drivers' pay." (Decision, pgs. 12-13.) The Board's determination stands for the proposition that an assertion of independence is less persuasive where the company is paying for or advancing funds to cover business expenses because the supposed independent contractor lacks any capital.

The pay-per-mile compensation structure is often touted by motor carriers as indicating independence. However, the Board "recognize[d] there was a time element to drivers' payment, as Petitioner designed driving assignments to meet specified delivery deadlines and to be completed within a certain number of days." (Decision, pg. 13.) That recognition means that the compensation structure should not be viewed in isolation from other facts, such as deadlines set by the company.

Perhaps most importantly, the Board assigned substantial weight to the fact that the drivers performed transportation services that were part of the regular business of Petitioner, stating

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Page four

"[this] is a *powerful indication* of an employment relationship." (Decision, pg. 14, emphasis added.) The Board noted that "[i]n recent history, this single factor has become by far the most significant to courts when analyzing whether a worker is an employee or independent contractor." (*Ibid.*) While the importance of this factor is fairly well-settled in other contexts, the Board's determination here is significant because of its application to motor carriers using an owner-operator business model. In the present case, Petitioner was a trucking company that owned no trucks and claimed to employ no drivers, yet the "drivers furnished no independent business or professional service relative to Petitioner." (Decision, pg. 15.) As a precedent decision, AO-380199 settles any existing ambiguity as to the significance of this factor in the motor carrier context.

b. Of General Application

The Board's determinations are "of general application" because "the facts are sufficiently common to give guidance to future cases" and will "clearly illuminate the legal . . . determination[s]" in those cases. Here, Petitioner was a motor carrier engaging drivers that it contended were owner-operators of tractors. Not only is this a common scenario, but in motor carrier cases, there tends to be a higher number of worker at issue than other tax cases. In this case, there were 98 drivers, for which payroll taxes were assessed.

Furthermore, the specific details in this case, like the fact that many of the drivers could not have obtained financing or leasing contracts without the aid of the company, will help delineate whether drivers in future cases are employees, thus "clearly illuminat[ing] the legal . . . determination[s]" in those matters.

c. Likely To Recur

In the past five years, the EDD has conducted 539 audits and 94 investigations relating to the trucking industry. Though it is unknown what percentage of those audits and investigations involved owner-operators, this historical data signifies that employment status determinations of tractor drivers are very "likely to recur" in the future.

2. The Board's holding that the tractor drivers at issue maintained their bases of operations in California was "a significant legal . . . determination of general application that is likely to recur."

The Board's determination that the drivers maintained their "bases of operations" in California was significant because it builds on to prior precedent decisions that applied section 602 of the CUIC, none of which turned on the base-of-operations test. (Precedent Decisions P-T-148 & P-B-120.) The base-of-operations test has proven itself as confusing, as demonstrated by both

Judge Rose
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Petitioner's misperception at the hearing below and Judge Holl's misapplication of the test in his decision that followed. (Tax Decision No. 5308590.) As the Board pointed out, the U.S. Department of Labor has cautioned that the "'base of operations' must be carefully distinguished from the 'place of direction and control.'" (Decision, pg. 18.)

In AO-380199, the Board clearly explained that the proper focus of the base-of-operations test is on the *workers*, not the employer. The Board went on to thoughtfully analyze the facts relevant to that test. If designated as precedent, those facts would serve as guideposts for base-of-operations determinations in the cases yet to come. Workers performing interstate services are not uncommon, and the relevant facts in the present case will certainly be analogous in many other cases, even beyond the trucking industry.

3. The Board's holding that the EDD's tax assessment against Petitioner was not preempted by the FAAAA was "a significant legal . . . determination of general application that is likely to recur."

The Board's determination that the FAAAA did not preempt the EDD's tax assessment against Petitioner is significant because it squarely addresses the issue, holding that "[t]he provisions of the code at issue in the present case are in no way 'related to' the transportation of property." (Decision, pg. 23.) The Board further held that "[t]he code does not conflict with the provisions or intent of the FAAAA." (*Ibid.*) The Board synthesized the applicable case law and applied the analysis of *Dilts v. Penske Logistics, LLC* (9th Cir. 2014) 769 F.3d 637 and *People ex rel. Harris v. PAC Anchor Transportation* (2014) 59 Cal.4th 772 to facts and issues in the present case, which are common to motor carrier cases and thus likely to recur.

Conclusion

The Board's determinations in Case No. AO-380199 resolved numerous uncertainties regarding several legal issues that commonly arise together in motor carrier cases: employment status of tractor drivers, localization of services, and purported preemption by the FAAAA. If the decision in AO-380199 is designated as a Board precedent, those legal determinations will promote the proper classification of tractor drivers and the consistent adjudication of similar disputes. For all of the reasons discussed herein, the EDD supports designating AO-380199 as a Board precedent.

Judge Rose
September 7, 2016
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The EDD hereby certifies that a true and complete copy of these written comments has been mailed to each of the addressees listed below. If you have any additional questions regarding this matter, please contact the undersigned at telephone number (916) 653-5671 or via email at Blake.Bandy@edd.ca.gov.

Sincerely,



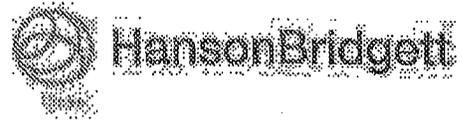
BLAKE BANDY, Attorney
Employment Development Department

cc: RWI Transportation LLC
P.O. Box 721668
Newport, KY 41072-1668

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FACD Central Operations
P.O. Box 826880
Sacramento, CA 94820-0001



Facsimile Cover Sheet

TO	PHONE NO.	FAX NO.
Elise S. Rose, Esq. Chief Administrative Law Judge Appellate Operations California Unemployment Insurance Appeals Board		(916) 263-6887

FROM: Jahmal T. Davis
Direct Phone: (415) 995-6813
Direct Fax: (415) 995-3489

DATE: September 6, 2016

RE: RWI's Comments on Case No. AO-380199 Being Designated a Board Precedent

PAGES: 39 (including cover page)
Original to Follow by U.S. Mail

Please see attached correspondence dated September 6, 2016.

Received in the
Office of the Chief Counsel

SEP 06 2016

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Hanson Bridgett LLP
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APPEALS BOARD



JAHMAL Y. DAVIS
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DIRECT DIAL (415) 995-3412
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E-MAIL j.davis@hansonbridgett.com

September 6, 2016

VIA FACSIMILE and U.S. MAIL

Elise S. Rose, Esq.
Chief Administrative Law Judge
Appellate Operations
California Unemployment Insurance Appeals Board
2400 Venture Oaks Way
Suite 310
Sacramento, CA 95833
Fax: 916-263-6837

Re: RWI's Comments on Case No. AO-380199 Being Designated a Board Precedent.

Dear Judge Rose:

As you know, our office represents RWI Transportation, LLC ("RWI"), who is a party to Case No. AO-380199. The Appeals Board issued a written decision in that case on July 29, 2016 (the "Decision"). RWI submits this letter in opposition to the adoption of the Decision as a "precedent decision" by the Board. RWI intends to attend the Board Meeting set for September 13, 2016, at 10:30 a.m.

Section 11426.60(b) of the California Government Code states that the Board may designate as precedential "a decision or part of a decision that contains significant legal or policy determination of general application that is likely to recur." RWI does not believe that the Decision meets such a standard. First, RWI asserts that the September 23, 2015 decision on the merits issued by Administrative Law Judge Holl was correctly decided, and that the Decision erred by overturning Judge Holl's prior ruling. RWI is in the process of seeking judicial review of the Decision, having paid the assessment on August 26, 2016 and immediately filed its claim for refund with Patrick J. Henning, Jr., Director of the California Employment Development Department (the "EDD"). A copy of RWI's claim for refund is attached hereto.

Second, underlying this case from the start has been the issue of whether the EDD's initial assessment against RWI is preempted by the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"). RWI has asserted FAAAAA preemption as a defense throughout the case proceedings, including before the Appeals Board. This preemption issue is currently being addressed by the United States District Court for Southern California in the recently filed lawsuit in *California Trucking Association v. Julie Su, in her official capacity as Labor Commissioner of the California Department of Industrial Relations*, Case No. 3:16-cv-01866-CAB-MDD.

For both of these reasons, RWI asserts that the July 29, 2016 Decision in this case does not meet the standard for precedent decisions, set forth by the Government Code. Alternatively,

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Elise S. Rose, Esq.
Chief Administrative Law Judge
Appellate Operations
September 6, 2016
Page 2

RWI asserts that the designation of the Decision as precedent is premature, given that RWI is seeking judicial review of the Decision.

If you have any questions or require any additional information on this issue, please contact the undersigned. By signing below, RWI certifies that it has mailed a copy of its comments to each of the other addressees listed below.

Sincerely,



Jahmal T. Davis

Enclosures: RWI's Claim for Refund

- cc: EDD - Audit Section - MIC94
FACD Central Operations
P.O. Box 826880
Sacramento, CA 94280-0001
- EDD - Legal Division - MIC59
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JENNIFER L. DAVIS
 PARTNER
 DIRECT DIAL (415) 926-8011
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 E-MAIL: jldavis@hansonbridgett.com

August 30, 2016:

VIA HAND DELIVERY

Patrick Hemming, Jr.
 Director, California Employment Development Department
 800 Capitol Mall, 5th Floor
 Sacramento, CA 95814

Re: RWI Transportation LLC
 Case No.: AO-380199
 Notice of Assessment Letter ID: L0818666816
 Issue Date: July 28, 2014
 Account ID: 255-3716-8
 OA Decision No.: 5308590
 CUIAB Decision date: July 29, 2016
 Payment Date: August 26, 2016

RWI TRANSPORTATION LLC'S CLAIM FOR REFUND

Dear Mr. Hemming:

Pursuant to Unemployment Insurance Code Sections 1178(a) and 1241(a), RWI Transportation LLC (RWI) hereby requests a full (or in the alternative a partial) refund of the \$2,331,867.64 assessment which it wired to the EDD on Friday, August 26, 2016. RWI's payment was relative to the EDD's initial July 28, 2014 assessment of \$2,380,414.49 (plus the interest due on the same), and the CUIAB decision of July 29, 2016 (decision no. 5308590) in case no. AO-380199, wherein it reversed the ALJ's decision of September 23, 2015. In support of its request for a full (or in the alternative partial) refund, RWI Transportation LLC states as follows:

I. The CUIAB's July 29, 2016 decision wherein it reversed the ALJ's September 23, 2015 decision is contrary to law. Specifically, in reaching its decision to reverse the ALJ and conclude that "Petitioner is an employer liable for contributions to the California Unemployment Fund," the CUIAB failed to accord the ALJ's finding the "strong presumption of correctness" to which it was entitled, and failed to require the EDD "to convince the [CUIAB] that the [ALJ] decision is contrary to the weight of the evidence." See *In the Matter of Mass Egg Ranches*, No. F.T. 13 (Cal. UIAB 1968); *Drumney v. State Board of Funeral Directors*, 13 Cal. 2d 75, 87 P. 2d 848, 854 (Cal. 1939). Moreover, "the determination of employee or independent-contractor status is one of fact if dependent upon the resolution of disputed evidence or inferences, and the [fact of fact] decision must be upheld if substantially supported." *S.G. Borello & Sons, Inc. v. Dept. of Indus. Relations*, 48 Cal. 3d 341, 349 (1989). The Board was thus required to give "full

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Patrick Henning, Jr.

August 30, 2016

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weight" to the ALJ's evaluation of the evidence and witnesses, and unless it is shown that "his findings are manifestly against the weight of the evidence," the ALJ's findings should have been accepted. *Moan supra*.

When the ALJ made his decision in this case, he had heard three days of live testimony and reviewed over 35 exhibits. As such, he was in the best position to judge the credibility of the witnesses, and to render a finding concerning whether RWI "controlled the means and manner" by which drivers performed transportation services for RWI. He provided a detailed 9-page Decision in which he made specific factual determinations that were supported by the evidence in the file, and he concluded as follows:

In this case, the substantial credible evidence presented does not support a finding that the Petitioner has the right to control, or exercises control, over the manner and means of accomplishing the driver's work. The evidence established that the drivers herein are true independent owner-operators in the legal and functional meaning of the term. Drivers may accept or reject any load. Their decision is based simply on the pickup and dropoff dates and the value of the load. Most of the "factors of control" relied upon by the department in asserting an employment relationship herein relates to matters required of the petitioner pursuant to federal regulations. Those factors may not be utilized, pursuant to statute, to determine the employment relationship. (See pg. 8 of ALJ decision).

Because the CUIAB failed to cite to any proof in the record demonstrating the ALJ's determination was "manifestly against the weight of the evidence," the CUIAB acted contrary to law in failing to uphold the ALJ's findings. As such, RWI is entitled to a full refund of the assessment it wired on August 26, 2016.

2. The CUIAB likewise erred in reversing the ALJ and concluding that the "driver's work was localized in California" under Code Section 603 and was therefore "covered employment" in California under California Unemployment Insurance Code (CUIA) Section 602. In reversing the ALJ decision on this point, the CUIAB missed the point of the jurisdictional requirement of the CUIA. The issue is not whether drivers who were subject to the audit should file personal income tax returns in California versus Kentucky. Rather, the issue is whether there was sufficient evidence in the record to establish that the Kentucky based RWI was subject to an audit of services performed by drivers who resided in California but who performed services both within and outside of California. The evidence produced at the hearing indicated that although drivers subject to the audit were all residents of the State of California, during a significant portion of the growing season (apx. 40%), loads of produce were transported between Arizona and the Midwest, during which time no loads transported on behalf of RWI originated or ended in California. As such, the CUIAB's conclusion that California was the place where all work for petitioner "started and ended," and where all drivers "customarily returned to service equipment and perform other tasks necessary to exercise their trade, and waited to receive assignments and instructions from petitioner" was totally unsupported by any

Patrick Henning, Jr.
August 30, 2016
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testimony in the record. Conversely, the witnesses who testified before the ALJ indicated that drivers could receive assignments by electronic transmission at any location, and that only during a portion of the year did loads originate or end in California. As such, there is insufficient credible evidence in the record to indicate that the ALJ's finding on this jurisdictional issue was "manifestly against the weight of the evidence," and his decision should have therefore been affirmed by the CUIAB. As such, RWI is entitled to a full refund of the assessment it wired on August 26, 2016.

3. The CUIAB's decision that the EDD's assessment "is not pre-empted by the FAAAA 49 U.S.C. Section 14301(c)" is totally unsupported by the evidence in the record. Specifically, the case law and argument relied upon by the CUIAB on this issue was never presented to the ALJ, nor was it contained in the EDD's brief following their appeal of the ALJ's decision. Indeed, at the request of the ALJ, petitioner filed a July 22, 2015 brief specifically addressing its preemption argument before the July 28, 2015 hearing against petitioner commenced. The EDD did not respond to petitioner's brief even after the ALJ specifically pointed that fact out and directed the EDD to file a responsive pleading. (See pg. 13, day one, of the hearing transcript attached as Exhibit A.) Similarly, after the ALJ's decision was issued, the EDD did not address in its appeal brief any evidence in support of their argument that the assessment against RWI was not preempted by the FAAAA. For the CUIAB to rely upon arguments never presented by the EDD either before, during, or even after the ALJ hearing was inappropriate. As such, because the entire assessment is preempted by the FAAAA, RWI is entitled to a full refund of the assessment it wired on August 26, 2016.

4. Even if one were to assume that the CUIAB's decision that RWI "is an employer liable for contributions to the California Unemployment Fund, and for PIT withholding plus interest," the \$2,531,867.64 the EDD required RWI to pay, was by all accounts incorrect. Specifically, in their original audit of RWI, the EDD conceded that the amount listed in the assessment (\$2,380,444.49) was based in part on a calculation of "gross payments" to drivers, and that a reduction based on a calculation of the "net" earnings of such drivers was required. At the ALJ hearing in July 2015, RWI was the only party to present any evidence concerning what the appropriate net calculation should be. (See attached Exhibit 35 and transcript at pg. 50-63, day three, of hearing attached as Exhibit B.) The EDD offered no evidence to refute the calculation provided by petitioner and, as such, waived any argument that the assessment should be anything more than the \$324,335.92 total testified to by RWI at the hearing.

Indeed, even in the CUIAB's decision requiring a payment by RWI, the Board acknowledged that "petitioner's second dispute with the assessment calculation, that it is based on gross versus net driver earnings, is legitimate." Although the panel rejected RWI's above-noted method of calculating driver net earnings, there is no explanation in the Board's decision as to what was incorrect or why the information utilized by RWI's witness on this issue was "insufficient" or "inappropriate." Indeed, given that the EDD presented absolutely no evidence on this issue, and given the EDD's auditor and the CUIAB's own concession acknowledging that the amount assessed against RWI was not correct, to require RWI to nevertheless pay the full amount assessed by the EDD (plus interest) in order to continue its appeal process is manifestly unlawful and inequitable. As such, and even if a decision is made that the CUIAB was correct in

Patrick Hennings, Jr.

August 30, 2016

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Its conclusion that "petitioner is an employer," the difference between the amount paid on August 26, 2016 by petitioner (\$2,531,867.64) minus the amount calculated to be due by RWI's witness during the hearing on the issue (\$324,535.92) should result in an immediate refund to RWI in the amount of \$2,207,331.72, plus interest.

5. Even if petitioner's calculations regarding what that assessment should have been is likewise rejected, the assessment charged to and paid by RWI is nevertheless grossly overstated. Specifically, on August 16, 2016, the EDD instructed RWI that:

... "to determine the net wages, RWI should subtract the expenses listed on the payee's year-end statement from the gross amount the payee was paid. Please provide the Sacramento area audit office (AAO) with a spreadsheet identifying all of the payees, with associated columns indicating (a) the gross wages paid; (b) the itemized breakdown of expenses for the payee; and (c) and, the net wages." (See attached Exhibit C, August 15, 2016 correspondence to RWI from EDD.)

Attached hereto as Exhibit D is the documentation requested in the August 15, 2016 correspondence from the EDD. (The back-up for this summary is simultaneously being provided to the EDD's auditor assigned to this claim.) Although petitioner does not agree this calculation appropriately computes the "net wages" of the drivers subject to the audit (because the year-end statements issued by RWI to each payee showing those expenses reimbursed by RWI in no way captures all of the appropriate business expenses which any individual driver may have incurred but never submitted to RWI), even under this alternative calculation, the amount due by RWI for the assessment was overstated. As such, even under the EDD's flawed method of calculating a "net" earnings upon which a tax could be applied, RWI is entitled to a refund. Specifically, RWI should be refunded the difference between the amount it paid (\$2,531,867) and the amount set forth in the attached Exhibit D calculation (\$1,057,512), leaving a refund amount due RWI in the amount of \$1,474,355, plus interest.

For all of the above reasons, RWI hereby requests an appropriate full (or at least partial) refund within 60 days of its August 26, 2016 payment of the above-captioned assessment.

Very truly yours,


Gabriel F. Davis

JTD:jt
Enclosures

cc: Gary Becker
Dinsmore & Shohl LLP

EXHIBIT A

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:
RMI TRANSPORTATION, LLC
Petitioner

Account No.: 255-3716-8

EMPLOYMENT DEVELOPMENT
DEPARTMENT

Respondent

Case No.: 5108590

TRANSCRIPT OF HEARING

BEFORE

JEFFREY P. HOLE
ADMINISTRATIVE LAW JUDGE

Audio Recording
REPORTER

J. Lynch
TRANSCRIBER (11/24/15)

Time(s) and Place(s) of Hearing

July 28, 2015
San Francisco, California

Appearances:

Page

For the Petitioner: JAHMAD F. DAVIS, MCO.
GARY BECKER, MCO.
RICHARD BAUER, Witness
MICHAEL LENISE, Witness

For the Department: STELLA ULN, Staff Counsel
HANS HONGLUND, Auditor 21, 62, 142
MIRANDEO ESTRELLA, Witness
(By Telephone) 118
JOSEPHINE VIBAT, Interpreter 118

1 interest. I had not seen a response from the state, Ms.
 2 ULM indicates it was sent. Did you receive the state's
 3 brief?

4 MR. DAVIS: No.

5 ALJ: She is having it faxed to this office right now,
 6 so we should --

7 MS. ULM: Along with the fax confirmation because it
 8 was previously faxed to --

9 ALJ: Okay.

10 MS. ULM: -- San Francisco.

11 ALJ: So I've reviewed your briefs. I understand the
 12 preemption issue being jurisdictional. I did want to see
 13 some response from the state in that regard. So we'll see
 14 that.

15 And I'm gonna deal with the preemption issue at the
 16 time of decision because of our own scheduling issues.
 17 We're gonna take care of the witnesses, and you can argue the
 18 preemption issue at the end and it'll be dealt with in the
 19 decision.

20 MS. ULM: Uh-huh.

21 ALJ: Okay.

22 MS. ULM: Yes.

23 ALJ: All right. Any other housekeeping issues?

24 MR. BECKER: I just have one.

25 ALJ: Sure, Mr. Becker.

26 MR. BECKER: I have been participating over the phone,
 27 as you know, on these matters and was anticipating being

EXHIBIT B

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

Case No.: 5302990

FMI TRANSPORTATION, LLC

Petitioner

TRANSCRIPT OF HEARING

Account No.: 299-1716-8

BEFORE

EMPLOYMENT DEVELOPMENT DEPARTMENT

JERRY P. HOLL
ADMINISTRATIVE LAW JUDGE

Respondent

Audio Recording
REPORTER

J. Lynch
TRANSCRIBER (11/24/15)

Time(s) and Place(s) of Hearing:

July 30th, 2015
San Francisco, California

Appearances:

Page

For the Petitioner: JAMAL T. DAVIS, ESQ.

GARY BECKER, ESQ.

DAVE CORDELL, Witness

JOSEPH RACKOVACE, Witness

10

TIM SLAUGHTER, Witness

15

For the Department: STELLA ULM, Staff Counsel

HANS MONCLUND, Attorney

1 A That's correct.

2 Q Hence you being here.

3 A That's right. That's why I'm here.

4 Q All right. So were you -- were you then asked to
5 calculate the net pay summary amount that was requested by
6 the auditor?

7 A I was.

8 Q All right. Judge, we'll be working from these.
9 We'll mark these and then -- it's a packet, through that
10 packet.

11 A (Pause.)

12 A All right.

13 MR. BECKER: What number are we up to?

14 MR. DAVIS: 30.

15 MR. HONGLAND: 35.

16 ALL: 35.

17 MR. BECKER: Thank you. So we'll mark it as -- your
18 packet as Exhibit 35, and first, I want to ask you, what
19 you did to try and calculate the net.

(MARKED EXHIBIT NO. 35)

21 MR. SLAUGHTER: Okay. I started with the gross amounts
22 per the 1099s. From there I deducted --

23 MR. BECKER: Well --

24 MR. SLAUGHTER: (Pause.)

25 MR. BECKER: Let's talk about the 1099s first then.

26 MR. SLAUGHTER: Okay. Sure.

27 MR. BECKER: Q RWI has given you access to the 1099s.

1 Did you do anything to look behind the 1099 number to verify
2 them?

3 A. MR. SLAUGHTER: A Yeah, I did. I pulled data on a
4 load by load basis that showed every load that each driver
5 trip took during this timeframe.

6 I pulled the timeframe of the load -- actually, the
7 payment date for the load. I pulled the load number. I
8 pulled the miles on the load, the gross amount of pay that
9 added into the 1099, and some other data that went along
10 with that load.

11 Q So was your intention there to validate the 1099s?

12 A I think that my intention didn't start out to be
13 -- to validate the 1099s, although did end up doing that.

14 Q Okay. All right. So you had the 1099 data from
15 RWI. What did you next do in order to determine a net?

16 A Okay. The first thing I did is I took each driver
17 and I summarized the total miles that he drove during the
18 time period that tied out to the gross amounts. From those
19 miles I was able to identify how many weeks he worked during
20 the year, or at least he was paid by RWI during the year. I
21 was able to, obviously, determine how many miles he drove in
22 order to come up with the cost for operating and driving
23 those miles.

24 Q All right. So why is that important to the net
25 calculation?

26 A Well, it's very important because, obviously, the
27 owner-operator's responsibility for paying for his own fuel.

1. He's responsible for paying for his own truck payment. He's
2. responsible, really all the costs of operating that truck.
3. So if you look at his net income, it's the gross minus all
4. those costs.

5. Q Okay, what other components other than trying to
6. come up with those expenses you just described were you
7. trying to determine to get to a net?

8. A In addition to the fuel that he -- that he used
9. and his truck payment, I looked at fuel taxes and I looked
10. at --

11. Q Maintenance?

12. A I looked at maintenance for the truck, yes.

13. Q All right, you did not have the specific dollar
14. amounts paid by every individual driver to make calculations
15. of truck payments, maintenance for that driver or his fuel
16. expense, correct?

17. A That's correct.

18. MS. ULM: Objection, compound and vague.

19. MR. BECKER: Context (inaudible).

20. ALJ: Yeah, it -- I -- I think -- I understood the
21. question, so that's overruled.

22. MR. BECKER: Q Because you did not have that specific
23. information from the individual drivers, what did you do in
24. order to come up with the net?

25. MS. ULM: Objection, vague and --

26. ALJ: What's vague about it?

27. MS. ULM: Because you did not have that specific --

1. what is he referring to by that?

2. ALJ: That's why he has to answer the question.

3. Overruled.

4. MR. BECKER: You can answer.

5. MR. SLAUGHTER: Okay. I had to make certain
6. assumptions, obviously. As an example, when I took the
7. miles that a driver drove, in order to come up to -- to come
8. up with the fuel that he burned, I had to make an assumption
9. as to the average price per gallon that he paid, and,
10. obviously, the M.P.G. that those trucks got and I made those
11. assumptions.

12. In addition, I had to make assumptions as to the amount
13. that his truck rent or lease payment would have been.

14. MR. BECKER: O. Let's talk about that one for --

15. MR. SLAUGHTER: A. Okay.

16. Q. -- for a moment. What -- what did you utilize to
17. work from as a number for the truck rent or depreciation and
18. how did you get there?

19. A. I did some research on the value of trucks and
20. what the cost and weekly payment for a new truck today would
21. be. Roughly, trucks today, new trucks are going for between
22. 125,000 and 150,000, and if you would just run a simple
23. amortization schedule on that, a truck payment on a new
24. truck today would be in the seven to \$900 range. So I,
25. effectively, use that number and cut it in half to come up
26. with my -- to -- to subtract as the owner-operator's
27. expense.

1 Q With the assumption being that owner-operators
2 typically aren't driving a new truck?

3 A Typically, they are not driving a new truck,
4 that's correct. They tend to hold onto 'em for longer. So
5 some of 'em do have new trucks, I believe -- some of them
6 don't.

7 Q And I apologize, I'm gonna back up real --

8 A Okay.

9 Q -- quick for you. When you were talking about
10 your fuel expenses,

11 A Sure.

12 Q To come up with your calculation, you told us you
13 did the research, but could you be specific in terms of how
14 you made the calculation for fuel expense?

15 A Yeah. I took the miles -- I assumed five miles
16 per gallon, that's pretty standard in the industry. The
17 trucks should get five, and some of -- some trucks get less,
18 some get more, but I used an average of five to come up with
19 the gallons burned.

20 Then this -- the OH energy --

21 MS. ULM: Your Honor, I'm gonna object or interrupt the
22 witness because he's looking over at a document that is in
23 front of counsel that counsel had referred to and the
24 witness is now referring to. If everybody's showing it, I'd
25 like to review it as well.

26 MR. BECKER: I'm happy to give you a copy. It is -- or
27 I can do it the old fashioned way and ask him if it refreshes

18 his recollection as the very specific way he did it.
19 Whatever way you would prefer, counsel. I don't have an
20 extra copy right this second to give you. I'm happy to give
21 you time to review this one.

22 MR. SLAUGHTER: I've got two.

23 MR. BECKER: You got one?

24 MS. GEM: I can review in the time that you're

25 MR. SLAUGHTER: Yep. Sure. I -- I was looking

26 okay. Go ahead.

27 MR. BECKER: Hold on. You need a second copy?

28 MS. GEM: No.

29 MR. BECKER: Okay.

30 MS. GEM: I'll just (inaudible).

31 MR. SLAUGHTER: I -- I was looking to cite the
32 reference that I pulled this information. The US Energy
33 Information Administration publishes a weekly and monthly
34 national average fuel price. I took the -- their
35 information and I calculated the -- the average for each of
36 the year in question from the US Energy Information, and I
37 applied that to the -- to the gallons burned.

38 Q And who produced this (unclear)? US energy?

39 MR. SLAUGHTER: Information administration.

40 MR. BECKER: O For the record and to be consistent

41 with the fact, when we talked about truck rent or

42 depreciation, that is also on the summary sheet that

43 reflects how you came up with your calculation of 50 -- \$450

44 per week.

1 Mr. SLAUGHTER: A. It is, yes.

2 Q Okay. Now did you come up with the amount of
3 money to assign for repairs that were incurred by the owner
4 operators?

5 A I, again, did some further research. There's an
6 organization called the America Transportation Research
7 Institute and I pulled their data and they had done some
8 in surveys and they came up with an average-per-mile cost
9 for tires, repairs and maintenance of 19.4 cents. So I used
10 \$0.19 a mile for repairs and maintenance.

11 Q And that would be to cover things like tires?

12 A Tires, engine repairs, oil, and those type of
13 things.

14 Q All those maintenance --

15 A All those maintenance-type things.

16 Q All right. Was there a calculation in your net
17 summary that dealt with fuel?

18 A There was. On average they're responsible for
19 paying for their own fuel taxes. Those average about a
20 penny and a half a mile. I'm getting that from fuel tax
21 returns that RWI and others have filed. So I used a penny
22 and a half a mile for fuel taxes.

23 Q If you look --

24 A That the owner -- that the owner-operator would be
25 responsible for.

26 Q Okay. All right. So you utilized those. Did you
27 -- what was your next then methodology? You got the data

1 that you're gonna utilize for the net. How did you apply
2 that to the drivers in this case?

3 A I took the gross amount and for each driver I did
4 a separate calculation and I subtracted each individual cost
5 from their gross in order to come up with a net.

6 Q So if you looked at Tab 35, which has been marked,
7 which are the first five pages, I believe, of the -- sorry --
8 -- of the exhibit.

9 A (Pause.)

10 Q The format, your Honor, is the same as our prior
11 exhibit alphabetizing the drivers and then also breaking it
12 out between the quadrant of 2011, '12, '13, and a portion of
13 '14 that's subject to the audit. So that was the point.

14 A (Pause.)

15 Q So you -- you took individual -- run me through it
16 again utilizing --

17 A Okay.

18 Q -- how you did it. I don't need to know every
19 driver's number. I'm just saying --

20 A Sure.

21 Q -- explain to him how this paper works.

22 A I started --

23 MS. DLM: I'm going to object. (Inaudible).

24 MS. CLAUPTON: Sure.

25 MS. DLM: This witness is now talking about truck
26 depreciation, ah, meal deductions. These are deductions
27 that the State of California Employment Development

1 Department does not take into account under the CIRC section
 2 929, reimbursement. That only covers fuel, maintenance, and
 3 those type of related costs. So I'm not quite sure what the
 4 relevance is of this individual's testimony if it's going
 5 outside that scope.

6 MR. BECKER: Could I respond on --

7 MS. ULM: To the extent that he can provide information,
 8 or data pertaining to those specific deductions that are
 9 driven by the CIRC, then the department is more than willing
 10 to hear that testimony. However, anything that goes beyond
 11 that I don't see as being relevant.

12 Q. Any of that information included in the audit
 13 report?

14 MS. ULM: It wasn't provided to the auditor so no.

15 Q. It wasn't included in the audit report then.

16 So it seems that it's relevant in terms of what the
 17 department claims is owed.

18 MS. ULM: The CIRC dictates what deductions are given
 19 under 929, fuel, maintenance and related costs.

20 Q. Right.

21 MS. ULM: That doesn't include, ah, meals and
 22 incidental expenses, truck depreciation. So I'm not -- I'm
 23 not seeing how what this individual's testifying about is
 24 related to any reimbursements or adjustments that -- that
 25 could be done to the employer's account on the basis of CIRC
 26 929.

27 MR. BECKER: Respond briefly.

1 Q Mr. Becker, go ahead.

2 MR. BECKER: First of all, her example of including per
3 diem, I never asked this gentleman if per diems were
4 included, and where she's getting that is she's looking at
5 the notes in front of her.

6 Q Sir, the per diem that counsel has just mentioned, did
7 you include a per diem in your net calculation?

8 MR. SLAUGHTER: I did not. The IRS does allow for a
9 per diem for truck drivers, it's \$59 per day for meals and
10 incidentals, but I did not deduct this where you come up
11 with the net because, I mean I -- I just had no basis to
12 to add it -- include it.

13 Q MR. BECKER: So it was on your summary sheet,
14 expressly saying you're not including it, correct?

15 MR. SLAUGHTER: A That's correct.

16 MS. DIM: The witness did testify about truck
17 depreciation and there is no such deduction taken under the
18 code.

19 Q Did you use depreciation or did you use the cost
20 of the rent of the tractor?

21 A: I used -- I used rent. Specifically in this
22 calculation I assumed rent.

23 Q Thank you. All right. So when you went through
24 the individual driver calculations and you deduct out then
25 these components that you just described?

26 A Yes.

27 Q Okay. What is the -- did you then compare your

1 net summary to the PDD assessments were based -- which were
2 based on gross pay?

3 A I did, and that's on this exhibit.

4 Q And you did that for each driver in the audit
5 period, correct?

6 A Correct.

7 Q All right. And the total amounts of net income,
8 which would be reflected on the last page of your summary of
9 the drivers.

10 A Yes.

11 Q Which I think is page 5 of 5 of the exhibit, your
12 Honor.

13 A Uh-huh.

14 Q The bottom right-hand corner, what would it be?

15 A \$4 million, 892,700 -- \$714, 80.13.

16 Q All right. So that's the net income. And then
17 what would you do from there to calculate the tax due?

18 A From there I took the California withholding tax
19 tables and I applied it to each of these numbers for every
20 year and I arrived -- and I calculated the amount that would
21 have been withheld on \$4,892,000.

22 Q And what was that amount?

23 A \$180,492 and 80.26.

24 Q Which is also listed on page 5 of your exhibit,
25 correct?

26 A That's correct.

27 Q All right. Did you summarize that in your next

1 page of your report?

2 A I did.

3 Q Okay. Can you explain your summary there and how
4 it works?

5 A Sure. It lists each year. It lists the number of
6 drivers that were -- that ran for DMV during each year
7 during each of the years. It lists the California gross
8 amount and it lists the net amount number by calculation in
9 total.

10 Q So we go from --

11 A The net tax.

12 Q So we go from the gross amount that was in the
13 assessment of a million nine --

14 A That's right.

15 Q -- plus, and the net -- less your net amount tax
16 which is 180,492.26?

17 A That is correct.

18 Q That's how it works?

19 A That's correct.

20 Q Okay. And then did you also calculate the
21 unemployment and state disability insurance portion of the
22 assessment based on your net calculations?

23 A I did.

24 Q And if you go to the last page of the exhibit,
25 your Honor.

26 A (Pause.)

27 Q Is that summarized there for --

1 Q IF IS. IF IS.

2 Q And what is your conclusion then? Based on
3 applying the unemployment portion, the state disability
4 insurance portion and the personal income tax portion based
5 on the net.

6 A The grand total is \$224,529 and 50.92.

7 Q MR. BECKER. Your Honor, we move into admission exhibit
8 35.

9 ALL: Ms. Ulm?

10 MS. ULM: Yes. So the department would, ah, object to
11 this document because, ah, it is inclusive of deductions and
12 it is executed in a manner that is not consistent with the
13 department's procedure for arriving at the assessment
14 values.

15 This isn't an audit for assessment driven by RMI. This
16 is an assessment issued by the MDD. So if anyone's going to
17 make these adjustments as they may be suggested by RMI, we
18 would request the source documents to show what the costs
19 were per driver, per team, whatever, per year as
20 verification, which we would do in any event for any
21 adjustment under CIRC 929, and reject this spreadsheet as a
22 representation of what the true assessment would be in this
23 case.

24 ALL: I'm gonna overrule the objection. I understand
25 what you're getting at, but, unfortunately, the audit report
26 indicates that the assessment is not -- the assessment
27 number is in all likelihood not an accurate number either.

1 and, no other calculations were ever done and so -- Don't.

2 Interrupt me.

3 I am left to decide on a number. Nobody else has done
4 the work. This gentleman put a significant amount of work
5 in here and reached some responsible conclusions that you
6 disagree with, I understand, Ms. ULM.

7 So during the course of cross-examination, you can ask
8 him about any numbers that he may have included to reduce
9 the total amount of the assessment that maybe probably
10 should be reintroduced to come up with a more accurate
11 number than what the amount of the assessment is or perhaps
12 what this gentleman has offered. So overruled. 15's in
13 evidence.

14 (RECEIVED EXHIBIT NO. 35)

15 MS. ULM: May I make one final objection for the
16 record. So the department objects to the relevance of this
17 particular document, Exhibit 35, and instead, request the
18 source documents driving, ah, how these figures were arrived
19 at.

20 ALJ: I don't have any authority to order him to
21 produce documents.

22 MS. ULM: Of course you do. It's under the California
23 Code of Regulations, Title 29, Section 89 -- and I can look
24 it up.

25 ALJ: In the middle of a hearing to produce documents?

26 MS. ULM: Specifically. Absolutely.

27 ALJ: I'm not familiar with it, but when you're in this

EXHIBIT C

California Labor and Workforce Development Agency



August 16, 2016
63 CB RWI Transportation
(916) 654-8410

Jahmal T. Davis
Hanson Bridgott LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Via Fax and U.S. Mail

Re: RWI Transportation, LLC
Account No.: 255-3716-8

Dear Mr. Davis:

Please recall that you and I spoke via telephone on August 9, 2016 about the information RWI needs to provide to the Department in order for the Department to determine the net wages for the payees and to permit the personal income tax (PIT) abatements to occur.

Regarding net wages: It is the Department's understanding that RWI provided a year-end statement to each payee showing expenses for that payee. To determine the net wages, RWI should subtract the expenses listed on the payee's year-end statement from the gross amount the payee was paid. Please provide the Sacramento Area Audit Office (AAO) with a spreadsheet identifying all of the payees, with associated columns indicating a) the gross wages paid; b) the itemized breakdown of expenses for the payee; and c) and the net wages.

Regarding the PIT abatement: The Department will abate the PIT based on our receipt of individual PIT abatement forms--Form 938P. RWI can get copies of the forms using the EDD website (www.edd.ca.gov/pdf/pub_ctr/de938p.pdf). Each payee will need to complete and sign a Form DE-938P. The completed forms should be sent to Hans Hoglund at the Sacramento AAO.

You and I had discussed the penalty for not paying the full amount of the assessment within 30 days of the decision. Under section 1136 of the Unemployment Insurance (UI) Code the penalty is fifteen percent (15%) of the unpaid balance. The adjustments for the net wages and/or for PIT abatements do not extend the 30 day period. RWI, however, has the option to pay the current balance in full to avoid the penalty or to pay any portion of the balance

Jahmal T. Davis
August 15, 2016
Page 2

prior to the imposition of the penalty. RWI will be entitled to a refund, with interest, for any overpayment due to the subsequent adjustments for the net wages and/or the PIT abatement.

Finally, we had discussed a payment plan and my suggestion that RWI might be able to avoid the use of the collections unit at this point. After some discussion, it is probably more efficient for RWI to work with a collector. A collector will be assigned to this matter, but payments can be sent in prior to any communication with the collection unit.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



CHRISTOPHER L. BROOKS
Staff Attorney III

Enclosures



Assessor's Name: _____
Phone Number: _____
Assessment #: _____
Case #: _____

CLAIM FOR ADJUSTMENT OR REFUND OF PERSONAL INCOME TAX

(1) Business/Principal Identification

Assessor Number: _____

Name of Firm: _____
 SSN: _____
 Address: _____
 City/State/ZIP Code: _____

(2) Worker Identification

Special Security Number (SSN): _____

Name (Print): _____
 Address: _____
 City/State/ZIP Code: _____

(3) Total Earnings Subject to Personal Income Tax Withholding

Calendar Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Reported on Form W-2				
Additional Earnings				
1st Quarter				
2nd Quarter				
3rd Quarter				
4th Quarter				
Total Additional Earnings				
Total Earnings				

This Portion to Be Completed by the Worker

(4) State and SSN as shown on the State of California Income Tax return(s) (Form 540 or Form 540NR) for the year(s) listed in Item (3):

Your Name: _____
 Your SSN: _____
 Spouse's Name: _____
 Spouse's SSN: _____

Current address, if different from Item (1) above: _____

(4) Computation of Tax Due (Refer to Instructions)

Calendar Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
1st Quarter				
2nd Quarter				
3rd Quarter				
4th Quarter				
Totals				

(5) I reported the following earnings from this entity on my California Income Tax return(s) (NOTE: If your total income received for any of the indicated years was insufficient to require a California Income Tax return, write N/A in the box for that year)

Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Earnings				

(6) Business/Principal Certification

I certify that on the basis of my knowledge and belief, the information herein is true and legal.

I have in Item (3) on line 10 used a valid Employer's Withholding Allowance Certificate to pay, at least, that was in my possession at the time of the payment of the earnings shown in Item (3). A completed worksheet is attached.

The tax in Item (4) was calculated based upon the worker being single with no deductions. A completed worksheet is attached.

Signature of Business/Principal Representative: _____ Date: _____

If you paid taxes prior to the April 15 deadline, please complete the following section.

I paid the following amounts (from 5/1/09):

Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Q1/09				
Q2/09				
Q3/09				
Q4/09				

I paid the following amounts with my Form 540 or Form 540NR:

Year	Amount	Date Paid

(7) Under penalty of perjury, I certify that the information shown in Items (3) and (5) above is true and correct.

Signature of Worker: _____ Date: _____

Return To: _____ Date Stamp: _____

INSTRUCTIONS FOR COMPLETING THE CLAIM FOR ADJUSTMENT OR REFUND OF PERSONAL INCOME TAX FORM

Purpose: To gain relief from some or all of the assessed Personal Income Tax (PIT) liability and associated penalties and interest through the use of the DE 938P form.

Prior to completing this form, please refer to the *Information Sheet, Personal Income Tax Adjustment Process (DE 231W)* for additional instructions.

Do not use this form to correct the earnings shown in Item (3) on page 1.

Instructions:

Worker Instruction:

1. Complete Item (5) showing name(s), Social Security Number(s), and your most current address.
2. Complete Item (6) showing the amount of earnings reported on your California income tax return from this business/principal for each of the indicated calendar years and the amounts of all PIT payment(s) that were made prior to the April 15 deadline.
3. Sign and date Item (7). A signature is required.

Business/Principal Instruction:

Instructions for Item (4):

If the worker completed a Form W-4/DE 4, which was on file at the time the earnings were paid, you must use it as a basis for calculating the PIT that should have been withheld and attach a copy of the Form W-4/DE 4 to this form. Otherwise, you must use the single with no deductions (S/O) tax rate to calculate the PIT that should have been withheld. Follow these steps:

1. Calculate the PIT for each pay period. Refer to the California Withholding Schedules in the *California Employer's Guide (DE 44)* for the applicable year.
2. Add up the PIT for all pay periods in each quarter. Enter the quarterly totals in the corresponding box in Item (4) on page 1 of this form.
3. Add the quarterly totals to produce the annual total(s) in Item (4).

Instructions for Item (8):

Sign and date Item (8) (this form is not valid without this signature).

If you completed Item (4), indicate the basis for the PIT recalculations and furnish a worksheet showing the recalculation.

Assistance:

If you cannot secure the signatures of the worker(s) or recalculate the PIT, inform the auditor.

Mail or Deliver:

Original and one (1) copy of the DE 938P should be sent to the audit office shown on page 1 of this form.

EXHIBIT D

Summary of California Tax
2011-2014

	Taxable Income	Cal FT	Unemployment	FT Tax	SDI	Total Tax/WH
2011	\$ 3,895,868	\$ 235,931	\$ 37,950	\$ 534	\$ 41,824	\$ 516,239
2012	\$ 4,626,114	\$ 308,678	\$ 38,986	\$ 548	\$ 38,903	\$ 382,036
2013	\$ 3,857,323	\$ 232,941	\$ 29,813	\$ 481	\$ 33,675	\$ 317,127
2014	\$ 812,592	\$ 14,744	\$ 20,372	\$ 528	\$ 3,211	\$ 48,003
Total	\$ 13,191,897	\$ 815,633	\$ 117,077	\$ 1,898	\$ 122,918	\$ 1,057,517



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

RWI TRANSPORTATION LLC
c/o JAHMAL T DAVIS, ESQ
Account No.: 255-3716-8
Petitioner

EMPLOYMENT DEVELOPMENT DEPARTMENT
Appellant

Case No.: **AO-380199 (T)**

OA Decision No.: 5308590

DECISION

Attached is the Appeals Board decision in the above-captioned case issued by Board Panel members:

MICHAEL ALLEN

ELLEN CORBETT

ROBERT DRESSER

This is the final decision by the Appeals Board. The Appeals Board has no authority to reconsider this decision. If you disagree with the decision, please refer to the information attachment which outlines your rights.

Date Mailed: 7/29/2016

Case No.: AO-380199
Petitioner: RWI TRANSPORTATION LLC

The Employment Development Department (EDD) appealed from the decision of the administrative law judge that granted Petitioner's petition for reassessment.

ISSUE STATEMENTS

The issues in this case are whether:

- (1) Workers were performing service for Petitioner as employees pursuant to California Unemployment Insurance Code (code), section 621, subdivision (b), to whom wages for employment were payable pursuant to code section 926;
- (2) Workers' entire service, performed for Petitioner both within and without California, was employment localized in California pursuant to code section 603 or otherwise subject to coverage in California pursuant to code section 602;
- (3) Petitioner is an employer liable for contributions to the California Unemployment Fund and withholdings for Personal Income Taxes (PIT), plus interest, as assessed by EDD pursuant to code section 1127; and,
- (4) EDD's assessment against Petitioner is preempted by the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. section 14501(c).

FINDINGS OF FACT

EDD commenced an audit on or about April 16, 2014 to determine whether Petitioner was an employer owing contributions to the California Unemployment Fund (accrued and payable for unemployment insurance, disability insurance, and employment training) as well as withholdings for PIT based on wages paid to employees. EDD initiated the random audit after noting Petitioner was a registered California employer reporting subject wages paid to a single California employee while also issuing an Internal Revenue Service (IRS) Form 1099 to multiple California addresses. EDD identified 98 California resident long-haul tractor drivers (drivers) performing services for Petitioner during the 2012 audit test year. EDD ultimately determined Petitioner had misclassified drivers as

independent contractors, and had not paid code-mandated contributions or made code-mandated deductions based on wages paid to them as employees.

On August 4, 2014, EDD mailed a Notice of Assessment dated July 28, 2014, finding Petitioner liable for unpaid contributions and driver PIT totaling \$2,380,444.49, including interest as calculated through August 4, 2014. EDD calculated the assessment based on available information about drivers' wages during the audit period, which began April 1, 2011 and ended March 31, 2014. The following facts pertained to Petitioner and drivers during the audit period.

Petitioner operates as an interstate freight transportation motor carrier under the authority and regulation of the United States Department of Transportation (USDOT) (and its sub-agency, the Federal Motor Carrier Safety Administration). Petitioner utilizes drivers to accomplish its regular business of hauling produce from shippers in California and Arizona to receivers in various other states. Petitioner's executive vice-president testified it operates in multiple states, generally south of Interstate 80. Petitioner also provides services to other customers in various states, utilizing drivers to move non-produce freight on their return trips to California. Petitioner could not conduct its business without the services performed by drivers.

Petitioner maintains its headquarters office in Kentucky; none of the employees who work there are drivers. Petitioner has one acknowledged employee in California who manages its California terminal/trailer yard. (Petitioner also has terminals/trailer yards with a managing employee in a few other states.) Petitioner contends that during its company history of over 50 years it has never employed drivers and that all its drivers are "owner-operators" working as independent contractors.

Owner-operator drivers who work as independent contractors are a recognized, organized group within the trucking industry. Petitioner's expert witness provided statistical information about owner-operator drivers: they are estimated to comprise somewhat over 10 percent of all interstate truck drivers who are subject to the authority of the USDOT; approximately 90 percent of them only possess and drive one tractor; they represent the vast majority of drivers engaged in the specialty area of interstate produce transport.

The act of driving a tractor does not differ, whether a driver is an employee or an independent contractor. All interstate tractor drivers must possess the knowledge, experience and skills necessary to obtain and maintain a commercial driving license. They must be familiar with the many rules and regulations applicable to interstate tractor drivers. They must be capable of operating a large

vehicle safely over long distances through various road, traffic and weather conditions.

Petitioner has relationships with shipping and receiving customers and the necessary infrastructure to communicate with them and coordinate freight movement. Such customers choose to deal directly with motor carriers equipped to manage all logistics, rather than interacting with numerous individual drivers. Because it is difficult for average owner-operator drivers to negotiate independently with those customers to provide transport services, most owner-operator drivers yoke themselves to authorized motor carriers such as Petitioner to get work.

Petitioner requires individuals who wish to perform services for it as drivers to submit an "employment" application, although Petitioner does not allow anyone the option to apply to work as an employee driver, only as an owner-operator. If their application is accepted by Petitioner, drivers must sign an "independent contractor" contract to work. Federal regulations allow motor carriers such as Petitioner to utilize independent contractor drivers rather than employee drivers, but mandate the existence of such a contract and specify some of its terms if they choose to do so. Petitioner's contract with drivers contains many additional terms which are not required by USDOT but instead are specific to Petitioner's business needs and preferences. Petitioner drafted the contract and its terms are not negotiable by drivers.

The contract between Petitioner and each driver is effective for a period of one year but renews automatically unless terminated by either party. Petitioner may terminate a contract with a driver, with or without cause, upon written notice. Drivers may terminate the contract with Petitioner upon thirty day written notice to Petitioner or a shorter time frame if Petitioner agrees.

Pursuant to federal regulations, Petitioner must verify the past three years of employment history and safe driving history of any driver operating under its authority. Petitioner is responsible to retain driver files including applications, motor vehicle reports, prior employment verifications, road tests, hours of service, random draw drug and alcohol test results, bills of lading, receipts and other paperwork for a minimum of three years. Petitioner is subject to USDOT audit and can be fined or shut down for failure to comply with regulations.

As a motor carrier, Petitioner is required to obtain USDOT operating authority, which is permission from the federal government to transport loads in interstate commerce, and USDOT numbers, which allow the federal government to track its safety performance. As acknowledged by Petitioner's witnesses, this is a costly and complicated process not usually undertaken by the average owner-operator

driver. Federal regulations require Petitioner's drivers to operate under its USDOT operating authority and numbers. Additionally, every state in which a motor carrier operates has its own permit requirements, which Petitioner acquires and maintains on behalf of its drivers.

In addition to their driving services, drivers provide the tractor portion of the tractor-trailer for Petitioner's use. Petitioner owns trailers but no tractors. Petitioner offers driver assistance in purchasing and maintaining a tractor via a relationship it maintains with a third party financing company. Petitioner may advance the down payment on behalf of drivers or make the down payment on the tractor for drivers as a "signing bonus." Petitioner provides drivers the option to take the tractor payment out of driver's pay and make it directly to the financing company on the driver's behalf. Drivers are ultimately responsible to make the lease or purchase payments; they bear the consequences of non-payment, lease termination, or own the tractor if or when paid for in full.

By contract and regulatory requirements, each driver's tractor is leased to Petitioner for its "exclusive possession, use and control." USDOT regulations require the tractor to bear signage identifying the carrier for which driver is operating; by contract, Petitioner supplies that signage to drivers. By contract, Petitioner also retains the right to place advertisements on drivers' tractors. By contract, Petitioner retains the right to assign other drivers to operate the tractor if a driver cannot complete an assignment. If Petitioner learns from driver or another motor carrier that driver is going to operate under the other motor carrier's USDOT authority, Petitioner terminates its own contract with that driver. Drivers are obligated to return all Petitioner property when the contract terminates. Drivers can subsequently return to perform services for Petitioner by executing a new contract.

By regulation, Petitioner must maintain liability insurance on drivers' tractors when they are being driven for Petitioner. Drivers pay for "bobtail" insurance to cover the property value of the tractor itself and liability coverage for when they are not driving the tractor for Petitioner. Petitioner covers the trailer and cargo insurance. Petitioner requires drivers to possess a workers' compensation policy or acceptable occupational accident policy.

Petitioner typically acquires and pays for the various necessary state permits and plates for drivers running under its authority and does not charge driver for these annual costs as long as driver works continuously for Petitioner. Petitioner secures and provides drivers with gas cards which drivers may use to purchase fuel and other items such as oil filters. Petitioner will pay the card issuer directly and deduct the charges from drivers' pay. Drivers may set up the same gas card for use as a bank card, on which Petitioner will deposit drivers' pay. Drivers may

also opt to use their own payment methods for fuel and supplies and receive their pay directly; Petitioner alleged an unspecified number do so.

Drivers pay for the cost of tractor maintenance, tires and mechanical repairs. If necessary, Petitioner will advance money to drivers for these items then offset the costs against drivers' payment. Petitioner will reimburse drivers for any money they spend on trailer maintenance, repair and washing; trailer refrigeration fuel; scale costs to weigh a trailer; yard admission fees; pallet purchases; and "lumper" or driver-invoiced loading/unloading services.

Drivers are responsible to pay fuel taxes in the states in which they drive, as calculated by actual miles driven. Petitioner calculates the taxes due in each state based on data collected by the Petitioner-owned device installed in each driver's tractor. Petitioner pays the fuel taxes then charges drivers back as a deduction from drivers' pay.

Drivers can hire co-drivers but per regulations Petitioner has to clear and authorize them to run under Petitioner's authority in the same way drivers were cleared and authorized. Petitioner will only pay the driver who owns the tractor, but pays that driver slightly more per mile and leaves it to driver how to split the pay with co-driver.

Drivers are not required to begin or end work at, or report to, the Petitioner's California terminal/trailer yard, unless they need to pick up or drop off a Petitioner's trailer there. They can park their personal vehicles or tractors there, but most do not. They may arrange to have their tractors serviced there. Drivers may also go there if they need assistance from the terminal/trailer yard manager. While the California terminal/trailer yard manager does not issue assignments to drivers, he testified he facilitates communication between them and Petitioner and provides services including: assisting new drivers with completing their application and contract with Petitioner; sending drivers to a clinic for drug screening; answering drivers' questions; emailing or faxing for drivers; printing load or other documents for drivers; arranging for drug testing as needed; and helping drivers submit paperwork required by Petitioner for driver payment and by USDOT for recordkeeping.

Drivers await assignments in their home state of California. Petitioner's dispatchers, who are employees located in its headquarters office in Kentucky, transmit written assignment offers to drivers using the Petitioner-owned device installed in each driver's tractor. An assignment offer includes information such as the cargo, customer shipper and receiver locations where driver must pick up and deliver goods, the Petitioner-identified route, mileage pay calculation, and completion deadlines. Drivers can accept or decline assignments without consequence, except that if they do not work they do not earn any money. Once

a driver accepts an offered assignment by responding to the dispatcher via the tractor-installed device, driver commences the trip from California to the shipper location.

Drivers are often offered regular or repeat assignments. Petitioner usually sets up assignments so that most can be completed in three to five days. That allows drivers to return home to California every week and to submit the necessary paperwork to receive payment each Thursday. Driver witness Flores testified he usually commenced his assignments from his home in California and delivered to destinations in Indiana, Kentucky, Ohio, and Illinois. Driver witness Estrella testified he hauled produce from California "all the way to the east coast." Petitioner's safety director testified drivers deliver mainly to the tri-state area (Indiana, Kentucky, Ohio) but also acknowledged drivers going to multiple other states. The safety director also asserted that drivers are not required to go to any of Petitioner's terminals.

While drivers are en route with a delivery they are contractually mandated to contact Petitioner twice each day during specified hours to communicate regarding the status of the delivery. Petitioner monitors tractor location and driving activity by satellite through the installed device. Petitioner also continuously communicates with drivers en route about possible return trip assignments on behalf of its non-produce customers.

Petitioner pays drivers by the mile based on a route determined by its chosen software program. Drivers have the discretion to travel a different route than suggested by the software program so long as it will allow them to complete the assignment by the deadline set by Petitioner. If drivers choose an alternate route, Petitioner still only pays them based on the mileage determined by its software program. Drivers may take breaks en route when they choose, as long as they can complete the assignment by the deadline set by Petitioner.

Once drivers accept an initial assignment, they make contact with the produce shippers to arrange pick up (in order to assure the produce is ready at the shed/cooler, rather than still in the fields). Drivers get a bill of lading from each shipper, certify what is loaded on the trailer, and transport the goods and the bill of lading to the receivers. Once the receivers have signed off on the bill of lading, drivers must submit it and other required paperwork to Petitioner in order to be paid for the assignment. The paperwork includes a trip report/overview cover sheet drivers must complete with specified information; some of the information is required from Petitioner by USDOT, other information is for Petitioner purposes only. Petitioner mandates drivers transmit this paperwork using a Petitioner-specified electronic scanning system which is available at truck stops or in

Petitioner's terminals. There is a fee associated with the scanning service which Petitioner charges back to drivers.

Once Petitioner receives the trip paperwork it issues payment to drivers, typically once per week. Petitioner pays drivers regardless of when or whether Petitioner's customers have paid Petitioner for its services. Petitioner performs all the accounting for drivers, keeping track of credits and charges to produce a detailed, itemized "settlement sheet" with a bottom line of the pay due drivers for each assignment. By contract, if drivers do not meet Petitioner requirements such as checking in twice daily while making pick-ups and meeting delivery deadlines, Petitioner may take deductions from drivers' pay.

Many drivers covered by the assessment had a long history of driving exclusively for Petitioner; for example, one driver testified he had been driving for Petitioner exclusively for 18 years. The vast majority of them owned only one tractor and did not have their own motor carrier authority or number through USDOT. Most drivers did not have their own businesses independent of the services they provide to the Petitioner. Petitioner contended that some drivers had established a DBA or LLC, had co-drivers, or owned more than one truck and hired drivers. Petitioner offered testimony to this effect based on witness belief and recollection, and presented a spreadsheet it created identifying a few drivers as possible examples.

EDD calculated the assessment based on information available to it at the time of the audit in April 2014, most of which was supplied to it by Petitioner. Petitioner drew information about drivers' earnings in part from IRS form 1099s it issued to drivers up through 2013. Petitioner issued 1099s to drivers up through 2013 but stopped filing them after 2011. After 2013, Petitioner started issuing drivers annual "settlement statements" instead.

Petitioner and EDD acknowledged that the IRS form 1099s and annual settlement statements provided information about gross driver earnings. From the commencement of the audit and continuing even after the issuance of the assessment, EDD repeatedly offered Petitioner the opportunity to submit additional information so that the assessment could be adjusted so as to be based on net driver earnings. Instead of doing so, at the hearing, a witness for Petitioner testified to a method he had devised for estimating drivers' net earnings and recalculating the assessment. Much of the information upon which he testified he relied was derived from source documents and materials in Petitioner's possession, but which Petitioner never provided to EDD.

Personal Income Tax (PIT) withholding accounts for over 80 percent of the assessment total. At Petitioner's request, subpoena duces tecum were issued to

the California Franchise Tax Board in an attempt to obtain proof that drivers had paid their own PIT on earnings during the audit period. If they did so, Petitioner would be entitled to an abatement of PIT liability. The Franchise Tax Board did not respond to the subpoenas. EDD would abate the assessment based on proof or sworn statements from drivers themselves indicating they had paid their PIT, but Petitioner failed to acquire or provide such.

REASONS FOR DECISION

I. Were drivers employees of Petitioner performing services in employment for wages?

EDD assessed Petitioner for contributions to the California Unemployment Fund based on drivers' wages. Code section 976 provides that contributions shall accrue and become payable by employers "with respect to wages paid for employment." Contributions assessed are for unemployment insurance (code § 976), disability insurance (code § 984) and employment training (code § 976.6). EDD also assessed Petitioner for withholding of drivers' PIT (code § 13020).

Liability for such contributions depends on whether drivers were performing services as employees or independent contractors. (*Empire Star Mines v. California Employment Commission* (1946) 28 Cal.2d 33, 43.) Legislation imposing unemployment insurance taxes is premised upon a relationship of employer and employee; a principal for whom services are rendered by an independent contractor does not come within the scope of its provisions. (*Ibid.*)

California unemployment insurance taxes accrue only on amounts paid as remuneration for services rendered by employees. The relationships of employer and employee and of principal and independent contractor have long been recognized to be mutually exclusive. They cannot exist simultaneously with respect to the same transaction. The proof of the one status automatically precludes the existence of the other. Accordingly, the services of an independent contractor are not "employment" within the meaning of code section 601, and the remuneration paid for such services is not taxable. (Precedent Decision P-T-2.)

Thus, the first issue to be resolved in this case is whether drivers were employees of Petitioner performing services in employment for wages during the audit period.

Code section 601 defines "employment" as service, including service in interstate commerce, performed by an employee for wages or under any contract of hire, written or oral, express or implied. Code section 621, subdivision (b) provides that "employee" includes any individual who, under the usual common law rules

applicable in determining the employer-employee relationship, has the status of an employee.

California follows common law rules to determine whether a worker is performing service as an employee. (code § 606.5.) Nevertheless, the courts have continued to interpret, evolve and expand upon those common law rules over time. California courts have confirmed that they, as well as administrative agencies, should interpret issues arising under code section 621, subdivision (b) "in light of comparable, complementary and overlapping criteria developed in caselaw. . .". (*Messenger Courier Assn. of the Americas, v. California Unemployment Ins. Appeals Bd.* (2009) 175 Cal. App. 4th 1074, 1092.) Thus, we apply those criteria to the case at hand, as follows.

A. Right to control the manner and means or details of the work

The primary test in determining whether service was rendered in employment is the right of the alleged employer to control the manner and means of accomplishing the desired results. (*Empire Star Mines Co., Ltd. v. California Employment Commission, supra*, 28 Cal.2d at p. 43.)

In *Hillen v. Industrial Accident Commission* (1926) 199 Cal. 577, 580, the court asserted that one performing work and labor for another is presumed to be an employee in the absence of evidence to the contrary.

Petitioner argues it did not control the manner and means by which drivers transported goods between Petitioner's customers. Petitioner's arguments are similar to those of the defendant in *Arzate v. Bridge Terminal Transport, Inc.* (2011) 192 Cal. App. 4th 419. Like the plaintiffs in *Arzate*, Petitioner's drivers used their own trucks, paid some of their own expenses, could decline dispatches, decided when and where to take meal and rest breaks, and could have leased more than one truck and hired other drivers. (*Id.* at p. 427.)

Petitioner argues that this evidence overcomes the presumption that drivers were servants. Yet the evidence also reveals that Petitioner directed drivers where to pick up and drop off produce and by when, subjected drivers to a twice-daily check-in requirement, required them to submit paperwork containing information beyond what was required of Petitioner by the USDOT, and mandated the use of certain stations via which drivers had to submit paperwork which was required to complete the job and to receive payment. Petitioner retained control over these significant details of the work, which strongly indicates employment. However, as the *Arzate* court noted, there are multiple factors beyond control of "manner and means" which must be considered. (*Ibid.*)

Courts "have long recognized that the 'control' test, applied rigidly and in isolation, is often of little use in evaluating the infinite variety of service arrangements." (*S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 350.)

In *State Compensation Ins. Fund v. Brown* (1995) 32 Cal.App.4th188, 202 the Court recognized that the right of control "retains significance, but is no longer determinative."

B. Right to discharge at will

Although not conclusive, a right to discharge a worker at will is strong evidence of an employer/employee relationship. (*California Employment Stabilization Commission v. Morris* (1946) 28 Cal.2d 812, 819.)

Petitioner by contract retains the right to terminate drivers with or without cause, at will, with written notice. This factor evidences an employee/employer relationship but is not conclusive.

C. Secondary factors beyond right to control manner and means

In seminal cases such as *Empire Star Mines v. California Employment Commission* (1946) 28 Cal.2d 33, *Tieberg v. California Unemployment Ins. App. Bd.* (1970) 2 Cal.3d 943, 950, and *S. G. Borello & Sons, Inc. v. Department of Industrial Relations, supra*, 48 Cal.3d at p. 350, the California Supreme Court has consistently considered factors beyond the common law employment criteria of the right to control the manner and means of accomplishing the result desired, and the right to discharge at will. In *Messenger Courier Assn. of the Americas, v. California Unemployment Ins. Appeals Bd., supra*, 175 Cal. App. 4th at p. 1090, the Court reiterated those secondary factors for consideration as follows:

1. Is the one performing services engaged in a distinct occupation or business?

Petitioner asserts drivers were engaged in their own distinct occupation and business, which indicates they were independent contractors. Petitioner's witnesses testified that independent contractor "owner-operator" drivers are recognized in the industry, have their own national association and are authorized to operate by law. Petitioner's expert witness further indicated that approximately 90 percent of all "owner-operator" drivers only own and drive one tractor and do so under the USDOT operating authority of a motor carrier such as Petitioner. Petitioner pointed out that some drivers had established "DBA"s or "LLC"s, had multiple tractors and hired other drivers. However, if true, those facts alone would be insufficient to conclude those drivers were not functioning as

employees of Petitioner. Nevertheless, the evidence revealed that the vast majority of Petitioner's drivers only owned or leased one tractor, did not have co-drivers or hire other drivers, and drove exclusively and continuously for Petitioner. In reality, the only business drivers were engaged in was the Petitioner's business, and this factor weighs toward finding drivers to be employees.

2. Is it the kind of occupation in the locality that the work is usually done under the direction of the principal or by a specialist without supervision?

Petitioner's expert witness testified that "owner-operator" independent contractor drivers are estimated to make up somewhat over 10 percent of interstate truck drivers subject to the authority of the USDOT; inversely, this means that upwards of 90 percent of interstate truck drivers work instead as employees. On the other hand, Petitioner's witness also indicated that "owner-operator" independent contractor drivers are disproportionately utilized in the interstate transport of produce. Balancing this evidence, we deem this factor to be neutral in the assessment of whether drivers were employees.

3. What skill is required in the particular occupation?

Petitioner argued that drivers were engaged in a high-skill occupation, which indicates they were independent contractors. We acknowledge that drivers are required to have certain skills beyond those of an average worker. However, all interstate tractor drivers require the same skills regardless of whether they are classified as employees or independent contractors. We note that even where skill is required, if the occupation is one which ordinarily is considered an incident of the business establishment of the employer, there is an inference that the actor is a servant. (Rest.2d Agency, § 220, p. 489.) Thus, this factor supports a finding of employment.

4. Does the principal or the worker supply the instrumentalities, tools, and the place of work for the person doing the work?

Petitioner contends that drivers supplied their own instrumentalities, tools, and place of work, also citing drivers' lease, purchase or ownership of their tractor as evidence drivers had substantial investment in their own business as independent contractors. However, the evidence demonstrates that Petitioner paid for or advanced funds to drivers for almost everything necessary for them to perform services, later deducting some payments or advances from drivers' pay. In some instances, Petitioner would even make the tractor down payment for drivers and arrange for payments on the tractor lease or purchase to come out of

driver's pay. Drivers did not have to possess, acquire or bring any significant resources into the relationship with Petitioner in order to perform services for it. This factor further supports a conclusion that drivers were functioning as employees.

5. What is the length of time for which the services are to be performed?

Petitioner executed a one-year contract with drivers which renewed automatically unless terminated by one of the parties. This resulted practically in an indefinite term of service and the evidence indicated many drivers had been engaged continuously in exclusive service to the Petitioner. This factor indicates an employment relationship.

6. Is the method of payment by the time or by the job?

Petitioner paid drivers by the miles driven while on assignment, which it argues is more equivalent to being paid by the job than by time, and thus supports a finding drivers were independent contractors. Conceding this general rule, we also recognize there was a time element to drivers' payment, as Petitioner designed driving assignments to meet specified delivery deadlines and to be completed within a certain number of days. Nevertheless, even while crediting this factor as indicative of independence, we deem it relatively inconsequential in resolving the issue of drivers' status when weighed appropriately with and against all other factors.

7. Do the parties believe they are creating the relationship of employer-employee?

Because drivers signed Petitioner's "independent contractor" contract, Petitioner insists the parties knew they were not creating an employer-employee relationship. Petitioner further argues that drivers preferred to be independent contractors.

That the parties may have mistakenly believed they were entering into the relationship of principal and independent contractor is not conclusive. (*Grant v. Woods* (1977) 71 Cal.App.3d 647, 654.) While a contractual provision that a worker is an independent contractor is persuasive evidence of the intended relationship, it is not controlling and the legal relationship may be governed by the subsequent conduct of the parties. (*Brown v. Industrial Accident Commission* (1917) 174 Cal. 457, 460.)

In this case, drivers had no choice but to sign the contract if they wished to perform services for Petitioner. Moreover, the belief, intent or even preference of

the parties is not controlling where the actual conduct of these parties demonstrates their legal relationship was that of employer-employee, as concluded below.

8. Is the work a part of the regular business of the principal?

The work performed by drivers was part of the regular business of Petitioner, the interstate transport of produce and other goods. This is a powerful indication of an employment relationship. In recent history, this single factor has become by far the most significant to courts when analyzing whether a worker is an employee or independent contractor.

Increasingly, the "modern tendency is to find employment when the work being done is an integral part of the regular business of the employer and the worker does not furnish an independent business or professional service relative to the employer." (*Santa Cruz Transportation, Inc. v. Unemployment Ins. Appeals Bd.* (1991) 235 Cal.App.3d 1363, 1376, citing *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*, *supra*, 48 Cal.3d at p. 357 (internal citations omitted).)

In *JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App. 4th 1046, the Court held that delivery drivers were employees under workers' compensation law. It held that the company was in the delivery business and that the delivery drivers performed the work of this business. (*Id.* at p. 1064.) It concluded that the individual factors utilized to evaluate employment status were not to be mechanically applied and that, "[T]he functions performed by the drivers, pick-up and delivery of papers or packages and driving in between, did not require a high degree of skill. And the functions constituted the integral heart of JKH's courier service business. By obtaining the clients in need of the service and providing the workers to conduct it, JKH retained all *necessary* control over the operation as a whole." (*Ibid.*)

In *Air Couriers Internat. v. Employment Development Dept.* (2007) 150 Cal.App.4th 923, the company was in the business of package delivery. The drivers used their own vehicles and paid their own driving expenses. They delivered to the company's customers under the direction of the company's dispatchers. They could select their own routes, but the company established pick-up and delivery deadlines and required the drivers to use company-furnished forms in order to receive payment. The company billed its customers and collected payment. The drivers generally worked continuously for the company and were paid at regular intervals. Although the drivers could turn down jobs, this was done infrequently because of the fear that the company would stop providing work. The drivers did not have their own businesses or work in a

separate profession. The court held the drivers were employees because the company "exerted control over the drivers to coordinate and supervise the company's basic function: timely delivery of packages." (*Id.* at p. 939.)

In the present case, drivers furnished no independent business or professional service relative to Petitioner. Absent the services of drivers, Petitioner could not have conducted its regular business, rendering drivers' work an integral part of Petitioner's business. As acknowledged in *Santa Cruz, JHK Enterprises and Air Couriers*, the modern tendency is to find employment under these circumstances, as we do in this case.

While considering the relevant evidence and applying the various legal tests in the present case, we were mindful of Petitioner's position that any controls it imposed on drivers required as the result of government regulations are not permitted to be considered as indicia of employment. Petitioner cites to the federal motor carrier regulations:

Nothing in the provisions required by paragraph (c)(1) of this section is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized carrier lessee. An independent contractor relationship may exist when a carrier lessee complies with 49 U.S.C. 14102 and attendant administrative requirements.

(49 CFR 376.12(c)(4).)

This provision clarifies that requirements imposed by the referenced regulations are intended for purposes other than affecting the status of drivers. It expressly recognizes that drivers may be independent contractors or employees. It acknowledges that an independent contractor relationship *may* exist when a motor carrier complies with regulatory requirements, but does not indicate that it necessarily *does* exist.

Nevertheless, in this case we do not find it necessary to rely on any of the control indicia established by regulatory requirements to conclude drivers were employees of Petitioner. As set forth above, more than ample evidence exists beyond those indicia to find that drivers were employees during the audit period pursuant to code section 621, subdivision (b) providing services in employment pursuant to code section 601. Remuneration payable to drivers for those services constituted wages pursuant to code section 926.

Having reached these conclusions, we now consider Petitioner's argument that, even if drivers were employees performing services in employment for Petitioner, California was not the correct state to issue an assessment on their wages.

II. Was drivers' entire service in employment, performed for Petitioner both within and without California, either localized in California or otherwise subject to coverage in California?

Petitioner argues that drivers' work was not localized in California under code section 603 and was not covered employment in California under code section 602. Petitioner contends California was not the correct state to assess contributions on the wages Petitioner paid drivers during the audit period.

Code section 602 states:

"Employment" includes an individual's entire service, performed within, or both within and without, this State if:

- (a) The service is localized in this State; or
- (b) The service is not localized in any state but some of the service is performed in this State and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

Code section 603 provides:

Service is localized within a state if:

- (a) The service is performed entirely within the state; or
- (b) The service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; for example, is temporary or transitory in nature, or consists of isolated transactions.

In this case, the parties acknowledged, and we agree, that drivers' service was not "localized" in California under code section 602(a), as defined in code section 603; drivers performed services both in and out of California and the services

performed out of California were not merely incidental to those performed in California. Thus, it is necessary to proceed to code section 602(b) and consider whether drivers had a base of operations in California, where they undisputedly performed some services.

The United States Department of Labor (USDOL) has issued Unemployment Insurance Program Letters explaining that the objective of "localization of work" provisions in state unemployment insurance laws is to cover under one state law all of the service performed by an individual for one employer, wherever it is performed. (U.S. Department of Labor, Unemployment Insurance Program Letter (UIPL) No. 291 (July 1, 1952) reissued with UIPL No. 20-04 (May 10, 2004.) In the early years of the unemployment insurance program each state agreed to enact uniform provisions like code section 602. The intent is to avoid duplication of coverage or gaps in coverage under state unemployment laws.

The UIPLs set forth principles providing guidance on the manner and sequence of applying the states' statutory provisions relating to "localization of work" as follows:

Only if the service is not localized in any state is any other test necessary. If the service is not localized, it is necessary to determine the individual's base of operations state and whether any work is performed in that state. In other words, questions must be asked: Does the individual have a base of operations in this state? Is a service performed here?

The "base of operations" is the place, or fixed center of more or less permanent nature, from which the individual starts work and to which the individual customarily returns in order to receive instructions from the employer, or communications from customers or other persons, or to replenish stocks and materials, to repair equipment, or to perform any other functions necessary to exercise the individual's trade or profession at some other point or points. The base of operations may be the employee's business office, which may be located at his residence, or the contract of employment may specify a particular place at which the employee is to receive his direction and instructions. This test is applicable principally to employees, such as salesmen, who customarily travel in several states.

(U.S. Department of Labor, Unemployment Insurance Program Letter (UIPL) No. 291 (July 1, 1952) reissued with UIPL No. 20-04 (May 10, 2004.)

Mirroring the language of the UIPLs, Precedent Tax Decision No. P-T-148 confirmed "base of operations" means a more or less permanent place from which the worker starts work and to which the worker customarily returns to receive instructions or perform functions related to the rendition of the worker's services.

The definition of "base of operations" focuses entirely on the activities of the employee and makes no mention whatsoever of the employer, including where the employer has its headquarters or place(s) of business. (*Walco Leasing v. Bilich* (Minn.Ct.App. 1986) 383 N.W.2d 374, 378 ("[T]he focus of the term 'base of operations' is upon the employee - - i.e. where the employee receives his directions, where he starts and ends his work, where he is hired, etc.")).

California was the fixed place from which drivers submitted their initial employment application and signed the contract required to work for Petitioner; started and ended work assignments; customarily returned to service equipment and perform other tasks necessary to exercise their trade; and waited to receive assignments and instructions from Petitioner. Drivers also interacted with the terminal/trailer yard manager in California as needed (including receiving directions from him on matters such as reporting for drug testing). Based on drivers' activities, California was their base of operations, either at their respective residences or wherever they parked their tractors in California when not driving for Petitioner.

Petitioner argues instead that drivers' base of operations was in Kentucky. However, drivers had only the most tenuous relationship with Kentucky based solely upon Petitioner's choice to locate its headquarters and dispatchers there. Petitioner could have chosen to locate its headquarters or dispatchers anywhere and it would not have affected drivers' activities. In its brief on appeal and during oral argument, Petitioner improperly attempted to offer new evidence that drivers always ferried produce from California and Arizona directly to a Petitioner warehouse in Kentucky. Not only is this contention conspicuously absent from the record, it is wholly contradicted by it. Although we do not accept or credit this new evidence, even if we did, it would not change our finding that California is drivers' base of operations, because by law the "base of operations" has nothing to do with the employer, its headquarters or place(s) of business. Therefore, Kentucky was not drivers' base of operations. As cautioned by the UIPLs, "base of operations" must be carefully distinguished from "place of direction and control", the latter being a test we do not properly reach unless the employee has no "base of operations" in a state in which he performs some services (P-T-148).

Localization of work laws were designed "to center the coverage of the work in the one state in which it would be most likely that he would seek work if he

became unemployed” (P-T-148, citing *Kunz v. Catherwood* (App.Div. 1968) 294 N.Y.S.2d 103, 106). In this case, drivers who became unemployed or disabled would be most likely to file claims for benefits and seek work in California. It cannot be said that any state other than California, including Kentucky, has a superior or even comparable claim to drivers’ wages. To hold otherwise would subvert the very intent of the law.

California was the proper state to assess contributions based on wages Petitioner paid to drivers during the audit period. Because drivers’ base of operations was in California and drivers performed services in California, drivers’ entire service, performed both within and without California, was covered employment in California under code section 602(b)(1).

III. Is Petitioner liable for contributions assessed by EDD pursuant to code section 1127?

Petitioner argues EDD’s assessment is inaccurate for several reasons. First, Petitioner asserts some drivers did have their own businesses and as such should be considered independent contractors and thus excluded from the assessment. Second, Petitioner disputes the assessment calculation as incorrectly based on drivers’ gross versus net earnings. Third, Petitioner alleges drivers paid their own PIT and thus Petitioner should be entitled to abatement of that substantial portion of the assessment.

With regard to Petitioner’s first assertion, from the time of the audit, Petitioner had ample opportunity to provide information to EDD that certain drivers should be excluded from the assessment but failed to do so. For instance, Petitioner could have: subpoenaed certain drivers to testify, or provided sworn statements from them, indicating they had their own businesses, customers, or multiple trucks and/or drivers in their employ; produced copies of public record documents by which certain drivers established DBAs or LLCs; provided images of driver business logos displayed on tractors or elsewhere tending to show independence; offered testimony or sworn statements from other motor carriers to whom certain drivers also provided service by virtue of owning more than one truck or having drivers in their employ.

Petitioner’s second dispute with the assessment calculation, that it is based on gross versus net driver earnings, is legitimate. However, Petitioner itself bears the responsibility of providing EDD with the necessary information identifying net driver earnings. Petitioner testified and argued at length about the extensive amount of documentation and data it is required to create and maintain by the USDOT; it could and should have shared that information and other business records with EDD but for unknown reasons chose not to do so. The testimony

provided by Petitioner's witness, concerning his method of calculating driver net earnings and the amounts at which he arrived, was not a satisfactory substitute and did not provide either EDD or this Board any credible basis for adjusting the assessment.

Petitioner's third allegation, that if drivers paid their own PIT for earnings during the audit period it is entitled to an abatement of that portion of the assessment, is true. Yet, Petitioner has had many months since the audit in which to secure from drivers proof or sworn statements to establish PIT payment but failed to do so. This is the responsibility of Petitioner, not EDD or this Board. Absent such proof, there can be no abatement.

We note the Petitioner has the burden of proof in a tax matter, particularly as the party attacking the employment relationship. (*Isenberg v. California Employment Stabilization Com.* (1947) 30 Cal.2d 34, 38; *Aladdin Oil Corp. v. Perluss* (1964) 230 Cal.App.2d 603, 610; *Smith v. Department of Employment* (1976) 62 Cal.App.3d 206, 213.) Petitioner only offered brief testimony based on vague and unsupported witness recollection with regard to its arguments concerning the assessment's inaccuracy. Because Petitioner offered weaker and less satisfactory evidence when it was within its power to produce stronger and more satisfactory evidence with regard to the accuracy of the assessment, the limited testimony it offered is viewed with distrust. (Evidence Code, § 412.)

If EDD is not satisfied with any return or report made by any employing unit of the amount of employer or wage earner contributions, it may compute the amount required to be paid upon the basis of facts contained in the return or reports or may make an estimate upon the basis of any information in its possession and make an assessment of the amount of the deficiency. (Unemployment Insurance Code, § 1127.)

Petitioner did not make satisfactory returns and reports to EDD with regard to drivers during the audit period. Pursuant to code section 1127, EDD was permitted to compute and estimate the amount to be paid on the basis of the only information available to it. Petitioner remains liable for the assessment. While we will not disturb it, Petitioner is not precluded from working with EDD to provide the additional information necessary for adjustments or abatements.

IV. Is EDD's assessment against Petitioner preempted by the FAAAA?

Finally, Petitioner argues EDD's assessment is preempted by the FAAAA, which provides:

. . . [A] State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property.

(49 U.S.C. § 14501(c)(1).)

Federal preemption is based on the United States Constitution's mandate that the "Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby. . ." (U.S. Const., art. VI, cl. 2.) A state law that conflicts with federal law is said to be preempted and is "without effect." (*Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516 [112 S. Ct. 2608].)

The appeals board is not required to turn a deaf ear because an issue is raised which involves application of the Constitution. While to declare legislation in violation of the Constitution is an exercise of judicial power beyond the proper scope of administrative adjudication, it is within our proper scope to determine whether an administrative agency is applying legislation in a constitutional way. (Precedent Decision P-T-31.)

Thus, while we make no finding as to the constitutionality of the code sections under consideration, we do find EDD applied them in a constitutional manner, relying upon existing judicial authority that the FAAAA does not preempt comparable state laws involving motor carriers.

The US Supreme Court has established parameters concerning the preemptive power of the FAAAA. The Supreme Court noted ". . . (1) that '[s]tate enforcement actions having a connection with, or reference to,' carrier 'rates, routes, or services' are pre-empted'; (2) that such pre-emption may occur even if a state law's effect on rates, routes, or services 'is only indirect.'" (*Rowe v. New Hampshire Motor Transport Ass'n*, (2008) 552 U.S. 364, 368 [128 S. Ct. 989] (internal citations omitted).) The Court later cautioned that "related to" did not mean the sky was the limit and that the addition of the words "with respect to the transportation of property" massively limited the scope of preemption ordered by the FAAAA. (*Dan's City Used Cars, Inc. v. Pelkey* (2013) 569 U.S. ___ [133 S. Ct. 1769, 1778].)

While the Ninth Circuit Court of Appeals has not resolved specifically whether the FAAAA preempts California or other states from assessing contributions to their unemployment funds, it has addressed preemption in cases of comparable context that we find most relevant and helpful in resolving the present issue.

In *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca* (9th Cir. 1998) 152 F.3d 1184, 1189, the Court held that California's prevailing wage law had no more than an indirect, remote, and tenuous effect on, and thus was not "related to", the motor carriers' prices, routes, and services within the meaning of the FAAAA's preemption clause.

Holding more recently that California's meal and rest break laws were not preempted by FAAAA, the Court declared:

[The meal and break laws] do not set prices, mandate or prohibit certain routes, or tell motor carriers what services they may or may not provide, either directly or indirectly. They are "broad law[s] applying to hundreds of different industries" with no other "forbidden connection with prices [, routes,] and services." They are normal background rules for almost *all* employers doing business in the state of California. And while motor carriers may have to take into account the meal and rest break requirements when allocating resources and scheduling routes – just as they must take into account state wage laws or speed limits and weight restrictions, the laws do not "bind" motor carriers to specific prices, routes, or services. Nor do they "freeze into place" prices, routes, or services or "determin[e] (to a significant degree) the [prices, routes, or] services that motor carriers will provide." Further, applying California's meal and rest break laws to motor carriers would not contribute to an impermissible "patchwork" of state-specific laws, defeating Congress' deregulatory objectives.

(*Dilts v. Penske Logistics, LLC* (9th Cir. 2014) 769 F.3d 637, 647, cert. den., (2015) 135 S. Ct. 2049 (internal citations omitted).)

The California Supreme Court addressed this issue in *People ex rel. Harris v. PAC Anchor Transportation, Inc.* (2014) 59 Cal.4th 772. The People took action against a trucking company for violations of the unfair competition law (UCL). (*Id.* at p. 775.) The People contended that by misclassifying its drivers as independent contractors, the trucking company illegally lowered its costs of doing business through failing to pay unemployment insurance and unemployment training fund taxes and by failing to withhold state disability insurance and state income taxes. (*Id.* at p. 776) Thus, the case implicated the same code provisions by which EDD levied its assessment in the present case.

The Court held the People's action was not preempted by the FAAAA, noting:

The sections of the Labor Code and the Unemployment Insurance Code that anchor the People's UCL claim make no reference to motor carriers, or the transportation of property. Rather, they are laws that regulate employer practices in all fields and simply require motor carriers to comply with labor laws that apply to the classification of their employees.

(*Id.* at p. 785.)

The Court further expressed that "nothing in the congressional record establishes that Congress intended to preempt states' ability to tax motor carriers, to enforce labor and wage standards, or to exempt motor carriers from generally applicable insurance laws." (*Id.* at p. 786.) "California labor and insurance laws and regulations of general applicability are not preempted as applied under the FAAAA." (*Ibid.*)

The provisions of the code at issue in the present case are in no way "related to" the transportation of property. The code does not conflict with the provisions or intent of the FAAAA. Interstate motor carriers such as Petitioner are only impacted by the code's generally applicable provisions to the same extent as any other subject California employer. As noted in *Dilts*, Petitioner routinely operates under and complies with many other California laws which could be said to affect interstate motor carrier prices, routes and services in an equal, if not more direct and substantial way. Any influence the code provisions may have on motor carrier prices, routes or services are as indirect, tenuous and remote as that of California's prevailing wage, meal and rest break laws and UCL prohibitions. As the Courts have held application of those laws to interstate motor carriers is not preempted by the FAAAA, we likewise hold neither is EDD's assessment against Petitioner under the provisions of the code.

DECISION

The decision of the administrative law judge is reversed. Drivers were performing service for Petitioner as employees pursuant to code section 621, subdivision (b), to whom wages for employment were payable pursuant to code section 926.

Although drivers' service was not localized under code section 603, driver's entire service for Petitioner, performed within and without California, is subject to coverage in California pursuant to code section 602.

Petitioner is an employer liable for contributions to the California Unemployment Fund, and for PIT withholding, plus interest, as assessed by EDD pursuant to code section 1127.

The assessment is not preempted by the FAAAA, 49 U.S.C. section 14501(c).