

THURSDAY, JANUARY 10, 2002

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m. with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, and Mr. Andal present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 1.4).

Audrey J. Bryant, Business Taxes Specialist I, Planning, Evaluation &
Technology Section, Headquarters
Wilma L. Wright, Tax Technician III, Consumer Use Tax Section, Headquarters

Action: Approved the 2002 Advisory Committee Membership as recommended by staff and listed below (Exhibit 1.5).

Deputy Director, Property Taxes, Board Representative and Chairperson
Gerald D. Cochran, Assessor, Del Norte County & Vice-Chair/Secretary
Marsha A. Wharff, Assessor/Recorder/Clerk, Mendocino County
Kenneth Bunch, Assessor, Lassen County
John A. Winner, Assessor, El Dorado County
Dave Peets, Assessor, Alpine County
Tim Treichelt, Member Representing Large-Scale Timber Owners
Cecil Wetsel, Alternate to Tim Treichelt
Roy Richards, Member Representing Small-Scale Timber Owners
Tim Robards, Member Representing Board of Forestry

Exhibits to these minutes are incorporated by reference.

THURSDAY, JANUARY 10, 2002

BOARD COMMITTEE REPORTS**Legislative Committee**

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the Legislative Committee report.

Business Taxes Committee

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the Business Taxes Committee report.

Property Tax Committee

Upon motion of Ms. Mandel, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the Property Tax Committee report.

CHIEF COUNSEL MATTERS**RULEMAKING**

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, the Board approved the submission of Regulations 4011, Distributors Not Engaged In Business In This State, and 4061, Unused Stamps and Unused Meter Settings, to the 15-Day rulemaking file.

PROPERTY TAX MATTERS, PETITIONS FOR REASSESSMENT OF UNITARY VALUE – FINDINGS AND DECISIONS

mPower Communications Corp., (7724), 131828
2001, \$81,300,000.00 Value

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel not participating, Mr. Parrish absent, the Board approved the Finding and Decision as recommended by staff reducing the 2001 unitary value.

THURSDAY, JANUARY 10, 2002

Firstworld Communications, Inc., (7624), 131530

2001, \$101,200,000.00 Value

\$10,120,000.00 Penalty

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel not participating, Mr. Parrish absent, the Board approved the Finding and Decision as recommended by staff reducing the 2001 unitary value and abatement of the penalty assessment.

LEGAL APPEALS MATTERS, ADJUDICATORY

Ralphs Grocery Company, 89000123230

7-22-91 to 1-29-95, \$27,458.69 Tax

Considered by the Board: Hearing Notice Sent – No Response

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Mr. Andal moved to grant. Motion failed for lack of a second.

Upon motion of Ms. Mandel, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal voting no, Mr. Parrish absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Olga M. and Santos Salinas, 89000381900

1-1-95 to 12-14-97, \$22,190.60 Tax

\$542.06 Penalty, Negligence

\$1,573.33 Penalty, Failure to File

Considered by the Board: Hearing Notice Sent – No Response

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Mr. Andal moved to reduce the measure of tax by 25 percent. The motion was seconded by Mr. Chiang but failed to carry, Mr. Chiang and Mr. Andal voting yes, Mr. Klehs and Ms. Mandel voting no, Mr. Parrish absent.

The Board deferred consideration of this matter.

Western Micro Technology, Inc., 89000650330

1-1-95 to 6-30-97, \$39,884.92 Tax

\$00.00 Penalty, Negligence

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

THURSDAY, JANUARY 10, 2002

Richard Brian Powers, 16476

1-1-98 to 12-31-98, \$1,664.00 Tax

Considered by the Board: October 25, 2001

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Mr. Andal moved to grant the petition. The motion failed for lack of a second.

Upon motion of Mr. Klehs, seconded by Ms. Mandel and duly carried,

Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal voting no, Mr. Parrish absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

LaVonne A. Hodgson, 47679

1994, \$4,454.00 Assessment

\$2,227.00 Penalties

Considered by the Board: Formal Opinion

Action: The Board took no action.

Jerome M. Dachman, 87440

1996, \$557.00 Assessment

1997, \$868.00 Assessment

1998, \$709.00 Assessment

Considered by the Board: October 2, 2001

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried,

Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Dale Mitchell Heindel, 103375

1980, \$2,204.59 Claim for Refund

Considered by the Board: December 20, 2001

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried,

Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, the Board adopted a decision modifying the action of the Franchise Tax Board.

THURSDAY, JANUARY 10, 2002

Glen A. Blair, 115255

1997, \$2,282.00 Tax

1998, \$2,485.00 Tax

\$621.25 Penalty, Delinquent

\$621.25 Penalty, Notice & Demand

Considered by the Board: December 19, 2001

Action: The Board took no action.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Leslie Gene Azevedo, 52786

12-22-93 to 9-30-96, \$00.00 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Douglas Aroin Duvall, 83137

10-1-96 to 12-31-99, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Section.

The Social Graces, Inc., 94633

1-1-97 to 12-31-99, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Section.

Rafik Chichyan, 37128

7-1-95 to 6-14-98, \$5,374.92 Tax

\$567.15 Penalty, Negligence

Action: Deny the petition for rehearing.

Michael Lee Sparkman and Daniel Robert Cornwell, 37201

1-6-97 to 12-31-98, \$9,862.73 Tax

Action: Deny the petition for rehearing.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of this matter: *Marianna T. Greene*, 11255..

THURSDAY, JANUARY 10, 2002

With respect to the Corporate Franchise and Personal Income Tax Matters, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Enniss Enterprises, Inc., 94354

1993, \$30,389.04 Tax

\$7,597.26 Penalty, Late Filing

1994, \$90,033.10 Tax

Action: Sustain the action with concession by the Franchise Tax Board.

Donald J. and Rosemarie Meneghetti, 104280

1994, \$2,040.33 Claim for Refund

Stuart J. and Karen Lerner, 104281

1994, \$2,408.62 Claim for Refund

Robert J. and Donna T. Mullarkey, 104283

1994, \$813.58 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Patricia Soulsburg, 104906

1998, \$1,211.00 Tax

\$302.75 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Shiro Shiozawa, 106769

1998, \$11,323.00 Tax

\$2,830.75 Penalty, Late Filing

\$2,830.75 Penalty, Notice and Demand

Action: Modify the action of the Franchise Tax Board.

Marianna T. Greene, 11255

1994, \$586.00 Assessment

Action: The Board deferred consideration of this matter.

Mah's Enterprises, Inc., 113609

1994, \$2,430.53 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

THURSDAY, JANUARY 10, 2002

Aaron Miller, 113610

1997, \$299.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Adam C. McCarthy and Vanessa E. Mickanen-McCarthy, 115052

1997, \$619.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Glenn J. Pratt, 115275

1997, \$1,412.00.00 Assessment

Action: The Board took no action.

Home Fashions, Inc., 115758

1995, \$124,000.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Maurice J. Nemier, Jr., 118231

1994, \$2,808.65 Claim for Refund

1995, \$5,232.49 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michael C. and Martha E. G. Herb, 118318

1997, \$1,082.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Tom Kramer, 118474

1997, \$292.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Daniel Morissette, 119108

1991, \$25,836.86 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Michael and Carol McAllister, 126816

1997, \$1,526.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

THURSDAY, JANUARY 10, 2002

Donald J. Mederos, 126817

1987, \$19,176.00 Tax

\$4,794.00 Penalty, Late Filing

\$4,794.00 Penalty, Notice and Demand

1988, \$1,638.00 Tax

\$409.50 Penalty, Late Filing

\$409.50 Penalty, Notice and Demand

Action: Sustain the action of the Franchise Tax Board.

Tom and Rhonda L. Good, 132216

1997, \$590.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Robert J. Connors, 134004

1997, \$1,344.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ronald C. and Melinda L. Young, 37458

1988, \$9,373.00 Tax

\$2,343.25 Penalty

1989, \$42,093.00 Tax

\$10,523.25 Penalty

1990, \$10,315.00

\$2,578.75 Penalty

Action: Deny the petition for rehearing.

Geronimo, Inc., 47665

1992, \$27,991.00 Tax

\$7,093.43 Penalty

1993, \$55,826.00 Tax

\$26,662.35 Penalty

1994, \$30,323.20 Tax

\$8,779.60 Penalty

1995, \$800.00 Tax

\$245.20 Penalty

1996, \$800.00 Tax

\$76.68 Penalty

Action: Deny the petition for rehearing.

THURSDAY, JANUARY 10, 2002

Steven Wildt, 88567

1980, \$1.00 or more Assessment

1981, \$1.00 or more Assessment

1982, \$1.00 or more Assessment

1989, \$1.00 or more Assessment

1990, \$1.00 or more Assessment

Action: Deny the petition for rehearing.

Henry Khalife, 93390

1998, \$658.00 Assessment

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

Robert Page, 118707

1998, \$1.00 or more Claim for Credit

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Clara Parks, 118708

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Anselmo Perez, 118709

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Bobbie J. Platt, 118713

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Ladell D. Bernardez, 126646

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

THURSDAY, JANUARY 10, 2002

Damien S. Carr, 26654

1999, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Betty Cummings, 126671

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Jane De Paolo, 126681

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Jamie Shutes, 126999

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Patrick Tompkins, 127006

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Rosie Valdez, 127013

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Barbara J. Williams, 127019

2000, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Robert Lowe, 127259

1998, \$98.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Gloria Manriquez, 127311

2000, \$48.75 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Kevin McKinney, 127422

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

THURSDAY, JANUARY 10, 2002

Felipe Ordonez, 127438

1999, \$904.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Pensri S. Quon, 127471

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Alexander Riganian, 127482

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Ralph M. Smith, 129774

2000, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Martin Aguilar, 131997

1998, \$1.00 or more Claim for Credit

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Ms. Mandel not participating in *Screentronix Inc., 109032*, the Board made the following orders:

Harwell Well Service Inc., 145728

10-1-97 to 9-30-00, \$50,899.85

Action: Approve credit and cancellation as recommended by staff.

The New York Times Sales Inc., 144940

4-1-01 to 6-30-01, \$106,613.05

Action: Approve credit and cancellation as recommended by staff.

Commonwealth Plan Inc., 145663

5-10-96, \$452,760.00

Action: Approve credit and cancellation as recommended by staff.

THURSDAY, JANUARY 10, 2002

CBL Capital Corporation, 145658

2-21-97, \$556,359.42

Action: Approve credit and cancellation as recommended by staff.

Citicorp North America Inc., 145696

11-15-99, \$2,258,616.25

Action: Approve credit and cancellation as recommended by staff.

Windstar Cat Cruises LLC, 149743

8-30-99, \$90,755.66

Action: Approve credit and cancellation as recommended by staff.

Aviation International Rotrs Inc., 145730

7-1-98, \$102,452.08

Action: Approve credit and cancellation as recommended by staff.

3 Com Corporation, 141281

4-1-99 to 12-31-00, \$84,060.31

Action: Approve refund as recommended by staff.

Screentronix Inc., 109032

10-1-97 to 3-31-01, \$400,206.26

Action: Approve refund as recommended by staff. Ms. Mandel not participating.

McDonald's Restaurants California Inc., 114915

4-1-99 to 9-30-00, \$65,351.11

Action: Approve refund as recommended by staff.

Structural Dynamics Research Corporation, 139871

4-1-1 to 6-30-01, \$94,579.88

Action: Approve refund as recommended by staff.

Trendway Corporation, 130713

10-1-99 to 3-31-00, \$81,366.91

Action: Approve refund as recommended by staff.

Toyoda Machinery USA Inc., 138235

4-1-00 to 6-30-00, \$52,694.86

Action: Approve refund as recommended by staff.

THURSDAY, JANUARY 10, 2002

Ail Systems Inc., 138870

1-1-01 to 3-31-01, \$79,082.32

Action: Approve refund as recommended by staff.

Peak Technologies Inc., 47698

1-1-97 to 12-31-99, \$175,969.64

Action: Approve refund as recommended by staff.

MHI Injection Molding Machinery Inc., 109325

1-1-99 to 12-31-00, \$117,522.78

Action: Approve refund as recommended by staff.

Axis Systems Inc., 109323

1-1-00 to 3-31-01, \$130,675.66

Action: Approve refund as recommended by staff.

Scott Ian Melcer, 110598

1-1-99 to 3-31-00, \$56,962.50

Action: Approve refund as recommended by staff.

Tollbridge Technologies, Inc., 91189

8-1-99 to 6-30-00, \$59,350.65

Action: Approve refund as recommended by staff.

Paramount Parks Inc., 79070

4-1-00 to 6-30-00, \$583,170.29

Action: Approve refund as recommended by staff.

Dohan Inc., 132948

1-1-01 to 3-31-01, \$81,163.99

Action: Approve refund as recommended by staff.

Linotext America, Inc., 87574

7-1-97 to 12-31-00, \$80,756.47

Action: Approve refund as recommended by staff.

Oratec Interventions In., 145321

7-1-97 to 6-30-99, \$113,202.00

Action: Approve refund as recommended by staff.

THURSDAY, JANUARY 10, 2002

SALES AND USE TAX MATTERS, REDETERMINATIONS AND RELIEF OF PENALTIES, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations and Relief of Penalties, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang not participating in *Motorola Inc., 75689*, and *Nokia Internet Communications Inc., 109207*, Ms. Mandel not participating in *Lenfest West Inc., 16902*, the Board made the following orders:

Creative Teaching press Inc., 106327

10-1-96 to 9-30-99, \$232,608.69

Action: Approve redetermination as recommended by staff.

The Wild Side West Inc., 89000234250

1-1-95 to 12-31-97, \$70,879.62

Action: Approve redetermination as recommended by staff.

ABS Pmps Inc., 56761

1-1-96 to 12-31-98, \$82,877.72

Action: Approve redetermination as recommended by staff.

Lenfest West Inc., 16902

1-1-95 to 6-30-96, \$1,033,574.48

Action: Approve redetermination as recommended by staff. Ms. Mandel not participating.

Lencomm Inc., 16900

1-1-95 to 12-31-97, \$887,913.72

Action: Approve redetermination as recommended by staff.

Motorola Inc., 75689

7-1-94 to 6-30-97, \$1,368,242.53

Action: Approve redetermination as recommended by staff. Mr. Chiang not participating.

Gen Dynamics Government System Corporation, 29498

7-1-93 to 6-30-96, \$112,980.66

Action: Approve redetermination as recommended by staff.

Sunshine Western Inc., 89001046580

10-1-92 to 9-30-94, \$89,356.78

Action: Approve redetermination as recommended by staff.

THURSDAY, JANUARY 10, 2002

Croupier Inc., 138820

5-24-96, \$153,876.25

Action: Approve redetermination as recommended by staff.

Luka Hure, 138695

7-14-98, \$71,535.20

Action: Approve redetermination as recommended by staff.

Incline Air Group LLC, 93477

1-20-99, \$175,312.50

Action: Approve redetermination as recommended by staff.

Interplanetary Aviation Inc., 140591

3-24-00, \$410,439.00

Action: Approve redetermination as recommended by staff.

Harris Farms Inc., 146573

8-13-98, \$184,140.00

Action: Approve redetermination as recommended by staff.

Eisenhower Health Services, 99814

7-1-96 to 6-30-99, \$255,875.44

Action: Approve redetermination as recommended by staff.

Chameleon Color Graphics Inc., 88607

3-1-95 to 6-30-98, \$15,806.93

Action: Approve redetermination as recommended by staff.

Nokia Internet Communications Inc., 109207

7-1-96 to 9-30-99, \$53,980.17

Action: Approve redetermination as recommended by staff. Mr. Chiang not participating.

Gero Vita Laboratories Inc., 146227

7-1-98 to 9-30-00, \$140,942.68

Action: Approve relief of penalties as recommended by staff.

Gero Vita International Inc., 146224

7-1-97 to 9-30-00, \$496,594.22

Action: Approve relief of penalties as recommended by staff.

THURSDAY, JANUARY 10, 2002

S & C Motors, 145812

1-1-01 to 3-31-01, \$66,451.50

Action: Approve relief of penalties as recommended by staff.

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

San Diego Metro Transit Development Board, 129829

1-1-00 to 12-31-00, \$85,795.80

Action: Approve the refund as recommended by staff.

Tavolo Inc., 142407

1-1-00 to 12-31-00, \$95,870.19

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS AND RELIEF OF PENALTY, CONSENT

With respect to the Special Taxes Matters, Redeterminations and Relief of Penalty, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

Sunshine Western Inc., 89000970630

1-1-92 to 9-30-94, \$1,122,095.69

Action: Approve the redetermination as recommended by staff.

Miller Distributing Inc., 89000970640

1-1-02 to 9-30-94, \$1,122,095.69

Action: Approve the redetermination as recommended by staff.

Smart & Final Stores Corporation, 145093

9-1-01 to 9-30-01, \$64,693.39

Action: Approve the relief of penalty as recommended by staff.

THURSDAY, JANUARY 10, 2002

Mr. Parrish stated for the record he would have voted with the majority in the following items: Administrative Matters, Consent; Board Committee Reports; Chief Counsel Matters, Rulemaking; Chief Counsel Property Tax Matters; Legal Appeals Matters, Adjudicatory; Corporate Franchise and Income Tax Matters, Adjudicatory; Legal Appeals Matters, Consent; and Corporate Franchise and Income Tax, Consent.

LEGAL APPEALS MATTER, ADJUDICATORY

Olga M. and Santos Salinas, 89000381900

1-1-95 to 12-14-97, \$22,190.60 Tax

\$542.06 Penalty, Negligence

\$1,573.33 Penalty, Failure to File

Considered by the Board: Hearing Notice Sent – No Response

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and duly carried, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Ms. Mandel voting no, the Board ordered the petition be redetermined with adjustments.

BUSINESS TAXES APPEALS HEARINGS

General Electric Co., 89002085750, 89002085760, 89002085770, 89002085720, 89002085630, 89002085640

10-1-88 to 3-31-90, \$159,016.09 Claim for Refund

\$00.00 Penalty, Negligence

4-1-91 to 9-30-91, \$196,924.19 Claim for Refund

\$00.00 Penalty, Negligence

10-1-91 to 3-31-93, \$1,139,424.07 Claim for Refund

\$00.00 Penalty, Negligence

For Petitioner: Kevin Berry, General Electric Sales Tax Manager

Jeffrey Vesely, Attorney

Richard Nielsen, Attorney

For Sales and Use Tax Department: David H. Levine, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether certain fees petitioner charged some of its California customers constitute additional rental receipts subject to use tax.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

THURSDAY, JANUARY 10, 2002

David A. Kervinen, 80180

11-30-99, \$13,557.50 Tax

For Petitioner: David A. Kervinen

For Sales and Use Tax Department: James M. Stillwell, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the evidence shows that petitioner purchased the vessel at issue for use outside California.

Whether petitioner is entitled to relief from the tax pursuant to Revenue and Taxation Code section 6596 because petitioner's failure to pay use tax on the purchase and use of the vessel was based on reasonable reliance on a written advice from the Board.

Action: Upon motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Bundox Restaurant, Inc., 51576

4-1-96 to 3-31-99, \$21,819.51 Tax

For Petitioner: Robert Rubin, Attorney

Al Falchi, Secretary/Treasurer

For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether a 20 percent service charge that is added to petitioner's restaurant and bar sales for banquets is part of taxable gross receipts.

Whether an 18 percent gratuity charge for groups of eight or more that is added to petitioner's restaurant and bar sales is mandatory and, therefore, part of taxable gross receipts.

Whether petitioner qualifies for relief from the liability under Revenue and Taxation Code section 6596.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 11:00 a.m. and reconvened at 11:05 a.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

Philip Hy Lien & Jenny Lam Lien, 37342

7-1-95 to 6-30-98, \$32,727.44 Tax

For Petitioner: Anna Lien, Representative

Ed Hsu, Representative

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

THURSDAY, JANUARY 10, 2002

Issues: Whether the allowance for shrinkage should be increased to at least 3 percent.
Whether the evidence supports a reduction in the audited markup to 5 percent.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the petition be redetermined with adjustments.

Chastain Park Holdings, Inc., 89001127910, 89001144680

9-30-95, \$53,625.00 Tax

8-31-97, \$132,000.00 Tax

\$00.00 Penalty, Failure to File

For Petitioner: Madelyn Helmle

For Sales and Use Tax Department: Robert Tucker, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: A disqualifying contribution was disclosed to Mr. Klehs and Dr. Connell. No other disqualifying contributions were disclosed.

Issues: Whether petitioner's purchase and use of the 1974 Lear Jet is exempt from tax as an aircraft purchased for use as a common carrier.

Whether petitioner's purchase and use of the 1976 Lear Jet is exempt from tax as an aircraft purchased for use as a common carrier.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Ms. Mandel not participating, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to submit additional documentation, the Department 30 days to review the documentation and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation.

Joseph Moustafa Eldam, Mitzi G. Eldam, and William Jerome Abbey, 37199

1-1-96 to 9-30-98, \$2,701.78 Tax

For Petitioner: Joseph Eldam

William Abbey

For Sales and Use Tax Department: Carla J. Caruso, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether petitioner is the retailer of vehicles sold from his business location but not reported.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be submitted for decision.

THURSDAY, JANUARY 10, 2002

Midhat and Cindy Memisevic, 89000950370, -380

1-1-91 to 12-31-96, \$21,192.44 Fee
 \$2,119.24 Penalty, Failure to File
 1-1-97 to 12-31-97, \$4,287.53 Fee
 \$00.00 Penalty, Negligence

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Judy Nelson, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioners are not liable for the underground storage tank maintenance fee for petroleum products placed into its underground storage tanks because they leased the underground storage tanks to station operators who assumed the obligation to pay all applicable fees to the Board.

Whether petitioners have met the burden of proving that the Board's determination of the measure of the fee is erroneous, by providing evidence from which a more accurate determination may be made.

Whether relief from the failure-to-file penalty is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be redetermined in accordance with the revised staff recommendation.

Nuha Nijmeh, 89002298690

7-1-94 to 6-30-97, \$17,267.85 Tax
 \$00.00 Penalty, Negligence

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether sufficient documentation has been submitted to prove that bank deposits include non-sale deposits.

Whether relief from the tax is warranted based on petitioner's allegation that she was not aware that mandatory tips were taxable.

Whether petitioner's catering contracts constitute fixed price contracts.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Mr. Klehs stated for the recorded he would have voted with the majority in the petitions of *Midhat and Cindy Memisevic, 89000950370, -380*, and *Nuha Nijmeh, 89002298690*.

THURSDAY, JANUARY 10, 2002

FINAL ACTIONS ON PETITIONS HEARD JANUARY 10, 2002

Upon motion of Mr. Klehs, seconded by Mr. Andal and duly carried, Mr. Chiang, Mr. Klehs and Mr. Andal, voting yes, Ms. Mandel voting no, Mr. Parrish abstaining, the Board ordered that the petition of *General Electric Co.*, 89002085720, 89002085630, 890020805640, 89002085750, 89002085760, 89002085770, be redetermined in accordance with the revised recommendation of the Appeals Section.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *David A. Kervinen*, 80180, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Bundox Restaurant, Inc.*, 51576, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Joseph Moustafa Eldam, Mitzi G. Eldam, and William Jerome Abbey*, 37199, be redetermined as recommended by the Appeals Section.

The Board adjourned at 11:50 a.m.

The foregoing minutes are adopted by the Board on March 27, 2002.

THURSDAY, JANUARY 10, 2002