

**Tuesday, March 23, 2004**

The Board met at its offices at 450 N Street, Sacramento, at 10:10 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Sanford and Helen P. Diller, 203453

1996, \$87,303.00 Claim for Refund

1998, \$163,361.00 Claim for Refund

For Claimant:

Michael Herbert, CPA

Sanford Diller, Claimant

For Franchise Tax Board

Jeanne Sibert, Tax Counsel

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

Issue: Whether respondent properly disallowed appellants' claimed charitable contribution deductions for 1996 and 1998.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.17)

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board reversed the action of the Franchise Tax Board.

Exhibits to these minutes are incorporated by reference.

Bruno W. and Charlene O. Schmidt, 192618

1998, \$15,489.00 Tax, \$8,664.50 Penalties

For Appellant:

Bruno W. Schmidt, Taxpayer

For Franchise Tax Board

Mark McEvelly, Tax Counsel

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

Issues: Whether appellants have met their burden to prove error in the proposed assessment for the 1998 taxable year.

Whether this Board is the proper forum for disputing a frivolous return penalty.

Whether appellants have been denied due process.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.18)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

### **SALES AND USE TAX APPEALS HEARINGS**

Donald S. Ju and Kam Po Ju, 100440

4-1-90 to 3-31-93, \$Unspecified Claim for Refund

4-1-93 to 3-31-96, \$Unspecified Claim for Refund

Donald S. Ju, 100443

3-1-91 to 3-31-93, \$Unspecified Claim for Refund

4-1-94 to 3-31-96, \$Unspecified Claim for Refund

For Claimant:

Jeffrey Ju, Representative

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

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

Issues: Whether the claim for refund filed by claimants on November 30, 2000 was timely for payments made pursuant to the determination issued for each claimant's first audit period.

Whether claimants overpaid tax for the second audit period.

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

**Neocork Technologies, Inc., 204053**

5-1-98 to 12-31-99, \$53,177.48 Tax

For Petitioner:

Stuart Yaniger, Taxpayer

Jim Williams, Representative

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

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

Issue: Whether the transfer of assets to a commencing limited liability company was a taxable transaction.

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

**National Medical Care, Homecare Division, Inc. 59219, 60413, 89000080330,**

**89000080340, 89000080360, 9000080370, 89000080380**

7-1-90 to 12-31-93, Undisclosed

1-1-94 to 3-31-97, Undisclosed

4-1-97 to 7-28-98, Undisclosed

For Petitioner:

Joseph F. Micallef, Representative

Joseph F. R. Micallef, Representative

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

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

Issues: Whether the Department's test of January 1996, April 1995, and March 1994 (three-month test) was the best available method by which to determine the percentage of taxable sales of infusion devices.

Whether petitioner has established that it is entitled to a tax-included adjustment.

Whether devices used for antibiotic services are prosthetic devices, the use of which under certain circumstances is exempt.

Whether, for certain periods during audit period two, petitioner relied on the prior written audit advice that the Department gave petitioner during reaudit of audit period one, entitling petitioner to relief of tax and interest for those periods under Revenue and Taxation Code section 6596.

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

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## PUBLIC HEARINGS

### Proposed Adoption of Sales and Use Tax Regulation 1828

Janice Thurston, Assistant Chief Counsel, Business Taxes Division, Legal Department, made introductory remarks regarding the proposed Regulation 1828, *Process for Reviewing Transactions & Use Tax Inquiries*, which is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code section 7270. The regulation is proposed to establish a formal process for administering district tax distribution inquiries and appeals (Exhibit 3.19).

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

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board adopted Regulation 1828, *Process for Reviewing Transactions & Use Tax Inquiries*, as published.

### Proposed Amendments to the Rules of Practice

Jean Ogrod, Acting Chief Counsel, made introductory remarks regarding the proposed amendments to Title 18, Regulations 5020, 5021, 5022, 5023, 5030, 5070, 5071, 5075, 5075.1, 5076, 5076.1, 5079, 5082.1, 5083, 5090, 5091, and 5093 and repeal Regulation 5087 of the Board's Rules of Practice. The Board's Rules of Practice are the hearing procedures applicable to the various tax and fee programs administered by the Board, including the procedures and standards for the Board's consideration of reimbursement claims under provisions of the Taxpayers' Bill of Rights (Exhibit 3.20).

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

Action: The Board granted Mr. Parrish's request to continue the public hearing to amend the Rules of Practice after May 15, 2004.

## FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD MARCH 23, 2004

Bruno W. and Charlene O. Schmidt, 192618

Final Action: Mr. Chiang moved to sustain the action of the Franchise Tax Board. The motion was seconded by Ms. Mandel. Ms. Migden made a substitute motion to sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty. The substitute motion was seconded by Mr. Parrish and duly carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang voting no.

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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MARCH 23, 2004**

Donald S. Ju and Kam Po Ju, 100440

Donald S. Ju, 100443

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the claim for refund be denied.

Neocork Technologies, Inc., 204053

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

National Medical Care, Homecare Division, Inc. 59219, 60413, 89000080330, 89000080340, 89000080360, 89000080370, 89000080380

Final Action: The Board deferred consideration of this matter to the next Sacramento Board meeting.

Ms. Migden requested that the Appeals Division send a letter to the taxpayer informing it that the representative did not appear at the appeals conference and that no documentation has been provided to the Board in support of taxpayer's position, and asking the taxpayer to submit whatever documentation and supporting evidence it has to clarify the issues and to support its contentions.

Mr. Leonard requested staff to find out how many taxpayers appear for an oral Board hearing but fail to show for the appeals conference.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

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

Henry William and Elizabeth B. Cord, 218677

1995, \$12,734.37 Claim for Refund

1996, \$8,146.76 Claim for Refund

1997, \$6,610.04 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

James D. Fox, 212737

1997, \$272.00 Tax, \$54.40 Penalty

Action: Sustain the action of the Franchise Tax Board.

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Alan Freisleben, 212734

2000, \$819.00 Tax, \$279.50 Penalty

Action: Sustain the action of the Franchise Tax Board.

Tapendra Gangopadhyay, 218210

1999, \$412.51 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Christopher Michael Guerra, 222705

1997, \$1,523.80 Assessment

Action: Sustain the action of the Franchise Tax Board.

Herbert Guevara, 219070

2000, \$1,014.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Daniel Hume, 219073

1997, \$599.63 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Esther Yvonne Jackson, 222856

2001, \$1,180.40 Assessment

Action: Sustain the action of the Franchise Tax Board.

Dennis King, 216467

1993, \$11,360.65 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Robert Kruse, 216435

1999, \$567.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Red Bud Industries, Inc., 224004

2001, \$800.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

San Francisco Community Service Center, Inc., 221838

1991, \$1,400.39 Claim for Refund

1992, \$1,192.25 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Louis and Victoria Schandler, 217196

1999, \$1,414.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Nick A. Shallerhorn, 219561

1997, \$5,060.09 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

James C. and Anna Sundu, 215134

1998 to 2000, \$4,634.25 Assessment

Action: Sustain the action of the Franchise Tax Board.

Miin Chyou and Ann Wu, 217486

1998, \$3,040.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

The Board deferred consideration of the following matter: Rahim Keshmiri, 212631.

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

Chris J. Brown, 218222

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Amber Creshae Deary, 221058

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Zelda Billie Griffin-Scott, 221065

2002, \$275.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Sharon Hanaway, 223678

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Velma Jenkins, 221555

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Lawrence Jones, 207390

2002, \$250.00 Claim for Refund

Manola Bomar, 209380

2002, \$347.50 Claim for Refund

Luella Best, 216512

2002, \$347.50 Claim for Refund

Lela M. Brown, 208963

2002, \$340.00 Claim for Refund

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*This case is continued from the previous page.*

Geneva Bryant, 216475  
 2002, \$320.00 Claim for Refund  
 Dorothy M. Bullock, 207391  
 2002, \$207.50 Claim for Refund  
 Emma Dandridge, 216478  
 2002, \$347.50 Claim for Refund  
 Laurie Days, 216400  
 2002, \$290.00 Claim for Refund  
 Willie Fant, 208820  
 2002, \$347.50 Claim for Refund  
 Charlotte Funches, 216414  
 2002, \$340.00 Claim for Refund  
 Rubie Gatling, 208966  
 2002, \$340.00 Claim for Refund  
 Selena Hammett, 208990  
 2002, \$327.50 Claim for Refund  
 Geneva S. Jenkins, 216422  
 2002, \$340.00 Claim for Refund  
 Clara Lewis, 208924  
 2002, \$327.50 Claim for Refund  
 Willie Parker, Jr., 208964  
 2002, \$347.50 Claim for Refund  
 A. Ruffins, 216546  
 2002, \$347.50 Claim for Refund  
 Gilbert Sanchez, 216555  
 2002, \$347.50 Claim for Refund  
 Percy Tickles, 216550  
 2002, \$347.50 Claim for Refund  
 Leonie E. Willis, 216482  
 2002, \$347.50 Claim for Refund  
 Doretha M. Wright, 208893  
 2002, \$347.50 Claim for Refund

Elnora Y. Buckner, 216534  
 2002, \$235.00 Claim for Refund  
 Robert G. Carr, 216433  
 2002, \$340.00 Claim for Refund  
 C. J. Dawson, 209015  
 2002, \$347.50 Claim for Refund  
 Doris J. Dotson, 208798  
 2002, \$320.00 Claim for Refund  
 Joe L. Fort, 208933  
 2002, \$347.50 Claim for Refund  
 Nelcina Garrett, 208930  
 2002, \$347.50 Claim for Refund  
 Elaine Hairston, 209383  
 2002, \$347.50 Claim for Refund  
 Louis Hurt, 209022  
 2002, \$320.00 Claim for Refund  
 Daisy M. Lawson, 216538  
 2002, \$347.50 Claim for Refund  
 Daisey M. Moorner, 216399  
 2002, \$340.00 Claim for Refund  
 Jonnie S. Portley, 208790  
 2002, \$250.00 Claim for Refund  
 Christine Sailes, 216543  
 2002, \$347.50 Claim for Refund  
 Charlene Sheppard, 208985  
 2002, \$347.50 Claim for Refund  
 Ira Lee Wash, 216402  
 2002, \$347.50 Claim for Refund  
 Lillie R. Wooley, 208925  
 2002, \$347.50 Claim for Refund  
 Clarice Zuber, 207392  
 2002, \$332.50 Claim for Refund

Action: Modify the action of the Franchise Tax Board in the matters of *Laurie Days, 216400* and *Elaine Hairston, 209383*, and sustain the action of the Franchise Tax Board with regards to the remaining claims.

Rahim Keshmiri, 212631  
 2002, \$1.00 or more Claim for Credit  
 Action: The Board deferred consideration of this matter.

Luong V. Pham, 238811  
 2003, \$1.00 or more Claim for Credit  
 Action: Sustain the action of the Franchise Tax Board.

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Rayford Vernon Pryor III, 238802

2003, \$340.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

John Toliver, 221561

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Mark M. Wakefield, 218563

2002, \$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. Leonard, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in *Premier America Credit Union, 240764*; and, *Arrowhead Central Credit Union, 129945*; the Board made the following orders:

Ralph Dale Walts, 253133

7-1-01 to 6-30-03, \$85,921.95

Action: Approve the credit and cancellation as recommended by staff.

Neal Brian Collins, 251267

1-1-02 to 12-31-02, \$77,298.99

Action: Approve the credit and cancellation as recommended by staff.

Summit Machine Builders Corporation, 253074

1-1-96 to 12-31-00, \$88,033.76

Action: Approve the credit and cancellation as recommended by staff.

CST Industries, Inc., 252196

1-1-02 to 6-30-02, \$74,725.00

Action: Approve the credit and cancellation as recommended by staff.

Cibola Systems Corporation, 252345

7-1-00 to 6-30-03, \$64,252.65

Action: Approve the refund as recommended by staff.

Canon Business Solutions-West, Inc., 251017

1-1-00 to 12-31-02, \$224,503.80

Action: Approve the refund as recommended by staff.

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John W. Kromer, Jr., 186034

7-1-99 to 6-30-02, \$92,306.80

Action: Approve the refund as recommended by staff.

Premier America Credit Union, 240764

1-1-02 to 12-31-02, \$92,865.71

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

Sherman Oaks Health System, 146075

7-1-98 to 6-30-02, \$80,865.16

Action: Approve the refund as recommended by staff.

Denny's, Inc., 195876

7-1-99 to 6-30-02, \$100,228.35

Action: Approve the refund as recommended by staff.

Nikken, Inc., 252080

7-1-00 to 9-30-03, \$99,183.12

Action: Approve the refund as recommended by staff.

Benicia Fabrication & Machine, Inc., 246292

7-1-00 to 6-30-03, \$144,643.91

Action: Approve the refund as recommended by staff.

St. Mary Hospital Foundation, 251063

4-1-00 to 3-31-03, \$54,633.10

Action: Approve the refund as recommended by staff.

Mailing & Marketing, Inc., 195518

7-1-99 to 12-31-02, \$213,560.65

Action: Approve the refund as recommended by staff.

Target Carpet Enterprises, Inc., 172805

4-1-98 to 3-31-02, \$53,375.88

Action: Approve the refund as recommended by staff.

Kla-Tencor Corporation, 252423

4-1-98 to 6-30-01, \$774,982.85

Action: Approve the refund as recommended by staff.

Micro-Linear Corporation, 221041

10-1-98 to 9-30-01, \$306,715.80

Action: Approve the refund as recommended by staff.

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**Cargill, Inc., 242271**

4-1-03 to 6-30-03, \$170,621.92

Action: Approve the refund as recommended by staff.

**Rae Corporation, 252137**

7-1-02 to 9-30-02, \$79,462.67

Action: Approve the refund as recommended by staff.

**Great Western Publishing, Inc., 205026**

10-1-98 to 3-31-02, \$70,296.91

Action: Approve the refund as recommended by staff.

**S & P Comstock, Inc., 173786**

4-1-99 to 12-31-99, \$87,986.62

Action: Approve the refund as recommended by staff.

**Alstom T & D, Inc., 213381**

10-1-02 to 12-31-02, \$88,337.88

Action: Approve the refund as recommended by staff.

**Bay View Acceptance Corporation, 145291**

7-1-98 to 9-30-02, \$235,421.22

Action: Approve the refund as recommended by staff.

**AM-PAC Tire Dist., Inc., 251467**

7-1-99 to 12-31-02, \$58,400.36

Action: Approve the refund as recommended by staff.

**Delphi Automotive Systems, LLC, 251468**

4-1-99 to 3-31-02, \$418,790.35

Action: Approve the refund as recommended by staff.

**DFS SPV LP, 151182**

11-1-98 to 6-30-01, \$384,741.51

Action: Approve the refund as recommended by staff.

**Sabeus Photonics, Inc., 188570**

1-1-00 to 3-31-02, \$116,702.20

Action: Approve the refund as recommended by staff.

**Newman Replacement Windows, Inc., 252079**

4-1-00 to 3-31-03, \$347,312.10

Action: Approve the refund as recommended by staff.

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Chameleon Engineering, LLC, 252401

4-1-02 to 6-30-02, \$99,244.98

Action: Approve the refund as recommended by staff.

A &amp; A Amalgated Printing Enterprise, Inc., 98657

7-1-97 to 12-31-01, \$137,519.05

Action: Approve the refund as recommended by staff.

Arrowhead Central Credit Union, 129945

4-1-98 to 3-31-02, \$133,270.94

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

Novadigm, Inc., 251107

4-1-01 to 6-30-01, \$322,165.18

Action: Approve the refund as recommended by staff.

Amerigas Propane LP, 252779

10-1-98 to 3-31-02, \$125,683.83

Action: Approve the refund as recommended by staff.

Pacific Service Credit Union, 185730

1-1-99 to 12-31-02, \$189,749.03

Action: Approve the refund as recommended by staff.

**SALES AND USE TAX MATTERS, REDETERMINATIONS AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in *Schools Federal Credit Union, 202644*, the Board made the following orders:

Smart Professional Photocopy Corporation, 158288

10-1-98 to 3-31-01, \$494,875.31

Action: Approve the redetermination as recommended by staff.

B &amp; F Music &amp; Vending, Inc., 220109

1-1-00 to 12-31-02, \$61,751.59

Action: Approve the redetermination as recommended by staff.

BKM Total Office of California LP, 196459

4-1-98 to 3-31-01, \$678,279.38

Action: Approve the redetermination as recommended by staff.

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**Inland Paperboard & Packaging, Inc., 216181**

7-1-97 to 6-30-00, \$465,471.08

Action: Approve the redetermination as recommended by staff.

**Lane Bryant, Inc., 206823**

10-1-99 to 3-31-01, \$63,032.24

Action: Approve the redetermination as recommended by staff.

**Bayside Dredging Company, 236009**

9-30-98, \$2,082,028.85

Action: Approve the redetermination as recommended by staff.

**Pactiv Corporation, 196313**

4-1-96 to 11-5-99, \$856,407.37

Action: Approve the redetermination as recommended by staff.

**Visiting Nurse Home Pharmacy, LLC, 187461**

3-1-95 to 6-30-00, \$107,968.65

Action: Approve the redetermination as recommended by staff.

**Dayton's Commercial Interiors, Inc., 208219**

10-1-98 to 9-30-01, \$97,598.24

Action: Approve the redetermination as recommended by staff.

**AlliedSignal Power Systems, Inc., 194098**

12-1-97 to 12-31-00, \$170,097.26

Action: Approve the redetermination as recommended by staff.

**Astrazeneca LP, 217897**

7-1-98 to 12-31-01, \$150,345.71

Action: Approve the redetermination as recommended by staff.

**Zeta, (Sierratech, Inc.), 235402**

10-1-99 to 12-31-02, \$284,780.87

Action: Approve the redetermination as recommended by staff.

**Kaiser Aluminum & Chemical Corporation, 212026**

10-1-98 to 2-11-02, \$473,067.91

Action: Approve the redetermination as recommended by staff.

**Victoria's Secret Store's, Inc., 206824**

10-1-99 to 3-31-01, \$142,582.20

Action: Approve the redetermination as recommended by staff.

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Maska US, Inc., 238727

7-1-95 to 9-30-02, \$71,493.05

Action: Approve the redetermination as recommended by staff.

Barnebey Sutcliffe Corporation, 216178

1-1-99 to 12-31-01, \$447,665.27

Action: Approve the redetermination as recommended by staff.

Rhonda Sarnicola, 242266

7-1-91 to 6-30-94, \$92,665.87

Action: Approve the denial of claim for refund as recommended by staff.

Philadelphia Gear Corporation, 240752

1-1-96 to 12-31-98, \$315,369.00

Action: Approve the denial of claim for refund as recommended by staff.

Great Western Publishing, Inc., 252944

10-1-98 to 3-31-02, \$166,678.80

Action: Approve the denial of claim for refund as recommended by staff.

DFS SPV LP, 242670

11-1-98 to 6-30-01, \$68,540.22

Action: Approve the denial of claim for refund as recommended by staff.

Schools Federal Credit Union, 202644

7-1-02 to 9-30-02, \$55,553.28

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating.

**SPECIAL TAXES MATTERS, REDETERMINATIONS, CONSENT**

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

World Oil Corporation, 167591

1-1-01 to 12-31-01, \$86,865.48

Action: Approve the redetermination as recommended by staff.

World Oil Corporation, 215012

1-1-02 to 12-31-02, \$111,899.75

Action: Approve the redetermination as recommended by staff.

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McLane/Suneast, Inc., 218810

1-1-99 to 9-1-00, \$134,884.34

Action: Approve the redetermination 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. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Acacia National Life Insurance Company, 241961*; and, *Explorer Insurance Company, 252357*; the Board made the following orders:

Acacia National Life Insurance Company, 241961

1-1-99 to 12-31-00, \$247,114.96

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Explorer Insurance Company, 252357

1-1-00 to 12-31-02, \$2,164,778.38

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Blind Jack, Inc., 250903

1-1-02 to 12-31-03, \$105,725.67

Action: Approve the refund as recommended by staff.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Office Furniture L.A., Inc., 140910

1-1-98 to 6-30-00, \$00.00 Tax, \$17,566.59 Fraud Penalty

Considered by the Board: January 27, 2004

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

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered to deny the petition for rehearing.

Paramount Pictures Corporation, 89000019140

7-1-92 to 12-31-95, \$734.25 Tax

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: Disqualifying contributions were disclosed to Mr. Chiang and Mr. Westly. No other disqualifying contributions were disclosed.

Action: The Board deferred consideration of this matter.

**Tuesday, March 23, 2004**

McDonnell Douglas Corporation, 106386

1-1-95 to 12-31-97, \$1,963,420.55 Tax

Considered by the Board: January 27, 2004

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

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden and Mr. Chiang voting no, the Board ordered that the petition be granted.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,  
ADJUDICATORY**

A-C Compressor Corporation, 192031

1992, \$56,483.00 or more Claim for Refund

1993, \$124,232.00 or more Claim for Refund

Dover Corporation, 192551

1992, \$228,265.00 or more Claim for Refund

Novacap, Inc., 192556

1993, \$57,044.00 or more Claim for Refund

Considered by the Board: January 27, 2004

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

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision modifying A-C for 1993, otherwise sustaining the action of the Franchise Tax Board.

Arlene Antoine, 212926

1996, \$3,455.00 Claim for Refund

Considered by the Board: January 27, 2004

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

Action: Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS,  
ADJUDICATORY**

Babak Naderi, 218339

2002, \$324.00 Claim for Credit

Considered by the Board: January 27, 2004

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision reversing the action of the Franchise Tax Board.

Tuesday, March 23, 2004

Ofelia Ochoa, 224771

2002, \$472.60 Claim for Credit

Considered by the Board: February 18, 2004

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Timothy A. Payne, 218323

2002, \$1.00 or more Claim for Credit

Considered by the Board: February 18, 2004

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision to reverse the action of the Franchise Tax Board.

#### **SALES AND USE TAX MATTERS, REFUNDS, ADJUDICATORY**

SBC Advanced Solutions, Inc., 203005

10-1-00 to 6-30-01, \$5,510,965.00 Tax

Considered by the Board: February 18, 2004

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

Action: The Board deferred consideration of this matter.

Arcadia Financial Ltd., 205682

4-1-00 to 12-31-02, \$4,140,184.37 Tax

Considered by the Board: February 18, 2004

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

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden voting no, the Board approved the refund as recommended by staff.

#### **SPECIAL TAXES MATTERS, RESCISSION OF DENIAL OF CLAIM FOR REFUND, ADJUDICATORY**

BP West Coast Products, LLC, 253215

1-1-02 to 1-31-02, \$1,206,189.18 Claim for Refund

Considered by the Board: May 28, 2003

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the rescission of denial of claim for refund as recommended by staff.

#### **SPECIAL TAXES MATTERS, REFUNDS, ADJUDICATORY**

BP West Coast Products, LLC, 253215

1-1-02 to 1-31-02, \$1,255,441.86 Claim for Refund

Considered by the Board: May 28, 2003

**Tuesday, March 23, 2004**

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

### **PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

With respect to the Property Taxes Matters Not Subject to Contributions Disclosure Statute Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

#### **Audits**

##### **Citizens Telecommunications Company of California (284)**

1999-2002, \$40,600,000.00 Excessive Assessment

Action: Adopt the excessive assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

##### **U.S. TelePacific Corporation (7757)**

2001-2003, \$57,500,000.00 Escaped Assessment, \$5,750,000.00 Penalty, \$9,030,000.00 In-lieu interest

Action: Adopt the audit escaped assessment, plus penalties and assessment in lieu of interest as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

##### **Altrio Communications, Inc., (7910)**

2002-2003, \$1,900,000.00, \$190,000.00 Penalty, \$249,000.00 In-lieu interest

Action: Adopt the audit escaped assessment, plus penalties and assessment in lieu of interest as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

### **CHIEF COUNSEL MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

#### **PROPERTY TAX MATTERS**

##### **Consideration of Findings and Decision**

##### **Allegiance Telecom of California, Inc. (7742), 224482**

2003, \$114,600,000 Unitary Value

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Findings and Decision as recommended by staff.

Tuesday, March 23, 2004

Altrio Communications, Inc. (7910), 224219

2003, \$62,800,000 Unitary Value

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Findings and Decision as recommended by staff.

Broadwing Communications, Inc. (7630), 214611

1999, \$17,200,000.00 Escaped Assessment, \$1,720,000.00 Penalty, \$5,676,000.00 In-Lieu Interest

2000, \$28,700,000.00 Escaped Assessment, \$2,870,000.00 Penalty, \$6,888,000.00 In-Lieu Interest

2001, \$18,000,000.00 Escaped Assessment, \$1,800,000.00 Penalty, \$2,700,000.00 In-Lieu Interest

Action: The Board deferred consideration of this matter for correction.

Comcast Phone of California, LLC (7553), 224483

2003, \$258,800,000 Unitary Value

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Findings and Decision as recommended by staff.

Wiltel Communications, Inc. (7819), 223804

2003, \$240,700,000 Unitary Value, \$20,000,000.00 Penalty

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Findings and Decision as recommended by staff.

## CHIEF COUNSEL MATTERS

### RULEMAKING

#### Section 100 Change to Sales and Use Tax Regulation 1614, Sales to the United States and its Instrumentalities

Janice Thurston, Assistant Chief Counsel, Legal Department, made introductory remarks regarding the request for authorization to amend Regulation 1614, Sales to the United States and its Instrumentalities, in accordance with Title 1, California Code of Regulations, section 100 (Exhibit 3.21).

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the Section 100 change to Sales and Use Tax Regulation 1614, Sales to the United States and its Instrumentalities.

Tuesday, March 23, 2004

**Section 100 Change to Sales and Use Tax Regulation 1619, Foreign Consuls**

Janice Thurston, Assistant Chief Counsel, Legal Department, made introductory remarks regarding the request for authorization to amend Regulation 1619, Foreign Consuls, in accordance with Title 1, California Code of Regulations, section 100 (Exhibit 3.22).

Action: Upon motion of Ms. Mandel, seconded by Ms. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the Section 100 change to Sales and Use Tax Regulation 1619, Foreign Consuls.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 11:30 a.m. and reconvened immediately in closed session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

**CLOSED SESSION**

The Board met to discuss settlements (Revenue and Taxation Code sections 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 12:10 p.m. and reconvened immediately in open session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

Timothy Boyer, Interim Executive Director, announced the appointment of Todd Gilman to the position of Chief, Taxpayers' Rights and Equal Employment Opportunity Division.

**ADMINISTRATIVE SESSION**

**ALTERNATIVE CIGARETTE TAX STAMP PROJECT STATUS REPORT**

Timothy Boyer made introductory remarks regarding the Alternative Cigarette Tax Stamp Project Status Report (Exhibit 3.23).

Speakers: Jim Bonhivert, President/CEO, SICPA  
Ed Manning, Principle, Manning Advocates  
Dennis Loper, Executive Director, California Distributors Association

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved staff recommendation to resolve the funding issue for the stamp and seek legislation for a delay in the implementation date.

The Board directed staff to bring this matter back to the Board at the next meeting with a progress report.

Tuesday, March 23, 2004

**APPROVAL OF CONTRACTS OVER \$1 MILLION**

Timothy Boyer, Interim Executive Director, made introductory remarks regarding the approval of routine renewals of interagency agreements that expire June 30, 2004 (Exhibit 3.24).

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the contracts for Stephen P. Teale Data Center and the Department of Motor Vehicles. The Board deferred consideration of the contract to Department of Toxic Substances Control.

**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board 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 3.25).

John Gilland Abbott, Tax Counsel IV, Legal Department, Headquarters  
Theresa De Anda, Tax Technician III, Fuel Taxes Division, Headquarters  
Helen A. Conover, Supervising Tax Auditor I, Santa Ana District Office  
James Johnson, Data Processing Manager III, Technology Services Division,  
Headquarters  
Esther C. Mester, Associate Tax Auditor, Torrance District Office  
Donald W. Rudisill, Data Processing Manager III, Technology Services Division,  
Headquarters

Action: Approve the Board Meeting Minutes of May 6, 2003 and January 27, 2004.

The Board adjourned at 12:45 p.m.

*The foregoing minutes are adopted by the Board on May 25, 2004.*

Note: The following cases were removed from the calendar prior to the meeting: *Raffi Ohanes Sepetjian, 195054*; and, *Tanney Machine Manufacturing, Inc., 150403*.