

Wednesday, June 25, 2003

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard, Mr. Chiang and Mr. Westly present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Warren W. Quann, 162821

1992, \$3,168.00 Assessment

For Appellant:

Warren W. Quann

For Franchise Tax Board:

Diane Ewing, Tax Counsel

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

Issue: Whether appellant has shown that he is entitled to the deductions that he claimed on his tax return for 1992.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 6.13)

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

Exhibits to these minutes are incorporated by reference.

Conopco, Inc., 129732

1989, \$5,326,302.00 Claim for Refund

1990, \$6,718,361.00 Claim for Refund

1991, \$5,465,259.00 Claim for Refund

Indopco, Inc., 129739

1989, \$1.00 or more Claim for Refund

1990, \$1.00 or more Claim for Refund

1991, \$1.00 or more Claim for Refund

Sequoia-Turner Corp., 129741

1989, \$1.00 or more Claim for Refund

1990, \$1.00 or more Claim for Refund

1991, \$1.00 or more Claim for Refund

For Claimant:

Derick J. Brannan, Representative

Jon Sperring, Representative

Tom Langan

For Franchise Tax Board:

Carl Joseph, Tax Counsel

Melissa Wulff, Tax Counsel

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

Issues: Whether appellants are engaged in a worldwide unitary business with one another and/or with their foreign affiliates.

If the Board finds appellants are members of a worldwide unitary business, whether certain accounting adjustments should be made to their income and apportionment factors.

Respondent's Exhibit: FTB 6203 for tax years 12/89-12/91 (Exhibit 6.14)

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

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SALES AND USE TAX APPEALS HEARINGS

Conner Family Trust (DTD 2-23-91), 107037

2-25-99, \$79,191.00 Tax

For Petitioner:

Steven J. Roth, Attorney

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

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

Issue: Whether the subject vessel was purchased for use in this state.

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

Ms. Mandel entered the Boardroom on behalf of Mr. Westly in accordance with Government Code section 7.9.

LSI Logic Corporation, 142330

1-1-96 to 12-31-96, \$3,895,018.00 Claim for Refund

Cypress Semiconductor Corp., 173287

1-1-00 to 12-31-00, \$926,653.00 Claim for Refund

For Claimant:

Derick J. Brannan, Representative

Mark E. Olson

For Sales and Use Tax Department:

Warren L. Astleford, Tax Counsel

Geoffrey Way, Tax Counsel

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

Issue in the petition of 142330:

Whether claimant is entitled to a refund of the amount of MIC it could have claimed even after its corporation tax liability is eliminated by other tax credits, since there is no mandated credit-order scheme for carried over credits.

Issue in the petition of 173287:

Whether claimant is entitled to a refund under Revenue and Taxation Code section 6902.2.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the claim be submitted for decision and placed on the August 6, 2003 Board meeting calendar.

Career Aviation Company Inc., 99048

12-4-98, \$177,375.00 Tax, \$17,738.00 Failure to File Penalty

For Petitioner:

Joseph Micaleff, Representative

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

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

Issues: Whether the evidence shows that the aircraft was purchased for use in exempt common carriage operations.

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Whether petitioner's allegation that it had an operational partner for the aircraft warrants relief from the tax.

Whether the penalty for failure to file a return should be abated.

Action: This matter was deferred to later in the day.

Chairwoman Migden requested staff to suggest Board hearing procedures that would avoid submission of documents at the time of the hearing.

PUBLIC HEARINGS

Proposed Amendment to Sales and Use Tax Regulation 1630, Packers, Loaders and Shippers

Janice Thurston, Assistant Chief Counsel, Business Tax Division, Legal Department, stated for the record that *Regulation 1630, Packers, Loaders and Shippers*, is proposed to be amended to interpret, implement and make specific Revenue and Taxation Code section 6007. Amendments are proposed to provide that when a shipper of perishable food products purchases a disposable temperature recorder for the sole purpose of shipping the device along with the products the shipper ships, a shipper does not make a taxable use of a disposable temperature recording device merely by starting the recording device in this state, and to conform the subdivision to current industry terminology.

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

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board adopted amendments to *Regulation 1630, Packers, Loaders and Shippers*, as published (Exhibit 6.15).

Timber Harvest Values

Mickie Stuckey, Chief, County Property Taxes Division, Property and Special Taxes Department, stated for the record that on or before June 30, 2003, the Board will estimate the immediate harvest value and adopt schedules for each species or subclassification of timber harvested between July 1 and December 31, 2003 (Revenue and Taxation Code section 38204(a)).

Speakers: Roy H. Richards, Jr., Timber Advisory Committee
Phil Aune, California Forestry Association

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 adopted staff's recommended timber values with a modification of a minimal value of \$1.00 for the region of nine south salvage timber values only (Exhibit 6.16).

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The Board directed staff to provide a report to the Board on the status of salvage timber in the nine south area in approximately three months.

LEGAL APPEALS MATTERS, ADJUDICATORY

Ana Maria Jimenez, 93965

1-1-97 to 4-30-00, \$00.00 Tax

Considered by the Board: May 6, 2003

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed.

Action: Upon motion of Ms. Migden, seconded by Mr. Leonard 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.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

American General Realty Investment Corporation Inc., 156726

1991, \$8,640,922.00 Claim for Refund

Considered by the Board: February 5, 2003

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed.

Action: Mr. Parrish moved to modify the action of the Franchise Tax Board to the extent that the interest expense for insurance subsidiary is disallowed in the amount of \$23,623,966.00 based on the indirect allocation formula. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Ms. Migden moved to sustain the action of the Franchise Tax Board. No vote taken. Ms. Migden withdrew her motion.

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

Mercury General Corporation, 145450

1993, \$1,924,582.16 Assessment

1994, \$1,593,504.39 Assessment

1995, \$1,936,025.87 Assessment

1996, \$2,131,411.09 Assessment

Considered by the Board: May 28, 2003

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

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

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Joseph and Hedva Zer-Ilan, 99342

1994, \$140,250.00 Assessment

Considered by the Board: March 26, 2003

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed.

Action: Mr. Parrish moved to grant. The motion was seconded by Mr. Leonard but no vote was taken.

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 submitted the petition for decision.

SALES AND USE TAX MATTERS, REDETERMINATION, ADJUDICATORY

Arco Material Supply Company, 168323

4-1-94 to 12-31-97, \$627,096.35

Considered by the Board: April 23, 2003

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed.

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 approved the redetermination as recommended by staff.

LEGAL APPEALS MATTERS, CONSENTThe Board deferred consideration of the following matter: *Silverstream Software Inc., 149753*.

With respect to the Legal Appeals 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:

William G. Morschauser, 63388

1-1-97 to 12-31-99, \$39,710.14 Tax, \$3,971.01 Negligence Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Neil Berry Ponsky, 89002071890

1-1-90 to 12-31-97, \$44,370.30 Tax, \$00.00 Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Silverstream Software Inc., 149753

1-1-98 to 12-31-00, \$00.00 Tax, \$18,207.54 Penalty

Action: The Board deferred consideration of this matter.

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Supply Source, Inc., 181577

1-1-99 to 12-31-99, \$11,178.60 Tax

Action: Redetermine as recommended by the Appeals Division.

Robert E. Smathers, 86347, 89002033020

7-1-86 to 6-30-93, \$00.00 Tax

7-1-93 to 6-30-96, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Arrow International Inc., 138595

10-1-96 to 12-31-99, \$1,332,415.00 Tax

Action: Redetermine as recommended by the Appeals Division.

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:

Timothy B. Balcom, 164371

1992, \$1,173.00 Tax, \$249.75 Delinquent Return Penalty, \$234.60 Accuracy Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Robert Castillo, 184837

1999, \$1,079.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ann Shalvarjian Codd, 186448

1999, \$820.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Wilson M. Iverson, 206108

1998, \$202.90 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ladislaus L. Braun Trust, 181673

1999, \$39,480.36 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Carl E. Nuesch and Kathleen K. Gulf, 188462

1998, \$4,445.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Mary Schell O'Hara, 183385

1995, \$463.68 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Julio C. Reyes, 192554

2000, \$492.00 Tax, \$123.00 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board.

Iradj Shahriary, 195039

1999, \$7,025.00 Assessment

Action: Modified the action of the Franchise Tax Board.

Jody Alonzo Slaughter, 192625

1996, \$4,566.97 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Betty Sunseri, 183942

1998, \$285.59 Tax

Action: Sustain the action of the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matters: *Lawrence E. Ross, 194227* and *Joel M. Weiner, 204146*.

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

Eugenia Boroch, 184331

1999, \$600.00 Claim for Credit

2000, \$600.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Richard Brown, 157374

2001, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Philip A. Espinoza, 197576

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Marcus J. Frost, 198936

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Donnavea R. Galloway, 194177

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Elda B. Garner, 187088

2002, \$37,40 Claim for Credit

Action: Reverse the action of the Franchise Tax Board.

Nga Hoang, 196133

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Jim Hurst, 199035

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Theopolis Jackson, 197509

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Walter Jeans, 197350

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Christine L. Johnson, 185769

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Stephen D. Johnson, 197482

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Scott L. King, 196625

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Ted J. Larson, 204145

2002, \$340.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Brenda Marie Lawson, 187822

2001, \$347.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

James J. Lewis, 204135

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Ruby Lewis, 196706

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

L. S. Nicholson, 194171

2002, \$347.50 Claim for Credit

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

Efim Reznik, 199005

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Lawrence E. Ross, 194227

2001, \$240.00 Claim for Credit

Action: The Board deferred consideration of this matter.

Mario S. Sanchez, 196171

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Theresa Scates, 194243

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

John Seelig, 203088

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Amanda V. Smithe, 197568

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Yan Ying Tam, 198162

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Lusik Tatulyan, 196135

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Samule Thomas, 196178

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Daniel David Torres-Constantine, 194564

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Christopher K. Truong, 192171

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Yu Vu Vang, 192249

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Ethel L. Warner, 197356

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Joel M. Weiner, 204146

2001, \$1.00 or more Claim for Credit

Action: The Board deferred consideration of this matter.

Penny White, 197504

2002, \$379.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Shatonya Wright, 194391

2000, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Jinghan G. Wu, 196641

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties 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, the Board made the following orders:

First Financial Management Corporation, 86844

4-1-96 to 4-26-98, \$84,937.97

Action: Approve the redetermination as recommended by staff.

America True, 207036

6-3-99 to 12-31-99, \$170,000.00

Action: Approve the redetermination as recommended by staff.

Bay Area/Diablo Petroleum Company, 187083

4-1-97 to 6-30-00, \$3,828,058.00

Action: Approve the redetermination as recommended by staff.

River Transportation LLC, 186767

2-12-01 to 2-12-01, \$202,125.00

Action: Approve the redetermination as recommended by staff.

Orion Bus Industries, Inc., 218722

4-1-02 to 6-30-02, \$65,124.50

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

Raytheon Company, 218847

7-1-02 to 9-30-02, \$70,712.90

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

Cash Reg Systems of Asheville, Inc., 219680

4-1-98 to 12-31-00, \$111,664.00

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

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 Ms. Migden, 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:

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Trans World Airlines, Inc., 218584

1-10-1- to 4-9-01, \$356,616.37

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

Unet Technologies, Inc., 218642

10-1-96 to 7-20-02, \$310,884.49

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

North Sails Group, Inc., 192506

1-1-02 to 6-30-02, \$87,238.24

Action: Approve the refund as recommended by staff.

Overland Storage, Inc., 219282

7-1-99 to 6-30-02, \$83,822.88

Action: Approve the refund as recommended by staff.

Cash Reg Systems of Asheville, Inc., 129082

10-1-97 to 12-31-00, \$202,313.42

Action: Approve the refund as recommended by staff.

Medical Data Electronics, Inc., 134381

4-1-98 to 3-31-02, \$112,675.14

Action: Approve the refund as recommended by staff.

Edison Material Supply LLC, 208837

10-1-01 to 12-31-02, \$166,938.09

Action: Approve the refund as recommended by staff.

NCS Healthcare of California, Inc., 162565

1-1-00 to 6-30-02, \$114,062.09

Action: Approve the refund as recommended by staff.

California State Automobile Association, 217966

7-1-01 to 12-31-02, \$191,549.73

Action: Approve the refund as recommended by staff.

Schools Federal Credit Union, 115269

1-1-98 to 6-30-02, \$344,046.60

Action: Approve the refund as recommended by staff.

Wescom Credit Union, 203772

7-1-02 to 9-30-02, \$56,914.88

Action: Approve the refund as recommended by staff.

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SPECIAL TAXES MATTERS, DENIAL OF CLAIMS FOR REFUND AND REDETERMINATION, CONSENT

With respect to the Special Taxes Matters, Denial of Claims for Refund and Redetermination, Consent Agenda, upon a single 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 made the following orders:

San Benito City Integrated Waste, 152125

1-1-96 to 12-31-01, \$72,121.73

Action: Approve the Denial of Claims for Refund as recommended by staff.

Dhia H. Mansour, 135700

9-1-97 to 12-31-99, \$64,076.32

Action: Approve the Redetermination as recommended by staff.

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, 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:

San Benito City Integrated Waste, 219567

1-1-96 to 12-31-01, \$86,181.47

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

McLane Sunwest, Inc., 219454

4-1-03 to 4-30-03, \$464,762.94

Action: Approve the refund as recommended by staff.

Thrifty Payless, Inc., 219532

5-26-03 to 6-25-03, \$57,938.04

Action: Approve 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. Chiang and unanimously carried, Ms. Migden, Mr. Leonard and Mr. Chiang voting yes, Mr. Parrish not participating and Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

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Board Roll Changes

1999, 2000, 2001 and 2002 State-Assessed Rolls

Action: Approve corrections to the 1999, 2000, 2001 and 2002 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 6.17). Mr. Parrish not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

LOCAL TAX REALLOCATION MATTER NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

City of Laguna Hills, 203006

7-1-94 to 12-31-98, \$1,635,245.00

Action: The Board took no action on this matter.

CHIEF COUNSEL MATTERS**RULEMAKING****Request for Authorization to Modify Amendments to Uniform Local Sales and Use Tax Regulation**

Janice Thurston, Assistant Chief Counsel, Business Taxes Division, Legal Department, made introductory remarks regarding the *Regulation 1802, Place of Sale and Use for Purposes of Bradley Burns Uniform Local Sales and Use Taxes*, which is proposed to be modified to clarify previously adopted amendments to subdivision (a)(1) entitled Retailers Having One Place of Business and to place in subdivision (a)(2) entitled Retailers Having More Than One Place of Business, the rules regarding place of sale where the retailer has more than one place of business in this state but only one of those places of business participates in the sale.

Speakers: Albin C. Koch, General Counsel, MBIA MuniServices/MRC
Bob Cendejas, Attorney for the Cities of Fremont, Signal Hill and Long Beach

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the revised language and referred the regulation to the 15-day file (Exhibit 6.18).

Consideration of New Petition for Amendment to Property Tax Rule

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, made introductory remarks regarding the Petition for Amendment of Property Tax Rule 462.500, Change in Ownership of Real Property Acquired to Replace Property Taken by Governmental Action or Eminent Domain Proceedings

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Action: Upon 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 ordered that staff begin the process which provides interested members of the public to express their views and present proposals regarding the revision to the regulation, and the matter to be brought back to the Board at the September 24, 2003 Property Tax Committee (Exhibit 6.19).

Request for adoption of revised language to proposed amendment to Property Tax Rule

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments to *Property Tax Rule 462.180, Change in Ownership – Legal Entities* which are clarifying the treatment of limited liability company membership interests and legal entity ownership interests held by spouses as community property, heard on May 28, 2003.

Action: Upon 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 adopted the revised language to *Rule 462.180, Change in Ownership – Legal Entities* (Exhibit 6.20).

Petition for Property Tax Rule 136

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, made introductory remarks regarding the revised staff recommendation on *Property Tax Rule 136, Qualifying Organizations*, which clarifies that the welfare exemption in Revenue and Taxation Code section 214(a) applies to property owned and operated by community chests, funds, foundations, corporations, or limited liability companies not organized or operated for profit, heard on May 28, 2003.

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 adopted the staff recommendation to work with the California Bar Association and return the matter to the Board at the September 24, 2003 Board Meeting (Exhibit 6.21).

SALES AND USE TAX/PROPERTY AND SPECIAL TAXES MATTER

Staff Suggestions Regarding Handling Cancellation of Determinations

Ramon Hirsig, Deputy Director, Sales and Use Tax Department, made introductory remarks regarding authority for cancellation of determinations above \$50,000 (Exhibit 6.22).

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Action: Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, with regards to Action Item 1, the Board denied staff recommendation to increase delegation of authority from \$50,000 to \$250,000.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, with regards to Action Item 2, the Board adopted staff recommendation to delegate to staff the authority to cancel (or redetermine to zero) all individual billings on vehicles, vessels and aircraft when tax is found not to be due.

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, with regards to Action Item 3, the Board adopted staff recommendation to amend the Board Reference Manual to reflect the revised levels of delegation and require that public records on those items above \$50,000 be retained in the Board Proceedings Division.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 12:02 p.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.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Mandel 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 6.23).

David L. Burdick, Business Taxes Representative C, Ventura District, Fresno
Branch Office

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Richard L. Martin, Business Taxes Compliance Supervisor III, Fresno Branch Office
David J. Martin, Research Manager II (GIS), Tax Area Services, Assessment Policy and Standards Division, Headquarters
Hazel Wambolt, Staff Information Systems Analyst, Business Integration Section, Technology Services Division, Headquarters

Action: The Board took no action on the Board Meeting Minutes of May 6, 2003.

Action: Approve extensions of time to complete and submit 2003-04 Local Assessment Rolls pursuant to Revenue and Taxation Code section 155 granted to Butte, Calaveras, El Dorado, Inyo, Los Angeles, Madera, Modoc, Mono, Placer and Tulare Counties (Exhibit 6.24).

BOARD COMMITTEE REPORTS

Legislative Committee

Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the Legislative Committee report (Exhibit 6.25).

Business Taxes Committee

Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report (Exhibit 6.26).

Property Tax Committee

Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the Property Tax Committee report (Exhibit 6.27).

SALES AND USE TAX APPEALS HEARINGS

Career Aviation Company Inc., 99048

12-4-98, \$177,375.00 Tax, \$17,738.00 Failure to File Penalty

For Petitioner: Joseph Micaleff, Representative

For Sales and Use Tax Department: Chris Schutz, Tax Counsel

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

Issues: Whether the evidence shows that the aircraft was purchased for use in exempt common carriage operations.

Whether petitioner's allegation that it had an operational partner for the aircraft warrants relief from the tax.

Wednesday, June 25, 2003

Whether the penalty for failure to file a return should be abated.

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 deferred to the July 9, 2003 meeting.

FINAL ACTION ON APPEALS HEARD JUNE 25, 2003

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, in the appeal of *Warren W. Quann, 162821*, the Board adopted a decision which modified the action of the Franchise Tax Board reducing the tax by 25 percent.

Ms. Migden moved to grant in part, finding Indopco and Sequoia-Turner were not unitary with one another nor with the others in the appeal of *Conopco, Inc., 129732*; *Indopco, Inc., 129739*; and, *Sequoia-Turner Corp., 129741*. The motion was seconded by Ms. Mandel. Mr. Parrish made a substitute motion to grant the claim for refund. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Mr. Chiang moved that all U.S. operations are unitary. Ms. Migden made a substitute motion to grant in part, finding Indopco and Sequoia-Turner were not unitary with one another nor with the others. The motion was seconded by Ms. Mandel but failed to carry, Ms. Migden and Ms. Mandel voting yes, Mr. Parrish, Mr. Leonard and Mr. Chiang voting no.

Mr. Chiang moved that all U.S. operations are unitary. The motion was seconded by Mr. Parrish. No vote taken.

The Board deferred consideration of this matter to the July 9, 2003 Board Meeting.

FINAL ACTION ON PETITION HEARD JUNE 25, 2003

Upon motion of Mr. Chiang, 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 of *Conner Family Trust (DTD 2-23-91), 107037*, be denied and redetermined as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARINGS

Ardeshir Eil Larijani, 76272

2-1-96 to 6-0-99, \$79,390.94 Tax, \$7,939.11 Negligence Penalty

For Petitioner: No Appearance

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

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

Issues: Whether the evidence warrants adjustment to the audited understatement of taxable sales established by analysis of bank deposits.

Whether the imposition of the 10 percent penalty for negligence is warranted.

Wednesday, June 25, 2003

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

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

American General Realty Investment Corporation Inc., 156726

1991, \$8,640,922.00 Claim for Refund

Considered by the Board: February 5, 2003

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

Action: Upon motion of Mr. Chiang, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Mercury General Corporation, 145450

1993, \$1,924,582.16 Assessment

1994, \$1,593,504.39 Assessment

1995, \$1,936,025.87 Assessment

1996, \$2,131,411.09 Assessment

Considered by the Board: May 28, 2003

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

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 adopted a decision modifying the action of the Franchise Tax Board by apportioning issue two, interest, among tax exempt and taxable.

Joseph and Hedva Zer-Ilan, 99342

1994, \$140,250.00 Assessment

Considered by the Board: March 26, 2003

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

Action: Mr. Parrish moved to grant. The motion failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Mr. Chiang, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

The Board adjourned at 12:30 p.m.

The foregoing minutes are adopted by the Board on August 6, 2003.

Note: The following case was removed from the calendar prior to the meeting: *Sam D'Ambrosio, 145476*

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