

TUESDAY, JULY 9, 2002

The Board met at the San Diego County Administration Building at 1600 Pacific Highway, Room 310, San Diego, at 9:00 a.m., with Mr. Chiang, Chair, and Mr. Klehs, Vice Chair, present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

LEGAL APPEALS MATTERS, CONSENT

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

Wong & Hy Food Service, Inc., 84136

10-1-96 to 9-30-99, \$00.00 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Polese Company, Inc., 89002130400

1-1-94 to 12-31-97, \$7,404.74 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Craftsmen Steel Buildings, 89002418000

5-1-76 to 6-30-87, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Section.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Sam Anton and Mary Dungom, 126840.*

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

Daniel T. Casey, 110575

1992, \$1,176.00 Tax

\$279.00 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board.

Sam Anton and Mary Dungom, 126840

1995, \$319.00 Tax

Action: The Board deferred consideration of this matter.

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Kirk M. Thorsen, 129647

1998, \$6,300.00 Tax

\$1,575.00 Penalty, Late Filing

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

Robert H. Hale, 130150

1998, \$7,881.00 Tax

\$1,970.25 Penalty, Failure to File

Action: Sustain the action of the Franchise Tax Board and impose a \$2,000.00 frivolous appeal penalty.

Michael and Sharon R. Walker, Sr., 133459

1996, \$1,813.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

David F. and Alice M. Viera, 133556

1994, \$183.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Terrill Croghan, 140836

1995, \$813.00 Assessment

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

Michael A. Rudolph, 145313

1995, \$637.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Noel C. Sudaria, 145328

1996 and 1997, \$7,159.76 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Owen J. and Candace L. Curtis, 145353

1997, \$2,124.86 Assessment

Action: Sustain the action of the Franchise Tax Board.

Michael V. and Linda B. Harrell, 115775

1993, \$71,928.00 Assessment

Action: Deny the petition for rehearing.

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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. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish and Mr. Andal absent, the Board made the following orders:

Reid J. Pubins, 133440

1999, \$182.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Dorien Tharps, 139724

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Anthony L. Williams, 142002

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

George Anthony Stanford IV, 143918

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Erika Grady, 150537

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Deborag M. Ortega, 151001

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Thelma Brutus, 152404

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Pearl June Hamilton, 153414

2001, \$473.00 Claim for Credit

Action: Sustain the action which includes a concession by the Franchise Tax Board.

T. T. Do, 154429

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Reginald E. Williams, 112206

1998, \$420.00 Claim for Credit

Action: Deny the petition for rehearing.

Yasuji Ohta, 118699

1998, \$350.00 Claim for Credit

Action: Deny the petition for rehearing and reverse the Board's March 27, 2002 decision. In addition, direct the Franchise Tax Board to issue assistance.

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

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refunds, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish and Mr. Andal absent, the Board made the following orders:

Packard-Bell Electronics Inc., 87603

10-1-94 to 12-31-97, \$840,420.91

Action: Approve the redetermination as recommended by staff.

Chumo Family Trust, 153368

7-16-98, \$69,672.50

Action: Approve the redetermination as recommended by staff.

Career Aviation Company Inc., 135581

11-15-96, \$174,762.50

Action: Approve the redetermination as recommended by staff.

Anguil Environmental Systems Inc., 78512

1-1-91 to 12-31-99, \$61,290.58

Action: Approve the redetermination as recommended by staff.

Iradj Nazarian, 161055

5-28-93 to 9-30-99, \$252,260.62

Action: Approve the redetermination as recommended by staff.

DLI Engineering Corp., 141534

1-1-94 to 6-30-00, \$55,989.12

Action: Approve the redetermination as recommended by staff.

Jim Henson Productions, Inc., 152396

4-1-97 to 6-30-00, \$353,946.37

Action: Approve the redetermination as recommended by staff.

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Visaer, Inc., 145693

10-1-97 to 9-30-00, \$56,216.34

Action: Approve the redetermination as recommended by staff.

Ultimax Cement Manufacturing Corp., 146410

1-1-97 to 6-30-00, \$114,224.47

Action: Approve the redetermination as recommended by staff.

Da Vinci Textile Inc., 93441

2-20-96 to 12-31-98, \$1,087,955.25

Action: Approve the redetermination as recommended by staff.

American Yearbook Company Inc., 170297

1-1-99 to 7-31-00, \$105,684.49

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

American Yearbook Company Inc., 170318

4-1-97 to 12-31-99, \$143,622.68

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

Thomas Earl Symonds, 140606

4-2-96 to 12-31-99, \$74,002.15

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

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

The Board deferred consideration of the following matters: *AT & T Communications of California, 150422, and Pfizer Inc., 164429*¹.

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

AT & T Communications of California, 150422

1-1-95 to 12-31-99, \$666,318.24

Action: The Board deferred consideration of this matter.

¹ The Board decided this matter later in the day.

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Pryor Resources Inc., 170729

1-1-98 to 7-24-01, \$56,054.55

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

ACS Enterprise Solutions, Inc., 172274

4-1-96 to 6-30-99, \$185,822.06

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

Construction Equipment Co., 171294

12-23-99, \$146,475.00

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

American Institute of Marine S, 172087

10-19-00, \$50,374.94

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

Webvan Group, Inc., 172135

12-1-88 to 7-7-01, \$1,082,509.11

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

Lansar, LLC, 172270

4-1-01 to 9-30-01, \$61,680.00

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

Restaurants on the Run Inc., 172122

10-1-00 to 12-31-00, \$55,755.00

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

TL-R & Associates, 76974

4-1-97 to 3-31-01, \$366,231.48

Action: Approve the refund as recommended by staff.

Challenge Graphics Corporation, 138875

7-1-98 to 6-30-01, \$100,196.28

Action: Approve the refund as recommended by staff.

Ambitech Inc., 170303

1-1-98 to 9-30-00, \$155,676.72

Action: Approve the refund as recommended by staff.

JBL Incorporated, 170292

7-1-96 to 6-30-99, \$101,271.45

Action: Approve the refund as recommended by staff.

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Sokkia Corporation, 95739

7-1-98 to 12-31-99, \$147,935.50

Action: Approve the refund as recommended by staff.

3 Com Corporation, 36633

4-1-96 to 9-30-96, \$1,361,839.55

Action: Approve the refund as recommended by staff.

Snowden Enterprises Inc., 90538

4-1-97 to 3-31-00, \$102,939.03

Action: Approve the refund as recommended by staff.

Union Bank, 93944

7-1-97 to 9-30-01, \$1,490,299.75

Action: Approve the refund as recommended by staff.

Equifax Marketing Decision Sys Inc., 83251

10-1-99 to 12-31-99, \$101,791.58

Action: Approve the refund as recommended by staff.

W.E. Behel Inc., 135646

4-1-01 to 6-30-01, \$242,410.33

Action: Approve the refund as recommended by staff.

Fong & Fong Printers Lithgrps. Inc., 87592

1-1-98 to 12-31-99, \$80,401.69

Action: Approve the refund as recommended by staff.

The Boeing Company, 169294

7-1-98 to 12-31-99, \$61,774.90

Action: Approve the refund as recommended by staff.

American Yearbook Company Inc., 145836

1-1-99 to 7-31-00, \$106,771.36

Action: Approve the refund as recommended by staff.

International Paper Box Mach. Co., 170291

4-1-99 to 6-30-00, \$61,129.81

Action: Approve the refund as recommended by staff.

Krauss Maffei Corporation, 113326

1-1-00 to 12-31-00, \$293,949.73

Action: Approve the refund as recommended by staff.

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Descartes Systems USA, Inc., 135470

1-1-01 to 3-31-01, \$75,969.42

Action: Approve the refund as recommended by staff.

Tokyo Electron Limited, 156132

10-1-99 to 12-31-99, \$487,633.18

Action: Approve the refund as recommended by staff.

Ionics Circuits USA, Inc., 134738

6-1-98 to 6-30-01, \$168,125.23

Action: Approve the refund as recommended by staff.

Matheson Tri-Gas Inc., 141213

1-1-00 to 3-31-01, \$189,158.13

Action: Approve the refund as recommended by staff.

Lee Technologies Inc., 110529

4-1-00 to 12-31-00, \$111,869.99

Action: Approve the refund as recommended by staff.

Western Asset Management Company, 140361

1-1-98 to 6-30-01, \$50,536.54

Action: Approve the refund as recommended by staff.

Matson Navigation Company, 118727

1-1-98 to 9-30-00, \$762,274.27

Action: Approve the refund as recommended by staff.

Pfizer Inc., 164429

10-1-00 to 12-31-00, \$96,997.19

Action: The Board deferred consideration of this matter.²**Cedars-Sinai Medical Center, 170618**

10-1-96 to 9-30-99, \$232,148.55

Action: Approve the refund as recommended by staff.

Ameron International Corporation, 162562

10-1-01 to 12-31-01, \$137,192.89

Action: Approve the refund as recommended by staff.

² The Board decided this matter later in the day.

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Orbital Sciences Corporation, 101446

7-1-99 to 9-30-00, \$58,888.29

Action: Approve the refund as recommended by staff.

Physical Electronics Inc., 129088

7-1-99 to 9-30-99, \$101,135.87

Action: Approve the refund as recommended by staff.

GNB Industrial Battery Company, 155979

7-1-98 to 9-30-00, \$133,835.13

Action: Approve the refund as recommended by staff.

SAP America Inc., 119367

1-1-94 to 12-31-97, \$2,839,645.59

Action: Approve the refund as recommended by staff.

Open Market Inc., 163702

4-1-00 to 6-30-00, \$72,018.59

Action: Approve the refund as recommended by staff.

Pacific Western Extruded Plastics Company, 172982

7-1-96 to 6-30-99, \$68,166.71

Action: Approve the refund as recommended by staff.

Daniel Lee Allen, 170929

7-1-98 to 3-31-01, \$56,858.68

Action: Approve the refund as recommended by staff.

Onyx Software Corporation, 151381

7-1-98 to 3-31-01, \$112,990.66

Action: Approve the refund as recommended by staff.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Cary Behar, 92485

1998, \$259.00 Assessment

\$64.75 Penalty, Notice and Demand

\$100.00 Penalty, Late Filing

For Appellant:

Cary Behar

T. W. Kabis, Representative

For Franchise Tax Board:

Mark McEvelly, Tax Counsel

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

Issues: Whether appellant has demonstrated error in respondent's assessment.

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Whether appellant has demonstrated reasonable cause to abate late filing and notice and demand penalties.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 7.1)

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

Exhibits to these minutes are incorporated by reference.

Richard W. Hoffman, 103377

1998, \$1,511.00 Tax

\$00.00 Penalty, Notice and Demand

For Appellant: Richard W. Hoffman

T. W. Kabis, Representative

For Franchise Tax Board: Suzanne Small, Tax Counsel

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

Issues: Whether appellant has demonstrated error in respondent's assessment.

Whether appellant has demonstrated reasonable cause to abate late filing and notice and demand penalties.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 7.2)

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

Tim Durfee, 149735

1995, \$5,403.05 Claim for Refund

1996, \$5,044.04 Claim for Refund

For Claimant: Tim J. Durfee

For Franchise Tax Board: Jozell Brunett, Tax Counsel

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

Issue: Whether appellant's claim for refund is barred by the stature of limitations.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 7.3)

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

Vergeer Foliage, Inc., 98057

6-30-95, \$1,223.23 Claim for Refund

For Claimant: Vivian Velichkoff Doering, Attorney

For Franchise Tax Board: John Penfield, Tax Counsel

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

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Issue: Whether appellant is entitled to a refund of the minimum franchise tax paid for the 1995 taxable year.

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

Frank Cardi, 110571

1997, \$2,389.00 Assessment

For Appellant: Frank Cardi

For Franchise Tax Board: David Gemmingen, Tax Counsel

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

Issue: Whether respondent properly assessed tax on New York pension income received by a California resident.

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

BUSINESS TAXES APPEALS HEARINGS**Interstate Battery San Diego, Inc., 76962**

7-1-96 to 6-30-99, \$7,868.16 Claim for Refund

For Claimant: No Appearance

For Sales and Use Tax Department: Warren L. Astleford, Counsel

Action: The Board took no action.

Jerome's Furniture Warehouse, Inc., 103755

10-1-96 to 9-30-99, \$24,658.56 Tax

For Petitioner: Louie Poloni, Contoller

Cindy Mione, Administrative Assistant

For Sales and Use Tax Department: Jeffrey Graybill, Counsel

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

Issue: Whether the price the customer paid for the furniture during the advertised promotional sales included sales tax reimbursement.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the disputed measure of tax be reduced by 10 percent.

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Gerald Kanen Enterprises, 56551

10-1-95 to 9-30-98, \$30,852.31 Tax

\$00.00 Penalty, Negligence

For Petitioner:

Patrick J. Leone, Accountant

Bradley J. Smith, Accountant

Cecilia Quintana, Bookkeeper

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

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

Issue: Whether disallowed resales are overstated.

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

The Board recessed at 10:30 a.m. and reconvened at 10:40 a.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

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 motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang not participating, Mr. Andal absent, the Board made the following order:

Pfizer Inc., 164429

10-1-00 to 12-31-00, \$96,997.19

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

BUSINESS TAXES APPEALS HEARINGS**Latif A. Zoura and Joseph A. Zoree, 84074**

7-1-95 to 6-30-98, \$8,062.11 Claim for Refund

For Claimant: Martin Schwartz, EA

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

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

Issues: Whether claimant correctly reported its taxable sales.

Whether relief from the 10 percent finality penalty is warranted.

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

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Moburn, Inc., 17634, 29494

1-1-95 to 6-30-98, \$18,364.23 Claim for Refund

For Claimant: Patrick J. Leone, Accountant

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

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

Issue: Whether the disallowed claimed exempt sales qualify as exempt printed sales messages.

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

The Board recessed at 10:50 a.m. and reconvened at 1:30 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Aaron C. Stuck, 133558

1998, \$434.00 Tax

\$108.50 Penalty, Late Filing

For Appellant: No Appearance

For Franchise Tax Board: Mark McEvelly, Tax Counsel

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

Issues: Whether appellant has demonstrated error in respondent's assessment of tax and a late filing penalty.

Whether a frivolous appeal penalty is appropriate.

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON APPEALS HEARD JULY 9, 2002

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, in the appeal of *Cary Behar*, 92485, the Board sustained the action of the Franchise Tax Board and imposed at \$1,000.00 frivolous appeals penalty.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, in the appeal of *Richard W. Hoffman*, 103377, the Board sustained the action of the Franchise Tax Board and imposed at \$1,000.00 frivolous appeals penalty.

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Upon motion of Mr. Klehs, seconded by Ms. Mandel and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Andal absent, in the claim of *Tim Durfee, 149735*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, in the claim of *Vergeer Foliage, Inc., 98057*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, in the appeal of *Frank Cardi, 110571*, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON PETITIONS HEARD JULY 9, 2002

Upon motion of Mr. Parrish, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Gerald Kanen Enterprises, 56551*, be redetermined with adjustments.

Upon motion of Mr. Klehs, seconded by Ms. Mandel and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Andal absent, the Board ordered that the claim of *Latif A. Zoura and Joseph A. Zoree, 84074*, be denied as recommended by the Appeals Section.

BUSINESS TAXES APPEALS HEARINGS

Byron Stewart Arnold, 57110

4-1-95 to 9-30-98, \$31,607.74 Tax

For Petitioner: No Appearance

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

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

Issues: Whether the "other income" listed on the 1997 operating statement represents additional gross receipts.

Whether the available evidence establishes that the amounts claimed as nontaxable sales for resale and exempt sales in interstate commerce are valid.

Whether the available evidence establishes that the amount of the claimed tax included deduction is correct.

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

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ADMINISTRATIVE SESSION**BOARD COMMITTEE REPORTS****Customer Services and Administrative Efficiency Committee**

Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board approved the Customer Services and Administrative Efficiency Committee report (Exhibit 7.4).

BUSINESS TAXES APPEALS HEARINGS**Centre City Capital, Inc., 53121**

10-1-96 to 12-31-99, \$1.00 or more Claim for Refund

For Claimant: No Appearance

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

Action: Board took no action.

Peter B. Rothschild Living Trust, 99979

9-30-99, \$40,455.00 Tax

For Petitioner: Peter B. Rothschild
Patrick J. Leone, Accountant
Jett Reeves, Witness

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issue: Whether the purchase and use of the subject aircraft qualifies for the aircraft common carrier exemption under Revenue and Taxation Code section 6366 or 6366.1.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, 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.

John Taylor Systems, Inc., 42164

4-1-95 to 3-31-98, \$20,256.06 Tax

\$00.00 Penalty, Negligence

For Petitioner: John Taylor, Taxpayer

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

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

Issue: Whether the evidence supports reductions to audited taxable receipts from an analysis of bank deposits for cash versus accrual accounting.

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

Alex Medical, Inc., 88019

1-1-97 to 12-31-99, \$9,362.00 Tax

For Petitioner: Scott Summerill, Accountant

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issue: Whether petitioner timely elected to report its use tax liability based on fair rental value of the aircraft.

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

Gen-Mar, Inc., 42168

4-1-96 to 3-31-99, \$92,045.51 Tax

\$00.00 Penalty, Negligence

For Petitioner: Gary Kevorkyan, Representative

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

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

Issues: Whether the evidence shows that the audited markup for exempt food products is excessive.

Whether petitioner's allegation that insufficient adjustments were made to the costs of goods sold for self-consumed merchandise, pilferage, and theft warrants reduction in the tax liability.

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

Michael Joseph Songer and Laura M. Songer, 89738

4-1-96 to 7-31-98, \$115,898.97 Tax

\$11,589.92 Penalty, Negligence

For Petitioner: Patrick Leone, CPA

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

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

Issues: Whether disallowed claimed sales for resale are overstated.

Whether relief from the negligence penalty is warranted.

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

TUESDAY, JULY 9, 2002

Carl Michael Meram, 61904, 97604

1-1-97 to 6-30-97, \$733.08 Tax

\$73.31 Penalty, Negligence

7-1-97 to 12-31-99, \$16,167.54 Tax

\$1,616.76 Penalty, Negligence

For Petitioner: Carl Meram, Taxpayer

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

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

Issues: Whether the audited understatements of taxable sales have been established in accordance with the facts.

Whether an allowance for bad debts is warranted.

Whether relief from the penalty for negligence is warranted.

Action: Mr. Klehs moved to submit the petition for decision. No vote was taken.

Mr. Klehs made a substitute motion that the disputed measure of tax be reduced by 5 percent. The motion was seconded by Ms. Mandel. No vote was taken.

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

The Board recessed at 3:15 p.m. and reconvened at 3:20 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

FINAL ACTION ON PETITIONS HEARD JULY 9, 2002

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *John Taylor Systems, Inc.*, 42164, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Alex Medical, Inc.*, 88019, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Gen-Mar, Inc.*, 42168, be redetermined as recommended by the Appeals Section.

TUESDAY, JULY 9, 2002

Upon motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Andal absent, the Board ordered that the petition of *Michael Joseph Songer and Laura M. Songer, 89738*, be redetermined as recommended by the Appeals Section.

Mr. Klehs moved to redetermine. Mr. Parrish made a substitute motion to delete the negligence penalty. The motion failed for lack of a second.

Upon motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the disputed measure of tax be reduced by 5 percent in the petition of *Carl Michael Meram, 61904, 97604*.

The Board adjourned at 3:25 p.m.

The foregoing minutes are adopted by the Board on September 12, 2002.

TUESDAY, JULY 9, 2002