

Wednesday, September 8, 2004

The Board met at its offices 450 N Street, Sacramento, at 9:35 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.

SALES AND USE TAX APPEALS HEARINGS

Giroux, Ltd., 16494

1-1-95 to 3-31-98, \$122,757.03 Tax, \$00.00 Penalty

For Petitioner: Tamar Kilijian, Taxpayer
Jirair Sarkissian, Taxpayer
Joseph Vinatieri, Attorney

For Sales and Use Tax Department: Sharon Jarvis, Tax Counsel

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

Issues: Whether the additional taxable sales established form an analysis of the sales tax reimbursement account represent additional returned merchandise.

Whether the available evidence shows that any of the errors determined in the statistical sample test are valid sales for resale or sales in interstate commerce.

Whether certain disallowed sales should be removed from the sample errors to be projected and treated as nonrecurring on the basis of its size.

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.

Pacific Pac, Inc., 192571

1-1-99 to 9-2-99, \$73,349.19 Tax

For Petitioner: Earl R. Thomas, Representative

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

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

Issues: Whether petitioner made a taxable sale of its non-inventory tangible personal property.

Whether the measure of tax on petitioner's sale of assets was correctly computed.

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.

Joyeria Internacional, Inc., 139250

10-1-97 to 9-30-00, \$44,004.21 Tax, \$4,490.75 Negligence Penalty

For Petitioner: Kurt Miller, Attorney

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

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

Issues: Whether petitioner has met its burden to establish that disallowed claimed sales for resale were in fact nontaxable sales for resale.

Whether the petitioner has met its burden to establish that disallowed claimed sales in interstate commerce were actual exempt sales in interstate commerce.

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Whether petitioner has established that the Department's block test for the fourth quarter 1999 overstates the taxable measure for the audit period.

Whether the Department's determination of taxable fabrication labor also resulted in the taxation of nontaxable repair labor.

Whether the negligence penalty assessed against petitioner should be sustained.

Action: The Board deferred consideration of this matter.

Imad Spiro Mansour, 205729

1-1-99 to 12-31-01, \$26,885.72 Tax, \$2,688.58 Negligence Penalty

For Petitioner: Imad Spiro Mansour, Taxpayer

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 supports further adjustments to the audited taxable sales.

Whether the allowance for self-consumption is adequate.

Whether the negligence penalty was properly applied.

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.

Hepworth and Associates, Inc., 184857

7-1-97 to 6-30-00, \$10,125.57 Tax

For Petitioner: Scott Hepworth, Taxpayer

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

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

Issue: Whether the management fees at issue are includable in gross receipts.

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.

SPECIAL TAXES APPEALS HEARING

Setha Iv, 195735

1-1-99 to 7-31-01, \$279,270.00 Tax

For Petitioner: Setha Iv, Taxpayer

For Property and Special Taxes Department: Monica Brisbane, Tax Counsel

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

Issue: Whether petitioner provided sufficient, credible evidence to show that the determination is excessive because she returned imported cigarettes to the suppliers in Cambodia.

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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SALES AND USE TAX APPEALS HEARING

Diane L. Janzen, 192574

6-18-02, \$2,217.00 Claim for Refund

For Claimant:

Claus Janzen, Representative

For Sales and Use Tax Department:

Anthony Epolite, Tax Counsel

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

Issue: Whether claimant is entitled to a refund of the use tax paid to the California Department of Motor Vehicles upon registration of the vehicle at issue.

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and duly carried, Ms. Migden, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel voting no, the Board granted 50 percent of the claim for refund.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Armando H. Arizmendiz, 246541; and, William R. Hallemeyer, 246264.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Mandel, 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:

Mears Allen, 244675

1999, \$4,376.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Armando H. Arizmendiz, 246541

2001, \$552.50 Assessment

Action: The Board deferred consideration of this matter.

Charles G. and Barbara A. Balchumas, 243864

1993, \$356.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Pearl I. Birchard-Adam, 224471

1997, \$4,126.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

John P. and Susan B. Brennan, 238350

1999, \$2,058.92 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Richard Courtney, 219041

1999, \$1,499.00 Tax, \$374.75 Late Filing Penalty, \$451.75 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

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Dorothea Ertz, 225270

1985, \$2,599.00 Assessment

1986, \$1,326.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Max Ganser, 246266

1999, \$3,399.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Garden Gate, Inc., 246273

1-31-93, \$12,573.74 Tax, \$3,143.43 Accuracy Related Penalty, \$3,353.00 Late Filing Penalty

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

George Green, 243529

1996, \$16,349.00 Tax, \$4,087.25 Late Filing Penalty, \$4,087.25 Demand Penalty

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

Nancy Jeam Haims, 250204

1996, \$345.00 Late Payment Penalty

1997, \$481.75 Late Filing and Notice and Demand Penalties

1998, \$328.25 Late Filing and Notice and Demand Penalties

1999, \$137.02 Late Payment Penalty

Action: Sustain the action of the Franchise Tax Board.

William R. Hallemeyer, 246264

1985, \$742.00 Claim for Refund

1986, \$1,944.00 Claim for Refund

Action: The Board deferred consideration of this matter.

Ching-I and Pih-Kuei Huang, 185996

1998, \$4,462.00 Assessment

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

John J. and Kathryn C. Huber, 250254

1997 to 2001, \$22,680.29 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Hai Huynh, 246329

1999, \$1,161.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Hernan Jacobo, 243392

2000, \$1,444.00 Tax, \$361.00 Late Filing Penalty, \$361.00 Notice and Demand Penalty

Action: Sustain the modified action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

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Dottie James, 205954

1993, \$00.00 Tax, \$00.00 Penalty

1994, \$3,333.00 Tax, \$600.86 Penalties

Action: Modify the action of the Franchise Tax Board.

Simon W. Lau, 250028

2001, \$1,937.50 Assessment

Action: Sustain the action of the Franchise Tax Board.

Derrick A. Lomax, 240754

1994, \$1.00 or more Assessment

1996, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Norman A. Maher, 239542, 240968

2000, \$2,881.48 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Phillip D. Maynard, 245398

2001, \$1,331.00 Tax, \$332.75 Failure to Furnish Information upon Demand Penalty

Action: Sustain the action of the Franchise Tax Board.

Abdul Majid and Khairoonnisa Motiwala, 249950

1999, \$728.17 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Renee and Steven D. Nuzum, 234570

1997, \$8,156.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Vickie D. and Michael Perez, 242024

1999, \$738.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

RJ Standard Corporation, 242022

3-31-97, \$3,243.00 Claim for Refund

3-31-98, \$3,698.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Software 2010, LLC, 241862

1997, \$1,200.00 Claim for Refund

1998, \$276.00 Claim for Refund

1999, \$648.75 Claim for Refund

2000, \$406.32 Claim for Refund

2001, \$328.85 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Steven C. and Linda R. Spencer, 245897

1997, \$1,743.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Richard Zenobi, 246154

2001, \$618.00 Tax, \$154.50 Notice and Demand

Action: Sustain the action of the Franchise Tax Board.

Paul E. Ballmer, 192188

1999, \$2,365.00 Tax, \$1,782.50 Penalty

Action: Deny the petition for rehearing.

Audrey Demirjian, 215894

1996, \$8,646.00 Tax, \$1,729.20 Accuracy Related Penalty

1997, \$14,833.00 Tax, \$2,966.60 Accuracy Related Penalty

Action: Deny the petition for rehearing.

Earl Dwaine Finley, 207678

1996, \$19,468.59 Claim for Refund

1997, \$425.84 Claim for Refund

Action: Deny the petition for rehearing.

Dale E. and Carol J. Fredericks, 186833

1984, \$1,819.00 Assessment

Action: Deny the petition for rehearing.

Hubert (deceased) and Joann Idleman, 153581, 209932

1995, \$86,458.00 Claim for Refund

1993, \$23,024.00 Assessment

Action: Deny the petition for rehearing.

Pete D. Nunez, 89002464650

1989, \$11,101.00 Tax, \$6,554.40 Penalties

Action: Deny the petition for rehearing.

O. Jeffrey Owen, 202127

1999, \$525.00 Tax, \$131.25 Late Filing Penalty

Action: Deny the petition for rehearing.

Viren Patel, 210174

2000, \$2,921.25 Claim for Refund

Action: Deny the petition for rehearing.

Trude A. and Timo J. Peltonen, 240278

1999, \$670.00 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. 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:

Charlotte Armstrong, 241719

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Tatiana Aroutiounian, 244356

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Carl Evans Bay, 244791

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Francesco Belmonte, 244830

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Heather M. Blevins, 258570

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Thi Uyen Bui, 239672

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Lynn M. Caluya, 241544

2002, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Monita Cameron, 241638

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Ingrid Carter, 253815

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Elba Castillo, 239171

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Kwai Ho Cheung, 245015

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Wein Shiu Liu Chou, 253862

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Audrey Davis, 250345

2003, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Michael De Augustine, 250354

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Richard Diaz, 239161

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Huong Do, 244987

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Jenni Dunn, 257704

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

David Duong, 254019

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Irma Easton, 254022

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Benjamin Feliciano, 245036

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Juanita DeLeon Flores, 251092

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Gloria Galloway, 251463

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Julius Gil, 251460

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Aleksandr Gitman, 251430

2003, \$265.00

Action: Sustain the action of the Franchise Tax Board.

William B. Gordon, 251421

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Mischa Maree Green, 251435

2003, \$57.50

Action: Sustain the action of the Franchise Tax Board.

Mary Haynes, 245046

2003, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Anthony Herren, 245027

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Christopher Humble, 251114

2003, \$327.50

Action: Sustain the action of the Franchise Tax Board.

Ephraim Davis James, 251470

2003, \$265.00

Action: Sustain the action of the Franchise Tax Board.

Walter E. Kellems, 257690

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Fanya Kelmanzon, 251512

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Nicholas Kinser, 251398

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Mickey Kuller, 244267

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Esfir I. Kunina, 251389

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Er Mei Lin, 246134

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Stella Love, 252850

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Jose Lozada, 252851

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Bryan J. McKinley, 252860

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Teodoro Morales, 256240

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Michael Morinan, 252865

2003, \$312.50

Action: Sustain the action of the Franchise Tax Board.

Gowhar Nazir, 251825

2003, \$192.50

Action: Reverse the action of the Franchise Tax Board.

Trong Nguyen, 251234

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Salome Y. Park, 252892

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Fine T. L. Peng, 255102

2003, \$265.00

Action: Sustain the action of the Franchise Tax Board.

Rema R. Perlas, 252900

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Jeff Pharis, 252902

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Kenneth L. Powell, 252909

2003, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Timothy Pritchard, 255107

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Deborah Quick, 255911

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Jorge Quirino, 252915

2003, \$265.00

Action: Sustain the action of the Franchise Tax Board.

Marshall Rand, 252919

2003, \$297.50

Action: Sustain the action of the Franchise Tax Board.

Nora L. Ripley, 255110

2003, \$237.00

Action: Sustain the action of the Franchise Tax Board.

Lori Roberto, 255012

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Nelson Robinson, 252926

2003, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Emma Rogers, 254643

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Alma R. Rosa, 252968

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Marian Dorsey Rosas, 252930

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Betty Rutkowski, 252946

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Selma Samuels, 253657

2003, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Jimmie Scates, 242321

2002, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Oanh Phi Sears, 253659

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Karen A. Siegel, 251778

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Tsuruko Starck, 252121

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Luz V. Sur, 252126

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Hazel Swan, 252127

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Sergio Tartabul, 252151

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Zoila Tezanos, 252165

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Vince L. Thomas, 252184

2003, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Jeri K. Thompson, 252169

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Thao Tran, 252179

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Lennell Tucker, 252181

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Shirlean B. Warren, 252669

2003, \$341.00

Action: Sustain the action of the Franchise Tax Board.

Clifford Wheat, 252674

2003, \$250.00

Action: Sustain the action of the Franchise Tax Board.

Willie Williams, 252679

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Steve Winters, 252192

2003, \$1.00 or more

Action: Reverse the action of the Franchise Tax Board.

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Robert J. Young, 252684

2003, \$327.50

Action: Sustain the action of the Franchise Tax Board.

Phong N. Nguyen, 224385

1998, \$1.00 or more

1999, \$1.00 or more

2000, \$1.00 or more

2001, \$348.00

Action: Deny the petition for rehearing and modify the action of the Franchise Tax Board.

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

The Board deferred consideration of the following matter: *National Film Laboratories, Inc., 262563.*

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, 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:

S.W.I.F.T. SC, 219570

1-1-95 to 12-31-95, \$60,477.96

Action: Approve the redetermination as recommended by staff.

Phillips Plastics Corporation, 188817

7-1-96 to 12-31-00, \$348,110.84

Action: Approve the redetermination as recommended by staff.

Diebold Incorporated, 242687

4-1-99 to 9-30-02, \$635,590.30

Action: Approve the redetermination as recommended by staff.

Johnson Scaffolding Company, 242415

1-1-99 to 12-31-01, \$161,629.26

Action: Approve the redetermination as recommended by staff.

National Film Laboratories, Inc., 262563

7-1-93 to 12-31-96, \$311,995.78

Action: The Board deferred consideration of this matter.

Enthone-Omi, Inc., 188573

7-1-99 to 3-31-02, \$99,763.14

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

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Rush Press, Inc., 203735

10-1-99 to 6-30-02, \$81,390.56

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

Scitex Vision America, Inc., 249240

4-1-02 to 6-30-02, \$58,800.00

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 Mr. Chiang, seconded by Mr. Parrish 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 87105 in *Daimler Chrysler Corporation, 258222; and, General Electric Company, 240716*; the Board made the following orders:

Central Valley Tom's Sales, Inc., 265440

7-1-00 to 3-31-03, \$61,964.70

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

Soma Networks, Inc., 267379

10-1-00 to 12-31-02, \$72,530.94

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

James Alan Story, 265786

4-1-03 to 12-31-03, \$51,237.59

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

Oracle Corporation, 259555

7-1-95 to 12-31-95, \$52,217.23

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

El Camino Resources, LTD., 262480

1-1-95 to 12-31-97, \$117,874.36

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 261340

1-1-03 to 3-31-03, \$129,781.14

Action: Approve the refund as recommended by staff.

Coxcom, Inc., 91479

7-1-97 to 12-31-00, \$250,998.49

Action: Approve the refund as recommended by staff.

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William P. Wilson & Sons, Inc., 213119

4-1-02 to 9-30-02, \$52,727.63

Action: Approve the refund as recommended by staff.

Dennis Uniform Manufacturing Company, 262555

10-1-03 to 12-31-03, \$63,075.23

Action: Approve the refund as recommended by staff.

Tice Electric Company, 220646

1-1-01 to 12-31-03, \$62,570.00

Action: Approve the refund as recommended by staff.

Lodgenet Entertainment, Inc., 249238

10-1-00 to 3-31-03, \$72,002.22

Action: Approve the refund as recommended by staff.

Johnson Controls Battery Group, Inc., 266885

10-1-97 to 3-31-03, \$209,143.46

Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 260601

11-1-03 to 2-29-04, \$998,532.11

Action: Approve the refund as recommended by staff.

Daimler Chrysler Corporation, 258222

1-1-03 to 1-31-04, \$810,045.53

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Thomas Weisel Partners, LLC, 263351

10-1-00 to 3-31-02, \$183,743.90

Action: Approve the refund as recommended by staff.

Louisiana-Pacific Samoa, Inc., 249342

7-1-03 to 9-30-03, \$95,162.38

Action: Approve the refund as recommended by staff.

Western Supply Corporation, 190106

7-1-99 to 6-30-03, \$130,108.01

Action: Approve the refund as recommended by staff.

HDL Focus, Inc., 188537

7-1-99 to 6-30-02, \$56,473.22

Action: Approve the refund as recommended by staff.

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Micron Technology, Inc., 174618

10-1-99 to 3-31-02, \$560,210.46

Action: Approve the refund as recommended by staff.

Agilent Technologies, Inc., 205068

1-1-00 to 9-30-02, \$218,957.13

Action: Approve the refund as recommended by staff.

Aurora Networks, Inc., 244828

1-1-00 to 9-30-02, \$158,922.86

Action: Approve the refund as recommended by staff.

Stahls, Inc., 207095

4-1-93 to 12-31-00, \$180,417.91

Action: Approve the refund as recommended by staff.

Hoss Equipment Company, 238488

1-1-03 to 3-31-03, \$74,539.60

Action: Approve the refund as recommended by staff.

General Electric Company, 240716

4-1-93 to 12-31-97, \$303,601.08

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Wescom Credit Union, 257953

10-1-03 to 12-31-03, \$57,670.92

Action: Approve the refund as recommended by staff.

Sun Microsystems, Inc., 235678

1-1-00 to 3-31-03, \$54,699.38

Action: Approve the refund as recommended by staff.

Lumenis, Inc., 184386

10-1-99 to 12-31-01, \$172,902.92

Action: Approve the refund 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 Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Petro-Diamond Incorporated, 208114

12-1-01 to 12-31-01, \$148,404.49

Action: Approve the refund as recommended by staff.

Wednesday, September 8, 2004

PROPERTY TAX MATTERS, CONSENT

With respect to the Property Tax 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:

Pacific Gas & Electric Company, 270045

10-1-99 to 12-31-02, \$111,503.24

Action: Approve the timber yield tax claim for refund as recommended by staff.

LEGAL APPEALS MATTERS, ADJUDICATORY

Gary R. Gibbs, 143214

10-1-92 to 7-29-99, \$44,951.93 Fee, \$00.00 Penalty

Considered by the Board: March 10, 2004

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

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 denied the petition for rehearing.

Sirarpi Kechedzian, 113001

4-1-97 to 6-30-00, \$38,201.32 Tax, \$9,550.42 Fraud Penalty

Considered by the Board: March 9, 2004

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

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 denied the petition for rehearing.

Estate of W. Fong Yue, 212439, 212441

1-1-01 to 7-31-02, \$15,655.59 Claim for Refund

1-1-01 to 7-31-02, \$941.81 Claim for Refund

Considered by the Board: Hearing Notice Sent – Appearance Waived

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

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 denied the claim for refund.

Kathreen Leann Writesman, 214649

7-1-96 to 4-30-01, \$32,745.36 Tax, \$1,104.00 Late Prepayment Penalty

Considered by the Board: August 24, 2004

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

Action: Mr. Parrish moved to grant the petition. 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.

Wednesday, September 8, 2004

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

Summit Aviation, Inc., 164643

6-21-99, \$00.00 Tax, \$25,381.25 Failure to File Penalty

Considered by the Board: August 24, 2004

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

Action: Mr. Parrish moved to delete the failure to file penalty, otherwise redetermine as recommended by the Appeals Division. 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.

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

Siemens Information & Communication Mobile, LLC, 239802

1-1-00 to 12-31-01, \$242,204.00 Claim for Refund

Presented for Separate Discussion

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

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 ordered that the petition be redetermined as recommended by the Appeals Division.

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

Hanmar Enterprises, Inc., 135972

10-1-96 to 9-30-99, \$96,061.87

Presented for Separate Discussion

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang 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.

Ms. Mandel stated that she would not participate in the matter of *Baxter Healthcare Corporation, 236381*, in accordance with Government Code section 87105, and left the Boardroom.

Baxter Healthcare Corporation, 236381

7-1-02 to 9-30-02, \$65,585.70

10-1-02 to 12-31-02, \$57,280.30

Presented for Separate Discussion

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

Wednesday, September 8, 2004

Action: Mr. Leonard moved to grant the relief of penalty for both quarters. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden and Mr. Chiang voting no, Ms. Mandel absent and not participating in accordance with Government Code section 87105.

Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Leonard and Mr. Chiang voting yes, Mr. Parrish abstaining, Ms. Mandel absent and not participating in accordance with Government Code section 87105, the Board approved the relief of penalty as recommended by staff.

Ms. Mandel returned to the Boardroom.

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

Pomona Valley Service, Inc., 260191

1-1-93 to 9-30-96, \$146,959.88

Presented for Separate Discussion

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

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 approved the credit and cancellation as recommended by staff.

Clarke American Checks, Inc., 181661

1-1-97 to 3-31-02, \$1,263,698.22

Presented for Separate Discussion

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

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 approved the refund as recommended by staff.

PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

Unitary Escaped Assessments

Utility Telephone, Inc., (7994)

2003, \$41,000.00 Value, \$4,100.00 Late Filing Penalty

Action: Mr. Chiang moved to adopt the unitary escaped assessment and penalty as recommended by staff. The motion was seconded by Ms. Migden. Mr. Parrish made a substitute motion to abate the penalty, otherwise adopt the unitary escaped assessment as recommended by staff. The substitute motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden and Mr. Chiang voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

Wednesday, September 8, 2004

Mr. Chiang moved to adopt the unitary escaped assessment and penalty as recommended by staff. The motion was seconded by Ms. Migden but failed to carry, Ms. Migden and Mr. Chiang voting yes, Mr. Parrish and Mr. Leonard voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board deferred consideration of this matter.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single 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 made the following orders:

Action: Approve the 2004-05 Emergency Telephone Users Surcharge Rate as recommended by staff (Exhibit 9.1).

Action: Approve the Property Tax Exemption Claim Forms as recommended by staff (Exhibit 9.2).

Action: Approve the Summons to Annual Meeting of the Board and County Assessors as recommended by staff (Exhibit 9.3).

Action: Approve the 2005 Diesel Fuel Tax Rate for Interstate Users as recommended by staff (Exhibit 9.4).

Exhibits to these minutes are incorporated by reference.

OTHER ADMINISTRATIVE MATTERS

Offers-in-Compromise Recommendations

Jean Ogrod, Assistant Chief Counsel, Settlement and Administration Division, Legal Department, was available to answer questions regarding the Offers in Compromise Recommendations.

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 approved the Offers in Compromise of *Sally S. De Philippis* and *Food King, Inc.*, as recommended by staff.

Wednesday, September 8, 2004

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Alan Bouverat, 218724

1988, \$2,018.83 Assessment

1989, \$8,744.55 Assessment

For Claimant:

No Appearance

For Franchise Tax Board:

Dennis Haase, Tax Counsel

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

Issues: Whether appellants have demonstrated that respondents abused their discretion in refusing to abate interest.

Whether this Board has jurisdiction to consider abatement of penalties and fees for 1988 and 1989.

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 sustained the action of the Franchise Tax Board.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
SEPTEMBER 8, 2004**

Giroux, Ltd., 16494

Final Action: Ms. Mandel moved to redetermine the petition as recommended by the Appeals Division. The motion was seconded by Ms. Migden. Mr. Parrish made a substitute motion to grant the petition to exclude the \$42,800 item from the projection and to assess it on an actual basis only, otherwise redetermine the petition as recommended by the Appeals Division. The substitute motion was seconded by Mr. Leonard and duly carried, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Migden and Ms. Mandel voting no.

Pacific Pac, Inc., 192571

Final 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 redetermined as recommended by the Appeals Division.

Imad Spiro Mansour, 205729

Final Action: Mr. Leonard moved to delete the negligence penalty. The motion was seconded by Mr. Parrish but failed to carry, Mr. Leonard and Mr. Parrish voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

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

Hepworth and Associates, Inc., 184857

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.

Wednesday, September 8, 2004

SALES AND USE TAX APPEALS HEARING

Dung Ngoc Do, 167611

7-1-97 to 6-30-00, \$194,466.83 Tax, \$19,466.70 Negligence Penalty, \$19,466.68 Finality Penalty

For Petitioner: No Appearance

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

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.

Issues: Whether the evidence supports further adjustments to the audited taxable sales.
Whether the evidence supports further adjustments to the disallowed claimed nontaxable sales for resale.

Whether the negligence penalty was properly applied.

Whether relief from the penalty for failure to timely pay the determination (finality penalty) is warranted.

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 redetermined as recommended by the Appeals Division.

FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD SEPTEMBER 8, 2004

Setha Iv, 195735

Final 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 redetermined as recommended by the Appeals Division.

PROPERTY TAXES HEARING

Altrio Communications, Inc. (7910), 266005

2002, \$400,000.00 Unitary Escape Assessment, \$40,000.00 Penalty, \$24,000.00 In Lieu Interest

2003, \$1,500,000.00 Unitary Escape Assessment, \$150,000.00 Penalty, \$225,000.00 In Lieu Interest

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Lou Ambrose, Tax Counsel

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

Issues: Whether the escape assessments include the value of exempt computer application software.

Whether the escape assessments include the value of exempt business inventory.

Whether other property, plant and equipment costs were under-reported.

Whether relief from the penalty should be granted.

Wednesday, September 8, 2004

Action: Upon motion of Ms. Migden, 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 adopted the staff recommendation to reduce the escape assessment which results in the reduction of the penalty and a reduction in the assessments in lieu of interest.

PUBLIC HEARING

Proposed Amendments to Property Tax Rule 462.500, Change in Ownership of Real Property Acquired to Replace Property Taken by Governmental Action or Eminent Domain Proceedings

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, made introductory remarks regarding the proposed Amendments to Property Tax Rule 462.500, *Change in Ownership of Real Property Acquired to Replace Property Taken by Governmental Action or Eminent Domain Proceedings*, which interprets "comparability" to substantially conform to the concept of "like-kind" property in Internal Revenue Code section 1031 and interprets "acquisition by a public entity" to include acquisition by a duly authorized agent of the public entity to conform more closely to the involuntary conversion provisions of Internal Revenue Code section 1033. The amendment adds examples of the manner in which the principal-agent relationship between a public entity and a third party may be established; adds definitions for "displaced," "real property," and "adjusted base year value"; adds an additional date after which replacement property must be acquired; and, clarifies the base year value to be transferred. (Exhibit 9.5.)

Speakers: James E. Schneider, Attorney, James E. Schneider, LL.M., Inc.
 Thomas R. Parker, Deputy County Counsel, El Dorado County, representing the
 California Assessors' Association
 Andrew Freeman, Deputy County Counsel, San Diego County Assessor

Action: Mr. Leonard moved to adopt option 2, proposed rule amendments with the language proposed by Mr. Schneider. The motion failed for lack of a second.

Upon motion of Mr. Parrish, seconded by Mr. Chiang and duly carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Ms. Migden absent, the Board adopted option 1, the proposed amendments to Property Tax Rule 462.500, *Change in Ownership of Real Property Acquired to Replace Property Taken by Governmental Action or Eminent Domain Proceedings* as published.

CHIEF COUNSEL MATTERS

RULEMAKING—ADMINISTRATION

Jean Ograd, Assistant Chief Counsel, Settlement and Administration Division, Legal Department, was available to answer questions regarding the request for authorization to publish proposed amendments to the State Board of Equalization's Conflict of Interest Code, Regulation 6001, *General Provisions* (Exhibit 9.6).

Wednesday, September 8, 2004

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board approved authorization to publish proposed amendments to the State Board of Equalization's Conflict of Interest Code, Regulation 6001, *General Provisions* as recommended by staff.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon J. Hirsig, Executive Director, thanked Members' staff and Board staff for a good job working with legislative issues this year. The Legislative Session came to a close on August 28, 2004 having passed 52 bills that will impact the Board. Staff is currently developing implementation plans.

Mr. Leonard requested that the Legislative and Research Division communicate with the Governor's Legislative Unit the impact any enrolled bills would have on the Board of Equalization.

The Board recessed at 11:25 a.m. and reconvened at 11:27 a.m. with Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

BOARD COMMITTEE REPORT

Property Tax Committee

Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board approved the Property Tax Committee report (Exhibit 9.7).

The Board adjourned at 11:30 a.m.

The foregoing minutes are adopted by the Board on October 19, 2004.

Wednesday, September 8, 2004