

THURSDAY, OCTOBER 25, 2001

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

SPECIAL PRESENTATION

Timothy Boyer, Chief Counsel, Legal Division, introduced to the Board the family of the late John Butterfield, Tax Counsel III, Specialist, in the Legal Division, who passed away on September 21, 2001.

Mr. Andal presented to Dr. Diane Wolfe, wife of John Butterfield, a resolution in his honor. The Members of the Board extended to the family, their deepest sympathy and sincere appreciation for his dedicated service to the State Board of Equalization and the State of California (Exhibit 10.18).

Exhibits to these minutes are incorporated by reference.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed in closed session with Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation, Revenue and Taxation Codes 7093.5, 7093.5(b)(3), 30459.1 and 50156.11, settlements and personnel matters.

The Board recessed at 9:40 a.m. and reconvened at 10:10 a.m. in open session with Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel present.

EXECUTIVE REPORT

Richard Johnson, Deputy Director, Property Tax Division, announced the appointment of David Gau to the position of Deputy Director, Property Taxes Division.

FINAL ACTION ON APPEALS HEARD OCTOBER 24, 2001

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal of *Oliver D. Gildersleeve, Jr., 102695*, be denied, sustaining the action of the Franchise Tax Board.

THURSDAY, OCTOBER 25, 2001

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal of *Jerry A. and Eileen S. Bartak, 98A-1156; 89002466400*, be denied, sustaining the action of the Franchise Tax Board.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal of *Steven G. Dunmore, 88986*, be denied, sustaining the action of the Franchise Tax Board.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal of *Douglas C. Roberts, 104296*, be denied, sustaining the action of the Franchise Tax Board and impose a \$500.00 frivolous appeals penalty.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal of *Judy A. Marshall, 102186*, be denied, sustaining the action of the Franchise Tax Board and impose a \$500.00 frivolous appeals penalty.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal of *Lori M. Langdon, 101136*, be denied, sustaining the action of the Franchise Tax Board and impose a \$2500.00 frivolous appeals penalty.

FINAL ACTION ON PETITIONS HEARD OCTOBER 24, 2001

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition of *Peter L. Kleinert & Kurt Widstrand, SR BH 21-755529; 89000326160*, be redetermined with adjustments.

THURSDAY, OCTOBER 25, 2001

BUSINESS TAXES APPEALS HEARINGS

Robert Wayne Allen and Pat Millslagle, SR GH 99-674619; 89002353860, 111642
11-1-96 to 12-31-96, \$685.10 Tax, 68.51 Penalty, Failure to File

For Petitioner: No Appearance

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

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

Issues: Whether petitioner partner Pat Millslagle provided proper, timely notice to the Board of his withdrawal from petitioner, thereby avoiding liability for petitioner's outstanding tax liability.

Whether petitioner partner Pat Millslagle should be relieved of the tax liability because he was no longer a partner in the business.

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

Taher S. Naser, Saleh A. Saleh and Nasr M. Nagi, SR CH 99-683313; 33128
10-1-95 to 9-30-98, \$127,089.00 Tax, \$00.00 Penalty, Negligence

For Petitioner: Taher S. Naser
M. O. Enwere

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 shows that audited taxable sales were computed in accordance with the facts.

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

ADMINISTRATIVE MATTERS, CONSENT

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

THURSDAY, OCTOBER 25, 2001

Action: Adopt the following resolution 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 10.19)

Lennis (Len) Saulny, Associate Tax Auditor, West Covina District Office
Herbert D. B. Stewart, Tax Auditor, Norwalk District Office
Norm E. Williams, Supervising Tax Auditor, Refund Section,
Headquarters
Carol Jaffe, Associate Tax Auditor, San Francisco District Office
Alma F. Cabrera, Office Technician, Riverside District Office
Nancy A. Renoude, Tax Technician III, Return Analysis Section,
Headquarters
William A. Daubenspeck, Business Taxes Compliance Specialist,
Riverside District Investigation Division, Riverside District Office
Fritz J. Milas, Business Taxes Compliance Specialist, Torrance District
Office

Action: Approve the Board Meeting Minutes of: July 31 - August 1, 2001 and August 14 - 15, 2001.

Action: Approve the Memorandum of Understanding, Agreement between State Board of Equalization, California State Association of Counties, and League of California Cities (Exhibit 10.20).

Action: Approve the rate of prepayment of sales tax on motor vehicle fuel distributions for the period April 1, 2002 through March 31, 2003 at \$0.095 per gallon, the rate of prepayment of sales tax on diesel fuel for the period April 1, 2002 through March 31, 2003 at \$ 0.075 per gallon and the prepayment of sales tax on Jet Fuel distributions for the period April 1, 2002 though March 31, 2003 at \$0.045 per gallon (Exhibit 10.21).

Action: Approval of Superior Accomplishment Award Nominees (Exhibit 10.22).

Action: Approve Assessors' Handbook Section 534, Rural Building Costs for publication (Exhibit 10.23).

Action: Approve Assessors' Handbook Section 531, Residential Building Costs for publication (Exhibit 10.24).

THURSDAY, OCTOBER 25, 2001

Action: Approve a non-substantive revisions to the Business Taxes Committee Procedures Manual (Exhibit 10.25).

Exhibits to these minutes are incorporated by reference.

LEGISLATIVE COMMITTEE

Margaret Shedd, Legislative Counsel, Legislative Division, made introductory remarks regarding the Legislative Committee Report.

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

CUSTOMER SERVICES AND ADMINISTRATIVE EFFICIENCY COMMITTEE

Bob Austin, Chief, Technology Services Division, made introductory remarks regarding the Customer Services and Administrative Efficiency Committee report.

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

BUSINESS TAXES COMMITTEE

Ramon Hirsig, Deputy Director, Sales and Use Tax Department, made introductory remarks regarding the Business Taxes Committee report.

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

PROPERTY TAX COMMITTEE

Richard Johnson, Deputy Director, Property Taxes Department, made introductory remarks regarding the Property Tax Committee report.

THURSDAY, OCTOBER 25, 2001

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

LEGAL APPEALS MATTERS, ADJUDICATORY

Robert Cameron, Jr., SR KHJ 14-644714; 47221

1-1-95 to 12-31-97, \$4,926.52 Tax, \$653.19 Penalty, Negligence

Considered by the Board: Hearing Notice Sent – No Response

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

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

Harry Soukiassian, SY AB 12-715059; 89000049350

4-1-93 to 3-31-96, \$00.00 Tax, \$00.00 Penalty, Negligence

Considered by the Board: July 11, 2001

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

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

Glaziner Bros. Inc., SR KHB 28-833951; 89000769770

1-1-95 to 12-31-97, \$13,227.92 Tax

Considered by the Board: June 21, 2001

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

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

THURSDAY, OCTOBER 25, 2001

CORPORATE FRANCHISE AND INCOME TAX MATTERS, ADJUDICATORY

Ronald F. and Catherine Boeddeker, 18702

1993, \$1,403,751.00 Assessment

Considered by the Board: Memorandum Opinion

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

Action: The Board took no action.

Barry and Wendy Breslow, 31449

1994, \$86,779.00 Assessment

Considered by the Board: October 2, 2001

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

Action: The Board took no action.

Dolly G. Teters, 105035

1997, \$280.00 Assessment

Considered by the Board: July 31, 2001

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

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

George and Barbara Zendejas, 112625

1994, \$ 4,507.00 Assessment, \$ 901.40 Penalty

1995, \$15,055.00 Assessment, \$3,011.00 Penalty

Considered by the Board: June 1, 2001

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

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

THURSDAY, OCTOBER 25, 2001

Georgett Stepner, 99A-0094; 89002458610
1990, \$133,331.00 Assessment

Considered by the Board: Petition for Rehearing
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and duly carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel voting no, the Board adopted a decision denying the petition for rehearing.

SALES AND USE TAX MATTERS, ADJUDICATORY

Colors in Optics Ltd., SC OHB 30-683540; 135751
7-1-93 to 6-30-96, \$144,797.52 Tax

Considered by the Board: Credit and Cancellation
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board approved the credit and cancellation as recommended by staff.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Pacific Coast Building Products, Inc., SZ KH 28-664457; 89000743690, Amray, Inc., SC OHB 30-647850; 90756 and Tech Data Company, SZ OH 30-676390; 89000854030.*

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

Pacific Coast Building Products, Inc., SZ KH 28-664457; 89000743690
4-1-92 to 3-31-95, \$00.00 Tax

Action: The Board took no action.

Amray, Inc., SC OHB 30-647850; 90756
1-1-97 to 12-31-98, \$3,385.81 Tax

Action: The Board deferred consideration of this matter.

THURSDAY, OCTOBER 25, 2001

Neyrpic, Inc., SC OHB 30-694162; 89000876750

4-1-94 to 3-31-98, \$00.00 Tax

Action: Redetermine as recommended by Appeals Section.

Scholl America, Inc., SC OHB 97-506299; 31677

7-1-90 to 3-31-98, \$69,624.32 Tax, \$00.00 Penalty, Failure to File

Action: Redetermine as recommended by Appeals Section.

Kaire International, Inc., SC OH 99-624355; 16939

1-1-93 to 4-30-97, \$167,030.41 Tax, \$14,773.38 Penalty, Failure to File

Action: Redetermine as recommended by Appeals Section.

John R. Buckley, SN OH 52-006262; 89000965870

Cerco, Inc., SC OH 99-826182; 89002407110

10-1-88 to 12-31-93, \$00.00 Tax, \$00.00 Penalty, Failure to File

Action: Redetermine as recommended by Appeals Section.

Citycom Communications, Inc., SR CHA 99-767676; 37894

9-1-95 to 6-30-98, \$377,704.61 Tax, \$37,770.52 Penalty, Negligence

Action: Redetermine as recommended by Appeals Section.

Tech Data Company, SZ OH 30-676390; 89000854030

7-1-91 to 6-30-94, \$299,941.70 Tax

Action: The Board deferred consideration of this matter.

Kimball International Marketing, Inc., SZ OHA 30-683033; 89000861180

10-1-90 to 6-30-93, \$00.00 Tax

Action: Redetermine as recommended by Appeals Section.

Southworth Products Corporation, SC OHB 99-241068; 89002163190

10-1-94 to 12-31-98, \$00.00 Tax, \$00.00 Penalty, Negligence

Action: Redetermine as recommended by Appeals Section.

FRANCHISE AND INCOME TAX MATTERS, CONSENT

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

THURSDAY, OCTOBER 25, 2001

Russell S. Green, 41145

1997, \$1,631.00 Assessment, \$407.75 Penalty, Late Filing
\$817.50 Penalty, Notice and DemandAction: Sustain the action of the Franchise Tax Board and impose a frivolous
appeal penalty of \$750.00.

Gordon W. and Lynn M. Mangel, 76188

1995, \$613.00 Assessment, \$122.86 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board.

Linda N. Krieg, 89011

1998, \$6,563.00 Assessment, \$1,640.75 Penalty, Late Filing
\$1,640.75 Penalty, Notice and DemandAction: Sustain the action of the Franchise Tax Board and impose a frivolous
appeal penalty of \$750.00.

Dolores Walsh, 92246

1998, \$6775.00 Assessment, \$1,693.75 Penalty, Late Filing
\$1,693.75 Penalty, Notice and Demand

Action: Sustain the action of the Franchise Tax Board.

Prapapun Zielke, 92250

1998, \$402.00 Assessment, \$100.50 Penalty, Late Filing
\$159.50 Penalty, Notice and DemandAction: Sustain the action of the Franchise Tax Board and impose a frivolous
appeal penalty of \$500.00.

Thomas S. and Rosemary Lang, 93405

1993, \$652.00 Assessment

1994, \$620.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Lynne Mock, 97661

1998, \$939.00 Assessment

Action: Reverse the action of the Franchise Tax Board.

THURSDAY, OCTOBER 25, 2001

Keith Ponthieux, 97696

1998, \$2,289.00 Assessment, \$572.75 Penalty, Late Filing

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

Ben F. Davis Co., 99464

1998, \$5,025.69 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

David E. Snyder, 99649

1998, \$939.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

William C. Parnell, 100551

1994, \$1,232.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Robert J. Mulder, 100553

1996, \$1,797.00 Assessment, \$449.25 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board.

James S. and Judy A. Frost, 102692

1999, \$200.92 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

George R. and Margaret A. Green, 103372

1984, \$ 157.00 Claims for Refund

1985, \$ 176.00 Claims for Refund

1986, \$ 345.00 Claims for Refund

1988, \$ 475.00 Claims for Refund

1989, \$ 426.00 Claims for Refund

1990, \$ 456.00 Claims for Refund

1991, \$1,107.00 Claims for Refund

1992, \$ 523.00 Claims for Refund

1993, \$ 453.00 Claims for Refund

1994, \$ 815.00 Claims for Refund

Action: Sustain the action of the Franchise Tax Board.

THURSDAY, OCTOBER 25, 2001

Carole J. Berry, 103686

1982, \$1.00 or More Claim for Refund

Action: Sustain the modified action of the Franchise Tax Board.

Julio Narvaez, 104258

1996, \$1,555.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Darren Oldach, 104284

1993, \$4,444.40 Claim for Refund

1995, \$1,596.46 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Shanshan Xu, 104762

1996, \$2,150 Assessment

Action: Sustain the action of the Franchise Tax Board.

Earl R. Brubaker, 105013

1992, \$103.00 Claim for Refund

1993, \$406.00 Claim for Refund

1994, \$ 81.04 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Roberta A. Carmichael, 105021

1987, \$1.00 or More Claim for Refund

1988, \$1.00 or More Claim for Refund

1989, \$1.00 or More Claim for Refund

1990, \$1.00 or More Claim for Refund

1991, \$1.00 or More Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

J. Peter and Joanne B. Hottois, 106409

1995, \$2,507.73 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jay T. and Susan M. Reed, 107034

1997, \$3,505.00 Assessment

Action: Sustain the modified action of the Franchise Tax Board.

THURSDAY, OCTOBER 25, 2001

Adebayo Akintunde, 109310

1995, \$450.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

William S. Webber, 109482

1993, \$5,787.00 Assessment, \$1,157.40 Penalty

Action: Sustain the action of the Franchise Tax Board.

Alan R. Bresner, 110568

1994, \$292.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Stephan A. and Sandra M. DeRodeff, 110577

1997, \$7,528.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Stephen B. and Lynne L. Ehren, 111244

1995, \$1.00 or More Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

GEWA Corporation, 111254

1997, \$1,377.00 Claim for Refund

Action: Sustain the modified action of the Franchise Tax Board.

Ralph and Patricia Stephany, 111257

1997, \$2,551.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Vaclav and Michelle Hoffmeister, 111267

1991, \$732.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Theron Johnson, 111269

1997, \$2,915.00 Claim for Refund

1998, \$5,097.00 Claim for Refund

1999, \$5,922.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board and impose a frivolous appeal penalty of \$750.00.

THURSDAY, OCTOBER 25, 2001

Kent H. Williams, 111406

1997, \$160.00 Assessment

Action: Dismissed by the Franchise Tax Board.

David M. Gregg (Deceased), 112342

1997, \$260.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ronald Cy and Pamela A. Icely, 112345

1999, \$13,291.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Rassoul Khodai, 112346

1998, \$1,555.00 Assessment, \$388.75 Penalty, Late Filing

Action: Reverse the action of the Franchise Tax Board.

Rachael Kanterman, 112348

1998, \$437.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Douglas A. DaSilva, 112539

1997, \$995.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

William and Laura Gapczynski, 113509

1997, \$169.25 Claim for Refund

Action: Sustain the modified action of the Franchise Tax Board.

Robert and Michelle Jaynes, 113514

1997, \$287.00 Assessment

Action: Sustain the modified action of the Franchise Tax Board.

Russell S. Greene, 99A-0154; 89002467770

1996, \$1,815.00 Assessment, \$453.75 Penalty, Late Filing

\$453.75 Penalty, Notice and Demand

Action: Sustain the action of the Franchise Tax Board and impose a frivolous appeal penalty of \$750.00.

THURSDAY, OCTOBER 25, 2001

Bayard M. and Lois S. Ordlock, 53037
1983, \$12,350.00 Assessment
1984, \$15,442.00 Assessment
1986, \$ 795.00 Assessment
1988, \$ 48.00 Assessment
Action: Deny the petition for rehearing.

Max Brenner, 57861
1991, \$80,233.00 Assessment
Action: Deny the petition for rehearing.

Dorothy M. Pataky and the Estate of George E. Bilbia, 79135
1989, \$10,458.00 Assessment, \$1,580.00 Penalty, Delinquent Return
1991, \$ 692.00 Assessment, \$ 173.00 Penalty, Delinquent Return
1992, \$ 365.00 Assessment, \$ 100.00 Penalty, Delinquent Return
Action: Deny the petition for rehearing.

Raymond D. and Rosamund L. Allison, 90072
1992, \$180.00 Assessment, \$8.00 Penalty
Action: Deny the petition for rehearing.

C.M.F. Van Gaasbeck, 91730
1996, \$83.00 Assessment
Action: Deny the petition for rehearing.

Rabi R. Maharaj, 93409
1998, \$1,582.00 Assessment, \$791.00 Penalty
Action: Deny the petition for rehearing.

David K. Sclafani, 94418
1996, \$3,629.00 Assessment, \$500.00 Penalty
Action: Deny the petition for rehearing.

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

The Board deferred consideration of the following matter:
Myunf Sup Lee, 105661.

THURSDAY, OCTOBER 25, 2001

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

Ginova L. Rush, 103022
2000, \$1.00 or More Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Lydia Mendez, 105551
2000, \$25.00 Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Judy Patterson, 105658
2000, \$1.00 or More Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Myunf Sup Lee, 105661
2000, \$1.00 or More Claim for Credit
Action: The Board took no action.

Misha McGlothen, 105670
2000, \$1.00 or More Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Erma Saahir, 106547
2000, \$1.00 or More Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Lyudmila G. Kravchenko, 106573
2000, \$600.00 Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Renesha Luchien, 108856
2000, \$1.00 or More Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Joe R. Mathes, 108867
2000, \$600.00 Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

THURSDAY, OCTOBER 25, 2001

Howard Mosely, 108870

2000, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Henry E. Novak, 108871

2000, \$1.00 or More Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Harry H. Wahl, 108882

2000, \$50.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Yuk Ho Wong, 108884

2000, \$1.00 or More Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Delores Taylor, 109016

1998, \$1.00 or More Claim for Credit

1999, \$1.00 or More Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Michael Foster, 109608

2000, \$400.20 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

James Haven, 109616

2000, \$1.00 or More Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Jaymelle Hinton, 109621

2000, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Lai Kiu Leung, 109950

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

THURSDAY, OCTOBER 25, 2001

Mary Portillo, 109967

2000, \$65.25 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Kenneth Holdman, 110011

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Gwen Hunt, 110014

1997, \$1.00 or more Claim for Credit

1998, \$1.00 or more Claim for Credit

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Leslie I. Davis, 110207

1999, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Martha E. Leos, 111785

2000, \$562.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Phung Tu Luu, 111788

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Yo Kenyon, 111857

1998, \$77.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Robert Baines, 112127

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Barbara Brown, 112149

2000, \$1.00 or more Claim for Credit

Action: Reverse the action of the Franchise Tax Board.

THURSDAY, OCTOBER 25, 2001

Kenneth Degrade, 112551
2000, \$1.00 or more Claim for Credit
Action: Reverse the action of the Franchise Tax Board.

Nafis Nabawi, 114588
1997, \$1.00 or more Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Alice M. Cornwell, 97908
2000, \$200.00 Claim for Credit
Action: Deny the petition for rehearing.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalty, & Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board made the following orders: Parametric Technology Corp., SR Z OHB 30-686138; 103647 4-1-95 to 9-30-98, \$166,036.18

Action: Approve redetermination as recommended by staff.

RBP of Arizona, Inc., SR OHC 30-699486; 97854
10-1-97 to 7-10-00, \$165,604.74
Action: Approve redetermination as recommended by staff.

Eastland Forrester Corporation, SR AB 99-202016; 89002145150
7-29-91 to 12-31-95, \$217,779.07
Action: Approve redetermination as recommended by staff.

Boeing Satellite Systems, Inc., SR AB 99-930684; 134599
10-1-00 to 12-31-00, \$145,601.11
Action: Approve relief of penalty as recommended by staff.

Deluxe Laboratories Inc., SR AS 11-800574; 138534
1-1-99 to 12-31-99, \$97,497.40
Action: Approve denial of claim for refund as recommended by staff.

THURSDAY, OCTOBER 25, 2001

Everett Chas Technologies, Inc., SR Z AP 17-720866; 113321
7-1-00 to 9-30-00, \$68,006.25

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

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

The Board deferred consideration of these matter: *Sumitomo Corporation of America, SR BH 19-601909; 129079.*

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

Avex Inc., SR AR 15-752944; 80347
4-1-96 to 12-31-98, \$138,777.27

Action: Approve credit and cancellation as recommended by staff.

Lon W. Schreur, SB I UT 84-010296; 138443
5-5-95, \$116,398.15

Action: Approve credit and cancellation as recommended by staff.

C I T Leasing, SP I UT 84-011038; 139053
9-21-95, \$3,495,316.50

Action: Approve credit and cancellation as recommended by staff.

Citicorp North America Inc., SP H UT 84-017804; 139663
11-16-99, \$310,966.55

Action: Approve credit and cancellation as recommended by staff.

Propeller Portable Compupter Products Inc., SR S OH 97-143740; 138445
4-1-00 to 12-31-00, \$428,403.47

Action: Approve credit and cancellation as recommended by staff.

Matsuno Design Group, SR AP 11-743726; 89000023050
1-1-96 to 12-31-00, \$294,322.35

Action: Approve refund as recommended by staff.

THURSDAY, OCTOBER 25, 2001

Deluxe Laboratories Inc., SR AS 11-800574; 138529
1-1-97 to 12-31-99, \$706,138.14

Action: Approve refund as recommended by staff.

Philip John Sicola, SR S AB 12-741844; 84453
7-1-87 to 2-28-92, \$66,564.27

Action: Approve refund as recommended by staff.

Sumitomo Corporation of America, SR BH 19-601909; 129079
10-1-99 to 12-31-00, \$2,675,642.49

Action: The Board deferred consideration of this matter.

Fremont Ford Sales Inc., SR CHA 21-744600; 138253
4-1-01 to 6-30-01, \$373,846.92

Action: Approve refund as recommended by staff.

Complas Inc., SR Y EH 21-854851; 131854
10-1-00 to 12-31-00, \$1,023,884.24

Action: Approve refund as recommended by staff.

Sierra Autocars Inc., SR AP 23-608831; 128342
4-1-98 to 3-31-01, \$62,561.90

Action: Approve refund as recommended by staff.

SCI California Funeral Service Inc., SR Y OHC 24-135662; 89000438460
4-1-94 to 9-30-96, \$129,074.84

Action: Approve refund as recommended by staff.

Gordon Biersch Brewing Co. Inc., SR EH 26-791396; 58120
10-1-99 to 12-31-99, \$193,290.34

Action: Approve refund as recommended by staff.

Medline Industries Inc., SR S OHA 30-630652; 57332
1-1-97 to 12-31-00, \$51,280.94

Action: Approve refund as recommended by staff.

IBJTC Leasing Corporation, SR S OHB 30-679337; 138759
1-1-94 to 9-30-97, \$1,217,787.99

Action: Approve refund as recommended by staff.

THURSDAY, OCTOBER 25, 2001

Aqueduct, Inc., SR EAA 97-473685; 113323

1-1-00 to 6-30-00, \$103,528.89

Action: Approve refund as recommended by staff.

Carmax Auto Superstars West Coast Inc., SR Z OHB 97-509695; 90608

10-1-99 to 12-31-99, \$125,254.72

Action: Approve refund as recommended by staff.

West Coast Medianews LLC, SR Y CHA 97-538530; 135173

4-1-99 to 6-30-00, \$79,900.63

Action: Approve refund as recommended by staff.

Zhone Technologies, Inc., SR CH 97-644208; 97579

4-1-00 to 9-30-00, \$157,048.89

Action: Approve refund as recommended by staff.

Allstate Cellular San Diego Inc., SR Y FH 99-320568; 136556

10-1-97 to 12-31-00, \$59,248.79

Action: Approve refund as recommended by staff.

Long Advertising Inc., SR AC 99-637081; 17622

4-1-96 to 9-30-00, \$141,393.74

Action: Approve refund as recommended by staff.

Unipure Corporation; SR EA 99-839917; 135904

4-1-98 to 12-31-00, \$57,535.33

Action: Approve refund 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. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Ms. Mandel not participating in *Lone Star Gas Liquids Processing, MD MT 07-001259; 116730, Yasuda Fire & Marine Insurance Co. of America, IT ET 34-001898; 134778, Montgomery Ward Life Insurance Co, IT ET 34-002010; 107120, Signature Life Insurance Co. of Am, IT ET 34-003172; 107122, IDS Life Insurance Company, IT ET 4-001565; 128285*, in accordance with Government Code section 7.9, the Board made the following orders:

THURSDAY, OCTOBER 25, 2001

Francisco J. Ulloa-Montano, DI MT 57-834314; 139401

7-1-95 to 12-31-98, \$89,497.00

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

Pacific Gas and Electric, HA Y EF 36-008798; 140006

1-1-93 to 12-31-94, \$51,319.10

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

City of Los Angeles, DG MT 57-425249; 139592

7-1-97 to 12-31-00, \$1,337,593.43

Action: Approve the refund as recommended by staff.

New West Petroleum, DD MT 57-250081; 139453

10-1-96 to 9-30-99, \$201,081.38

Action: Approve the refund as recommended by staff.

Lone Star Gas Liquids Processing, MD MT 07-001259; 116730

4-1-00 to 7-31-00, \$222,199.97

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

Sanmina Corporation, HA Y EF 36-009793; 119507

1-1-00 to 12-31-00, \$53,454.68

Action: Approve the refund as recommended by staff.

Alameda Corridor Transportation Authority, HA Y EF 36-057704; 109242

1-1-99 to 12-31-99, \$203,721.40

Action: Approve the refund as recommended by staff.

Yasuda Fire & Marine Insurance Co. of America, IT ET 34-001898; 134778

1-1-99 to 12-31-99, \$223,538.93

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

Montgomery Ward Life Insurance Co, IT ET 34-002010; 107120

1-1-99 to 12-31-99, \$2,493,404.49

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

THURSDAY, OCTOBER 25, 2001

Signature Life Insurance Co. of Am, IT ET 34-003172; 107122

1-1-99 to 12-31-99, \$151,379.41

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

IDS Life Insurance Company, IT ET 34-001565; 128285

1-1-00 to 12-31-00, \$350,954.01

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

American Procurement & Logistics Co., CR ET 02-001154; 138442

8-1-01 to 8-31-01, \$61,252.77

Action: Approve the refund as recommended by staff.

American Procurement & Logistics Co., CR ET 02-001154; 138440

8-1-01 to 8-31-01, \$62,697.27d

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTY, CONSENT

With respect to the Special Taxes Matters, Relief of Penalty, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

American General Life Ins. Co., IT ET 34-001625; 135481

12-15-98 to 4-1-99, \$60,115.20

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

Norcal Mutual Insurance Co, IT ET 34-002204; 135771

12-15-97 to 4-1-98, \$63,362.20

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

THURSDAY, OCTOBER 25, 2001

PROPERTY TAX MATTERS, CONSENT

With respect to the Property Taxes Matter, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Petition for Reassessment and Penalty abatement on Unitary Escape Assessment

Pacific Bell and Subsidiaries (279), EAU 01-001, 100743

1996, \$ 26,300,000.00 Escaped Assessment

\$ 883,000.00 Penalty

\$ 3,708,000.00 Assessment in lieu of Interest

1997, \$ 42,100,000.00 Escaped Assessment

\$ 2,671,000.00 Penalty

\$ 8,815,000.00 Assessment in lieu of Interest

1998, \$208,800,000.00 Escaped Assessment

\$ 15,791,000.00 Penalty

\$ 37,899,000.00 Assessment in lieu of Interest

1999, \$ 33,900,000.00 Escaped Assessment

\$ 1,994,000.00 Penalty

\$ 2,992,000.00 Assessment in lieu of Interest

Action: Approve revised (audit) escaped assessment, penalty and assessment in lieu of interest as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petitions for Reassessment and Penalty Abatement on 2001 Unitary Value

01 Communications, Inc. (7791), SAU 01-016; 130868

2001, \$8,310,000.00 Value

\$ 831,000.00 Penalty

Action: Grant the petition for reassessment and abatement of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

THURSDAY, OCTOBER 25, 2001

Monarch Communications (7795), SAU 01-018; 130870
2001, \$68,000.00 Value
\$ 6,800.00 Penalty

Action: Grant the petition for reassessment and deny the abatement of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petitions for Reassessment of 2001 Unitary Value

Sierra Pacific Power Company (146), SAU 01-029; 131269
2001, \$186,400,000.00 Value

Action: Deny the petition for reassessment of 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Citizens Telecommunications Company of California (284), SAU 01-019; 130874
2001, \$175,300,000.00 Value

Action: Approve the reduction of 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Central Oregon and Pacific Railroad Company, Inc. (802), SAU 01-033; 131348
2001, \$4,270,000.00 Value

Action: Deny the petition for reassessment of 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

San Diego and Imperial Valley Railroad Co., Inc. (865), SAU 01-038; 131949
2001, \$3,850,000.00 Value

Action: Deny the petition for reassessment of 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Genesis Communications International Inc. (7517), SAU 01-050; 133646
2001, \$933,000.00 Value

Action: Deny the petition for reassessment of 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Level 3 Communications, LLC (7761), SAU 01-045; 132050
2001, \$905,500,000.00 Value

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

THURSDAY, OCTOBER 25, 2001

Telco Network Services, Inc. (7762), SAU 01-037; 131531

2001, \$21,500,000.00 Value

Action: Approve the reduction of the unitary value as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

RCN Telecom Services of California, Inc. (7775), SAU 01-015; 130816

2001, \$234,100,000.00 Value

Action: Approve the reduction of the unitary value as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Compass Telecommunications, Inc. (7848), SAU 01-007; 130100

2001, \$426,000.00 Value

Action: Approve the reduction of the unitary value as recommended by staff.

Ms. Mandel not participating in accordance with Government Code section 7.9.

Petition for Penalty Abatement on 2001 Unitary Value

Electric Lightwave, Inc. (2430), SAU 01-014; 130811

2001, \$117,800,000.00 Value

\$ 11,780,000.00 Penalty

Action: Deny the petition for penalty abatement on 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Advanced Nationwide Messaging Corporation, Inc. (3431), SAU 01-039; 132000

2001, \$4,650,000.00 Value

\$ 465,000.00 Penalty

Action: Approve the penalty abatement on 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

XO Communications, Inc. (fna Nextlink California, LLC) (7560), SAU 01-006; 129751

2001, \$185,400,000.00 Value

\$ 18,540,000.00 Penalty

Action: Approve the penalty abatement on 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

THURSDAY, OCTOBER 25, 2001

LDExchange.com (7777), SAU 01-004; 128478

2001, \$2,400,000.00 Value

\$ 240,000.00 Penalty

Action: Approve the penalty abatement on 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Metromedia Fiber Network Services, Inc. (7837), SAU 01-001; 128232

2001, \$125,400,000.00 Value

\$ 12,540,000.00 Penalty

Action: Approve the penalty abatement on 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Telstra, Inc. (7852), SAU 01-002; 128233

2001, \$1,340,000.00 Value

\$ 134,000.00 Penalty

Action: Approve the penalty abatement on 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Competitive Communications, Inc. (7874), SAU 01-003; 128477

2001, \$298,000.00 Value

\$ 29,800.00 Penalty

Action: Approve the penalty abatement on 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Concert Global Networks USA, LLC (7881), SAU 01-013; 130800

2001, \$44,900,000.00 Value

\$ 4,490,000.00 Penalty

Action: Approve the penalty abatement on 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Concert USA, GP (7882), SAU 01-012; 130795

2001, \$24,200.00 Value

\$ 2,420.00 Penalty

Action: Approve the penalty abatement on 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

THURSDAY, OCTOBER 25, 2001

Advanced Solutions, Inc. (7885), SAU 01-008; 130764
2001, \$453,200,000.00 Value
\$ 20,000,000.00 Penalty

Action: Approve the penalty abatement on 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petition for Correction of Allocation of 2001 Unitary Value

Competitive Communications, Inc. (7874), SAA 01-001; 129748
2001, \$327,800.00 Value, Los Angeles

Action: Approve the reallocation of 2001 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

PROPERTY TAX HEARINGS

Allegiance Telecom of California, Inc. (7742), SAU 01-032; 131277
2001, \$105,800,000.00 Value

For Petitioner: Waived Appearance

For Property Taxes Department: Louis Ambrose, Counsel

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

Issue: Whether the Petitioner's analysis of economic obsolescence supports its claimed reduction of unitary value even though that analysis fails to identify the specific type or types of equipment that have suffered economic obsolescence and the degree of the claimed obsolescence?

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Andal, Mr. Parrish, Mr. Klehs and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code Section 7.9, the Board ordered that the petition be denied.

Adelphia Business Solutions (7854), SAU 01-034; 131349
2001, \$21,800,000.00 Value

For Petitioner: Waived Appearance

For Property Taxes Department: Louis Ambrose, Counsel

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

THURSDAY, OCTOBER 25, 2001

Issues: Whether exempt application software reported by Petitioner was improperly assessed by staff.

Whether tenant leasehold improvements reported by Petitioner were improperly assessed because they have already been locally assessed to the lessor of the property.

Whether collocation fee costs reported by Petitioner were improperly assessed because they have already been locally assessed to the lessor of the property.

Whether Dun & Bradstreet records reported by Petitioner and assessed by staff represent non-assessable potential customer lists.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Klehs and Mr. Andal voting yes, Mr. Chiang not participating, Ms. Mandel not participating in accordance with Government Code Section 7.9, the Board ordered that the petition be denied.

BUSINESS TAXES APPEALS HEARINGS

Edward G. Staiger, SR ARF 99-201723; 89002144920, 89002144910
1-1-93 to 6-30-95, \$17,708.73 Tax, \$ 00.00 Penalty, Fraud
\$1,772.42 Penalty, Negligence

For Petitioner: E. D. Oliver, Representative

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

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

Issues: Whether audited taxable sales were established in accordance with the facts.

Whether relief from the negligence penalty is warranted.

Whether evidence has been presented to support the claim for refund of tax paid on returns.

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

George Gray and Judy Gray, SA UT 84-001217; 31083
3-31-98, \$6,194.00 Tax

For Petitioner: George Gray

For Sales and Use Tax Department: Robert Tucker, Counsel

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

Issue: Whether the vehicle was purchased for use in California.

THURSDAY, OCTOBER 25, 2001

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

Bergen Brunswig Drug Company, SY EA 11-629749, 89000012890
4-1-94 to 3-31-97, \$838,430.55 Tax

For Petitioner: Rick Richman, Representative
Kirk Merriman, Manager

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issue: Whether petitioner's sales of medicines to surgery centers qualify for exemption from sales tax.

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

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered the Appeals Section to prepare a memo opinion and directing the Department to delete the annotation.

Gerald Smith Avila, AR AP 17-786797; 89000216580
7-1-94 to 6-30-97, \$602.75 Tax, \$00.00 Penalty, Negligence

For Petitioner: Appearance Waived

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

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

Issue: Whether certain disallowed claimed sales for resale should be accepted as valid.

Action: Mr. Andal moved to delete the \$602.00 invoice otherwise redetermine as recommended by the Appeals Section. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

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

THURSDAY, OCTOBER 25, 2001

Adela Vitalis, SR AB 97-595532; 49468

5-1-91 to 3-31-93, \$11,344.92 Tax, \$00.00 Penalty

Adela Vitalis, SR AB 97-519044; 49473

4-1-93 to 12-31-93, \$13,706.22 Tax, \$00.00 Penalty,

For Petitioner: Appearance Waived

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

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

Issue: Whether any further adjustments to the audited measure of tax are warranted.

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

Richard Brian Powers, SR CH 21-763169; 16476

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

For Petitioner: Richard B. Powers, Artist

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

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

Issues: Whether petitioner's gross receipts from his retail sales of airbrushed tee shirts are exempt from tax.

Whether the applicable statutes of the Sales and Use Tax Law, as applied to petitioner, are unconstitutional under the First and Fourteenth Amendments of the United States Constitution.

Whether Business and Professions Code section 16102 exempts the otherwise taxable retail sales of petitioner, an honorably discharged United States Marine Corps veteran, from sales tax.

Action: Ms. Mandel moved to take the matter under submission.

Mr. Andal offered a substitute motion to grant the petition. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang and Ms. Mandel voting no, Mr. Klehs absent.

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

The Board recessed at 12:10 p.m. and reconvened at 1:35 p.m. with Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel present.

THURSDAY, OCTOBER 25, 2001

BUSINESS TAXES APPEALS HEARINGS

Pinedale Auto Sales, Inc., SR ARF 22-827027; 89000388860

10-1-94 to 9-30-97, \$31,607.29 Tax, \$3,466.57 Penalty, Negligence

For Petitioner: Jerry H. Satterberg, E.A.

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

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

Issues: Whether audited taxable sales were computed in accordance with the facts.

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the Department 30 days to review the new documentation and the Appeals Section 30 day thereafter to bring the matter back to the Board with a final recommendation.

Mac's Club, Inc., SR GH 26-691336; 89000650210, 89000650220

1-1-95 to 12-31-95, \$4,742.98 Tax, \$00.00 Penalty

89000650210

1-1-96 to 12-31-97, \$2,144.03 Late Protest, \$00.00 Penalty

For Petitioner: Gail Chandler
John Croll

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 supports an increase in the audited pour size for distilled spirits.

Whether the shelf test for liquor is representative of petitioner's operations.

Whether the evidence warrants a greater allowance for Happy Hour sales.

Whether the evidence shows that the audited markup for draft beer is excessive.

Whether the evidence shows that the audited markup for cans and bottles of beer is excessive.

Whether the evidence warrants a greater allowance for self-consumed taxable merchandise.

THURSDAY, OCTOBER 25, 2001

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

Raymond E. and Gloria J. Frazee, SB UT 84-001004; 60834
3-31-99, \$24,669.00 Tax

For Petitioner: Shawn M. Throwe, Attorney
Raymond E. Frazee

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issue: Whether petitioners owe use tax on a vessel purchased on March 12, 1998, in Taiwan, because they first functionally used the vessel in California.

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

Mike David and Kimberly A. Tomasetti, SR ARF 99-861580-010; 89002420010
4-1-93 to 6-30-96, \$25,110.00 Tax, \$00.00 Penalty, Failure to File
\$00.00 Penalty, Negligence

For Petitioner: Nishan Kochian, Representative
Mike Tomasetti

For Sales and Use Tax Department: Robert Tucker, Counsel

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

Issues: Whether the evidence shows that the purchase of certain cotton harvesting equipment is subject to sales tax rather than use tax.

Whether the evidence shows that the purchase of a water truck is subject to sales tax rather than use tax.

Alternatively, whether the sale of the water truck was an occasional sale.

Whether the penalty for failure to file returns applies.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered the deletion of penalties and adjustments as recommended by the Appeals Section.

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

THURSDAY, OCTOBER 25, 2001

Philip Hy Lien and Jenny Lam Lien, SR BH 99-632380; 37342
7-1-95 to 6-30-98, \$32,727.44 Tax

For Petitioner: No Appearance
For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Action: The Board took no action.

Minitab, Inc., SC OH 99-578975; 89002315730
7-1-87 to 9-30-94, \$87,873.00 Claim for Refund

For Petitioner: R. Todd Luoma, Attorney
For Sales and Use Tax Department: David H. Levine, Counsel

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

Issue: Whether claimant's claim for refund, filed July 11, 1996, is timely with respect to a September 25, 1995 payment of tax.

Action: Mr. Andal moved to grant the petition. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section. The Board ordered it would support a Board of Control Claim by petitioner. Ms. Mandel not participating in the Board of Control Claim.

Interior Designs by Ricci, Inc., SR EAA 99-408873; 89002239300
7-1-93 to 6-30-96, \$438.03 Tax, \$00.00 Penalty, Negligence

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

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

Issues: Whether petitioner has provided sufficient evidence to prove that it was not conducting business in this state during the third quarter of 1993.

Whether petitioner correctly reported its fourth quarter 1993 taxable sales.

Action: Mr. Andal moved to grant the petition.

Mr. Klehs made a substitute motion to redetermined the petition as recommended by the Appeals Section. The motion was seconded by Mr. Chiang.

Mr. Andal offered a substitute motion to grant the petition. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Klehs and Ms. Mandel voting no, Mr. Chiang not participating.

THURSDAY, OCTOBER 25, 2001

Mr. Klehs moved to redetermine the petition as recommended by the Appeals Section. The motion was seconded by Ms. Mandel but failed to carry, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish and Mr. Andal voting no, Mr. Chiang not participating.

The Board deferred consideration of this matter to the next Board meeting.

PROPERTY TAXES HEARINGS, PETITION FOR REASSESSMENT OF UNITARY VALUE

New Edge Networks (7800), SAU 01-027; 131267

2001, \$11,000,000.00 Value

For Petitioner:

Petition Withdrawn

For Property Taxes Department:

Robert Lambert, Counsel

Action: The Board took no action.

CORPORATE FRANCHISE AND INCOME TAXES HEARING

Adolphe C. Dassler, 89002469630

1993, \$60,748.00 Claim for Refund

For Appellant:

Robert Reynolds, Attorney

Barry Weissman, Representative

For Franchise Tax Board:

David Gemmingen, Tax Counsel

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

Issue: Whether appellant adequately substantiated his basis in Adidas stock sold during 1993 for a claimed capital loss.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.26)

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang not participating, the Board ordered that the action of the Franchise Tax Board be modified.

FINAL ACTION ON PETITIONS HEARD OCTOBER 25, 2001

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition of *Edward G. Staiger, SR ARF 99-201723; 89002144920, 89002144910*, be redetermined as recommended by the Appeals Section.

THURSDAY, OCTOBER 25, 2001

The Board ordered that the petition of *Richard Brian Powers, SR CH 21-763169; 16476*, be deferred to the next Board Meeting.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the disputed taxable measure be reduced by 25 percent in the petition of *Mac's Club, Inc., SR GH 26-691336; 89000650210, 89000650220*.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition of *Raymond E. and Gloria J. Frazee, SB UT 84-001004; 60834*, be redetermined as recommended by the Appeals Section.

Mr. Andal moved that the petition of *Mike David and Kimberly A. Tomasetti, SR ARF 99-861580-010, 89002420010*, be granted. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Chiang and Mr. Klehs voting no, Ms. Mandel abstaining. The Board deferred consideration of this matter to the next Board meeting.

CORPORATE FRANCHISE AND INCOME TAXES HEARINGS

Jennie Pappas (Deceased), 88767
1990, \$ 30,583.70 Claim for Refund
1991, \$125,266.59 Claim for Refund

For Appellant:

Lisa Powers, 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 shown that the otherwise applicable statute of limitations should be waived or tolled because of the mental incapacity of appellant and her accountant.

Whether appellant has shown that her refund claims are timely under Revenue and Taxation Code section 19311.

Whether appellant has shown that her claimed refunds should be permitted under a "correction of error" theory.

Appellant's Exhibit:

1993 CA Income Tax Return (Exhibit 10.27)

Miscellaneous Document (Exhibit 10.28)

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

THURSDAY, OCTOBER 25, 2001

Lars E., Jr. and Donna J. Fredrickson, 93366

1992, \$8,467.00 Assessment

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 the proposed assessment is barred by any applicable statute of limitations.

Whether appellants have met their burden to prove error in the proposed assessment, and the federal action on which it is based.

Whether interest should be abated.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.29)

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the appeal be denied, sustaining the action of the Franchise Tax Board.

The Board adjourned at 3:45 p. m.

The foregoing minutes are adopted by the Board on December 20, 2001.

THURSDAY, OCTOBER 25, 2001