

THURSDAY, DECEMBER 20, 2001

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m. with 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.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 9:32 a.m. and reconvened immediately into closed session with 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 10:00 a.m. and reconvened immediately into open session with Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel present.

ADMINISTRATIVE SESSION

STAFF REPORT ON PROPERTY TAX RELIEF RELATED TO SEPTEMBER 11 TERRORIST ATTACKS

David Gau, Deputy Director, Property Taxes Department, made introductory remarks regarding staff's report on property tax relief related to September 11th Terrorist Attacks.

Speakers: Eric Miethke, Partner, Nielsen, Merksamer
Terrance Flinn, Deputy Assessor, San Mateo County
John Nibbelon, Deputy County Counsel, San Mateo County
Barry Bosscher, Special Assistant, Los Angeles County Assessor

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel abstaining, the Board authorized the publication of Property Tax Rule 139 and an immediate letter to county assessors regarding this matter.

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried,

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Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel made the following orders:

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 12.14)

Patrick Farish, Business Taxes Compliance Supervisor III, Fuel Taxes
Division, Headquarters
Pauline Arndt, Associate Governmental Program Analyst, Policy,
Planning and Evaluation Division, Headquarters
Ralph W. Kato, Associate Tax Auditor, Torrance District Office

Action: Approve the Board Meeting Minutes of: October 24-25, 2001 and November 6-7, 2001.

CHIEF COUNSEL MATTERS

RULEMAKING

Janice Thurston, Assistant Chief Counsel, Business Taxes Section, Legal Division, made introductory remarks regarding Regulation 1671.1, Rebates and Incentives, requesting authorization to publish.

Speaker: Lance Hastings, Vice President, Government Relations,
California Grocers Association

Action: Mr. Klehs moved to authorize the publication of regulation. Failed for lack of a second.

The Board deferred consideration of this matter until the April Board meeting.

Janice Thurston, Assistant Chief Counsel, Business Taxes Division, Legal Division, made introductory remarks regarding Regulation 1668, Resale Certificates, requesting adoption of the changed version of the regulation.

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 adopted the changed version of Regulation 1668.

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PROPERTY TAX MATTER-PETITION FOR REASSESSMENT OF UNITARY VALUE, FINDINGS AND DECISIONS

Citizens Telecommunications Company of California, (284), SAU01-019, 130874
2001, \$175,300,000.00 Value

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel not participating, the Board approved the Finding and Decision as recommended by staff. (Exhibit 12.15).

LEGAL APPEALS MATTERS, ADJUDICATORY

Barbara A. Wallace, LLC, SR ARF 99-702975; 89002365270

7-1-91 to 5-4-95, \$50,358.21 Tax, \$11,425.05 Penalty

Considered by the Board: March 16, 2000

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. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish voting no, the Board ordered to deny the petition for rehearing.

Bergen Brunswig Drug Company, SY EA 11-629749; 89000012890

4-1-94 to 3-31-97, \$838,430.55 Tax

Considered by the Board: Memorandum Opinion

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

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 approved the Memorandum Opinion.

David Michaeli, SR AP 18-731067; 29058

4-1-95 to 3-31-98, \$5,525.91 Tax, \$00.00 Penalty, Negligence

Considered by the Board: October 3, 2001

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

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 as recommended by Appeals Section.

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Action Medical Products, Inc., SR FH 97-309543; 57424
 5-10-91 to 12-31-98, \$33,550.51 Tax, \$00.00 Penalty, Failure to File
 \$00.00 Penalty, Negligence

Considered by the Board: August 15, 2001

Action: The Board took no action.

Apache Mills, Inc., SR OHC 99-324285; 89002200530

7-1-94 to 6-30-97, \$1,635.53 Tax

Considered by the Board: September 26, 2001

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

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

Summit Imports, Inc., SR FH 99-567595; 89002311430

10-1-94 to 9-30-97, \$5,000.11 Tax, \$00.00 Penalty, Finality

Considered by the Board: August 15, 2001

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

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 as recommended by Appeals Section.

CORPORATE FRANCHISE AND INCOME TAX MATTERS, ADJUDICATORY

Save Mart Supermarkets & Subsidiary, 61548

1996, \$235,928.00 Claim for Refund

Considered by the Board: Formal Opinion

Action: The Board took no action.

Raymond H. and Margaret R. Berner, 88344

1986, \$95,691.00 Assessment, \$23,922.75 Penalty, Notice and Demand

1987, \$313,694.00 Assessment, \$78,423.50 Penalty, Notice and Demand

1988, \$49,672.00 Assessment, \$3,932.90 Penalty, Negligence

Considered by the Board: Formal Opinion

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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 approved the Formal Opinion.

David and Marilee Duff, 101519

1998, \$5,232.98 Claim for Refund

Considered by the Board: Formal Opinion

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 approved the Formal Opinion.

Fremont General Corporation, 27969

1982, \$526,796.00 Assessment

1983, \$517,441.00 Assessment

1984, \$253,482.00 Assessment

1985, \$648,463.00 Assessment

Considered by the Board: July 10, 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. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang not participating, the Board adopted a modified action of the Franchise Tax Board.

Susan Lancaster, 78269

1991, \$2,390.50 Assessment, \$ 857.23 Penalty

1992, \$4,342.00 Assessment, \$ 543.25 Penalty

1993, \$4,755.50 Assessment, \$2,705.95 Penalty

1994, \$ 00.00 Assessment, \$1,355.00 Penalty

1997, \$ 00.00 Assessment, \$ 262.86 Penalty

Considered by the Board: August 14, 2001

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

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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 modifying the action of the Franchise Tax Board.

Dale Mitchell Heindel, 103375

1980, \$2,204.59 Claim for Refund

Considered by the Board: November 6, 2001

Action: The Board deferred consideration of this matter.

Rebecca T. Kato, 111270

1999, \$16,021.00 Claim for Refund

Considered by the Board: November 6, 2001

Action: The Board deferred consideration of this matter.

Seibert Security Services, Inc., 49512

1992, \$35,645.34 Claim for Refund

1993, \$1.00 or more

Considered by the Board: March 29, 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.

SALES AND USE TAX MATTERS, ADJUDICATORY

Niguel Country Club, SR EAA 24-689357, 135651

1-1-97 to 12-31-99, \$69,182.42 Tax

Considered by the Board: Denial of Claim for Refund

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

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 approved the denial of claim for refund as recommended by staff.

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PROPERTY TAX MATTERS, ADJUDICATORY

Petitions for Reassessment of 2001 Unitary Value

Southern California Edison Company (148), SAU 01-049; 133642
2001, \$8,727,100,000.00 Value

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

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang 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 adopted unitary value be reduced as recommended by staff.

Genuity Solutions, Inc. (7733), SAU 01-051; 133647
2001, \$265,000,000.00 Value

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

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang 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 adopted unitary value be reduced as recommended by staff.

PaeTec Communications, Inc. (7814), SAU 01-017; 130869
2001, \$5,870,000.00 Value

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

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang 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 adopted unitary value be reduced as recommended by staff.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Bernard Gregory Ross & Ronald Eric McMillan, SR AS 11-813619; 89000035410, and Fereydoun Saidi and Hussein Saidi, SR AB 23-797091; 41193.*

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

Lepco, Inc. of Houston, SR S OHC 30-700497, 57415
10-1-95 to 9-30-98, \$5,693.95 Tax, \$680.38 Penalty, Negligence
\$680.38 Penalty, Failure to Timely Pay
Lepco of Houston Inc., SR S OHC 97-136450, 57200
7-1-97 to 9-30-98, \$20,306.55 Tax, \$00.00 Penalty, Failure to Timely Pay
Action: Redetermine as recommended by Appeals Section.

ISS Merchant Services, Inc., SC OHB 99-441784; 89002256540
4-1-93 to 12-31-95, \$1,251.94 Tax, \$00.00 Penalty, Finality
Action: Redetermine as recommended by Appeals Section.

David J. Eid, SR BHA 19-768139; 89000288430
4-1-95 to 12-31-97, \$14,667.60 Tax, \$1,494.02 Penalty, Negligence
Action: Redetermine as recommended by Appeals Section.

Bernard Gregory Ross & Ronald Eric McMillan, SR AS 11-813619; 89000035410
10-1-94 to 12-31-96, \$43,985.62 Tax, \$00.00 Penalty, Negligence
Action: The Board deferred consideration of this matter.

Ian Phillips Interiors, Inc., SR AC 13-110166; 30642
7-1-94 to 3-31-98, \$45,792.01 Tax
Action: Deny the petition for rehearing.

Fereydoun Saidi and Hussein Saidi, SR AB 23-797091; 41193
1-1-96 to 3-31-98, \$3,012.32 Tax
Action: The Board deferred consideration of this matter.

Nadia Hassan Ebrahim, TK MT 44-039128; 32344
6-1-95 to 12-31-98, \$15,448.49 Fee, \$1,544.88 Penalty, Failure to File
Action: Deny the petition for rehearing.

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Hassan Jalali and Gholam Hossein Jalali, SR AC 99-446628; 89002258660
1-1-93 to 12-31-97, \$68,008.83 Tax; \$17,002.32 Penalty, Fraud
Action: Grant the petition for rehearing.

Shirley Samuels Kraft, SR AC 99-625832; 89002333370
12-1-94 to 12-31-96, \$5,536.14 Tax, \$553.63 Penalty, Negligence
Action: Deny the petition for rehearing.

FRANCHISE AND INCOME TAX MATTERS, CONSENT

The Board deferred consideration of this matter: *Robert and Melody Schmidt, 113508.*

With respect to the Franchise & Income Tax 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:

Ron and Beth Heffner, 106408
1996, \$2,456.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Emily E. Berrym, 110564
1994, \$1.00 or more Assessment
Action: Sustain the modified action of the Franchise Tax Board.

Young and Helen Pyon, 111400
1997, \$666.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Robert and Melody Schmidt, 113508
1994, \$19,836.00 Assessment
Action: The Board deferred consideration of this matter.

Chris and Michelle Latam, 113598
1997, \$955.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

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Robert R. and Barbara T. Woore, 113633

1997, \$252.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jamey L. Smith, 114345

1997, \$288.88 Assessment

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

Juan Mayo, 115051

1997, \$408.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Stephen Ryan, 115287

1997, \$4,221.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Robert C. Prescott and Patricia D. Lappin-Prescott, 118220

1997, \$716.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Paul F. Koster, 118473

1990, \$3,888.00 Tax, \$1,749.60 Penalty

1991, \$ 332.00 Tax, \$ 149.40 Penalty

1992, \$1,916.00 Tax, \$ 862.20 Penalty

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

Diane Bishoff, 118678

1997, \$402.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Manuel R. Diaz, 118706

1976, \$4,317.31 Claim for Refund

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

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

JoAnn Greer, 111777
2000, \$600.00 Claim for Credit
Action: Reverse the action of the Franchise Tax Board.

Jacqueline M. McNeil, 116229
1999, \$1.00 or more Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Sandra Becton, 116281
1999, \$390.00 Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Robert S. Bennett, 116283
2000, \$1.00 or more Claim for Credit
Action: Reverse the action of the Franchise Tax Board.

Katrina B. Burns, 116288
2000, \$600.00 Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Ann R. Carnesecca, 116291
1999, \$1.00 or more Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Josephine M. Henley, 118301
2000, \$600.00 Claim for Credit
Action: Reverse the action of the Franchise Tax Board.

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Betty Louise Logan, 118664

2000, \$450.98 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Sue Hayashi, 126963

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalty, & Denials of Claims for Refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Ms. Mandel not participating in *Sun Microsystems Inc.*, SR Y GH 26-787983; 89000673760, *Sun Microsystems Inc.*, SR Y GH 26-787983; 89000673770, *Sun Microsystems Inc.*, SR Y GH 26-787983; 89000673780, *Sun Microsystems Computer Corp.*, SR Y GH 26-825814; 89000689020, *Sun Microsystems Computer Corp.*, SR Y GH 26-825814; 89000689030, *Sun Microsystems Computer Corp.*, SR Y GH 26-825814; 89000689040, *Sun Microsystems Computer Corp.*, SR Y GH 26-825814; 89000689050, *Sun Microsystems Computer Corp.*, SR Y GH 26-825814; 89000689060, *Sun Microsystems Inc.*, SR Y GH 99-594260; 89002321520, *Sun Microsystems Inc.*, SR Y GH 99-594260; 89002321530, Board made the following orders:

Better Image Inc., SR Y BHA 19-741755, 15870

10-1-94 to 3-31-98, \$425,707.26

Action: Approve redetermination as recommended by staff.

Lenac Warford Stone Inc., SR EAA 24-6606621; 89000444900

10-1-94 to 9-30-97, \$78,433.30

Action: Approve redetermination as recommended by staff.

Sun Microsystems Inc., SR Y GH 26-787983; 89000673760

7-1-89 to 3-31-90, \$2,842,649.21

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

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Sun Microsystems Inc., SR Y GH 26-787983; 89000673770

4-1-90 to 12-31-90, \$3,158,288.54

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

Sun Microsystems Inc., SR Y GH 26-787983; 89000673780

1-1-91 to 6-30-91, \$2,882,601.31

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

Sun Microsystems Computer Corp., SR Y GH 26-825814; 89000689020

10-1-91 to 3-31-92, \$2,337,705.26

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

Sun Microsystems Computer Corp., SR Y GH 26-825814; 89000689030

4-1-92 to 9-30-92, \$1,811,608.25

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

Sun Microsystems Computer Corp., SR Y GH 26-825814; 89000689040

10-1-92 to 3-31-93, \$3,522,518.21

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

Sun Microsystems Computer Corp., SR Y GH 26-825814; 89000689050

4-1-93 to 9-30-93, \$3,254,816.76

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

Sun Microsystems Computer Corp., SR Y GH 26-825814; 89000689060

10-1-93 to 6-30-94, \$4,608,422.34

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

Valenite Inc., SR S OHA 30-664610; 89000842270

4-1-95 to 6-30-97, \$401,480.99

Action: Approve redetermination as recommended by staff.

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Lermer Packaging Corporation, SR OHB 30-674562; 89000851990
1-1-93 to 6-5-96, \$129,451.99

Action: Approve redetermination as recommended by staff.

Mount Cook Tours LTD, SP H UT 84-006056; 118981
12-4-98 to 12-4-98, \$2,318.250.00

Action: Approve redetermination as recommended by staff.

Mount Cook Tours LTD, SP H UT 84-006056; 118982
12-4-98 to 12-4-98, \$569,250.00

Action: Approve redetermination as recommended by staff.

International Holiday Hotels Inc., SP H UT 84-012672; 135580
3-19-99 to 3-19-99, \$89,086.25

Action: Approve redetermination as recommended by staff.

Richard A. and Roberta D. Lewis Trust, SB G UT 84-017864; 136118
8-11-99 to 8-11-99, \$61,864.30

Action: Approve redetermination as recommended by staff.

Green Mountain Corporation I, SP U UT 84-023881; 135554
3-24-00 to 3-24-00, \$70,125.00

Action: Approve redetermination as recommended by staff.

Whitson Properties LC, SP I UT 84-025750; 135621
12-1-98 to 12-1-98, \$91,669.33

Action: Approve redetermination as recommended by staff.

Alex Lyons & Son Sales Managers, SP I UT 84-026441; 135617
10-6-99 to 10-6-99, \$353,555.00

Action: Approve redetermination as recommended by staff.

George E. Lyman, SB G UT 084-026572, 135566
4-2-99 to 4-2-99, \$56,877.78

Action: Approve redetermination as recommended by staff.

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CBE Technologies, Inc., SR S OHB 97-006340

4-1-97 to 3-31-98, \$66,355.89

Action: Approve redetermination as recommended by staff.

VF Imagewear (West), Inc., SR S OHB 99-281272; 119345

10-1-96 to 12-31-99, \$111,948.61

Action: Approve redetermination as recommended by staff.

Medical Economics Company, Inc., SC OHB 99-527054; 101183

1-1-92 to 6-30-99, \$197,999.29

Action: Approve redetermination as recommended by staff.

Sun Microsystems Inc., SR Y GH 99-594260; 89002321520

7-1-94 12-31-94, \$3,608,866.94

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

Sun Microsystems Inc., SR Y GH 99-594260; 89002321530

1-1-95 to 9-30-95, \$4,781,823.88

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

ASAP Software Express Inc., SC OHA 99-685470; 116332

1-1-96 to 12-31-98, \$154,115.04

Action: Approve redetermination as recommended by staff.

Volvo Commercial Finance Inc. Americas, SR S OHB 99-816012

10-1-96 to 12-31-98, \$239,939.26

Action: Approve redetermination as recommended by staff.

Natsteel Electronics (USA) Mnfgt., SR CHA 99-997307; 109186

1-1-97 to 3-31-00, \$54,707.87

Action: Approve redetermination as recommended by staff.

Ralph's Grocery Company, SR Y AA 14-743151; 144674

1-30-95 to 4-26-98, \$50,182.34

Action: Approve relief of penalty as recommended by staff.

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San Fernando Valley Automotive, SR Y AC 97-321574; 143524

7-1-01 to 7-31-01, \$77,592.18

Action: Approve relief of penalty as recommended by staff.

Coach Inc., SR A OHB 97-733863; 143212

10-1-00 to 12-31-00, \$76,078.80

Action: Approve relief of penalty as recommended by staff.

Tempur-Pedic Inc., SR Z OHA 97-812143; 144076

10-30-95 to 9-30-00, \$114,457.89

Action: Approve relief of penalty as recommended by staff.

Plantway Inc., SR GHD 97-212021; 89264

1-1-98 to 12-31-99, \$122,891.00

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

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations & Refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang not participating in *American Equipment Company Inc., SR S OHB 30-657078; 132959* and *Microstrategy Inc., SR OHB 99-261280; 105278*, the Board made the following orders:

Versyss Incorporated, SR OH 12-713023; 141428

7-1-95 to 12-6-99, \$442,853.61

Action: Approve credit and cancellation as recommended by staff.

Cort Furniture Rental, SR Y EA 18-643088; 144357

7-1-97 to 6-30-00, \$63,844.96

Action: Approve credit and cancellation as recommended by staff.

Mellon Financial Services Corp. #3, SR S OHB 30-677022; 144654

1-1-01 to 3-31-01, \$88,488.17

Action: Approve credit and cancellation as recommended by staff.

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Steve Thomas, SB G UT 84-001197; 136895

3-30-98 to 3-30-98, \$73,706.38

Action: Approve credit and cancellation as recommended by staff.

Charles H. Grieve, SB S UT 84-001781; 113603

3-14-97 to 3-14-97, \$152,055.00

Action: Approve credit and cancellation as recommended by staff.

Mach I Aircraft Inc., SP H UT 84-009878; 131812

4-15-99 to 4-15-99, \$55,877.46

Action: Approve credit and cancellation as recommended by staff.

Challenger 1056 Inc., SP H UT 84-013657; 144599

4-7-99 to 4-7-99, \$952,943.77

Action: Approve credit and cancellation as recommended by staff.

TSR Wireless LLC, SR Y OHB 97-248482; 143484

4-1-98 to 12-7-00, \$246,560.53

Action: Approve credit and cancellation as recommended by staff.

Ethnic-American Broadcasting Company LP, SC OHB 99-937354; 144469

10-1-99 to 6-30-00, \$61,132.21

Action: Approve credit and cancellation as recommended by staff.

Asatsu America Inc., SR AB 18-683820; 143070

1-1-98 to 12-31-00, \$243,631.82

Action: Approve refund as recommended by staff.

Redwood City Electric Inc., SR S BHA 19-684123; 135204

1-1-01 to 3-31-01, \$73,303.36

Action: Approve refund as recommended by staff.

Contra Costa Community College District, SR Y CHB 21-089714; 143111

1-1-98 to 3-31-01, \$140,825.85

Action: Approve refund as recommended by staff.

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Tom Sawyer Software Corporation, SR CH 21-875680; 133701
7-1-97 to 6-30-00, \$108,588.89

Action: Approve refund as recommended by staff.

Merrill Lynch-Pierce-Fenner-Smith, SU S OHB 30-300760; 90818
7-1-93 to 12-31-96, \$134,586.16

Action: Approve refund as recommended by staff.

American Equipment Company Inc., SR S OHB 30-657078; 132959
1-1-01 to 3-31-01, \$166,446.37

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

Adaptive Broadband Corporation; SC OHB 30-697800; 131398
7-1-00 to 9-30-00, \$305,405.09

Action: Approve refund as recommended by staff.

Daimler Chrysler Corporation, SR CHA 52-010555; 143465
7-1-99 to 7-31-99, \$1,187,096.36

Action: Approve refund as recommended by staff.

Lewis Family Trust Dtd 2-7-90, SB G UT 84-016041; 111993
8-20-99 to 8-20-99, \$51,733.46

Action: Approve refund as recommended by staff.

Magic Acquisition Corporation, SR AC 97-012083; 142564
4-1-97 to 6-30-00, \$71,020.36

Action: Approve refund as recommended by staff.

Agrium U.S. Inc., SR S OH 97-521758; 131257
1-1-00 to 12-31-00, \$54,564.03

Action: Approve refund as recommended by staff.

Encad, Inc., SR FH 97-560858; 100643
1-1-99 to 9-30-00, \$62,079.80

Action: Approve refund as recommended by staff.

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Urban Machinery Inc., SR OH 97-649133; 131254
7-1-00 to 3-31-01, \$55,304.97

Action: Approve refund as recommended by staff.

Wells Fargo Financial Acceptance, SR OHA 97-928689; 144252
10-1-97 to 12-31-00, \$2,775,897.69

Action: Approve refund as recommended by staff.

Green Arrow, SR X AC 98-038221; 144157
7-1-98 to 6-30-01, \$93,886.98

Action: Approve refund as recommended by staff.

The Gillette Company, SR Z OHB 98-042012; 89002096340
4-1-95 to 3-31-99, \$53,785.76

Action: Approve refund as recommended by staff.

Microstrategy Inc., SR OHB 99-261280; 105278
1-1-96 to 12-31-98, \$65,631.06

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

DJ Parker Company, Inc., SR EH 99-767134; 15750
10-1-97 to 6-30-98, \$65,135.66

Action: Approve refund as recommended by staff.

Technical Maint. & Installation, SR S EA 99-830768; 129504
4-1-98 to 3-31-01, \$69,899.99

Action: Approve refund as recommended by staff.

Roche Laboratories Inc., SR S OHB 99-922813; 135190
10-1-99 to 12-31-99, \$90,143.11

Action: Approve 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. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Ms. Mandel not participating in *Tosco Corporation, MD MT 07-000977; 87195*, and *Massachusetts*

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Mutual Life Insurance Company, IT ET 34-000115; 133892, in accordance with Government Code section 7.9, the Board made the following orders:

Tosco Corporation, MD MT 07-000977; 87195
10-1-98 to 10-31-98, \$218,749.84

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

Ultramar Inc., DD MT 57-250042; 91410
9-1-98 to 10-31-98, \$349,498.85

Action: Approve the refund as recommended by staff.

Massachusetts Mutual Life Insurance Company, IT ET 34-000115; 133892
1-1-99 to 12-31-99, \$868,528.53

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

PROPERTY TAX MATTERS, CONSENT

With respect to the Property Taxes Matter, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang 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:

Petitions for Reassessment of 2001 Unitary Value

Pacific Gas & Electric Company (135), SAU 01-030, 131270
2001, \$12,261,600,000.00 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.

ICG Telecom of San Diego, Inc. (2433), SAU 01-009; 130772
2001, \$47,500,000.00 Value

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

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360 Networks (USA), Inc. (7779), SAU 01-020, 130876

2001, \$109,600,000.00 Value

Action: Modify the petition for reassessment of 2001 unitary value 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

Bay Area Teleport, Inc. (2131), SAU 01-011; 130781

2001, \$160,700,000.00 Value

\$ 16,070,000.00 Penalty

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

ICG Telecom Group, Inc. (2462), SAU 01-010; 130779

2001, \$262,100,000.00 Value

\$ 20,000,000.00 Penalty

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

Petition for Penalty Abatement on 2001 Unitary Value

Western States Microwave Transmission Company (2019), SAU 01-052; 141645

2001, \$317,000.00 Value

\$ 31,700.00 Penalty

Action: Grant 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.

Net2000 Communications Services, Inc., (7888), SAU 01-053; 142275

2001, \$434,000.00 Value

\$ 43,400.00 Penalty

Action: Grant 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.

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

With respect to the Property Taxes Matter Not Subject to Contribution Disclosure Statute Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang 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:

Unitary Escaped Assessments

Concert Global Networks USA, LLC (7881)
2001, \$68,000,000.00 Escaped Assessment
 \$ 6,800,000.00 Penalty
 \$ 6,120,000.00 Assessment in lieu of Interest

Concert USA, GP (7882)
2001, \$2,185,800.00 Escaped Assessment
 \$ 218,580.00 Penalty
 \$196,722.00 Assessment in lieu of Interest

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

Audits

Qwest Communications Corporation (2463)
1997, \$17,400,000.00 Escaped Assessment
 \$ 1,740,000.00 Penalty
 \$ 7,308,000.00 Assessment in lieu of Interest
1998, \$ 8,500,000.00 Escaped Assessment
 \$ 850,000.00 Penalty
 \$ 2,805,000.00 Assessment in lieu of Interest
1999, \$ 4,800,000.00 Escaped Assessment
 \$ 480,000.00 Penalty
 \$ 1,152,000.00 Assessment in lieu of Interest
2000, \$ 3,100,000.00 Escaped Assessment
 \$ 310,000.00 Penalty
 \$ 465,000.00 Assessment in lieu of Interest

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

Nextlink of California, Inc., (7560)

1999, \$5,580,000.00 Escaped Assessment
\$ 527,189.00 Penalty
\$1,265,253.00 Assessment in lieu of Interest
2000, \$5,230,000.00 Escaped Assessment
\$ 523,000.00 Penalty
\$ 784,500.00 Assessment in lieu of Interest

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

Covad Communications Company (7706)

1998, \$ 726,000.00 Escaped Assessment
\$ 72,600.00 Penalty
\$ 239,580.00 Assessment in lieu of Interest
1999, \$1,770,000.00 Escaped Assessment
\$ 177,000.00 Penalty
\$ 424,800.00 Assessment in lieu of Interest
2000, \$2,580,000.00 Escaped Assessment
\$ 258,000.00 Penalty
\$ 387,000.00 Assessment in lieu of Interest

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

BUSINESS TAXES APPEALS HEARINGS

Richard Skale, SR FHB 99-942831; 89002443310

7-1-88 to 9-30-96, \$71,002.88 Tax, \$3,546.49 Penalty, Failure to File

For Petitioner: Mary L. O'Brien, Representative
Richard Skale

For Sales and Use Tax Department: Robert Tucker, Counsel

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

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Issues: Whether the evidence shows that the audited taxable sales are excessive.
Whether relief from the penalty for failure to file returns is warranted.

Action: 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 Failure to File penalty be deleted.

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 be submitted for decision.

Edward Y. and Vergine Misserlian, SR BH 19-683483; 33178
1-1-95 to 3-31-98, \$104,116.74 Tax, \$00.00 Penalty, Negligence

For Petitioner: Edward R. Sarti, Counsel
Edward Misserlian

For Sales and Use Tax Department: James M. Stillwell, Counsel

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

Issues: Whether sufficient documentation has been submitted to prove that certain disallowed claimed nontaxable sales were valid sales for resale.

Whether sufficient documentation has been submitted to prove that certain disallowed claimed exempt sales were valid sales in interstate commerce.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang and Mr. Andal voting yes, Ms. Mandel abstaining, Mr. Klehs absent, the Board ordered that the disputed measure of tax be reduced by 25 percent.

Basics Etc., Corporation, SR EH 17-710206; 89000204000
10-1-93 to 12-31-96, \$20,749.83 Tax

For Petitioner: Abe Golomb, Representative

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

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

Issue: Whether the resale certificates that petitioner accepted from its customers were valid resale certificates taken in good faith, thus sales to its customers were nontaxable.

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Action: Upon motion of Mr. Andal and unanimously carried, Mr. Parrish, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be submitted for decision, directing the Appeals Section to bring the matters back before the Board with a final recommendation at the February 2003 Sacramento Board meeting.

The Board recessed at 12:30 p.m. and reconvened at 2:00 p.m. with Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel.

BUSINESS TAXES APPEALS HEARINGS

Attorney's Diversified Services, SY KH 28-674959; 89000744890, 89000744900
4-1-93 to 12-31-93, \$11,167.45 Tax, \$00.00 Penalty, Negligence
1-1-94 to 3-31-96, \$140,713.70 Tax

For Petitioner: Abe Golomb, Representative
Peter Cunningham, President

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issues: Whether the evidence establishes that petitioner is entitled to a reduction in the taxable measure for excess tax reimbursement collected on an exempt sale in interstate commerce.

Whether relief from a portion of the tax is warranted based on erroneous advice petitioner allegedly received in a prior audit.

Whether the evidence establishes that petitioner's charges for photocopying medical records at a customer's location constituted nontaxable services in connection with the service of a subpoena duces tecum or letter authorization presented by an attorney.

Whether the evidence shows that petitioner's shipping and handling fees are nontaxable charges.

Whether excess tax reimbursement collected from one transaction may be used to offset tax due on another separate transaction.

Whether the evidence shows that certain computer equipment purchased from InVzn Development Corporation was purchased for use outside this state.

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.

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ADMINISTRATIVE MATTER**CUSTOMER SERVICES AND ADMINISTRATIVE EFFICIENCY COMMITTEE**

Jerri Dale, Chief, Customer and Taxpayer Services Division, made introductory remarks regarding the Customer Services and Administrative Efficiency Committee report.

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 approved the 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. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel abstaining, the Board approved an amendment to action Item 2 from approval of industry version to staff's recommended version of Regulation 1507

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 approved the amended Business Taxes Committee report.

PUBLIC HEARING**PROPERTY TAXPAYERS' BILL OF RIGHTS HEARING**

Jennifer Willis, Chief, Taxpayer Rights Advocates Office, made introductory remarks regarding the Property Taxpayers' Bill of Rights Annual Report.

Speakers: Pamela G. Wiese

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FINAL ACTION ON PETITIONS HEARD DECEMBER 20, 2001

Upon motion of Mr. Klehs, seconded by Mr. Andal and duly carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish voting no, the Board ordered that the petition of *Richard Skale, SR FHB 99-942831; 89002443310*, be redetermined as recommended by the Appeals Section.

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 of *Attorney's Diversified Services, SY KH 28-674959; 89000744890, 89000744900*, be redetermined as recommended by the Appeals Section.

The Board adjourned at 2:35 p. m.

The foregoing minutes are adopted by the Board on February 6, 2002.