

WEDNESDAY, MARCH 27, 2002

The Board met at its offices at 450 N Street, Sacramento, at 9:35 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

### **ADMINISTRATIVE SESSION**

#### **PROPOSED CONTRACTS OVER \$1 MILLION**

Dade Powers, Chief, Administrative Support Division, reported the items before the Board are 2001-02 contracts that require Board Member approval prior to being established (Exhibit 3.11).

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the 2001-02 contracts over \$1 million with the exception of the Department of General Services contract.

Upon motion of Mr. Klehs, seconded by Ms. Mandel and duly carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal voting no, the Board adopted staff recommendation to amend the Department of General Services contract.

Exhibits to these Minutes are incorporated by reference.

#### **REQUEST FOR BOARD MEETING LOCATION CHANGE**

Deborah Pellegrini, Chief, Board Proceedings Division, request Board Meeting Location change for November 12, 2002 from Sacramento to Oakland (Exhibit 3.12).

Upon motion of Mr. Andal, seconded by Mr. Klehs and duly carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang voting no, the Board denied the location change.

#### **ADMINISTRATIVE MATTERS, CONSENT**

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

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 3.13).

Emil Pollak, Business Taxes Compliance Specialist, San Francisco District Office

Margaret Rangel, Tax Technician II, Rancho Mirage Branch Office

Richard S. Morikawa, Jr., Business Taxes Specialist I, Santa Ana District Office

Camille Bush, Legal Secretary, Legal Division, Headquarters

Clintonia Hawkins, Tax Technician I, San Francisco District Office

John F. Sheehy III, Supervising Tax Auditor, Van Nuys District Office

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Action: Adopt the Board Meeting Minutes of January 9-10, 2002 and February 5-6, 2002.

Action: Adopt revisions to Audit Manual Chapter 13 (Exhibit 3.14).

## **BOARD COMMITTEE REPORTS**

### **Legislative Committee**

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the Legislative Committee report (Exhibit 3.15).

### **Business Taxes Committee**

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report (Exhibit 3.16).

### **Customer Services and Administrative Efficiency Committee**

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report (Exhibit 3.17).

### **Property Tax Committee**

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the Property Tax Committee report (Exhibit 3.18).

## **CHIEF COUNSEL MATTERS**

### **RULEMAKING**

#### **Re-Adoption of Emergency Property Tax Rule 138, Exemption of Aircraft Being Repaired, Overhauled, Modified or Serviced**

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted *Emergency Property Tax Rule 138, Exemption of Aircraft Being Repaired, Overhauled, Modified or Serviced*.

#### **Property Tax Rule 135, Homeowners' Property Tax Exemption, Section 100 Change**

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted the section 100 changes to *Property Tax Rule 135, Homeowners' Property Tax Exemption*.

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**Motor Vehicle Fuel Tax Regulations and Diesel Fuel Tax Regulations, Section 100 Change**

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted the section 100 changes to *Motor Vehicle Fuel Tax Regulations and Diesel Fuel Tax Regulations 1111, 1122, 1137, 1177, 1413, and 1470.*

**PROPERTY TAX MATTERS****State Assessee Petition for Reassessment of Unitary Value*****Consideration of Findings and Decisions***

All American Pipeline LP, 130880

2001, \$96,600.00 Value

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and duly carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang voting no, Ms. Mandel not participating, the Board approved the Finding and Decision as recommended by staff reducing the 2001 unitary value.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Nypro San Diego, Inc., 78514

1-1-96 to 6-30-99, \$32,466.60 Tax

Considered by the Board: November 6, 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. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

NCI Successor, Inc., 89002447210, 89002447200

1-1-91 to 3-31-94, \$16,234.30 Claim for Refund

\$00.00 Penalty, Failure to Timely Pay

5-23-97 to 2-24-98, \$30,179.63 Claim for Refund

Zarcon Corporation, 89000578220

7-1-93 to 6-30-96, \$10,697.71 Claim for Refund

Advanced Coating Technology, Inc., 89000613020

7-1-93 to 3-31-94, \$27,512.00 Claim for Refund

Considered by the Board: November 7, 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. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered the claim for refund be granted.

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Omnitrition International, Inc., 89000882520

7-1-93 to 6-30-96, \$1,134,507.59 Tax

Considered by the Board: November 25, 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. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the petition be granted with respect to the Omni Trim Extra Product.

Upon motion of Mr. Andal, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the petition be granted with respect to the WOW and Java Trim Extra Products.

Upon motion of Mr. Andal, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the petition be granted with respect to the OmniFit Product.

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

Z.E.I. Acquisition Corporation, 89002234310

10-1-93 to 9-30-96, \$1,473,045.00 Tax

Considered by the Board: February 6, 2002

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. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the petition be redetermined with adjustments.

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

Candice A. Linquist, 53026

1997, \$3,562.00 Tax

\$890.50 Penalty, Late Filing

\$890.50 Penalty, Notice and Demand

Considered by the Board: June 21, 2001

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. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board and imposing a \$1,000 frivolous appeal penalty.

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Kevin P. Linquist, 53028

1996, \$7,293.00 Tax

\$1,823.25 Penalty, Late Filing

\$1,823.25 Penalty, Notice and Demand

1997, \$7,487.00 Tax

\$1,871.75 Penalty, Late Filing

\$1,871.75 Penalty, Notice and Demand

Considered by the Board: June 21, 2001

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. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board and imposing a \$1,000 frivolous appeal penalty.

Mark D. Perry, 62413

1996, \$7,233.00 Tax

\$1,808.25 Penalty, Notice and Demand

1997, \$140.11 Tax

\$1,446.60 Penalty, Accuracy Related

Considered by the Board: June 21, 2001

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. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted a decision to sustain the action of the Franchise Tax Board and deny the petition for rehearing.

#### **HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, ADJUDICATORY**

Willemena Grodon, 113498

2000, \$1.00 or more Claim for Refund

Considered by the Board: February 6, 2002

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. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Venicio F. Jesuitas, 129875

2000, \$1.00 or more Claim for Refund

Considered by the Board: February 6, 2002

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

Alfred Aguirre, 138471

2001, \$1.00 or more Claim for Refund

Considered by the Board: February 6, 2002

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. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

#### **PROPERTY TAX MATTERS, ADJUDICATORY**

Sierra Pacific Industries, 129687

7-1-97 to 6-30-00, \$89,562.24 Claim for Refund

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Andal. No other contributions were disclosed.

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

#### **LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of this matter: *SFPP, LP, 83144*.

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

The Pub at Tahoe Seasons, Inc., 88012, 88015

1-1-97 to 3-31-99, \$5,965.59 Tax

Action: Redetermine as recommended by the Appeals Section.

Nipon Mathiyakom, 89002450710, 89000097420

7-1-96 to 6-30-98, \$00.00 Tax

\$00.00 Penalty

10-1-94 to 3-31-98, \$00.00 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

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SFPP LP, 83144

3-7-98 to 6-30-99, \$00.00 Tax

Action: The Board took no action.

Edward G. Staiger, 89002144920, 89002144910

1-1-93 to 6-30-95, \$17,708.73 Tax

\$00.00 Penalty, Fraud

\$1,772.42 Penalty, Negligence

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

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

The Board deferred consideration in the following matters: *Brian Pierce, 118227; Etienne Graves, 136798; Steven G. Dunmore, 88986; and Manuel R. Diaz, 118706.*

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

Eduardo H. and Estela P. Manaig, 99281

1994, \$893.00 Assessment

1995, \$3,455.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Richard Schachter, 102318

1992, \$9,816.24 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Darryl and Regina Arnold, 110560

1993, \$772.00 Assessment

1994, \$1,359.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

John H. Vories, 111259

1998, \$2,364.00 Tax

\$591.00 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board and impose a \$1,500.00 frivolous appeal penalty.

Donald C. and Ingrid A. Graham, 113513

1999, \$3,568.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Franz E. and (Margaret) Peggy Fischer, 114268

1997, \$5,496.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Richard and Jane Paxman, 115057

1996, \$5,600.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Brian Pierce, 118227

1997, \$1.00 or more Assessment

Action: The Board took no action.

Marcy Martin, 128292

1993, \$366.65 Claim for Refund

1997, \$366.65 Claim for Refund

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

Jerry Cartwright, 129438

1993, \$5,318.90 Claim for Refund

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

Jane E. Evans, 130108

1998, \$1,414.08 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

George and Monica Torrez, 133513

1998, \$257.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Haruko Saito, 133963

1997, \$18.31 or more Assessment

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

Vernon E. Miller and Estate of Mary J. Miller, 135868

1983, \$1.00 or more Claim for Refund

1984, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Charles W. Fink, 136794

1997, \$611.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Etienne and Denise Graves, 136798

1997, \$540.00 Assessment

Action: The Board took no action.

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**Raymond C. Newbert, 56348**

1997, \$3,935.00 Tax

\$983.75 Penalty, Late Filing

\$983.75 Penalty, Failure to File

Action: Deny the petition for rehearing.

**Jason R. Fanugo, 57645**

1997, \$1,529.00 Tax

\$382.25 Penalty, Late Filing

Action: Deny the petition for rehearing.

**Steven G. Dunmore, 88986**

1987, \$28,424.00 Tax

1991, \$59,559.00 Tax

\$11,911.80 Penalty

1992, \$14,133.00 Tax

\$2,826.60 Penalty

1993, \$81,521.00 Tax

\$36,678.70 Penalty

Action: Deferred consideration of this matter to allow additional briefing.

**Amare Teferi and Belainesh Belatches, 92504**

1993, \$1,530.00 Assessment

Action: Deny the petition for rehearing.

**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: Deny the petition for rehearing.

**Robert R. and Barbara T. Woore, 113633**

1997, \$252.00 Assessment

Action: Deny the petition for rehearing.

**Manuel R. Diaz, 118706**

1976, \$3,051.86 Claim for Refund

Action: Deferred consideration of this matter to allow additional briefing.

**Daniel Morisette, 119108**

1991, \$25,836.86 Claim for Refund

Action: Deny the petition for rehearing.

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

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

**Reginald E. Williams, 112206**

1998, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**David W. White, 115437**

2000, \$1.00 or more Claim for Credit

Action: Reverse the action of the Franchise Tax Board.

**Yasuji Ohta, 118699**

1998, \$350.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Jimisha Florence, 131869**

2000, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**B. J. Coppedge, 134576**

2000, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**B. J. Coppedge, 134582**

2000, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Barbara Love, 135966**

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Betty J. Bryant, 136777**

2001, \$250.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Catherine Walker, 139126**

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Morgan E. Rogers, 139138**

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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JoAnn Greer, 111777

2000, \$600.00 Claim for Credit

Action: Deny the petition for rehearing.

Patrick Tompkins, 127006

2000, \$1.00 or more Claim for Credit

Action: Sustain the action with concession by the Franchise Tax Board and deny the petition for rehearing.

Ralph M. Smith, 129774

2000, \$240.00 Claim for Credit

Action: Deny the petition for rehearing.

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

The Board deferred consideration of this matter: *Starbucks Corporation, 99802.*

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang not participating in *SMC Corporation of America, 63158*, the Board made the following orders:

Bay City Electric Works Inc., 135343

7-1-97 to 9-30-00, \$73,314.03

Action: Approve the redetermination as recommended by staff.

Madge Networks Inc., 113122

1-1-97 to 12-31-99, \$58,412.50

Action: Approve the redetermination as recommended by staff.

Fox Photo Inc., 61909

7-1-94 to 8-31-98, \$105,584.15

Action: Approve the redetermination as recommended by staff.

Starbucks Corporation, 99802

7-1-96 6-30-99, \$4,811,208.92

Action: The Board took no action.

MDFC Loan Corporation, 138815

12-30-99 to 12-30-99, \$294,229.91

Action: Approve the redetermination as recommended by staff.

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**Broder Bros. Co., 118271**

7-1-97 to 6-30-00, \$237,401.65

Action: Approve the redetermination as recommended by staff.

**Holiday Marine Sales, LLC, 139098**

10-1-97 to 6-30-00, \$61,329.32

Action: Approve the redetermination as recommended by staff.

**SMC Corporation of America, 63158**

7-1-99 to 3-31-00, \$91,142.56

Action: Approve the denial of claim for refund as recommended by staff. Mr. Chiang not participating.

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

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

**Harris Corporation, 157860**

7-1-97 to 12-31-97, \$214,916.57

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

**Ampex Data Systems Corporation, 157995**

10-1-00 to 12-31-00, \$64,273.29

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

**Sea Vision I LLC, 157276**

9-16-98, \$216,326.39

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

**The George Family Living Trust, 156624**

12-9-96, \$77,732.50

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

**Alpen LLC, 157589**

11-16-99, \$107,638.84

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

**William N. Zabit, 157864**

5-12-00, \$59,152.69

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

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**O'Neil Group Inc., 157159**

4-1-01 to 6-30-01, \$85,398.66

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

**Keylex Inc., 155883**

1-1-98 to 3-31-01, \$52,665.53

Action: Approve the refund as recommended by staff.

**Steve Taub Inc., 156368**

4-1-98 to 3-31-01, \$75,991.23

Action: Approve the refund as recommended by staff.

**Commercial Press Inc., 156706**

4-1-01 to 12-31-01, \$214,531.14

Action: Approve the refund as recommended by staff.

**Hussmann Corporation, 60495**

1-1-97 to 9-30-98, \$311,116.23

Action: Approve the refund as recommended by staff.

**Hitachi Leasing America LTD, 80556**

1-1-98 to 3-31-00, \$136,456.23

Action: Approve the refund as recommended by staff.

**Stone & Youngberg LLC, 155890**

7-1-98 to 9-30-01, \$94,486.60

Action: Approve the refund as recommended by staff.

**Delaware Ariba, Inc., 145277**

5-1-98 to 3-31-01, \$54,430.42

Action: Approve the refund as recommended by staff.

**Tokyo Electron Limited, 79363**

1-1-98 to 3-31-99, \$90,584.64

Action: Approve the refund as recommended by staff.

**Commonwealth Aluminum Concast Inc., 155931**

1-1-98 to 12-31-00, \$166,314.34

Action: Approve the refund as recommended by staff.

**Corpworks, 155926**

7-1-98 to 6-30-01, \$86,796.09

Action: Approve the refund as recommended by staff.

**Sorrento Networks, Inc., 143605**

2-1-00 to 12-31-00, \$91,494.64

Action: Approve the refund as recommended by staff.

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**Pacific Bell, 138877**

1-1-94 to 12-31-97, \$3,334,139.29

Action: Approve the refund as recommended by staff.

**The Straumann Company, 134001**

4-1-98 to 6-30-01, \$868,661.77

Action: Approve the refund as recommended by staff.

**Red Lion Hotels Inc., 143618**

4-1-99 to 6-30-99, \$86,023.86

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang not participating in *Applied Materials, Inc., 157453*, and Ms. Mandel not participating in accordance with Government Code section 7.9 in *Great Southern Life Insurance Company, 131273*, the Board made the following orders:

**Applied Materials, Inc., 157453**

1-1-00 to 12-31-00, \$72,454.22

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

**Great Southern Life Insurance Company, 131273**

1-1-98 to 12-31-99, \$178,667.27

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

**Costco Wholesale Corporation, 153357**

9-10-01 to 9-30-01, \$62,243.53

Action: Approve the refund as recommended by staff.

**Costco Wholesale Corporation, 153356**

9-10-01 to 9-30-01, \$114,697.94

Action: Approve the refund as recommended by staff.

**Costco Wholesale Corporation, 157942**

9-10-01 to 9-30-01, \$157,957.77

Action: Approve the refund as recommended by staff.

**Swedish Match North America, Inc., 153763**

10-01-01 to 10-31-01, \$51,783.37

Action: Approve the refund as recommended by staff.

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**SPECIAL TAXES MATTERS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Special Taxes Matters, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Fremont Indemnity Company, 153548*, *Fremont Compensation Inc. Co., 153512* and *American General Life Ins. Co., 156285*, the Board made the following orders:

**Fremont Indemnity Company, 153548**

6-15-01 to 9-15-01, \$75,486.30

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

**Fremont Compensation Inc. Co., 153512**

6-15-01 to 9-15-01, \$184,308.60

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

**American General Life Ins. Co., 156285**

9-15-01 to 12-14-01, \$68,118.49

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

**MTC Distributing, 153358**

7-1-01 to 9-9-01, \$312,179.00

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

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

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

**Audits**

**Cox California Telecom, L.L.C. (7640)**

2000, \$1,700,000.00 Escaped Assessment

\$170,000.00 Penalty

\$255,000.00 Interest

2001, \$700,000.00 Escaped Assessment

\$70,000.00 Penalty

\$42,000.00 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.

**GoBeam, Inc. (7893)**

2001, \$743,000.00 Escaped Assessment

\$74,300.00 Penalty

\$44,580.00 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.

**Unitary and Nonunitary Escaped Assessments****Pacific Gas and electric company (135)**

1998-2000, \$2,029,368.00

Action: Adopt unitary and nonunitary escaped assessments as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**Sierra Pacific Power Company (146)**

1998-1999, \$211,900.00

Action: Adopt nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**Union Pacific Railroad Company (843)**

1999-2000, \$270,000.00

Action: Adopt nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**Sprint Spectrum L.P. (2722)**

2000, \$735,492.00

Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**Level 3 Communications, LLC (7761)**

2000, \$8,455,000.00

Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**Board Roll Changes**

Action: Approved Board Roll Changes as recommended by staff (Exhibit 3.19). Ms. Mandel not participating in accordance with Government Code section 7.9.

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**BUSINESS TAXES APPEALS HEARINGS**

Mohinderpal Singh Deol and Randeep Deol, 78617

1-1-96 to 11-15-96, \$3,388.27 Tax

\$338.82 Penalty, Failure to File

For Petitioner: Adolfo M. Corona, Counsel

For Sales and Use Tax Department: Judy Nelson, Counsel

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

Issues: Whether petitioner is liable for payment of the underground storage tank maintenance fee.

Whether relief from the 10 percent failure-to-file penalty is warranted.

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

William D. Courtright, 143318, 143325

7-1-94 to 6-30-97, \$15,447.14 Tax

\$00.00 Penalty, Negligence

For Petitioner: William D. Courtright

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

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

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

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

Daniel Joseph Cullinan, Mark B. Raynaud, and Richard Griffith, 89000694310

4-1-94 to 4-30-96, \$37,834.85 Tax

\$3,783.48 Penalty, Negligence

For Petitioner: Abe Golomb, Representative

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

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

Issues: Whether an allowance should be made for nontaxable installation labor in connection with petitioner's sale and installation of tangible personal property.

Whether petitioner has met its burden of proving that the Board's determination of the measure of tax, based upon a federal income tax return, is overstated.

Whether petitioner made a nontaxable distribution to a partner, rather than a taxable sale of fixed assets upon its dissolution.

Whether relief from the negligence penalty is warranted.

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

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the matter be taken under submission granting the petitioner 30 days to provide additional documentation, the Department 30 days to review the documentation and the Appeals Section 30 days thereafter to bring the matter before the Board with a final recommendation including input on the fraud penalty as recommended by Mr. Klehs.

Crane, Borkenhagen, Enterprises, Inc., 30686

10-1-95 to 9-30-98, \$75,924.34 Tax

\$00.00 Penalty, Negligence

For Petitioner: Kathleen Borkenhagen, Corporate Secretary

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 establishes that the food markup is excessive.

Whether the evidence shows that petitioner included mandatory tips in reported taxable sales.

Action: Mr. Parrish moved to discount credit card sales by 20 percent. Mr. Chiang made a substitute motion to reduce the taxable measure by 15 percent. The motion was seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes.

### **FINAL ACTION ON PETITION HEARD MARCH 27, 2002**

The Board expunged the final action in the petition of *William D. Courtright*, 143318, 143325.

### **PUBLIC HEARINGS**

#### **Proposed Adoption of Property Tax Rule 21, Taxable Possessory Interests-Valuation, Proposed Repeal of Property Tax Rule 23, Written Agreements as to Term of Possessory Interests, Rule 24, Possessory Interest Rights to be Valued, Rule 25, Valuation of Post-De Luz Possessory Interests, and Rule 26, Valuation of Pre-De Luz Possessory Interests**

Larry Augusta, Assistant Chief Counsel, Legal Division, stated for the record that the Board is proposing to amend *Rule 21* and delete *Rules 23, 24, 25, and 26*. These rules all relate to the valuation of taxable possessory interests for property tax purposes. The amendment and deletion of these rules is proposed to (1) combine the regulatory provisions relating to the valuation of taxable possessory interests in one unified rule, (2) implement the court's holding in *American Airlines, Inc. v. County of Los Angeles* 65 Cal.App.3d 325 (1976) with respect to the determination of the appropriate "term of possession," (3) delete those portions of the rules that

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are no longer valid or that no longer represent good appraisal practice, and (4) remedy intercounty inconsistencies with respect to the determination of the "term of possession" for valuation purposes.

Speakers: Erik Miethke, Partner, Nielsen, Merksamer, Parrinello, Mueller & Naylor LLP  
Wm. Gregory Turner, General Counsel, California Taxpayers' Association  
Thomas Parker, Representative, El Dorado County Counsel, California  
Assessors' Association

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted the amendment to *Property Tax Rule 21* and deleted *Property Tax Rules 23, 24, 25* and *26* as published.

#### **Proposed Adoption of Property Tax Rule 138, Exemption for Aircraft Being Repaired, Overhauled, Modified or Serviced**

Larry Augusta, Assistant Chief Counsel, Legal Division, stated for the record that *Property Tax Rule 138* will make clear that the exemption provided by section 220 applies to aircraft which are located in California while out of revenue service due to the downturn in air carrier business in the aftermath of the terrorists attacks of September 11, 2001, where such aircraft are serviced in accordance with FAA requirements. The broad objective of the rule is to encourage air carriers to service their aircraft in California while the aircraft is out of revenue service. The benefit to California is the aircraft maintenance and repair work that will accrue to California businesses. The proposed rule is intended to make clear that the terms "aircraft . . . in California . . . solely for the purpose of being repaired, overhauled, modified, or serviced" includes necessary and attendant storage and that exempt aircraft are not valued under Rule 202.

Speakers: Barry Bosscher, Special Assistant, Los Angeles County Assessor  
John White, President, Southern California Aviation LLC  
Erik Miethke, Partner, Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP  
James Holtquist, Managing Director – Tax, Air Transport Association  
Wm. Gregory Turner, General Counsel, California Taxpayer's Association  
James W. Mapels, Assessor-Recorder, County of Kern

Action: Upon motion of Mr. Klehs, seconded by Mr. Parish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted *Property Tax Rule 138* as published.

#### **Proposed Adoption of Property Tax Rule 139, Restricted Access as Damage Eligible for Reassessment Relief Pursuant to section 170**

Larry Augusta, Assistant Chief Counsel, Legal Division, stated for the record section 170 of the Revenue and Taxation Code authorizes a county board of supervisors to enact an ordinance that provides for the reassessment of property damaged or destroyed by misfortune or calamity as of the date of occurrence of the damage or destruction. For purposes of applying section 170, the proposed rule interprets damage or destruction as including restricted access that

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results in a diminution of the property's value. Restricted access resulting in a diminution of property value constitutes damage or destruction within the meaning of section 170 because it imposes a physical limitation on the use of property that adversely affects its value. The proposed rule also provides that reassessment relief may be granted only for the duration of the period of restricted access and prescribes the method of reappraisal for the period of restricted access and of reassessment at the termination of the period.

Speakers: Erik Miethke, Partner, Nielsen, Merksamer, Parrinello, Mueller & Naylovr LLP  
James Hultquist, Managing Director-Tax, Air Transport Association  
John D. Nibbelin, Deputy County Council, San Mateo County  
Marcy Berkman, Deputy County Council, Santa Clara County  
Wm. Gregory Turner, General Counsel, California Taxpayer's Association

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted *Property Tax Rule 139* published.

**Proposed Adoption of Property Tax Rules 255, Enrollment of Supplemental Assessments, Rule 263, Roll Corrections, Rule 264, Base Year Value Corrections, Rule 265, Board Ordered Roll Changes, Proposed Amendment of Property Tax Rules 252, Content of Assessment Roll, Rule 254, Use of Board-Prepared Roll as Unextended Roll, Rule 261, Penalties, Form and Manner of Entry, Proposed Repeal of Property Tax Rules, Rule 253, Machine Prepared Roll; Controls, Rule 256, Tape Storage of Roll Data, Rule 262, Indexing Assessments of Escaped Property, Proposed Renumber of Property Tax Rule, and Rule 304, Location of Local Roll for Inspection**

Larry Augusta, Assistant Chief Counsel, Legal Division, stated for the record the Board is proposing to amend three rules, to add four rules, to repeal three rules, and to renumber one rule to update and clarify the local assessment roll procedures by (1) conforming the rules to statutory requirements for inclusion of specific items on the assessment roll, (2) interpreting applicable statutes of limitations for making roll corrections, (3) reflecting current technology in the electronic format used for roll processing and record keeping, and (4) deleting outdated procedures not required by statute.

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

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted *Property Tax Rules 255, 263, 264 and 265*, amended *Rules 252, 254 and 261*, repealed *Rules 253, 256 and 262*, and renumber *Rule 304* as published.

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**Proposed Adoption of Motor Vehicle Fuel Tax Law Regulations 1123, 1124, 1161 and 1178; Amendment of Regulations 1101, 1105, 1120, 1132 and 1134; and Repeal of Regulations 1103, 1104, 1106, 1107, 1108, 1114, 1115, 1116, 1117, 1118, 1119, 1121, 1131, 1133, 1151, 1152, 1153, 1154, 1155, 1171, 1172, 1173, 1174, 1175, and 1176 and Adoption of Diesel Fuel Tax Law Regulations 1435 and 1436, Amendment of Regulations 1420, 1422, and 1430**

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record the Motor Vehicle Fuel Tax Law and Diesel Fuel Tax Law regulations implement statutory changes in fuel tax laws respecting definitions, exemptions, and imposition of tax at the rack.

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

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted *Motor Vehicle Fuel Tax Law Regulations 1123, 1124, 1161 and 1178*; amended *Regulations 1101, 1105, 1120, 1132 and 1134*; and repealed *Regulations 1103, 1104, 1106, 1107, 1108, 1114, 1115, 1116, 1117, 1118, 1119, 1121, 1131, 1133, 1151, 1152, 1153, 1154, 1155, 1171, 1172, 1173, 1174, 1175 and 1176*; and adopted *Diesel Fuel Tax Law Regulations 1435 and 1436*; and amended *Regulations 1420, 1422 and 1430* as published.

**Proposed Adoption of Sales and Use Tax Regulation 1507, Technology Transfer Agreements**

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record *Regulation 1507, Technology Transfer Agreements*, is proposed to interpret, implement and make specific Revenue and Taxation Code sections 6011 and 6012. The regulation is proposed to incorporate the California Supreme Court decision in *Preston vs. State Board of Equalization*; clarify how the statutory language applies to technology transfer agreements that include transfers of patent interests; and describe the application of tax to technology transfer agreements.

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

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted *Sales and Use Tax Regulation 1507* as published.

**Proposed Adoption of Sales and Use Tax Regulation 1525.7 Rural Investment Tax Exemption**

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record proposed *Regulation 1525.7, Rural Investment Tax Exemption*, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code section 6378.1.

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

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted *Sales and Use Tax Regulation 1525.7* as published.

### **Proposed Adoption of Sales and Use Tax Regulation 1533, Liquefied Petroleum Gas**

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record *Sales and Use Tax Regulation 1533, Liquefied Petroleum Gas*, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code section 6353, granting an exemption from tax for sales of liquefied petroleum gas under defined conditions. (AB 426, Stats. 2001, Ch. 156, § 3.) In addition, Mrs. Thurston requested the Board's approval of a non-substantive change that removes the word "partial" from the Exemption Certificate to accurately reflect the "full" nature of this exemption.

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

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted *Sales and Use Tax Regulation 1533* as published.

### **Proposed Adoption of Sales and Use Tax Regulation 1533.1, Farm Equipment and Machinery**

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record *Sales and Use Tax Regulation 1533.1, Farm Equipment and Machinery*, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code section 6356.5, granting a partial exemption from tax for sales of farm equipment and machinery under defined conditions (AB 426, Stats. 2001, Ch. 156, § 4).

Speakers: John Gamper, Director, Tax and Land Use, Farm Bureau

Mr. Klehs stated for the record he would be voting against two items within *Regulation 1533.1*, agricultural operating structures and personal property becoming real property.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted *Sales and Use Tax Regulation 1533.1* as published excluding items agricultural operating structures and personal property becoming real property.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board adopted *Sales and Use Tax Regulation 1533.1* items agricultural operating structures and personal property becoming real property.

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**Proposed Adoption of Sales and Use Tax Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing**

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record *Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing*, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code section 6357.1, granting a partial exemption from tax for sales of diesel fuel used in farming activities or food processing under defined conditions (AB 426, Stats. 2001, Ch. 156, § 6).

Speakers: Louie Brown, Representative, Kahn, Soares & Conway  
Chris Micheli, Representative, Carpenter Snodgrass  
Joshua Shaw, Executive Director, California Transit Association  
Robert Naylor, Representative, Los Angeles County MTA  
Shane Gusman, Teamsters, Amalgamated Transit Union  
James Gleich, Deputy General Manager, AC Transit  
John F. Foran, Attorney, Advocate MTC  
Eric Stein, Legislative Representative, Wine Institute  
Rebecca Long, Legislative analyst, Metropolitan Transportation Commission  
Suzanne D. Fox, Legislative Policy Director, Consultant, Monterey-Salinas Transit  
Mike Robson, Edelstein & Gilbert, San Francisco City & County MUNI  
Peter Spaulding, Executive Director, California Association for Coordinated Transportation

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted the following change to subdivision (b)(4), Example C. New sentence added: "Cannery A and Cannery B are different divisions of the same food processing entity."

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted the following change to subdivision (b)(5). Connector ", and" and phrase "(except as otherwise described in Codes 2011 and 2015 of the SIC Manual)" is added to the second sentence.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted the following change to subdivision (b)(5) add the word "for" between sold and resale in the first sentence to correct typographical error.

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted the compromise language as presented by the Farming/Food Processing Coalition and the California Transit Association (Exhibit 3.20).

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the recommendation to send *Regulation 1533.2* to the 15-Day Rulemaking file.

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**Proposed Amendment of Sales and Use Tax Regulation 1616, Federal Areas**

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record *Regulation 1616, Federal Areas*, is proposed to be amended to interpret, implement and make specific Revenue and Taxation Code section 6352. Amendments are proposed to provide that to the extent the gross receipts from the sale or consumption of tangible personal property by non-Indians on reservations have reservation-based value, they are not included in the gross receipts subject to tax.

Speakers: Glenn M. Feldman, Attorney, Santa Ynez, San Pasqual, Cabazon Bands of Mission Indians  
Wendy Schlatten, La Jolla Tribal Chairwomen, La Jolla Band of Luiseno Indians  
Ralph LePera, Attorney, Bishop Paiute Tribe  
Don S. Kovacic, Attorney  
Monica Miller, Legislative Advocate, County of Santa Barbara  
Pat Leary, Legislative Representative, California Association of Counties  
Wm. Gregory Turner, General Counsel, California Taxpayers' Association

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted amendment to *Sales and Use Tax Regulation 1616, Federal Areas* as published.

**FINAL ACTION ON PETITION HEARD MARCH 27, 2002**

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that its previous motion in the petition of *William D. Courtright, 143318, 143325*, to redetermine the petition as recommended by the Appeals Section be expunged.

Mr. Parrish moved to reduce the pilferage rate to 6 percent. The motion was seconded by Mr. Andal but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon motion of Mr. Parrish, seconded by Mr. Andal and duly carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Ms. Mandel voting no the Board ordered the pilferage rate be reduced to 4 percent.

The Board adjourned at 2:45 p.m.

*The foregoing minutes are adopted by the Board on May 30, 2002.*