THURSDAY, APRIL 18, 2002

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair 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 9:35 a.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel present.

CLOSED SESSION

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

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

CHIEF COUNSEL MATTERS

RULEMAKING

Adoption of Changed Version 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) (Exhibit 4.6).

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish absent, the Board adopted the changed version of *Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing*.

Exhibits to these minutes are incorporated by reference.

Authorization to Publish Sales and Use Tax Regulation 1671.1, Rebates and Incentives

Janice Thurston, Assistant Chief Counsel, Legal Division, made introductory remarks regarding *Sales and Use Tax Regulation 1671.1, Rebates and Ince*ntives. Ms. Thurston stated for the record at the October 31, 2000, Business Taxes Committee meeting, where proposed revisions to Audit Manual, Chapter 9, Grocers, were presented for discussion the

revisions included the creation of a new section for the application of tax to buy-down rebates and incentive prograMs. Rather than making this change in the application of tax through the Audit Manual, the Business Taxes Committee directed staff to proceed through the regulatory process and present a proposed regulation on rebates and incentive prograMs. (Exhibit 4.7.)

Speakers: Peter Larkin, President, California Grocers Association
John Handley, California Independent Grocers Association

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 the language "oral contract" be deleted from *Regulation 1671.1, Rebates and Incentives*.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Parrish and Mr. Andal voting yes, Mr. Klehs voting no, Ms. Mandel abstaining and Mr. Chiang not participating, the Board adopted the industry's version of *Regulation 1671.1, Rebates and Incentives*.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative 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:

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 4.8).

Patricia Ann Lepe, Business Taxes Compliance Supervisor, Van Nuys District Office
Ramona A. Dean, Tax Technician II, Eureka Branch Office

BOARD COMMITTEE REPORTS

Legislative Committee

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 approved the Legislative Committee report (Exhibit 4.9).

Customer Services and Administrative Efficiency Committee

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel abstaining, the Board approved Item 1 of the Customer Services an Administrative Efficiency Committee report (Exhibit 4.10).

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 approved Item 2 of the Customer Services an Administrative Efficiency Committee report.

Property Tax Committee

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 Property Tax Committee report (Exhibit 4.11).

LEGAL APPEALS MATTERS, ADJUDICATORY

Action Medical Products, Inc., 57424
5-10-91 to 12-31-98, $865,982.00 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 duly carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, Mr. Chiang abstaining, the Board adopted the alternative Memorandum Opinion as proposed by Mr. Andal.

Casmalia Disposal, 89000924710
7-1-90 to 6-30-91, $421,200.00 Fee
Considered by the Board: March 13, 2002
Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Klehs. No other contributions were disclosed.
Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel voting no, Mr. Chiang abstaining and Mr. Klehs not participating, the Board ordered to grant the petition.

Conam Inspection, Inc., 89002320200
4-1-94 to 3-31-97, $62,686.12 Tax
Conam-MMP, Inc., 89000966320
4-1-95 to 12-31-97, $45,191.20 Tax
$00.00 Penalty, Failure to File
Considered by the Board: March 13, 2002
Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.
Action: Mr. Parrish moved that the measure of tax be reduced by 40 percent. The motion failed for lack of a second.
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 to delete the penalties, and redetermined the petition as recommended by the Appeals Section.

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LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals 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, Ms. Mandel not participating in *Avnet Inc., 89000228820*, the Board made the following orders:

Coleman B. Looney, 89000386250
7-1-94 to 6-30-97, ($18,185.54) Tax
$00.00 Penalty, Negligence
Action: Redetermine as recommended by the Appeals Section.

Energy Conversions, Inc., 89000676930, 89000676950
1-1-92 to 12-31-95, $176,562.10 Tax
10-1-94 to 12-31-95, $31,045.96 Tax
Action: Redetermine as recommended by the Appeals Section.

Pacificare Health Systems, Inc., 40927, 78626
6-1-96 to 12-31-97, $125,305.29 Claim for Refund
1-1-98 to 12-31-98, $2,945.28 Claim for Refund
Action: Redetermine as recommended by the Appeals Section.

Truxign, Inc., 82994, 66685
1-1-96 to 12-31-98, $13,262.69 Tax
Action: Redetermine as recommended by the Appeals Section.

Computervision Corporation, 89000819990
1-1-93 to 12-31-95, $248,640.13 Tax
Action: Redetermine as recommended by the Appeals Section.

SFPP, LP, 83144
3-7-98 to 6-30-99, $00.00 Tax
Action: Redetermine as recommended by the Appeals Section.

Avnet, Inc., 89000228820
1-7-91 to 6-30-95, $34,798.10 Tax
Action: Grant the petition for rehearing as recommended by the Appeals Section.
Ms. Mandel not participating.

Michael Keith Easley, 89002083430
1-1-95 to 6-30-98, $19,640.59 Tax
$00.00 Penalty, Failure to File
Action: Deny the petition for rehearing as recommended by the Appeals Section.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

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:

Caren Abdela, 62403
1997, $465.00 Tax
$116.25 Penalty, Late Filing
Action: Sustain the action of the Franchise Tax Board and impose a $1,000.00 frivolous appeal penalty.

Michael S. and Linda D. Bull, 88709
1994, $1,604.00 Tax
$399.00 Penalty, Late Filing
$320.80 Penalty, Accuracy Related
Action: Sustain the action of the Franchise Tax Board and impose a $1,000.00 frivolous appeal penalty.

Estate of Robert Macko and Estate of Mary Macko, 93410
1988, $3,759.00 Tax
$939.75 Penalty, Failure to File
1989, $4,213.00 Tax
$1,053.25 Penalty, Failure to File
Action: Sustain the modified action of the Franchise Tax Board.

Daniel Sundstrom, 106413
1998, $6,825.00 Tax
$1,706.25 Penalty, Late Filing
Action: Sustain the action of the Franchise Tax Board and impose a $1,000.00 frivolous appeal penalty.

David Easler, 111023
1998, $5,601.00 Tax
$1,400.25 Penalty, Late Filing
$1,400.25 Penalty, Notice and Demand
Action: Sustain the modified action of the Franchise Tax Board and impose a $1,000.00 frivolous appeal penalty.

Robert Dake, 115279
1998, $4,796.00 Tax
$1,199.00 Penalty, Late Filing
$1,199.00 Penalty, Notice and Demand
Action: Sustain the action of the Franchise Tax and impose a $1,000.00 frivolous appeal penalty.

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Robin D. Fortini, 118456
1997, $1,228.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Robert B. and Karen L. Keller, 118472
1997, $1,557.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Sharon Saunders, 118626
1998, $1,642.00 Tax
$410.50 Penalty, Late Filing
$537.50 Penalty, Notice and Demand
Action: Sustain the action of the Franchise Tax and impose a $2,500.00 frivolous appeal penalty.

Lydia Summers, 127693
1988, $306.03 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Joel Berryhill, Jr. and Julie Anderson, 129238
1997, $608.00 Tax
$100.00 Penalty, Late Filing
Action: Sustain the action of the Franchise Tax Board.

Edith I. Butler, 129429
1997, $1,671.00 Tax
$416.00 Penalty, Late Filing
Action: Sustain the action of the Franchise Tax Board.

Lawrence N. and Eris M. Field, 130131
1995, $3,844.00 Assessment
1996, $8,300.00 Assessment
1997, $1,579.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

David G. Lamons, 133700
1997, $295.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Alberto and Zonia Pullen, 134952
1993, $1,083.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

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Paul Krieg, 135119
1985, $1,383.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Richard A. and Suzanne L. Crooker, 135933
1992, $2,345.89 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

RI Partners, a California Limited Partnership, 136371
1997, $800.00 Claim for Refund
$400.00 Penalty, Late Filing
Action: Sustain the action of the Franchise Tax Board.

Etienne and Denise Graves, 136798
1997, $540.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

James J. Hill, Jr. and Alice L. Hill, 136799
1997, $1,600.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Edward Taapken, 139593
1996, $357.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Orville L. Roache, 97699
1998, $1,916.00 Tax
$479.00 Penalty, Late Filing
Action: Deny the petition for rehearing.

Ron and Beth Heffner, 106408
1996, $2,456.00 Assessment
Action: Deny the petition for rehearing.

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:

Linda Sarnataro, 126994
2000, $1.00 or more Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

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Freddie L. Wilson, 139215
1999, $1.00 or more Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Francesca Leonard, 140030
2001, $1.00 or more Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Dominique X. Thomas, 141699
2001, $240.00 Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Temeika S. Spates-Garrett, 145215
2001, $1.00 or more Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

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

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

AIO Corporation, 142130
4-1-98 to 12-31-00, $88.886.75
Action: Approve the redetermination as recommended by staff.

American Colloid Company, 109219
10-1-96 to 12-31-99, $141,992.66
Action: Approve the redetermination as recommended by staff.

Mercy Air Service Inc., 134293
12-13-93, $113,625.07
Action: Approve the redetermination as recommended by staff.

GRM Aviation Inc., 136123
1-4-00, $158,414.00
Action: Approve the redetermination as recommended by staff.

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Adelaide Leasing Company, 138692
5-18-00, $185,625.00
Action: Approve the redetermination as recommended by staff.

Gregory B. Chabrier, 141081
4-24-00, $195,937.50
Action: Approve the redetermination as recommended by staff.

Alpine Industries Inc., 93436
10-1-97 to 7-10-00, $176,602.33
Action: Approve the redetermination as recommended by staff.

Newell Operating Company, 115543
1-1-97 to 12-31-99, $1,269,402.40
Action: Approve the redetermination as recommended by staff.

The C.I.T. Group/Equipment Financing, 157460
4-1-01 to 5-30-01, $77,578.48
Action: Approve the relief of penalties as recommended by staff.

Continuum, 82102
7-1-96 to 6-30-99, $95,442.27
Action: Approve the denial of claim for refund as recommended by staff.

SZ Testsysteme Inc., 53157
10-1-99 to 12-31-99, $55,687.50
Action: Approve the denial of claim for refund as recommended by staff.

CRTV Concepts in Advertising, Inc., 161612
4-1-97 to 3-31-00, $52,803.89
Action: Approve the denial of relief of penalty as recommended by staff.

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

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. 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:

Jet Aviation California Inc, 158088
6-30-98, $1,518,000.00
Action: Approve the credit and cancellation as recommended by staff.

Seaview Charter Inc., 162008
5-26-00, $64,343.64
Action: Approve the credit and cancellation as recommended by staff.

Steven M. Self, 161906
4-1-96 to 3-31-97, $93,521.74
Action: Approve the credit and cancellation as recommended by staff.

National Medical Care, Homecare Division, Inc., 89000080330
7-1-90 to 12-31-95, $818,993.72
Action: Approve the refund as recommended by staff.

National Medical Care, Homecare Division, Inc., 59219
4-1-97 to 7-28-98, $297,633.25
Action: Approve the refund as recommended by staff.

National Medical Care, Homecare Division, Inc., 60413
1-1-97 to 3-31-97, $1,043,996.51
Action: Approve the refund as recommended by staff.

Chevron USA Inc., 227660
1-1-91 to 12-31-97, $123,573.28
Action: Approve the refund as recommended by staff.

Birchwood Cabinets of California Inc., 157511
1-1-98 to 12-31-00, $56,575.23
Action: Approve the refund as recommended by staff.

The Manufacturers Life Insurance Company, 80567
4-1-97 to 6-30-00, $121,174.76
Action: Approve the refund as recommended by staff.

Krones Inc., 129046
4-1-00 to 12-31-00, $80,557.63
Action: Approve the refund as recommended by staff.

Worldstor Inc., 158355
7-1-00 to 9-30-00, $264,199.24
Action: Approve the refund as recommended by staff.

Siemens Power Transmission & Distributor, 161698
10-1-99 to 12-31-00, $353,001.16
Action: Approve the refund as recommended by staff.

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Pacific Bell, 157124
1-1-98 to 6-30-00, $349,054.60
Action: Approve the refund as recommended by staff.

Ecometry Corporation, 118729
1-1-00 to 12-31-00, $92,313.38
Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Special Taxes Matters, 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 and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Texaco Refining and Marketing, Inc., 89000006530
10-1-97 to 10-31-97, $75,600.00
Action: Approve the Denials of Claims for Refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Texaco Refining and Marketing, Inc., 89000006540
8-1-97 to 8-31-97, $336,775.17
Action: Approve the Denials of Claims for Refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

SPECIAL TAXES MATTERS, REFUND, CONSENT

With respect to the Special Taxes Matters, Refund, 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:

Thrifty Payless, Inc., 156526
6-1-98 to 12-31-00, $382,477.97
Action: Approve the refund as recommended by staff.

PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

With respect to the Property Taxes Matters Not Subject to Contributions Disclosure Statute Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal 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:

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Private Railroad Car Tax Penalty Cancellation Request

Trinity Chemical Leasing, LLC (6920)
2001, $322.59
Action: Deny the petition for cancellation of the penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Unitary and Nonunitary Escaped Assessments

Verizon California, Inc., (201)
1998-2000, $28,936.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Worldcom International Data Services, Inc. (2322)
1999-2001, $2,379,339.00 Value
Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Bay Area Cellular Telephone Company, dba AT&T Wireless Services (2502)
1998-2000, $1,354,473.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Verizon Wireless-San Diego, dba Verizon Wireless (2512)
1998-2000, $819,979.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Sacramento Valley Ltd. Partnership, dba Verizon Wireless (2513)
1998-2000, $231,336.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Los Angeles SMSA Ltd., dba Verizon Wireless (2532)
2000-2001, $325,723.00 Value
Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

AB Cellular Holding, LLC, dba AT&T Wireless Services (2547)
1999-2001, $1,173,619.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Fresno MSA Ltd. Partnership, dba Verizon Wireless (2552)
1998-2000, $2,363,173.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

GTE Mobilnet of California, Ltd. Partnership, dba Verizon Wireless (2559)
1998-2000, $7,547,084.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

AT&T Wireless Services of California, Inc. (2600)
1998-2000, $259,897.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

AT&T Wireless Services of California, Inc. (2606)
1998-2001, $5,884,831.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

Bakersfield Cellular Telephone Company, dba AT&T Wireless Services (2622)
1998-2001, $450,141.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

Santa Barbara Cellular Systems, Ltd., dba AT&T Wireless Services (2626)
1998-2001, $815,134.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

GTE Mobilnet of Santa Barbara L.P., dba Verizon Wireless (2627)
1998-2000, $643,003.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

Redding Cellular Partnership, dba AT&T Wireless Services (2639)
1998-2000, $294,071.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

Visalia Cellular Telephone Company, dba AT&T Wireless Services (2641)
1998-2000, $144,103.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

Cal-One Cellular, L.P., dba Cal-North Cellular (2659)
2000, $24,518.00 Value
Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

WWC License LLC (2665)
2001, $48,000.00 Value
Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

GTE Mobilnet of Central California, Inc., dba Verizon Wireless (2667)
1998-2000, $554,491.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

California RSA #4 Partnership, dba Verizon Wireless (2669)
1999-2000, $361,185.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Gulf Coast Broadcasting Corp., dba Verizon Wireless (2731)
1999-2001, $176,522.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

VIA Wireless LLC (2747)
2000, $172,567.00 Value
Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Cingular (2748)
1998-2000, $3,302,999.00 Value
1997-2001, $1,137,508.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

AT&T Wireless PCS, LLC (2749)
2000, $588,930.00 Value
Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Cal-Autofone (3369)
1998-2000, $75,179.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Williams Communications LLC, dba Williams Network, Inc. (7819)
2000-2001, $1,609,821.00 Value
Action: Adopt unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Cox Communications PCS L.P. (2720)
1999-2001, $1,820,809.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Sprint Spectrum L.P., dba Sprint PCS (2722)
1998-2001, $1,612,544.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Nextel of California, Inc. (2737)
1998-2001, $53,213,892.00 Value
Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board recessed at 10:20 a.m. and reconvened at 10:25 a.m. with Mr. Chiang, Mr. Parrish, Mr. Klehs, Mr. Andal and Ms. Mandel present.

BUSINESS TAXES APPEALS HEARINGS

Rhodia, Inc., 60469, 78672
7-1-97 to 3-31-00, $50,000.00 Claim for Refund
4-1-98 to 3-31-99, $50,000.00 Claim for Refund
For Petitioner: William Vande Wetering, Attorney
Joseph Vinatieri, Attorney
Tom Benner, Taxpayer
For Sales and Use Tax Department: Sharon Jarvis, Counsel
Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.
Issues: Whether claimant's regeneration of spent sulfuric acid constitutes taxable fabrication labor or merely the repair or reconditioning of tangible personal property for the use for which it was originally produced.

If claimant's regeneration is not fabrication labor, whether tax applies to claimant's transfer of commingled regenerated sulfuric acid under California Code of Regulations, Title 18, section 1546, subdivision (b)(4).
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 ordered that the petition be submitted for decision.

PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

Upon a single motion of Andal, seconded by Mr. Parrish 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 directed staff to draft a letter to industry on behalf of the Board requesting these companies to inform this Board the locations of their "towers" to be properly assessed. If these companies are not in compliance, they will have to appear before the Board.

BUSINESS TAXES APPEALS HEARINGS

Jerome G. Morgan, 62763
5-31-99, $26,777.00 Tax
For Petitioner: Appearance Waived
For Sales and Use Tax Department: Trecia Nienow, Counsel
Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.
Issue: Whether documentation presented proves that the vessel was purchased, delivered, and used outside California.
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 ordered that the petition be redetermined as recommended by the Appeals Section.

Lancaster Colony Commercial Products Inc., 61942
1-1-90 to 6-30-97, $73,270.88 Tax, $00.00 Penalty, Failure to File
For Petitioner: Appearance Waived
For Sales and Use Tax Department: David H. Levine, Counsel
Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.
Issues: Whether the evidence shows that petitioner is not "engaged in business" in this state for purposes of Revenue and Taxation Code section 6203.

Whether the remaining unreported taxable sales are valid sales for resale.

Whether petitioner is responsible for collecting and reporting use tax on sales to out-of-state retailers with delivery by common carrier directly to the retailers' customers in this state (drop shipments).

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Whether it is proper to add a markup to petitioner's selling price to compute audited drop shipment sales.
Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Section.

Edward Jack Sandel, 89000335440, 89000335460
4-1-90 to 6-30-90, $00.00 Tax, $140.74 Penalty, Failure to File
7-1-89 to 6-30-92, $33,032.11 Tax
Action: The Board took no action.

FINAL ACTION ON PETITION HEARD APRIL 18, 2002

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the petition of *Rhodia, Inc., 60469, 78672*, be redetermined as recommended by the Appeals Section.

The Board adjourned at 11:10 a.m.

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

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