

WEDNESDAY, MAY 29, 2002

The Board met at its offices at 450 N Street, Sacramento, at 10:45 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.

BUSINESS TAXES APPEALS HEARINGS

The Bathroom, Inc., 89000691190

7-1-93 to 12-31-96, \$10,420.61 Tax

\$1,042.06 Penalty, Finality

\$1,042.05 Penalty, Negligence

For Petitioner: Hossein K. Haghghi, Representative

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 shows that audited taxable sales are excessive due to including tax-paid purchases of supply-type items in the costs of goods sold.

Whether the evidence shows that ex-tax purchases of supply-type items include nontaxable or tax-paid purchases.

Whether relief from the negligence penalty is warranted.

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 penalties be deleted, otherwise redetermined as recommended by the Appeals Section.

Bauman Landscaping Inc., 60814

4-1-96 to 12-31-98, \$22,582.52 Tax

For Petitioner: Steve Miller, Chief Financing Officer

Keith Huggett, Representative

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issue: Whether petitioner has presented sufficient proof to show that audited materials consumed in lump-sum contracts are excessive.

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 redetermined as recommended by the Appeals Section and offered the taxpayer a 3-year installment payment plan.

WEDNESDAY, MAY 29, 2002

Edmund Wozniak, 86872

7-1-97 to 3-31-99, \$5,152.08 Tax

\$515.20 Penalty, Negligence

For Petitioner: Edmund Wozniak
Emil Pollak, Representative

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

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

Issues: Whether audited taxable sales are excessive because they include employee tips not subject to tax.

Whether relief from the negligence penalty is warranted.

Action: Mr. Parrish moved to delete the negligence penalty and reduce the measure of tax by 15 percent. The motion failed for lack of a second.

Upon motion of Mr. Parrish, seconded by Mr. Andal, and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the negligence penalty be deleted.

Upon motion of Mr. Parrish, seconded by Mr. Andal and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the disputed measure of tax be reduced by 10 percent.

National Superior Vending, Inc., 30065

1-1-95 to 9-30-98, \$216,496.82 Tax

\$00.00 Penalty, Negligence

For Petitioner: Joseph Micallef, 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 petitioner is liable for tax on its sales to out-of-state retailers with no nexus, which petitioner delivered to California customers.

Whether the markup used in the prior audit should be used in the current audit to establish the out-of-state retailers' selling price.

Whether some transactions should be considered sales for resale based on the frequency and dollar amount.

Action: Mr. Andal moved to reduce the disputed measure of tax by 50 percent. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang and Ms. Mandel voting no, Mr. Klehs absent.

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, and Mr. Klehs absent, the Board ordered that the matter be submitted for decision, directing the Appeals Section to review the Board hearing transcript and bring the matter back to the Board with a final recommendation at the July Sacramento Board meeting.

Mr. Andal directed the Legal Division staff to prepare a memorandum regarding the subject of annotations and annotation back-up materials before the July Board meeting.

WEDNESDAY, MAY 29, 2002

Jane Boyett, 112555

7-1-97 to 6-30-00, \$16,741.98 Tax

For Petitioner: Appearance Waived

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

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

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

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

The Board recessed at 12:10 p.m. and reconvened at 1:45 p.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Dr. Connell present.

BOARD PHOTOGRAPH

The annual Board photograph was taken of Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Dr. Connell.

PROPERTY TAX MATTER**VALUATION OF STATE ASSESSED PROPERTIES AS OF JANUARY 1, 2002**

Upon the motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

3005	Mobilephone of Humboldt, Inc.	196,000
3039	Fresno Mobile Radio, Inc.	732,000
3052	Vincent Communications, Inc.	24,400
3342	High Sierra Mobilfone	11,600
3362	Madera Radio Dispatch, Inc.	318,000
3369	Cal-Autofone	299,000
3374	Radio Electronics Products Corporation	52,700
3426	Rob Hanson	35,800
3427	Access Paging Company, Inc.	93,200
3430	Metrocall, Inc.	6,110,000
3431	Advanced Nationwide Messaging Corporation, Inc.	3,440,000

WEDNESDAY, MAY 29, 2002

Upon the motion of Dr. Connell, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

3348	Donald G. Pollard	5,720
3360	Sylvan B. Malis	45,870
3432	Point BTA 79 LLC	52,900
3433	Point BTA 371 LLC	41,800

Upon the motion of Mr. Klehs, seconded by Dr. Connell and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, Mr. Chiang not participating in *McLeodUSA Telecommunications Services, Inc. (7785)*, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

2014	Sprint Communications Co., L.P.	1,015,200,000
2035	Cable & Wireless USA, Inc.	69,400,000
2038	Verizon Airfone, Inc.	4,090,000
2043	PacWest Telecomm, Inc.	97,900,000
2054	Spacenet, Inc.	1,990,000
2063	Extelcom, Inc.	2,600,000
2096	GTE Railfone/Amtrak Venture	6,400
2099	Smart City Networks LP	754,000
2100	Preferred Long Distance	3,300
2131	Bay Area Teleport, Inc.	54,340,000
2207	Global Crossing Telecommunications, Inc.	97,700,000
2213	COMSAT Corporation	12,500,000
2214	COMSAT General Corporation	286,000
2274	MCIWorldCom Network Services, Inc.	1,217,700,000
2275	SES Americom Inc.	444,000
2310	AT&T Communications, Inc.	1,158,700,000
2322	WorldCom International Data Services, Inc.	27,900,000
2329	Intellicall Operator Services, Inc.	90,800
2351	Global Crossing Bandwidth, Inc.	7,535,000
2368	Globe Wireless, LLC	2,400,000
2372	MCIMetro Access Transmission Services, Inc.	761,400,000
2376	Working Assets Funding Service, Inc.	913,000
2388	GENUITY TELECOM, Inc.	2,480,000
2391	Arrival Communications, Inc.	4,310,000
2416	NOS Communications, Inc.	2,160,000
2418	One Call Communications, Inc.	57,900
2430	Electric Lightwave, Inc.	113,400,000
2431	People's Telephone Company	257,000

WEDNESDAY, MAY 29, 2002

2432	Claircom Communicatins Group, Inc.	1,060,000
2433	ICG Telecom of San Diego, L.P.	16,500,000
2437	Dialink Corporation	52,200
2443	National Comtel Network, Inc.	17,050
2447	RSL COM USA, Inc.	864,000
2448	RhondaCom, Inc. dba Continental Network Services	5,700
2462	ICG Telecom Group, Inc.	90,420,000
2463	Qwest Communications Corporation	876,300,000
2470	Broadwing Telecommunications, Inc.	152,000
2475	VarTec Telecom, Inc.	2,910,000
7503	Verizon Select Services, Inc.	13,000,000
7507	T-NETIX, Inc.	2,100,000
7512	Citizens Telecommunications Co.	5,090,000
7517	Genesis Communications International, Inc.	905,000
7522	Time Warner Telecom of California, L.P.	408,500,000
7525	Fiberlink Communications Corp.	49,600
7527	Lightyear Communications, Inc.	84,260
7536	Global Crossing North American Networks, Inc.	49,500,000
7538	Tremcom International, Inc.	283,800
7544	Telswitch, Inc.	34,100
7553	AT&T Broadband Phone of California, LLC	249,200,000
7560	XO Communications, Inc.	310,100,000
7571	Network Enhanced Technologies, Inc.	1,630,000
7577	Qwest Interprise America, Inc.	11,900,000
7579	Moving Bytes, Inc.	337,000
7580	Evercom Systems, Inc.	427,000
7581	ABS-CBN Telecom North America, Inc.	438,000
7588	PNG Telecommunications, Inc.	44,110
7621	SES Americom California Inc.	7,100,000
7625	T Cast Communications, Inc.	2,180,000
7630	Broadwing Communications Services, Inc.	146,200,000
7632	Business Discount Plan, Inc.	246,000
7635	CCI Telecommunications, Inc.	1,100
7636	Network Telephone Services, Inc.	6,050,000
7638	Integrated Telemanagement Services, Inc.	22,700
7640	Cox California Telcom, L.L.C.	117,600,000
7642	Fibrcom, Inc.	285,000
7645	Communications Brokers & Consultants	10,670
7686	Primus Telecommunications, Inc.	4,830,000
7690	California Catalog & Technology, Inc.	3,200
7698	EPOCH Networks, Inc.	9,470,000
7701	TSI Telecommunications Services, Inc.	4,700
7702	Federal Communications Corporation	102,190
7703	Transcommunications, Inc.	94,800

WEDNESDAY, MAY 29, 2002

7705	Sierra Telephone Long Distance	83,400
7706	Covad Communications Company	105,600,000
7707	Roseville Long Distance Company	12,000
7708	San Diego Telecom, Inc.	24,800
7712	Dancris Telecom, LLC	1,551,000
7713	DSI/Inn-Tel, Inc.	17,700
7714	I-Link, Inc.	385,000
7715	Teligent Services, Inc.	448,000
7723	Opentel Communication, Inc.	659,000
7724	Mpower Communications Corp.	59,300,000
7727	Sprint Services, Inc.	5,710,000
7729	New Global Telecom, Inc.	4,160,000
7732	NTT America, Inc.	13,600,000
7733	GENUITY SOLUTIONS, Inc.	342,600,000
7735	Pacific Centrex Services, Inc.	62,590
7737	SaveCom International USA, Inc.	305,000
7740	TRI-M Communications, Inc.	294,000
7742	Allegiance Telecom of California, Inc.	145,310,000
7743	Applied Theory California Corp.	803,000
7744	e.spireDATA, Inc.	111,100
7746	UNA Telecommunications, Inc.	4,800
7747	TGEC Communications, Co., LLC	206,000
7754	World Network Communications, Inc.	3,500
7755	Real Navigation Systems Corporation	1,100
7756	Centergistic Solutions	136,000
7758	BT North America, Inc.	7,710,000
7759	Focal Communications Corp. of California	53,900,000
7760	Teleglobe USA, Inc.	60,900,000
7761	Level 3 Communications, LLC	720,300,000
7762	Teleco Network Services, Inc.	12,400,000
7764	Diamond Link, Inc.	1,070,000
7766	KDDI America, Inc.	8,100,000
7772	QuantumShift Communications, Inc.	5,620,000
7775	RCN Telecom Services of California, Inc.	334,400,000
7776	SmartStop, Inc.	240,900
7777	Micro General Services Corp.	1,600,000
7778	HighSpeed Communications of California, LLC	463,000
7779	360networks (USA) inc.	133,700,000
7781	Korea Telecom America, Inc.	1,419,000
7782	Ton Services, Inc	27,700
7783	U.S. Telephone Holding Company, Inc.	193,000
7785	McLeodUSA Telecommunications Services, Inc.	108,000
7790	NTC Network, LLC	97,240
7792	Point to Point, Inc.	295,000

WEDNESDAY, MAY 29, 2002

7796	Samsung Data Systems America, Inc.	103,000
7798	United States Advanced Network, Inc.	1,980,000
7799	Wilshire Connection, LLC	1,804,000
7800	New Edge Network, Inc.	11,200,000
7802	Network Enhanced Telecom, LLC	2,670,000
7808	Nosc Corporation	2,200
7811	Public Communications Services, Inc.	1,580,000
7812	True America Communications, Inc.	122,100
7813	Advanced Telcom, Inc.	46,420,000
7814	PaeTec Communications, Inc.	4,920,000
7815	GTC Telecom Corporation	340,000
7818	Wholesale Telecom, Inc.	9,500
7819	Williams Communications, LLC	635,400,000
7823	U.S. Telestar Communications Group	2,970
7824	Kertel Communications, Inc.	207,000
7832	Seren Innovations, Inc.	169,700,000
7834	Pannon Telecom, Inc.	146,300
7837	Metromedia Fiber Network Services, Inc.	252,300,000
7842	Universal Information Services, Inc.	3,500
7845	San Carlos Telecom, Inc.	78,500
7850	Sempra Communications	57,400
7852	Telstra Incorporated	1,230,000
7853	iTELCO Communications, Inc.	655,000
7854	Adelphia Business Solutions Operations, Inc.	3,830,000
7855	Enhanced Global Convergence Services, Inc.	574,200
7856	One Point Services, L.L.C.	8,470
7859	EAS Communication, Inc.	566,000
7860	Pocket Pass.com, Inc.	35,750
7861	Looking Glass Network	19,700,000
7862	Bigzoo.com Corporation	994,000
7863	Sentre Telecom, LLC	57,600
7866	Telmex USA, LLC	561,000
7867	The Telephone Connection IXC Services, LLC	37,700
7868	Fones 4 All Corporation	24,000
7869	Verizon Advanced Data, Inc.	85,200,000
7870	Communications Express, Inc.	38,700
7871	GTE.NET LLC dba Verizon Internet Solutions	784,000
7872	Infotech Telecommunication & Network, Inc.	3,200
7873	Single Billing Services, Inc.	81,400
7874	Competitive Communications, Inc.	250,000
7875	Allcom USA	4,620
7876	Total Call International, Inc.	947,000
7877	Touch America, Inc.	35,000,000
7878	Novacom Global, Inc.	22,440

WEDNESDAY, MAY 29, 2002

7880	Quick-Tel, Inc.	3,400
7881	Concert Global Network USA, LLC	137,600,000
7882	Concert USA, GP	1,570,000
7884	InterVoice-Brite, Inc.	2,970
7885	SBC ASI / SBC ASI P&L L.P.	490,700,000
7886	Tele Direct Telcommunications Group, LLC	258,000
7887	Accessline Communications Corporation	674,300
7888	Net2000 Communications Services, Inc.	25,300
7890	Wholesale Air-Time, Inc.	135,000
7892	OnFiber Communications, Inc.	15,070,000

Upon the motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, Mr. Chiang not participating on *McLeodUSA Telecommunications Services, Inc. (7785)*, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

2402	mail.com Business Messaging Service	3,190
2415	Incomnet Communications Corp.	13,200,000
7516	Cybernet Communications, Inc.	38,500
7528	NetSolve Incorporated	7,500
7545	A&N Telecom, Inc.	130,900
7648	Group Long Distance	33,110
7663	Startec Global Operating Company	5,775,000
7677	Talk.Com Holdings Corp.	1,628,000
7681	Atlas Communications Ltd.	1,826,000
7699	Legacy Long Distance International	503,000
7700	Cheetah Communications, LLC	90,200
7711	FTS Communications, Inc.	15,400
7751	Star Telecom Network, Inc.	268,400
7757	U.S. Telepacific Corp.	21,780,000
7769	Airnex Communications, Inc.	498,300
7788	FNET Corporation	586,300
7789	Multa Communications Corp.	4,015,000
7793	Big Bear Telecom, Inc.	10,120
7794	Global Photon Systems, Inc.	180,400
7795	Monarch Communications, Inc.	20,570
7801	Global West Network, Inc.	2,134,000
7810	California Network Management, Inc.	33,990
7820	Star Telecommunications, Inc.	27,060,000
7826	Bitro Telecommunications, Inc.	1,650,000
7833	INET Interactive Network System, Inc.	2,112,000
7835	MainNet, Inc.	35,200
7839	UBN	9,636,000

WEDNESDAY, MAY 29, 2002

7843	Telemanagement Services, Inc.	57,200
7894	Ponderosa Cablevision	1,160,000
7895	Univance Telecommunications, Inc.	524,000
7896	Newslink U.S.A., Inc.	228,800
7897	Ideas-For-Business	7,100
7898	United States Telesis, Inc.	2,700
7899	RGT Utilities of California, Inc.	223,000
7900	Viva Telecom, L.L.C.	264,000
7901	Neu-Firmnet, Inc.	434,000
7902	Zone Telecom, Inc.	1,903,000
7903	BBG Communications, Inc	713,000
7904	MercedNet, Inc.	2,290,000
7905	KMC Millennium, LLC	14,700,000
7906	netGuru, Inc.	454,000
7907	Telscape Communications, Inc.	9,670,000
7908	U.S.A. Softronik Corporation	198,000
7909	ACC Telecommunications, LLC	36,800,000
7910	Altrio Communications, Inc.	24,000,000
7911	WTI Systems & Services, Inc.	122,000
7912	Americom Government Services, Inc.	710,000
7913	VCOM Solutions, Inc.	10,890
7914	McLeodUSA Network Services, Inc.	55,300,000
7915	Ameritech Communications International, Inc.	349,000
7916	Peak Communications, Inc.	1,100
7917	APEX Telecom, Inc.	18,300
7918	Communication Bridge USA, Inc.	75,460
7919	Verizon Avenue Corp.	815,100
7920	Vectren Communication Services, Inc.	119,000
7921	Call and Save Communications, Inc.	4,730
7922	Novatel Global, LLC	273,900
7923	Lucky Communications, Inc.	18,480
7924	BAK Communications LLC	1,069,200
7925	United Communications HUB, Inc.	150,000
7926	DSLnet Communications, LLC	244,200
7927	Dial Thru International Corporation	970,200
7928	Tecnet, Inc.	6,281,000
7929	Fiberride, Inc.	332,200
7930	Western Integrated Networks of CA, LLC	55,000,000
7931	Universal Access, Inc.	4,202,000
7932	Metro Access Exchange, LLC	27,280
7933	Worldxchange Corp.	12,430,000

WEDNESDAY, MAY 29, 2002

Upon the motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

2512	Verizon Wireless (VAW) LLC	195,200,000
2513	Sacramento Valley Limited Partnership	185,200,000
2532	Los Angeles SMSA Ltd. Partnership	872,700,000
2552	Fresno MSA Limited Partnership	82,800,000
2559	GTE Mobilnet of California Ltd, Partnership	381,800,000
2596	Mall Telecommunications	37,100
2602	Digital Communications Network, Inc.	262,000
2605	Nova Cellular West, Inc.	47,100
2606	AT&T Wireless of California, Inc.	315,700,000
2611	Cagal Cellular Communications Corporation	30,200,000
2616	MCI Wireless, Inc.	7,650,000
2622	Bakersfield Cellular Telephone Company	28,300,000
2626	Santa Barbara Cellular Systems, Ltd.	37,300,000
2627	GTE Mobilnet of Santa Barbara L.P.	37,100,000
2630	Santa Cruz Cellular Telephone Co.	7,530,000
2639	Redding Cellular Partnership	4,830,000
2641	Visalia Cellular Telephone Company	5,090,000
2643	Yuba City Cellular Telephone Company	2,470,000
2649	Action Cellular Rent-A-Phone, Inc.	153,000
2658	Intouch America, Inc.	65,300
2659	Cal-One Cellular, L.P.	8,710,000
2665	WWC License LLC	5,550,000
2667	Cellco Partnership	4,590,000
2668	California RSA No.3 Limited Partnership	8,760,000
2669	California RSA #4 Partnership	13,700,000
2671	California Rural Service Area #1, Inc.	21,300,000
2672	El Dorado Cellular dba Mountain Cellular	4,430,000
2675	Dobson Cellular Systems, Inc.	17,900,000
2676	Nevada County Cellular Corporation	1,300,000
2680	ConexOne Communications LLC	444,000
2681	Everything Wireless, L.L.C.	73,300
2683	Pay-Less Cellular Accessories	1,950,000
2696	Cellular Express, Inc.	244,000
2698	Digital Cellular, Inc.	39,400
2715	Worldwide Cellular, Inc.	25,200
2718	Dobson Cellular Systems CA RSA # 7	7,820,000
2720	Cox Communications PCS, L.P.	685,900,000
2722	Sprint Spectrum L.P.	478,400,000
2737	Nextel of California, Inc.	647,200,000

WEDNESDAY, MAY 29, 2002

2745	West Coast P.C.S.	69,000,000
2746	Alpine PCS, Inc.	30,000,000
2747	VIA Wireless LLC	66,220,000
2748	Pacific Bell Wireless, LLC	905,300,000
2749	AT&T Wireless PCS, LLC.	15,200,000
2750	National Telemanagement Corporation	36,000
2753	Edge Wireless, LLC	10,900,000
2754	Metro One Telecommunications, Inc.	9,230,000
2755	Southwestern Bell Mobile Systems, LLC	90,800,000

Mr. Andal moved that the market value to be used in the assessment of unitary property of *Bay Area Cellular Telephone Company (2502)* be \$281,900,000, *AB Cellular Holding, LLC (2547)* be \$339,100,000, *Napa Cellular Telephone Company (2628)* be \$8,180,000, *Salinas Cellular Telephone Company (2637)* be \$20,100,000 and *SLO Cellular, Inc., (2687)* be \$13,000,000. The motion failed for lack of votes, Mr. Andal and Parrish voting yes, Mr. Chiang, Mr. Klehs and Dr. Connell voting no.

Mr. Klehs moved to adopt the staff recommendation on company nos. *2502, 2547, 2628, 2637* and *2687*. The motion failed for lack of a second.

Upon the motion of Mr. Andal, seconded by Dr. Connell and duly carried, Mr. Chiang, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, Mr. Klehs voting no, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

2502	Bay Area Cellular Telephone Company	281,900,000
2547	AB Cellular Holding, LLC.	339,100,000
2628	Napa Cellular Telephone Company	8,180,000
2637	Salinas Cellular Telephone Company	20,100,000
2687	SLO Cellular, Inc.	13,700,000

Upon the motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

2733	MetroPCS California/Florida, Inc.	54,400,000
2744	Smartel Cellular Telecomm., Inc.	35,310
2751	Ubiquitel, Inc.	23,650,000
2756	Cingular Wireless, LLC	12,800,000
2758	Image Paging & Cellular	96,600
2759	OnStar Corporation	88,600
2760	Fisher Wireless Services, Inc.	3,916,000
2761	OmniPoint Communications, Inc.	28,270,000
2762	Cricket Communications, Inc.	14,600,000

WEDNESDAY, MAY 29, 2002

2763 Irridigital, LLC 2,900

Upon the motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

400	Standard Gas Company	1,010,000
406	Calpine Pittsburg, Inc.	7,990,000
407	Valero Refining Company - California	1,110,000
409	West Coast Pipe Lines	146,600,000
410	Homestake Mining Company of California	826,000
412	Kings County Canal Company	684,000
428	CPN Pipeline Company	12,600,000
429	Chevron U.S.A., Inc.	25,200,000
432	Equilon Enterprises, LLC.	144,500,000
435	Natomas Central Mutual Water Company	131,000
462	ARCO Pipeline Company	1,240,000
464	Ventura Pipeline System	4,750,000
465	All American Pipeline, L.P.	99,500,000
467	Tosco Corporation	801,000
468	Equilon California Pipeline Company LLC	32,600,000
469	San Ardo Pipeline Company	11,400,000
475	IMC Chemicals, Inc.	1,540,000
476	Texaco Exploration & Production, Inc.	6,010,000
477	Union Island Pipeline Company	4,650,000
478	California Gas Gathering, Inc.	99,440
479	Chevron Pipeline Company	26,400,000
483	Mobil Pacific Pipeline Company	1,990,000
484	Calpine Pipeline Corporation	4,680,000

Upon the motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

480 UNOCAP (UNOCAL California Pipeline Company) 72,900,000

The Board expunged the record in the matter of *Pacific Pipeline System, LLC*,
486.

WEDNESDAY, MAY 29, 2002

Upon the motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

800	Alameda Belt Line	4,410,000
801	Amador Central Railroad	135,000
802	Central Oregon & Pacific Railroad	4,400,000
804	Burlington Northern & Santa Fe Railway Co.	636,500,000
808	West Isle Line, Inc.	125,000
810	ParkSierra Corporation dba California Northern Railroad	2,290,000
812	Ventura County Railroad	2,690,000
815	California Western Railroad, Inc.	1,920,000
817	Tulare Valley Railroad	314,000
818	Central California Traction Company	4,870,000
834	Lake County Railroad	190,000
839	Oakland Terminal Railway Company	113,000
843	Union Pacific Railroad Company	748,600,000
865	San Diego & Imperial Valley Railroad Co. Inc.	3,690,000
869	Santa Maria Valley Railroad Company	1,610,000
871	Sierra Railroad Company	881,000
878	Stockton Terminal and Eastern Railroad	9,740,000
883	McCloud Railway Company	1,480,000
889	Yreka Western Railroad Co.	491,700
892	Almanor Railroad Company	224,000
894	Napa Valley Wine Train, Inc.	10,700,000
896	Santa Cruz Big Trees & Pacific Railway Co.	769,000
898	Yolo Shortline Railroad Company	627,000

Upon the motion of Mr. Klehs, seconded by Dr. Connell and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

813	Pacific Harbor Lines	5,370,000
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Upon the motion of Dr. Connell, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs and Dr. Connell voting yes, Mr. Andal and Mr. Parrish voting no, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

850	Modesto & Empire Traction Company	18,800,000
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WEDNESDAY, MAY 29, 2002

Upon the motion of Dr. Connell, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs and Dr. Connell voting yes, Mr. Andal and Mr. Parrish voting no, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

882	Trona Railway Co.	14,000,000
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Upon the motion of Dr. Connell, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

897	San Joaquin Valley Railroad Company	3,250,000
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Upon the motion of Mr. Klehs, seconded by Dr. Connell and duly carried, Mr. Chiang, Mr. Klehs and Dr. Connell voting yes, Mr. Andal and Mr. Parrish voting no, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

899	ParkSierra Corporation dba Arizona & California Railroad	7,810,000
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Upon the motion of Mr. Klehs, seconded by Dr. Connell and duly carried, Mr. Chiang, Mr. Klehs and Dr. Connell voting yes, Mr. Andal and Mr. Parrish voting no, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

857	Parr Terminal Railroad	525,000
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Upon the motion of Mr. Chiang, seconded by Dr. Connell and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, Mr. Parrish not participating on *Pacific Bell (279)*, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

201	Verizon California Inc.	3,894,300,000
202	CenturyTel of Eastern Oregon, Inc.	166,000
205	Ponderosa Telephone Co.	29,500,000
209	Pinnacles Telephone Co.	1,160,000
210	Calaveras Telephone Company	7,230,000
228	Ducor Telephone Company	8,020,000
229	Evans Telephone Company	11,900,000
235	Foresthill Telephone Company	3,220,000
239	Hornitos Telephone Company	1,040,000
240	Happy Valley Telephone Company	3,020,000

WEDNESDAY, MAY 29, 2002

246	Kerman Telephone Co.	9,100,000
270	Citizens Telecommunications Company of Golden State	16,200,000
279	Pacific Bell	12,617,300,000
284	Citizens Telecommunications Company of California	143,400,000
286	Sierra Telephone Company, Inc.	47,000,000
294	Roseville Telephone Company	196,400,000
301	The Siskiyou Telephone Company	19,200,000
311	Citizens Telecommunications Company of Tuolumne	8,190,000
320	Verizon West Coast Inc.	14,100,000
327	Volcano Telephone Company, The	26,300,000
328	Cal-Ore Telephone Co.	5,920,000
330	Winterhaven Telephone Company	1,840,000

Upon the motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

101	Southern California Water Company	359,600,000
103	Anza Electric Cooperative, Inc.	14,100,000
106	Pacificorp	153,400,000
141	San Diego Gas & Electric Co.	2,711,000,000
146	Sierra Pacific Power Company	179,900,000
148	Southern California Edison Company	8,159,900,000
149	Southern California Gas Co.	2,605,000,000
152	Southwest Gas Corporation	121,700,000
160	Valley Electric Association Inc.	40,100
173	Surprise Valley Electrification Corp.	13,100,000
176	Plumas-Sierra Rural Electric Cooperative	26,800,000
184	Avista Corporation	10,000,000
185	Mountain Utilities	4,600,000
187	Mojave Pipeline Company	100,900,000
188	Kern River Gas Transmission Company	143,800,000
189	Standard Pacific Gas Line, Inc.	18,800,000
190	Tuscarora Gas Transmission Company	73,000,000
191	Arizona Public Service Company	3,100,000
192	Alpine Natural Gas Operating Company No. One LLC	2,520,000
193	Southwest Transmission Cooperative, Inc.	124,000
194	West Coast Gas Company Inc.	1,040,000
195	Wild Goose Storage, Inc.	41,100,000
196	Questar Southern Trails Pipeline Company	35,400,000
197	El Paso Natural Gas Company	42,100,000
198	Lodi Gas Storage, LLC	92,840,000
199	Clean Earth Energy, Inc.	2,700

WEDNESDAY, MAY 29, 2002

Upon the motion of Mr. Klehs, seconded by Dr. Connell and duly carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Dr. Connell voting yes, Mr. Andal voting no, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

135	Pacific Gas & Electric Company	13,224,700,000
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Upon the motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

180	PG&E National Energy Group	6,090,000
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Upon the motion of Dr. Connell, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

461	SFPP, L.P.	380,000,000
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Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that its previous motion that the market value to be used in the assessment of unitary property of *Pacific Pipeline System, LLC (486)* be \$201,100,000, be expunged.

Upon the motion of Dr. Connell, seconded by Mr. Andal and duly carried, Mr. Chiang, Mr. Parrish, Mr. Andal and Dr. Connell voting yes, Mr. Klehs voting no, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

486	Pacific Pipeline System, LLC	176,500,000
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Mr. Klehs moved to adopt the market value to be used in the assessment of unitary property of *CalNev Pipe Line Company (402)* be \$73,700,000. The motion was seconded by Dr. Connell but was not voted on.

Mr. Andal moved that the market value to be used in the assessment of unitary property of *CalNev Pipeline Company (402)* be \$69,500,000. The motion was seconded by Mr. Chiang but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Dr. Connell voting no.

WEDNESDAY, MAY 29, 2002

Upon the motion of Dr. Connell, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs and Dr. Connell voting yes, Mr. Parrish and Mr. Andal voting no, the Board ordered that the market value to be used in the assessment of unitary property of the following listed companies as of January 1, 2002 be as follows:

402	CalNev Pipe Line Company	73,700,000
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PUBLIC HEARINGS

Proposed Amendment of Sales and Use Tax Regulation 1528, Photographers, Photocopiers, Photo Finishers and X-Ray Laboratories

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record that the adoption of the amendment to *Regulation 1528, Photographers, Photocopiers, Photo Finishers and X-Ray Laboratories*, explains the application of sales and use tax to transfers of tangible personal property by photographers, photocopiers, photo finishers and x-ray laboratories. In order to alert commercial photographers who are acting as commercial artists that the application of tax to their transactions is explained in Regulation 1540, a reference to Regulation 1540 should be added to Regulation 1528.

Speakers: Mike Chittim, Owner, Legal Photocopy Service

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish voting yes, Dr. Connell absent, the Board adopted *Regulation 1528, Photographers, Photocopiers, Photo Finishers and X-Ray Laboratories* as published (Exhibit 5.9).

Exhibits to these minutes are incorporated by reference.

Proposed Amendment of Sales and Use Tax Regulation 1540, Advertising Agencies, Commercial Artists and Designers

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record that the adoption of the amendment to *Regulation 1540, Advertising Agencies, Commercial Artists and Designers*, explains the application of sales and use tax to transfers of tangible personal property by advertising agencies, and persons who perform the functions of commercial artists. The regulation is proposed to be amended to conform Regulation 1540 to the April 2000 revisions to Regulation 1541, in regard to lump-sum billings for artwork and nontaxable services; to replace the confusing terminology of "ultimately subject to tax" with a clear explanation of the application of tax; and to reformat the discussion of special printing aids into subdivision (c)(1) through (c)(3) as it relates to a printer's and a print broker's purchase of special printing aids, the sale of these printing aids, and the application of tax to each transaction.

WEDNESDAY, MAY 29, 2002

Speakers: Speakers were asked to address the Board but they declined.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish voting yes, Dr. Connell absent, the Board adopted *Regulation 1540, Advertising Agencies, Commercial Artists and Designers* as published (Exhibit 5.10).

Proposed Amendment of Sales and Use Tax Regulation 1541, Printing and Related Arts

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record that the adoption of the amendment to *Regulation 1541, Printing and Related Arts*, explains the application of sales and use tax to transfers of tangible personal property by printers and persons who perform similar functions. The regulation is proposed to be amended to conform Regulation 1541 to the April 2000 revisions to Regulation 1540, in regard to lump-sum billings for artwork and nontaxable services; to replace the confusing terminology of “ultimately subject to tax” with a clear explanation of the application of tax; and to reformat the discussion of special printing aids into subdivision (c)(1) through (c)(3) as it relates to a printer’s and a print broker’s purchase of special printing aids, the sale of these printing aids, and the application of tax to each transaction.

Speakers: Speakers were asked to address the Board but there were none.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish voting yes, Dr. Connell absent, the Board adopted *Regulation 1541, Printing and Related Arts* as published (Exhibit 5.11).

Proposed Amendment to Sales and Use Tax Regulation 1543, Publishers

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record that the adoption of the amendment to *Regulation 1543, Publishers*, explains the application of sales and use tax to transfers of tangible personal property by publishers. In part, it addresses activities of the graphic arts industry. The regulation is proposed to be amended to provide cross-references to, and reflect amendments made in 1999 and 2002 to Regulations 1540, Advertising Agencies, Commercial Artists and Designers, and 1541, Printing and Related Arts and recent statutory and case law changes.

Speakers: Speakers were asked 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 voting yes, Dr. Connell absent, the Board adopted *Regulation 1543, Publishers* as published (Exhibit 5.12).

WEDNESDAY, MAY 29, 2002

Ms. Mandel entered the Boardroom on behalf of Dr. Connell in accordance with Government Code section 7.9.

PROPERTY TAXES HEARINGS

Pac-West Telecomm, Inc. (2043), 154098

1997, \$304,000

1999, \$19,698,000

2000, \$20,250,000

For Petitioner:

Alan O. Schultz, Agent

Dennis Meyer, Senior Financial Advisor

Bill Tancik, Senior Accountant

Ajay Chandra, Controller

For Property Taxes Department:

Robert Lambert, Counsel

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

Issues: Whether or not a pro rata portion of the interest costs associated with a contract that covers both the installation of computer hardware and software must be allocated to the assessable hardware costs when calculating replacement cost less depreciation under subsection (b) of Rule 6.

Whether or not an estimated labor cost component should be added to the installation cost of assessable hardware when calculating replacement cost less depreciation under subsection (b) of Rule 6.

Whether or not the petitioner has met its burden of proving that its December 1999 \$2,500,000 year-end accrual to "Construction Work in Progress" (or CWIP) was made in error and consequently caused an overstatement in the calculation of the replacement cost of its CWIP property as of the lien date.

Whether or not the petitioner has established that its failure to include the \$12 million to \$15 million in escaped "Construction Work in Progress" (or CWIP) in its original property statement was "due to reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect."

Whether or not the Board has the authority to waive an escape assessment in-lieu of interest under subsection (a) of section 864 of the Revenue and Taxation Code given that, in the petition, the petitioner has not alleged the presence of "an error, other than an erroneous opinion of value, on the part of the Board" as required by the statute.

Petitioner's Exhibit: Miscellaneous Documents (Exhibit 5.13)

Action: 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 not participating in accordance with Government Code section 7.9, the Board ordered that the petition be submitted for decision directing the Legal Property Tax Section to review new documentation submitted at this hearing and bring the matter back to the Board with a final recommendation with regards to the penalty and CWIP issues at the July Sacramento Board meeting.

WEDNESDAY, MAY 29, 2002

The Board recessed at 3:00 p.m. and reconvened at 3:10 p.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

Northern California Power Agency, 19387, 27694

1998, \$33,027,593

1999, \$33,688,145

For Petitioner:

Peter Michaels, Counsel

Clayton Clement, Counsel

For the County of Sonoma

Brett L. Price, Counsel for Sonoma County

For Property Taxes Department:

Robert Lambert, Counsel

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

Issues: Whether or not the Settlement Agreement between the applicant and the respondent county -- and the judgment entered in the related validation action -- preclude the assessment of the Steamfield Improvements at the lesser of factored base year value or fair market value.

Whether or not the Settlement Agreement converts the applicant's personalty included in the Steamfield system into taxable property.

If the Settlement Agreement does not preclude the assessment of the Steamfield Improvements at the lesser of factored base year value or fair market value, what is the fair market value of the Steamfield Improvements.

Action: Upon 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 ordered that the petition be granted and adjusted the 1998 assessment to \$4,760,000 and the 1999 assessment to \$4,740,000.

BUSINESS TAXES APPEALS HEARINGS

Arundel Green LLC, 118310

1-1-96 to 12-31-96, \$17,582.00 Tax

\$00.00 Penalty, Failure to File

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Judy Nelson, Counsel

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

Issues: Whether petitioner was a generator of the contaminated soil which was excavated during the development of a construction site.

Whether any statute or regulation is unconstitutional.

Whether the determination at issue was issued in violation of the statute of limitations.

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 deferred for one month until the settlement was final.

WEDNESDAY, MAY 29, 2002

James Alan Thorne, 52796

10-1-95 to 9-30-98, \$7,652.08 Tax

For Petitioner: Waived Appearance

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. 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.

Lifescan, Inc., 29592, 37314, 48966

10-1-94 to 12-31-97, \$448,451.46 Tax

For Petitioner: No Appearance

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

Action: The Board took no action.

Empire Equipment Co., L.P., 30009

4-1-95 to 3-31-98, \$87,249.33 Tax

For Petitioner: Abe Golomb, Representative

Bruce Kish, General Manager

For Sales and Use Tax Department: Warren L. Astleford, Counsel

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

Issues: Whether petitioner has shown that sales to Gregory Schaefer Logging and Fourth Nomad qualify as exempt sales in interstate or foreign commerce.

Whether petitioner has shown that the Department is precluded from projecting the percentage of error for questioned part sales, rentals, and service based upon a claimed de minimus error.

In the alternative, whether certain disallowed transactions concerning internal sales invoices and claimed taxable delivery charges to petitioner's purchasers should be deleted from the calculation of disallowed exempt/nontaxable sales of parts, services, and rentals.

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 petition be granted with respect to Issue 1.

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 petition be submitted for decision with regard to the remaining items.

WEDNESDAY, MAY 29, 2002

Alpine Medical Ltd., 89000475350, 89000475340

7-1-94 to 12-31-97, \$43,963.56 Tax

\$00.00 Penalty, Negligence

7-1-94 to 12-31-97, \$43,963.56 Claim for Refund

For Petitioner: Abe Golomb, Representative

For Sales and Use Tax Department: Stephen M. Smith, Counsel

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

Issues: Whether the evidence establishes that certain sales of home health-care equipment qualify as exempt sales of medicines.

Whether petitioner is entitled to additional credits for bad debts.

Whether petitioner has shown that most of its "sales under Medicare" were in fact rentals of equipment, so that the tax is measured by the rental receipts and tax is due in the period in which the rental receipts were received.

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 petition be submitted for decision.

The Board adjourned at 4:25 p.m.

The foregoing minutes are adopted by the Board on August 1, 2002.

WEDNESDAY, MAY 29, 2002