

THURSDAY, MAY 30, 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 9:31 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 *Joyce Miller v. State Board of Equalization*, Sacramento, Superior Court Case No. BC253531 (Govt. Code § 11126(e)), 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, Mr. Parrish and Ms. Mandel present.

ADMINISTRATIVE SESSION

PROPOSED MEMORANDUM OPINION IN THE APPEAL OF RHODIA, 60469 AND 78672

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Dr. Connell absent, the Board adopted the memorandum opinion as recommended by the Appeals Section.

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

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, 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 5.14).

Lorene Fravel, Business Taxes Specialist II, Environmental Fees, Division, Audit
Section, Headquarters
Walter Seger, Supervising Tax Technician II, Audit Control Unit, Headquarters

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Jerry Doctrow, Staff Information Systems Analyst (Specialist), Torrance District Office

Action: Approve the Board Meeting Minutes of: March 12-14, 2002, March 26-27, 2002, and April 17-18, 2002.

Action: Approve 4-R Act Equalization Ratio for 2002-03. (Exhibit 5.15).

Action: Approve extensions of time to complete and submit 2002-03 Local Assessment Rolls pursuant to Revenue and Taxation Code section 155 granted to Calaveras, Inyo, Lassen, Madera, Sierra, Tehama, and Trinity Counties.

Action: Approve extension of time for filing Welfare Affidavits and Financial Statements pursuant to Revenue and Taxation Code section 155 granted to Orange County.

Exhibits to these minutes are incorporated by reference.

REALLOCATION OF LOCAL TAX

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 the City of Fremont appeal hearing request, directing staff to bring this matter back to the Board on August 1, 2002.

MOTION RELATING TO TIMELINESS OF STATE ASSESSEE FILINGS

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 abstaining, the Board directed that staff shall notify assessees that all Replacement Cost Studies, obsolescence requests, and other voluntary information that assessees believe affects the value of their property must be filed with the property statement or by a date granted by a formal extension. If such information is not filed by that date, staff is not required to consider it in determining its unitary value recommendation.

CHIEF COUNSEL MATTERS

RULEMAKING

Janice Thurston, Assistant Chief Counsel, Legal Division, requested that the Board authorize publication of an amendment to *Regulation 1703, Interest and Penalties* adding language stating that fraud or intent to evade shall be established by clear and convincing evidence (Exhibit 15.16).

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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 authorized publication of an amendment to *Regulation 1703, Interest and Penalties*.

LEGAL APPEALS MATTERS, ADJUDICATORY**K.B. Products, Inc., 34346**

7-1-95 to 6-30-98, \$6,014.43 Tax

Considered by the Board: March 26, 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 ordered that the petition be redetermined as recommended by the Appeals Section.

Podell Industries, Incorporated, 76777

1-1-96 to 6-30-99, \$135,763.16 Tax

\$00.00 Penalty, Negligence

Considered by the Board: May 9, 2002

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

Action: Upon motion of Mr. Parrish, 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 with adjustments.

Drew L. and Mary De-Lane Hyer, 89000366970

1-1-94 to 12-31-97, \$4,385.27 Tax

Considered by the Board: February 5, 2002

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

Action: 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 petition be granted as to Issue 1 and redetermined the remaining issues as recommended by the Appeals Section.

Bahram Shiralian, 89000369260, 89000369320, 89000369300

1-1-92 to 6-30-93, \$13,200.00 Tax

\$00.00 Penalty, Negligence

1-1-92 to 6-30-93, \$100,966.34 Tax

\$00.00 Penalty, Negligence

1-1-92 to 6-30-93, \$23,481.03 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. Parrish 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.

Chastain Park Holdings, Inc., 89001127910

9-30-95 and 8-31-97, \$00.00 Tax

Considered by the Board: January 10, 2002

Contribution Disclosures pursuant to Government Code section 15626: Disqualifying contributions were disclosed to Mr. Klehs and Dr. Connell. 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, Mr. Chiang voting no, Mr. Klehs and Ms. Mandel not participating in accordance with Government Code section 15626, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Chancecarson, Inc., 89001144680

9-30-95 and 8-31-97, \$00.00 Tax

Considered by the Board: January 10, 2002

Contribution Disclosures pursuant to Government Code Section 15626: Disqualifying contributions were disclosed to Mr. Klehs and Dr. Connell. No other contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Ms. Mandel not participating in accordance with Government Code section 15626, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Brian Pierce, 118227

1997, \$1.00 or more Assessment

Considered by the Board: March 27, 2002

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

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

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SALES AND USE TAX MATTERS, REDETERMINATION AND DENIALS OF CLAIMS FOR REFUND, ADJUDICATORY

Starbucks Corporation, dba Starbucks, 99802

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

Considered by the Board: March 27, 2002

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 staff.

Filco Inc., 154541

10-1-93 to 9-30-96, \$142,570.68

Considered by the Board: Denial of Claim for Refund

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

Action: Upon motion of Mr. 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 denial of claim for refund as recommended by staff.

Mason Shoe Manufacturing Company, 154546

4-1-95 to 3-31-98, \$2,364,117.94

Considered by the Board: Denial of Claim for Refund

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

Action: Upon motion of Mr. 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 denial of claim for refund as recommended by staff.

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, Mr. Chiang not participating in *People Soft, Inc., 34259, 34260, 34261, 41341*, Ms. Mandel not participating in *Northbrook Life Insurance Company, 89000902980, 89000902960, 89000902970*, in accordance with Government Code section 7.9, the Board made the following orders:

International Coffee Exchange, Inc., 80348

1-1-97 to 10-31-97, \$3,085.34 Tax

\$00.00 Penalty, Failure to Timely Pay

Action: Redetermine as recommended by the Appeals Section.

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Jerome Vincent Fernandez, F. James Miller and Edward Strand, 89000690750

10-1-93 to 3-13-95, \$18,019.03 Tax

\$1,801.90 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

People Soft, Inc., 34259, 34260, 34261, 41341

1-1-96 to 12-31-96, \$164.09 Claim for Refund

4-1-96 to 9-30-96, \$507.74 Claim for Refund

10-1-96 to 3-31-99, \$13,252.95 Claim for Refund

1-1-98 to 12-31-98, \$20.76 Claim for Refund

Action: Redetermine as recommended by the Appeals Section. Mr. Chiang not participating.

Roy Rodriguez Avila, 89002266100

1-1-95 to 12-31-96, \$20,953.40 Tax

\$2,118.78 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Jaber & Al-Hassan, Ltd., 89002266490

10-1-94 to 9-30-97, \$21,238.97 Tax

\$2,123.93 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Space, Time, and Graphics, 15586

1-1-96 to 12-31-98, \$101,636.95 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

K-Line Industries, Inc., 16868, 62356

1-1-91 to 12-31-91, \$8,793.73 Tax

1-1-92 to 9-30-98, \$67,428.13 Tax

\$00.00 Penalty, Failure to File

Action: Redetermine as recommended by the Appeals Section.

West Hotel Partners, LTD. PTN., 29013

1-1-96 to 12-31-98, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Section.

Sergio Zamora, 99801

2-19-98 to 12-31-98, \$2,205.13 Tax

\$00.00 Penalty, Failure to File

Action: Redetermine as recommended by the Appeals Section.

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Fundtech Corporation, 56167

4-1-96 to 6-30-99, \$122,370.05 Tax

\$12,237.02 Penalty, Failure to File

Action: Redetermine as recommended by the Appeals Section.

Northbrook Life Insurance Company, 89000902980, 89000902960, 89000902970

1-1-92 to 12-31-94, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Section. Ms. Mandel not participating in accordance with Government Code section 7.9.

Headway Technologies, Inc., 89002318650

10-1-94 to 6-30-97, \$35,247.99 Tax

Action: Redetermine as recommended by the Appeals Section.

Faramarz Bibayan, 37294

7-1-95 to 9-30-98, \$7,443.33 Tax

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

Francisco Alvarado Rodriguez, 90899

10-31-97 to 12-28-99, \$23,560.83 Tax

\$5,890.22 Penalty, Fraud

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

Lawrence C. Gorfine, 49802

1-1-92 to 12-31-97, \$17,413.50 Tax

\$00.00 Penalty, Failure to File

\$1,725.65 Penalty, Finality

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

Helnick Inc., 162817

12-18-01

Action: Determine the staff properly seized cigarettes.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENTThe Board deferred consideration of: *Eugene P. and Kerry A. Smith, 136380.*

With respect to the Corporate Franchise and Personal Income Tax 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:

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Joseph Yunson, 110587

1994, \$431.53 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Gary A. Kanelos, 118469

1992, \$790.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Hector M. Palacio and Barbara D. Ploog, 126827

1997, \$173.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ronald J. Stauber, 127658

1995, \$1.00 or more Claim for Refund

1999, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Johnnie D. Byrd, 129432

1994, \$5,009.91 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Thomas L. Frinken, 132061

1996, \$1,693.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jose C. and Helen S. Collado, 133904

1995, \$358.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Eugene P. and Kerry A. Smith, 136380

1997, \$2,971.54 Claim for Refund

Action: The Board deferred consideration of this matter.

Elsa Lee, 138247

1997, \$455.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Ronald Galatolo, 139381

1995, \$1,153.00 Assessment

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

Geoffrey L. Ross, 142073

1997, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

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Ernest and Catherine Kleinman, 142173

1992, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Michael Schultz, 143911

1991, \$5,556.54 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michele J. Oudeans, 151548

1995, \$20,174.91 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Dee Baird, 60036

1994, \$601.00 Tax

\$150.25 Penalty, Late Filing

\$120.20 Penalty, Accuracy

1997, \$673.00 Tax

\$168.25 Penalty, Late Filing

\$168.25 Penalty, Notice and Demand

Action: Deny the petition for rehearing.

Richard Delgado, 129715

1997, \$950.00 Tax

Action: Grant the petition for rehearing.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties 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 *Sunrider Corporation, dba Sunrider International, 89000854530*, the Board made the following orders:

Sybase Inc., 142577

1-1-95 to 12-31-99, \$93,664.45

Action: Approve the redetermination as recommended by staff.

Maxell Corporation of America, 89000821140

7-1-93 to 3-31-97, \$119,182.51

Action: Approve the redetermination as recommended by staff.

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Sunrider Corporation, dba Sunrider International, 89000854530

1-1-92 to 12-31-96, \$93,851.81

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

James G. Stull, 151082

12-10-98, \$125,938.00

Action: Approve the redetermination as recommended by staff.

Kodi Air LLC., 149835

1-20-00, \$2,265,625.00

Action: Approve the redetermination as recommended by staff.

Lloyd E. Rasner, 145959

1-15-01, \$120,000.00

Action: Approve the redetermination as recommended by staff.

Dunn-Edwards Corporation, 164459

7-28-01 to 8-27-01, \$89,989.56

Action: Approve the relief of penalty as recommended by staff.

Wilsey Foods Inc., 30809

10-1-93 to 9-30-96, \$162,358.92

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

Portal Publications LTD, 165291

1-1-98 to 12-31-00, \$197,678.03

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

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:

Angela McBride, 135982

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Alicia Mueller, 140038

1996, \$1,067.27 Claim for Credit

1997, \$1,056.36 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Laura J. Murray, 141532

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Tony A. Robinson, 141874

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Ella Jenkins, 141943

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Yang H. Vue, 142051

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Joyce E. Cherney, 143105

2001, \$47.88 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Phillip Lovelace, 143904

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Mitchell C. Welch, 144067

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Marne R. Yasay, 144109

2001, \$336.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Ronald Sullivan, 144794

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Loreen B. Sullivan, 144804

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Jacqueline Williams, 144833

2001, \$47.87 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Soledad Beltran, 145244

1999, \$1,560.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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

The Board deferred consideration of the following matters: *McCurdy Circuits Inc., 166590, Chevron U.S.A. Inc., 136256*

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

McCurdy Circuits Inc., 166590

4-1-98 to 6-30-01, \$173,857.20

Action: The Board deferred consideration of this matter.

Air Francis LLC, 167308

6-11-98, \$321,748.21

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

Gregory H. DeLapp, 166848

12-23-98, \$56,912.40

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

Shadowfax LLC, 167040

7-22-99, \$738,783.21

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

Trayton Aviation LLC, 145951

6-8-00, \$609,537.50

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

Real Estate Mort. Acct. Co., Inc., 166178

4-2-99, \$265,491.85

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

Taylor Devices, Inc., 167252

1-1-01 to 12-31-01, \$262,715.94

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

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Chevron U.S.A. Inc., 136256

1-1-99 to 12-31-99, \$55,648.66

Action: The Board deferred consideration of this matter.

Bank of America NT & SA, 108850

4-1-96 to 12-31-00, \$8,256,972.35

Action: Approve the refund as recommended by staff.

WJ Communications, Inc., 133821

4-1-98 to 9-30-00, \$144,526.76

Action: Approve the refund as recommended by staff.

Walker & Associates, Inc., 166339

4-1-98 to 3-31-01, \$76,349.70

Action: Approve the refund as recommended by staff.

Superior National Insurance Group, Inc., 98454

1-1-00 to 9-30-01, \$54,288.86

Action: Approve the refund as recommended by staff.

Amwest Surety Insurance Company, 51294

10-1-96 to 12-31-00, \$76,377.70

Action: Approve the refund as recommended by staff.

Household Automotive Financial, 104004

10-1-97 to 9-30-00, \$2,063,402.70

Action: Approve the refund as recommended by staff.

M.A. Hanna Resin Distribution Company, 76813

4-1-97 to 6-30-98, \$63,282.41

Action: Approve the refund as recommended by staff.

Bridgestone Aircraft Tire USA Inc., 127787

1-1-98 to 12-31-99, \$63,729.52

Action: Approve the refund as recommended by staff.

American Electronics Assoc. C.U., 115780

1-1-98 to 3-31-01, \$615,638.93

Action: Approve the refund as recommended by staff.

Factory 2-U Stores, Inc., dba Factory 2-U & Family Bargain Center, 135643

7-1-99 to 6-30-01, \$74,365.90

Action: Approve the refund as recommended by staff.

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Americredit Financial Service Inc., 157714

1-1-98 to 12-31-01, \$4,258,736.59

Action: Approve the refund as recommended by staff.

American President Lines LTD., 166338

1-1-96 to 12-31-98, \$251,921.01

Action: Approve the refund as recommended by staff.

Imation Corporation, 166380

7-1-96 to 6-30-99, \$166,388.28

Action: Approve the refund as recommended by staff.

JD Edwards World Solutions Company, 138671

1-1-98 to 12-31-00, \$230,679.02

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

The Board deferred consideration of the following matters: *Ralphs Grocery Company, 168428*.

With respect to the Special Taxes Matters, Refunds, 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 on *Transamerica Occidental Life Ins., 156295; Tokio Marine & Fire Ins., Co., 146678, 155159, 146678; Security Life of Denver Ins. Co., 163820; First Capital Life Insurance Co., 89000899990; American Economy Insurance Co., 145969; Jackson National Life Ins. Co., 154312; Monumental Life Insurance Co., 153508; Amerin Guaranty Corporation, 155250; Fidelity & Deposit Co. of Maryland, 157913; Explorer Insurance Company, 156371; Lumber Mutual Insurance Company, 162262; and Ultramar Inc., 139478*, the Board made the following orders:

Ralphs Grocery Company, 168428

4-1-02 to 4-30-02, \$60,159.54

Action: The Board deferred consideration of this matter.

Transamerica Occidental Life Ins., 156295

1-1-99 to 12-31-99, \$231,274.26

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

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Tokio Marine & Fire Ins., Co., 146678

1-1-98 to 12-31-98, \$508,875.41

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

Tokio Marine & Fire Ins., Co., 155159

1-1-99 to 12-31-99, \$85,116.80

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

Tokio Marine & Fire Ins., Co., 155161

1-1-00 to 12-31-00, \$230,862.63

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

Security Life of Denver Ins. Co., 163820

1-1-97 to 12-31-97, \$191,091.81

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

First Capital Life Insurance Co., 89000899990

1-1-87 to 12-31-90, \$239,765.58

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

American Economy Insurance Co., 145969

9-15-00 to 12-15-00, \$380,408.87

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

Jackson National Life Ins. Co., 154312

1-1-97 to 1-1-00, \$82,381.25

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

Monumental Life Insurance Co., 153508

1-1-00 to 12-31-00, \$546,093.73

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

Amerin Guaranty Corporation, 155250

1-1-00 to 12-31-00, \$220,334.07

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

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Fidelity & Deposit Co. of Maryland, 157913

1-1-98 to 12-31-98, \$68,618.03

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

Explorer Insurance Company, 156371

1-1-98 to 12-31-98, \$228,179.64

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

Lumber Mutual Insurance Company, 162262

12-15-97 to 12-15-00, \$61,031.53

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

City of Fresno, 168607

7-1-97 to 12-31-01, \$351,768.55

Action: Approve the refund as recommended by staff.

Marten Transport Ltd., 82289

1-1-96 to 12-31-98, \$341,499.95

Action: Approve the refund as recommended by staff.

Ultramar Inc., 139478

2-1-00 to 6-30-01, \$4,174,677.23

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

SPECIAL TAXES MATTERS, RELIEF OF PENALTY, CONSENT

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

Los Angeles SMSA, LTD., PTN., 166046

6-1-01 to 8-31-01, \$148,659.40

Action: Approve the relief of penalty as recommended by staff.

Pacific Bell Wireless, LLC., 167298

6-1-01 to 6-30-01, \$113,371.85

Action: Approve the relief of penalty as recommended by staff.

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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:

Audit**Unocap--Tosco Corporation, (480)**

2001, \$26,200,000.00 Escaped Assessment

\$2,620,000.00 Penalty

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

Unitary and Nonunitary Escaped Assessments**Pacific Bell, (279)**

1998-2001, \$1,106,996.00 Value

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

Union Pacific Railroad Company, (843)

1998-2000, \$276,000.00 Value

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

Private Railroad Car Tax Refund Request**Asarco, Incorporated, (5732)**

2001, \$835.25 Tax

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

Rio Grande Chemical Sales Co., (5798)

2001, \$14.87 Tax

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

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Cemex, U.S.A., (5980)

2001, \$1,069.20 Tax

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

Southdown, Inc., (6084)

2001, \$225.34 Tax

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

John T. Nickel, 104288

1993, \$146,418.00 Assessment

For Appellant:

Eric J. Coffill, Attorney

Reece B. Morrel, Attorney

Edwin P. Antolin, Attorney

For Franchise Tax Board:

Anne Hodges, Tax Counsel

Kent Summers, Tax Counsel

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

Issues: Whether the tax benefit rule allows appellant to increase his basis in a partnership interest by the amount of prior deductions for which he received no tax benefit.

In the alternative, whether appellant is entitled to a net operating loss deduction.

Action: 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 appeal be submitted for decision, granting the Franchise Tax Board 30 days to submit additional documentation, the appellant 30 days to review the documentation and respond, and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation.

BUSINESS TAXES APPEALS HEARINGS

Elva Corporation, 42201

7-1-95 to 6-30-98, \$21,305.64 Tax

\$2,130.63 Penalty, Negligence

For Petitioner:

Craig M. Hunt, Attorney

Abraham Sadi, President

For Sales and Use Tax Department:

Robert Tucker, Counsel

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

Issues: Whether petitioner has met its burden of establishing that the disallowed claimed sales for resale were actually sales for resale.

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Whether petitioner has sufficient shipping documents proving that certain sales at issue qualify as exempt sales in interstate commerce.

Whether the 10 percent penalty for negligence should be abated.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs voting no, Ms. Mandel abstaining the Board ordered that the negligence penalty be deleted and the remaining issues submitted for decision.

Ed Staub & Sons Petroleum, Inc., 30361

4-1-95 to 3-31-98, \$22,710.34 Tax

Staub Petroleum Products, Inc., 40674

7-1-95 to 6-30-98, \$175,769.51 Tax

For Petitioner: Lawrence Nochols, CPA

Kathy Oates, Secretary

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

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

Issue in the petition of 30361:

Whether any adjustments to the measure of tax are warranted.

Issues in the petition of 40674:

Whether any adjustments to the measure of tax are warranted.

Whether accrued interest may be abated.

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, granting the petitioner 30 days to submit additional documentation, the Department 30 days to review the documentation and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation

Krueger International, Inc., 89000835310

10-1-94 to 9-30-97, \$65,242.66 Tax

For Petitioner: Appearance Waived

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

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

Issues: Whether petitioner has incurred a use tax collection obligation as a result of drop-shipping its products into California from an out-of-state location.

Whether the Department properly marked up petitioner's drop-shipped sales to California consumers.

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 in accordance with the revised recommendation of the Appeals Section.

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Classic Woodworking Inc., 89000882020

1-1-86 to 12-31-93, \$69,677.63 Tax

\$5,504.69 Penalty, Failure to File

For Petitioner: John Hollman, President
Malcolm A. Gurusinghe, Chief Executive Officer

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 petitioner has nexus in California, sufficient to impose the use tax collection liability on it.

Whether the evidence shows that certain installed lockers were correctly classified as fixtures.

Whether the cost of materials for lockers were computed in accordance with the facts.

Whether the measure of tax with respect to retail sales of lockers is excessive.

Whether the evidence shows that certain transactions were duplicated in the audit.

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.

The Board recessed at 10:55 a.m. and reconvened at 11:00 a.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel.

Bin Wang and Ai Fen Zhou, 112966

7-4-97 to 6-30-00, \$10,186.68 Tax

\$1,018.69 Penalty, Negligence

For Petitioner: Ray C. Chan, CPA

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 audit method used to establish audited taxable sales was appropriate under the circumstances.

Whether the audited measure of tax was established in accordance with the facts.

Whether relief is warranted from the 10 percent penalty added for negligence.

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 to reduce the disputed measure of tax by 5 percent.

Mr. Andal moved that the negligence penalty be deleted. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no. The Board submitted the petition for decision.

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Fresno Truck Center, 91442

1-1-96 to 12-31-98, \$00.00 Tax

For Petitioner: Craig A. Houghton, Attorney

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

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

Issue: Whether petitioner is entitled to a credit/offset against the tax deficiency for the audit period at issue of \$25,908 in tax, which was erroneously reported and paid to the Board on petitioner's fourth quarter 1995 sales and use tax return, and the refund of which is now barred by the statute of limitations.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, and Mr. Parrish voting yes, and Ms. Mandel not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

The Board directed staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.

Whitney Construction, 104692

7-1-96 to 6-30-99, \$11,708.75 Tax

For Petitioner: Leon Whitney, President

Dennis Hinz, CPA

For Sales and Use Tax Department: Trecia Nienow, Counsel

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

Issue: Whether petitioner's labor was for improvement on or to real property or taxable crushing and stockpiling of rock.

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 submitted for decision, to be brought back to the July Sacramento meeting.

At the request of Mr. Klehs, the Chair reopened the matter of *John T. Nickel, 104288*, in order to submit into the record the following request of the parties to provide further briefing and specifically address the following questions:

1. What effect and weight should be given to the following documents in ascertaining the Legislature's intent with regard to the net operating loss provisions of Senate Bill 354, chapter 581, statutes of 1989:
 - a. The Franchise Tax Board's bill analysis;
 - b. The Assembly and Senate Revenue and Taxation Committee analyses;
 - c. The Governor's enrolled bill report; and
 - d. The Legislative Counsel's digest?

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2. What effect and weight should be given to the fact that, 13 years after the relevant amendments, and 7 years after the decision in the Appeal of *Chana* the Legislature has not amended or otherwise clarified the relevant net operating loss provisions, despite administrative practice that continues to follow the *Chana* rule?

T J & F Company, 89000321330, 89000321320

1-1-93 to 12-31-95, \$18,112.57 Tax

For Petitioner: Timothy Moran, Representative

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

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

Issue: Whether petitioner has furnished sufficient documentation to prove that audited taxable sales 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 to reduce the disputed measure of tax by 50 percent.

FINAL ACTION ON PETITIONS HEARD MAY 29, 2002

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 of *Empire Equipment Co., L.P.*, 30009, be redetermined as recommended by the Appeals Section.

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 of *Alpine Medical Ltd.*, 89000475350, 89000475340, be redetermined as recommended by the Appeals Section.

FINAL ACTION ON PETITION HEARD MAY 30, 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 the petition of *Elva Corporation*, 42201, be redetermined as recommended by the Appeals Section.

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BUSINESS TAX APPEALS HEARING

Stephanie Kalomiros Brown, 105412

10-1-97 to 9-30-99, \$12,666.25 Tax

\$00.00 Penalty, Negligence

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Trecia Nienow, Counsel

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

Issues: Whether there was a taxable sale of a 1994 Ferrari automobile to a private party as alleged by the Department, or merely an investment transaction as alleged by petitioner.

Whether a 1958 Porsche automobile was irrevocably committed to the export process for shipment abroad to the buyer at the time of sale by petitioner.

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 in accordance with the revised recommendation of the Appeals Section.

Don Ricardo's Restaurant, Inc., 42025

Padrino's Inc., 42029

1-1-94 to 12-31-96, \$37,111.60 Tax

\$3,711.16 Penalty, Negligence

For Petitioner: No Appearance

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

Action: The Board took no action.

FINAL ACTION ON PETITION HEARD MAY 30, 2002

Mr. Andal moved in the petition of *Bin Wang and Ai Fen Zhou, 112966*, that the negligence penalty be deleted. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

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

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ADMINISTRATIVE SESSION**BOARD COMMITTEE REPORTS****Legislative 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 Legislative Committee report (Exhibit 5.17).

Customer Services and Administrative Efficiency 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 Customer Services and Administrative Efficiency Committee report (Exhibit 5.18).

Business Taxes 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 Business Taxes Committee report (Exhibit 5.19).

The Board adjourned at 11:55 a.m.

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