

WEDNESDAY, OCTOBER 2, 2002

The Board met at its offices at 450 N Street, Sacramento, at 2:20 p.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, Mr. Andal and Mr. Parrish present.

PROPERTY TAXES HEARINGS

ICG Telecom of San Diego, Inc. (2433), 183704

2002, \$16,500,000.00 Unitary Value

ICG Telecom Group, Inc. (2462), 183702

2002, \$82,200,000.00 Unitary Value

\$8,220,000.00 Penalty, Failure to File

Bay Area Teleport, Inc. (2131), 183706

2002, \$49,400,000.00 Unitary Value

\$4,940,000.00 Penalty, Failure to File

For Petitioner:

Robert Huskison, Representative

Peter Michaels, Attorney

For Property and Special Taxes Department:

Michael Lebeau, Board Staff

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

Issue: Whether the Board's reliance on the Replacement Cost Less Depreciation value indicator was invalid considering the petitioner's status in bankruptcy, participation in troubled industry, and unexpected obsolescence.

Whether the petitioner is entitled to an abatement of the penalty for failure to file all necessary information requested by Board staff, specifically the Possessory Interest payments schedule.

Petitioner's Exhibit: Binder of Miscellaneous Material (Exhibit 10.1)

Action: 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 ordered to deny the petitions for reassessment and abatement of penalties, and ordered that staff send a letter to the petitioners' chief financial officers, giving notice that lack of timely and complete reporting compliance next year will result in the issuance of a subpoena requiring their appearance before the Board.

Exhibits to these minutes are incorporated by reference.

All American Pipeline, L.P. (465), 183744

2002, \$99,500,000.00 Unitary Value

For Petitioner:

Peter Michaels, Attorney

Thomas Gilbert, Assistant Treasurer

For Property and Special Taxes Department:

Daniel Nauman, Tax Counsel

Mark McCaleb, Board Auditor Appraiser

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

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Issues: Whether Petitioner provided sufficient information to establish a shorter remaining operating life for the Point Arguello Field, and for the Santa Ynez Unit, than that utilized by Board staff, such that the remaining operating life of its pipeline property is 11 years.
 Whether the sources for crude oil production projections for the Santa Ynez Unit and for the Point Arguello Field relied upon by Board staff were reliable.
 Whether Board staff should have placed any reliance upon the ReprCLD value indicator.

Petitioner's Exhibit: Income/Cost sheets (Exhibit 10.2)

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

Williams Communications, L.L.C., 183699

2001, \$635,400,000.00 Unitary Value

For Petitioner: No Appearance

For Property and Special Taxes Department: Mary Ann Alonzo, Tax Counsel

Action: The Board took no action.

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

BUSINESS TAXES APPEALS HEARINGS

Lifescan, Inc., 29592, 37314, 48966

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

For Petitioner: Alan D. Floria, Representative

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

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

Issues: Whether transfers of insulin test systems, delivered by petitioner to common carriers for shipment directly to consumers outside the state under petitioner's "meter swap-out program," are promotional gifts or exempt sales in interstate commerce.

Whether petitioner's transfer of meters to Kaiser Permanente (Kaiser) in exchange for Kaiser's agreement to purchase a minimum number of glucose strips from petitioner and to refrain from purchasing any competitors' strips, is a taxable use of the meters by petitioner or an exempt sale of both strips and meters to Kaiser.

Whether the evidence supports a finding that three journal entries were erroneously included in the measure of tax because they were either reversed or did not involve the transfer of tangible personal property.

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

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Linda M. Nantelle, 89000678810, 89000678820, 89000678830

4-1-94 to 9-30-94, -\$204.67 Tax
\$00.00 Penalty, Negligence

10-1-94 to 3-31-95, \$333.24 Tax
\$00.00 Penalty, Negligence

4-1-95 to 5-31-97, \$3,807.49 Tax
\$00.00 Penalty, Negligence

For Petitioner: Linda M. Beck (Nantelle)

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

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

Issue: Whether the measure of tax was computed in accordance with the Board's order.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs, absent, the Board ordered that the petition be granted as to the disputed measure of tax.

Sukhdev Singh Dhillon, 119102

10-1-97 to 9-30-00, \$482.42 Tax

For Petitioner: No Appearance

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

Action: The Board took no action.

Raspberry Hill, L.P., 76832

10-1-96 to 9-30-99, \$1,291.52 Tax

For Petitioner: Randy Dawson, President

For Sales and Use Tax Department: Sharon Jarvis, Tax Counsel

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

Issue: Whether the remaining amounts that petitioner charged to its customers in conjunction with events during which petitioner made sales of meals and drinks constituted taxable gross receipts.

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

Temtco Equipment, Inc., 48019

6-30-92 to 12-31-98, \$388,773.63 Tax

\$38,877.38 Penalty, Failure to File

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Robert Tucker, Tax Counsel

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

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Issues: Whether the evidence shows that the tractors are subject to sales tax rather than use tax.

Whether the evidence shows that the tractors and trailers qualify for the interstate commerce exemption.

Whether the evidence shows that petitioner reported and paid the use tax on certain tractors to the Department of Motor Vehicles.

Whether the audit methodology used by the Department results in an accurate amount of taxable transactions.

Whether relief from the penalty for failure to file returns is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

FINAL ACTION ON PETITION HEARD OCTOBER 2, 2002

Upon motion of Ms. Mandel, seconded by Mr. Parrish and duly carried, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang voting no, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition of *Lifescan, Inc.*, 29592, 37314, 48966, be redetermined with adjustment.

The Board adjourned at 4:00 p.m.

The foregoing minutes are adopted by the Board on November 13, 2002.