

THURSDAY, OCTOBER 3, 2002

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Mr. Chiang, Chair, Mr. Andal and Mr. Parrish present.

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, Mr. Parrish and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation, settlements (Revenue and Taxation Code sections 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126 (a)).

The Board recessed at 9:35 a.m. and reconvened immediately in open session with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

ADMINISTRATIVE SESSION

CHRISTIAN COMMUNITY CREDIT UNION, 144236

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered the Appeals Division to draft a formal opinion for Board consideration at the next Sacramento meeting.

ADMINISTRATIVE MATTERS, CONSENT

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

Action: Adopt the following resolution extending its best wishes on his retirement and its appreciation for his service to the State Board of Equalization and the State of California (Exhibit 10.3).

Jon Sperring, Tax Counsel III, Board Member's Office, Second District

Action: Adopt the summons to County Assessors for the Board's December 18, 2002 meeting (Exhibit 10.4).

Action: Adopt prepayment of Sales Tax on Motor Vehicle Fuel, Diesel Fuel and Jet Fuel (Exhibit 10.5).

Exhibits to these minutes are incorporated by reference.

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SPECIAL PRESENTATION

On behalf of the Board, Mr. Andal presented to Jon Sperring, Tax Counsel III, Board Member's Office, Second District, a resolution extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California.

CHIEF COUNSEL MATTERS**RULEMAKING****Request adoption of revised language to Regulation 1616, Federal Areas**

Janice Thurston, Assistant Chief Counsel, Legal Division, made introductory remarks regarding the requested adoption of revised language to *Regulation 1616, Federal Areas* (Exhibit 10.6).

Speaker: Clifford Lyle Marshall, Chairman, Hoopa Valley Tribal Council

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted the revised language to *Regulation 1616, Federal Areas*.

Request for authorization to publish proposed amendment to the State Board of Equalization's Conflict of Interest Code, Regulation 6001, General Provisions.

Jean Ogrod, Assistant Chief Counsel, Settlement and Administrative Section, Legal Division, made introductory remarks regarding the authorization to publish proposed amendment to the State Board of Equalization's Conflict of Interest Code, *Regulation 6001, General Provisions* (Exhibit 10.7).

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 the proposed amendment to the State Board of Equalization's Conflict of Interest Code, *Regulation 6001, General Provisions*.

LEGAL APPEALS MATTERS, ADJUDICATORY

Peter B. Rothschild Living Trust, 99979

9-30-99, \$40,455.00 Tax

Considered by the Board: July 9, 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. 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 Division.

Industrial Systems Associates, Inc., 42237

8-14-95 to 9-30-98, \$268,557.45 Tax

Considered by the Board: September 11, 2002

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

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and duly carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang voting no, Ms. Mandel not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Conam Inspection, Inc., 89002320200

4-1-94 to 3-31-97, \$62,686.12 Tax

Conam-MMP, Inc., 89000966320

4-1-95 to 12-31-97, \$45,191.20 Tax

\$00.00 Penalty, Failure to File

Considered by the Board: March 13, 2002

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

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

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,
ADJUDICATORY****Donald and Julia Galloway, 89002467700**

1992, \$90,207.00 Tax

David L. (deceased) and Juanita F. Thomas, 31869

1992, \$96,203.00 Tax

\$23,730.25 Penalty, Late Filing

Considered by the Board: June 20, 2002

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

Action: Mr. Klehs moved to adopt a decision sustaining the action of the Franchise Tax Board. Mr. Andal made a substitute motion to delete the late filing penalty. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Mr. Klehs moved to adopt a decision sustaining the action of the Franchise Tax Board. The motion was seconded by Mr. Chiang but failed to carry, Mr. Klehs voting yes, Mr. Chiang, Mr. Parrish and Mr. Andal voting no, Ms. Mandel abstaining.

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The Board deferred consideration of this matter to later in the day.

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

Alissa Williams, 144054

2001, \$1.00 or more Claim for Refund

Considered by the Board: August 1, 2002

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

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

**SALES AND USE TAX MATTERS, CREDITS AND CANCELLATIONS,
ADJUDICATORY**

Cena Lorraine Abergel, 187606

1-1-94 to 12-31-95, \$85,551.74 Tax

Considered by the Board: November 30, 2000

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 approved the credit and cancellation as recommended by staff.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals 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, Ms. Mandel not participating in accordance with Government Code section 7.9 in *USAA Life Insurance Company, 32655*, the Board made the following orders:

Orix Credit Alliance, Inc. 19444

1-1-93 to 3-31-96, \$25,195.59 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Division.

Sebastian City, Inc., 92440

1-1-97 to 12-31-99, \$41,080.87 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Division.

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Legend, Inc., 41974

7-1-90 to 12-31-97, \$472.56 Tax

\$00.00 Penalty, Failure to File

Action: Redetermine as recommended by the Appeals Division.

USAA Life Insurance Company, 32655

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

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

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. 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:

Montgomery Ward and Co., Inc., 133828

1989, \$1,018,998.00 Claim for Refund

1990, \$1,698,227.00 Claim for Refund

1991, \$1,425,358.00 Claim for Refund

1992, \$322,871.00 Claim for Refund

1993, \$157,602.00 Claim for Refund

1994, \$1,093,307.00 Claim for Refund

Action: Adopt a decision which included mutual concessions of the parties.

Satinder S. and Harpreet K. Rekhi, 153490

1996, \$32,761.00 Assessments

1997, \$27,205.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Philip A. and Cheryl L. Ramseyer, 153561

1998, \$817 Assessment

Action: Sustain the action of the Franchise Tax Board.

Thomas W. Bauder, 154079

1992, \$1,929.00 Tax

\$385.80 Penalty

1993, \$2,311.00 Tax

\$462.20 Penalty

Action: Sustain the action of the Franchise Tax Board.

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Larry J. Leavitt, 155482

1999, \$2,766.79 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ronald W. Grove, 155515

1984, \$1.00 or more Claim for Refund

1985, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Lyle B. Chrysler, 156605

1999, \$83.84 Assessment

Action: Sustain the action of the Franchise Tax Board.

Regina L. Brown, 156625

1996, \$282.56 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Rodney Springer, 157784

1996, \$1,106.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Kenneth W. Castleberry, 158117

1998, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

William H. Chollman, Sr., 162179

1997, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Pattie A. Rhoades, 162824

1999, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Samuel A. Nash, 162826

1999, \$1,135.49 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Nicholas H. and Robin P. Politan, 164431

1998, \$3,035.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Shari L. Schabath, 164456

1999, \$1,114.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Lise K. Rosengard, 165240

1998, \$76.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Peggy L. Kaiser, 165743

1998, \$532.76 Tax

Action: Sustain the action of the Franchise Tax Board.

Richard Parissi, 115055

1997, \$647.25 Tax

\$161.81 Penalty

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

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

Mary Frances Allison, 144792

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Victoria S. Munez, 145120

1999, \$345.25 Claim for Credit

2000, \$345.25 Claim for Credit

Action: Sustain the action of the Franchise Tax Board for 1999 and reverse the action of the Franchise Tax Board for 2000.

Verlyn Stewart, 153248

2001, \$192.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Richard L. Dobbs, 153510

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Conrado Ortega, 154081

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Kim-Vang Nguyen, 154084

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Muey Chow Saechao, 154575

2001, \$600.00 Claim for Credit

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

Norma J. Reed, 154601

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Ozie Williams, 155463

2001, \$344.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Nhieu Q. Nguyen, 156154

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Eloise James, 156159

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Margaret T. Blake, 156594

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Miguel Briseno, 156603

2001, \$592.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Thanh Ngoc Dao, 156628

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Jeannette D. Lewis, 156967

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Diana M. Charles-Rego, 157024

2001, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Hipolito D. de Mesa, 157046

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Benjamin Harris, 157188

2001, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Alfred E. Carnes, 157362

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Theresa Dominguez, 157385

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Denise Burke, 157624

2001, \$200.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Debra Stutts, 157961

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Sherry Spencer, 158320

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Sharon Jones, 158599

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Rudy Garcia, 158602

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Judith M. Hayes, 160349

2001, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Howard Lee George, Jr., 163507

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Beatrice C. Solario, 164837

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Michael G. Ramirez, 165729

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Mariya Golenkova, 167621

2001, \$320.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Alice A. McGee, 170347

2000, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denial of Claims for Refund, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

Meyer Corporation U.S., 152393

4-1-98 to 3-31-01, \$105,109.10

Action: Approve the redetermination as recommended by staff.

3 Com Corporation, 56160

10-01-96 to 3-31-97 \$1,362,916.26

Action: Approve the redetermination as recommended by staff.

3 Com Corporation, 84579

4-1-97 to 9-30-97, \$678,289.03

Action: Approve the redetermination as recommended by staff.

Komag, Inc., 151987

3-30-98 to 4-1-1, \$75,051.21

Action: Approve the redetermination as recommended by staff.

SSE Technologies, Inc., 167412

1-1-99 to 9-12-01, \$121,552.81

Action: Approve the redetermination as recommended by staff.

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Matthews International Corp., 89000807220

7-1-92 to 6-30-95, \$95,923.99

Action: Approve the redetermination as recommended by staff.

Capitol Associates International, Inc., 130257

4-1-96 to 3-31-99, \$1,474,596.91

Action: Approve the redetermination as recommended by staff.

Compuware Corporation, 157758

4-1-98 to 3-31-99, \$68,438.32

Action: Approve the redetermination as recommended by staff.

Altec Industries, Inc., 82998

10-01-95 to 12-31-98, \$156,011.79

Action: Approve the redetermination as recommended by staff.

Fleet Capital Corp., 114944

12-3-99, \$1,195,920.00

Action: Approve the redetermination as recommended by staff.

Ro-An Industries, 127819

10-01-97 to 9-30-00, \$60,660.37

Action: Approve the redetermination as recommended by staff.

Packaging Machines International, 145183

10-01-96 to 3-31-01, \$85,092.23

Action: Approve the redetermination as recommended by staff.

XLSource, Inc., 135360

1-1-97 to 12-31-98, \$373,584.39

Action: Approve the redetermination as recommended by staff.

Wild Oats Markets, Inc., 157768

7-1-97 to 6-30-00, \$434,490.43

Action: Approve the redetermination as recommended by staff.

Loehmann's, Inc., 186268

10-07-01 to 2-2-02, \$59,105.69

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

Quest N. Limited Partnership, 187555

10-1-01 – 12-31-01, \$100,097.00

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

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PHH Vehicle Management Services, 186282

10-1-01 – 12-31-01, \$71,0223.00

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

Cincinnati Machine, 187553

1-1-99 to 3-31-99, \$65,150.10

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

SAP America, Inc., 185807

11-1-01 to 11-30-01, \$161,605.43

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

Ericsson, Inc., 98725

10-1-98 to 6-30-00, \$1,494,244.29

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

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

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

Aviation Equipment Resources I, 186623

3-10-99 to 3-10-99, \$57,477.94

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

Poole Family Trust Dated 1/11/00, 186844

3-31-00, \$74,012.47

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

Karl A. Jacob, III, 187446

6-19-00, \$181,634.37

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

Montgomery Ward & Co., Inc., 187660

7-8-97 to 7-31-99, \$248,347.10

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

Heidelberg USA, Inc., 169038

1-1-98 to 12-31-00, \$281,861.72

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

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L.A. Unified School District, 186935

10-1-99 to 6-30-01, \$491,694.89

Action: Approve the refund as recommended by staff.

Lockheed Federal Credit Union, 186404

1-1-98 to 12-31-01, \$181,519.41

Action: Approve the refund as recommended by staff.

Dean Witter Reynolds, Inc., 106276

1-1-97 to 12-31-99, \$541,224.26

Action: Approve the refund as recommended by staff.

Watermark Press LTD., 142411

1-1-01 to 6-30-01, \$81,540.12

Action: Approve the refund as recommended by staff.

Budget Rent-A-Car Systems, Inc., 105815

7-1-97 to 6-30-98, \$75,761.16

Action: Approve the refund as recommended by staff.

Kamran Sharareh, 89000649950

7-1-90 to 9-30-93, \$89,937.94

Action: Approve the refund as recommended by staff.

Michael C. McMenemy Co., Inc., 145842

7-1-00 to 9-30-00, \$75,950.43

Action: Approve the refund as recommended by staff.

Safe Credit Union, 186403

1-1-98 to 3-31-02, \$152,384.91

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 185930

1-1-01 to 12-31-01, \$151,463.41

Action: Approve the refund as recommended by staff.

Computervision Corporation, 186931

7-1-96 to 1-12-98, \$74,545.37

Action: Approve the refund as recommended by staff.

The Babcock & Wilcox Company, 143594

10-1-00 to 12-31-00, \$386,408.50

Action: Approve the refund as recommended by staff.

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Caterpillar Financial Services Corporation, 186943

7-1-98 to 12-31-01, \$76,794.69

Action: Approve the refund as recommended by staff.

California Insurance Group, 152877

10-1-98 to 9-30-01, \$107,708.06

Action: Approve the refund as recommended by staff.

Riverstone Networks, Inc., 130618

10-1-00 to 3-31-00, \$694,288.73

Action: Approve the refund as recommended by staff.

H.L. Foodservice, Inc., 140054

4-1-98 to 6-30-01, \$474,865.60

Action: Approve the refund as recommended by staff.

P E C, Inc., 186820

7-11-98 to 6-30-01, \$52,833.16

Action: Approve the refund as recommended by staff.

Delta Air Lines, Inc., 157194

10-1-95 to 9-30-99, \$498,446.10

Action: Approve the refund as recommended by staff.

Northrop Grumman Information Tech, Inc., 186667

7-1-01 to 9-30-01, \$3,187,231.70

Action: Approve the refund as recommended by staff.

SZ Testsysteme, Inc., 94301

7-1-00 to 9-30-00, \$70,075.44

Action: Approve the refund as recommended by staff.

Westlake Services, Inc., 184422

1-1-98 to 3-31-02, \$643,550.73

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, RELIEF OF PENALTIES AND REDETERMINATION,
CONSENT**

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

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BFI Industries of California, 187073

1-1-01 to 12-31-01, \$219,581.73

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

Mc Lane Suneast, Inc., 62824

3-1-97 to 12-31-97, \$97,395.79

Action: Approve the redetermination as recommended by staff.

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang not participating in *The Boeing Company, 170757*, the Board made the following orders:

Otay Landfill, Inc., 172398

1-1-01 to 3-31-02, \$111,648.57

Action: Approve the refund as recommended by staff.

The Boeing Company, 170757

1-1-99 to 12-31-00, \$95,573.14

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

PROPERTY TAXES MATTERS, CONSENT

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

Nextlink California, LLC, 174282

2002, \$120,300,000.00 Unitary Value

Action: Approve the reassessment of 2002 unitary value as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

Covad Communications Company, 183417

2002, \$58,400,000.00 Unitary Value

Action: Approve the reassessment of 2002 unitary value as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

ACC Telecommunications, LLC, 183415

2002, \$28,700,000.00 Unitary Value

Action: Approve the reassessment of 2002 unitary value as recommended by staff.
Ms. Mandel not participating in accordance with Government Code section 7.9.

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

Timber Yield Tax Write-Off Schedule TW-9

Action: Approve staff request for discharge from accountability of Timber Yield Tax (Exhibit 10.8).

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Gwilliam, Ivary, Chiosso, Cavalli & Brewer, 118821

1994, \$62,775.21 Assessment

1995, \$350,488.76 Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

David Biedler, Tax Counsel

Action: The Board took no action.

Robert M. and Lois F. Ling, 133712

1989, \$72,471.00 Assessment

\$17,591.00 Late Filing Penalty

For Appellant:

Robert M. Ling

R. Todd Luoma, Attorney

For Franchise Tax Board:

Bruce Langston, Tax Counsel

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

Issues: Whether appellants have met their burden to prove error in the proposed assessment, or the federal action it is based on.

Whether appellants have shown reasonable cause for relief from the late filing penalty.

Whether interest should be abated.

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 abate the interest from July 8, 1999 to April 12, 2001.

Upon motion of Mr. Andal, seconded by Mr. Klehs and duly carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang and Ms. Mandel voting no, the Board ordered that the action of the Franchise Tax Board be sustained as to Issue 1, the late filing penalty be deleted, and the Franchise Tax Board follow interest abatement granted by the Internal Revenue Service.

THURSDAY, OCTOBER 3, 2002

The Board recessed at 10:30 a.m. and reconvened at 10:40 a.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Ms. Mandel present.

Atlantic Richfield Company, 134085

12-31-88, \$9,203,702.00 Assessment

For Appellant:

Barry Weissman, Representative

For Franchise Tax Board:

Ira Rubinoff, Tax Counsel

Lorig Mushegain, Tax Counsel

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

Issues: Whether appellant has established that the gain from the sale of Britoil stock was business income under the transactional test of Regulation 25120.

In the alternative, whether appellant has established that the gain from the sale of Britoil stock was business income because the stock was purchased with appellant's "working capital."

Appellant's Exhibit: Miscellaneous Documents (Exhibit 10.9)

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 submitted the appeal for decision.

Roberto Brutocao, 140415

12-31-93, \$82,891.00 Tax

\$39,066.75 Late Filing Penalty

Venture Communications, Inc. 141641

9-30-93, \$475,256.55 Tax

For Appellant:

Gerald A. Klein, Attorney

Donald Gusarson, Accountant

For Franchise Tax Board:

Cody Cinnamon, Tax Counsel

Kent Sumners, Tax Counsel

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

Issues: Whether proceeds awarded to appellant-Venture Communications, Inc., by the superior court in October 1992 constitute built-in gains to appellant upon its conversion from a C corporation to an S corporation because the proceeds are attributable to the period before appellant's S corporation election.

Whether the income received by Venture Communications, Inc., from the disposition of its limited partnership interest in Falcon Cable TV of West Covina, and passed through to appellant, constitutes California source income with the result that appellant-Brutocao, a shareholder in Venture Communications, Inc., and a resident of Nevada, is subject to California income tax (and a late filing penalty) on the amount.

Appellant's Exhibit: Miscellaneous Charts and Graphs (Exhibit 10.10)

Respondent's Exhibit: Timeline and CA Form 565 for the year 1991 (Exhibit 10.11)

THURSDAY, OCTOBER 3, 2002

Action: Upon motion of Mr. Andal, seconded by Ms. Mandel and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board reversed the action of the Franchise Tax Board.

Amir H. and Lila Ghassemi, 112341

1996, \$18,076.00 Assessment

\$4,519.00 Late Filing Penalty

1997, \$4,974.00 Assessment

For Appellant:

Ed Regan, Representative

For Franchise Tax Board:

John Penfield, Tax Counsel

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

Issue: Whether respondent properly relied on the results of a sales tax audit by the Board of Equalization to assess additional income taxes and penalties.

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 appeal be submitted for decision, granting the appellant 30 days to submit additional documentation and the Appeals Division 30 days thereafter to bring the matter back to the Board with a final recommendation.

The Board recessed at 11:50 a.m. and reconvened at 1:30 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Ms. Mandel present.

FINAL ACTION ON PETITION HEARD OCTOBER 2, 2002

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 not participating in accordance with Government Code section 7.9, the Board ordered that the 2002 unitary value be reduced in the petition of *All American Pipeline, L.P. (465), 183744*.

FINAL ACTION ON APPEAL HEARD OCTOBER 3, 2002

Ms. Mandel moved to grant the petition of *Atlantic Richfield Company, 134085*. The motion failed for lack of a second.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs and Mr. Parrish voting yes, Ms. Mandel voting no, Mr. Andal not participating, the Board sustained the action of the Franchise Tax Board.

THURSDAY, OCTOBER 3, 2002

BUSINESS TAXES APPEALS HEARINGS

Document Copy Service, 116753

7-1-94 to 6-30-97, \$389,143.49Tax

\$00.00 Delinquency Penalty

For Petitioner:

Forrest Besocke, Witness

Terence Callaghan, CPA

Bayard J. Miller, Attorney

For Sales and Use Tax Department:

Randy Ferris, Tax Counsel

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

Issues: Whether petitioner's advance fee charges for photocopies, made pursuant to a written authorization, are subject to tax.

Whether petitioner is entitled to relief under Revenue and Taxation Code section 6596 and California Code of Regulations, title 18, section 1705 with respect to: (1) advance fees charged pursuant to a written authorization, and (2) freight charges in excess of petitioner's actual cost for transportation.

Whether petitioner's charges for telephone calls are nontaxable because they were made in the preparation and service of subpoenas duces tecum under California Code of Regulations, title 18, section 1528, subdivision (b)(1) and (b)(3).

Whether petitioner's charges to opposing counsel for copies of photocopies are nontaxable because they are indirectly related to petitioner's preparation and service of a subpoena duce tecum.

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel 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.

Naiel M. Ammari & Nabeel Ammari, 128570

8-7-98 to 3-31-00, \$4,824.19Tax, \$5,001.18 Negligence Penalty

For Petitioner:

Jeffrey B Setness, Attorney

Naiel M. Ammari

For Sales and Use Tax Department:

Stephen Smith, Tax Counsel

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

Issues: Whether petitioner has shown that two disallowed transactions are, in fact, sales for resale, despite petitioner's failure to take a resale certificate from either buyer.

Whether relief from the negligence penalty should be allowed.

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

THURSDAY, OCTOBER 3, 2002

The Phoebus Company, Inc., 89000259970, 49459, 47417

4-1-95 to 3-31-96, \$11,721.12 Tax

\$00.00 Penalty, Negligence

4-1-96 to 6-30-98, \$25,536.01 Tax

\$00.00 Penalty, Negligence

4-1-96 to 6-30-98, \$1.00 or more, Claim for Refund

For Petitioner: No Appearance

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

Action: The Board took no action.

United States Fire Insurance Company, 57489

1-1-89 to 12-31-89, \$699,429.64 Claim for Refund

For Claimant: Derick Brannan, Attorney

Michael G. DeAngelis, Representative

For Property and Special Taxes Department: Trecia Nienow, Tax Counsel

For Department of Insurance: Arnold Kessler, Tax Counsel

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

Issues: Whether claimant should have been allowed to deduct its earned but unbilled workers' compensation premiums on its 1989 insurance tax return.

Whether claimant's March 29, 2000 claim should be a valid claim for refund for the 1986 return, based on equitable tolling of the statute of limitations.

Whether claimant is entitled to an offset of its 1986 overpayment of insurance tax against its 1989 underpayment pursuant to Revenue and Taxation Code section 12426.

Whether claimant is entitled to equitable recoupment of its 1986 overpayment of insurance tax.

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

PETITION FOR RELEASE OF SEIZED PROPERTY

Max Wayne Holmes, 186279

7-3-02 Notice of Seizure and Forfeiture

For Petitioner: Max Wayne Holmes

For Property and Special Taxes Department: Blanca Breeze, Tax Counsel

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

Issue: Whether the cigarettes should be forfeited to the State of California because they are described by subdivision (b) of Revenue and Taxation Code section 30436.

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

THURSDAY, OCTOBER 3, 2002

FINAL ACTION ON PETITIONS HEARD OCTOBER 3, 2002

Ms. Mandel moved to redetermine the petition of *Document Copy Service, 116753*, as recommended by the Appeals Division. The motion failed for lack of a second.

Mr. Klehs moved to reduce the disputed measure of tax by 10 percent. The motion was seconded by Mr. Parrish, but failed to carry, Mr. Parrish and Mr. Klehs voting yes, Mr. Chiang and Ms. Mandel voting no, Mr. Andal absent.

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

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Naiei M. Ammari & Nabeel Ammari, 128570*, be redetermined as recommended by the Appeals Division.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Andal absent, the Board ordered that the claim for refund of *United States Fire Insurance Company, 57489*, be denied.

Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board determined that the staff did properly seize the property in the petition of *Max Wayne Holmes, 186279*.

The Board directed the Appeals Division to draft a memorandum opinion.

PUBIC HEARING**BUSINESS TAXPAYERS' BILL OF RIGHTS HEARINGS**

Jennifer Willis, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers' Bill of Rights Hearing.

Speakers: Abe Golomb, Representative, Associated Sales Tax Consultants

PROPERTY TAXPAYERS' BILL OF RIGHTS HEARINGS

Jennifer Willis, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Property Taxpayers' Bill of Rights Hearing.

Speakers: Nancy F. Lea, Property Owner
Chowvalee Boonyaratanakornkit, Property Owner

THURSDAY, OCTOBER 3, 2002

ADMINISTRATIVE SESSION**BOARD COMMITTEE REPORTS****Property Tax Committee**

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 approved the Property Tax Committee report (Exhibit 10.12).

Customer Services and Administrative Efficiency Committee

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 approved the Customer Services and Administrative Efficiency Committee report (Exhibit 10.13).

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,
ADJUDICATORY – Continued**

Donald and Julia Galloway, 89002467700

1992, \$90,207.00 Tax

David L. (deceased) and Juanita F. Thomas, 31869

1992, \$96,203.00 Tax

\$23,730.25 Penalty, Late Filing

Considered by the Board: June 20, 2002

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

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board sustained the action of the Franchise Tax Board.

The Board adjourned at 3:15 p.m.

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

THURSDAY, OCTOBER 3, 2002