

Tuesday, October 19, 2004

The Board met at its offices at 450 N Street, Sacramento, at 9:40 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS**Tah Lih Investment, Inc., 194099**

10-1-98 to 9-30-01, \$53,442.19 Tax, \$00.00 Negligence Penalty

For Petitioner: Edward G. Wang, CPA
Alex Tang, Taxpayer

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

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence warrants an additional adjustment for employee theft of merchandise.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Bikecology, Inc., 225006

10-1-99 to 9-30-02, \$11,156.54 Tax

For Petitioner: David Bertoni, Attorney

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

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether labor charges associated with the application of the Superguard treatment to new bicycles represents taxable labor.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be deferred to later in the day, directing staff to review documents with the petitioner to determine whether proper documents were provided to the petitioner.

Ceramiche Di Cintone, Inc., 214245

10-1-98 to 9-30-01, \$1,069.84 Tax

For Petitioner: Tony Campanile, Taxpayer

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

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence shows that the disputed taxable sales understatement represents allowable bad-debt deductions.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Joyeria Internacional, Inc., 139250

10-1-97 to 9-30-00, \$44,004.21 Tax, \$4,490.75 Negligence Penalty

For Petitioner: Kurt Miller, Attorney

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

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Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has met its burden to establish that disallowed claimed sales for resale were in fact nontaxable sales for resale.

Whether petitioner has met its burden to establish that disallowed claimed sales in interstate commerce were actual exempt sales in interstate commerce.

Whether petitioner has established that the Department's block test for the fourth quarter 1999 overstates the taxable measure for the audit period.

Whether the Department's determination of taxable fabrication labor also resulted in the taxation of nontaxable repair labor.

Whether the negligence penalty assessed against petitioner should be sustained.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Migden and Ms. Mandel voting no, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Mr. Leonard moved to amend the previous motion to submit the petition for decision for 60 days, directing the Department to do an on-site investigation and the Appeals Division thereafter to review the Department's findings and provide its recommendation to the Board. The motion was seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes.

Century Theatres, Inc., 282251

4-1-98 to 3-31-01, \$769,375.16 Claim for Refund

For Claimant: Andrew McCullough, Taxpayer

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

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the popcorn that claimant sold at its various movie theaters throughout California was a hot prepared food product, the sales of which are subject to sales tax.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

PETITION FOR RELEASE OF SEIZED PROPERTY

J Top World Corporation, 271883

April 21, 2004 Notice of Seizure and Forfeiture

For Petitioner: Jae Soo Aoh, Taxpayer

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

Contribution Disclosures pursuant to Government Code section 15626: None 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 Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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PROPERTY TAXES HEARING

Ms. Mandel stated that she would not participate in the matter of *U.S. TelePacific Corporation (7757)*, 267288, in accordance with Government Code sections 7.9 and 15626 and left the Boardroom.

U.S. TelePacific Corporation (7757), 267288

2001, \$19,400,000.00 Escape Assessment, \$1,940,000.00 Penalty, \$4,656,000.00 In-Lieu Interest
 2002, \$23,200,000.00 Escape Assessment, \$2,320,000.00 Penalty, \$3,480,000.00 In-Lieu Interest
 2003, \$14,900,000.00 Escape Assessment, \$1,490,000.00 Penalty, \$894,000.00 In-Lieu Interest

For Petitioner:

Jeffrey A. Mannisto, Attorney

Harvey Rochman, Attorney

Arnie Tesh, Witness

For Property and Special Taxes Department: Reed Schreiter, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Westly. No other disqualifying contributions were disclosed.

Issues: Whether the original assessments of petitioner's central office equipment digital switches and related peripheral equipment overvalued that property by failing to adequately reflect reductions due to adverse economic changes in the telecommunications industry.

Whether relief from the penalty should be granted.

Petitioner's Exhibit: Miscellaneous Documents (Exhibit 10.1)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, and Mr. Leonard voting yes, Mr. Parrish and Mr. Chiang abstaining, Mr. Westly absent, the Board ordered that the petition be submitted for decision.

Exhibits to these minutes are incorporated by reference.

Ms. Mandel returned to the Boardroom on behalf of Mr. Westly in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Tammy Brewer, 251574

2001, \$750.00 Assessment

For Appellant:

Tammy Brewer, Taxpayer

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has shown that she is entitled to use head of household filing status for 2001.

Whether appellant has shown reasonable cause such that a failure to provide information penalty should be waived.

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board reversed the action of the Franchise Tax Board.

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Rick Spain, 206124, 237220

1999, \$3,974.00 Tax, \$933.50 Late Filing Penalty, \$933.50 Notice and Demand Penalty
2000, \$4,141.00 Tax, \$1,035.25 Late Filing Penalty, \$1,035.25 Notice and Demand Penalty

For Appellant: No Appearance

For Franchise Tax Board: Mark McEvelly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed.

Action: The Board deferred consideration of this matter.

PUBLIC HEARINGS

Proposed Amendments to Sales and Use Tax Regulation 1619, Foreign Consuls

Sharon Jarvis, Senior Tax Counsel, Business Taxes Division, Legal Department, was available to answer questions regarding Sales and Use Tax Regulation 1619, *Foreign Consuls*, which is proposed to be amended to interpret, implement and make specific Revenue and Taxation Code section 6352. Amendments are proposed, effective June 1, 2003, to incorporate new requirements announced by the federal government for demonstrating exempt sales to foreign consuls and the records that must be retained in the event of audit. (Exhibit 10.2.)

Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the proposed amendments to Sales and Use Tax Regulation 1619, *Foreign Consuls*, as published.

Proposed Amendments to the Rules of Practice, Regulations 5060, 5061, 5062, 5063, and 5064

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, was available to answer questions regarding the proposed amendments to the Rules of Practice 5060-5064, which interpret and make specific statutory changes governing welfare exemption claim filing requirements and hearing procedures for appealing the Board staff's denial of exemption. (Exhibit 10.3.)

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the proposed amendments to the Rules of Practice, Regulations 5060, 5061, 5062, 5063, and 5064, as published.

LEGAL APPEALS MATTERS, CONSENT

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

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Steve Gonzalez Alfaro, 198278

1-1-99 to 9-30-01, \$6,993.71 Tax

Action: Grant the petition for rehearing as recommended by the Appeals Division.

Brian C. Brown, 220983

3-1-02 to 6-10-02, \$5,672.00 Tax

Robert C. Hemmer, 221890

3-1-02 to 6-10-02, \$5,672.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Giao Van Nguyen, 271876

May 18, 2004 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the cigarettes.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Southern Wine & Spirits of America, 249301*.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

William D. Dogherra, 219662

2000, \$765.25 Assessment

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Mary Elizabeth Grondie, 235456

2000, \$424.00 Tax, \$106.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

David Jenkins, 251232

1999, \$936.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Southern Wine & Spirits of America, 249301

2001, \$15,537.94 Assessment

Action: The Board deferred consideration of this matter.

Sean M. Staab, 249316

2001, \$2,750.00 Assessment

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

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Estate of Charles G. Tison, 251031

1993, \$9,454.00 Claim for Refund
 1994, \$7,890.00 Claim for Refund
 1995, \$3,404.00 Claim for Refund
 1996, \$9,498.00 Claim for Refund
 1997, \$18,153.00 Claim for Refund
 1998, \$189.29 Claim for Refund
 1999, \$6,936.30 Assessment
 2000, \$901.13 Assessment
 2001, \$3,042.79 Assessment

Action: Sustain the action of the Franchise Tax Board.

John A. and Barbara J. Vertullo, 241944

1975, \$15,938.04 Claim for Refund
 1978, \$22,915.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ignatius Anyanwu, 213522

2000, \$870.00 Tax, \$217.50 Penalty

Action: Deny the petition for rehearing.

Bruno W. and Charlene O. Schmidt, 192618

1998, \$15,489.00 Tax, \$8,664.50 Penalty

Action: Deny the petition for rehearing.

Debra Sipich, 239334

2000, \$1,138.56 Assessment

Action: Deny the petition for rehearing.

Richard E. and Pamela D. Zierenberg, 195329

1997, \$832.00 Assessment

1998, \$1,565.00 Assessment

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

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

Warren J. Chatman III, 240046, 244126

2002, \$1.00 or more

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Hsueh-Hua Cheng, 253855

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Penkwei S. Chow, 254003

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Woo Wha Chu, 254005

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Michael Dinh, 254015

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Donna L. Holland, 253643

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Moses Jacko, 260545

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Maria E. Lagarde, 252847

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Lam Minh Le, 253615

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Patrick Sean Lovett, 255894

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Letha F. Maurer, 253820

2003, \$305.00

Action: Sustain the action of the Franchise Tax Board.

Lisé L. Miller, 255096

2003, \$297.00

Action: Sustain the action of the Franchise Tax Board.

James J. Morrison, 254063

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Welven T. Porter, 252959

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

David Rendon, 253630

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Timothy L. Ross, 256243

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Flora M. Sheaffer, 257938

2003, \$321.00

Action: Sustain the action of the Franchise Tax Board.

Jackie K. Shen, 257942

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Hui Ping Shih, 257943

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Patricia A. Smith, 252110

2003, \$265.00

Action: Sustain the action of the Franchise Tax Board.

Augustine Soto, 252115

2003, \$232.00

Action: Sustain the action of the Franchise Tax Board.

Linda Spears, 252116

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Arlene Stoico, 252123

2003, \$347.50

Action: Reverse the action of the Franchise Tax Board.

Wei Ying Sun, 257947

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Catherine Thomas, 256313

2003, \$327.00

Action: Sustain the action of the Franchise Tax Board.

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Anh Tran, 252177

2003, \$265.00

Action: Sustain the action of the Franchise Tax Board.

Huei Ping Chen Tsao, 257975

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Koey Vann, 252606

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Chi-Sheng Wang, 256335

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Kwok Wei Wong, 257988

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Yuan-Chi Wu, 257991

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Yung Shan Yen, 257999

2003, \$207.00

Action: Sustain the action of the Franchise Tax Board.

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

The Board deferred consideration of the following matters: *Conseco Finance Vendor Service Corporation, 198986; VW Credit Leasing, Ltd., 249458; and, Cannon Power Corporation, 264771.*

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

Scott Mednick & Associates, Inc., 146406

7-1-97 to 8-31-01, \$284,751.95

Action: Approve the redetermination as recommended by staff.

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ARC-COM Fabrics, Inc., 249782

10-1-98 to 9-30-01, \$50,939.44

Action: Approve the redetermination as recommended by staff.

ATS Systems Oregon, Inc., 244377

4-1-00 to 3-31-02, \$118,260.16

Action: Approve the redetermination as recommended by staff.

Conseco Finance Vendor Service Corporation, 198986

7-1-97 to 1-31-01, \$165,160.99

Action: The Board deferred consideration of this matter.

Corporate Software & Technology, 160886

10-1-98 to 3-31-01, \$1,813,665.82

Action: Approve the redetermination as recommended by staff.

Stevens Communications, Inc., 223047

1-1-99 to 12-31-01, \$54,298.34

Action: Approve the redetermination as recommended by staff.

Sierracities.com, Inc., 89002345340

1-1-95 to 3-31-96, \$272,264.96

Action: Approve the redetermination as recommended by staff.

Kern Oil & Refining Company, 253141

11-1-02 to 11-30-02, \$169,268.84

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

Prestige Air, LLC, 262277

2-10-00, \$124,000.00

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

Prestige Air, LLC, 262278

12-2-99, \$74,250.00

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

Bemusic, Inc., 264516

10-1-03 to 12-31-03, \$83,357.00

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

Merillat Corporation, 207086

10-1-99 to 12-31-00, \$445,203.00

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

Greenpoint Credit Corporation, 272722

1-1-96 to 12-31-98, \$67,613.25

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

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Quality Stores, Inc., 245988

4-1-01 to 12-23-01, \$94,734.00

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

H & R Services, Inc., 201950

2-1-00 to 6-30-00, \$71,788.00

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

Prediwave Corporation, 224776

7-1-01 to 6-30-02, \$177,486.00

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

VW Credit Leasing, Ltd., 249458

4-1-03 to 6-30-03, \$58,757.40

Action: The Board deferred consideration of this matter.

Cannon Power Corporation, 264771

7-1-02 to 6-30-03, \$487,008.10

Action: The Board deferred consideration of this matter.

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

The Board deferred consideration of the following matter: *Summit Medical Center, 268231.*

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Chiang not participating in *Interreactive Coating Technologies Corporation, 271389*; Ms. Mandel not participating in accordance with Government Code section 87105 in *Ford Motor Company, 270809*; and, *Microsoft Corporation, 197917*; the Board made the following orders:

Saddleback Recreational Vehicles, Inc., 269638

10-1-98 to 9-30-01, \$81,911.63

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

Los Angeles Department of Water & Power, 164045

1-1-97 to 12-31-01, \$67,229.30

Action: Approve the refund as recommended by staff.

Pomona Valley Community Hospital, Ltd., 271334

1-1-00 to 6-30-03, \$94,258.42

Action: Approve the refund as recommended by staff.

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Anthony Manufacturing Corporation, 268635

7-1-00 to 9-30-01, \$84,195.28

Action: Approve the refund as recommended by staff.

California Pacific Medical Center, 269027

7-1-00 to 6-30-03, \$90,373.45

Action: Approve the refund as recommended by staff.

Summit Medical Center, 268231

7-1-99 to 6-30-02, \$185,769.66

Action: The Board deferred consideration of this matter.

Alta Bates Summit Medical Center, 268222

7-1-99 to 6-30-02, \$61,330.29

Action: Approve the refund as recommended by staff.

GEA Power Cooling Systems, Inc., 207096

1-1-02 to 12-31-02, \$132,045.59

Action: Approve the refund as recommended by staff.

Professional Hospital Supply, Inc., 240728

7-1-00 to 12-31-03, \$125,634.37

Action: Approve the refund as recommended by staff.

Ranroy Company, Inc., 217694

1-1-00 to 12-31-02, \$51,581.45

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 266399

7-1-03 to 3-31-04, \$364,458.08

Action: Approve the refund as recommended by staff.

Ethicon, Inc., 186037

4-1-99 to 6-30-02, \$232,516.01

Action: Approve the refund as recommended by staff.

Rain Bird Sales, Inc., 268647

7-1-00 to 9-30-01, \$198,495.48

Action: Approve the refund as recommended by staff.

Ford Motor Company, 270809

2-1-03 to 3-31-04, \$1,880,528.10

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

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Marine World Joint Power Authority, 271298

4-1-03 to 9-30-03, \$88,355.29

Action: Approve the refund as recommended by staff.

Emerzian Woodworking, Inc., 207892

4-1-00 to 3-31-03, \$62,903.95

Action: Approve the refund as recommended by staff.

Marcelo Ruben Garcia, 184498

4-1-99 to 6-30-02, \$98,505.59

Action: Approve the refund as recommended by staff.

Interreactive Coating Technologies Corporation, 271389

1-1-01 to 12-31-03, \$137,770.96

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

Greenpoint Credit Corporation, 46717

1-1-96 to 12-31-98, \$125,986.21

Action: Approve the refund as recommended by staff.

ACAD Corporation, 270322

1-1-01 to 12-31-03, \$56,963.67

Action: Approve the refund as recommended by staff.

LNT Inc., 266398

10-1-03 to 12-31-03, \$59,850.50

Action: Approve the refund as recommended by staff.

Microsoft Corporation, 197917

4-1-02 to 6-30-02, \$1,000,072.05

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Owens & Minor Distribution, Inc., 210085

1-1-02 to 12-31-02, \$113,085.03

Action: Approve the refund as recommended by staff.

GTE California Incorporated, 270615

4-1-01 to 6-30-01, \$141,733.02

Action: Approve the refund as recommended by staff.

Los Angeles Department of Water & Power, 165684

1-1-97 to 12-31-01, \$54,230.79

Action: Approve the refund as recommended by staff.

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Graybar Electric Company, Inc., 172713

4-1-00 to 12-31-01, \$874,901.54

Action: Approve the refund as recommended by staff.

Valley Credit Union, 262415

4-1-03 to 9-30-03, \$114,267.51

Action: Approve the refund as recommended by staff.

Travis Credit Union, 266964

10-1-03 to 12-31-03, \$61,938.16

Action: Approve the refund as recommended by staff.

Recot, Inc., 269350

7-1-97 to 9-30-00, \$288,401.31

Action: Approve the refund as recommended by staff.

Cerner DHT Inc., 249251

7-1-02 to 9-30-02, \$72,135.60

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 268713

1-1-04 to 3-31-04, \$90,735.44

Action: Approve the refund as recommended by staff.

Modern Finance Company, 191006

1-1-02 to 12-31-02, \$96,256.00

Action: Approve the refund as recommended by staff.

Middleton MZ, LLC, 260147

10-1-03 to 12-31-03, \$66,075.85

Action: Approve the refund as recommended by staff.

Nuvel Credit Corporation, 266958

1-1-04 to 3-31-04, \$320,360.84

Action: Approve the refund as recommended by staff.

Parmatech, Inc., 241103

2-1-03 to 3-31-03, \$158,434.17

Action: Approve the refund as recommended by staff.

CIG Financial, 252867

7-1-00 to 12-31-02, \$640,773.71

Action: Approve the refund as recommended by staff.

Heritage Community Credit Union, 270607

4-1-01 to 3-31-03, \$319,339.95

Action: Approve the refund as recommended by staff.

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SPECIAL TAXES MATTERS, REDETERMINATIONS, CONSENT

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

Vista Paint Corporation, 128529

1-1-99 to 12-31-99, \$61,473.23

Action: Approve the redetermination as recommended by staff.

Vista Paint Corporation, 259650

1-1-03 to 12-31-03, \$68,652.04

Action: Approve the redetermination as recommended by staff.

Amita International Trading Corporation, 250846

12-1-98 to 8-31-99, \$95,146.96

Action: Approve the redetermination as recommended by staff.

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Equilon Enterprises, LLC, 254398*, the Board made the following orders:

Vista Paint Corporation, 98097

1-1-98 to 12-31-98, \$99,691.92

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

Vista Paint Corporation, 98080

1-1-97 to 12-31-97, \$104,133.67

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

Vista Paint Corporation, 89000960690

1-1-94 to 12-31-96, \$380,623.11

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

Vista Paint Corporation, 89000960680

1-1-92 to 12-31-92, \$82,290.83

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

Vista Paint Corporation, 89000960670

1-1-91 to 12-31-91, \$65,374.23

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

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Vista Paint Corporation, 223775

1-1-02 to 12-31-02, \$82,196.92

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

Vista Paint Corporation, 170047

1-1-01 to 12-31-01, \$73,121.80

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

Equilon Enterprises, LLC, 254398

7-1-98 to 12-31-01, \$92,791.67

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

Mandela Gateway Associates, A California LP, 266365

1-1-03 to 12-31-03, \$65,674.96

Action: Approve the refund as recommended by staff.

Atlantic Richfield Company, 206947

7-1-98 to 12-31-01, \$4,773,526.85

Action: Approve the refund as recommended by staff.

PROPERTY TAX MATTERS, CONSENT

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

Petitions for Reassessment of Unitary Value

Pacific Gas & Electric Company (0135), 269508

2004, \$14,271,900,000.00 Unitary Value

Action: Deny the petition for reassessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Duke Energy Oakland, LLC (1105), 270197

2004, \$6,650,000.00 Unitary Value

Action: Deny the petition for reassessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Duke Energy South Bay, LLC (1118), 270198

2004, \$72,800,000.00 Unitary Value

Action: Deny the petition for reassessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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LEGAL APPEALS MATTERS, ADJUDICATORY

American Standard Auctioneers, Liquidators, Appraisers, LLC, 145706
7-1-97 to 11-30-99, \$1,524.27 Tax, \$367.30 Failure to File and \$1,328.07 Negligence Penalties
Considered by the Board: Hearing Notice Sent – No Response
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

U.S. Telecom, Inc., 129004
12-1-97 to 4-30-00, \$1,460,224.42 Tax
Considered by the Board: Hearing Notice Sent – Appearance Waived
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Glasstone, Inc., 190970
4-1-98 to 3-31-01, \$60,191.00 Tax
Considered by the Board: September 22, 2004
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Carpeteria Markarian Company, Inc., 197090
1-1-99 to 12-31-01, \$33,655.78
Considered by the Board: September 22, 2004
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.
Action: Mr. Parrish moved that the cost of materials consumed on construction contracts should be reduced by \$219,534.00 for rebates and incentives received under a group purchase program, otherwise redetermine the petition as recommended by the Appeals Division. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.
Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Omar Ahmad, 202283
2000, \$4,031.86 Claim for Refund
Considered by the Board: August 24, 2004

Tuesday, October 19, 2004

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision which modified the action of the Franchise Tax Board.

Northwest Energetic Services, LLC, 236696

1997, \$997.60 Claim for Refund

1998, \$198.30 Claim for Refund

1999, \$7,743.11 Claim for Refund

2000, \$12,538.86 Claim for Refund

2001, \$7,013.95 Claim for Refund

Considered by the Board: August 24, 2004

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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

Estate of Alice Godsil, 222708

1999, \$4,598.34 Claim for Refund

Considered by the Board: August 24, 2004

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Mandel moved to sustain the action of the Franchise Tax Board. Mr. Parrish made a substitute motion to delete the late payment penalty, otherwise sustain the action of the Franchise Tax Board. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Mandel and unanimously carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard abstaining, the Board adopted a decision sustaining the action of the Franchise Tax Board.

William R. Hallemeier, 246264

1985, \$742.00 Claim for Refund

1986, \$1,944.00 Claim for Refund

Considered by the Board: September 8, 2004

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating, the Board adopted a decision sustaining the action of the Franchise Tax Board and 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.

Dajasha J. Love, 240774

2001, \$1,056.00 Tax, \$264.00 Penalty

Considered by the Board: August 24, 2004

Tuesday, October 19, 2004

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

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

Paul Simmons, 224039

2000, \$352.32 Assessment

Considered by the Board: August 24, 2004

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision which modified the action of the Franchise Tax Board.

Mark R. Raus, 220515

2000, \$7,953.00 Tax, \$1,988.25 Late Filing Penalty, \$518.11 Claim for Refund

Considered by the Board: August 24, 2004

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision which modified the action of the Franchise Tax Board and imposed a frivolous appeal penalty of \$1,000.00.

SALES AND USE TAX MATTERS, RELIEF OF PENALTIES, ADJUDICATORY

Mr. Parrish stated that he would not participate in these matters in accordance with Government Code section 87105, and left the Boardroom.

Pratt & Whitney Power Systems, Inc., 246470

7-1-99 to 930-02, \$56,589.59

Considered by the Board: February 18, 2004

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent and not participating in accordance with Government Code section 87105, the Board approved the relief of penalty as recommended by staff.

Borders, Inc., 246251

7-1-03 to 7-31-03, \$171,949.74

Considered by the Board: February 18, 2004

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Tuesday, October 19, 2004

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent and not participating in accordance with Government Code section 87105, the Board approved the relief of penalty as recommended by staff.

Mr. Parrish returned to the Boardroom.

SPECIAL TAXES MATTERS, REDETERMINATIONS AND DENIAL OF CLAIM FOR REFUND, ADJUDICATORY

Tosco Corporation, 133015

5-1-98 to 9-30-00, \$1,781,175.60

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved the redetermination as recommended by staff.

Shell Oil Company, 165523

1-1-01 to 12-31-01, \$1,946,217.80

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the redetermination as recommended by staff.

Olympian Gulf Properties, 245294

1-1-00 to 7-1-02, \$61,893.20

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the denial of claim for refund as recommended by staff.

SPECIAL TAXES MATTERS, REFUNDS, ADJUDICATORY

Olympian Gulf Properties, 245294

1-1-00 to 7-1-02, \$50,644.11

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

Tuesday, October 19, 2004

PROPERTY TAX MATTERS, ADJUDICATORY

Virgin Mobile USA, LLC (2767), 252152

2003, \$475,000.00 Late Filing Penalty

Considered by the Board: August 24, 2004

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Migden moved to deny the petition for penalty abatement. Mr. Leonard made a substitute motion to grant the petition for abatement of penalty on the 2003 escaped assessment. The substitute motion was seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9.

PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**Audit**

Cal-Ore Telephone Company (328)

2003, \$1,060,000.00 Excessive Assessment

Action: Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit excessive assessment as recommended by staff.

Unitary Escaped Assessments

Norcast Communications (7998)

2003, \$230,000.00 Escaped Assessment, \$23,000.00 Late Filing Penalty, plus applicable Assessment In Lieu of Interest

2004, \$306,000.00 Escaped Assessment, \$30,600.00 Late Filing Penalty

Action: Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary value, plus penalties and assessment in lieu of interest, as recommended by staff.

Hands on Sign Language Services (7999)

2004, \$31,000.00 Escaped Assessment, \$3,100.00 Late Filing Penalty

Action: Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary value, plus penalties, as recommended by staff.

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G2 Solutions, Inc. (8000)

2004, \$7,400.00 Escaped Assessment, \$740.00 Late Filing Penalty

Action: Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary value, plus penalties, as recommended by staff.

CHIEF COUNSEL MATTERS

RULEMAKING—SALES AND USE TAX

Sharon Jarvis, Senior Tax Counsel, Business Taxes Division, Legal Department, was available to answer questions regarding the Section 100 Changes to Sales and Use Tax Regulations.

Sales and Use Tax Regulation 1588, Seeds, Plants and Fertilizer, Section 100 Change

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Section 100 Change to Sales and Use Tax Regulation 1588, *Seeds, Plants and Fertilizer* (Exhibit 10.4).

Sales and Use Tax Regulation 1589, Containers and Labels, Section 100 Change

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Section 100 Change to Sales and Use Tax Regulation 1589, *Containers and Labels* (Exhibit 10.5).

Sales and Use Tax Regulation 1630, Packers, Loaders, and Shippers, Section 100 Change

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the Section 100 Change to Sales and Use Tax Regulation 1630, *Packers, Loaders, and Shippers* (Exhibit 10.6).

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

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

Tuesday, October 19, 2004

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 10.7).

Marcia L. Davis, Staff Services Manager I, Classification Section, Personnel Management Division, Headquarters
Todd A. Dingley, Business Taxes Compliance Supervisor II, Compliance Policy Unit, Sales and Use Tax Department, Headquarters
Janet A. Kauffman, Associate Governmental Program Analyst, Compliance Policy Unit, Sales and Use Tax Department, Headquarters
Gerard F. Kelleher, Business Tax Compliance Supervisor, Return Analysis Section, Headquarters
Eugene S. Kim, Associate Tax Auditor, Out-of-State District Office, Chicago
Barbara McCrory, Business Taxes Administrator III, Technology Services Division, Headquarters
Don D. F. "Dade" Powers, Chief, Administrative Support Division, Administration Department, Headquarters
Leroy Stevenson, Tax Technician II, Consumer Use Tax Section, Headquarters
Linda Villeneuve, Staff Services Analyst, Business Taxes Committee and Training Section, Headquarters

Action: Approve the Board Meeting Minutes of August 24 and September 8, 2004.

Action: Adopt prepayment of Sales Tax on Motor Vehicle Fuel, Diesel Fuel and Jet Fuel (Exhibit 10.8).

Action: Approve Property Tax Base Year Value Transfer Claim Form (Exhibit 10.9).

Action: Adopt the 2005 Hazardous Waste Fees and Occupational Lead Poisoning Prevention Fee as recommended by staff (Exhibit 10.10).

BOARD COMMITTEE REPORTS

Property Tax Committee

Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the Property Tax Committee report (Exhibit 10.11).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon J. Hirsig, Executive Director, reported that the Board has timely submitted three legislative budget change proposals which were due ten days after signing.

Tuesday, October 19, 2004

Approval of Contracts Over \$1 Million

Timothy Boyer, Chief Counsel, made introductory remarks regarding the renewal of the Interagency Agreement with the Department of Toxic Substances Control.

Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved an agreement with the Department of Toxic Substances Control that expires December 31, 2004 (Renewal) (Exhibit 10.12).

Interagency License Requirements Report

Jeffrey McGuire, Tax Policy Manager, Tax Policy Division, Sales and Use Tax Department made introductory remarks regarding a report on state agencies that issue occupational permits or licenses to retailers (Exhibit 10.13).

Ms. Migden and Ms. Mandel directed staff to seek legislation requiring the Department of Alcoholic Beverage Control to ensure that liquor license applicants obtain a seller's permit as a condition of obtaining a liquor license.

SALES AND USE TAX APPEALS HEARING

Bikecology, Inc., 225006

10-1-99 to 9-30-02, \$11,156.54 Tax

For Petitioner:

David Bertoni, Attorney

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether labor charges associated with the application of the Superguard treatment to new bicycles represents taxable labor.

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

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD
OCTOBER 19, 2004**

Tah Lih Investment, Inc., 194099

Final Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Migden. Mr. Parrish made a substitute motion to increase the pilferage allowance from 2 percent to 4 percent. The substitute motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

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

Tuesday, October 19, 2004

SALES AND USE TAX APPEALS HEARING

IMA North America, Inc., 203064

7-1-92 to 9-30-02, \$00.00 Tax, \$00.00 Failure to File Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Westly. No other disqualifying contributions were disclosed.

Issue: Whether relief from the interest is warranted.

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

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
OCTOBER 19, 2004**

Ceramiche Di Cintone, Inc., 214245

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Century Theatres, Inc., 282251

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and duly carried, Ms. Migden and Ms. Mandel voting yes, Mr. Chiang voting no, Mr. Parrish and Mr. Leonard abstaining, the Board ordered that the claim for refund be granted.

**FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HEARD
OCTOBER 19, 2004**

J Top World Corporation, 271883

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board determined that staff properly seized the cigarettes.

FINAL ACTION ON PROPERTY TAXES HEARING HELD OCTOBER 19, 2004

U.S. TelePacific Corporation (7757), 267288

Final Action: Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Leonard and Mr. Chiang voting yes, Mr. Parrish abstaining, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition for reassessment and request for penalty abatement on the 2001, 2002, and 2003 unitary escape assessment be denied as recommended by staff.

Tuesday, October 19, 2004

PROPERTY TAXES HEARINGS

Cricket Communications, Inc. (2762), 269795

2004, \$21,400,000.00 Unitary Value, \$2,140,000.00 Penalty

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Shirley Johnson, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether Board-adopted Replacement Cost New Less Depreciation value indicator should be reduced from \$23,540,000 to \$1,500,000 by using three different approaches to estimate the value of petitioner's property.

Whether the 10 percent penalty imposed for failure to file a property statement, in whole or in part, should be abated.

Action: Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Chiang and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board reduced the 2004 unitary value from \$21,400,000.00 to \$6,150,000.00, and denied penalty abatement, but reduced the penalty to \$615,000.00 to coincide with the reduction in unitary value, as recommended by staff.

WilTel Communications, Inc. (7819), 270215

2004, \$191,200,000.00 Unitary Value

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Reed Schreiter, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Board-adopted unitary value should be reduced to account for economic obsolescence.

Action: Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board denied the petition for reassessment of 2004 unitary value as recommended by staff.

Altrio Communications, Inc. (7910), 269835

2004, \$5,580,000.00 Unitary Value, \$558,000.00 Penalty

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Lou Ambrose, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether the Board-adopted unitary value should be reduced to reflect underutilization of petitioner's leasehold improvements.

Whether relief from the penalty should be granted.

Action: Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board denied the petition for reassessment of 2004 unitary value and granted penalty abatement as recommended by staff.

Tuesday, October 19, 2004

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 11:55 a.m. and reconvened immediately in closed session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Govt. Code § 11126(e)), settlements (R&T Code § 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 12:10 p.m. and reconvened immediately in open session with Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

PUBLIC HEARINGS

BUSINESS AND PROPERTY TAXPAYERS' BILL OF RIGHTS HEARINGS

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

Speakers: Ourania Riddle, Property Owner

The Board adjourned at 12:17 p.m.

The foregoing minutes are adopted by the Board on December 14, 2004.

Note: The following cases were removed from the calendar prior to the meeting: *W. Rocke and Glenda L. Garcia, 252189; Davinder Singh Pabla, Mohinder Singh Pabla and Dial Kaur Pabla 194819, 205731; Roofing Technology, 32808; and, Ayesha H. Ayesha, 235815.*