

Thursday, November 4, 2004

The Board met at its offices at 450 N Street, Sacramento, at 9:45 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 HEARING

Dandesign West, Inc., 204054

4-1-99 to 3-31-02, \$13,270.51 Tax

For Petitioner:

Lloyd A. Lawrence, 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 supports further adjustments to the disallowed claimed nontaxable sales for resale.

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

Mr. Leonard inquired whether it was clear enough in the regulations and our pamphlets that it is the retailer's burden to accept a valid resale certificate. In addition, Mr. Leonard commented that the scenario the hearing representative discussed should be added to our pamphlets. The scenario entailed an interior designer using their license to make a purchase for a relative and the relative paying the retailer directly, therefore, this would not be considered a sale for resale from the interior designer to the relative.

Ms. Migden referred this request to the Customer Services and Administrative Efficiency Committee for discussion.

LOCAL TAX REALLOCATION HEARING

City of Sacramento, 255567

1-1-00, \$10,427.00 Tax

For Petitioner:

Albin Koch, Representative

Russ Fehr, City of Sacramento Budget Manager

For Sales and Use Tax Department:

John Waid, Tax Counsel

Issue: Whether Central's sale of four fire trucks for \$1,042,800 to the City of Sacramento are subject to the sales or use tax.

Petitioner's Exhibit: Miscellaneous Documents (Exhibit 11.1)

Action: Upon motion of Mr. Leonard, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel abstaining, the Board ordered that the petition be granted, allocating the tax directly to the City of Sacramento.

Exhibits to these minutes are incorporated by reference.

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PROPERTY TAXES HEARING

XO Communications, Inc. (7560), 269583

2004, \$49,900,000.00 Unitary Value

For Petitioner:

Jay Belinfante, Representative

Marty Pfister, Representative

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

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

Issue: Whether the Board-adopted unitary value is excessive because it fails to adequately reflect economic obsolescence.

Petitioner's Exhibit: Memo (Exhibit 11.2)

Action: Upon motion of Ms. Migden 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 ordered that the petition be submitted for decision.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Shirley I. Niles, 221130.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single 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 made the following orders:

Leonardo F. Aguiar, 254537

2000, \$259.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Joseph Baldino II and N. Leanah Baldino, 246369

1996, \$588.59 Late Payment Penalty, \$1.00 or more interest

Action: Sustain the action with concession by the Franchise Tax Board as to the partial interest and the Board took no action on the remainder due to lack of jurisdiction.

Edward and Mary Camozzi, 224279

1995, \$2,354.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Matthew G. Cestarcic, 245932

1997, \$87.89 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Kwok K. Chan, 258771

2000, \$996.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Jerry J. Couchman, 224276

2000, \$1,982.00 Assessment, \$955.00 Penalties

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

Ronald D. Harris, 239605

1980, \$307.00 Tax, \$70.61 Penalty \$1,061.35 Interest

Action: Sustain the action with of the Franchise Tax Board as to the interest and the Board took no action on the remainder due to lack of jurisdiction.

Daniel Hubbard, 240645

2000, \$1,760.00 Tax, \$988.00 Penalties

Action: Sustain the modified action with concession by the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Dominic and Editha Joseph, 192053

1996, \$1,338.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Henry C. Kirsch, 243395

1999, \$1,607.00 Assessment

Action: Sustain the modified action with concession by the Franchise Tax Board.

Jorge A. Mendoza, 239606

1990, \$8,003.00 Assessment, \$1,958.25 Penalty

1991, \$3,291.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Mark W. Mosley, 252150

2000, \$202.23 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Edward J. (Deceased) and Doerte G. Murray, 254279

1999, \$2,839.39 Assessment

Action: Sustain the action of the Franchise Tax Board.

Rafael and Deborah Ortiz, 207818

1999, \$2,666.00 Tax, \$533.20 Accuracy Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Yuan Ji Su, 218864

1990, \$145,196.22 Claim for Refund

1993, \$26,253.36 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Roy Eugene Tuckman, 245871

2002, \$1.00 or more Claim for Refund

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

John and Connie Williams, 253200

2002, \$196.98 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Allan Wolff, 241973

2000, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Mounier Zaki, 250419

1997, \$12,760.08 Assessment

Action: Sustain the action of the Franchise Tax Board.

Loran J. Forbes, 174200, 216753

1998, \$1,589.00 Claim for Refund

1998, \$2,226.00 Assessment

Action: Deny the petition for rehearing.

William Howell, 239923

1998, \$30,125.49 Claim for Refund

1999, \$12,206.99 Claim for Refund

Action: Deny the petition for rehearing and impose a \$1,000.00 frivolous appeal penalty.

Kathleen A. Little, 205956

1998, \$2,415.69 Tax, \$1,334.42 Penalty

Action: Deny the petition for rehearing.

Shirley I. Niles, 221130

1999, \$145.27 Assessment

Action: The Board took no action.

Kirk C. Odegaard, 224339

2000, \$5,201.00 Tax, \$1,300.25 Late Filing Penalty, \$1,300.25 Notice and Demand Penalty

Action: Deny the petition for rehearing.

David F. Paré, 236414

2000, \$1,699.00 Assessment

Action: Deny the petition for rehearing.

James A. Wood, 239488

2002, \$1.00 or more Claim for Refund

Action: Deny the petition for rehearing.

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HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matter: *Pierre R. Marsh*, 253623.

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single 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 made the following orders:

Sean Anderson, 259435

2002, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Ruben Badian, et al., 252204

2003, \$1.00 or more

Angela MacLeod, et al., 253571

2003, \$1.00 or more

Constance Caire, et al., 253572

2003, \$1.00 or more

Beverly Quaintance, et al., 253573

2003, \$1.00 or more

Rudolph Hill, et al., 253575

2003, \$1.00 or more

Ruth Sumner, et al., 253576

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board with the exception of Dolores Arvizo and George Saylor, whose appeals are hereby removed from these consolidated appeals for further briefing. In addition, sustain the action with concession by the Franchise Tax Board as to Barbara Bell, Angela MacLeod, Fannie McKenzie, John Sanchez, and Charles Sudolsky.

Gail D. Ballesteros, 259430

2003, \$241.40

Action: Sustain the action of the Franchise Tax Board.

Sherie Lea Bante, 259429

2002, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Bernadette Burgos, 262234

2002, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Milistean Burleson, 245445

2003, \$305.00

Action: Sustain the action of the Franchise Tax Board.

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Bing Jun Chen, 257699

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Joyce A. Cole, 258266

2003, \$342.00

Action: Sustain the action of the Franchise Tax Board.

Josse A. Demierre, 258265

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Michael K. Edwards, 257707

2003, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Khana Finkel, 251080

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Doris D. Gregory, 261160

2003, \$300.00

Action: Sustain the action of the Franchise Tax Board.

Qi Miao He, 253617

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Lashay Johnson, 251206

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

T. F. Kelly, 260547

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

M. E. Kennedy, 261819

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Sun Hwa Koo, 253640

2003, \$327.00

Action: Sustain the action of the Franchise Tax Board.

Roxanne M. Koger, 253641

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Daniel Koski, 264987

2002, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Liu Yin Kuo, 263004

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Pierre R. Marsh, 253623

2003, \$350.00

Action: The Board deferred consideration of this matter.

Maria Mendoza, 258859

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Larry Miller, 255590

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Marie Pendleton (Deceased), 258867

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

W. Michael Rabbitt, 264535

2002, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Joy A. Romero, 263329

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Maria Salgado, 251726

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Lillian M. Scialoia, 251747

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Pamela Smith, 264522

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Elizabeth Sun, 257946

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Jenn Kao Tang, 257949

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Kathleen B. Taylor, 257961

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Orelia Taylor, 252157

2003, \$342.94

Action: Sustain the action of the Franchise Tax Board.

Magdalena Valle, 256316

2003, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Simon Voskov, 252616

2003, \$347.50

Action: Reverse the action of the Franchise Tax Board.

Kenneth James Walker, 256320

2003, \$265.00

Action: Sustain the action of the Franchise Tax Board.

Roberta U. Watson, 256344

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Dwight D. Wenneker (Deceased), 260694

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Mildred Wilkins, 256368

2003, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Pari Beheshty Zadeh, 256365

2003, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Greg Maddox, 245595

2003, \$235.00

Action: Deny the petition for rehearing and modify the action of the Franchise Tax Board.

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

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. Parrish, seconded by Ms. Migden 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 87105 in *DaimlerChrysler Services North America, LLC, 282231*, the Board made the following orders:

Foundry Networks, Inc., 266199

7-1-00 to 6-30-03, \$76,150.91

Action: Approve the redetermination as recommended by staff.

SL Service, Inc., 271180

1-1-98 to 12-31-00, \$58,271.86

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

Jones Retail Corporation, 242874

1-1-03 to 3-31-03, \$52,407.40

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

Keystone Engineering Company, 222190

1-1-99 to 12-31-01, \$103,496.57

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

R.E. Snader & Associates, Inc., 239620

10-1-96 to 3-31-02, \$127,845.91

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

Kinkisharyo International, LLC, 249245

10-1-02 to 9-30-03, \$4,581,908.00

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

DaimlerChrysler Services North America, LLC., 282231

4-1-03 to 6-30-03, \$57,511.76

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

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 Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish not participating in *BCI Coca-Cola Bottling Company, L.A., 192592*, the Board made the following orders:

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Bob Stall Chevrolet, 272585

1-1-04 to 3-31-04, \$93,139.15

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

Bertile Taylor, 265621

10-1-82 to 6-30-84, \$549,726.54

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

Bertile Taylor, 265622

10-1-81 to 9-30-82, \$396,875.47

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

Go Skate Surf & Sports, Inc., 217947

10-1-99 to 3-31-02, \$59,358.29

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

L.D. Brinkman Corporation, 272612

1-1-04 to 3-31-04, \$276,459.22

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

Ferro Union, Inc., 236538

4-1-99 to 12-31-02, \$66,320.30

Action: Approve the refund as recommended by staff.

P N S Stores, Inc., 203056

9-30-01 to 12-28-02, \$134,373.65

Action: Approve the refund as recommended by staff.

City of Hope National Medical Center, 261002

4-1-00 to 3-31-03, \$63,598.92

Action: Approve the refund as recommended by staff.

F C P, Inc., 281431

7-1-00 to 9-30-03, \$57,250.12

Action: Approve the refund as recommended by staff.

York International Corporation, 235507

4-1-03 to 6-30-03, \$98,919.73

Action: Approve the refund as recommended by staff.

Chevrolet Motor Division, 269295

3-1-04 to 5-31-04, \$639,913.59

Action: Approve the refund as recommended by staff.

Bernard Abrams & Associates, Inc., 261564

1-1-01 to 3-31-04, \$139,920.59

Action: Approve the refund as recommended by staff.

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Siemens Information & Communication Mobile, LLC., 245531

4-1-02 to 9-30-03, \$89,990.38

Action: Approve the refund as recommended by staff.

SPSS, Inc., 259713

10-1-03 to 12-31-03, \$83,187.50

Action: Approve the refund as recommended by staff.

SFPP, LP., 254692

10-1-99 to 9-30-02, \$70,562.36

Action: Approve the refund as recommended by staff.

BCI Coca-Cola Bottling Company, L.A., 192592

1-1-02 to 3-31-04, \$160,647.11

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

Patelco Credit Union, 233668

4-1-00 to 12-31-03, \$490,871.52

Action: Approve the refund as recommended by staff.

Wescom Credit Union, 271019

7-1-03 to 9-30-03, \$117,869.21

Action: Approve the refund as recommended by staff.

Zarak Systems Corporation, 214885

1-1-99 to 6-30-02, \$101,106.69

Action: Approve the refund as recommended by staff.

Rodel, Inc., 195336

4-1-98 to 12-31-01, \$579,302.84

Action: Approve the refund as recommended by staff.

American River Healthpro Credit Union, 272443

4-1-01 to 12-31-03, \$121,516.57

Action: Approve the refund as recommended by staff.

Massman Automation Designs, Inc., 239623

7-1-95 to 12-31-02, \$67,085.24

Action: Approve the refund 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. Parrish, 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:

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Chevron U.S.A., Inc., 208884

1-1-00 to 12-31-01, \$211,837.24

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

Beneto, Inc., 220239

1-1-02 to 7-31-02, \$117,114.61

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

Ohio Indemnity Company, 281190

1-1-03 to 12-31-03, \$61,873.76

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

TIG Premier Insurance Company, 259201

1-1-01 to 12-31-01, \$72,362.78

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

PROPERTY TAX MATTERS, CONSENT

With respect to the Property Tax Matters, Consent Agenda, upon a single motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Mr. Chiang not participating in *AT&T Communications, Inc. (2310)*, 269327, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Petitions for Reassessment of Unitary Value

Sierra Pacific Power Company (146), 269511

2004, \$181,200,000.00 Unitary Value

Action: Reduce the 2004 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Southwest Gas Corporation (152), 270212

2004, \$140,100,000.00 Unitary Value

Action: Reduce the 2004 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Calpine Pittsburg, Inc. (406), 270527

2004, \$12,300,000.00 Unitary Value

Action: Reduce the 2004 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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CPN Pipeline Company (428), 270528

2004, \$21,200,000.00 Unitary Value

Action: Reduce the 2004 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Calpine Pipeline Corporation (484), 270529

2004, \$7,180,000.00 Unitary Value

Action: Reduce the 2004 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Cable & Wireless USA, Inc. (2035), 269746

2004, \$8,500,000.00 Unitary Value

Action: Grant the petition for reassessment of 2004 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Metro PCS California/Florida, Inc. (2733), 269758

2004, \$123,100,000.00 Unitary Value

Action: Reduce the 2004 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

01 Communications, Inc. (7791), 272644

2004, \$3,250,000.00 Unitary Value

Action: Reduce the 2004 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petitions for Reassessment and Penalty Abatement on Unitary Value**360networks (USA), Inc. (7779), 270478**

2004, \$13,000,000.00 Unitary Value, \$1,300,000.00 Penalty

Action: Approve the reassessment and penalty abatement on 2004 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Yipes Enterprise Services, Inc. (7972), 269739

2004, \$8,870,000.00 Unitary Value, \$887,000.00 Penalty

Action: Approve the reassessment and deny penalty abatement on 2004 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petitions for Penalty Abatement on Unitary Value**Lodi Gas Storage, LLC (198), 267709**

2004, \$10,640,000.00 Penalty

Action: Approve the penalty abatement on 2004 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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United States Advanced Network, Inc. (7798), 268364

2004, \$133,000.00 Penalty

Action: Deny the petition for penalty abatement on 2004 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Touch America, Inc. (7877), 270189

2004, \$256,000.00 Penalty

Action: Deny the petition for penalty abatement on 2004 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petition for Penalty Abatement on Unitary Escape Assessment

Aleron Broadband Services, LLC (7974), 266004

2004, \$306,000.00 Unitary Escape Value, \$30,600.00 Penalty

Action: Approve the penalty abatement on 2004 unitary escape value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petition for Reallocation of Unitary Value

AT&T Communications, Inc. (2310), 269327

2004, \$980,100,000.00 Unitary Allocation

Action: Approve the reallocation of 2004 unitary value as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

LEGAL APPEALS MATTERS, ADJUDICATORY

Century Theatres, 282251

4-1-98 to 3-31-01, \$590,984.62

Considered by the Board: Memorandum Opinion

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and duly carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang voting no, the Board adopted the memorandum opinion.

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

National Film Laboratories, Inc., 262563

7-1-93 to 12-31-96, \$311,995.78

Considered by the Board: September 8, 2004

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 denial of claim for refund as recommended by staff.

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Cardinal Health 110, Inc., 260537

7-1-93 to 9-30-96, \$525,387.64

Considered by the Board: September 21, 2004

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

Action: Mr. Leonard moved to grant the claim for refund. The motion was seconded by Ms. Mandel. Ms. Migden made a substitute motion to deny the claim for refund as recommended by staff. The substitute motion was seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Parrish, and Mr. Chiang voting yes, Mr. Leonard and Ms. Mandel voting no.

SPECIAL TAXES MATTERS, REFUNDS, ADJUDICATORY

Ultramar, Inc., 282668, 253328

7-1-95 to 3-31-98, \$638,813.30

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, Mr. Chiang and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

Ultramar, Inc., 282619, 115181

4-1-98 to 12-31-01, \$425,474.54

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, Mr. Chiang and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

Ultramar, Inc., 272873, 203889, 185989

4-1-98 to 12-31-01, \$307,088.62

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 refund as recommended by staff.

PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**Board Roll Changes**

2001, 2002, 2003 and 2004 State-Assessed Property Rolls

Action: Upon motion of Mr. Parrish, 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 approved corrections to the 2001, 2002, 2003 and 2004 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 11.3).

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CHIEF COUNSEL MATTERS**RULEMAKING****Request for authorization to amend Property Tax Rule 27, Valuation of Possessory Interests for the Production of Hydrocarbons, Section 100 Change**

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, made introductory remarks regarding the approval of Property Tax Rule 27, *Valuation of Possessory Interests for the Production of Hydrocarbons* (Exhibit 11.4).

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 request to amend Property Tax Rule 27, *Valuation of Possessory Interests for the Production of Hydrocarbons*.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single 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 made the following orders:

Action: Adopt the following resolution extending its best wishes on her retirement and its appreciation for her service to the State Board of Equalization and the State of California (Exhibit 11.5).

Ann D. Carlson, Tax Technician II, Riverside Office

Action: Approve the backfill determination of \$21.3 million for fiscal year 2003-04 for the effects of Proposition 10 on cigarette and tobacco products consumption as recommended by staff (Exhibit 11.6).

Action: Approve the 2005 Timberland Production Zone Values as recommended by staff (Exhibit 11.7).

Action: Approve the January 2005 Assessors' Handbook Section 531, Residential Building Costs, for publication (Exhibit 11.8).

Action: Approve the January 2005 Assessors' Handbook Section 534, Rural Building Costs, for publication (Exhibit 11.9).

Action: Approve the January 2005 Assessors' Handbook Section 581, Equipment Index and Percent Good Factors, for publication (Exhibit 11.10).

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BOARD COMMITTEE REPORT**Customer Services and Administrative Efficiency Committee**

Upon 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 approved the Customer Services and Administrative Efficiency Committee report (Exhibit 11.11).

OTHER ADMINISTRATIVE MATTERS**Executive Director's Report**

Ramon Hirsig, Executive Director, reported to the Board that staff prepared two supplemental reports to the joint legislative budget committee: 1) the special taxing jurisdiction administrative cost report that looks at alternative methodologies for allocating the special taxing jurisdictions; and, 2) an informational report on Board field offices and response to request for unit cost for taxpayer services, audit and collection activities in the 27 offices. (Exhibit 11.12.)

Ms. Migden requested the *AB 986 Legislative Analysts' Office Report to the Legislature* be returned to the December 14, 2004 Board meeting agenda.

Mr. Leonard requested with respect to the *2004-05 Fiscal Year Budget Supplemental Report on special taxing jurisdiction administrative cost* that staff expand and provide additional tables and provide definition of terms to be posted on the Board's website.

Ms. Migden directed staff to obtain the order concerning the \$1.4 million budget cut in writing and to find out what other agencies are affected. Ms. Migden also requested staff to examine the \$1.4 million figure to determine whether the Department of Finance would accept a smaller amount.

Mr. Leonard requested that staff add to the cover letter of the *Legislative Analysts' Office Field Office Report*, information regarding the Department of Finance's proposed cuts so the Board of Equalization's budget is not cut twice. Ms. Migden requested that staff work closely with the Members' offices in this matter.

Approval of Contracts Over \$1 Million

Dade Powers, Chief, Administrative Support Division, Administration Department, made introductory remarks regarding the agreement with the California Integrated Waste Management Board (Exhibit 11.13).

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 approved an agreement with the California Integrated Waste Management Board.

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AB 71, The California Cigarette & Tobacco Products Licensing Act of 2003

Timothy Boyer, Chief Counsel, made introductory remarks regarding AB71, The California Cigarette & Tobacco Products Licensing Act of 2003, requesting approval of the *Civil Penalties and Appeal Procedures for Violations of AB 71 and Delegation of Authority to Hold and Decide License Suspension Hearings* (Exhibit 11.14).

Action: Upon motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the *Civil Penalties and Appeal Procedures for Violations of AB 71* and the *Delegation of Authority to Hold and Decide License Suspension Hearings* as recommended by staff with modifications which lower the threshold for fines appealable to the Board to amounts above \$2,500.00; allow suspensions to be appealable to the Appeals Division; and, provide a bimonthly report to the Members.

Ms. Migden directed, at Mr. Leonard's request, that the Civil Penalties and Appeal Procedures for Violations of AB 71 be posted to the Board's website, and that no mailings be sent as a cost savings measure.

Proposed Legislation

Randie Henry, Deputy Director, Sales and Use Tax Department, made introductory remarks on proposed legislation to require the issuance of a seller's permit prior to issuance of an Alcohol Beverage Control liquor license (Exhibit 11.15).

The Board directed staff to proceed to seek a legislative remedy and continue the reform to require the issuance of a seller's permit prior to issuance of an Alcohol Beverage Control liquor license. The Board requested that documents of proof be provided, of staff's efforts of out reach, to gauge the response from Alcohol Beverage Control.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD NOVEMBER 4, 2004

Dandesign West, Inc., 204054

Final 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 ordered that the petition be redetermined as recommended by the Appeals Division.

PROPERTY TAXES HEARINGS

MCI Metro Access Transmission Services, LLC (2372), 270476

2004, \$428,300,000.00 Unitary Value

MCI WorldCom Network Services, Inc. (2274), 270435

2004, \$877,700,000.00 Unitary Value

For Petitioner:

Appearance Waived

For Property and Special Taxes Department:

Lou Ambrose, Tax Counsel

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

Issues: Whether the Board-adopted unitary value properly recognized all economic obsolescence.

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 ordered that the 2004 unitary value be reduced as recommended by staff.

ICG Telecom Group, Inc. (2462), 269510

2004, \$31,800,000.00 Unitary Value

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 unitary value included the value of taxable property owned by petitioner's subsidiary.

Whether the Board staff's method of calculating value for possessory interests overstated the value of petitioner's leased fiber optic lines.

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 ordered that the 2004 unitary value be increased as recommended by staff.

FINAL ACTION ON PROPERTY TAXES HEARING HELD NOVEMBER 4, 2004

XO Communications, Inc. (7560), 269583

Final Action: Upon motion of Mr. Leonard, seconded by Ms. Migden 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 of 2004 unitary value be denied as recommended by staff.

SPECIAL PRESENTATION

Mr. Leonard stated that he enjoyed working with Ms. Migden in her position as Chairwoman of the Board of Equalization and looked forward to working with her in the future upcoming legislative session.

On behalf of State Controller Steve Westly and herself, Ms. Mandel stated that they enjoyed working with Ms. Migden here at the State Board of Equalization, as well as the Franchise Tax Board, and they look forward to continuing the relationship with her in her new position in the legislature. Ms. Mandel congratulated Ms. Migden on her election and wished her good luck.

Mr. Chiang extended his congratulations on Ms. Migden's extraordinary election and his sincere and grateful appreciation for her dedicated service to the State Board of Equalization.

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Mr. Parrish extended his sincere and grateful appreciation to Ms. Migden on her dedicated service to the State Board of Equalization.

Ms. Migden thanked the Members for their generous comments and kindness throughout her service with the State Board of Equalization. Ms. Migden thanked her staff and especially Betty Yee, her Deputy Director, for all their hard work and dedication to service while she served as a Board Member.

On behalf of the Board, Ms. Mandel, presented to Carole Migden, Board Member, First District, a Board resolution extending its sincere and grateful appreciation for her dedicated service to the State Board of Equalization and the State of California.

The Board adjourned at 11:15 a.m.

The foregoing minutes are adopted by the Board on February 8, 2005.

Note: The following cases were removed from the calendar prior to the meeting: *Advocates of California, 266286; Kathleen Lovell Lemons, 258455; and, Ayes H. Ayes, 235815.*