

TUESDAY, NOVEMBER 6, 2001

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m. with Chairman Parrish, Vice Chairman Chiang and Mr. Klehs present and Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code Section 7.9.

CHIEF COUNSEL MATTERS, RULEMAKING

Janice Thurston, Assistant Chief Counsel, Business Tax Section, Legal Division, made introductory remarks regarding the adoption of the Cigarette and Tobacco Products Tax Laws.

Upon motion of Mr. Parrish, seconded by Mr. Klehs, and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, and Ms. Mandel voting yes, Mr. Andal absent, the Board adopting Regulations 4063.5 and 4098, amending Regulations 4018, 4021, 4022, 4023, 4026, 4027, 4034, 4047, 4055, 4056, 4057, 4058, 4059, 4060, 4062, 4063, 4064, 4065, 4080, 4081, 4091, and 4092 and repealing Regulations 4028, 4067, 4079, and 4082. The Board withdrew 4041 for further review by the Legal Division. (Exhibit 11.1)

FRANCHISE AND INCOME TAX MATTER, ADJUDICATORY

Ronald F. and Catherine Boeddeker, 18702

Considered by the Board: Memorandum Opinion

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

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

Raymond H. Berner, 88344

Raymond H. & Margaret R. Berner, 88344

1986, \$ 95,691.00 Assessment, \$23,922.75 Penalty, Failure to File

1987, \$313,694.00 Assessment, \$78,423.50 Penalty, Failure to File

1988, \$ 49,672.00 Assessment, \$ 3,932.90 Penalty, Negligence

Considered by the Board: Memorandum Opinion

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

Action: The Board took no action.

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Barry and Wendy Breslow, 31449
1994, \$86, 779.00 Assessment

Considered by the Board: October 2, 2001

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

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

LEGAL APPEALS MATTERS, CONSENT

Action: (Motion expunged.)

FRANCHISE AND INCOME TAX MATTERS, CONSENT

Action: (Motion expunged.)

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred the following matter: *Vy Trac and Anh Do, 112543.*

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

Bridget Spain, 104773

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Rafael E. Lainez, 105530

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Naseem Mikki, 105555

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Gendun T. Sherpa, 106562
1998, \$225.00 Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Blanca Rosa Sandoval, 109626
2000, \$800.00 Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Edmundo J. Prado, 109969
2000, \$1.00 or more Claim for Credit
Action: Reverse the action of the Franchise Tax Board.

John Rushing, 109983
2000, \$240.00 Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Tamatie Sherow, 110028
2000, \$860.00 Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Raymond Stoffel (deceased), 110031
2000, \$1.00 or more Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Rosalind D. Wright, 111851
2000, \$1.00 or more Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Arshaluys Kyuregyan, 111863
1999, \$600.00 Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Barbara A. Smith, 111866
2000, \$1.00 or more Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

Marian Smith, 111869
2000, \$1.00 or more Claim for Credit
Action: Sustain the action of the Franchise Tax Board.

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Johnnie Mae Taylor, 112165

2000, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Robert Williams, 112204

2000, \$275.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Vy Trac and Anh Do, 112543

1996, \$853.00 Assessment

Action: The Board deferred consideration of this matter.

Martha F. Rowe, 112660

2000, \$1.00 or more Claim for Credit

Action: Reverse the action of the Franchise Tax Board.

Robert Sumners, 113486

2000, \$92.22 Claim for Credit

Action: Reverse the action of the Franchise Tax Board.

Terry L. Gibson, 113497

1999, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Hin C. Joe, 113505

2000, \$1.00 or more Claim for Credit

Action: Reverse the action of the Franchise Tax Board.

Arlene E. Berry, 113620

1998, \$1.00 or more Claim for Credit

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Andrew Blackwood, 113621

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Paula Garza, 113850

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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

Gerhard J. Jaax, SP H UT 84-005134; 140216
9-28-98, \$78,158.40

Action: Approve credit and cancellation as recommended by staff.

First Security Bank NA Trustee, SP I UT 84-015609; 139649
1-9-98, \$4,728,557.23

Action: Approve credit and cancellation as recommended by staff.

JP Air Charter Inc., SP H UT 84-019740; 113605
1-14-00, \$283,908.34

Action: Approve credit and cancellation as recommended by staff.

Hitachi Denshi America Ltd., SR OHB 18-603684; 128887
7-1-00 to 9-30-00, \$61,593.52

Action: Approve refund as recommended by staff.

G. L. Nemirow Inc., SR AC 18-733308; 32876
7-1-96 to 12-31-99, \$1,200,267.02

Action: Approve refund as recommended by staff.

Nikon Precision Inc., SR BHA 19-679241; 140201
1-1-00 to 9-30-00, \$736,543.57

Action: Approve refund as recommended by staff.

New United Motor Mfg. Inc., SR S CHA 21-767715; 79057
4-1-97 to 6-30-00, \$1,597,017.91

Action: Approve refund as recommended by staff.

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Ivex of Delaware Inc., SR ARF 22-791469; 138318

4-1-1 to 6-30-01, \$72,891.24

Action: Approve refund as recommended by staff.

Pizza Hut Inc., SR Y OHA 25-613882; 89000514020

4-1-95 to 3-31-98, \$134,213.25

Action: Approve refund as recommended by staff.

Mc-Call Oil & Chemical Corporation, SR Y OH 30-658526; 138944

4-1-1- to 6-30-01, \$68,823.06

Action: Approve refund as recommended by staff.

De La Rue Cash Systems Inc., SR S OHA 30-683202; 94308

1-1-99 to 6-30-99, \$68,804.16

Action: Approve refund as recommended by staff.

Barclays Global Investors, N.A., SR BH 52-011826; 139785

4-1-98 to 6-30-01, \$223,113.64

Action: Approve refund as recommended by staff.

Newcourt Financial USA Inc., SR S OHA 99-419443; 56875

4-1-99 to 6-30-99, \$102,327.26

Action: Approve refund as recommended by staff.

Crest Door & Trim Inc., SR S EH 99-906071; 138867

4-1-98 to 3-31-01, \$68,283.44

Action: Approve refund as recommended by staff.

Techsystems Group, Inc., SR AP 99-938115; 135445

7-1-97 to 12-31-00, \$71,527.27

Action: Approve refund as recommended by staff.

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

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

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ABC Rail Corporation, SC OHA 30-678789; 37824

4-1-95 to 6-30-98, \$190,904.65

Action: Approve redetermination as recommended by staff.

C J Aviation Company LLC, SP I UT 84-026067; 128192

9-1-98, \$160,875.00

Action: Approve redetermination as recommended by staff.

Larry V. Plummer, SP H UT 84-026608; 118904

7-30-00, \$197,366.75

Action: Approve redetermination as recommended by staff.

Comeq, Inc., SC OHB 97-651187; 61362

1-1-92 to 9-30-99, \$77,000.77

Action: Approve redetermination as recommended by staff.

Winning Ways, Inc., SC OHA 99-469231; 89002269730

1-1-90 to 2-28-97, \$1,597,031.51

Action: Approve redetermination as recommended by staff.

H. R. Imports, Inc., SR EA 99-964211; 97855

1-1-97 to 12-31-99, \$59,632.24

Action: Approve redetermination as recommended by staff.

The Upper Deck Company LLC, SR FHB 99-981456; 140655

10-1-96 to 9-30-99, \$61,556.83

Action: Approve relief of penalty as recommended by staff.

Pharmchem Laboratories Inc., SR OHC 99-487597; 34385

1-1-95 to 3-31-98, \$98,804.23

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

LEGAL APPEALS MATTERS, ADJUDICATORY

Glen M. Passaretti, SR EAA 24-918908; 89000491040

1-1-90 to 6-30-93, \$00.00 Tax, \$5,641,18 Penalty, Negligence

Considered by the Board: August 14, 2001

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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. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be redetermined as recommended by Appeals Section.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

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

Action: Approve the draft summons to County Assessors to a State Board of Equalization Meeting (Exhibit 11.2).

ANNOUNCEMENT OF CLOSED SESSION

Ms. Pellegrini announced that the closed session had been cancelled.

FRANCHISE AND INCOME TAX MATTERS, CONSENT

The Board deferred the following matters: *Dale Mitchell Heindel, 103375 and Rebecca T. Kato, 111270.*

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

Les Roy Reid, 93312

1998, \$6,620.00 Assessment, \$1,655.00 Penalty, Late Filing

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

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William G. & Sally M. Bowdon, 94590

1996, \$1,610.00 Assessment

Action: Sustain the action of the Franchise Tax Board

Kathryn L. Daniels, 94599

1998, \$902.00 Assessment, \$225.50 Penalty, Late Filing

\$271.75 Penalty, Notice & Demand

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

Michael Myers, 101135

1998, \$608.00 Assessment, \$152.00 Penalty, Late Filing

\$152.00 Penalty, Notice & Demand

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

Dale Mitchell Heindel, 103375

1980, \$2,204.59 Claim for Refund

Action: The Board deferred consideration of this matter.

Ashok and Poonam Chandoke, 109297

1996, \$3,713.00 Assessment

Action: Sustain the modified action of the Franchise Tax Board

Rebecca T. Kato, 111270

1999, \$16,021.00 Claim for Refund

Action: The Board deferred consideration of this matter.

Robert A. Wiemer, 111404

1989, \$7,495.00 Assessment, \$374.75 Penalty, Negligence

Action: Sustain the action of the Franchise Tax Board

Alfredo D'Amico, 112538

1993, \$24,152.00 Assessment, \$4,830.40 Penalty, Accuracy-Related

Action: Sustain the action of the Franchise Tax Board

Hai-Ling Tang and Timothy P. Lord, 112546

1997, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board

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Lyndha E. Evensen, 87447
 1989, \$925.80 Assessment, \$487.24 Penalty
 Action: Deny the petition for rehearing.

Walter Y. Josephson, Jr., 91419
 1996, \$920.75 Claim for Refund
 Action: Deny the petition for rehearing.

Scott A. and Michelle L. Bennett, 99933
 1997, \$1,756 Assessment
 Action: Deny the petition for rehearing.

Hany and Helen Hadded, 102696
 1994, \$2,733.90 Claim for Refund
 Action: Deny the petition for rehearing.

BUSINESS TAXES APPEALS HEARINGS

Lightning Dubbs, Inc., SR AS 11-797620; 32799
 1-5-95 to 12-31-97, \$00.00 Tax, \$10,770.73 Penalty, Negligence
 For Petitioner: Bob Johas, Representative
 For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
 Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.
 Issue: Whether relief from the negligence penalty is warranted.
 Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

Anthony & Mary Ciuffo, SR AC 13-853438; 89000091160
 10-1-93 to 6-30-96, \$8,108.29 Tax
 For Petitioner: Mary Ciuffo
 For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
 Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.
 Issues: Whether the measure of tax was established in accordance with the facts.
 Whether interest may be abated based upon petitioners' hardship, i.e., serious illness.

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

Avnet, Inc., SY AS 18-613316; 89000228820
7-1-91 to 6-30-95, \$34,798.10 Tax

For Petitioner: John A. Carfora, VP, Tax
Richard Mackovich, Tax Manager

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

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

Issue: Whether there is sufficient evidence to reverse the Department's disallowance of petitioner's claimed nontaxable sales for resale.

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

Robert R. Daigle, SR EH 23-842829; 89000424880
10-1-94 to 9-30-97, \$11,804.76 Tax, \$00.00 Penalty, Negligence

For Petitioner: Robert R. Daigle

For Sales and Use Tax Department: Robert Tucker, Counsel

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

Issues: Whether petitioner made overpayments of tax in the second quarter of 1996 and third quarter of 1996 for which an adjustment has not been made.

Whether the disallowed sales in interstate commerce are valid.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Chiang and Mr. Klehs voting yes, Ms. Mandel voting no, Mr. Andal absent, the Board ordered that the petition be redetermined with adjustments.

BHMA Inc., SR AS 97-138769; 89002064250
7-1-97 to 9-14-97, \$102,697.51 Tax, \$00.00 Penalty

For Petitioner: Appearance Waived

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

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

Issue: Whether relief from the successor liability is warranted.

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

Reuben David Chudy, SR AS 99-161879; 15520

1-1-92 to 12-31-97, \$244,837.30 Tax, \$61,209.43 Penalty, Fraud

\$ 4,691.71 Penalty, Failure to File

For Petitioner:

Ziba Soroudi, CPA

Reuben David Chudy

For Sales and Use Tax Department:

Sharon Jarvis, Counsel

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

Issues: Whether petitioner is a construction contractor making improvements to real property when he furnished and installed spas on concrete slabs and wood decks.

Whether audited taxable sales are excessive.

Whether petitioner received and relied on erroneous written advice in a prior audit of another taxpayer of which he was a partner.

Whether relief from the failure to file penalty is warranted.

Whether relief from the fraud penalty is warranted.

Whether relief from the negligence penalty is warranted.

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

Z.E.I. Acquisition Corporation, SY GH 99-398937; 89002234310

10-1-93 to 9-30-96, \$1,473,045.00 Tax

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Robert Tucker, Counsel

Action: The Board took no action.

Richard Skale, SR FHB 99-942831; 89002443310

7-1-88 to 9-30-96, \$71,002.88 Tax, \$3,546.49 Penalty

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Warren L. Astleford, Counsel

Action: The Board took no action.

The Board recessed at 10:40 a.m. and reconvened at 1:45 p.m. with Mr. Parrish, Mr. Chiang and Ms. Mandel present.

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PUBLIC HEARINGS

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 Hearings.

Speakers: Leland West, President, Lee West Enterprise Inc.
Rex Halverson, Practice Leader, KPMG, LLP
Jason C. Demille, Attorney, Bewley, Lassleben & Miller

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 Hearings.

Speakers: Jason C. Demille, Attorney, Bewley, Lassleben & Miller
Darlene J. Bloom, Clerk of the Board, Orange County

BUSINESS TAXES APPEALS HEARINGS

GTE Cellular Communications Corporation, SS OHC 24-806753-010; 89000464760
1-1-92 to 12-31-94, \$129,497.81 Tax, \$18,007.69 Penalty, Negligence

For Petitioner: Appearance Waived

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

Contribution Disclosures pursuant to Government Code Section 15626: No contributions disclosures forms were filed.

Issues: Whether the evidence provided is sufficient to show that petitioner's transfers of cellular devices to Cellularent Corporation were not subject to sales or use tax.

Whether the evidence provided is sufficient to show that petitioner's transfers of cellular devices from the Los Angeles to San Francisco locations of Hertz Corporation were nontaxable transfers of tax-paid telephones.

Whether petitioner's sale of its credit card cellular phone operation to QuickCall Corporation was nontaxable as a sale for resale, or an exempt occasional sale.

Whether relief from the negligence penalty is warranted.

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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 not participating, Mr. Andal absent, the Board ordered that the negligence penalty be deleted otherwise the petition be redetermined as recommended by the Appeals Section.

Nypro San Diego, Inc., SR FH 25-853568; 78514
1-1-96 to 6-30-99, \$36,134.06 Tax

For Petitioner:

Chris Hurd, Corporate Tax Manager
Richard Even, General Manager
Shelly Bailey, Representative

For Sales and Use Tax Department:

Warren L. Astleford, Counsel

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

Issue: Whether certain of petitioner's sale and leaseback transactions with a related entity constitute nontaxable sale and leaseback transactions, rather than taxable leases.

Action: Upon motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to submit additional documentation, the Department 30 days to review the documentation and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation.

PTS Furniture, Inc., SR AR 15-723528; 89000151620
10-1-95 to 9-30-98, \$127,040.00 Tax

For Petitioner:

Joseph Paulucci, President

For Sales and Use Tax Department:

James M. Stillwell, Counsel

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

Issues: Whether the Sales and Use Tax Department properly disallowed a claimed sale in interstate commerce where the contract provided for delivery of furniture out of state, but due to the manufacturer's delay, the purchaser took delivery in California.

Whether petitioner is entitled to a 50 percent reduction of the Los Angeles County district tax, because the Board, at a hearing in connection with a prior audit, ordered the measure of district tax in that prior audit be reduced by 50 percent.

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

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Avery Petroleum Company, SR EA 99-370464; 89002221300
7-1-94 to 6-30-97, \$28,949.48 Tax, \$00.00 Penalty, Negligence

For Petitioner: Talat Radwan, Consultant
Nabil Abraham, Shareholder
Patti Farris, Bookkeeper

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the evidence establishes that the purchase segregation test results in an excessive ratio of taxable to total merchandise purchases.

Whether the evidence establishes that the shelf test markup is excessive.

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

Neil Berry Ponsky, SR AC 97-182851; 89002071890
1-1-90 to 12-31-97, \$73,951.16 Tax, \$00.00 Penalty

For Petitioner: No Appearance
For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel

Action: The Board took no action.

Flamingo Motors Inc., SR X FH 99-822796; 93910
10-1-96 to 9-30-99, \$20,019.49 Tax, \$00.00 Penalty, Negligence

\$00.00 Penalty, Finality Penalty
For Petitioner: John Scannell, Attorney

For Sales and Use Tax Department: Robert Tucker, Counsel
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether documentation submitted warrants an additional reduction in audited taxable sales based on bank deposits.

Whether disallowed claimed sales for resale were established in accordance with the facts.

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

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Gold Prospectors Association, Inc., SR EH 25-830344; 89000578640

7-1-93 to 6-30-96, \$26,231.48 Tax, \$00.00 Penalty, Failure to Timely Pay

For Petitioner: Rick Dickson, Chief Operating Officer
Dave Ashwood, Agent
Mark Corcoran, Controller

For Sales and Use Tax Department: Sharon Jarvis, Counsel

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

Issues: Whether the evidence shows that the disallowed claimed exempt sales based on a random sample are overstated.

Whether taxpayer has established that use tax liabilities arising from ex-tax purchases of supplies from out-of-state vendors should be offset with credit for use tax reported by taxpayer for unidentified purchases.

Whether it is improper for the Sales and Use Tax Department to include unexplained differences between recorded and reported taxable sales in the determination.

Whether relief from the 10 percent penalty for failure to timely pay the determination is warranted.

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

The Board recessed at 4:30 p.m. and reconvened at 4:35 p.m. with Mr. Parrish, Mr. Klehs, Mr. Chiang and Ms. Mandel present.

Udom Povieng and Chunpen Povieng, SR AB 16-688531; 52830

4-1-96 to 6-30-99, \$26,223.12 Tax, \$2,670.61 Penalty, Negligence

For Petitioner: No Appearance

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

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

Issues: Whether the evidence shows that the one-year test period is not representative of petitioners' operations.

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

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FINAL ACTION ON PETITIONS HEARD NOVEMBER 6, 2001

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Lightning Dubbs, Inc.*, SR AS 11-797620; 32799, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Chiang, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Andal absent, the Board ordered that the petition of *Avnet, Inc.*, SY AS 18-613316; 89000228820, be redetermined as recommended by the Appeals Section.

Mr. Parrish moved to reduce the fraud penalty to a negligence penalty. The motion failed for lack of a second in the petition of *Reuben David Chudy*, SR AS 99-161879; 15520.

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

Upon motion of Mr. Chiang, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *PTS Furniture, Inc.*, SR AR 15-723528; 89000151620, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Avery Petroleum Company*, SR EA 99-370464; 89002221300, be redetermined with adjustments.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Flamingo Motors Inc.*, SR X FH 99-822796; 93910, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Andal absent, the Board ordered that the petition of *Gold Prospectors Association, Inc.*, SR EH 25-830344; 89000578640, be redetermined as recommended by the Appeals Section.

TUESDAY, NOVEMBER 6, 2001

LEGAL APPEALS MATTERS, CONSENT

The Board deferred the following matters: *Michael P. & Kristy S. Shelley, SR EH 23-874422; 17161 and Gutierrez Restaurants, Inc., SR ARH 99-630310; 89002335470, 27335*

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

Paradise Textile Corp., SR EH 23-888223; 48271

1-1-95 to 9-30-98, \$156,967.14 Tax

Action: Redetermine as recommended by Appeals Section

Francisco Rodriguez Ramirez, SR AA 17-682952; 89000200040, 102600

4-1-94 to 3-31-97, \$11,549.99 Tax, \$1,155.03 Penalty, Negligence

Francisco Rodriguez Ramirez, AR AP 17-732186; 89000206770, 102599

4-1-94 to 3-31-97, \$15,683.84 Tax, \$1,568.39 Penalty, Negligence

Action: Redetermine as recommended by Appeals Section

Michael P. & Kristy S. Shelley, SR EH 23-874422; 17161

1-1-95 to 6-30-98, \$175,821.43, \$17,582.17 Penalty, Negligence

Action: The Board took no action.

Novas Rent A Car, SY AC 99-496478; 89002281700

4-15-94 to 9-30-97, \$116,508.39 Tax, \$00.00 Penalty, Negligence

\$00.00 Penalty, Finality

Action: Redetermine as recommended by Appeals Section

Gutierrez Restaurants, Inc., SR ARH 99-630310; 89002335470, 27335

7-1-95 to 12-31-95, \$2,708.50 Tax, \$00.00 Penalty, Negligence

1-1-96 to 3-31-98, \$46,507.36 Tax, \$00.00 Penalty, Negligence

Action: The Board deferred consideration of this matter.

Elite Information Systems, Inc., SR AS 18-698923; 50386

4-1-96 to 3-31-99, \$00.00 Tax, \$00.00 Penalty, Negligence

Action: Redetermine as recommended by Appeals Section .

TUESDAY, NOVEMBER 6, 2001

Puente Hills Ford, SR AP 99-274994; 89002178830
1-1-94 to 12-31-96, \$3,759.86 Tax, \$00.00 Penalty, Negligence
Action: Redetermine as recommended by Appeals Section

Lamson & Gilbert Co., Inc., SR AS 18-100114; 89000227020, 89000227030
7-1-94 to 6-30-97, \$00.00 Tax, \$00.00 Penalty, Negligence
Action: Redetermine as recommended by Appeals Section

Johnny Koo, SR AS 97-529419; 15265
4-4-94 to 12-31-98, \$00.00 Tax, \$00.00 Penalty
Susie Byun, SR AS 97-529427; 15266
4-4-94 to 12-31-98, \$00.00 Tax, \$00.00 Penalty
Action: Redetermine as recommended by Appeals Section

CHV, Inc., SR AP 99-764918; 41249
1-1-96 to 3-31-99, \$00.00 Tax, \$00.00 Penalty, Negligence
Action: Redetermine as recommended by Appeals Section

Thomas A. Monteleone, SR AC 13-638787; 89000061760
4-1-94 to 12-31-96, \$10,133.41 Tax, \$00.00 Penalty, Negligence
Action: Deny the petition for rehearing.

Fahrad Delrahim, aka Fahrad Arya, SR AC 53-000179-010; 89000969980
4-1-94 to 2-27-97, \$39,678.29 Tax, \$3,967.83 Penalty, Negligence
Bahram Javaherian, SR AC 13-822583-010; 89000083730
4-1-94 to 2-27-97, \$39,678.29, \$3,967.83 Penalty, Negligence
Action: Deny the petition for rehearing.

DocuSource, Inc., SR AC 18-740267; 36592
1-1-95 to 12-31-97, \$51,536.41 Tax
Action: Grant the petition for rehearing.
Purchase Leasing Corporation, SY EAA 24-864360; 89000476970, 89000476990
1-1-90 to -30-94, (\$20,479.16) Tax
7-1-94 to 12-31-97, \$00.00 Tax
Action: Deny the petition for rehearing.

The Board adjourned at 4:45 p. m.

TUESDAY, NOVEMBER 6, 2001

The foregoing minutes are adopted by the Board on December 20, 2001.