

Thursday, November 15, 2007

The Board met at its offices at 450 N Street, Sacramento, at 9:35 a.m., Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

PROPERTY TAXES HEARINGS

Petitions for Reassessment of Unitary Value

Golden State Water Company (101), 414767

2007, \$502,400,000.00 Unitary Value

For Petitioner:

Peter Hladek, Representative

Andrew Davis, Representative

For Property and Special Taxes Department:

Andrew Jacobson, Tax Counsel

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

Issue: Whether petitioner has shown that respondent improperly used petitioner's book depreciation to calculate a capital replacement expenditure allowance in the determination of petitioner's Board-adopted unitary value.

Whether petitioner has shown that its income shortfall valuation methodology is a reliable measure of economic obsolescence and that the 2007 Board-adopted unitary value should be reduced for that amount of economic obsolescence.

Petitioner's Exhibit: Miscellaneous Documents (Exhibit 11.3)

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be submitted for decision.

Exhibits to these minutes are incorporated by reference.

Petitions for Reassessment of Unitary Escaped Assessment

Verizon Wireless (2512), 405333

2002 to 2005, \$30,000,000.00 Unitary Escaped Assessment, \$2,550,000.00 Penalty,

\$7,821,000.00 In lieu of Interest

Sacramento Valley LP (2513), 406373

2002 to 2005, \$33,251,000.00 Unitary Escaped Assessment, \$2,520,000.00 Penalty,

\$8,169,000.00 In lieu of Interest

Los Angeles SMSA LP (2532), 406374

2002 to 2005, \$60,734,600.00 Unitary Escaped Assessment, \$3,670,000.00 Penalty,

\$18,216,000.00 In lieu of Interest

Fresno MSA LP (2552), 406375

2002 to 2005, \$16,900,000.00 Unitary Escaped Assessment, \$476,000.00 Penalty, \$5,022,000.00

In lieu of Interest

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GTE Mobilnet of California LP (2559), 406376

2002 to 2005, \$65,100,000.00 Unitary Escaped Assessment, \$4,110,000.00 Penalty,
\$17,505,000.00 In lieu of Interest

GTE Mobilnet of Santa Barbara LP (2627), 406377

2002 to 2005, \$200,000.00 Unitary Escaped Assessment, \$290,000.00 Penalty, \$768,000.00 In
lieu of Interest

Cellco Partnership (2667), 406378

2002 to 2005, \$35,440,000.00 Unitary Escaped Assessment, \$1,840,000.00 Penalty,
\$8,385,000.00 In lieu of Interest

California RSA #4 (2669), 406379

2002 to 2005, (\$1,500,000.00) Unitary Escaped Assessment, \$10,000.00 Penalty, \$15,000.00 In
lieu of Interest

For Petitioner:

Michael Mupo, Taxpayer

Peter Michaels, Attorney

For Property and Special Taxes Department:

Daniel Paul, Tax Counsel

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

Issue: Whether the Board adopted escaped assessment properly included the assessment
in lieu of interest amount per section 864.

Petitioner's Exhibit: Miscellaneous Documents (Exhibit 11.4)

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried,
Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in
accordance with Government Code section 7.9, the Board ordered that the petition be submitted
for decision.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, on behalf of the Board of Equalization, presented a resolution of appreciation to the Franchise Tax Board (FTB) in response to their quick action and continued support in accommodating displaced Board of Equalization employees.

Selvi Stanislaus, Executive Officer of the FTB, thanked both agencies' staff for their timely collaboration in relocating the Board of Equalization employees to the FTB facility.

Mr. Leonard commented on the continued support given to the relocated staff by all levels of FTB staff.

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PUBLIC HEARINGS**Proposed Amendments to Property Tax Rule 101, *Board-Prescribed Exemption Forms*, and Property Tax Rule 171, *Board –Prescribed Forms for Property Statements***

Denise Riley, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks. The purposes of the proposed amendments to Property Tax Rule 101, *Board-Prescribed Exemption Forms*, and Rule 171, *Board-Prescribed Forms for Property Statements*, are to permit the Board to review and approve property tax forms for county assessors via e-mail and/or the Internet, delete rules prescribing the use of long and short-form property statements to eliminate unnecessarily repetitive amendments, and make minor, non-substantive grammatical and text-style improvements. (Exhibit 11.5.)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted Property Tax Rules 101 and 171 as published.

Proposed Amendments to Sales and Use Tax Regulation 1699, *Permits*

David Levine, Tax Counsel, Appeals Division, Legal Department, made introductory remarks. Regulation 1699, *Permits*, is proposed to be amended to clarify the administration of inactive seller's permits. The proposed regulation changes the language in Regulation 1699(f) by clarifying the methods for notifying the board when a seller's permit becomes inactive, explains limitations on predecessor's liability and clarifies the regulatory limitation on the fraud penalty. (Exhibit 11.6.)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted Sales and Use Tax Regulation 1699 as published.

Proposed Adoption of Alcohol Beverage Tax Regulation 2558, *Distilled Spirits*, Regulation 2559, *Presumption-Distilled Spirits*, Regulation 2559.1, *Rebuttable Presumption–Distilled Spirits*, Regulation 2559.3, *Internet List*, and Regulation 2559.5, *Correct Classification*

Monica Brisbane, Tax Counsel, Business Taxes Division, Legal Department, made introductory remarks regarding the proposed adoption of the following regulations relating to taxing flavored malt beverages as distilled spirits: 2558, *Distilled Spirits*; 2559, *Presumption – Distilled Spirits*; 2559.1, *Rebuttable Presumption – Distilled Spirits*; 2559.3, *Internet List*; and, 2559.5, *Correct Classification*. (Exhibit 11.7.)

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Speakers: Marc Sorini, Attorney for Flavored Malt Beverage Coalition
Gene Livingston, Attorney, Greenberg Traurig for Miller Brewing Company
Fred Jones, Advocate, California Council on Alcohol Problems, and Alcapops
and Youth Coalition
Michael Scippa, Advocacy Director, Marin Institute
Jimmy Jordan, Youth Member, Friday Night Live
Katie Lucas, Government Relations Director, Girl Scout Councils of California
Vanessa Madrid, California Youth Council, Friday Night Live

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board adopted Alcohol Beverage Tax Regulations 2558, 2559, 2559.1, 2559.3, and 2559.5, as published.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

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

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 11.8).

Leon J. Adams, District Principal Auditor, Sacramento District Office
David Dunlap, Business Taxes Specialist I, Fuel Industry Section, Property and
Special Taxes Department, Headquarters
Eva Kay, Associate Information Systems Analyst, Specialist, Technology
Services Division, Headquarters
Lena F. Ng, Supervising Tax Auditor I, Norwalk District Office

Action: Adopt a resolution to Marsha A. Wharff, Mendocino County Assessor, extending its best wishes on her retirement and its appreciation for her service to citizens of Mendocino County and the State of California (Exhibit 11.9).

Action: Approve a report on effects of proposition 10 on cigarette and tobacco products consumption (Exhibit 11.10).

Action: Approve the 2008 Timberland Production Zone Values as recommended by staff (Exhibit 11.11).

Action: Approve sales tax prepayment rate on motor vehicle fuel, diesel fuel and jet fuel as recommended by staff (Exhibit 11.12).

Action: Approve Assessors' Handbook Section 531, *Residential Building Costs* (Exhibit 11.13).

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Action: Approve Assessors' Handbook Section 534, *Rural Building Costs* (Exhibit 11.14).

Action: Approve Assessors' Handbook Section 581, *Equipment Index and Percent Good Factors* (Exhibit 11.15).

Action: Approve Form BOE-62-DP, *Claim for Reassessment Reversal for Registered Domestic Partners* (Exhibit 11.16).

With respect to the Administrative Matters, Consent Agenda, the Board deferred consideration of fractionally owned aircraft forms: Form BOE-570-FO-1, *Supplementary Schedule to the Business Property Statement --- Aircraft Cost Report*, and instructions; and, Form BOE-570-FO-2, *Supplementary Schedule to the Business Property Statement --- Aircraft Value Computation*, and instructions (Exhibit 11.17).

The Board directed staff to work with parties and county assessors to improve these forms and to report its progress to the Board.

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, provided a headquarters building update.

Deputy Director's Report

David Gau, Interim Deputy Director, Administration Department, made introductory remarks regarding renewal of Department of Technology Service Interagency Agreement for fiscal year 2007-2008 (Exhibit 11.18).

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved renewal of the Department of Technology Service Interagency Agreement for fiscal year 2007-2008.

Mr. Gau provided a status report on the unallocated reduction request (Exhibit 11.19).

Mr. Gau reported the status of pending CEA positions and requested approval of CEA I upgrades (Exhibit 11.20).

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved staff's request to move forward with the CEA 2 examination and appointment process for the following positions: Research and Statistics Section Chief, Human Resources Division Chief, and Administrative Support Division Chief.

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ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**Legislative Committee**

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Legislative Committee report, with format revisions, and the actions therein and ordered that the votes be reflected in these minutes (Exhibit 11.21).

Committee votes were as follows:

Property Taxes, 2008 Legislative Proposals, Consent Items

A recommendation to approve the consent agenda unanimously passed with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes. These items are as follow:

- Amend Revenue and Taxation Code section 276
- Amend Revenue and Taxation Code section 441
- Amend Government Code section 15641

Business Taxes 2008 Legislative Proposals

A recommendation of support to amend Revenue and Taxation Code section 6591.5 unanimously passed with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

A motion to adopt section 15607 of the Government Code failed with Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

A motion to adopt a proposal that conforms section 15607 of the Government Code to the IRS statute failed with Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

Business Taxes, Sales and Use Taxes, 2008 Legislative Proposals

A recommendation of support to add section 6363.4 to the Sales and Use Tax Law unanimously passed with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

A recommendation of support to amend the Labor Code unanimously passed with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

The matter of adding section 6487.06 to the Revenue and Taxation Code was deferred without discussion.

A recommendation of support to amend section 6248 of the Revenue and Taxation Code duly passed with Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no.

A recommendation of support to amend sections 6452.1, 6487.3, and 18510 of the Revenue and Taxation Code duly passed with Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no.

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Business Taxes, Special Taxes, 2008 Legislative Proposals

A recommendation of support to amend 7342, 7470, and 60135 of the Revenue and Taxation Code duly passed with Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no.

Customer Services and Administrative Efficiency Committee

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report and the actions therein (Exhibit 11.22).

The Board recessed at 12:05 p.m. and reconvened at 12:10 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

PROPERTY TAXES HEARING

U.S. Telepacific Corporation (7757), 414208
2007, \$123,000,000.00 Unitary Value

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| For Petitioner: | Waived Appearance |
| For Property and Special Taxes Department: | Travis Fullwood, Legal Analyst Richard Moon, Tax Counsel |

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

Issue: Whether petitioner has shown that an adjustment for additional functional obsolescence of petitioner's digital switch equipment should be allowed.

Whether petitioner has shown that it is entitled to an additional adjustment of claimed exempt application software.

Action: Ms. Chu moved to deny the petition as recommended by staff. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

The Board deferred consideration of the matter to the December Legal Appeals Property Tax Matters, Adjudicatory calendar.

FINAL ACTION ON PROPERTY TAXES HEARING HELD NOVEMBER 15, 2007

Golden State Water Company (101), 414767

Final Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied as recommended by staff.

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PROPERTY TAXES HEARING

O1 Communications, Inc. (7791), 388338

2003, \$3,400,000.00 Unitary Escaped Assessment, \$1,122,000.00 In lieu of Interest

2004, \$2,420,000.00 Unitary Escaped Assessment, \$580,800.00 In lieu of Interest

2005, \$273,000.00 Unitary Escaped Assessment, \$40,950.00 In lieu of Interest

For Petitioner: Waived Appearance

For Property and Special Taxes Department: Bradley Heller, Tax Counsel

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

Issues: Whether petitioner has shown that the State-Assessed Properties Division improperly applied the valuation methodology by failing to take into account actual price data from the secondary market for replacement costs, an appropriate degree of functional obsolescence and a prior Board ruling in favor of petitioner.

Whether petitioner has established that the assessments in lieu of interest were not properly imposed.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted staff's revised recommendation which affirmed the assessments in lieu of interest and reduced the Board-adopted escape assessments for years 2003, 2004 and 2005 to \$1,680,000.00, \$1,060,000.00 and \$273,000.00, respectively.

FINAL ACTION ON PROPERTY TAXES HEARING HELD NOVEMBER 15, 2007

Verizon Wireless (2512), 405333

Sacramento Valley LP (2513), 406373

Los Angeles SMSA LP (2532), 406374

Fresno MSA LP (2552), 406375

GTE Mobilnet of California LP (2559), 406376

GTE Mobilnet of Santa Barbara LP (2627), 406377

Cellco Partnership (2667), 406378

California RSA #4 (2669), 406379

Final Action: Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Mr. Leonard voting yes, Ms. Steel voting no, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied as recommended by staff.

Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered staff to report to the Board on whether State and local valuations are consistent in the area of escaped assessments and in-lieu interest.

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Ms. Yee congratulated Janice Thurston, Assistant Chief Counsel, on her new position as Legislative Counsel IV with the Office of the Legislative Counsel in the Tax Section and acknowledged some of her many contributions to the Board.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 12:25 p.m. and reconvened immediately in closed session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

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

The Board recessed at 2:35 p.m. and reconvened immediately in open session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Ramon Hirsig, Executive Director, announced the appointment of Elizabeth K. Houser to the position of Deputy Director of the Administration Department.

The Board adjourned at 2:40 p.m.

The foregoing minutes are adopted by the Board on February 1, 2008.