

**Wednesday, December 12, 2007**

The Board met at its offices at 450 N Street, Sacramento, at 9:30 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.

### **SALES AND USE TAX APPEALS HEARINGS**

Aerolease of America, Inc., 282309, 296191 (UT)

2-26-02, \$1,650.00 Tax

2-28-02, \$1,650.00 Tax

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

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

Issue: Whether the amounts petitioner paid to Mr. Aarvik for each aircraft was for financing (a loan), rather than a purchase.

Diane Olson, Chief, Board Proceedings Division, announced that the petitioner requested a postponement in the late afternoon of December 11, 2007.

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

Chung Im Kim, 358090 (KH)

3-1-05 to 6-19-05, \$7,904.00 Tax, \$790.40 Failure to File Penalty

For Petitioner:

Chung Im Choi (Kim), Taxpayer

For Sales and Use Tax Department:

Robert Tucker, Tax Counsel

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

Issues: Whether petitioner is liable for tax on the estimated sales.

Whether petitioner is entitled to relief of the failure-to-file penalty.

Jeff Angeja, Tax Counsel, Appeals Division, Legal Department, announced a revised recommendation that would reduce the tax liability.

Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel abstaining, the Board ordered that the petition be granted.

Ms. Mandel left the Boardroom and Mr. Chivaro entered on behalf of Mr. Chiang in accordance with Government Code section 7.9.

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GE Engine Services-Corporate Aviation, Inc., 166340 (AS)

1-1-97 to 12-31-99, \$340,384.69 Tax

For Petitioner:

Kevin S. Berry, Taxpayer

Joseph Vinatieri, Attorney

Patrick Guerin, Taxpayer

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

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

Issues: Whether petitioner timely received a valid resale certificate or exemption certificate.

Whether petitioner has established that it is entitled to additional adjustments for parts that were installed on aircraft used as a common carrier.

Mr. Vinatieri announced concession of the second issue.

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and duly carried, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chivaro voting yes, Ms. Yee voting no, the Board ordered that the petition be granted as to issue 1.

Upon motion of Ms. Chu, seconded by Mr. Chivaro and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division as to issue 2.

Mr. Chivaro left the Boardroom and Ms. Mandel entered on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### **SPECIAL TAXES APPEALS HEARING**

Cigars by Chivas, Inc., 334787, 334876 (AP)

4-1-02 to 3-31-05, \$86,690.71 Tax, \$17,687.20 Negligence Penalty

4-1-02 to 3-31-05, \$51,396.62 Tax, \$16,582.25 Negligence Penalty

For Petitioner:

Tina Glandian, Attorney

For Property and Special Taxes Department:

Tim Treichel, Tax Counsel

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

Issues: Whether petitioner has established that the determination for sales tax on unreported taxable sales is excessive.

Whether the determination for cigarette and tobacco products tax is excessive.

Whether petitioner was negligent.

Ms. Glandian requested a postponement.

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

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**PUBLIC HEARINGS****Timber Yield Tax Rate**

David E. Hayes, Manager, Research and Statistics Section, Legislative and Research Division, made introductory remarks. Revenue and Taxation Code, section 38202 requires that the Board adjust the timber yield tax rate in December of each year to the nearest one-tenth of one percent for the next calendar year. The adjustment is to be in the same proportion as the change from the previous tax year to the present one of the average general property tax rate in the rate adjustment counties. (Exhibit 12.2.)

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 the 2008 timber yield tax rate of 2.9 percent as recommended by staff.

Exhibits to these minutes are incorporated by reference.

**Timber Harvest Values**

Benjamin Tang, Principal Property Appraiser, County-Assessed Properties Division, Property and Special Taxes Department, made introductory remarks. On or before December 31, 2007, the Board shall estimate the immediate harvest values of and adopt schedules for timber harvested between January 1, 2008 and June 30, 2008. (Rev. & Tax. Code, § 38204.) (Exhibit 12.3.)

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the 2008 timber harvest values as recommended by staff.

**LEGAL APPEALS MATTERS, CONSENT**

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

Ed Emadi, Inc., 249588, 273019 (GH)

7-1-00 to 9-30-03, \$0.00 Tax, \$220,950.52 Fraud Penalty

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

Rafik M. Assad, 420480 (ET)

July 23, 2007, \$444.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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Francois Alexandre, 421658 (ET)

August 9, 2007, \$367.50 Approximate Value

Action: Determined that staff properly seized the tobacco products.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Timothy Jenkins, 348922.*

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

R. Keith Brewster, 382894

2004, \$579.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Robert K. Castillon, 349008

2003, \$1,055.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Michael P. Goodman, 383411

2005, \$106.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Robin D. Granger, 357603

2004, \$999.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Sherrie Seng Savang, 378530

2005, \$525.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

David W. Shaw, 382224

1989, \$12,240.91 Claim for Refund

1993, \$10,942.09 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Scott C. Tonne, 384451

2004, \$187 Tax, \$100.00 Filing Penalty, \$185.00 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee

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

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Marvin W. Ward, 378098

2004, \$6,432.00 Tax, \$1,608.00 Late Filing Penalty, \$2,444.25 Notice and Demand Penalty, \$120.00 Filing Enforcement Fee

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

Herkie Lee Williams, M.D., 379653

2003, \$3,935.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Timothy Jenkins, 348922

2001, \$792.59 Tax

Action: The Board deferred consideration of this matter.

Lionel Kolker, 334482

1997, \$14,425.00 Tax, \$3,606.25 Late Filing Penalty

Action: Deny the petition for rehearing.

Cedo Popovic and Mirjana Popovic, 353602

1999, \$54,501.72 Claim for Refund

Action: Deny the petition for rehearing.

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

The Board deferred consideration of the following matter: *Tanya Berry, 395705.*

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Steel, 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:

Knarik Abadzhyan (Deceased), 389709

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Eugene Anderson, 394691

2006, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Tanya Berry, 395705

2006, \$347.50

Action: The Board deferred consideration of this matter.

Paul W. Bloom, 381217

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Hung Jae Chang, 380744

2006, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Alfred de Bartolo, 390549

2006, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Grace Devico, 378106

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Romelia Gould, 383276

2006, \$297.81

Action: Modify the action of the Franchise Tax Board in accordance with its concession to pay appellants an additional \$6.68; otherwise respondents' action is sustained.

Gracie L. Harris, 383481

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Brenda Hawkins, 394376

2006, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Angela Jenkins, 396056

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Shirley Koppi, 383506

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Velga Laivenieks, 378347

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Clara Scott Terry, 379149

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Pho Van Tran, 372794

2006, \$1.00 or more

Action: Sustain 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**

The Board deferred consideration of the following matters: *UPS Oasis Supply Corporation, 418332*; *Aramark Uniform & Career Apparel, 300481*; and, *Caddo Design & Office Products, 421105*.

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 Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Medtronic Sofamor Danek USA, Inc., 389559*; and, *American International Group, Inc., 359344*; the Board made the following orders:

Dan Gamel, Inc., 312448 (KHO)

7-1-02 to 12-31-03, \$73,465.44

Action: Approve the redetermination as recommended by staff.

Ki Hong Park, 342932 (EAA)

4-1-00 to 11-30-04, \$68,831.37

Action: Approve the redetermination as recommended by staff.

Daniel A. Frahm, 399410 (AR)

1-1-98 to 12-31-00, \$91,668.95

Action: Approve the redetermination as recommended by staff.

Willy Alfredo Phillips, 329910 (AS)

1-1-01 to 12-31-03, \$54,049.27

Action: Approve the redetermination as recommended by staff.

Medtronic Sofamor Danek USA, Inc., 389559 (OHA)

4-1-02 to 3-31-05, \$578,814.14

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

Equistar Chemicals, LP, 389560 (OHC)

7-1-02 to 12-31-05, \$572,852.91

Action: Approve the redetermination as recommended by staff.

Lyondell Chemical Company, 389561 (OHC)

7-1-02 to 12-31-05, \$253,905.98

Action: Approve the redetermination as recommended by staff.

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Pass Avenue Associates, LLC, 404533 (AC)

4-1-04 to 12-19-06, \$85,487.07

Action: Approve the redetermination as recommended by staff.

Sears-Roebuck and Company, 299496 (OHA)

1-1-99 to 6-30-02, \$90,550.49

Action: Approve the redetermination as recommended by staff.

Baker Petrolite Corporation, 421549 (OHC)

1-1-07 to 6-30-07, \$121,880.90

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

UPS Oasis Supply Corporation, 418332 (OHA)

7-1-06 to 9-30-06, \$63,363.30

Action: The Board deferred consideration of this matter.

Infinera Corporation, 418441 (GH)

7-1-01 to 3-31-04, \$71,130.73

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

Baja Fresh Westlake Village, Inc., 421550 (EA)

10-1-06 to 12-31-06, \$190,612.70

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

Aramark Uniform & Career Apparel, 300481 (AC)

7-1-99 to 6-30-02, \$317,854.16

Action: The Board deferred consideration of this matter.

Professional Hospital Supply, Inc., 317682 (EH)

7-1-00 to 9-30-03, \$1,976,827.53

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

American International Group, Inc., 359344 (OHB)

4-1-03 to 6-30-06, \$350,000.00

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

Caddo Design & Office Products, 421105 (OH)

1-1-04 to 12-31-04, \$56,661.97

Action: The Board deferred consideration of this matter.

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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. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *EMC Corporation, 394229; Sunamerica Life Insurance Company, 360459; and, Schlumberger Technology Corporation, 405005*; the Board made the following orders:

Enclos Corporation, 421650 (OHA)

1-1-05 to 9-30-06, \$56,090.08

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

Larry M. Hayes, Inc., 420916 (AR)

1-1-06 to 3-20-06, \$96,272.84

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

American Isuzu Motors, Inc., 299346 (AA)

1-1-99 to 12-31-03, \$104,102.08

Action: Approve the refund as recommended by staff.

Metro-Med, Inc., 418127 (AC)

1-1-04 to 3-31-07, \$409,778.16

Action: Approve the refund as recommended by staff.

Hertz Equipment Rental Corporation, 418334 (OHB)

4-1-99 to 12-31-02, \$186,598.74

Action: Approve the refund as recommended by staff.

All American Asphalt, 418268 (EH)

7-1-02 to 6-30-05, \$297,658.18

Action: Approve the refund as recommended by staff.

Primary Color Systems Corporation, 417771 (EAA)

4-1-04 to 12-31-05, \$76,157.89

Action: Approve the refund as recommended by staff.

Hawthorne Machinery Company, 415254 (FHB)

10-1-06 to 12-31-06, \$400,509.15

Action: Approve the refund as recommended by staff.

Professional Hospital Supply, Inc., 317682 (EH)

7-1-00 to 9-30-03, \$752,532.90

Action: Approve the refund as recommended by staff.

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EMC Corporation, 394229 (OHB)

10-1-01 to 12-31-04, \$468,435.03

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

Ford Motor Company, 420067 (OHA)

2-17-07 to 7-24-07, \$633,837.75

Action: Approve the refund as recommended by staff.

Sunamerica Life Insurance Company, 360459 (AS)

7-1-03 to 6-30-06, \$502,893.61

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

Crossbow 50, LLC, 420077 (UT)

3-29-02 to 3-29-02, \$262,434.40

Action: Approve the refund as recommended by staff.

Election Systems &amp; Software, Inc., 394819 (OHA)

7-1-06 to 9-30-06, \$166,567.91

Action: Approve the refund as recommended by staff.

Genis Productions, Inc., 418057 (AC)

7-1-03 to 3-31-06, \$96,445.46

Action: Approve the refund as recommended by staff.

Man Roland, Inc., 414298 (OHA)

1-1-07 to 3-31-07, \$233,825.27

Action: Approve the refund as recommended by staff.

Wachovia Dealer Services, Inc., 415510 (EAA)

1-1-07 to 3-31-07, \$1,657,623.86

Action: Approve the refund as recommended by staff.

Nintendo of America, Inc., 340932 (OH)

4-1-02 to 3-31-05, \$101,876.28

Action: Approve the refund as recommended by staff.

MTI Technology Corporation, 417770 (EA)

10-1-03 to 9-30-06, \$79,920.25

Action: Approve the refund as recommended by staff.

General Atomics Aeronautical Systems, Inc., 395651 (FHB)

10-1-05 to 12-31-05, \$72,732.45

Action: Approve the refund as recommended by staff.

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Wescom Credit Union, 415511 (AP)

1-1-07 to 6-30-07, \$173,444.62

Action: Approve the refund as recommended by staff.

Eisenhower Health Services, 416342 (EHC)

4-1-03 to 6-30-06, \$319,602.60

Action: Approve the refund as recommended by staff.

Schlumberger Technology Corporation, 405005 (OHC)

1-1-05 to 12-31-06, \$115,504.18

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

Westlake Services, Inc., 414674 (AS)

10-1-06 to 3-31-07, \$156,809.58

Action: Approve the refund as recommended by staff.

Mission Financial Services Corporation, 404540 (EA)

1-1-07 to 6-30-07, \$62,462.93

Action: Approve the refund as recommended by staff.

Long Beach Acceptance Corporation, 380440 (EA)

1-1-05 to 6-30-06, \$802,594.93

Action: Approve the refund as recommended by staff.

Rancho Santa Fe Thrift & Loan, 402670

7-1-06 to 12-31-06, \$67,361.14

Action: Approve the refund as recommended by staff.

Truman Fuel, LLC, 420420 (AC)

12-16-04 to 12-31-05, \$83,938.32

Action: Approve the refund as recommended by staff.

Lowell, Inc., 404504 (OHA)

1-1-07 to 3-31-07, \$70,110.40

Action: Approve the refund as recommended by staff.

Hayernik Ghazarian, 420421 (AC)

1-1-06 to 3-31-07, \$86,484.87

Action: Approve the refund as recommended by staff.

W2005 New Century Hotel Portfolio, LP, 419983 (OHC)

2-1-07 to 3-31-07, \$87,186.22

Action: Approve the refund as recommended by staff.

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

Republic Indemnity Company of California, 298649 (ET)

10-1-04 to 12-31-04, \$124,765.20

Action: The Board deferred consideration of this matter.

**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 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 made the following order:

Affirmative Insurance Company, 422227 (ET)

7-1-07 to 9-30-07, \$417,168.84

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

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Thomas D. Thomas, 315849 (UT)

12-10-99, \$4,125.00 Tax, \$412.50 Failure to File Penalty

Considered by the Board: Hearing Notice Sent - No Response

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 Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

FMF Racing, 295383 (AA)

1-1-00 to 12-31-02, \$63,610.61 Tax

Considered by the Board: June 20, 2007

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

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

Speaker: Cindy Ho, Attorney, made remarks on behalf of *Rogelio G. Cisneros, 343638.*

Jalal Odish Zora, 203825 (FH)

7-1-98 to 6-30-01, \$21,246.04 Tax, \$0.00 Penalty

Jalal Odish Zora, 203824 (FHB)

5-1-99 to 6-30-01, \$10,744.76 Tax, \$0.00 Penalty

Considered by the Board: June 20, 2007

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

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and duly carried, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Yee voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Rogelio G. Cisneros, 343638 (GH)

7-1-01 to 12-31-04, \$153,504.93 Tax, \$23,268.67 Penalties

Considered by the Board: July 17, 2007

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

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

#### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY**

Larry Geisel, 358724

2000, \$92,424.00 Assessment

Considered by the Board: Formal Opinion

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

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Mr. Leonard voting yes, Ms. Steel and Ms. Mandel voting no, the Board adopted the Formal Opinion with the addition of a phrase regarding intent of repayment.

Paul L. Mickelsen and Patricia Mickelsen, 343108

1999, \$537,178.00 Claim for Refund

Considered by the Board: Formal Opinion

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

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board adopted the Formal Opinion.

Downey Toy Company, 306793

1998, \$162,051.63 Claim for Refund

1999, \$93,067.27 Claim for Refund

2000, \$94,676.15 Claim for Refund

Considered by the Board: March 20, 2007

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

Action: Upon motion of Ms. Yee, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel abstaining, the Board ordered the appeal be submitted for written opinion sustaining the action of the Franchise Tax Board. The Board's decision on this matter shall not become final until the matter is brought back to the Board for adoption of the proposed opinion.

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John J. Gannitto, 378805

2004, \$3,433.75 Assessment

Considered by the Board: November 14, 2007

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. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

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

Christies, Inc., 404723 (OHB)

10-1-06 to 12-31-06, \$1,020,672.50

Considered by the Board: October 2, 2007

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

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 relief of penalty as recommended by staff.

Tandus US, Inc. 421563 (OHA)

7-1-06 to 9-30-06, \$65,444.40

Considered by the Board: Presented for Separate Discussion

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

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 relief of penalty as recommended by staff.

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

Kaiser Foundation Health Plan, Inc., 398517 (AP)

1-1-01 to 12-31-03, \$251,445.23

Considered by the Board: September 12, 2007

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

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 refund as recommended by staff.

Time Warner Entertainment Company, LP, 312205 (AC)

10-1-98 to 10-31-01, \$111,961.13

Considered by the Board: September 12, 2007

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

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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 refund as recommended by staff.

**Kaiser Foundation Hospitals, 398554 (AP)**

1-1-01 to 12-31-03, \$1,875,954.50

Considered by the Board: September 12, 2007

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

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 refund as recommended by staff.

**Oliver A. Goldsmith, 395912 (AP)**

1-1-01 to 12-31-03, \$730,583.88

Considered by the Board: September 12, 2007

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

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 refund as recommended by staff.

**Ford Motor Credit Company, 262540 (OHA)**

1-1-01 to 12-31-05, \$24,440,917.87

Considered by the Board: Presented for Separate Discussion

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

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 refund as recommended by staff.

**Capital One Auto Finance, Inc., 341976 (OHA)**

4-1-05 to 9-30-05, \$639,606.42

Considered by the Board: August 14, 2007

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

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 refund as recommended by staff.

**LEGAL APPEALS PROPERTY TAX MATTERS, ADJUDICATORY**

Speaker: David Hankin, Vice President, Regulatory and Governmental Affairs, made remarks on behalf of *Astound Broadband, LLC (7832), 414386*.

**Astound Broadband, LLC (7832), 414386**

2007, \$18,900,000.00 Unitary Assessed Value, \$1,890,000.00 Late Filing Penalty

Considered by the Board: Presented for Separate Discussion

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

Wednesday, December 12, 2007

Action: Mr. Leonard moved that the petition for penalty abatement be granted. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Ms. Chu voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

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

## CHIEF COUNSEL MATTERS

### OTHER CHIEF COUNSEL MATTERS

#### Untimely or Late-filed Property Tax Appeals Materials - Staff recommendation for Board distribution policy

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

## 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 12.4).

Larry Fogerson, Senior Forest Property Appraiser, County-Assessed Properties Division, Property and Special Taxes Department, Headquarters  
George T. Ito, Supervising Tax Auditor I, Culver City District Office  
Norman W. Rice, Associate Tax Auditor, Van Nuys District Office  
Edward W. Schoelz, Business Taxes Specialist, West Covina District Office  
Paula Spreitzer, Associate Personnel Analyst, Human Resources Division  
David Sherman, Business Tax Specialist I, Van Nuys District Office  
Marilyn Varon, Business Taxes Compliance Specialist, Van Nuys District Office  
Stan Young, Tax Auditor, Van Nuys District Office

Action: Adopt a resolution to Jose M. Rodriguez, Jr., Imperial County Assessor, extending its best wishes on his retirement and its appreciation for his service to the citizens of Imperial and the State of California (Exhibit 12.5).

Wednesday, December 12, 2007

## **ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**

### **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 12.6).

## **OTHER ADMINISTRATIVE MATTERS**

### **Executive Director's Report**

Ramon Hirsig, Executive Director, provided a headquarters building update. Mr. Hirsig also reported that the 2008 Board organization will be placed on the January Sacramento agenda. (Exhibit 12.7.)

### **Deputy Director's Report**

Randie Henry, Deputy Director, Sales and Use Tax Department, provided an update regarding Electronic Funds Transfer Bank Conversion project 2008. Ms. Henry also reported the completion of the Sales and Use Tax Department's realignment. (Exhibit 12.8.)

Liz Houser, Deputy Director, Administration Department, provided an update on recent discussions with the Department of Finance regarding the Board of Equalization's Budget for Fiscal Years 2007-08 and 2008-09, and on the Budget Change Proposal process for Fiscal Year 2009-10 (Exhibit 12.9).

The Board recessed at 12:15 p.m. and reconvened at 1:35 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang present.

## **LEGAL APPEALS PROPERTY TAX MATTERS, ADJUDICATORY**

San Diego Gas & Electric Company (141), 414848

2007, \$4,156,800,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Mr. Leonard moved to grant the reduction in value for the emission reduction credits and otherwise approve the value as recommended by the Department. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Mr. Chiang voting no.

Upon motion of Ms. Chu, seconded by Mr. Chiang and duly carried, Ms. Yee, Ms. Chu and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied as recommended by the Appeals Division.

Wednesday, December 12, 2007

## Reliant Energy Mandalay, LLC (1114), 414223

2007, \$43,400,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Mr. Leonard moved to grant the reduction in value for the emission reduction credits and otherwise approve the value as recommended by the Department. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Mr. Chiang voting no.

Upon motion of Ms. Chu, seconded by Mr. Chiang and duly carried, Ms. Yee, Ms. Chu and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied as recommended by the Appeals Division.

## Reliant Energy Ormond Beach, LLC (1115), 414224

2007, \$109,000,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Mr. Leonard moved to grant the reduction in value for the emission reduction credits and otherwise approve the value as recommended by the Department. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Mr. Chiang voting no.

Upon motion of Ms. Chu, seconded by Mr. Chiang and duly carried, Ms. Yee, Ms. Chu and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board reduced the value to \$96,800,000.00 as recommended by the Appeals Division.

## Mountainview Power Company (1119), 414758

2007, \$603,600,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Mr. Leonard moved to grant the reduction in value for the emission reduction credits and otherwise approve the value as recommended by the Department. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Mr. Chiang voting no.

Upon motion of Ms. Chu, seconded by Mr. Chiang and duly carried, Ms. Yee, Ms. Chu and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied as recommended by the Appeals Division.

## Delta Energy Center, LLC (1128), 415120

2007, \$405,100,000.00 Unitary Assessed Value

## Pastoria Energy Center, LLC (1131), 415660

2007, \$386,400,000.00 Unitary Assessed Value

## Calpine Construction Finance Company, LP (1132), 415661

2007, \$212,900,000.00 Unitary Assessed Value

## Metcalf Energy Center (1133), 415662

2007, \$311,900,000.00 Unitary Assessed Value

Wednesday, December 12, 2007

Considered by the Board: Presented for Separate Discussion  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Action: Mr. Leonard moved to grant the reduction in value for the emission reduction credits and otherwise approve the value as recommended by the Department. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Mr. Chiang voting no.  
Upon motion of Ms. Chu, seconded by Mr. Chiang and duly carried, Ms. Yee, Ms. Chu and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied as recommended by the Appeals Division.

Mountain Utilities, LLC (185), 414760  
2007, \$4,440,000.00 Unitary Assessed Value  
Considered by the Board: Presented for Separate Discussion  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Action: Upon motion of Ms. Chu, seconded by Mr. Chiang and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied as recommended by the Appeals Division.

Wild Goose Storage, LLC (195), 415369  
2007, \$146,700,000.00 Unitary Assessed Value  
Considered by the Board: Presented for Separate Discussion  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Action: Upon motion of Ms. Chu, seconded by Mr. Chiang and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board reduced the value to \$130,300,000 as recommended by the Appeals Division.

Calpine Pittsburg, Inc. (406), 414979  
2007, \$13,500,000.00 Unitary Assessed Value  
Considered by the Board: Presented for Separate Discussion  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Action: Upon motion of Ms. Chu, seconded by Mr. Chiang and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied as recommended by the Appeals Division.

CPN Pipeline Company (428), 414983  
2007, \$25,600,000.00 Unitary Assessed Value  
Considered by the Board: Presented for Separate Discussion  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Action: Upon motion of Ms. Chu, seconded by Mr. Chiang and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied as recommended by the Appeals Division.

Calpine Pipeline Corporation (484), 414984  
2007, \$5,790,000.00 Unitary Assessed Value  
Considered by the Board: Presented for Separate Discussion

Wednesday, December 12, 2007

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

Action: Upon motion of Ms. Chu, seconded by Mr. Chiang and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied as recommended by the Appeals Division.

Dynegy Moss Landing, LLC (1103), 415122

2007, \$680,100,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Ms. Chu moved that the petition be denied as recommended by the Appeals Division. The motion was seconded by Mr. Chiang. Mr. Leonard made a substitute motion to grant the reduction in value for the emission reduction credits and for the lifecycle of the turbine generation unit. The substitute motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Mr. Chiang voting no.

Upon motion of Ms. Chu, seconded by Mr. Chiang and duly carried, Ms. Yee, Ms. Chu and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied as recommended by the Appeals Division.

Los Esteros Critical Energy Facility, LLC (1143), 415659

2007, \$86,700,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Ms. Chu moved that the petition be denied as recommended by the Appeals Division. The motion was seconded by Mr. Chiang. Mr. Leonard made a substitute motion to grant the petition. The substitute motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Mr. Chiang voting no.

Upon motion of Ms. Chu, seconded by Mr. Chiang and duly carried, Ms. Yee, Ms. Chu and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied as recommended by the Appeals Division.

Qwest Communications Corporation (2463), 415366

2007, \$144,500,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Chu, seconded by Mr. Chiang and duly carried, Ms. Yee, Ms. Chu and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied as recommended by the Appeals Division.

The Board referred the issue of newer, technologically advanced equipment lifing tables to the Property Taxes Committee. Don Jackson, Principal Property Appraiser, State-Assessed Properties Division, Property and Special Taxes Department, reported that this would be part of the telecommunications equipment obsolescence study that staff is currently conducting.

Wednesday, December 12, 2007

Speaker: Peter Kotschedoff, Director, Duff and Phelps, made remarks on behalf of  
*U.S. Telepacific Corporation (7757), 414208.*

**U.S. Telepacific Corporation (7757), 414208**

2007, \$123,000,000.00 Unitary Assessed Value

Considered by the Board: Presented for Separate Discussion

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

Action: Mr. Leonard moved to grant the petition. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Mr. Chiang voting no.

Upon motion of Ms. Chu, seconded by Mr. Chiang and duly carried, Ms. Yee, Ms. Chu and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied as recommended by the Appeals Division.

**Globalstar USA, LLC (2772), 414759**

2007, \$4,330,000.00 Unitary Assessed Value, \$433,000.00 Late Filing Penalty

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Ms. Chu, seconded by Mr. Chiang and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied as recommended by the Appeals Division.

**Astound Broadband, LLC (7832), 414386**

2007, \$18,900,000.00 Unitary Assessed Value, \$1,890,000.00 Late Filing Penalty

Considered by the Board: Presented for Separate Discussion

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

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and duly carried, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, Ms. Yee and Ms. Chu voting no, the Board reduced the penalty by 50 percent, otherwise denied the petition as recommended by the Appeals Division.

**OmniPoint Communications, Inc. (2748), 388350**

2003, \$25,400,000.00 Escaped Assessed Value, \$1,270,000.00 Penalty, \$8,382,000.00 In Lieu of Interest

2004, \$17,600,000.00 Escaped Assessed Value, \$880,000.00 Penalty, \$4,224,000.00 In Lieu of Interest

Considered by the Board: Presented for Separate Discussion

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: Ms. Chu moved that the value be reduced and the abatement of penalty be denied as recommended by the Appeals Division. The motion was seconded by Mr. Chiang. Mr. Leonard made a substitute motion to abate the penalty. The substitute motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Mr. Chiang voting no.

**Wednesday, December 12, 2007**

Upon motion of Ms. Chu, seconded by Mr. Chiang and duly carried, Ms. Yee, Ms. Chu and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the 2003 and 2004 unitary value be reduced to \$30,800,000.00, and in-lieu interest reduced to \$9,084,000.00, and denied the request for abatement of penalty but adjusted the penalty accordingly to \$1,540,000.00, as recommended by the Appeals Division.

### **PROPERTY TAXES HEARING**

Pacific Bell (279), 406929  
2007, \$6,927,500,000.00 Unitary Value

For Petitioner:

Eric Miethke, Attorney  
Robert Strong, Taxpayer

For Property and Special Taxes Department: Daniel Paul, Tax Counsel

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

Issue: Whether the replacement cost new less depreciation value indicator used to determine the 2007 Board-adopted unitary value fails to adequately account for all forms of depreciation and obsolescence in the unitary property of petitioner Pacific Bell Telephone Company.

Petitioner's Exhibit: Miscellaneous Document (Exhibit 12.10)

Action: Mr. Chiang moved to reduce the 2007 unitary value by 50 percent. The motion was seconded by Mr. Leonard. Mr. Chiang withdrew his motion.

Upon motion of Mr. Chiang, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be submitted for decision.

Mr. Chiang directed staff to identify unresolved property tax issues so such issues can be further developed for next year.

### **CHIEF COUNSEL MATTERS**

#### **OTHER CHIEF COUNSEL MATTERS**

#### **Untimely or Late-filed Property Tax Appeals Materials - Staff recommendation for Board distribution policy**

The Board deferred consideration of this matter to the next Board meeting.

### **PROPERTY TAXES HEARINGS**

AT&T Communications (2310) 406930  
2007, \$826,400,000.00 Unitary Value

For Petitioner:

Eric Miethke, Attorney  
Robert Strong, Taxpayer

For Property and Special Taxes Department: Daniel Paul, Tax Counsel

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

Wednesday, December 12, 2007

Issue: Whether petitioner has shown that the Board committed error in the determination of the 2007 Board-adopted unitary value by placing 100 percent reliance on the Replacement Cost New Less Depreciation value indicator based on amounts recorded pursuant to petitioner's Statement of Financial Accounting Standards No. 141 purchase price allocation.

Lou Ambrose, Tax Counsel, Property Taxes Division, Legal Department, announced the Appeals Division's revised recommendation.

Action: Upon motion of Mr. Chiang, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be submitted for decision.

Covad Communications Company (7706), 414850

2007, \$69,600,000.00 Unitary Value

For Petitioner:

Todd Heinrichs, Representative

Amy Haste, Representative

For Property and Special Taxes Department: Denise Riley, Tax Counsel

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

Issue: Whether petitioner has shown that respondent's replacement cost new less depreciation value indicator which the Board adopted as petitioner's 2007 unitary value should be adjusted to account for additional economic obsolescence.

Action: Upon motion of Ms. Chu, seconded by Mr. Chiang and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be submitted for decision.

Intelsat Global Service Corporation (7969), 415123

2007, \$24,000,000.00 Unitary Value, \$2,400,000.00 Late-Filing Penalty

For Petitioner:

Georgina Eckman, Representative

For Property and Special Taxes Department: Matthew Burke, Tax Counsel

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

Issue: Whether petitioner has met its burden of proving that the delay in filing the property statement was due to reasonable cause so as to justify abatement of the late-filing penalty.

Action: Upon motion of Ms. Chu, seconded by Mr. Chiang and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be submitted for decision.

Nextel of California, Inc. (2737), 415663

2007, \$822,900,000.00 Unitary Value

For Petitioner:

Richard Wiley, Attorney

Peter Hladek, Representative

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

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

**Wednesday, December 12, 2007**

Issues: Whether petitioner has shown that an additional adjustment is needed to account for all functional and economic obsolescence in petitioner's digital switch equipment, base transceiver system equipment and site acquisition and construction.

Whether the Replacement Cost New Less Depreciation value indicator erroneously includes the value of construction work in progress which is tax-exempt property leased from a third-party.

Petitioner's Exhibit: Miscellaneous Document (Exhibit 12.11)

Action: Upon motion of Mr. Chiang, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be submitted for decision.

### **FINAL ACTION ON PROPERTY TAXES HEARINGS HELD DECEMBER 12, 2007**

**Pacific Bell (279), 406929**

Final Action: Ms. Chu moved that the petition be denied as recommended by the Appeals Division. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard, Ms. Steel and Mr. Chiang voting no.

Mr. Chiang moved to reduce the value to about \$6.7 billion to reflect utilization of the 2006 factors. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Mr. Chiang voting yes, Ms. Yee, Ms. Chu and Ms. Steel voting no.

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

**AT&T Communications (2310) 406930**

Final Action: Ms. Chu moved that the petition be denied as recommended by the Appeals Division. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard, Ms. Steel and Mr. Chiang voting no.

Upon motion of Ms. Steel, seconded by Mr. Leonard and duly carried, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, Ms. Yee and Ms. Chu voting no, the Board ordered that the petition be granted.

### **PROPERTY TAXES HEARINGS**

**SureWest Telephone Company (294), 414763**

2007, \$155,600,000.00 Unitary Value

For Petitioner: Waived Appearance

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 erroneously failed to consider the Capitalized Earning Ability value indicator in determining petitioner's unitary value.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied as recommended by the Appeals Division.

**Wednesday, December 12, 2007**

SureWest Televideo (7961), 414765

2007, \$145,400,000.00 Unitary Value

For Petitioner: Waived Appearance

For Property and Special Taxes Department: Andrew Jacobson, Tax Counsel

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

Issues: Whether the 2007 Board-adopted unitary value, based wholly on the Replacement Cost Less Depreciation value indicator, adequately accounts for functional and economic obsolescence.

Whether petitioner has shown that respondent erroneously failed to consider the Capitalized Earning Ability value indicator in determining petitioner's unitary value.

Whether respondent properly calculated the value of petitioner's taxable possessory interest in federal government property.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board adopted staff's revised recommendation which reduced the 2007 Unitary Value to \$137,800,000.00.

West Coast P.C.S. (2745), 414764

2007, \$33,900,000.00 Unitary Value

For Petitioner: Waived Appearance

For Property and Special Taxes Department: Andrew Jacobson, Tax Counsel

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

Issues: Whether the 2007 Board-adopted unitary value, based wholly on the Replacement Cost Less Depreciation value indicator, adequately accounts for functional and economic obsolescence.

Whether petitioner has shown that respondent erroneously failed to consider the Capitalized Earning Ability value indicator in determining petitioner's unitary value.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board adopted staff's revised recommendation which reduced the 2007 Unitary Value to \$31,000,000.00.

Mr. Leonard stated that he would not participate in accordance with Government Code section 87105 in the matter of *Lodi Gas Storage, LLC (198), 414766*, and left the Boardroom.

Lodi Gas Storage, LLC (198), 414766

2007, \$164,800,000.00 Unitary Value

For Petitioner: Waived Appearance

For Property and Special Taxes Department: Denise Riley, Tax Counsel

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

Issue: Whether petitioner has shown that respondent improperly applied the valuation methodology of 50 percent weighting each of the Reproduction Cost Less Depreciation value indicator and the capitalized Earning Ability – Perpetual Life Premise value indicator.

Wednesday, December 12, 2007

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Ms. Steel and Mr. Chiang voting yes, Mr. Leonard absent and not participating in accordance with Government Code section 87105, the Board ordered that the petition be denied as recommended by the Appeals Division.

Mr. Leonard returned to the Boardroom.

### **FINAL ACTION ON PROPERTY TAXES HEARINGS HELD DECEMBER 12, 2007**

Covad Communications Company (7706), 414850

Final Action: Upon motion of Ms. Chu, seconded by Ms. Steel and duly carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Mr. Chiang voting no, the Board adopted the net book value, and ordered that the petitioner be audited with respect to the co-location fees.

Intelsat Global Service Corporation (7969), 415123

Final Action: Ms. Steel moved to reduce the penalty to 5 percent. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Mr. Chiang voting no.

Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied as recommended by the Appeals Division.

### **PROPERTY TAXES HEARING**

Metro PCS California/Florida, Inc. (2733), 415368

2007, \$213,500,000.00 Unitary Value

Royal Street Communications, LLC (2779), 415367

2007, \$58,800,000.00 Unitary Value

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 the construction work in process was properly valued.

Whether an adjustment for extraordinary obsolescence should be allowed in petitioner's Replacement Cost New Less Depreciation value indicator.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chiang voting yes, the Board ordered that the petition be denied as recommended by the Appeals Division.

### **FINAL ACTION ON PROPERTY TAXES HEARINGS HELD DECEMBER 12, 2007**

Nextel of California, Inc. (2737), 415663

Final Action: Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu, Mr. Leonard and Mr. Chiang voting yes, Ms. Steel voting no, the Board ordered that the petition be denied as recommended by the Appeals Division.

Wednesday, December 12, 2007

Pacific Bell (279), 406929

Final Action: Upon motion of Mr. Chiang, seconded by Ms. Chu and duly carried, Ms. Yee, Ms. Chu and Mr. Chiang voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be denied as recommended by the Appeals Division.

#### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 6:00 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)) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 6:10 p.m. and reconvened immediately in open session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

The Board adjourned at 6:15 p.m. in memory of Larry McCarthy, President of the California Taxpayers' Association, and long-standing advocate for California taxpayers for over three decades.

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

Note: The following matter was removed from the calendar prior to the meeting: *Ford Motor Credit Company, 383620 (OHA)*.