

Memorandum

To : Mrs. Janice Masterton

Date : July 25, 1991

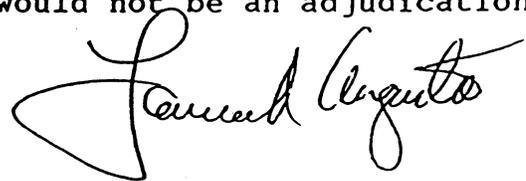
From : Lawrence A. Augusta
Assistant Chief Counsel

Subject : CONTRIBUTION DISCLOSURE OPINION 91-21
RECOMMENDATION TO BOARD OF CONTROL REGARDING
REIMBURSEMENT IS NOT AN ADJUDICATORY MATTER

A claim has been filed with the State Board of Control by Northern California Anthes, Inc., pursuant to Section 7091 of the Revenue and Taxation Code. Section 7091 provides for reimbursement to petitioners of fees and expenses related to a hearing before the Board, if the Board finds the action taken by the staff was unreasonable, and makes a recommendation to the State Board of Control that the taxpayer be awarded a specific amount of fees and expenses.

In my opinion, consideration by the Board of the reasonableness of the staff's action, and of their recommendation to the State Board of Control, is not an adjudicatory proceeding within the meaning of Section 15626 of the Government Code.

An essential element of an adjudication is the authority to make a final order or decision in the matter. This authority resides in the Board of Control under Section 7091. The action on the claim by the State Board of Control would be an adjudication of the matter; the Board of Equalization's decision on their recommendation to the Board would not be an adjudication.



LAA:wk
3248C

cc: Honorable Brad Sherman
Honorable Ernest J. Dronenburg, Jr.
Honorable William M. Bennett
Honorable Matthew K. Fong
Honorable Gray Davis
Ms. Cindy Rambo
Mr. E. L. Sorensen, Jr.
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