

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION FINAL ACTION SUMMARY

3 In the Matter of the Petitions for Redetermination)
4 and the Claim for Refund Under the Sales and)
5 Use Tax Law of:)

6 SANDISK CORPORATION)

Account Number: SR GH 26-814758

Case ID's 208950, 225448, 312943

7 Petitioner)

Milpitas, Santa Clara County

8 Type of Business: Manufacturer of flash data storage products

9 Liability Periods: 10/1/99 – 3/31/00 (208950)
4/01/00 – 12/31/01 (225448)

10 Claim Period: 10/1/99 – 12/31/01 (312943)

11 Item Amounts in Dispute12 Inventory withdrawals No remaining dispute¹

	<u>208950</u>	<u>225448</u>	<u>Total</u>
Tax as determined	\$188,095.31	\$569,616.05	\$ 757,711.36
Adjustment - Sales and Use Tax Department	+ 42,199.72 ²		+ 42,199.72
- Appeals Division	- 84,326.13	- 238,178.88	- 322,505.01
Proposed redetermination	\$145,968.90	\$331,437.17	\$ 477,406.07
Concurred in	-145,968.90	- 331,437.17	- 477,406.07
Protested	<u>\$ 00.00</u>	<u>\$ 00.00</u>	<u>\$ 00.00</u>
Proposed tax redetermination	\$145,968.90	\$331,437.17	\$ 477,406.07
Interest through 2/28/03 (tax paid in full 2/27/03)	<u>46,885.20</u>		46,885.20
Interest through 5/31/05 (tax paid in full 5/26/05)		<u>119,470.75</u>	<u>119,470.75</u>
Total tax and interest	\$192,854.10	\$450,907.92	\$ 643,762.02
Payments	-192,854.10	-450,907.92	- 643,762.02
Balance due	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ 0.00</u> ³

21 The Board hearing in these matters was held March 16, 2009. The Board granted petitioner
22 additional time to provide evidence and for the Sales and Use Tax Department (Department) to
23 respond.

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25 ¹ In a telephone conversation March 4, 2010, Ms. Mary Mendes, Tax Manager of petitioner, confirmed that petitioner no longer disputes this issue.

26 ² The Notice of Determination was issued based on an estimate to prevent the statute of limitations from barring issuance of the notice. When the audit was completed, the Sales and Use Tax Department determined that more tax was due than indicated in the Notice of Determination, and it therefore issued a letter dated August 28, 2003, asserting the increase pursuant to Revenue and Taxation Code section 6563.

27 ³ As explained in more detail below, petitioner paid amounts in excess of the amounts due, and refunds of the overpayments
28 have been initiated and are pending approval.

1 The issue in these appeals is the amount of tax due on petitioner's transfers of materials out of
2 resale inventory for use. Petitioner had claimed credit amounts of accrued tax on material withdrawn
3 from resale inventory and returned to inventory prior to use, and a portion of the claimed credit was
4 disallowed in the audit. At the Board hearing, petitioner contended that the percentage of error in the
5 claimed credit should be reduced to 23.44 percent. In the post-hearing reaudit, the Department
6 computed a percentage of error of 28.14 percent. The reaudit adjustment reduced the disallowed
7 amount of the credit from \$7,556,131 to \$3,393,502. The reaudit report states that petitioner agrees
8 with the reaudit findings. Also, in a telephone conversation on March 4, 2010, Ms. Mary Mendes, Tax
9 Manager of petitioner, stated that, while petitioner may not be in complete agreement with the amount
10 of the disallowed credit in the reaudit, it does not wish to pursue this matter further.

11 We have reviewed the reaudit, and we concur with the Department's findings. Accordingly,
12 we recommend a reduction in the disallowed credit for materials withdrawn from inventory and
13 returned to inventory prior to use of \$4,162,629 (\$7,556,131 - \$3,393,502). Further, we note that, after
14 the reaudit adjustments, petitioner's payments of tax and interest exceed the amounts due by
15 \$280,305.29 and \$182,812.62, respectively. The Department has initiated refunds of those amounts,
16 with credit interest added to the overpayments of tax, pending the Board's approval. We recommend
17 that the refunds be granted.

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20 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III