



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)	
COACHELLA VALLEY SAVINGS AND)	Nos. 84R-878-GO
LOAN ASSN.)	84R-879, 84R-880,
COMMUNITY SAVINGS AND LOAN ASSN.)	84R-881, 84R-882,
FINANCIAL SAVINGS AND LOAN ASSN.)	84R-883, 84R-889,
FINANCIAL SAVINGS AND LOAN ASSN.)	84R-890, 84R-891,
OF NO. CALIFORNIA)	84R-892, 84R-894,
FINANCIAL SAVINGS AND LOAN ASSN.)	85R-246, 85R-368,
OF SAN FRANCISCO)	85R-369, 85R-373,
FINANCIAL SAVINGS AND LOAN ASSN.)	85R-374, 85R-375,
OF SO. CALIFORNIA)	85R-376, 85R-379,
NORTHERN CALIFORNIA SAVINGS)	85R-378, 85R-382,
AND LOAN ASSN.)	85R-383, 85R-384,
PALOMAR SAVINGS AND LOAN ASSN.)	86R-0037
PRUDENTIAL SAVINGS AND LOAN ASSN.)	
SEQUOIA SAVINGS AND LOAN ASSN.)	
SILVER GATE SAVINGS AND)	
LOAN ASSN.)	
UNITED SAVINGS AND LOAN ASSN.)	

For Appellants: Paul H. Lusby
Attorney

For Respondent: Donald C. McKenzie
Counsel

O P I N I O N

These appeals are made pursuant to section 26075, subdivision (a), of the Revenue and Taxation' Code from the action of the Franchise Tax Hoard in denying the claims for refund of franchise tax in the amounts and for the years as follows:

I/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the income years in issue.

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	<u>Income Years</u>	<u>Claims for Refund</u>
Coachella Valley Savings and Loan Assn.	1978	\$ 80,323
	1979	73,264
Community Savings and Loan Assn.	1978	151,268
	1979	59,198
Financial Savings and Loan Assn.	1978	49,831
	1979	107,364
Financial Savings and Loan Assn. of No. California	1978	50,574
	1979	56,496
Financial Savings and Loan Assn. of San Francisco	1978	22,022
	1979	62,942
Financial Savings and Loan Assn. of so. California	1978	49,435
	1979	58,861
Northern California Savings and Loan Assn.	1972	27,781
	1973	55,178
	1974	88,698
	1975	67,733
	1976	102,315
	1977	110,646
	1978	180,913
Palomar Savings and Loan Assn.	1978	89,232
	1979	111,447
Prudential Savings and Loan Assn.	1978	87,673
	1979	87,476
Sequoia Savings and Loan Assn.	1978	31,804
	1979	38,088
Silver Gate Savings and Loan Assn.	1978	19,353
	1979	26,471
United Savings and Loan Assn.	1978	36,748
	1979	38,102

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The five issues **presented** for determination are as follows:

(1) Whether income **from** obligations of the United States, which is exempt from taxation *for income tax purposes, may be included in gross income for the purposes of measuring the franchise tax of appellants.

(2) Whether costs incurred by **appellants**, savings and loan associations, in connection with the establishment of new branch offices, are deductible as current expenses.

(3) Whether minimum tax paid to the federal government by appellants **constitutes** deductible excise tax.

(4) Whether appellants may offset against their franchise tax the amounts they paid for use, utility, and sales taxes.

(5) Whether an adjustment should be allowed in income in 1978 of \$24,878, which allegedly had been reported in 1976 by appellant Northern California Savings and Loan Association.

Coachella Savings and Loan Association, Community Savings and Loan Association, Financial Savings and Loan Association, Financial Savings and Loan Association of Northern California, **Financial** Savings and Loan Association of San Francisco, Financial Savings and Loan Association of Southern California, Palomar Savings and Loan Association, Prudential Savings and Loan Association, Sequoia Savings and Loan **Association**, and Silver Gate Savings and Loan Association were merged into Sierra Savings **and** Loan Association on **May** 31, 1982. Sierra Savings and Loan Association then changed its name to United Savings and Loan Association. On June 15, 1983, United Savings and Loan Association converted from a state chartered stock association to a federally chartered stock association and changed its name to United Savings, a Federal Savings **and** Loan Association, which was merged into Great Western Savings, a Federal Savings and Loan Association ("**GWS**"), on July 17, 1983.

On May 14, 1972, **Northern** California Savings and Loan Association converted from a state chartered stock association to a federal chartered stock association and changed its name to Northern California Savings,

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a Federal Savings and Loan Association, and, in turn, on July 31, 1982, merged into GWS.

On September 15, 1983, GWS, as successor in interest to the United **Associations**, **filed** amended returns and refund requests on behalf of each of the **associations**; and on January 21, 1983, as successor in interest to Northern California Savings and Loan Association, on behalf of it. Respondent denied the refund requests of each of the associations by Notices of Action of Cancellation, Credit or **Refund**. Thereupon, the instant **appeals** were filed. Because of the identity of facts, issues, and legal principles involved in each case, these appeals are consolidated for purposes of this opinion.

1 . United States Obligations

During the period at issue, each appellant held stock in the Federal **Home** Loan Bank from which annual dividends were received. In addition, each appellant held various other **interest-bearing** federal obligations.

During the period at issue, Revised Statutes Section 3701, as amended, provided as follows:

[A]ll stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation **by or** under State or municipal or local authority. This exemption extends to every form of taxation that would require that either the obligations or the interest thereon, or both, be considered, directly or indirectly, in the computation of the tax except nondiscriminatory franchise or other **nonproperty** taxes in lieu thereof imposed on corporations and except estate taxes or inheritance taxes.

(31 U.S.C.A. § 742 (1976), replaced by 31 U.S.C.A. § 3124(a) (Sept. 13, 1982), P.L. 97-258, § 1, 96 Stat. 945 and § 4(a), 96 Stat. 1067).)

Accordingly, interest income from such federal securities is exempt from taxation for California income tax purposes. However, respondent takes the position that such income can be included in **gross** income for the purpose of measuring the franchise tax. For example, section 24272 specifically provides that for purposes of the franchise tax imposed under Chapter 2, "gross income"

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includes all interest received from federal, state, municipal, or other bonds. (See discussion in Appeal of Boca Chino Corporation, Cal. St. Bd. of Equal., May 21, 1980, and the cases cited therein.)

Appellants, however, argue that it is illegal to include in the measure of tax for franchise tax purposes the income from exempt government securities. Relying upon the United States Supreme Court's decision in Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, [51 L.Ed.2d 326] (1977), appellants argue that the distinction between a tax on the privilege of doing business upon which the franchise tax is based and a tax on net income must be abandoned. Moreover, appellants argue that the decision in First Federal Savings and Loan v. Department of Revenue, 654 P.2d 496 (Mont. 1982), cert. den. 462 U.S. 1144 [77 L.Ed.2d 1378] (1982), "a case factually indistinguishable from the instant" **appeals**, also "rejected the argument that a franchise tax based on net income was a tax on 'the privilege of doing business' rather than a tax on income." (App. Stmt. of Facts and Memo. of Pts. and Auth. (hereinafter App. Pts. and Auth.) at 5.) As such, contrary to the taxpayers in Security-First National Bank v. Franchise Tax Board, 55 Cal.2d 407, 424 [359 P.2d 625] (1961), cert. den., 368 U.S. 3 [7 L.Ed.2d 16] (1961), who admitted "that a state may impose a franchise tax on banks measured by net income from all sources, including exempt governmental securities. . . ." appellants appear to argue that section 24272 noted above is unconstitutional and a violation of 31 U.S.C.A. section 742, cited above.

With respect to this contention, we believe the passage of Proposition 5 by the voters on June 6, 1978, adding section '3.5 to article III of the California Constitution, precludes our determining that the statutory provisions involved are unconstitutional or unenforceable. Although this provision applies in this case, we nevertheless note that this board, in Appeal of Reclaimed Island Lands Company, decided on November 15, 1939, followed case precedent and held that the Bank and Corporation Franchise Tax does not impose a direct tax upon income, but imposes instead a tax upon the privilege of doing business in corporate form. This holding, still valid, (see Security-First National Bank v. Franchise Tax Board, supra; Appeal of Boca Chino Corporation, supra) **appears** to establish the propriety of respondent's action with respect to the issue.

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Moreover, contrary to appellants' allegation, no basis for distinguishing Security-First from these appeals has been advanced here. (See App. Pts. and Auth. at 6 & 7, fn. 2.) Indeed, in Security-First, the plaintiffs advanced the same **argument** as appellants advance here. The court noted that "[p]laintiffs assert that it is illegal to include in the measure of tax [for franchise tax purposes] income from exempt governmental **securities.**" (Security-First National Bank v. Franchise Tax Board, supra, **55 Cal.2d** at 424.) The court in Security-First concluded that there was no merit to this contention. In addition, First Federal Savings and Loan v. Department of Revenue, supra, upon which **appellants** rely, has been expressly overruled by Schwinden v. Burlington Northern, -Inc., **691 P.2d 1351** (Mont. 1984). **Finally**, contrary to appellants' allegations, the holding of the United States Supreme Court in Complete Auto Transit, Inc. v. Brady, supra, does not require **rejection** of the well-settled view that the **California franchise** tax is a tax on the privilege of doing business rather than a tax on income. Indeed, the Supreme Court held then that a state tax on the 'privilege of doing business*' in the state was not, per se, unconstitutional under the commerce clause merely because it was applied to an activity that was part of interstate commerce. The Supreme Court held that in **the** absence of a claim that the taxpayer's **"activity** [was not] sufficiently connected to the State to justify a tax, or that the tax is not fairly related to benefits provided the taxpayer or that the tax discriminates . . . or that the tax is not fairly apportioned," the state tax on the privilege of "doing business" must be upheld. (Complete Auto Transit, Inc. v. Brady, **430 U.S.** supra, at **287.**)

Accordingly, respondent's action must be sustained on this issue.

(2) New Branch Office Expenditures

During the years at issue, various appellants incurred expenditures for feasibility studies, license applications, and hearing costs in connection with the acquisition and start up of additional branch offices. On their returns as initially filed, each of these appellants characterized such expenditure as capital in nature. However, in NCNB Corp. v. United States, **684 F.2d 285** (4th Cir. 1982), the court, sitting en banc, vacated an earlier **decision** (NCNB Corp. v. United States, **651 F.2d 942** (1981)), and allowed the current deductions

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for the costs of planning and establishing branch offices for a national bank. Relying upon the reasoning of this case in their claims for refund, appellants argue that due to the special need of financial institutions to expand their network of branch offices, the subject expenditures constitute ordinary and necessary business expenses which are properly deductible in the year of the expenditure. (App. Pts. and Auth. at 3.)

However, the United States Court of Appeals for the Fifth Circuit, in a later decision, chose not to follow the NCNB decision. In Central Texas Sav. & Loan Ass'n v. United States, 731 F.2d 1181 (5th Cir. 1984), the court held that start up expenditures made in researching and establishing new branches of a savings and loan association were capital expenditures, not deductible expenses. It is now respondent's contention that the Central Texas Sav. & Loan Ass'n case correctly states the applicable law in the instant matter. For the reasons discussed below, we agree with respondent.

Section 24343 authorizes a deduction for ordinary and necessary expenses paid or incurred during the income year in carrying on a trade or business. This statute is substantially similar to its federal counterpart, which is Internal Revenue Code section 162. Because of this similarity, the interpretations and effect given the federal provision by the federal courts are relevant in determining the meaning of the California statute. (Meanley v. McColgan, 49 Cal.App.2d 203 [121 P.2d 45] (1942); Andrews v. Franchise Tax Board, 275 Cal.App.2d 653 (80 Cal.Rptr. 403) (1969).) We further observe that deductions are a matter of legislative grace, and the burden is on the taxpayer to show that it is entitled to the deductions claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934); Appeal of James C. and Monablancne A. Walshe, Cal. St. Bd. of Equal., Oct. 20, 1975.)

The courts have long grappled with the question of whether particular payments should be treated as deductible expenses or as capital expenditures. (See Welch v. Helvering, 290 U.S. 111 [78 L.Ed. 2123] (1933).) The Supreme Court has stated that an expenditure must meet five criteria in order to qualify as an allowable deduction under section 162 of the Internal Revenue Code. The item must be: (1) paid or incurred during the taxable year; (2) for carrying on a trade or business; (3) an expense; (4) a necessary expense; and (5) an ordinary expense. (Commissioner v. Lincoln Savings &

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Loan Asso., 403 U.S. 345 [29 L.Ed.2d 519] (1971).) In most cases, as in the instant appeals, the decisive question is whether the expenditure is ordinary and necessary. While the term "necessary" has been construed to impose the minimal requirement that the expense be "appropriate and helpful," the principal function of the term "ordinary" is to distinguish expenditures that are currently deductible from those that are in the nature of a nondeductible capital outlay. (Commissioner v. Tellier, 383 U.S. 687 [16 L.Ed.2d 185] (1966).)

In general, an expenditure must be treated as a nondeductible capital outlay if it is made in the acquisition of a capital asset. (Woodward v. Commissioner, 397 U.S. 572 [25 L.Ed.2d 577] (1970).) "Thus an expenditure that would ordinarily be a deductible expense must nonetheless be capitalized if it is incurred in connection with the acquisition of a capital asset." (Ellis Banking Corp. v. Commissioner, 688 F.2d 1376, 1379 (11th Cir. 1982).) The costs of acquiring a license having an economically useful life beyond the taxable year have long been treated as capital expenditures (Nachman v. Commissioner, 12 T.C. 1204 (1949), affd., 191 F.2d 934 (5th Cir. 1951); Pasadena City Lines, Inc. v. Commissioner, 23 T.C. 34 (1954); Dustin v. Commissioner, 53 T.C. 49T (1969); Surety Ins. Co. of Calif. v. Commissioner, ¶ 80,070 T.C.M. (P-5) (1980)), for it has been said that Internal Revenue Code section 162 was "primarily intended to cover recurring expenditures where the benefit derived from the payment is realized and exhausted within the taxable year." (Stevens v. Commissioner, 338 F.2d 298, 300 (6th Cir. 1968).) However, the controlling test for determining when a payment is a capital expenditure rather than an ordinary expense is whether the payment serves to create or enhance a separate and distinct additional asset. (Commissioner v. Lincoln Savings & Loan Asso., supra; Honodel v. Commissioner, 722 F.2d 1462 (9th Cir. 1984).)

In Appeal of Independence Savings and Loan Association, decided June 25, 1985, a savings and loan association claimed that various expenses incurred in applying for a license to open a proposed branch office should be characterized as ordinary and necessary deductions rather than as capital expenditures. In upholding the Franchise Tax Board's denial of its claim, we noted that under the Savings and Loan Association Law enacted in 1951 and repealed in 1983 (Fin. Code, former § 5056 et seq., repealed by Stats. 1983, ch. 1091, § 1, P. 3887), a branch of a savings and loan association was treated much

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like a separate business enterprise. Relying upon the reasoning of Central Texas Sav. & Loan Ass'n v. United States, supra, we noted that the savings and loan association acquired the right to receive new accounts and new customers in a new market. Moreover, in accordance with the opinion of the Central Texas Sav. & Loan Ass'n case, we concluded that the taxpayer's establishment of the new branch office pursuant to the license granted by the commissioner created a separate and distinct asset. Therefore, we held that the costs incurred by the taxpayer in applying for the license to open a branch office must be capitalized. (Appeal of Independence Savings and Loan Association, supra.)

Moreover, we found NCNB Corp. v. United States, supra, to be distinguishable. That case involved a full-service, nationally chartered bank which was actively engaged in the expansion of its services into new markets to counter increased competition in the banking industry. As part of its expansion program, the bank conducted two types of market research: (1) long-range planning studies of large geographic areas identifying future service areas; and (2) feasibility studies evaluating specific locations as potential branches. The bank treated the expenditures for these studies, as well as the costs incurred in applying to the Comptroller of the Currency for permission to open branch offices, as currently deductible expenses. In allowing the deductions, the court in the NCNB case emphasized that the bank was regularly engaged in developing a statewide network of branch banking facilities. In other words, the court's holding in NCNB was largely based upon the view that these expenditures were ordinary and necessary to expand and to protect the existing business of the bank.

However, for the reasons stated in Appeal of Independence Savings and Loan Association, supra, we find that the facts in the instant appeals bear a striking resemblance to the facts in Central Texas Sav. & Loan Ass'n v. United States, supra. Based upon that similarity and for the reasons cited above, we hold that the costs incurred by appellants in applying for licenses to acquire and to operate branch offices must be capitalized. Accordingly, respondent's action with respect to this issue must be sustained.

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(3) Minimum Tax

In 1978, appellants were **required** to make minimum tax payments to the federal government as a **result** of deductions taken for **additions** to their bad debt **reserves**. Appellants contend **that** the minimum tax is an excise tax on the privilege of enjoying a preferential deduction, rather than an income **tax**, and, as such, is deductible under section 24335. (**App. Pts. and Auth. at 3.**) In contrast, respondent contends that the minimum tax is an income tax which is not deductible under section 24345.

Section 24345, subdivision (a), provides in relevant part that "[t]axes or licenses paid or accrued [shall be allowed as a deduction] except ... [t]axes on or according to or measured by income or profits ... imposed by the authority of . . . [t]he Government of the United States. . . ." The central question here is whether or not the minimum tax is an income tax.

In Ward v. United States, 695 F.2d 1351 (10th Cir. 1982); **the taxpayers** argued that the minimum tax 'was a deductible excise-tax, rather **than** an income tax. In finding that the minimum tax was an income tax and not an excise tax, the court of appeals observed:

The clear language and intent of Congress was noted in Lubus v. United States, 573 F.2d 1292 (2nd Cir., 1978):

"By its clear wording, Section 56 of the Internal Revenue Code imposes a tax '[in] addition to the other taxes' **imposed** under the income tax provisions. The Legislative **History** of the provision supports this language for congress's intention was not to give tax relief, but rather to impose an additional tax on high income individuals with large amounts of non-wage income."

The Internal Revenue Service has consistently treated the tax as an income tax, Rev. Rul. 77-396, 1977-2 C.B. 86. **Additionally**, all **of** the courts which have considered this question have found the **minimum** tax to be an income tax. See Graff v. Commissioner, supra [74 T.C. 7431, and cases cited therein. **It** is well settled that the concept of 'income' for tax purposes is extremely broad.

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Eisner v. Macomber, 252 U.S. 189 [40 S.Ct. 189, 64 L.Ed. 521] (1920). The tax laws have been liberally interpreted without restrictive labels or limitations as to the source of taxable receipts. The Court finds that the tax in question is a tax on economic benefit as defined in Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 75 S.Ct. 473, 99 L.Ed. 483 (1955) and accordingly, is an income tax.

(Ward v. United States, supra, 695 F.2d at 1355.)

We have found no case holding that the minimum tax is anything but an income tax. The following articles cited by appellants which, of course, are not authoritative, advocate treating the minimum tax as an excise tax: Burke, The 1976 Retroactive Amendment of the Minimum Tax: An Exercise of the Taxing Power or a Taking of Property? 32 Baylor L.Rev. 165 (1980); Burke and Malloy, The Minimum Tax -- Is It A Deductible Excise Tax? 31 Baylor L.Rev. 9 (1979); and Burke, Graff, Revenue Ruling 78-61 and Inland Steel Company: What is the Add-On Minimum Tax? 59 Taxes 161 (1981). Even these articles admit that the federal case law provides that the minimum tax is an income tax. Notwithstanding this admission, the author, Burke, argues that the result which he supports, that the minimum tax should be treated as an excise tax, "[h]opefully . . . will be forthcoming from the cases involving this issue which are awaiting trial and from the appeals of Wyly and Graff." (Burke, Graff, Revenue Ruling 78-61 and Inland Steel Company: What is the Add-On Minimum Tax?, supra, 59 Taxes, at 165.) However, Graff v. Commissioner, 74 T.C. 743 (1980), was a ffirmed in a per curiam decision without discussion of the minimum tax issue. (Graff v. Commissioner, 673 F.2d 784 (5th Cir. 1982); accord, Wyly v. United States, 662 F.2d 397 (5th Cir. 1981).) Accordingly, based upon the foregoing, we must conclude that the minimum tax is based upon income and, therefore, not deductible under section 24345. For this reason, respondent's action with respect to this issue must be sustained.

(4) Use, Utility, and Sales Taxes

Appellants contend that pursuant to section 23184, subdivision (a), they are entitled to offset against their franchise tax, payments made for use and sales taxes. Moreover, appellants contend that "in light of the clear legislative mandate that the banks and

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financial corporations be taxed equally," section **23134**, subdivision (a), also must be construed to permit expenditures for utility user's taxes to be offset against their franchise tax. (App. Pts. and **Auth.** at 4.) Apparently, respondent concedes that appellants are entitled to offset properly substantiated expenditures for **use** tax paid. However, respondent argues that appellants have provided no substantiation for amounts claimed to have been paid or an explanation as to why each appellant claims exactly \$3,000 for such use taxes paid. (Resg. Br. at 5 and **6.**) Moreover, respondent argues that appellants are not entitled to the claimed offset for sales tax or utility tax paid as outlined in Appeal of Home Savings and Loan Association decided by this **board** on January 31, 1984.

Section 23184 allows financial corporations to offset against their franchise tax certain taxes paid during the income year. Subdivision **(a)(3)** of that section allows a savings and loan association to offset against its franchise tax, excise taxes it pays for the privilege of "**[s]toring, using or otherwise consuming tangible personal property in this state.**" Appellants contend that this language is broad enough to encompass both the utility user taxes and the sales tax.

As we stated in Appeal of Home Savings and Loan Association, supra, the **language of subdivision (a)(3) of section 23184**, is identical to section 6201 which imposes the use **tax**. The California Supreme Court has compared utility user taxes to the state's use tax and concluded. they are "substantially different" taxes. (**Rivera v. City of Fresno**, 6 **Cal.3d** 132, 137 [490 P.2d 793] (1971).) Since subdivision **(a)(3)** of section 23184 allows an offset only of amounts paid in use tax, and the **utility** user taxes are not use taxes, appellants are not entitled to offset the amount they paid in utility user taxes.

Similarly, appellants are not entitled to offset the amounts they paid in sales tax because the sales tax is different from the use tax. The sales tax is a tax imposed upon the seller "**[f]or the privilege of selling tangible personal property at retail**" (Rev. & Tax. Code, §966051) (emphases added), whereas the use tax is imposed upon the purchaser for the privilege of using, storing, or consuming tangible personal property. (Rev. & Tax. Code, § 6201.) Although the two taxes are complementary in that the use tax was imposed to help retailers in this state compete with retailers outside California,

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they are separate taxes. (Bank of America v. State Bd. of Equal., 209 Cal.App.2d 780 [26 Cal.Rptr. 348] (1962).)

Appellants' position is that, despite the definitional differences, the sales tax is actually imposed upon the purchasers, and, thus, is actually a tax on the privilege of using personal property. As support for this proposition, appellants rely on the case of Diamond National v. State Equalization Bd., 425 U.S. 268 [47 L.Ed.2d 780] (1976), which involved the issue of whether national banks were exempt from California's sales tax under a federal statute in effect at that time. which limited state taxation of national banks. The Supreme Court held that it was not bound by California court decisions which concluded that the incidence of the state sales tax falls upon the seller. The court went on to conclude that the incidence of the California sales tax fell upon the national bank as a purchaser and, therefore, that the national bank was exempt from the tax pursuant to the federal statute.

Appellants' reliance upon Diamond National, supra, is misplaced. In Occidental Life Ins. Co. v. State Bd. of Equalization, 135 Cal.App.3d 845 [185 Cal.Rptr. 779] (1982), the court reviewed the Diamond National case and the authority cited therein and determined that those cases applied only when there was a question of federal immunity or exemption and that, for state purposes, California courts were entitled to adhere to their opinion that the incidence of the state's sales tax falls upon the seller. Since there is no question of federal immunity involved in these appeals, the incidence of the sales tax is not on appellants, the users of the property, and, thus, the sales tax cannot be considered to be 'a tax for the privilege of using personal property. Accordingly, no offset against franchise tax is allowed under section 23784.

Lastly, appellants have provided no substantiation of amounts claimed to have been paid as use taxes. As stated above, deductions are a matter of legislative grace, and the burden is upon the taxpayer to show that it is entitled to the deductions claimed. (New Colonial Ice Co. v. Helvering, supra). Since no substantiation has been provided, we must also find that appellants are not entitled to an offset as claimed for use taxes.

Accordingly, based upon the foregoing, respondent's action with respect to this issue must be sustained.

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(5) Adjustment of Income

In its claim for refund for 1978, Northern California Savings states that the revenue agent's report for 1976 showed an adjustment to income in the amount of \$540,141 for deferred credits on loans sold. Appellant argues that an adjustment to 1978 in the total amount of \$24,878 is required to reverse that portion of the \$540,141 recognized for accounting purposes in 1976, and to eliminate the double inclusion of income, (App. Ltr. of Oct. 31, 1985.) No other facts or arguments for this allegation appear in the record. Since the taxpayer has the burden of proof, based on the record presented, we have no choice but to sustain respondent's action on the issue.

Accordingly, based upon the foregoing discussion, respondent's entire action with respect to these appeals must be sustained.

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O R D E R

Pursuant to **the** views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEKEBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims for refund of franchise tax in the amounts and for the years as follows:

	<u>Income Years</u>	<u>Claims for Refund</u>
Coachella Valley Savings and Loan Assn.	1978 1979	\$ 80,323 73,264
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