

TUESDAY, AUGUST 14, 2001

The Board met at the San Diego County Administration Building at 1600 Pacific Highway, Room 310, San Diego, at 9:30 a.m. with Chairman Parrish, Vice Chairman Chiang, and Mr. Andal present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code Section 7.9.

FRANCHISE AND INCOME TAXES HEARINGS

Save Mart Supermarkets & Subsidiary, 61548

1996, \$235,928.00 Claim for Refund

For Appellant:

Jeffery M. Vesely, Attorney

Michael D. Herbert, CPA

Christopher M. Micheli, Representative

For Franchise Tax Board:

Geoff Way, Tax Counsel

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

Issues: Whether appellant is a “qualified taxpayer” as defined in Revenue and Taxation Code (R&TC) section 23649, subdivision (c) (1), and California Code of Regulation, title 18, (Regulation) section 23649-3, for purposes of claiming the Manufacturers’ Investment Credit (MIC).

Whether Regulation section 23649-3. as adopted by respondent, is invalid as inconsistent with R&TC section 23649.

Whether respondent’s disallowance of the MIC as claimed by appellant violates the Due Process and Equal Protection Clauses of the United States and California Constitutions.

Appellant’s Exhibit:

Revenue and Taxation Codes (Exhibit 8.6)

Respondent’s Exhibit:

Bill Analysis (Exhibit 8.7)

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs not voting, the Board ordered that the appeal be granted.

Angus & Elizabeth MacPherson, 89002469160

1993, \$72,207.00 Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

Ann Hoover-Hodges, Tax Counsel

Action: The Board took no action.

Dennis V. Riley, 83499

1991, \$16,774.00 Assessment

For Appellant:

No Appearance

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For Franchise Tax Board: Terry Collins, Supervising Tax Counsel
 Action: The Board took no action.

Charles W. Snider, 31603
 1995, \$1,162.00 Assessment

For Appellant: Charles W. Snider
 For Franchise Tax Board: Richard Gould, Tax Counsel
 Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether appellant has shown that amounts that he contributed to his 401(k) plan that was also taxed by Pennsylvania should be offset against the distribution that he received from his roll-over IRA in 1995.

Appellant's Exhibit: Payroll sheets (Exhibit 8.8)
 Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel abstaining, the Board ordered the action of the Franchise Tax Board be modified.

Russell & Melissa Clark, 56466
 1990, \$49,021.00 Assessment, \$12,255.25 Penalty, Late Filing
 \$ 9,804.20 Penalty, Accuracy-related

For Appellant: Zuzana Colaprete, Attorney
 For Franchise Tax Board: Dan Biedler, Tax Counsel
 Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Have appellants shown that respondent improperly determined their basis in property which they sold.
 Have appellants shown that respondent improperly imposed late filing and accuracy-related penalties.

Appellant's Exhibit: 1998 and 1999 Tax Returns (Exhibit 8.9)
 Respondent's Exhibit: Parcel Division; Basis of Property;
 Assessment County Roll (Exhibit 8.10)

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

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

Pentel of America Ltd., 99A-0014; 89002464880

1989, \$177,126.00 Assessment

Submitted for Decision: August 1, 2001

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

Action: Mr. Andal moved to grant the petition for rehearing but the motion failed for lack of a second.

Mr. Andal moved to grant the petition for rehearing. The motion was seconded by Mr. Parrish but the motion failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Klehs and Ms. Mandel voting no and Mr. Chiang abstaining.

The Board ordered that the petition for rehearing be submitted for decision.

Yamaha Motor Corporation, USA, 99A-0226; 89002467500

1989, \$ 3,593.00 Assessment

1990, \$229,623.00 Assessment

1991, \$ 9,038.00 Assessment

Submitted for Decision: August 1, 2001

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

Action: The Board ordered that the petition for rehearing be submitted for decision.

Mr. Andal moved to have the Appeals Section prepare a formal opinion in the appeal of *Raymond H. & Margaret R. Berner, 88344*, the motion was seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Chiang and Mr. Andal voting yes, Mr. Klehs voting no, Ms. Mandel abstaining.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Regency Aluminum Products, Inc., SS AC 13-697016; 89000066130, Atlantic Group, Inc., SX FH 25-761401; 89000549720, J. Antonio-Rangel Guizar & Federico Jasso Contreras, SR FH 25-893033; 32588, and Dramis Corporation, SR FH 99-882393; 89002426480.*

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With respect to the Legal Appeals Matters, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board made the following orders:

Regency Aluminum Products, Inc., SS AC 13-697016; 89000066130
10-1-94 to 12-31-97, \$298,816.80 Assessment, \$29,881.72 Penalty, Negligence
Action: The Board deferred consideration of this matter.

Atlantic Group, Inc., SX FH 25-761401; 89000549720
4-1-88 to 3-31-91, \$191,091.55 Tax
Action: The Board deferred consideration of this matter.

J. Antonio-Rangel Guizar & Federico Jasso Contreras, SR FH 25-893033; 32588
7-1-95 to 6-30-98, \$14,297.56 Tax
Action: The Board deferred consideration of this matter.

Dramis Corporation, SR FH 99-882393; 89002426480
10-1-94 to 6-30-97, \$29,202.20 Tax, \$2,849.99 Penalty, Negligence
\$2,849.98 Penalty, Finality
Action: The Board deferred consideration of this matter.

Jerry Paul Miller, SR FH 25-898302; 17226
10-1-95 to 9-30-98, \$00.00 Tax, \$00.00 Penalty, Negligence
Action: Redetermined as recommended by Appeals Section.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Franchise & Income Tax Matters, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board made the following orders:

Anas Watar, 92248
1993, \$1,402.00 Assessment, \$280.40 Penalty, Accuracy-related
1994, \$2,499.00 Assessment, \$499.80 Penalty, Accuracy-related
Action: Sustain the action of the Franchise Tax Board.

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David E. McGreenery, 93414
1996, \$186.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Eddie R. & Diane Percy, 93417
1998, \$1,282.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

Yurii Barajas, 93958
1998, \$823.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

George R. Davis, 98091
1996, \$206.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Garth & Lisa Ruhlin, 100536
1996, \$482.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Ken Milman, 100556
1996, \$967.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Timothy D. Gallo, 102955
1998, \$978.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

James & Angela McCorvey, 104256
1997, \$769.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Seibert Security Services, Inc., 49512
1992, \$35,645.34 Claim for Refund
1993, \$ 1.00 or more Claim for Refund
Action: To be held in abeyance for additional briefing.

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Jeana Bevan, 59710

1998, \$621.00 Assessment

Action: Deny the petition for rehearing.

Lily Jane Lutz, 88633

1989, \$707.00 Claim for Refund

Action: Deny the petition for rehearing.

SALES AND USE TAX MATTERS, REDETERMINATIONS AND RELIEF OF PENALTY, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations and Relief of Penalty, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board made the following orders:

Signal Market, SR AA 014-047039; 89000103140

4-1-94 to 3-31-97, \$141,116.69

Action: Approve the redetermination as recommended by staff.

Cornerstone Propane, L.P., SP A UT 084-002392; 99981

6-26-97, \$176,000.00

Action: Approve the redetermination as recommended by staff.

Tyra Technologies, Inc., SR Y EA 099-779344; 92513

1-1-97 to 3-31-00, \$245,383.24

Action: Approve the redetermination as recommended by staff.

Chief Auto Parts Inc., SR Y OHA 014-739765; 127056

5-1-99 to 6-15-99, \$158,617.80

Action: Approve relief of penalty as recommended by staff.

Stone & Webster Engineering Corporation, SU S OHB 030-300753; 127513

1-1-00 to 3-31-00, \$102,491.70

Action: Approve relief of penalty as recommended by staff.

Redback Networks, Inc., SR GH 097-193107; 116714

10-1-00 to 12-31-00, \$63,142.50

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Action: Approve relief of penalty as recommended by staff.
SBC Datacomm, Inc., SR S OHA 097-557533; 126807
10-1-00 to 12-31-00, \$300,449.70

Action: Approve relief of penalty as recommended by staff.

Societe Inter de Telecommunications Aeronautiques, SC OHB 097-653885; 129446
10-1-96 to 9-30-99, \$128,679.57

Action: Approve relief of penalty as recommended by staff.

PB Equipment Management Inc., SC OHB 097-669432; 126805
10-1-00 to 12-31-00, \$330,414.80

Action: Approve relief of penalty as recommended by staff.

SCCA LLC, SR Y OHC 097-838646; 126806
2-1-01 to 3-31-01, \$268,328.30

Action: Approve relief of penalty as recommended by staff.

Mervyn's, SR Y CHA 098-041056; 119057
4-30-00 to 6-11-00, \$1,005,636.32

Action: Approve relief of penalty as recommended by staff.

Officemax, Inc., SR Z OHA 099-409202; 128218
7-1-99 to 9-30-99, \$283,318.70

Action: Approve relief of penalty as recommended by staff.

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

With respect to the Sales and Use Tax Matters, Credits and Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board made the following orders:

Luck Is 777, SR Y EH 099-643424; 127653
7-1-97 to 3-31-00, \$71,633.64

Action: Approve credit and cancellation as recommended by staff.

Bay Alarm Company, SR Z CH 021-147576; 89000309630
1-1-95 to 9-30-96, \$397,997.81

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Action: Approve refund as recommended by staff.
Apria Healthcare, Inc., SR Y EAA 024-819801, 109223
1-1-00 to 12-31-00, \$337,569.78

Action: Approve refund as recommended by staff.

Apria Healthcare, Inc., SR Y EAA 024-819801, 112542
1-1-97 to 12-31-99, \$3,965,349.03

Action: Approve refund as recommended by staff.

Apria Healthcare, Inc., SR Y EAA 024-819801, 89000467420
7-1-95 to 9-30-98, \$2,631,369.51

Action: Approve refund as recommended by staff.

Copeland's Enterprises, Inc., SR Y AR 026-649799; 113330
10-1-00 to 12-31-00, \$202,809.25

Action: Approve refund as recommended by staff.

Elmore Motors, SR EA 098-041924; 83429
4-1-97 to 9-30-00, \$58,681.87

Action: Approve refund as recommended by staff.

PAQ, Inc., SR Y KHE 099-797154; 128328
1-1-98 to 12-31-00, \$62,482.89

Action: Approve refund as recommended by staff.

Edison Security Corporation, SR Z AP 099-828725
10-1-96 to 12-31-99, \$651,612.19

Action: Approve refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATIONS AND RELIEF OF PENALTY

With respect to the Special Taxes Matters, Redeterminations and Relief of Penalty, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

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Golden West Refining Company, MD MT 007-001175; 89000006320
4-1-87 to 3-31-90, \$345,894.93

Action: Approve the redetermination as recommended by staff. Ms. Mandel not participating.

Ranger Insurance Company, IT ET 034-002415; 127872
4-2-99 to 6-15-99, \$63,429.70

Action: Approve the relief from penalty as recommended by staff. Ms. Mandel not participating.

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Exxon Mobil Corporation, MD MT 007-000878; 89000005970
4-1-98 to 4-30-98, \$745,222.41

Action: Approved the refund as recommended by staff. Ms. Mandel not participating.

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel made the following orders:

Action: Approve recommended index for coins and bullion bulk sale threshold for inflation, based on the (June to June) California consumer Price Index (CCPI), as mandated by Senate Bill 213 (Chapter 977 statutes of 1993) (Exhibit 8.11).

FRANCHISE AND INCOME TAXES HEARINGS

Susan Lancaster, 78269
1991, \$2,390.50 Assessment, \$ 857.23 Penalty, \$ 00.00 Fees/Miscellaneous

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1992, \$4,342.00 Assessment, \$ 543.25 Penalty, \$ 15.60 Fees/Miscellaneous

1993, \$4,755.50 Assessment, \$1,458.60 Penalty, \$303.00 Fees/Miscellaneous

1994, \$ 00.00 Assessment, \$1,355.00 Penalty, \$ 13.00 Fees/Miscellaneous

1997, \$ 00.00 Assessment, \$ 262.86 Penalty, \$ 11.00 Fees/Miscellaneous

For Appellant:

Susan Lancaster

Stacey Makahara, CPA

For Franchise Tax Board:

Jozell Brunett, Tax Counsel

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

Issues: Whether additional innocent spouse relief should be granted for the years from 1991 through 1993.

Whether innocent spouse relief should be granted as to any of the years from 1994 through 1997.

Whether the Board has jurisdiction to consider appellant's request for relief from the late filing penalty imposed for 1997 and if so, whether appellant is entitled to such relief.

Whether the Board has jurisdiction to consider appellant's request for relief from filing enforcement cost recovery fees, collection cost recovery fees, lien fees and sheriff's fees and if so, whether such relief should be granted.

Whether interest should be abated.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered the penalties be deleted and the remainder of the appeal be submitted for decision; granting the appellant 30 days to provide additional documentation, the Franchise Tax Board 30 days to review the documentation, and Appeals 30 days thereafter to bring the matter back to the Board.

Geronimo, Inc., 47665

1992, \$27,991.00 Assessment, \$ 7,093.43 Penalty/Fee

1993, \$55,826.00 Assessment, \$10,331.50 Penalty, Late Filing

\$13,956.50 Penalty, Notice and Demand

\$ 2,240.35 Penalty, Estimated Tax

\$ 119.00 Penalty, Filing Enforcement Fee

\$ 15.00 Penalty, Dishonored Check

1994, \$30,232.00 Assessment, \$ 1,210.60 Penalty, Estimated Tax

\$ 7,558.00 Penalty, Late Filing

\$ 11.00 Lien Fee

1995, \$ 800.00 Assessment, \$ 254.20 Penalty

1996, \$ 800.00 Assessment, \$ 65.68 Penalty, Estimated Tax

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\$ 11.00 Lien Fee

For Appellant:

Kevin McTaggart, Representative
Charles Frank, Officer

For Franchise Tax Board:

Bruce Langston, Tax Counsel

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

Issues: Whether appellant has shown that respondent's Notices of Proposed Assessment (NPA's) for the appeal years should be barred as untimely under the applicable statute of limitations.

Whether respondent has shown that appellant was properly a transferee of the tax liabilities of GYW Enterprises, Inc. (GYW) for the appeal years.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

Steven Wildt, 88567

1980, \$1.00 or more Assessment

1981, \$1.00 or more Assessment

1982, \$1.00 or more Assessment

1989, \$1.00 or more Assessment

1990, \$1.00 or more Assessment

For Appellant:

Steven Wildt

For Franchise Tax Board:

Jozell Brunett, Tax Counsel

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

Issue: Whether appellant has shown that he is entitled to the abatement of interest.

Appellant's Exhibit:

Opening Brief; Taxpayers Bill of Rights;
Tax Levy; 540 Tax Return; Bankruptcy
Code Section 523; 1981 W-2 (Exhibit 8.12)

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered to sustained the revised action the Franchise Tax Board.

Upon motion of Mr. Chiang, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the remainder of the appeal be submitted for decision.

The Board recessed at 11:50 a.m. and reconvened at 1:40 p.m. with Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel present.

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Thomas Wayne Kabis, 53615

1997, \$1,887.00 Assessment, \$441.75 Penalty, Late Filing

\$965.75 Penalty, Notice & Demand

For Appellant: Thomas Wayne Kabis

For Franchise Tax Board: Mark McEvilly, Tax Counsel

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

Issues: Whether appellant has established that respondent's additional tax assessment (based on federal information) was erroneous.

Whether appellant has been denied due process.

Whether appellant has maintained a frivolous or groundless position before the Board.

Appellant's Exhibit: Evidence (Exhibit 8.13)

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the appeal be submitted for decision.

Joseph E. Marcoux, 79927

1997, \$1,156.00 Assessment, \$289.00 Penalty, Late Filing

For Appellant: Joseph E. Marcoux

For Franchise Tax Board: Mark McEvilly, Tax Counsel

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

Issues: Whether appellant is subject to California's income tax laws.

Whether respondent properly determined appellant's tax liability.

Whether the late filing penalty should be abated.

Whether appellant has brought a frivolous or groundless position before the Board.

Appellant's Exhibit: Written Statement (Exhibit 8.14)

Letter (Exhibit 8.15)

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the appeal be submitted for decision.

Alphonso Eiland, 80235

1997, \$541.00 Assessment, \$135.25 Penalty, Late Filing

For Appellant: Alphonso Eiland

For Franchise Tax Board: Mark McEvilly, Tax Counsel

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

Issue: Whether appellant is subject to California's income tax laws.
Whether respondent properly determined appellant's tax liability.
Whether the late filing penalty should be abated.
Whether appellant has brought a frivolous or groundless position before the Board.

Appellant's Exhibit: Written Statement (Exhibit 8.16)

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the appeal be submitted for decision.

TAXPAYERS' BILL OF RIGHTS REIMBURSEMENT CLAIM HEARING

Waystations, Inc., TBR 00-005-F, 91946
1991, \$250,000.00 Claim for Reimbursement

For Claimant: Melvyn J. Schulman, Attorney

For Department: Renel Sapiandante, Tax Counsel

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

Issues Whether respondent's actions taken in the underlying appeal were "unreasonable".

If respondent's actions are found to have been unreasonable, what is the appropriate hourly rate for reimbursement of attorney fees under Revenue and Taxation Code section 21013.

Claimant's Exhibit: Letter (Exhibit 8.17)

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal, and Ms. Mandel voting yes, the Board ordered that the claim for reimbursement be submitted for decision.

BUSINESS TAXES APPEALS HEARINGS

Nypro San Diego, Inc., SR FH 25-853568; 78514
1-1-96 to 6-30-99, \$36,134.06 Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: Warren Astleford, Counsel

Action: The Board took no action.

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Salvatore DiNunzio, SB UT 81-012927; 36864
5-31-98, \$5,016.88 Tax

For Petitioner:

Salvatore DiNunzio

For Sales and Use Tax Department:

Jeffery Graybill, Counsel

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

Issues: Whether petitioner purchased the vessel for use in California when the seller did not transfer record title into petitioner's name.

Whether the measure of tax is excessive.

Action: Upon motion of Mr. Chiang, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

Lawrence C. Gorfine, SR FH 97-311583; 49802

1-1-92 to 12-31-97, \$19,348.41 Tax, \$ 0.00 Penalty, Failure to File
\$1,917.75 Penalty, Finality

For Petitioner:

Lawrence C. Gorfine

For Sales and Use Tax Department:

Sharon Jarvis, Counsel

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

Issues: Whether taxpayer's sales of EKG paper and products constitute exempt sales of medicines.

Whether taxpayer's claim that he was unaware the items at issue were taxable warrants relief from the tax.

Whether relief from the failure to file penalty is warranted,

Whether relief from the penalty for failure to timely pay the final determination (finality penalty) is warranted.

Whether relief from the interest is warranted.

Action: Upon motion of Mr. Parrish, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the finality penalty be deleted.

Upon motion of Mr. Chiang, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

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FINAL ACTION ON APPEALS HEARD AUGUST 14, 2001

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the appeal of *Russell & Melissa Clark, 56466*, be denied.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the appeal of *Steven Wildt, 88567*, be denied.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the appeal of *Thomas Wayne Kabis, 53615*, be denied and impose a \$1,000.00 frivolous appeal penalty.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the appeal of *Joseph E. Marcoux, 79927*, be denied and impose a \$1,000.00 frivolous appeal penalty.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the appeal of *Alphonso Eiland, 80235*, be denied and impose a \$1,000.00 frivolous appeal penalty.

FINAL ACTION ON CLAIM HEARD AUGUST 14, 2001

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Waystations, Inc., TBR 00-005-F, 91946*, be denied.

Mr. Klehs moved to impose a \$1,000.00 frivolous appeals penalty. No vote was taken.

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FINAL ACTION ON PETITIONS HEARD AUGUST 14, 2001

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Salvatore DiNunzio, SB UT 81-012927; 36864*, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Lawrence C. Gorfine, SR FH 97-311583; 49802*, the measure of tax be reduced by 10 percent and a generous payment plan be offered to the petitioner.

The Board adjourned at 3:50 p.m.

The foregoing minutes are adopted by the Board on October 25, 2001.