

WEDNESDAY, SEPTEMBER 11, 2002

The Board met at its offices at 450 N Street, Sacramento, at 10:05 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Bogomil Atanasov, 152408

2000, \$1.00 or more Claim for Credit

For Claimant: Bogomil Atanasov

For Franchise Tax Board: Lisa Lawson, Tax Counsel

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

Issue: Whether respondent properly denied appellant's claim for property tax assistance.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 9.1)

Respondent's Exhibit: Evidence of Residence (Exhibit 9.2)

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board reversed the action of the Franchise Tax Board.

Exhibits to these minutes have been incorporated by reference.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Christian Community Credit Union, 144236

1988, \$4,226.00 Claim for Refund

1990, \$3,517.00 Claim for Refund

1994, \$8,327.00 Claim for Refund

1995, \$5,250.00 Claim for Refund

1996, \$17,331.00 Claim for Refund

1997, \$11,645.00 Claim for Refund

For Claimant: Randy Moore, Attorney

JoAn Blackstone, Attorney

For Franchise Tax Board: Ed Kline, Tax Counsel

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

Issues: Whether Revenue and Taxation Code section 24405, subdivision (c) as interpreted by the Board's decision in the *Appeal of San Francisco Police Credit Union* (99-SBE-002), decided January 7, 1999, requires allocation of appellants equity capital and savings capital to the amount of member loans for purposes of calculating Surplus Member Savings Capital.

Whether respondent claims a manifestly unreasonable position in light of the Revenue and Taxation Code and the Board's opinion in the *Appeal of San Francisco Police Credit Union, supra*, thus entitling appellant to its fees and costs.

Respondent's Exhibit: Miscellaneous Examples (Exhibit 9.3)

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

Mr. Andal moved to submit the appeals for decision, requesting the Appeals Section to bring the matter back before for Board with a final recommendation in 30 days. The motion failed for lack of a second.

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

The Board recessed at 10:40 a.m. and reconvened at 10:45 a.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Ms. Mandel present.

J. Allen & Carol A. Beebe, 88463

1994, \$196,480.00 Assessment

1996, \$43,728.00 Assessment

OCAT, Inc., 88699

8-31-94, \$8,069.89 Assessment

8-31-95, \$23,003.76 Assessment

12-24-96, \$18,929.45 Assessment

For Appellant:

Robert Lewis, Representative

Gerald J. Beaudoin, Attorney

For Franchise Tax Board:

Renel Sapiandante, Tax Counsel

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

Issues in the petition of **88463**:

Whether the River Oaks-Oakdale Limited Partnership (RO), as an accrual method taxpayer, incurred a deductible loss on foreclosure, which passed through to the Beebes, in 1994 when RO entered a stipulation with respect to the foreclosure, or in 1998 when the property transferred back to the bank pursuant to the terms of the stipulation of the parties.

Issue in the petition of **88699**:

Whether the amounts claimed and deducted as rent by OCAT, Inc., qualify as ordinary and necessary business expenses pursuant to Internal Revenue Code section 162(a)(3), as incorporated into California tax law by Revenue and Taxation Code section 17201.

Whether appellant had sufficient basis in DNAL, Inc., an S corporation in which appellant was a shareholder, to deduct pass-through losses in 1994 and 1996.

Whether loans made to appellant's brother, which appellant's brother allegedly defaulted on, may be deducted as either business or non-business bad debt losses.

Appellant's Exhibit: Opening Brief, 88463(Exhibit 9.4)

Opening Brief, 88699 (Exhibit 9.5)

Miscellaneous Documents (Exhibit 9.6)

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Action: Mr. Andal moved that the appeals be submitted for decision, granting the appellant 30 days to submit additional documentation, the Franchise Tax Board 30 days to review the documentation and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation. The motion failed for lack of a second.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeals be submitted for decision, granting the Franchise Tax Board 30 days to review the new documentation and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation.

Antonio Langham, 141888
1998, \$149,433.00 Assessment
For Claimant:

Geoffrey W. Haynes, Attorney
Steven Kravitz, Attorney

For Franchise Tax Board: Natasha Page, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether a bonus paid to appellant, a professional athlete, should be apportioned under the "duty day" formula.

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

Garrison Hearst, 142388
1997, \$44,316.00 Assessment
For Claimant:

Geoffrey W. Haynes, Attorney
Steven Kravitz, Attorney

For Franchise Tax Board: Natasha Page, Tax Counsel
Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether a bonus paid to appellant, a professional athlete, should be apportioned under the "duty day" formula.

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

The Board recessed at 11:30 a.m. and reconvened at 1:40 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Ms. Mandel present.

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PUBLIC HEARINGS**Proposed Amendment of Sales and Use Tax Regulation 1502, Computers, Programs, and Data Processing**

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record that the adoption of *Regulation 1502, Computers, Programs, and Data Processing*, is proposed to be amended to interpret, implement and make specific Revenue and Taxation Code section 6011 and 6012. Amendment is proposed to provide that 50 percent of the lump-sum charge for an optional software maintenance agreement is for the sale of tangible personal property and is subject to tax, and the remaining 50 percent of the lump-sum charge is a nontaxable charge for repair; to make non-substantive revisions throughout the regulation that reformat text and language consistent with current standards and delete references to obsolete computer processes; to conform the definition of digital pre-press instructions to the language used in recent amendments to Regulations 1540, Advertising Agencies and Commercial Artists, and 1541, Printing and Related Arts; and, to remove gender-specific language.

Speakers: William Lasher, Tax Partner, PricewaterhouseCoopers
Suzanne Beaudelaire, Sr. Manager, Ernst-Young, LLP
Terry Ryan, Tax Director, Apple Computer
Roxanne Gould, V.P. Government Relations, American Electronics Association

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted *Regulation 1502, Computers, Programs, and Data Processing*, as published (Exhibit 9.7).

Proposed Adoption of Sales and Use Tax Regulation 1535, Race Horse Breeding Stock

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record that the adoption of *Regulation 1535, Racehorse Breeding Stock*, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code section 6358.5, which provides an exemption for state, but not from local or district, sales and use tax for sales and purchases of racehorse breeding stock. The proposed regulation provides definitions of terms used in the statute and clarification with respect to the application of the partial exemption to the sale and use of racehorse breeding stock. The proposed regulation has an operative date of September 1, 2001. Ms. Thurston further suggested that the two non-substantive changes be made to the text of the regulation.

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

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Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted *Regulation 1535, Race Horse Breeding Stock*, and the adoption of staff's recommended non-substantive changes (Exhibit 9.8).

Proposed Adoption of Sales and Use Tax Regulation 1671.1, Rebates and Incentives

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record that the adoption of *Regulation 1671.1, Rebates and Incentives*, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code sections 6011 and 6012. The regulation is proposed to promulgate in regulatory form current Board policies regarding when rebates and buy-downs are included in gross receipts or sales price, with the new requirement that the customer have knowledge of certain rebates and buy-downs. The proposed regulation applies to determinations on or after July 1, 2002, and to petitions for redetermination and claims for refund filed but not yet final as of August 1, 2002 (Exhibit 9.9).

Speakers: Greg Turner, General Counsel, Cal-Tax
Paul P. Singh, Public Accountant
Kavinder Chatkara, President, Fast-N-Easy, Inc.
Lance Hastings, V. P. Government Relations, CA Grocers Association

Action: Mr. Klehs moved to table the adoption of *Regulation 1671.1, Rebates and Incentives*. The motion was seconded by Mr. Andal, but failed to carry, Mr. Chiang and Mr. Klehs voting yes, Mr. Andal, Mr. Parrish and Ms. Mandel voting no.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, Mr. Chiang abstaining, the Board adopted the following language to subdivision (f): This regulation shall apply to determinations made and transactions that occur on or after July 1, 2002 and petitions for redetermination and claims for refund filed but not yet final as of August 1, 2002.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, Mr. Chiang abstaining, the Board ordered that a rebate is only taxable if a retailer has to redeem a physical coupon.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, Mr. Chiang abstaining, the Board authorized the publication of the revised language in *Regulation 1671.1, Rebates and Incentives*.

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Proposed Amendment of Sales and Use Tax Regulation 1703, Interest and Penalties

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record that the adoption of *Regulation 1703, Interest and Penalties*, is proposed to be amended to interpret, implement and make specific Revenue and Taxation Code sections 6485 and 6514. Amendments are proposed to declare that the applicable burden of proof for a finding of fraud is "clear and convincing evidence."

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

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted *Regulation 1703, Interest and Penalties*, as published (Exhibit 9.10).

FINAL ACTION ON APPEALS HEARD SEPTEMBER 11, 2002

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Christian Community Credit Union, 144236*, the Board reversed the action of the Franchise Tax Board.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Antonio Langham, 141888*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Garrison Hearst, 142388*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered a formal opinion be written in the appeals of *Antonio Langham, 141888 and Garrison Hearst, 142388*.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Robert K. and Judith S. Adams, 149730

1993, \$1,361,746.00 Assessment

For Appellant:

Mark L. Mann, Attorney

For Franchise Tax Board:

Renel Sapiandante, Tax Counsel

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

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Issue: Whether appellants have shown that Trails Associates, Ltd. (Trails) was discharged from indebtedness arising out of certain promissory notes in 1992 and another promissory note in 1993, so that the unpaid balances of the promissory notes are not properly included as amounts realized on the sale of property in 1993.

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

BUSINESS TAXES APPEALS HEARINGS

Industrial Systems Associates, Inc., 42237

8-14-95 to 9-30-98, \$283,824.83 Tax

For Petitioner:

Joseph A. Vinatieri, Attorney

Daniel L. Thompson, CPA

Michael Bonner, Vice President and CFO

David Courtright, Controller and CAO

For Sales and Use Tax Department: Warren L. Astleford, Counsel

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

Issues: Whether fees for petitioner's implementation of "in-plant stores" (IPS's), and for management services related to those IPS's, are subject to tax as gross receipts for services that are part of petitioner's taxable sales of tangible personal property.

Whether the Department properly disallowed petitioner's claimed nontaxable sales for resale to Allied Signal International, Inc., in the amount of \$317,254.00.

Whether petitioner's charges to customers for transportation of products to petitioner are subject to tax.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang voting no, Mr. Klehs and Ms. Mandel absent, the Board ordered that the petition be granted as to the implementation fee.

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Ms. Mandel absent, the Board ordered that the petition be denied as to the issue of nontaxable sales for resale to Allied Signal International, Inc.

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Ms. Mandel absent, the Board ordered that the petition be denied as to the issue of the taxability of freight charges.

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Ms. Mandel absent, the Board ordered that the issue of the branch operating fee be submitted for decision, directing the Appeals Section to bring the matter back to the Board with a final recommendation.

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Ms. Mandel absent, the Board ordered that the petition be denied as to the fee component and item management fee.

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Veracom Holdings Corporation, 89002072300

10-1-94 to 9-30-97, \$28,400.13 Tax

\$00.00 Penalty, Negligence

For Petitioner:

Abe Golomb, Representative

Robert Bramzuela, General Manager

For Sales and Use Tax Department: Stephen M. Smith, Counsel

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

Issues: Whether petitioner has shown that the sales at issue qualify as exempt sales in foreign commerce.

Whether petitioner has shown that the sales at issue qualify as exempt sales in interstate commerce.

Whether petitioner has shown that it did not make a sale of a certain vehicle, but rather leased the vehicle to its customer followed immediately by an assignment of the lease to a finance company so that only the finance company incurred the applicable tax.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel voting no, Mr. Klehs absent, the Board ordered that the disputed measure of tax be reduced by 50 percent with the exception of the sales agreement regarding the vehicle sold to a customer in the amount of \$34,570.00.

Orville Vincent Paul, Jr. (Deceased) and Barbara Theresa Paul, 113126

10-1-97 to 12-31-97, \$22,285.49 Tax

For Petitioner:

Barbara Theresa Paul

Dwight Norris, CPA

For Sales and Use Tax Department: Trecia Nienow, Counsel

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

Issues: Whether petitioners withdrew the vessel in issue from resale inventory and made any use thereof other than retention, demonstration, or display while holding the vessel for sale in the regular course of business.

Whether petitioners are entitled to relief from the interest assessed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board accepted the opening brief of the petitioner.

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

Scott R. Hicks, 87617

2-1-95 to 12-31-97, \$17,597.74 Tax

\$00.00 Penalty, Failure to File

America Cinema Equipment, Inc., 87618

1-1-98 to 9-30-99, \$3,084.55 Tax

\$00.00 Penalty, Failure to File

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For Petitioner: Scott R. Hicks
For Sales and Use Tax Department: Randy Ferris, Counsel
Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.
Issues: Whether petitioner Scott R. Hicks was engaged in business in California during the period June 19, 1996 through December 31, 1997.
Whether the evidence shows that certain sales are nontaxable sales because the use tax was self-declared by the purchaser, or the use tax was assessed in the audit of the purchaser.
Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be submitted for decision.

The Board recessed at 4:05 p.m. and reconvened at 4:10 p.m. with Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel present.

Chris K. Sugai, 40759

1-1-95 to 12-31-97, \$31,942.27 Tax

For Petitioner: Waived Appearance
For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.
Issue: Whether audited taxable cost of materials was computed in accordance with the facts, or whether adjustments need to be made for use tax exemption, freight, or tax-paid purchases resold deductions.
Whether an allowance for bad debts is warranted.
Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Cellular Solutions, Inc., 89000355440

7-1-93 to 12-31-96, \$70,796.80 Tax

For Petitioner: Waived Appearance
For Sales and Use Tax Department: Sandy McCaleb, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.
Issue: Whether the audited phone sales markup is excessive.
Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

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Gary Fisher and Terry Edwards, 89002181700

10-1-93 to 6-30-96, \$85,033.71 Tax

\$00.00 Penalty, Negligence

For Petitioner: No Appearance

For Sales and Use Tax Department: Robert Tucker, Counsel

Action: The Board took no action.

Norvel R. Wright, 89000689740

10-1-95 to 6-30-98, \$18,426.05 Tax

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Randy Ferris, Counsel

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

Issue: Whether the difference between reported and audited taxable sales is due to nontaxable sales for resale or to exempt sales of medicines included in audited gross receipts.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Tulip Publishing & Graphics, Inc., 134874

4-1-96 to 3-31-99, \$9,479.17 Tax

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel

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

Issues: Whether the evidence shows petitioner's lack of transfer of any tangible personal property to any customers.

Whether the evidence shows that errors occurred in reporting the correct measure of tax.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

FINAL ACTION ON APPEAL HEARD SEPTEMBER 11, 2002

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, in the appeal of *Robert K. and Judith S. Adams, 149730*, the Board sustained the action of the Franchise Tax Board.

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FINAL ACTION ON PETITIONS HEARD SEPTEMBER 11, 2002

Upon motion of Mr. Andal, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel voting no, Mr. Klehs absent, the Board ordered that the petition of *Orville Vincent Paul, Jr. (Deceased) and Barbara Theresa Paul, 113126*, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition of *Scott R. Hicks, 87617*, and *America Cinema Equipment, Inc., 87618* be redetermined as recommended by the Appeals Section.

The Board adjourned at 4:30 p.m.

The foregoing minutes are adopted by the Board on November 13, 2002.

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