

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
HEMOPET,) OTA NO. 18011847
)
)
) APPELLANT.)
)
)
_____)

Transcript of Proceedings, taken at
15350 Sherman Way, Suite 300, Van Nuys,
California, 91401, commencing at 11:50 a.m.
and concluding at 12:46 p.m. on Tuesday,
December 11, 2018, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead: HON. ANDREW KWEE

Panel Members: HON. AMANDA VASSIGH
HON. GRANT THOMPSON

For the Appellant: CHARLES BERMAN, ESQ.
W. JEAN DODDS

For the Respondent: State of California
Franchise Tax Board
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E X H I B I T S

(Appellant's Exhibits were received at page 7.)

(Franchise Tax Board's Exhibits were received at page 7.)

Van Nuys, California; Tuesday, December 11, 2018

11:50 a.m.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. So we're opening the record in the Appeal of Hemopet before the Office of Tax Appeals. The OTA Case No. is 18011847. Today's date is Tuesday, December 12th. I'm sorry. Tuesday, December 11th, 2018, and the time is approximately 11:50 a.m.

Today's hearing is being heard in Van Nuys. For the evidentiary record, will the parties at the table please state their names and who they represent starting with Hemopet.

MS. DODDS: Thank you for the opportunity to speak.

MR. BERMAN: Just say who you are.

MS. DODDS: What? Oh, sorry. I'm Jean Dodds. I'm the veterinarian president of Hemopet that was first registered in the State of California in April of 1981. We received a biologics license to --

MR. BERMAN: He didn't ask.

ADMINISTRATIVE LAW JUDGE KWEE: Thank you. I'll get back to you, and you can testify in a few minutes. Right now we just need to state the names of the parties for the record. Thank you.

MR. BERMAN: I'm Charles Berman, the general counsel for Hemopet.

ADMINISTRATIVE LAW JUDGE KWEE: Okay.

MR. K. SMITH: I'm Kevin Smith. I'm an attorney with CDTFA.

MR. S. SMITH: Steven Smith, tax counsel for CDTFA.

MR. HANKS: Kevin Hanks, Chief of Headquarters Operations Bureau CDTFA.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. And today's hearing is being heard by a panel of three administrative law judges. My name is Andrew Kwee. I'll be the lead judge. To my left is Judge Vassigh, and to my -- I mean to my right is Judge Vassigh, and to my left Judge Thompson, and they are the other members of this panel.

All three judges will meet after the hearing today and produce a written decision as equal participants, although, the lead judge will conduct the hearing. Any judge on the panel may ask questions or otherwise participate in order to ensure we have all the information needed to make a decision on this appeal.

The documentary evidence on this hearing is on the exhibit list in front of you, and it identifies Exhibits 1 through 16 for Hemopet and A through I for

CDTFA. This list represents all the exhibits that the parties have submitted today.

CDTFA would you confirm whether or not you have any objections to any of the exhibits identified on the index?

MR. K. SMITH: We do not have any objections to the exhibits.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. And to the taxpayer, do you have any objections to any of the exhibits?

MR. BERMAN: No objections, Your Honor.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. I'm admitting all the exhibits identified on the exhibit index into the evidentiary record without objection. That's Exhibits 1 through 16 for the taxpayer, and A through I for CDTFA.

(Appellant's Exhibits 1-16 were received in evidence by the Administrative Law Judge.)

(Department's Exhibits A-I were received in evidence by the Administrative Law Judge.)

So the issues in this appeal are whether sales and use tax applies to the charges at issue, and two, whether interest relief is warranted.

So now we're ready to proceed with the Appellant's presentation regarding the issue on appeal.

Before we start, I'd like to swear in Dr. Dodds so that she may offer testimony of the facts.

W. JEAN DODDS,

produced as a witness by and on behalf of the Appellant, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

MS. DODDS: I so affirm.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. You may proceed with your presentation.

MR. BERMAN: You can proceed now.

MS. DODDS: Okay. Yes.

MR. BERMAN: Start.

MS. DODDS: Start. Oh, sorry.

First of all, I would like to comment that Hemopet is a federal and California registered 501(C)(3) charity. Neither myself, nor Mr. Berman, have earned any salary. We are volunteers. We run this company because we have -- I have and he has too, a passion and commitment to providing animal emergency medical services like they do for people.

Hemopet first was registered in 1986 as a business. I was in New York State at that time. In 1990 we started, after we had raised enough funds to open a

blood bank to animals akin to the Animal Red Cross, including all the services to society as well and the community at large.

We actually got a biologics license No. 84 from California Department -- animal services branch of the California Department of Food and Agriculture. We have that biologics license today. We are inspected annually by the Department, and they go through all the records of our facility documenting that we are doing, in fact, what we are doing, not only for the health and welfare of the animals that we keep, but also for the products and services that we distribute throughout California and the United States.

And about a third of our distribution and services occurs within the State of California. The rest is outside and services the rest of the United States. Hemopet serves about 40 percent of the emergency blood services needed for veterinary clinics throughout the United States of America. We are proud of that service.

And since then, we now house today about 200 resident greyhounds, and we chose them as a comment of society's responsibility to the animals that we choose to use for our own pleasure; in this case, the racing industry. The animals are either deemed unsuitable or retired from that industry. There is no racing of

greyhounds in the State of California. There hasn't been since 1926.

So our animals come from other states in the United States where greyhound racing is still used. Although, you may be aware that recently the tracks in Florida have been closed. We actually will be getting some of those animals to save them from an uncertainty in -- actually in this next month we'll be getting them.

So what happens is the animals come to Hemopet, and we get new animals about every three weeks. In the interim, the animals that we have are adopted as family companions. So an equal part of our nonprofit program is the adoption program where we match suitable families with particular animals so that an 85-year old lady doesn't get a 95-pound greyhound.

So they are matched because we want them to have a forever home, because they are donated to be able to distribute their blood products to serve the needs of patients in need throughout the country.

So what happens is we started out with 33 animals by the way in 1991. So now we have 200. We cannot meet the national need, and our purpose is not to do that. Our purpose is to show how to run a blood bank for animals akin to the services of the American Red Cross in a humane way that everybody benefits.

The animals that service our needs are in adopted homes. And also, the products that they provide are distributed to save the lives of other animals. We teach this to countries all over the world. Veterinarians and other people have sent -- have come to our facility to learn how to run a blood bank; in Mexico for example, United Kingdom, in Portugal, in Italy, in Switzerland.

So we teach that. We teach animal health technicians from Stanbridge College and Western University. They come to our facility to learn, and there's no charge for our services. We're doing that as a societal benefit. And just this last week for the second time this year, Japanese veterinary technician students come and learn from Japan how to run the kind of facility we run here.

So what we have is the animals donate around twice a month, a pediatric unit of whole blood, which is half the regular adult unit, 250 milliliters. That blood unit is then processed into components. Of course the animals have to be cared for and looked after the whole time.

And the reason why we do it in components is there's not enough blood available for the services we need to provide if we use just one bag. If you can make it into six or seven components, you can save many more

lives. Not only that, giving an animal or a person a blood component they don't medically need can be harmful.

So the products are broken down into specific components. They are then distributed to the end user, which is a veterinary clinic with a specific patient in mind. So we just don't send them whatever. We send them a specific product based on what that veterinary clinic's patient needs to provide emergency medical services for the care and survival, or even prophylaxis before surgery, for example, if they had a bleeding disorder.

So what we do then is we provide this service. Many times veterinarians will call us for specific questions. For this particular case, Dr. Dodds, which product that you provide for me for my patient should I be using?

So we provide educational and product driven services for that. That's basically how it operates now. I can also give you more background of how we got to where we are today if you would like me to.

ADMINISTRATIVE LAW JUDGE KWEE: There's one question I'd like for you to address. In one of your declarations you had indicated that there have been a BOE auditor that came out in March of 2009, and then on two later occasions, and that they had told you that you were reporting everything correctly, and at the time you were

not reporting taxes on this.

I was wondering if you could speak to that a little.

MR. BERMAN: Probably because Dr. Dodds didn't hear the question, probably I can answer that for you. In fact, one of the new exhibits that we provided today, Exhibit 16, refers to a documentation that the BOE actually came and took from -- we actually had to deliver to the Riverside operation of the BOE in 2010.

That documentation was lost. Okay. And so that was one incident, which we've been able to verify -- we had gone just this weekend -- when they did that. Prior to that, there are declarations by Dr. Dodds, which is Exhibit -- and other employees -- which are Exhibit 3, Exhibit 4, and Exhibit 2, which describe the times that the BOE offices came to Hemopet, inspected Hemopet, and said everything was in good order at that time.

So that is in the exhibits of the taxpayer.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. At the time, did Hemopet receive any, like, a note change audit report or any written documentation to reflect the audit visit?

MR. BERMAN: Not to our knowledge, Your Honor.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. I'm going to see if CDTFA has any questions for Dr. Dodds at this

time.

MR. K. SMITH: No, we don't.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. Just briefly if -- CDTFA before we continue if you could just -- do you have any evidence that there was an audit during the audit period 2009 and 2010?

MR. K. SMITH: No. We don't have any evidence or audit. They presented nothing of a written advice to us to indicate that they were told they were doing things correctly. That would be our response.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. I'll let you proceed.

MR. BERMAN: Subject to one comment that Dr. Dodds I'm sure will refer as she continues to present her case.

In 1993 there was a BOE hearing which Dr. Dodds attended. And it's been a subject of a fair amount of discussion in the taxpayer's documentation. And Dr. Dodds I think can explain it better than me because she was there presenting the case personally. And the statement there made was that everything was in good order.

Our position is that it was a broad sweeping statement, and I know the paperwork is more limited than what it says, but Dr. Dodds can explain, I think, that. And we would rely on that 1993 decision by the BOE that

everything was in good order from an indirect tax perspective.

ADMINISTRATIVE LAW JUDGE KWEE: Okay.

MR. BERMAN: Do you want Dr. Dodds to continue?

ADMINISTRATIVE LAW JUDGE KWEE: She may proceed with her presentation if she wishes, or it's your turn right now. You can proceed however you wish.

MR. BERMAN: I think it's a good idea to explain what happened.

MS. DODDS: I'd like to explain what happened.

ADMINISTRATIVE LAW JUDGE KWEE: Okay.

MS. DODDS: We were questioned by Orange County at the end of 1992 about why we weren't paying property tax, and I said, but we're a service. We're an emergency medical service. And I said that I wanted to appeal any concerns and come to Sacramento, which I did in January of 1993 in the pouring rain.

And I went there and there were three administrative law judges there, and I presented the issue. And Judge Fong -- Administrative Law Judge Fong asked me specifically, "Can you tell me, are human blood banks exempt from taxes on their product distribution and services?"

And I said absolutely. They were before 1965, and they were after that again in the 1970s. So they are.

And he said -- and he looked at the other two judges. And he said, "Then we determine that animal blood banks should be treated exactly the same way as human blood banks."

I was amazed. Everybody started clapping. That was fine until the new situation arose in 2010, 2012 until today, and I find out that the transcripts -- there was a transcript of that hearing, which I did not know, was never informed of such -- and they were only kept for 12 years.

So the only way I could prove that that's what happened was to make an affidavit and have an affidavit from two people that attended with me, the executive director of the California Veterinary Medical Association at the time, and the associate director who is now the current director of the California Veterinary Medical Association. And they were both there and affirmed that that's what happened.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. Do you have anything further that you would like to say before we let CDTFA proceed with their presentation?

MR. BERMAN: Well, we actually -- Dr. Dodds have been describing a background of where we are today, but she has not yet presented the case. And she wants to present the case that we have basically three grounds on which we believe sales tax should not be applicable.

One is that the activities of the taxpayer are those of a service. Number two, that the charitable organization exemption applies. And number three, for consistency and precedent, when you look at the history of indirect taxes associated with blood banks, that should equally be applicable.

So each of those three grounds we want to address in detail.

ADMINISTRATIVE LAW JUDGE KWEE: Okay.

MR. BERMAN: And Dr. Dodds is prepared at this time to talk about why the operation of the Hemopet Blood Bank, the taxpayer's blood bank, is a service, a distribution of blood, and she will do that part of it.

I will talk about the charitable organization part of it and the precedent in the law that is there. And then if it please the court, we can leave the question of interest until after that because it's not ready. It's a substantive issue. So that's what we propose to do.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. That sounds good. Please proceed.

MR. BERMAN: Talk about the services.

MS. DODDS: I'm just trying to decide where to begin. I was in charge of the human blood and transfusion services and the regulations of blood safety and products in the State of New York for 25 years. I was the only

hematologist of senior level when AIDS and blood safety became a huge issue in the late 1970s and in the early 1980s.

I actually signed into law all the regulations that protected the safety of the blood supply for the citizens of the State of New York. In 1986, because of this background, I realized we need to have the same thing for animals. Because as veterinarian trained and specializing in comparative hematology, how people are models for animals and animals are models for people and for their conditions, I realized we needed to have a similar service for animals.

I moved to California in 1988. I spent that time raising the funds in order to start Hemopet as I told you earlier. Now we were fine. We thought everything was wonderful. We didn't have any idea there was a problem until this issue of personal property tax arose, which I went to Sacramento in 1993, as I explained. And it was decided then that animal blood banks should be treated like human blood banks.

So we went along assuming that that was the case operating this way as so until about 2010 when, again, Orange County asked us for some audit. They wanted to do an audit of our records. Which as Mr. Berman explained, we gave them all the documents and the office was moving

and they were lost. So we provided them all over again, and we have the receipt to show that they were all delivered.

It took a year to a year and a half before we got a decision from these documents. And at that time we sought help from the Board of Equalization. We went up and -- several years passed after that and nothing had happened, so we assumed everything was fine. We just continued to operate as we had. No -- people visited us. BOE staff visited us.

They said everything was okay until we got a notice that they're going to assess a tax against us based on these audits that had been going on years -- several years before. So we went to Sacramento, actually, and met with the Board of Equalization. We met with Senator Runner and Senator Hockey first.

And meeting with them they said, you know, I think we should stop this ongoing process here because it's not helping anybody, and we want to have someone write a law to define unequivocally that animal blood bank services are not subject to any kind of tax akin to the human situation.

So Senator Janet Nguyen from Garden Grove was the sponsor of this law, SB-898. We went six times to meet at the request of BOE, meet all the appropriate people to

explain our situation before -- which you're allowed to do, obviously -- before the hearing. It passed the assembly. It passed the Senate unopposed.

We were elated. It went to -- we met with Governor Brown's staff person at that time. He cautioned us about Governor Brown's concern about spending any money on anything. Governor Brown had a very large tax budget to rule on that year. We had a \$24,000 request for relief. We've never paid any taxes. Remember this would be something new we would be expected to pay.

He vetoed all of them including ours. We were devastated as you might expect. And so now here we are today starting over again when we followed the directions of the BOE to try and get us out of this ongoing concern, and we still have not had relief; even though we feel that we are a service. We do all the other social things.

We lose money. Just in the last years we've lost \$400,000. In the State of California that amounts to about 13 percent of our cost. So we are in a financial loss, but we continue to provide this service because veterinarians and their patients will not get emergency medical services without our program. Thank you.

Oh, sorry. Mr. Berman is reminding me that we do not charge at all for the blood. There is no charge for the blood. It's the services to keep the animals, raise

the animals, care for the animals appropriately, then take the products, divide it into components, distribute it on a specific patient basis, a need to a veterinary clinic to save that patient's life, or to be used as prophylaxis if they are going into surgery or something and they have to be transfused beforehand.

And we provide 40 percent of the canine blood component services provided throughout the United States of America by this service. Thank you.

MR. BERMAN: I will pick up from here, Judges.

What I wanted to address was the Section 33 of the tax code consistency within the law and the charitable exemption. We want to make it absolutely clear. We are not asking -- have never asked -- for Section 33 to be interpreted to cover animal blood banks. We recognize that it covers human blood banks.

What we have put before the Court is the legislative history associated with Section 33 and how it came to be about. We were very fortunate to be able, through the archives, to find that legislative history, and it's part of the record before the Court.

And what it showed at that time was a very interesting chronology of events. But the critical feature of why Governor Brown -- present Governor's father -- passed that bill, was the recognition that a

blood bank was a service. Okay. And when you look at the legislative history building up to that, it explains that.

What it did explain, and which is very important -- and that's the only reason we wanted you to look at Section 33 -- that the definition in our system is that a blood bank is a service. Okay. And also, if you look at the new Exhibit 16, which we gave you, and we refer to that statute of the Health and Safety Code Article 1602, it defines there what a blood bank is.

And you'll see that the very last words are blood banks are where blood derivatives are distributed. And Dr. Dodds, I think, has eloquently explained that her process akin to the Red Cross is distribution service. That's what it is. Okay.

So when you look now, bridging into the second part of the argument for consistency and authority to move forward. When you look at how Section 63 came about, the legislative history says this.

It says, "Before 1965," that's when Section 63 -- 33 was promulgated. "The BOE at that time promulgated that sales tax would not be applicable to human blood banks."

There were no such things as animal blood banks. The BEO had the authority to do it at that time. Comes 1965, the legislature says no property tax for human blood

banks. Comes 1993 -- and what Dr. Dodds has referred to is the BOE again says there's equality between human blood banks and animal blood banks, therefore, at a minimum no property tax should be associated with an animal blood bank.

So you're left with this little lingering issue of sales tax for animal blood banks. And what happens in 2016 is the BOE again says let's just clarify this once and for all and make sure it's all on an even playing field because it's one and the same kind of thing. It's a blood bank, and it's a service, and that's the way it should be.

So what we're asking the OTA to consider is this history and the precedential value that the history shows that this last unspoken element, so to speak, should be consistent with what has happened before. So moving on to the third limb of the argument, and this is the question of the charitable exemption, which is 635.

There I think -- there are apparently four grounds. There are four elements you have to meet to have that exemption within the law. I don't think there's an argument that we meet element No. 1 that we are a welfare organization. We have been approved that way, and the property tax case does. I don't think there's an argument on No. 4. Okay.

The elements that features everything comes in the State of California. The issues, really, are conditions 2 and 3. Do we need conditions 2 and 3? And it says -- the regulation says conditions 2 and 3 are met by selling property at reduced prices.

There's a lot of paperwork over here, about what is meant by reduced prices. Okay. So the Exhibit 15, which we -- was filed about three weeks ago, really explains in a nutshell why these are reduced prices.

There are arguments by the CDTFA that it's lower than market price. It's -- there's no way really actually meaning or defining what is a reduced price. But we showed you premise on earlier evidence, which is over here that the deficiency bill was for \$1,000,000 -- approximately \$1,000,000.

We've also showed you evidence that Hemopet lost \$400,000 in the development of this blood during -- but that's for the entire country. So given that Hemopet provides one-third of the blood in the State of California, we just arbitrarily said that's a loss of about \$133,000, which is a loss of 13 percent. It's below market value of 13 percent.

Why does the blood have to be provided at that price? Because it's a life-saving emergency fluid. You cannot overcharge the consumer. So that's why Hemopet

loses 13 percent on its blood products. How does Hemopet survive? That may be the question you want to ask. They have diagnostic services, which they provide, which kinds of balances the box and keeps things in order.

What I think is also very -- very instructive for -- for the Court is to look at the case of the Good Shepherd Lutheran, which I gave full copies for. The Good Shepherd Lutheran Case, which was cited by the CDTFA is very instructive of what's going on here.

It basically says when the rules came about for sales tax, there was no regulations, really, implementing what sales tax was about. Therefore, look at the property tax rules and see what they said about property tax because that's the only guidance you can get.

Good Shepherd didn't win their case for couple of reasons. Number one, they weren't a welfare organization, and number two, they gave no financial data to support the fact that there were reduced prices. Hemopet has met both of those aspects. We are a welfare, and we've given you the financial data. If you want to look at the property tax rules, it basically says the term charitable is not confined to the relief of properties.

There are many things associated with being a charitable organization. So we look at Good Shepherd Lutheran. It's actually being very supportive of the

premise that the taxpayer is putting forth. We meet what Lutheran did not meet at that time.

So given that -- given the fact that the BOE in 1993 already equated human and animal, we think it's overwhelming, judicial, persuasive decision to support our position that we meet the requirements of a charitable organization.

One other argument made by the CDTFA, which bears some kind of comment more than anything else. It says the recipients of these blood products; the inferences are dogs. And dogs are not the people that are getting the blood products, and they're not in distress. Well, with all respect, I mean, blood, in the human sense, could be given to child an incapacitated person. The whole family is involved with the distress situation.

The dog is in distress. The pet parent is in distress. Everyone is in distress. So I really don't think that's a very ingenious argument to say. Because the dog is getting the blood product, it's the element in distress, and not the people associated with this. So frankly, I don't think that argument has any basis whatsoever.

So I think, again, we meet all the criteria of being a charitable organization. And in summary -- we can conclude but we'll do it in a wrap up -- is basically we

believe we meet the criteria of the sales relief based on the fact that we're a service distributing blood. There is consistency in the law and precedence in the law for doing it. And number three that we area charitable organization.

ADMINISTRATIVE LAW JUDGE KWEE: Quick question on your second point. You had mentioned that you attached the legislative history for Revenue and Taxation Code Section 33?

MR. BERMAN: Yes.

ADMINISTRATIVE LAW JUDGE KWEE: And I did look at that, and I noticed there that it said that at the time they passed Section 33, the sales of human blood was already exempt under BOE administrative ruling of counsel, so that Section 33 really impacted, at the time, property taxes.

MR. BERMAN: That's correct.

ADMINISTRATIVE LAW JUDGE KWEE: I was wondering if you had provided any research or evidence on what theory the sales of human blood was exempt by BOE at the time, whether it was a service or was for some other reason that we reconsidered it?

MR. BERMAN: Your Honor, no. We actually -- we're very fortunate to find legislative history going back to 1965, and we asked to go back. And it could have

been in the 1920s, and there was no basis for doing that. And actually, the one decision that was referred to, the Alpha Therapeutics case.

It talks also -- we just happen to see it this weekend. It talks also about the legislative history. And it talks also historically, and it makes no mention about what happened and how the sales tax for human blood came into place. It's -- it was just open. No one seems to find the background for that.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. All right. I'm going to let CDTFA proceed with their presentation, and then I'll put it up for more questions.

MR. K. SMITH: Okay. Let me start with the charitable organization exemption. We're talking about most recently. First note Subdivision A-2 requires that the organization be relief -- relieved of property and distress.

Appellant did not sell animal blood products for the poor -- or for the poor. So they sold them to veterinary clinic -- veterinarians and veterinary clinics in California, and, therefore, they don't meet the second criteria for the exemption no matter how the term of distress is defined.

We also reject Appellant's argument that sales tax satisfies the second requirement because the animals

who ultimately receive the blood products were suffering and in physical distress, and their owners were in emotional distress. The law has never been interpreted in this manner. There's no justification for doing so.

Turning to their next argument on the charitable organization. So with the argument, it appears what they're arguing is under 1570(a)(3). Let me just read what 1570(a)(3) says. It says that, "the organizations," in this case Hemopet, "sales or donations must be made principally as a matter of assistance to purchasers or donors in distressed financial conditions."

That's the regulatory language. So appellant's alleged shells of blood transfers lessen its cost even as claimed donation of blood products is misplaced. Appellant sales of products must be of real assistance to purchasers who themselves were in distressed financial conditions.

But here appellant sells animal products to veterinary doctors and clinics, who are not persons of distressed financial conditions. The veterinarians themselves give the blood products to the owners of the pets who then receive the products.

Let me turn then to their argument regarding Section 33 and whether the sales of blood products would be exempt. For sales of animal blood and blood products,

or sales of tangible personal property, and there's no statutory exemption or exclusion for the sale of animal blood products. And this point to be made clear by my Exhibit D, which is a copy of the legislation that they talked about, that was proposed to create an exemption to the sales and use tax law for the sale of animal blood and blood product.

This attempt to pass legislation in creating exemption for sales of animal blood is an admission that sales of animal blood are not exempt under the current law. And finally turning to the argument about providing a service, we don't believe appellant has provided any evidence that it's providing a blood transfusion service.

They sell blood products to veterinarians, and those veterinarians provide the blood transfusion service to pet owners. And I have Exhibit G, which is a printout of their website which states -- it states that "Hemopet's licensed full-service blood bank provides state of the art blood components and supplies for transfusion to veterinary clinics nationwide."

It does not mention the transfusion service, and Appellant has provided no other evidence to support his claim in providing transfusion service. Some of the other exhibits I have, like Exhibit F, also talks about the price of their plasma units and how they should -- how you

should compare the price of their units to other -- other blood banks that sell blood.

I think it's pretty clear that they're -- what they're providing in the situation is blood products and blood -- and blood to veterinarians, not to -- they're not selling -- they're not selling a service to veterinarians. So I think that's all we have. Thank you.

ADMINISTRATIVE LAW JUDGE KWEE: I guess I'll ask you the same question. Does CDTFA have any documentation or research on what basis human blood sales were considered exempt or nontaxable prior to the enactment of Section 33?

MR. K. SMITH: No, I didn't research that.

ADMINISTRATIVE LAW JUDGE KWEE: Okay.

MR. K. SMITH: Unclear why.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. For the panel, does the panel have any questions?

So I did have a quick clarification. You had requested interest relief and indicated an audit period, but I was wondering you -- if there is a specific time period for which you're requesting interest relief? Was it -- what period were you requesting interest relief?

MR. BERMAN: We appreciate the CDTFA pointing out to us that in fact it's up to the present time, not just 2008 to 2011. That was a mistake in our documentation.

So we appreciate that giving us that degree of relief or say what period for which it is. I'd like to -- can we rebut the comments by the CDTFA about the comments that they just made?

ADMINISTRATIVE LAW JUDGE KWEE: I'm sure you can have some time right now to respond to their argument.

MR. BERMAN: Okay. I'd like actually for Dr. Dodds to do it. She didn't hear properly. The argument was we were selling to veterinarians and not to the distressed patients. In reality it's like saying you're selling human blood to a doctor and the doctor is not distressed, but the patient is.

The doctor is just a vehicle to get the blood to the patient. It could be a child that could be injured. It could be a person who is terminally ill. So I think it's a -- it's creative but sensical (sic) to say you're selling it to a veterinarian. It's really going to a patient, and I think it will be very useful for Dr. Dodds to explain the distribution mechanism.

And really it's -- the entire case of services is well described in Exhibit 15, which was filed recently. And it was filed to assist the Court in finding in one central place rather than in these four inches of documents what this service is all about. So I think it would be very helpful, to just briefly, for Dr. Dodds to

explain that.

MS. DODDS: We are distributing our blood components to veterinarians for a specific patient. The veterinarian, with all due respect being one, is not an expert in transfusion medicine. They really don't know what's safe for the patient. And we deal with this by questions constantly. They don't understand.

And many physicians in hospitals today are not aware. They go to the blood bank or hematology service to find out what a particular patient needs. So even though we distribute the product, the component of the blood, it's for a specific patient's medical needs or prophylactic needs for a procedure.

That veterinarian is asking us to provide the distribution component for the service for the pet. So clearly it's the pet that we're providing the service to through the veterinarians as a conduit to transfuse it, whether it be the veterinarian or the veterinary technician in the clinic.

Because they are not aware. It's just not general, just get some blood. It's the component that's necessary for that specific case.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. So the measure at issue, the \$1,030,964, I understand your position is that you're not charging for the blood. So

what exactly does this disputed measure consist of? Is that? Does that -- what -- what did you receive that resulted in this assessment?

MR. BERMAN: The position of the taxpayer is that it's in the services of running and operating a blood bank, and they may well be a product at the end. But as Dr. Dodds pointed out in this declaration of Exhibit 15, there are zero dollars appropriated for the product. It is for the distribution.

It's for saving dogs around the country. The dogs come from Florida. They come from Texas. They come from Kansas. They come from Oklahoma bringing them in to a facility. It's all explained in detail making sure blood is of the right -- disease free. Making sure it's the right universal blood type. Making sure that it's okay.

Keeping these dogs for two years in the facility and then ultimately distributing it out nationwide, including one-third of the product in California. It's that whole distribution network, which then the million dollars really covers.

MS. DODDS: They don't stay two years there, they only stay max of 14 months.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. So I understand your position is that you provide transfusion

services and related services in connection with that, but the ultimate charge to the veterinarian, is that based on the amount of blood provided, or is that based on -- on something else than the amount of blood provided?

MR. BERMAN: Well, this is part of Exhibit 15. It happens to be in color -- in Technicolor so it's easy to see.

MS. DODDS: In 2015 we created this distribution explanation. It's in Exhibit 15 that shows you how we provide and distribute our services to the community, to the veterinarian, to the pet patient. And whatever. So it really is a consortium of social services in that community. We did long before we knew this was an issue before you today.

MR. BERMAN: And I think to be more precise to answer your question, Your Honor, if the patient happens to need double the quantity of blood, part of the medical service, the veterinary advice, is this patient is a Great Dane. It needs twice the amount than a little Chihuahua. Yes. And obviously it will be quantitatively determined.

I mean, the company has to survive and the blood element, the product, is a way of quantifying the value of the services being provided. Like if you have a Great Dane, it's going to eat twice as much food, obviously, more than a Chihuahua kind of dog. So it's a measuring

stick. That's all it is.

ADMINISTRATIVE LAW JUDGE KWEE: And you had mentioned with the four elements for the 1570 Charitable Exemption that there wasn't a dispute on the first element. So my understanding is that Hemopet does claim the welfare exemption then with respect to blood bank property?

MR. BERMAN: Yes. In fact, the qualified and welfare exemption license, whatever it's called.

ADMINISTRATIVE LAW JUDGE KWEE: I guess I'll just have a brief question for CDTFA. I noticed in the regulation 1503, which was the hospital and medical service facilities, there's a subdivision out there that basically says tax does not modify with respect to the purchasing or donations of blood or blood plasma for use in transfusions.

I realize the title is Hospital Medical Service Facilities, but then the Subdivision(b)(3) doesn't specify. The indication is that it's kind of just sitting out there. I'm wondering if you had considered that, or if you have a physician on -- or on why this is not admissible here.

MR. K. SMITH: What is the language again?

ADMINISTRATIVE LAW JUDGE KWEE: Yes, 1503 is service enterprises and then hospital -- hospital and

medical service facilities. If that's not something you're prepared to answer I understand that.

MR. K. SMITH: The title of the regulation is for the care of persons. We think in the context they're referring to is human blood and not animal blood.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. If there's no more questions I think we're ready to proceed with final closing arguments.

MR. BERMAN: We're going to address the question of interest. Do you want to do that afterwards or --

ADMINISTRATIVE LAW JUDGE KWEE: Oh, so I think with interest relief, since there was new issue that CDTFA was going to have 30 days until January 11th to prove -- I think January 11th, 2019 -- is that the due date? 30 days until January 11th, 2019, to provide additional submission on whether or not interest relief is warranted -- additional interest relief is warranted. And after their submission, you Hemopet, would possibly be able to provide an additional submission depending on what evidence CDTFA submits.

MR. BERMAN: Your Honor. That was a new issue, that particular form that was filed. I forget the number. But we did -- and it's being present the question of estoppel, which has been there all the time. And the -- I think that could be addressed at this stage, which is

different from this particular form, if you want to do that.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. If you have a presentation you would like to make on estoppel, you may proceed.

MR. BERMAN: It's a very simple presentation. The elements of estoppel are met. The rebuttal from CDTFA is that it has to be in writing. There's no question that it has to be in writing. And furthermore, they make the statement that it has -- it cannot be awarded by the BOE.

Well your court, Your Honor, is a new court which considers things de novo equivalent to a trial court. Evidence can be given. So we believe you have the authority to grant estoppel if the circumstances are there. And there were three grounds to meet the estoppel requirement, and that easily met with the evidence that supports them. And we're asking you to give relief from interest on principal of estoppel.

The other issue we can address another time.

ADMINISTRATIVE LAW JUDGE KWEE: Did you want to make any arguments on the interest relief under the Revenue Taxation Codes?

MR. BERMAN: Yeah. Well -- and it can help the CDTFA as well. What we did make mention about was that -- and this is Exhibit 16 -- that in 2010 already the BOE

were looking at documentation. Eight boxes of documents was prepared at that time. It was sent to Riverside. It was lost. It took two years for them to come back and start asking us for documentation, and we had to redo it.

ADMINISTRATIVE LAW JUDGE THOMPSON: And that was the e-mail exchange?

MR. BERMAN: That was the e-mail exchange with Hamid Cuya. Okay. And as Dr. Dodds explained, we basically are a small profit company. It is a great hardship for us, but we do what the State requires. Okay. Then there's documentation which we've got here, which is BOE4147, which should help the CDTFA reconstruct what actually happened.

I think the most important thing is this. If you look at page 1, you can see they were hard at work in 2012 doing their audit. Fine. That's okay. 2013 comes along. In the beginning of 2013 the audit is finished. It's then turned in to the supervisor.

It takes eight months for the supervisor to look at it. And then again it goes to 2014, another one-year accord for the BOE complete their own internal paperwork. This to us makes no sense. While you're hard at work, fine. Afterwards, they're sitting with two periods, a six-month period and a 12-month period, and we, the taxpayer, do not believe it is our responsibility to

that -- to be responsible for the interest in that. During this time, and I have not been able to correlate or find the documentation.

At least twice they asked for us to agree to relief for statute of limitations because they couldn't get their paperwork done in good time. Okay. Then comes the period where we ask for a reconsideration, and this was done and an opinion was given. And then it was set for a hearing. Okay.

When, as Dr. Dodds explained, we went to the BOE prior to hearing, which I think was like in March 2016, the BOE then pulled the hearing. It wasn't us that pulled the hearing. So for the whole of 2016 we're sitting in limbo. It's not our responsibility. Okay. Then it gets a second supplementary determination issued, and I think the organization has agreed that we're entitled to waiver of interest over that time. Fine.

After they come with a supplementary, surely the taxpayer is entitled to comment on that supplementary, which we did. It had taken about a month or so. Then it sits for another nine months before a hearing is scheduled at the end of -- it's like September 2017 before the BOE.

We didn't ask for a postponement for three months. This court could have been hearing our case on January 1, theoretically, 2018, not in December 2018. So

for this whole year 2018, it's not our responsibility. We were ready to start January 1.

The court may not have been ready because you're just getting organized. We didn't ask for a long postponement of things. So when you take this whole period -- and you're talking about tax going back to 2008 10 years ago -- there's very short periods of time where we could be called responsible for asking for a delay of something, just to understand what is going on.

The vast majority -- I would think 95 percent -- of any delay is associated with our colleagues on the other side.

ADMINISTRATIVE LAW JUDGE KWEE: So the earliest date that you had indicated that you met with the BOE auditor was in March 2009, if I understand the declaration. I was just wondering if you had -- you indicated you didn't have any written advice that you received at that time?

MR. BERMAN: There's no written advice that we've been able to recover.

ADMINISTRATIVE LAW JUDGE KWEE: So do you have any evidence to show that you just met with the auditor, like a contact?

MR. BERMAN: Yes. We've given you declarations from the people who explained that these auditors came in,

looked around, investigated, and left and said everything was in good order. And it's a sworn declaration by two of the employees of Hemopet, including Dr. Dodds. So that's the evidence.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. Would you like to make any further closing remarks before I turn it over to the CDTFA to make their final closing remarks?

MR. BERMAN: Just one closing remark. The BOE or the new organization that referred to the standard oil case about estoppel, frankly, I don't know what meaning it has. It dealt with a writ of certiorari. There's not a single word of estoppel in that. I -- I don't know what the relevance of that particular case is.

So, frankly, in conclusion just very briefly. Hemopet the taxpayer is a service. We've given you what we believe is precedential value, and it makes sense. That law is not in a vacuum. And what the taxpayer, Hemopet, is doing exactly what a human blood bank is doing.

We're not asking you to create something new, some new kind of law. And then finally we believe we meet the charitable organization requirements, and that estoppel, at a minimum, should apply. And then if you start to calculate periods on this, we know that there will be rebuttal on that. There may be a minimal period

of interest that could be applicable to the taxpayer.

ADMINISTRATIVE LAW JUDGE KWEE: And I'm going to turn it over to CDTFA to making any closing remarks if they wish. And they may also address interest, or they may hold off on interest until their post-hearing submission.

MR. K. SMITH: Well, in the interest relief I think we're going to hold off until the post-hearing submission. We just need time to research those time periods to get a clear understanding of what was happening to make a recommendation.

Turning to the substance of the hearing just briefly. We continue to assert that sales of animal blood and blood products are sales of tangible and personal property and are taxable because there's no statutory exemption or exclusion for the sale of animal blood products.

In addition, Appellant is not a charitable organization with sales that qualify for the exemption from sales and use tax. Specifically, because it does not meet the requirements of 157083 and 84. And finally, Appellant has provided no evidence that it is providing a blood transfusion service. Appellant sells blood products to veterinarians, and those veterinarians provide blood transfusion service to pet owners.

Accordingly, we ask that you deny the appeal.

Thank you.

ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you. We're ready to conclude this hearing. This case is submitted on December 11th, 2018. The record will be held open until January 11th, 2019, for post-hearing submission from CDTFA, which is limited to the issue of interest relief. Depending on this admission, the record may be held open further for Appellant Hemopet to make additional submission.

Otherwise I thank you everyone for coming in today. The judges will meet and decide your case after we have received all submissions on this appeal, and we will send you a written opinion probably within 100 days after closing the record in this case.

The hearing for today is now adjourned. Thank you.

(Proceedings adjourned at 12:46 p.m.)

HEARING REPORTER'S CERTIFICATE

I, Lynne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 28th day of December, 2018.

LYNNE M. ALONZO
HEARING REPORTER