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HEARING

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Franchise and/

Income Tax Appeals Hearing of:

CARSMITH, INC.,

OTA Case No. 18011929

Appellant.

\_\_\_\_\_/

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, AUGUST 27, 2019

10:18 A.M.

OFFICE OF TAX APPEALS  
1400 R STREET  
SACRAMENTO, CALIFORNIA

Reported by: Peter Petty

1 APPEARANCES

2 Panel Lead:

3 ANDREW KWEE, ADMINISTRATIVE LAW JUDGE

4 STATE OF CALIFORNIA

5 OFFICE OF TAX APPEALS

6 1400 R STREET

7 SACRAMENTO, CALIFORNIA

8

9 Panel Members:

10 SARA HOSEY, ADMINISTRATIVE LAW JUDGE

11 TOMMY LEUNG, ADMINISTRATIVE LAW JUDGE

12

13 For Appellant:

14 MARK FRANCIS, EA

15 For Franchise Tax Board:

16 LISA RENATI, HEARING REPRESENTATIVE

17 STATE OF CALIFORNIA

18

19 JARRETT NOBLE, TAX COUNSEL

20 STATE OF CALIFORNIA

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22 MONICA GONZALEZ SILVA, TAX COUNSEL

23 STATE OF CALIFORNIA

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EXHIBITS

PAGE

(Exhibits premarked, described  
and retained by Administrative  
Law Judge.)

1 TUESDAY, AUGUST 27, 2019 - 10:18 A.M.

2 ALJ KWEE: We're opening the record in the appeal  
3 of Carsmith, Inc. before the Office of Tax Appeals. OTA Case  
4 Number is 18011929. And today's date is Tuesday, August 27,  
5 2019. The time is approximately 10:20 a.m. and this hearing  
6 is being convened in Sacramento, California.

7 For the record, will the parties' table please  
8 state their names and who they represent starting with the  
9 representative for the taxpayer, Carsmith, Inc.

10 MR. FRANCIS: My name is Mark Francis and I  
11 represent the taxpayer, Carsmith, Inc.

12 ALJ KWEE: Good morning. Thank you.

13 MR. NOBLE: My name is Jarrett Noble. I represent  
14 the California Department of Tax and Fee Administration. To  
15 my left is Monica Silva and Lisa Renati.

16 ALJ KWEE: Great. Thank you. So today's hearing  
17 is being heard by a panel of three administrative law judges.  
18 To my left is Sarah Hosey. And --

19 ALJ HOSEY: Good morning.

20 ALJ KWEE: -- to my right is Tommy Leung.

21 ALJ LEUNG: Good morning.

22 ALJ KWEE: And my name is Andrew Kwee. Judge Hosey  
23 and Judge Leung are the other members of this panel and I  
24 will be the lead judge. All three judges will meet after the  
25 hearing and produce a written decision as equal participants.

1 Although the lead judge will conduct the hearing, any judge  
2 in this panel may ask questions or otherwise participate in  
3 this hearing to ensure that we have all the information  
4 needed to decide this appeal.

5           So the documentary evidence that we have marked for  
6 identification includes no exhibits for the taxpayer and  
7 Exhibits A through D for CDTFA. There are no objections that  
8 were based that CDTFA exhibits and the parties have also  
9 agreed to the statement of agreed facts as summarized at  
10 OTA's minutes and orders for the prehearing conference. And  
11 the parties agree that these facts are correct and not  
12 disputed. The exhibits are also listed in the OTA's minutes  
13 and orders subject to the caveat that we are striking  
14 Exhibits E through H from the exhibit index listed in that  
15 document.

16           Will the parties please confirm for the record that  
17 the summary I have just provided is correct and that they  
18 have no objections to admitting any of the evidence into the  
19 record that I have just described including the statement of  
20 agreed facts. Starting with Counsel for the taxpayer.

21           MR. FRANCIS: I confirm and agree.

22           ALJ KWEE: Okay. And Counsel for CDTFA.

23           MR. NOBLE: Yeah, we confirm and agree. No  
24 objections.

25           ALJ KWEE: Great. Thank you. So the evidence is

1 now admitted into the oral hearing record.

2 (Exhibits admitted into evidence.)

3 ALJ KWEE: At this point, I'll go over the issue  
4 statement and the issue statement is whether the taxpayer  
5 should liable for sales tax on its sales of vehicles at  
6 retail in California when it didn't collect any amounts for  
7 sales tax reimbursement from its customers and the customers  
8 did not register the vehicles in this state.

9 So we are, at this point, ready to proceed with the  
10 taxpayers opening presentation. The taxpayer will allow  
11 approximately ten minutes and I will not be swearing anyone  
12 in today because we're just doing oral arguments.

13 So with that said, please feel free to proceed  
14 for -- for the taxpayer.

15 MR. FRANCIS: Okay. Thank you for your time. As  
16 it pertains to the case in question, as we have already  
17 mentioned, the taxpayer does not disagree with the findings  
18 of the 2008 to 2010 period audit and the assessment that has  
19 been laid upon them, so to speak. And we do not dispute  
20 anything that was laid out in audit. We think that was  
21 actually a cleanly and correctly done audit. Ultimately, it  
22 took some time to get to the final amount. But at this  
23 point, we agree with it.

24 What is at issue and the taxpayer would like to  
25 have put on the record is that they -- their erroneous

1 assumption, and again they're accepting culpability for their  
2 error, that registration of the vehicle in a -- in a foreign  
3 state was sufficient to qualify it as out-of-state sales  
4 therefore not subject to tax in the state of California was  
5 their fallacy. And they conducted a decent amount of  
6 business where vehicles were delivered out of the state which  
7 does comply with -- with the definition of an out-of-state  
8 sale. And they had some transactions that were -- where the  
9 vehicle was driven out of the state and those, obviously, do  
10 not comply with the definition of an out-of-state sales.  
11 They were unaware of that.

12           Their confusion was aided by obviously not knowing  
13 the existence of a DMV one-trip permit which allows the  
14 vehicle to leave the state and the fact that they were aiding  
15 their customers in registering their vehicles in the states  
16 where they were being required to pay sales or use tax. And  
17 so in their mind they were assuring that tax was being paid  
18 on the transaction what they thought was correctly. And so  
19 that's what -- that's what resulted in the findings from the  
20 2008 to 2010 audit.

21           The taxpayer was again audited for the tax periods  
22 2011 to 2013. And because the 2008 to 2010 audit didn't  
23 conclude until 2012, the taxpayer continued to do business in  
24 2011 and 2012 under the same, you know, ignorance of what  
25 constituted out-of-state sales correctly. And so the audit

1 of 2011 to 2013 called to attention those very same things  
2 auditors were perfectly aware of the situation from 2008 to  
3 2010, knew to look for transactions of similar nature and  
4 identified several of those as well. In that audit, they  
5 asked for the taxpayer to prove the cars were ultimately  
6 registered. We did a little research and determined that the  
7 cars had in fact been registered in the states they were sold  
8 to and they found for no change on that audit. And so the  
9 taxpayer is frustrated and confused that there would be two  
10 different findings for the same set of circumstances. They  
11 realize that the law supports the first -- findings from the  
12 first audit more than it does from the second audit. But it  
13 underscores the issue at stake here which is that the rules  
14 surrounding out-of-state sales for vehicles are very  
15 confusing and difficult for taxpayers and business owners to  
16 understand clearly.

17 I think it's not a stretch to say that it is kind  
18 of unusual that a car could be delivered on a truck to the  
19 state line and not be a taxable transaction in the state of  
20 California versus one being driven to the state line and  
21 across the state line and subsequently registered into that  
22 state the it drives across to and have it be a taxable  
23 transaction. It's not inherent -- it's not something that I  
24 would expect, you know, an average person to know. I  
25 understand that it's on the taxpayer to know the tax laws,



1 but at the same time, the state is in business with the  
2 taxpayer and there's some -- it's kind of a two-way street,  
3 as far as that goes, in my opinion. The BOE, you know, the  
4 CDTFA's predecessor, never reached out to the taxpayers when  
5 the business was formed or at any time along the way to  
6 stress that the out-of-state sales rules are complicated and  
7 confusing and that they should be careful not to accidentally  
8 expose themselves to a tax liability for a tax they never  
9 collected and can't pay.

10           Lastly, I would just say that Carsmith has been in  
11 business since 2002. It has remitted approximately  
12 \$14 million in sales tax to the state of California. It has  
13 filed all of its sales tax returns timely and paid all of its  
14 sales tax timely and correctly with obvious exception of the  
15 matters that we're here to discuss. And they've been a good  
16 business partner for the state of California.

17           So that's pretty much all I have to say on the  
18 matter at this time.

19           ALJ KWEE: Okay. Thank you. And if I could just  
20 get one clarification on the argument. Were you saying, if I  
21 understand correctly, that in a subsequent audit under the  
22 same facts, CDTFA accepted the transactions based on  
23 allowance where tax paid to another state. But in this audit  
24 it was treated differently?

25           MR. FRANCIS: I'm saying that the Board of

1 Equalization did that. It was BOE at the time.

2 ALJ KWEE: Okay.

3 MR. FRANCIS: But I'm saying that there were  
4 transactions of the same nature in that audit and they were  
5 discussed between the auditors and myself. And they issued a  
6 no change, that's correct.

7 ALJ KWEE: Okay. And briefly before I go to CDTFA,  
8 I was just wondering if you are at all prepared today to talk  
9 about the subsequent audit and address this point that was -  
10 this issue that's being raised.

11 MR. NOBLE: We're currently trying to verify  
12 whether it was an actual audit where audit working papers  
13 were to exist versus an initial examination of documentation  
14 in the determination the audit would not be conducted.

15 ALJ KWEE: Okay. So at this point, would you like  
16 to proceed with your presentation or would you like a brief  
17 recess to discuss this before you start.

18 MR. NOBLE: Sounds good. We would like to  
19 proceed --

20 ALJ KWEE: Okay.

21 MR. NOBLE: -- while we discussing the audit period  
22 issue in which the sales have been conceded as subject to  
23 sales tax.

24 ALJ KWEE: Okay. Please proceed.

25 MR. NOBLE: Under the Revenue and Taxation Code,

1 sales taxes imposed on a retailer's retail sales of tangible  
2 personal property in this state measured by the retailer's  
3 gross receipts unless the sale is specifically exempt or  
4 excluded from tax by statute, a retailer's gross receipts are  
5 presumed to be taxable until proven otherwise and the burden  
6 is on the retailer to establish that its retail sales are not  
7 subject to tax. Sales and interstate commerce are exempt  
8 from sales tax when pursuant to the contract of sale the  
9 property is required to be shipped and is shipped to a point  
10 outside the state by the retailer or the retailer's delivery  
11 of the property to a carrier, custom's broker, or forwarding  
12 agent for shipment out of state.

13           In this appeal, there is no dispute that the 46  
14 sales remaining at issue either involve sales in which the  
15 customer took possession of the vehicles in California and  
16 drug the vehicles to out-of-state locations or sales where  
17 there is no documentation establishing that the sales were  
18 nontaxable sales in interstate commerce or were otherwise  
19 exempt from tax. For the sales where the customers took  
20 possession of the vehicles in California, the sales occurred  
21 in this state when Appellant delivered the vehicle in title  
22 passed. Accordingly, Appellant is liable for sales tax on  
23 these transactions. As for the sales to which there is no  
24 documentation, Appellant has failed to meet its burden  
25 establishing that the sales are not subject to tax and there

1 is no basis to recommend adjustments to the deficiency  
2 measure for these sales.

3 As for Appellant's assertion that it should be  
4 granted equitable relief from the tax liability because it  
5 did not collect tax reimbursement from its customers, we  
6 first note that CDTFA is bound by law and there is no statute  
7 or regulation granting relief from the tax liability based on  
8 the issues in this appeal.

9 Second, while a retailer is authorized to collect  
10 tax reimbursement on its retail sales, the sales tax is  
11 imposed on and owed by the retailer regardless whether tax  
12 reimbursement is collected from the customer. There is  
13 therefore no legal basis for further adjustments after the  
14 recommended adjustments as set forth in the second  
15 supplemental decision. As to the remaining liability, this  
16 appeal should be denied.

17 ALJ KWEE: Okay. I'm just briefly, does the  
18 Department have any position on whether if the taxpayer  
19 established that tax was paid to another state at the time  
20 the vehicles were registered, any allowances would be  
21 warranted since the taxpayer I guess is arguing that no  
22 allowance was given in a subsequent audit for that type of  
23 scenario?

24 MR. NOBLE: It's unclear what's going on in the  
25 secondary audit. Even if there is one, my interpretation was

1     that he alleged that when registration was shown out of  
2     state, that they assumed that the sales were delivered out of  
3     state. That's not the same as getting an offset for tax paid  
4     out of state. I don't believe with the sales at issue we  
5     have any evidence that tax was paid out of state. Although  
6     there have some evidence of vehicle registration out of  
7     state. If we have evidence that tax was paid to another  
8     jurisdiction such as another state, CDTFA would need time to  
9     respond to that. That would be use tax permitted by the  
10    purchaser versus sales tax reimbursement that would have been  
11    owed by the retailer. We would need to see evidence that tax  
12    was paid to another state first.

13           ALJ KWEE: Okay. At this point, I'd like to see if  
14    either co-panelist has any questions.

15           ALJ HOSEY: No questions. Thank you.

16           ALJ LEUNG: I've got a question to both parties.  
17    Given the fact that there's a very fine distinction between  
18    having a consumer pick up the car in California, having the  
19    car put on public carrier, like a tractor trailer carry it  
20    across state lines, does CDTFA provide any type of brochure,  
21    publications, whatever to car dealerships to explain this to  
22    them.

23           MR. NOBLE: Yeah. CDTFA has publications on its  
24    websites both for vehicles, vessels, and aircraft that deal  
25    with use tax generally. And they have publications specific

1 to vehicle dealers that go through interstate commerce sales  
2 and out-of-state sales. And generally when a retailer opens  
3 up their sellers permit, they're given different publications  
4 about the rights and obligations that they have to do  
5 business in this state at the time that the seller's permit  
6 is open.

7 ALJ LEUNG: Thank you.

8 And to -- for the taxpayer, did you read those  
9 publications? Did you have access to them?

10 MR. FRANCIS: I've since read them.

11 ALJ LEUNG: So.

12 MR. FRANCIS: Well the -- so the taxpayer's been in  
13 business since 2002. I have been their accountant pretty  
14 much the entire time. What was provided to them by BOE in  
15 2002 is not of knowledge to me. However, as a practitioner,  
16 I'm aware that when one opens a sales tax account in the  
17 state of California, documentation is provided whether  
18 vehicle specific information was provided to the taxpayer, I  
19 certainly can't say.

20 ALJ LEUNG: Okay. For what exactly are you asking  
21 from us?

22 MR. FRANCIS: Well basically the whole point of my  
23 being here is two things. First of all is to get certain  
24 things on the record. And second of all is for a plea to  
25 reasonability which is what I have been asking for at every

1 step of the appeals process. The taxpayer is left holding  
2 the bag on a very large tax liability that threatens the very  
3 existence of the business. I don't expect you to be super  
4 sympathetic to the fact that they made an error, but I do  
5 expect that the circumstances surrounding it be considered  
6 such that these vehicle -- the taxpayer made effort to ensure  
7 that the vehicles were properly registered in their state and  
8 that tax was paid in those states. They knew tax was due  
9 somewhere. They did not know where and they made a mistake.  
10 And the penalty for their mistake is \$106,000 as it stands  
11 right now. To me that seems harsh. The audit papers from  
12 2008 to 2010 indicate that the taxpayer was cooperative at  
13 every step of the way and that they were helpful and  
14 forthcoming with regards to the information. The same thing  
15 was true in the 2011 to 2013 audit.

16 As I've noted, the business has been around for 17  
17 years. It has remitted \$14 million to the state of  
18 California. It is a good business partner. When I was in  
19 line for a hearing with the BOE before I got pulled off the  
20 docket and the whole format changed, I worked with Fiona Ma's  
21 office in San Francisco. They were very sympathetic to the  
22 taxpayer's case. I made contact with George Runner's office  
23 and began to introduce the case to him. They were  
24 sympathetic to the case.

25 So my point of being here is simply that the law is

1 absolute. If you want to apply the law which is absolute,  
2 then you're going to find against me and show me to the door.  
3 But if you want to consider what happened and consider the  
4 people doing the business at Carsmith, Dave and Kevin, the  
5 owners, Jeff and Brian and Arlin and Eric, good people who  
6 are trying to do their job and made a mistake, then perhaps,  
7 you know, somebody can step in and treat the situation  
8 reasonably. Should they be penalized for their mistake?  
9 Yeah, maybe, probably, who knows? That's up to other people  
10 besides me. It's an honest mistake and none of us are  
11 perfect. I don't think they should be penalized at all,  
12 speaking candidly. But should they have to pay sales tax  
13 that they cannot collect from customers who registered the  
14 cars in other states and paid tax there? I mean, there's no  
15 remedy for the taxpayer.

16 And the state of California, in my opinion, is  
17 being unreasonable in asking that they do that and given the  
18 nature of confusion surrounding out-of-state sales and the  
19 fact the Board of Equalization conducted two parallel audits  
20 with basically different findings. And CDTFA can discuss the  
21 semantics of the second audit all they want, but the auditors  
22 came to that audit fully aware of what happened in the first  
23 audit and the taxpayer was continuing to conduct business  
24 until they were made aware of their error in the exact same  
25 manner until that audit found against them and were unable to



1 correct it. And those auditors were keenly aware of those  
2 transactions. They was no showing them that the car was  
3 registered in Colorado, for example, and them thinking that  
4 it was delivered on a truck as opposed to driven out. They  
5 knew, they were keenly aware of the circumstances. So those  
6 auditors, whether they were doing the job correctly or not,  
7 acknowledged that the situation was confusing and didn't seek  
8 to further punish the taxpayer. So what I'm asking for is  
9 that reasonability prevail and that the taxpayer be dealt  
10 with fairly here and that we not apply the law mechanically  
11 and that we consider the facts and circumstances surrounding  
12 the case.

13 ALJ KWEE: So just a quick clarification with the  
14 CDTFA, there's no penalties at issue in this case. Is this  
15 correct?

16 MR. NOBLE: No, there are no penalties at issue and  
17 I wanted to note that there's no audit working papers for the  
18 audit. An audit wasn't conducted. It was initial record  
19 examination and no opinion was issued whatsoever. So.

20 ALJ KWEE: Oh, --

21 MS. SILVA: For the second --

22 MR. NOBLE: For the secondary audit.

23 ALJ KWEE: -- you're saying it was a no opinion,  
24 okay.

25 MR. NOBLE: Yeah.

1 MS. SILVA: We were able to confirm that. And no  
2 audit --

3 MR. NOBLE: They didn't actually officially examine  
4 records and go conduct an audit and make a finding.

5 ALJ KWEE: Okay. Well as I - I did state since we  
6 don't have evidence on the subsequent audit, we can't make a  
7 factual finding as to what happened at that time in absence  
8 of documentation or agreement between the parties.

9 But I did have a question for the taxpayer. Did,  
10 do you -- would you still have records of tax paid at the  
11 time of registration on the disputed vehicles?

12 MR. FRANCIS: We have some. I mean, so basically  
13 in the course of the audit and the appeals, we have used --  
14 we have gotten customers to provide some of that information  
15 for the purpose of, basically, you know, building our case,  
16 so to speak. And in the case of all the vehicles, we traced  
17 their registration ultimately to the state in which they were  
18 sold to so we knew that they had been registered there and  
19 were aware of the registration rules in the states that they  
20 were registered in. In other words, use tax being properly  
21 remitted at the time.

22 Had it been an issue that would have been accepted  
23 at the time, certainly we would have went back to our  
24 customers and gathered that information because our customers  
25 like us, we have a good reputation in the community and we do

1 business the right way. So if we were to try and piece it  
2 together for all of the transactions now, it's, you know, ten  
3 years later so we might not be perfect in doing it. But I  
4 bet we could pull some of it together.

5 ALJ KWEE: Okay, and I guess at this point, I would  
6 ask CDTFA if that -- if the taxpayer were able to provide  
7 that type of information, is that something which would  
8 change CDTFA's position at all, potentially change CDTFA's  
9 position?

10 MR. NOBLE: CDTFA -- CDTFA would like to see the  
11 evidence and then have time to respond, if necessary. As I  
12 said before, these taxes -- these sales are California sales  
13 tax transactions in which California sales tax was imposed.  
14 The taxpayer, the Appellant, would not have been the one  
15 paying use tax to another state. It would have been a  
16 different individual. 6406 is the regular -- is the statute  
17 that deals offsets for a taxpayer to another jurisdiction so  
18 we would have to analyze that issue, but again we'd like to  
19 see evidence that tax was paid not just registered in another  
20 state.

21 ALJ KWEE: Okay. At this point, do you mind if we  
22 took a brief five-minute recess?

23 MR. NOBLE: No. No problem at all.

24 ALJ KWEE: All right. Thank you.

25 [Off the record at 10:40 a.m.]

1 [On the record at 10:47 a.m.]

2 ALJ KWEE: We're back on the record now. So at  
3 this point, I believe CDTFA has a clarification to make.

4 MR. NOBLE: Yeah. California -- Revenue and  
5 Taxation Code Section 6406 is the statute that addresses tax  
6 credits for tax paid to another jurisdiction. And it's --  
7 it's person specific so in this case the retailer, Appellant,  
8 didn't pay any use tax to another jurisdiction or sales tax  
9 to another jurisdiction so there would be nothing to offset  
10 here. The purchaser would have been paying their own use tax  
11 out of state.

12 ALJ KWEE: Okay. Thank you. And at this point, I  
13 believe we're ready to proceed to closing arguments. Oh, I'm  
14 sorry, I should ask the panel if either member has a question  
15 before I proceed?

16 ALJ LEUNG: No.

17 ALJ HOSEY: No question. Thank you.

18 ALJ KWEE: Okay. So at this point, I'll let the  
19 taxpayer start with their closing arguments.

20 MR. FRANCIS: Thank you. Judge Leung got most of  
21 my closing argument out of me when he asked me what I was  
22 here for so I will be brief and first thank everybody for  
23 their time. I wish we didn't have to be here for this, but  
24 unfortunately here we are. This audit started a long time  
25 ago and I think it's seven years later, I'm still upside

1 down.

2           Thinking about it, it's a matter of great passion  
3 to me. I represent the client pro bono. I feel very  
4 strongly about how adversely effected they would be by having  
5 this tax found against them. I think I've made a good case  
6 as to during the audit and in all subsequent steps as to how  
7 the laws of the state of California regarding out-of-state  
8 vehicle sales are confusing. I think I made a good case that  
9 the taxpayer cannot pay a tax that they did not -- cannot  
10 remit a tax that they did not collect. And that is very  
11 difficult to go back to a customer who has since paid  
12 applicable taxes in their state of registration to pay more  
13 tax on top it. There's no remedy for what is being asked  
14 here. The business is a business that lives hand to mouth.  
15 The -- I'm sure the financials were examined in conjunction  
16 with the audit. This isn't a huge car dealership. This is a  
17 small, closely-run business with a handful of people working  
18 hard trying to make a living just like the rest of us. They  
19 were not involved in some elaborate ruse to avoid tax. They  
20 were unaware of the rules. And while their being unaware of  
21 the rules doesn't necessarily excuse them, the saying that  
22 the punishment does not fit the crime seems clearly at play  
23 here. And I've done everything I could to try and resolve  
24 that matter prior to being here in a courtroom on the record  
25 and stating these things. But when I tried to negotiate a

1 penalty rather than, you know, the tax be paid of reasonable  
2 ones to, you know, effect the taxpayer, I got laughed at, you  
3 know, basically by the lawyers for the BOE.

4           And so here we are and again Carsmith, good partner  
5 with the state of California. \$14 million of sales tax  
6 remitted successfully. Timely filings consistently. Timely  
7 payments consistently. You know, if you did any research on  
8 the dealership before you came here, good references from  
9 people who have bought cars from them. Good people. I would  
10 think that the state of California wants to continue to do  
11 business with Carsmith, Inc. But if they proceed with the  
12 levying of this sales tax amount liability to them, it will  
13 put them out of business and you'll be forced to deal  
14 whatever that replacement business is and start collecting  
15 tax from them. And hopefully their record will be as good as  
16 Carsmith's, if that's the case.

17           Thanks again for time. I really do appreciate it.

18           ALJ KWEE: Okay, thank you.

19           At this point, we can turn to CDTFA for their  
20 closing arguments.

21           MR. NOBLE: As we stated before, we iterate the  
22 same arguments made in the opening presentation. There's no  
23 legal basis to relieve a retailer from their sales tax  
24 liability because they failed to collect tax reimbursement  
25 from their customers. There's just no legal basis to make

1 adjustments to the measure. That's it.

2 ALJ KWEE: Okay. Thank you.

3 I believe we're ready to conclude this hearing.

4 Would either co-panel is like to ask any final questions  
5 before I close?

6 ALJ HOSEY: No, thank you.

7 ALJ LEUNG: I'm good. Thank you.

8 ALJ KWEE: Great. This case is submitted on  
9 August 27<sup>th</sup>, 2019. The record is now closed.

10 Thank you everyone for coming in today. We'll try  
11 and issue a decision within 100 days from today.

12 MR. NOBLE: Thank you.

13 MS. SILVA: Thank you.

14 (Whereupon the proceedings were  
15 adjourned at 10:52 a.m.)

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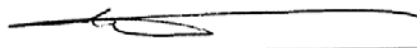
25 .

**REPORTER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of September, 2019.

  
\_\_\_\_\_

PETER PETTY  
CER\*\*D-493  
Notary Public



**TRANSCRIBER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of September, 2019.



Jill Jacoby  
Certified Transcriber  
AAERT No. CERT\*\*D-633