

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE OF,)
)
JACOB DEAN STEWARD,) OTA NO. 18011990
)
)
 APPELLANT.)
)
)
 _____)

Transcript of Proceedings, taken at
355 S. Grand Ave. 23rd Floor, Los Angeles,
California, 91401, commencing at
10:45 a.m. and concluding at 11:20 a.m.
on Tuesday, September 17, 2019, reported
by Ernaly M. Alonzo, Hearing Reporter,
in and for the State of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Panel Lead: Hon. JEFF ANGEJA

Panel Members: Hon. LINDA CHENG
Hon. RICHARD TAY

For the Appellant: JACOB STEWARD
SEAN CASON

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION
By: KEVIN SMITH
MONICA SILVA
LISA RENATI

TAX COUNSEL
Legal Division
P.O. Box 1720
Rancho Cordova, CA 95741
916-845-2498

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

OPENING STATEMENT

| | <u>PAGE</u> |
|-------------|-------------|
| Mr. Steward | 9 |
| Mr. Smith | 21 |

E X H I B I T S

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

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

CLOSING STATEMENT

| | <u>PAGE</u> |
|-------------|-------------|
| Mr. Steward | 26 |

1 Los Angeles, California; Tuesday, September 17, 2019

2 10:45 a.m.

3

4 ADMINISTRATIVE LAW JUDGE ANGEJA: Good morning,
5 everyone. We're ready to go on the record.

6 We're now on the record in the Office of Tax
7 Appeals oral hearing for the appeal of Jacob Dean Steward,
8 Case ID is 1801 -- I've got it wrong already -- 18011990.
9 We're in Los Angeles, California. It's Tuesday,
10 September 17th, 2019. It's 10:45 a.m.

11 My name is Jeff Angeja. I'm the lead
12 Administrative Law Judge for the hearing. And my
13 co-panelists today are Linda Cheng to my left, and Richard
14 Tay to my right.

15 And Appellant, could you please identify
16 yourselves for the record?

17 MR. STEWARD: Yes. Good morning. My name is
18 Jacob Steward. I'm the Appellant, and my representative
19 is here with me, Sean Cason.

20 ADMINISTRATIVE LAW JUDGE ANGEJA: All right.
21 Thank you.

22 MR. STEWARD: He is not an attorney. He is my
23 domestic partner.

24 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. And for
25 CDTFA, please introduce yourselves.

1 MR. SMITH: Kevin Smith with the -- right here is
2 Monica Silva and Lisa Renati.

3 ADMINISTRATIVE LAW JUDGE ANGEJA: All right.
4 Thank you.

5 And this appeal involves two issues which are:
6 Whether Appellant's purchase and use of a recreational
7 vehicle in California is subject to use tax; and, whether
8 Appellant is entitled to an offset for excess tax
9 requirement.

10 During our prehearing conferences, the parties
11 agreed to the admission into evidence of Appellant's
12 Exhibit 1 and CDTFA's Exhibits A through P. Neither party
13 had any objection to the admission of those exhibits. Is
14 that still the case?

15 MR. SMITH: Correct.

16 ADMINISTRATIVE LAW JUDGE ANGEJA: No objections?

17 MR. SMITH: No objections.

18 MR. STEWARD: I do have an objection to the
19 repair orders that have been submitted by CDTFA, which we
20 noticed in our first pretrial conference that they are
21 incomplete. We submitted some that we found that they did
22 not submit at the beginning of the case. So I --

23 ADMINISTRATIVE LAW JUDGE ANGEJA: We have that as
24 your Exhibit 1, I believe; right?

25 MR. STEWARD: Correct. Yes.

1 ADMINISTRATIVE LAW JUDGE ANGEJA: So if yours is
2 the more complete set -- either way it will all come in,
3 but we'll make note that theirs may be an incomplete
4 record.

5 MR. SMITH: I guess my concern that I'd like to
6 stipulate is we can't validate their exhibits, everything
7 that's contained within that.

8 ADMINISTRATIVE LAW JUDGE ANGEJA: We'll note that
9 concern, and we'll take that into account when we review.

10 MR. STEWARD: Okay.

11 ADMINISTRATIVE LAW JUDGE ANGEJA: For purposes of
12 admitting it into the hearing record, I'll admit your
13 Exhibit 1 and their Exhibits A through P, and we'll weigh
14 it for what it's worth.

15 (Appellant's Exhibit 1 was received in
16 evidence by the administrative Law Judge.)

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

19 MR. STEWARD: Okay.

20 ADMINISTRATIVE LAW JUDGE ANGEJA: And based on
21 our prehearing conference, it's my understanding that both
22 of you will testify as witnesses today, which means I'll
23 swear you under oath.

24 MR. STEWARD: Okay.

25 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. So when

1 we get to that spot, I'll do that.

2 MR. STEWARD: Okay.

3 ADMINISTRATIVE LAW JUDGE ANGEJA: And CDTFA has
4 no witnesses. Is that still correct?

5 MR. SMITH: Correct.

6 ADMINISTRATIVE LAW JUDGE ANGEJA: All right. And
7 we agreed during our prehearing conference that we'll
8 begin with Appellant's testimony and argument, which
9 should not exceed 30 minutes. And CDTFA can ask questions
10 as can the judges. CDTFA will then make its presentation
11 not exceed 15 minutes, and Appellant can ask questions if
12 he wishes, as can the judges. And then we'll allow a
13 5-minute rebuttal just like you saw with the prior case.
14 So if there's no questions as to procedure, we'll get
15 started.

16 I'll swear you in if you would both please --
17 you're both going to testify or just one?

18 MR. STEWARD: Correct. We did request a witness.
19 He was able to make a statement as far as where the RV was
20 used. However, they were not added to the agenda, so we
21 didn't have them appear today.

22 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. And like
23 I said in the prehearing conference with an eye towards
24 the clock, redundant testimony is not going to help.

25 MR. STEWARD: Correct.

1 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. Both,
2 please stand and raise your right hands.

3

4

JACOB DEAN STEWARD,
5 produced as a witness, and having been first duly sworn by
6 the Administrative Law Judge, was examined and testified
7 as follows:

8

9

SEAN CASON,
10 produced as a witness, and having been first duly sworn by
11 the Administrative Law Judge, was examined and testified
12 as follows:

13

14

ADMINISTRATIVE LAW JUDGE ANGEJA: Thank you.
15 Please be seated. Please begin whenever you're ready. I
16 don't know who is going to go first, but we've sworn you
17 both in.

18

19

OPENING STATEMENT

20

21

22

23

24

25

MR. STEWARD: Well, this case goes back many,
many years as everyone in the room is aware. Our position
has been this. First of all, the RV was purchased for the
use in the State of Arizona, not California. We took
delivery of it in the State of Arizona. We rented an RV
space in the State of Arizona, Lake Havasu City to be

1 specific.

2 For whatever reason, the BOE, at the time,
3 requested proof that we were utilizing this in the State
4 of Arizona. We sent them that proof over the years, which
5 included a rental agreement for the space that was rented
6 or leased in the State of Arizona, fuel receipts, storage
7 receipts, etcetera. This did not -- this wasn't enough
8 proof to them. This didn't convince the BOE at the time
9 that this was utilized for that.

10 Somewhere along the line, the BOE took it upon
11 themselves to gather repair orders from Mike Thompson's RV
12 in the State of California for repair and service work for
13 the RV, without our knowledge, without our consent. And
14 as I stated earlier, these repair orders are very
15 incomplete. There's several visits missing. There is
16 inaccurate mileage logged by Mike Thompson's, as well as
17 repair orders from Redlands Truck.

18 So to explain, an RV has a chassis, and it has a
19 body. So whenever you have warranty work, you have to
20 take it sometimes to two different places. Which, we were
21 forced to do in this case. So the BOE gathers this as
22 their case, and says, "Hey, you owe this tax." But again,
23 very inclusive. A lot of stuff missing. A lot of gaps.

24 So we kind of go in and find repair orders that
25 we have that we have records of that were missing. And

1 we've been arguing this case for, I think, close to 7
2 years now. We've been resigned to different auditors,
3 different representatives, different everything. You
4 would submit your rebuttal or appeal, and you literally
5 won't hear anything back until six months later.

6 Anyway, that's besides the point. The next thing
7 that's very important is that we established that this was
8 used in the State of Arizona. The repair orders were for
9 warranty and service work. We've without a -- any doubt
10 whatsoever, that this was purchased for the State of
11 Arizona.

12 This particular RV was in the shop so many
13 times -- which are clearly evident by the repair orders in
14 front of everybody -- that the manufacturer voluntarily
15 decided, under the Song-Beverly Act, to repurchase the
16 motor home back, which is also known as the lemon law.

17 Under California law and the Lemon Law, sales tax
18 would be refunded to the purchaser. And we've established
19 this with the CDTFA. And we -- they refuse to even read
20 that law or acknowledge that. So we submitted proof, and
21 they contend that this --

22 I don't know why this keeps going off.

23 ADMINISTRATIVE LAW JUDGE ANGEJA: It seems as the
24 batteries wear, you have to talk directly into it.

25 MR. STEWARD: They contend that this unit was

1 traded in. They have nothing at all to support that,
2 including my letter from the manufacturer that says that
3 they are going to buy it back and replace it. We
4 submitted proof that sales tax was paid to the State of
5 Arizona.

6 We have established that there should be an
7 offset to that. And I should stipulate that the amount
8 that they're now saying is -- should be offset is
9 incorrect. Our records show a much higher amount than
10 that, closer to \$6,000, but we can get to that later. So,
11 again, going back to Song-Beverly Act and Lemon Law, this
12 unit that they are trying to tax us -- double tax us on
13 doesn't apply.

14 The sales tax, had it been paid to the State of
15 California would have been refunded. Sales tax was paid
16 on the replacement unit. We have established that by
17 their own audit, and I believe by order of the judge. So
18 you -- sales tax has been paid. There's no question about
19 that. What they're trying to assert is we should pay it
20 twice on a Lemon Law unit.

21 So, obviously, I don't agree with that, and
22 that's why we're here today. It's a matter of principle.
23 That's all I have.

24 MR. CASON: So just to reiterate and to clarify
25 the repair orders as we have noted and commented several

1 times over the last several years to the BOE regarding
2 those repair orders, they are inclusive in terms of their
3 content based on mileage in and out of the shop.

4 So Mike Thompson's RV has a habit, as we have
5 demonstrated and shown on those documents, that they do
6 the mileage check in as the same as the check out. So
7 there is misalignment there, and we demonstrated that on
8 those repair orders to show that's the case. So
9 originally -- and this probably goes back, I would say,
10 you know, 10 or 15 BOE representatives ago, because this
11 case has changed hands about 20 times with their group --
12 where we outline that and submitted that, again, to the
13 department for review. And, of course, I think they
14 misplaced those at some point when they changed the
15 representative again.

16 So we have provided that evidence several times,
17 but I just wanted to specify that on that mileage
18 clarification that that part of their argument does not
19 hold because the RV dealership doesn't accurately reflect
20 that on those repair orders consistently. Also, note we
21 did provide evidence that sales tax was paid to the State
22 of Arizona, which created an offset on the original
23 purchase.

24 So if you take that into consideration, we've
25 actually overpaid tax, right. We paid the \$6,000 to

1 Arizona. We've paid over \$8,000 to the State of
2 California. So we've actually overpaid, when you combine
3 all those two together, the taxes for this purchase, which
4 once again, goes counter to their argument. So I just
5 wanted to add that in as well.

6 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. Does
7 that conclude your presentation?

8 MR. STEWARD: Yes.

9 MR. CASON: Yes.

10 ADMINISTRATIVE LAW JUDGE ANGEJA: Quick question
11 for clarification. They've conceded -- I have it in my
12 notes. I don't have it in front of me -- tax was paid to
13 Arizona in the amount of, I believe it was 48 --

14 MR. SMITH: Yeah, \$4,875.22.

15 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. Do you
16 have -- you were going to try and find the canceled check.

17 MR. STEWARD: Correct. So I have the check stub
18 but not the canceled check. And since this goes back to
19 2010, which the check was written December 1st, 2010 for
20 \$6,925.04. In the great State of Arizona -- and I am a
21 citizen of California -- only \$8 of that is registration,
22 the rest is tax, \$1.50 acquisition fee, \$2.49 for PST, and
23 \$4 for title.

24 So roughly close to that \$6,900 that I gave you
25 is all tax, and I thought I submitted this. It breaks it

1 down on the right-hand side: Vehicle license tax, DOR,
2 and it says what these fees are for basically. So like I
3 said that \$4,800 is low.

4 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. Will you
5 guys address that in your presentation?

6 MR. SMITH: We can do it right now.

7 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. Go
8 ahead.

9 MR. SMITH: The VLT, the vehicle licensing,
10 that's a licensing fee, essentially, the registration fee
11 to Arizona. We don't give a credit for that. What we
12 give a credit for is an amount paid to the Department of
13 Revenue in Arizona. That would be the \$4,875.22. So I
14 think that's where the discrepancy is coming from.

15 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

16 MR. STEWARD: Okay. And I agree on those
17 amounts, but I don't know who the decision maker is in
18 deciding what is applicable to tax and what is not.

19 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. I think
20 I've seen that document. So we'll be able to -- I just
21 want to make that clear.

22 MR. STEWARD: Okay.

23 ADMINISTRATIVE LAW JUDGE ANGEJA: And then my
24 understanding is this is a petition for redetermination,
25 not a claim for refund. So you haven't paid the tax yet.

1 I realize they've assessed it or propose to assess it. So
2 the argument about double taxation is true, if they
3 prevail and collect it. But you haven't paid yet?

4 MR. STEWARD: No. We have paid sales tax, both
5 on the 2010, the original unit. Sales tax was paid not to
6 the State of California because we didn't purchase it for
7 the use in the State of California.

8 ADMINISTRATIVE LAW JUDGE ANGEJA: The seller paid
9 that. They've stipulated that the seller paid -- not on
10 the 2010 -- on the 2013.

11 MR. STEWARD: The 2013, the manufacturer
12 Fleetwood --

13 ADMINISTRATIVE LAW JUDGE ANGEJA: Right. But for
14 the 2010, nobody paid tax yet because it was delivered out
15 of state. It was an interstate commerce sale, and you
16 signed the 44744.

17 MR. STEWARD: Correct. That's -- that's what
18 they're wanting.

19 ADMINISTRATIVE LAW JUDGE ANGEJA: Right. But
20 your statement was that you had paid the tax. I just want
21 to clarify. To my knowledge, it hasn't been paid.

22 MR. CASON: Yeah. I'm sorry. So let me just
23 clarify that. So the State is arguing that they are going
24 to credit \$4,875 to what they think we owe the State of
25 California.

1 ADMINISTRATIVE LAW JUDGE ANGEJA: Yes. And if
2 they collected -- your argument is --

3 MR. CASON: Correct. Exactly. So I just wanted
4 to -- yeah.

5 MR. STEWARD: And to --

6 MR. CASON: Go ahead.

7 MR. STEWARD: And to go back to your -- to his
8 point as far as us paying, we would be owed a refund. Had
9 this followed the normal statute of limitations, as far as
10 a two to four year process depending on precedent and the
11 case, we could have applied for a refund from the State of
12 Arizona to get that money back. But, unfortunately, this
13 has been dragging out so -- if I go to Arizona right now
14 and say, "Hey, would you give us this money back? This
15 was, you know, a lemon," I'm sure they would laugh at us.

16 But that's not your guys' problem. I understand
17 that.

18 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. All
19 right. That clarifies my confusion. Questions from the
20 judges?

21 ADMINISTRATIVE LAW JUDGE CHENG: Actually, I do
22 have a question. For the Appellant, you said that --
23 sorry. So you said --

24 MR. STEWARD: I can hear you fine, so you don't
25 have to use the mic.

1 ADMINISTRATIVE LAW JUDGE CHENG: Okay. So you
2 said that the repair orders from CDTFA are inaccurate and
3 inconclusive. What's your position on that as to mileage?
4 According to your documents, is mileage higher or lower,
5 and how does it affect your position?

6 MR. STEWARD: So they establish -- sorry. They
7 tried to establish that this was not used in the State of
8 Arizona by coming up with mileage calculations. And I
9 can't say they because we've been through so many
10 different people. In fact, one of my question was -- for
11 them directly, is: Have they analyzed what they
12 submitted; and do they come to the same conclusion; and
13 also, with the additional repair orders that we provided
14 that were conveniently missing when they submitted this
15 case many years ago.

16 So I could not under oath tell you that I could
17 form any solid opinion because of what my partner said is
18 the first problem. Mike Thompson's, they're relying on
19 the dealer and the mileage that they log on the repair
20 order to make that conclusion. They are also relying on
21 repair orders they had because they went and somehow got
22 access to these. We still don't know that.

23 It's probably irrelevant, but it's important to
24 bring light to it. It's not as if they came to us and
25 said, "Hey, we think there's a problem here. Provide us

1 with some sort of proof." That's not how this worked. So
2 to say I don't know how they came up with the mileage
3 calculation, and it's being Mike Thompson's, again, will
4 say, "Hey, the unit came in with 2,500 miles, and it left
5 two weeks later with 2,500 miles."

6 And the repair order will stipulate that they
7 test drove the vehicle. It doesn't make sense. So it
8 really degrades the integrity of that repair order, which
9 is the whole basis that they're relying their first issue
10 on. I don't know if that answers your question.

11 MR. CASON: So just to clarify, back several
12 years ago, one of the claims that BOE made was that based
13 on the repair orders, right, the RV spent more time in
14 California for use than it did in Arizona, right. So the
15 reason it was in California, and it was in California for
16 a significant amount of time that first year, was because
17 of all the defective issues with that unit.

18 So the repair orders were used to back up our
19 claim that the reason the RV spent so much time back in
20 California. So Arizona -- lake Havasu does not have RV
21 repair place for warranty work, so just to state that. So
22 it had to be brought back to California to Mike Thompson's
23 where we purchased it for the warranty covered work.

24 MR. STEWARD: And Redlands Truck.

25 MR. CASON: SO it spent a significant time in

1 California for those repairs. I mean, you know, I don't
2 remember how many days it was, but it was significant when
3 you add it all up. So their contention was the repair
4 orders do not match that exact time that you're stating
5 this unit had to be back in California for repairs based
6 on the mileage of driving from Arizona, from Lake Havasu
7 to Mike Thompson's. So the problem with that is one,
8 their repair order history was incomplete, even though we
9 provided them with everything, including the Redlands
10 Truck invoices several times by the way.

11 The other problem is the mileage that was
12 reported on those repair orders by Mike Thompson's and
13 Redlands Truck was not accurate, right. They just took a
14 standard. It's got 2,500 miles on it and they would just
15 use that as the standard on the repair orders, check in
16 and check out. So there was -- there was misalignment
17 with the mileage between driving to Lake Havasu to Mike
18 Thompson's, right.

19 So they were using that as their contention that
20 this vehicle was purchased, really, for use in California
21 and not Arizona, right. So that's -- that's where I was
22 trying to provide some clarification on that.

23 ADMINISTRATIVE LAW JUDGE CHENG: Okay. Thank
24 you.

25 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. CDTF,

1 go ahead.

2 MR. SMITH: Thank you.

3

4 OPENING STATEMENT

5 MR. SMITH: This appeal should be denied of
6 Appellant's purchase and use of the 2010 Boulder RV in
7 California as subject to use tax. Additionally, there's
8 no legal basis for an offset for any tax paid by the RV
9 dealer when furnished Appellant with a replacement RV.

10 Turning first to Appellant's use of the RV in
11 California. For purchases of vehicles, Revenue and
12 Taxation Code 6248(a) establishes a 12-month test for
13 determining whether a vehicle was purchased for use in
14 California, unless it is subject to use tax. Under that
15 test, it was rebuttably (sic) presumed that a vehicle
16 purchased and first functionally used outside of
17 California but brought into California within 12 months of
18 the date of purchase, was required for storage use or
19 other consumption in California, and is subject to use
20 tax, if the vehicle was purchased by California resident,
21 as defined in section 516 of the Vehicle Code.

22 Here it is undisputed that Appellant was a
23 California resident at the time of the purchase of the
24 2010 Boulder RV motor home. A presumption of the vehicle
25 was, purchased for use in California, may be rebutted by

1 documentary evidence that the vehicle was purchased for
2 use outside of California during the first 12 months of
3 ownership.

4 This evidence may include, but is not limited to,
5 documentary evidence that the vehicle was brought into the
6 state for the exclusive purpose of warranty repair or
7 service and was used or stored in the state for that
8 purpose for 30 days or less. So here we're focussing on
9 number of days that it was in the state, not the mileage.

10 The 30-day period begins when the vehicle enters
11 a state, included any time of travel to and from the
12 warranty or repair facility, and ends when the vehicle is
13 returned to a point outside the state. Here, there's no
14 dispute that the evidence shows that the Appellant took
15 possession of the RV outside of California and first
16 functional use of the vehicle outside of California.

17 There's also no dispute that the evidence shows
18 that the Appellant drove the motor home back into
19 California on January 7th, 2011, which was within 12
20 months of the purchase date of November 30, 2010. Because
21 Appellant was a California resident at the time of
22 purchase, an RV was brought back into California within 12
23 months of its purchase. There is a rebuttable presumption
24 that the RV was purchased for use in California.

25 If the RV had entered California solely for

1 qualifying repair service, and if the RV's presence in
2 California for that purpose did not exceed 30 days during
3 the applicable period, then Appellant would be regarded as
4 having -- would not be regarded as having purchased the
5 motor home for use in California.

6 But here, based on the service records provided
7 in our Exhibit L, the RV was in California for at least
8 115 days. Furthermore, according to the Appellant's
9 handwritten notation on Exhibit N, the RV was in
10 California from March 28th, 2011, until May 24th, 2011,
11 which was an additional 57 days in California. Therefore,
12 the evidence establishes that the RV was in California for
13 at least 172 days in the 12-month period following the
14 purchase date.

15 Although, Appellant states that the sole purpose
16 for these trips purpose was for service and/or repairs,
17 Regulation 1620(e)(5)(a)(1), only allows purchasers to
18 bring a vehicle into California for repairs for up to 30
19 days. Appellant has exceeded this amount and, therefore,
20 he is presumed to have purchased the RV for use in
21 California and use tax is owed.

22 Now, let's turn to the second issue; whether an
23 offset for excess tax reimbursement should be paid to
24 Appellant's use tax liability because the RV dealer
25 remitted sales tax to CDTFA when it furnished Appellant

1 with a replacement RV, so the 2013 RV.

2 Regulation 1700 does not provide for an offset if
3 a taxpayer has collected excess -- I'm sorry.

4 Regulation 1700 does provide for an offset if a
5 taxpayer who has collected excess tax reimbursement on a
6 transaction fails or refuses refund of the excess tax
7 collected to the customer who paid it. The excess tax
8 reimbursement can be offset against any tax liability to
9 the taxpayer on the same transaction. Such offsets can
10 only be made on transaction by transaction basis, and that
11 the excess tax reimbursement collected on specific
12 transaction can only be used to satisfy tax liability
13 arising from the same transaction.

14 Regulation 1700 goes on to state that the same
15 transaction means all activities involved in an
16 acquisition and disposition of the same property. The
17 facts of this case do not allow for an offset under
18 Regulation 1700 for several reasons. First, Regulation
19 1700 requires that a taxpayer collect excess tax
20 reimbursement.

21 Here, there's no evidence that Appellant paid any
22 tax reimbursement to the RV dealer. The RV dealer paid
23 the tax without collecting any tax reimbursement,
24 therefore, Regulation 1700 cannot apply. Second, even
25 assuming for argument's sake, there was excess tax

1 reimbursement collected by the RV dealer. Regulation 1700
2 requires that the offset be made on the same transaction.

3 Here, there are two separate transactions. The
4 first was the sale of a 2010 RV, and the second, the sale
5 of a 2013 RV. Further, even if we accept that this was
6 still all one transaction, the transactions did not
7 involve the same property. Again, one was a 2010 RV and
8 the other a 2013 RV. Therefore, an offset is not allowed.

9 Additionally, Regulation 1700 allows the offset
10 for tax liability for the taxpayer. In this case, the RV
11 dealer, not the liability of the customer, in this case,
12 Appellant. There is no offset allowed, and the Appellant
13 still owes use tax for the use of the 2010 RV in
14 California. Appellant is not being asked to pay tax
15 twice. Appellant has never paid tax even once. Appellant
16 purchased an RV in 2010, used it inside California and
17 paid no tax on that use. Appellant then obtained a
18 replacement, a 2013 RV, and paid no tax on that purchase.

19 And then we note, after receiving Appellant's
20 exhibits, that we had provided a credit to Appellant's
21 liability for the tax Appellant paid to Arizona. The
22 document Appellant submitted as Exhibit E established that
23 Appellant paid tax in the amount of \$4,875.22 to Arizona.
24 That tax payment reduces Appellant's tax liability from
25 \$8,878.35 to \$4,003.13. Subject to this adjustment, this

1 appeal should be denied.

2 Thank you.

3 ADMINISTRATIVE LAW JUDGE ANGEJA: All right. I
4 will have questions. I think I want to hold them until
5 the end. I'll give you the chance to rebut, and then I
6 will --

7

8 CLOSING STATEMENT

9 MR. STEWARD: Okay. So, again, they are
10 stipulating that I purchased an RV that I could have in
11 the repair shop for how many days? This is what baffles
12 me is that they say I bought this RV for use in
13 California. But yet, their sole evidence and my
14 documentation shows that RV was in the shop almost all the
15 time. This is what baffles me and frustrates me.

16 There's no question that the RV was purchased and
17 taken to a resort in California, and it utilized -- no.
18 I'm trying to make a point here. Anyway, so the fact that
19 it was here over 30 days, and there is also a period that
20 it was at Mike Thompson's for a long time. That's when
21 Fleetwood said, "Look, this thing is a hunk of junk.
22 It's -- we're going to go ahead and Lemon Law this and buy
23 it back."

24 So they held on to it for quite a long time while
25 we waited for the replacement unit. I cannot emphasize

1 that enough, replacement unit. Now, I don't know what's
2 any different, and this goes back to the other -- the
3 argument as far as who paid tax or what. Tax is due on
4 the actual merchandise. The -- this is called sales tax.
5 You're paying tax on an item that you purchased. Who pays
6 it? What individual? I'm not going to get into that
7 technicalities.

8 But, for instance, BMW repurchased -- and I know
9 this isn't part of this case -- repurchased my vehicle
10 under Lemon Law in the State of California. So there's a
11 process that happens with -- for the sales tax that was
12 paid by me when I initially purchased or leased that
13 vehicle. And in turn when they replaced the vehicle, in
14 this case a separate unit, it's called the Song-Beverly
15 Act. And I have asked repeatedly that these three people
16 to my left, on the telephone, that they review that
17 information. And they have flat-out refused because it
18 spells out pretty clearly in this process.

19 So that's what I have in rebuttal.

20 MR. CASON: I would just like to quickly add.
21 First of all, it's interesting that CDTFA just indicated
22 that there was a replacement unit. I don't know if you
23 caught that, but he specifically state, "On the
24 replacement unit."

25 So in terms of a 2010 versus a 2013, I don't

1 understand the relevance there because that is simply a
2 matter of when the unit was replaced. In 2013, Fleetwood
3 no longer made a 2010. If they did, they would have
4 replaced it with another 2010. So I'm a little confused
5 about that.

6 The other thing is, how am I supposed to hold a
7 manufacturer to 30 days for repairs? I don't know how to
8 do that, quite honestly. Not to mention, this had to go
9 to two different shops for several different issues. So
10 I'm not sure 30 days comes into that. The other
11 interesting thing is they're actually using the repair
12 orders as their justification for us, saying we used the
13 motor home in California, which I also think -- excuse
14 me -- which I also feel is very ironic in this process,
15 right.

16 If those repair orders didn't exist, the only
17 thing they would have to go on is our receipts from the
18 resort in Arizona where the RV stayed, which we have
19 provided. So I find it interesting that outside of those
20 repair orders, the record completely shows that the RV was
21 used in Arizona. So once again, I don't understand how
22 I -- how we are to be held to a 30-day count by a
23 manufacturer, by a repair shop, by a dealership?

24 And I can't tell you and -- and, you know, we've
25 been sworn in here. We did not camp at Mike Thompson's

1 RV. We never once had our chairs out there with our
2 awning out watching TV in the repair shop at Mike
3 Thompson's RV. Just so you know, that we never camped
4 there. We never had our friends there. We never, you
5 know, had camp fires and cook outs at Mike Thompson's. So
6 I just wanted to make those two clear -- clarifications.

7 Thank you.

8 MR. STEWARD: I have one last thing. Just one
9 last thing in closing. Again, the 2010 RV that the State
10 of California or CDTFAs wants taxes paid on, we do not have
11 anymore. The manufacturer has taken that away from us
12 because it was a lemon. We do not have it. We do not
13 have possession of it. They replaced it with a 2013.

14 That's all I have to say.

15 ADMINISTRATIVE LAW JUDGE ANGEJA: Thank you.

16 All right. So I have some questions. For CDTFAs,
17 do you concede that the 2013 was a warranty replacement
18 for the 2010?

19 MR. SMITH: Yes, we do.

20 ADMINISTRATIVE LAW JUDGE ANGEJA: So under
21 warranty?

22 MR. SMITH: Right.

23 ADMINISTRATIVE LAW JUDGE ANGEJA: And it doesn't
24 have to have been a Lemon Law because --

25 MR. SMITH: Right.

1 ADMINISTRATIVE LAW JUDGE ANGEJA: -- I realize
2 there is criteria for that?

3 MR. SMITH: Right.

4 ADMINISTRATIVE LAW JUDGE ANGEJA: All right. And
5 we've conceded that the seller paid tax -- sales tax on
6 that replacement transaction?

7 MR. SMITH: I think that's right. I think they
8 said the manufacturer paid the sales tax.

9 ADMINISTRATIVE LAW JUDGE ANGEJA: The seller. I
10 think it was Mike --

11 MR. STEWARD: Fleetwood RV.

12 ADMINISTRATIVE LAW JUDGE ANGEJA: Fleetwood RV.
13 Sorry. Exhibit P shows that that's the seller. I'm
14 trying to keep names out of this and not divulge other
15 people's confidential tax information. But Exhibit P is
16 the purchase order. It shows tax paid and it says the
17 seller. So I'm referring to it as the seller. So, I
18 guess, my firs -- it's a legal question.

19 Is not the provision of property pursuant to a
20 mandatory warranty, isn't that part of the same
21 transaction? Tax was not due on the transfer of the
22 replacement vehicle.

23 MR. SMITH: We don't see it as the same
24 transaction because, again, these are two different. One
25 was a purchase -- the initial purchase in 2010 of an RV

1 with a use tax transaction. The second was a sales tax
2 transaction in 2013. So we don't see them as the same
3 transaction. But even if we did, again, this regulation
4 specifies it has to be the same property. And, again,
5 this is not the same property.

6 ADMINISTRATIVE LAW JUDGE ANGEJA: Right. So let
7 me put it differently. I go to Home Depot -- and this is
8 not new. I said this over the phone in our prehearing
9 conferences. I buy a refrigerator from Home Depot. It
10 comes with a one-year mandatory warranty. I can't get the
11 fridge without paying for that warranty, one-year free
12 replacement. Six months in they can't fix it.

13 They come and deliver a new refrigerator and take
14 away the old one. They're not charging me for another
15 one, right. Now, in my hypo, tax was paid on the first
16 one, but it's not a separate transaction. It's still the
17 disposition or acquisition of that same refrigerator. Is
18 it not? The first one was defective. They replace it
19 under warranty. That second transaction is not a taxable
20 sale. It's not a sale -- it's not a sale at all. It's
21 sold with the first refrigerator.

22 So how is the RV any different? Other than the
23 passage of three years, but it was still replaced under
24 warranty.

25 MS. SILVA: Based on that -- under that scenario,

1 we would agree that the second transaction is not a
2 taxable transaction. So in this case, although, the RV
3 dealer paid the tax, it was not a taxable transaction.
4 It's up to the seller to file a claim for refund for that
5 amount. So I don't know that we're in a disagreement with
6 you as far as the replacement under warranty.

7 ADMINISTRATIVE LAW JUDGE ANGEJA: Well, his
8 answer was -- I'm not trying to be argumentative. So I
9 apologize. Just that his argument was that they're two
10 separate pieces of property, but it's the disposition of
11 the first that results in the provision of the transfer --
12 of the replacement RV. It's still part of the same
13 transaction so far as I can see.

14 It's not as if there was a credit allowed for a
15 trade in. I'm looking at Exhibit P. It says NA for
16 interest payments, the number of payments, the interest
17 rate for the trade in allowance. I mean, it looks to be a
18 warranty replacement.

19 MS. SILVA: But I think that there's a difference
20 between the 1700 same transaction and the replacement
21 under the mandatory warranty. So I think it's kind of
22 comparing apples to oranges. We've agreed with you that
23 the warranty replacement, there was no sales tax on the
24 second transaction. But under 1700, when you're looking
25 at an offset for excess tax reimbursement, I think you do

1 have to have the same transaction.

2 It's often where a seller has charged excess tax
3 reimbursement sales tax, and they should have paid use
4 tax, so they haven't -- they charge tax on something they
5 should not have taxed. Now, they have excess tax
6 reimbursement and they owe on their use tax transaction.
7 So 1700 allows for that taxpayer to take an offset on the
8 excess tax reimbursement they collected on nontaxable
9 transaction.

10 So I think they're separate sections. And the
11 1700 offset we're arguing does not apply here. And I
12 would agree with you that the 1655, replacement under
13 warranty, is applicable in the sense that the second
14 transaction was not taxable. In this case, the RV seller
15 need not have pay sales tax. And while it appears that
16 they did, it would be for them to file a claim for refund.

17 The bottom line is there was never use tax paid
18 on the first transaction, and that's the issue. Was use
19 tax paid?

20 ADMINISTRATIVE LAW JUDGE ANGEJA: And then does
21 CDTFA have a response to the argument that it's
22 essentially a windfall to the State? You've collected
23 twice, one on a nontaxable transaction, and the other one
24 on an arguably -- assuming the first issue we define it as
25 a purchase for use in the state -- you collect tax twice.

1 MR. SMITH: We don't see it as collecting tax
2 twice because they're, again, two different transactions.
3 The 2010 is a use tax transaction. They said it was going
4 to be used outside of the state. It was not used outside
5 of the state. It was used in California. You owe tax on
6 that use. And the 2013 was a sales tax transaction.
7 Taxes are due on that one as well.

8 I think it would be more inequitable to not make
9 a person -- the purchase of a vehicle pay tax. I mean,
10 everybody that drives a car in California -- everybody
11 here that has purchased a car has to pay tax on it. They
12 cannot pay tax on any -- on either vehicle just doesn't
13 seem fair. That's where we're going.

14 ADMINISTRATIVE LAW JUDGE ANGEJA: Which would
15 have happened if he had left it outside the state for 1
16 year or for 12 -- yeah, 12 months and one day, right?

17 MR. SMITH: Right. But he didn't so.

18 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. I don't
19 have any other questions. I'll ask my colleagues if they
20 do.

21 ADMINISTRATIVE LAW JUDGE CHENG: No questions.

22 ADMINISTRATIVE LAW JUDGE ANGEJA: All right. We
23 have a legal -- factual and legal case to resolve. So if
24 there's no additional question or evidence, I'll close the
25 record at this point and conclude the hearing.

1 I want to thank each party for coming here today
2 and fighting the traffic. Following this hearing, my
3 co-panelists and I will discuss the evidence and argument,
4 and we'll issue a written opinion within 100 days. I
5 think that'll do it.

6 This hearing is now closed. Thank you.

7 (Proceedings adjourned at 11:20 a.m.)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING REPORTER'S CERTIFICATE

I, Ernalyne 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 7th day of October, 2019.

ERNALYN M. ALONZO
HEARING REPORTER