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APPEARANCES:

Panel Lead: ALJ DANIEL CHO

Panel Members: ALJ JOSHUA ALDRICH
ALJ ANDREW WONG

For the Appellant: DAVID PARKER
ELAINE SERRAO

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION
By: RANDOLPH SUAZO
JASON PARKER
KEVIN SMITH

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I N D E X

E X H I B I T S

(Appellant's Exhibits A-E were received at page 6.)

(Department's Exhibits 1-6 were received at page 6.)

APPELLANT'S
WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

David Parker

7

PRESENTATION

PAGE

By Ms. Serrao

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By Mr. Suazo

20

CLOSING STATEMENT

PAGE

By Ms. Serrao

27

1 Cerritos, California; Thursday, July 23, 2020

2 10:04 a.m.

3

4 THE COURT: This is the appeal of Auto Cellular
5 Systems, Inc., OTA Case Number 18063345. Today is July
6 23rd, 2020, and the time is approximately 10:04 a.m.

7 This hearing was originally scheduled for
8 Cerritos, California. However, due to the ongoing health
9 concern, we're holding this hearing electronically with
10 the agreement of all the parties.

11 My name is Daniel Cho, and I will be the lead
12 administrative law judge for this appeal. With me are
13 Administrative Law Judges Andrew Wong, and Josh Aldrich.

14 Can the parties please introduce and identify
15 yourselves for the record, beginning with Appellant.

16 MS. SERRAO: Good morning, Your Honor. This is
17 Elaine Serrao representing the Appellant, Auto Cellular
18 Systems. And on the phone is Mr. Dave Parker, a witness
19 in this matter.

20 JUDGE CHO: Thank you very much.

21 Department.

22 MR. SUAZO: This is Randy Suazo, Hearing
23 Representative.

24 MR. JASON PARKER: This is Jason Parker, Hearing
25 Representative.

1 MR. SMITH: This is Kevin Smith from the CDTFA
2 Legal Department.

3 JUDGE CHO: Thank you very much.

4 The issue in this appeal is whether any
5 additional adjustments are warranted to the determined
6 measure of tax.

7 With respect to evidentiary record, CDTFA has
8 provided Exhibits A through E, and Appellant did not
9 object to these exhibits. Therefore, these exhibits are
10 entered into the evidentiary record.

11 (Appellant's Exhibits A-E were received
12 in evidence by the Administrative Law Judge.)

13 Appellant has submitted Exhibits 1 through 6.
14 CDTFA has not objected to these exhibits, therefore, these
15 exhibits are entered into the evidentiary record as well.

16 (Department's Exhibits 1-6 were received in
17 evidence by the Administrative Law Judge.)

18 With that background, we're ready to go into
19 witness testimony. Before we have the testimony begin,
20 may I please have Mr. Parker -- I see you're on the phone.
21 Would you mind raising your right hand. I'm just going to
22 swear you in due to our regulations.

23 MR. DAVID PARKER: Proceed.

24 THE COURT: All right. Thank you.

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DAVID PARKER,

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

THE COURT: Thank you very much.

Ms. Serrao, you may begin your examination of the witness.

DIRECT EXAMINATION

BY MS. SERRAO:

Q Good morning. Can you please state your name for the record?

A My name is David Parker.

Q And we're here today with respect to Auto Cellular Systems. Are you familiar with that entity?

A Yes.

Q And in what capacity, sir?

A I serve as the secretary of the corporation, and that's my official designation.

Q Were you an owner of the corporation as well?

A The corporation was a minority-owned corporation. I was a 30 percent owner and investor.

Q And what type of business was Auto Cellular Systems?

1 A Auto Cellular Systems was at one time largest
2 retail sales outlet for Verizon Wireless.

3 Q How many locations approximately?

4 A At the peak -- at the peak there were over 30,
5 from what I remember.

6 Q And where were they located?

7 A The stores were located across Southern
8 California reaching as far north as Ventura, as far south
9 as San Clemente, as far as inland as -- I want to say
10 Chico -- or Chino, not Chico. Sorry.

11 Q And when was the business founded?

12 A The business was founded in 1989, and the
13 business was subsequently sold in December of 2013. It
14 was sold to a national franchise.

15 Q So based on those years, had a 24-year history
16 then?

17 A Yes. Yeah. Very, very successful chain of
18 Verizon outlets.

19 Q During this 24 years, was the Appellant's
20 business subject to sales tax audits?

21 A Yes. Again, I'm an investor, so I have limited
22 knowledge. But the sales tax audits were performed
23 regularly, I believe every three years, and they went
24 through with stellar results. Never had an issue. Never
25 had a problem.

1 Q So a no-change then?

2 A No-change, correct.

3 Q And do you know in the approximate 24 years that
4 business was in operation, by that math, every three
5 years -- an audit every three years, approximately eight
6 audits were conducted during ACS' lifespan?

7 A That's, as I recall.

8 Q Would you agree?

9 A Yes. I would agree, yes.

10 Q And no-changes on those, notwithstanding the
11 incident audit?

12 A Correct. There was no-changes.

13 Q I want to turn to the final transactions that the
14 Appellant's business engaged in. During the audit period,
15 did the Appellant's business cellular phones and something
16 known as bundled transactions?

17 A Yes. The industry did bundled transactions
18 regularly, and that's why a \$500 phone might cost the
19 customer \$100 when they went to buy it, because they would
20 sign up for the contract and the carrier -- the carrier at
21 the end was Verizon. In the beginning, I don't know if
22 you remember, but it was PacTel and then it was AirTouch,
23 but in the end it was Verizon. And they would pay a
24 commission which would offset the cost of the phone so
25 long as the subscriber stayed as a Verizon customer for

1 the set amount of time, either a year or two years.

2 Q So there was a reduction in the retail price of
3 the phone for the customer with this bundled transaction?

4 A Correct. We would offset the sale price of the
5 phone taking into account the money received from Verizon
6 to get the phone to the consumer for less money, much
7 cheaper. I think everyone is aware of how they work
8 because everyone hates those contracts. So --

9 Q And how did the Appellant's business collect
10 sales tax on those bundled transactions?

11 A So there was a formula, and I don't have the
12 exact amount. But, basically, if a \$500 phone was -- a
13 retail value of the phone was \$500, and it was sold for a
14 \$100, they would collect tax on the \$500 retail value of
15 the phone. So, again, a \$500, you know, iPhone was sold
16 for \$400, they would charge sales tax on the full \$500.

17 Now, Auto Cellular Systems had a policy that they
18 added a fudge factor just in case the retail value varied.
19 And the retail value varied on the phones from month to
20 month because there were sale spiffs on them. There are
21 sales goals, sales quotas. There's advertising discounts.
22 There's advertising commissions. So Auto Cellular's
23 policy was to use the retail price of and add a slight
24 margin of, say, 15 percent.

25 So they would actually charge sales tax as if the

1 phone was a retail value of, say, \$575 dollars, and charge
2 tax on that amount. So the sales tax at a 9 percent rate
3 on the \$575 sale would be in the area of \$50. So we would
4 collect \$100 from the customer plus the \$50 in sales tax.

5 Q Okay. Did all of ACS's 30-plus locations collect
6 sales tax in this manner?

7 A Yes. Correct. And that was the standard, and
8 that was what we were advised to do several times. So
9 that's how it was handled. And then the sales tax
10 collected on those phones, again, was at every location
11 and every retail sale.

12 Q To your knowledge, did ACS ever deviate from this
13 policy?

14 A No. That was the policy.

15 Q And was sales tax always reported in connection,
16 you know, in connection with this policy?

17 A Yeah. Sales tax was recorded at the point of
18 sale. It was shown on the customer's receipt, and it
19 was -- it was -- it flowed through the computer programs.
20 We had one computer program, we switched to a newer one
21 called Retail iQ at some point. But it was tracked, and
22 those reports were printed out. And I think those are in
23 evidence, those Retail iQ reports. I can't recall.

24 So but doing this on Zoom is difficult because
25 they don't have access to all that. So -- but, yes. We

1 never deviated from that. That was the standard.

2 Q And I want to turn to the bad debts and
3 charge-backs issue. So the bundled transaction was sold
4 in conjunction with service contracts; correct?

5 A Correct.

6 Q And what happens if that the service contract is
7 cancelled?

8 A If the service contract was cancelled within a
9 certain time, and the cancellation would be by the
10 customer, either the customer would no longer want the
11 phone, they wouldn't pay the bill, they would call Verizon
12 and cancel the service for a number of reasons. Then of
13 that \$500 phone that we sold, the \$400 commission from
14 Verizon was then charged back to us.

15 So, again, we sold to a customer for \$500 -- we
16 sold them a \$500 phone. We collected \$100 from the
17 customer, and we collected \$400 from Verizon. If the
18 customer did not stay on a set length of time -- and it
19 varied, I believe -- Verizon would charge us back or
20 deduct that commission from us, from our monthly stipend.
21 So now we have a phone that cost \$500, and we only
22 collected \$100 for it. So that \$400 then became bad debt
23 or charge back.

24 Now, to continue that, the challenge is when
25 Verizon did that then we had to unwind the sale. And then

1 that customer was supposed either write us a check for the
2 \$400 or return the phone. And we had contracts from them
3 so stating that they would do so. Maybe 5 to 10 percent
4 of the people did that, either paid us off or returned the
5 phone.

6 So on 90 percent of the charge backs, we incurred
7 bad debt. So we incurred the bad debt once from Verizon,
8 and then second when the customer didn't pay us or didn't
9 return the phone. And then of course we had other bad
10 debt, normal business bad debt where customers didn't pay
11 us. But, you know, that's pretty standard.

12 So there was three sources of bad debt: The
13 charge backs; the customers that didn't return the phone
14 or didn't pay us to reimburse us for the commission; or
15 normal business bad debt.

16 Q And were cancellations by customers normal in
17 your industry?

18 A They were very regular. They were operated --
19 probably of our sales, they were in the 5 percent of our
20 sales range got returned or cancelled for some reason. So
21 we carried bad debt. I think when we sold the business in
22 2013, we had over a million dollars in collections on
23 these types of bad debts that we accumulated over the
24 years.

25 We were selling thousands of phones a month, you

1 might guess, with 30 -- with some 20 to 30 stores. So we
2 had a lot of charge backs. We sold a lot of phones, and
3 we had a lot of charge backs. If you go in, if you take
4 this a step further -- because I'm sure you're going to
5 ask this next -- once that deal unwound, then that sale
6 was cancelled. The sales tax then did not become due.
7 There was none due.

8 So we -- it was no longer a sale because the sale
9 was cancelled and terminated. So we now have a charge
10 back that we have in our books, but we also have a sale
11 that's cancelled. And a lot of those charge backs hit --
12 don't necessarily go through the computer. So they become
13 bad debt in a different way. So I think the biggest
14 problem we have now is showing that we have charge backs
15 and the bad debt, but the sales tax on the bad debt was
16 written off.

17 That's what I think the challenge is that we're
18 having with this audit. This is why we fought it for six
19 years because there was a legitimate loss there where
20 sales tax was no longer due that we didn't get credit for
21 this audit.

22 Q And it was always the policy of ACS to report the
23 bad debt in this matter?

24 A Well, the charge backs were immediately reported
25 on the computer because Verizon's computer would talk to

1 our computer, and they would deduct it automatically. But
2 we carried the bad debt on the company books. And the
3 process for eliminating those sales tax due on those
4 unwound transactions as never tracked well or clear.

5 And I think, again, as I've told the auditor when
6 we first met, that's where, I think, a lot of the source
7 of this challenge has come from; is that we would have to
8 just take -- deduct bad debt and deduct our estimate of
9 corresponding sales tax on that bad debt.

10 Q Is there anything further you would like to add,
11 Mr. Parker?

12 A No. You can come back to me if you think of
13 something else, but I think that's pretty much what we
14 told the auditors the first two or three times we met with
15 them, and that's why we're here. Because it's still not
16 understood. It's very complicated. I understand that,
17 but it's still how we did business and how we did business
18 for 25 years. And this is the first time we got hit with
19 it.

20 And, again, we sold the business in 2013. It's
21 2020, and we're still dealing with this and accruing
22 interest and penalties. And it's just, you know, it's
23 just not -- we haven't been treated well for the millions
24 and millions of dollars we generated in sales tax. It's
25 just -- it's not warranted.

1 MS. SERRAO: Okay. And with that, my questioning
2 is finished.

3 JUDGE CHO: This is judge Cho. Thank you very
4 much.

5 Department, do you have any questions for the
6 witness?

7 MR. SUAZO: This is Randy Suazo. No, Your Honor.

8 JUDGE CHO: Thank you. This is Judge Cho.
9 Panel members, do you have any questions for the
10 witness? I'll start with Judge Wong.

11 JUDGE WONG: This is the Judge Wong. I have no
12 questions at this time. Thank you.

13 JUDGE CHO: Thank you. This is Judge Cho.

14 Judge Aldrich, do you have any questions for the
15 witness?

16 JUDGE ALDRICH: This is Judge Aldrich. I don't
17 have any questions for the witness at this time.

18 JUDGE CHO: Thank you. This is Judge Cho.

19 I have just a quick question, Mr. Parker. You
20 said that when the sale was unwound in your books you
21 would not remit the sales tax anymore because the sale was
22 cancelled; is that correct?

23 MR. DAVID PARKER: That's correct.

24 JUDGE CHO: What happened to the sales tax that
25 you collected from the customers at that point in time

1 then?

2 MR. DAVID PARKER: It was applied to their
3 account immediately as a credit because they no longer had
4 that due. So if they owed us \$400, but they had paid us
5 \$50 of that, we would credit them back that sales tax in
6 full against their account.

7 JUDGE CHO: Okay. Thank you very much. That's
8 the only question that I had.

9 Why don't we move onto Appellant's presentation.
10 Ms. Serrao, are you ready?

11 MS. SERRAO: Yes, Your Honor.

12 JUDGE CHO: All right. You may proceed. You
13 have about 30 minutes.

14 MS. SERRAO: Your Honor, that was probably an
15 overestimation at our preconference hearing and was
16 inclusive of Mr. Parker's testimony. So the 30 minutes
17 would not be needed just as to state that upfront.

18 JUDGE CHO: No problem. Take your time. Thank
19 you.

20

21 PRESENTATION

22 MS. SERRAO: And in fact, my comments will be
23 relatively short.

24 Mr. Parker's testimony evidenced the operational
25 structure of Appellant's business. And through his

1 testimony we heard of Appellant's 24-year history as a
2 retailer for cellular phones, and it underwent sales tax
3 audits frequently, coming up like clockwork every three
4 years. And for that period, notwithstanding the instant
5 audit, always resulted in a no change during those years.

6 So the business had established a rapport in
7 correctly reporting sales tax. And through his testimony
8 as well, we've heard that the business is generally --
9 general operating standards collected sales tax in
10 conformity with the Revenue and Taxation Code and the
11 regulation promulgated they are under.

12 You know, in this industry as mandated by the
13 code, sales tax was collected on the retail price of the
14 phone, not what the customer tendered, and that was
15 reported as such. And with respect to the Respondent's
16 measure of unreported taxable sales, Respondent bases this
17 determination on the transaction by account reports, which
18 the Respondent used to extrapolate out a variance between
19 imputed sales tax reimbursement and what was reported, and
20 that purported unreported taxable sale was in the 3.2
21 million figure.

22 But as Mr. Parker testified, the charge backs
23 were fairly normal. Even during the 2016 appeals
24 conference before the BOE, the Appeals Board referenced
25 how frequent the charge backs were in this line of work.

1 So to extrapolate out an unreported sales tax without
2 giving any offset for the reality of the charge backs that
3 occurred is not in tune with the reality of the industry.

4 Additionally, Appellant did attach Exhibit
5 Number 4, which was additional charge backs -- evidence of
6 charge backs. These charge backs were found following the
7 reaudit period but during the pendency of appeal. They
8 should be considered by the Respondent, and to the effect
9 they -- the effect the determination of Respondent's
10 unreported taxable sales imputes to Appellant. So there
11 is evidence of additional bad debt deduction.

12 And to uphold the Respondent's measure of
13 unreported taxable sales as it stands is unwarranted, is
14 erroneous, and is unjust towards the taxpayer.

15 JUDGE CHO: Does that conclude your presentation?

16 MS. SERRAO: Yes, Your Honor.

17 JUDGE CHO: Thank you.

18 MS. SERRAO: Thank you.

19 JUDGE CHO: Panel members, do you have any
20 questions?

21 I'm sorry. Ms. Serrao, would you mind muting
22 your mic?

23 MS. SERRAO: Excuse me. Sorry.

24 JUDGE CHO: Thank you.

25 Panel members, do you have any questions for the

1 Appellant at this point in time? Judge Wong?

2 JUDGE WONG: This is Judge Wong. I have no
3 questions.

4 JUDGE CHO: Thank you.

5 Judge Aldrich?

6 JUDGE ALDRICH: This is Judge Aldrich. I don't
7 have any questions.

8 JUDGE CHO: Thank you.

9 Then Department, please proceed when you're ready
10 with your presentation.

11

12

PRESENTATION

13 MR. SUAZO: This is Randy Suazo.

14 The Appellant is a corporation and retailer of
15 cell phones and related accessories. They are an
16 authorized dealer for Verizon Wireless, and during the
17 audit period, operated 34 locations in Los Angeles,
18 Orange, San Bernardino, and Ventura Counties. The
19 business start date is July 1st, 1989, and prior audits
20 were performed.

21 On prior audits performed, there were deficit
22 audits involved. The audit period is from -- this audit
23 period is from July 1st, 2009, through June 30th, 2012.
24 The books and records provided for the audit included:
25 Federal income returns for 2010 and 2011; sales tax

1 payable account 25100 for the audit period; profit and
2 loss statements for 2010 and 2011; RQ4 reports for claimed
3 labor amounts for periods 4Q '10, 1Q '11 and 2Q '11 as
4 well; sample invoices and partial paid bills for 2011;
5 Verizon summary commission statements, which included
6 charge backs, were also provided for the audit period.

7 The auditor was unable to determine how total
8 sales, the amounts received from Verizon for bundled sales
9 of cell phone and accessories and claimed deductions were
10 computed; Exhibit A page 5.

11 During the appeals hearing, the Appellant stated
12 that the sale information from its point of sale system
13 was exported to an Excel spreadsheet. And this tax
14 worksheet was used to prepare sales and use tax returns.
15 The Appellant did not provide a copy of the sales tax
16 worksheet to the Department; Exhibit A, page 5.

17 The Appellant states that their reporting method
18 is as follows: The amount of money received from
19 customers discounted sales price for a sale is included in
20 total sales reported on line 1 of the sales and use tax
21 return. The amount of discount, if any, received on the
22 sale is listed as purchases subject to use tax on line 2
23 of the sales and use tax return, along with other proceeds
24 received from Verizon for bundled sales; Appellant's
25 opening brief, page 5.

1 An example of this would be, if a customer pays
2 \$299 on a phone with the retail and sign price of \$740,
3 the \$299 is recorded on line 1 of the gross sales. The
4 discount received of \$440 and a penny is entered into line
5 2, purchases subject to use tax. The customer is billed
6 \$299 plus sale tax at the full selling price of \$740 at a
7 9.75 percent tax rate, the tax paid by the customer would
8 be \$72.15. And the total amount paid by the customer
9 would be \$372.14, which is the \$299.99 for the discounted
10 phone plus the \$72.15 on the full tax based on full retail
11 selling price; Appellant's Exhibit 3.

12 The Appellant would have collected the full
13 amount of tax directly from the customer and should
14 accordingly report the amount collected to the State. The
15 Appellant under these circumstances is acting as a pass
16 through only. And since the full amount of tax is paid by
17 the customer, the Appellant is not creating accounts
18 receivable or anticipated proceed on the actual sales tax
19 itself.

20 The federal income tax returns for 2010 and 2011
21 were scheduled and reviewed. Differences of \$2,437,451
22 for 2010 and \$1,971,097 for 2011 were noted. They were
23 not assessed as they appear to be primarily due to
24 commissioned income not reported on sales and use tax
25 returns; Exhibit E, page 99. No bad debts were claimed on

1 either federal income tax return.

2 A sales tax reconciliation was performed using
3 general ledger sales tax payable account, Account Number
4 25100 as a source. The sales tax collected posted monthly
5 under the GL memo header "Retail iQ Change in Account" on
6 a monthly basis. The monthly sales tax collected was
7 scheduled into quarterly amounts and were compared to
8 reported sales tax. Differences were noted; Exhibit E,
9 pages 95 and 96.

10 For period 3Q '09 zero difference was noted.
11 4Q '09, difference was noted. 1Q '10, no difference was
12 noted. For 2Q '10 only \$18 was noted. However, following
13 from third quarter '10 through second quarter '12, large
14 differences were noted. And third quarter of 2010 are
15 \$22,735 difference. In the fourth quarter of '10,
16 \$152,043. In the first quarter of '11, \$10,145 difference
17 noted. In the second quarter of 2011, \$74,448 was noted.
18 In the third quarter of '11, \$7,134 was noted for a
19 difference. The fourth quarter difference for 2011 was
20 \$11,470. First quarter of 2012, a difference noted of
21 \$10,372. And finally in the second quarter of 2012, a
22 difference of \$13,412 was noted. Total difference noted
23 for the audit period was \$301,777 worth of sales tax.

24 The Appellant stated that the reported sales tax
25 payable account provided during the audit period was not

1 complete due to a query error in generating the report.
2 The Appellant claims that the report did not include all
3 sales returns and cancellations. They further stated that
4 due to turnover in accounting staff, they did not adjust
5 sales tax timely; Exhibit D, page 54.

6 The Appellant was asked to provide a download of
7 its sales from its POS system and other applicable
8 documentation to support their contentions. The Appellant
9 has yet to provide the data requested, and no adjustment
10 has been made to the assessment. It should be noted that
11 that same query was recorded -- that was recorded to the
12 sales tax payable account in 3Q '09, 4Q '09, and 1Q'09
13 showed no differences, and a very minor difference of \$18
14 for the second quarter of 2010; Exhibit E, page 96.

15 In the reaudit, the bad debt deduction that was
16 disallowed and assessed was removed. However, this was
17 not because the bad debt deductions were accepted.
18 Rather, it was to correct the fact that by disallowing a
19 deduction, sales tax would be assessed twice for tax
20 collected. There is no evidence that the petitioner
21 failed to charge sales tax reimbursement on taxable sales.
22 Therefore, sales tax collected from its customers is
23 included in the sales tax payable account.

24 Due to the manner in which the assessment of
25 sales tax for reconciliation was established, by comparing

1 the sales tax payable GL account, the sales tax reported
2 on the sales and use tax returns, any disallowance of
3 claimed deductions would have a doubling effect on the
4 assessment; Exhibit A, page 12.

5 The Appellant believes that they are entitled to
6 a bad debt deduction as they state. The charge backs by
7 Verizon for customers who had terminated their contract
8 would constitute bad debts, per Regulation 1585 CT, which
9 states, charge backs to the retailer. Retailers reporting
10 tax measured by the unbundled sales price of a wireless
11 telecommunication device may take a bad debt deduction
12 pursuant to Regulation 1642 when a payment or rebate from
13 a wireless telecommunication service provider is charged
14 back to the retailer.

15 Based on the customer termination of its contract
16 with the wireless telecommunication service provider
17 before the date specified in the utility service contract.
18 The amount of bad debt deduction claimed by a retailer may
19 not exceed difference between the gross receipts on which
20 tax is reported paid by the retailer and the total amount
21 collected and retained by the retailer from the sale of
22 wireless telecommunication devices, excluding any amounts
23 collected from the customer's tax or tax reimbursement.

24 Any tax or tax reimbursement collected by the
25 retailer on the amount of bad debt deduction claimed by

1 the retailer constitutes excess tax reimbursement and must
2 be returned to the customer or paid to Board unless the
3 customer and retailer agree that this amount may be
4 applied towards the amount owed by the customer on the
5 debt.

6 The customer and retailer will be regarded as
7 having agreed to the application of any excess tax
8 reimbursement to the customer's debt where the retailer's
9 books reflect both the debt owed by the customer and the
10 corresponding credit for excessive tax reimbursement. The
11 Appellant has provided Verizon commission statements that
12 include monthly summarized charge back information;
13 Appellant's opening brief, Exhibits 4, 5 and 6.

14 However, detailed information concerning
15 customer's name, original sales date, amount which
16 retailer paid tax, payment history, date of determining
17 bad debt have not been provided; Exhibit D, page 61.

18 Charge backs on Verizon statements would include
19 both taxable and nontaxable income. Without original
20 contracts or sales details and payment records, it is not
21 possible to establish the appropriate taxable measure for
22 any bad debt allowance; Exhibit A, page 17.

23 Furthermore, for bad debt expense to be accepted,
24 the Department must verify that bad debt expense has been
25 deducted from income tax purposes or charged off in

1 accordance with generally accepted accounting principles.
2 The 2010 and 2011 federal income returns do not have
3 claimed bad debt deductions; Exhibit E, pages 99 and 100.
4 Appellant has been asked several times by the Department
5 for detailed information to verify their claim. However,
6 no information has been provided.

7 This concludes my presentation. I'm available to
8 answer any questions you may have.

9 JUDGE CHO: This is Judge Cho. Thank you very
10 much, Department.

11 Panel members, do you have any questions for the
12 Department? Judge Wong?

13 JUDGE WONG: This is Judge Wong. No questions.

14 JUDGE CHO: Thank you.
15 Judge Aldrich?

16 JUDGE ALDRICH: This is Judge Aldrich. No
17 questions.

18 JUDGE CHO: This is Judge Cho. I don't have any
19 questions either.

20 So Ms. Serrao, you have five minutes on your
21 rebuttal. But since you didn't use all of your 30
22 minutes, you can go a little bit longer if you'd like.

23 MS. SERRAO: Thank you, Your Honor.

24

25

CLOSING STATEMENT

1 MS. SERRAO: I will make a comment with respect
2 to the Respondent's reference to the federal income tax
3 returns. The Respondent has stated that the federal
4 incomes returns didn't include all of the gross receipts
5 and the bad debt deductions.

6 However, the 1120S filed by Appellant applies a
7 much broader definition of gross receipts, and this would
8 include gross receipts not just from the sales of selling
9 wireless devices but for all business operations, not
10 merely retail sales. Tax court has clarified that
11 non-sales income is included in gross receipts. And that
12 was Hewlett Packard Company 139 Tax Court Number 8 in
13 2012.

14 So the reliance on a federal income tax return,
15 which has higher receipts than what is reported on the
16 sales tax return, should not indicate measure of
17 unreported taxable sales. There's simply a different
18 definition of gross receipts for federal income tax
19 reporting purposes.

20 Furthermore, temporary Treasury Regulation
21 1.448-1 T, includes in gross receipts income from all
22 outside sources and is not limited merely to sales income.
23 Additionally, the groupings and categorizations for sales
24 tax return purposes are vastly different than income tax
25 return purposes. As a result, any federal income tax

1 gross receipts listed on the return cannot be the bases
2 for unreported taxable sales that the Respondent seeks to
3 impose.

4 JUDGE CHO: This is Judge Cho. Does that
5 conclude your rebuttal?

6 MS. SERRAO: Yes, Your Honor.

7 JUDGE CHO: All right. Thank you very much. I'm
8 sorry. Ms. Serrao, would you mind muting your mic?

9 MS. SERRAO: Oh, I apologize.

10 JUDGE CHO: Okay. Thank you very much.

11 All right. Any last-minute questions, panel
12 members? Judge Wong?

13 JUDGE WONG: This is Judge Wong. I just had one
14 question for Ms. Serrao. Can I get those cites again and
15 the Treasury Reg cite and the case name and cite, please?

16 MS. SERRAO: Yes. The tax court case was Hewlett
17 Packard Company, which is Commissioner of Internal Revenue
18 139 TC Number 8 2012. And the Treasury Regulation,
19 temporary one, is 1.448-1 T F2 4; 4 is the numerical.

20 JUDGE WONG: This is Judge Wong. Thank you. No
21 further questions.

22 MS. SERRAO: Thank you.

23 JUDGE CHO: This is Judge Cho. Thank you.

24 Judge Aldrich, do you have any last-minute
25 questions for either party?

1 JUDGE ALDRICH: I don't have any questions for
2 either party.

3 JUDGE CHO: Thank you very much.

4 All right. I don't have any questions either.
5 This concludes this hearing. The panel will meet and
6 decide based on the documents and testimony provided
7 today. We will issue our written decision no later than
8 100 days from today. This case is submitted, and the
9 record is now closed.

10 (Proceedings adjourned at 10:40 a.m.)

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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 10th day of August, 2020.

ERNALYN M. ALONZO
HEARING REPORTER