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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
R. BATTISTONI, ) OTA NO. 20035913  
APPELLANT. )  
\_\_\_\_\_ )

Transcript of Virtual Proceedings,  
commencing at 10:10 a.m. and concluding  
at 11:17 a.m. on Wednesday, February 24, 2021,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ TERESA STANLEY

Panel Members: ALJ MICHAEL GEARY  
ALJ JOSHUA ALDRICH

For the Appellant: PAUL S. TRUSSO  
RICK BATTISTONI  
MIKE HALLMARK  
DANA JOHANSEN

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE ADMINISTRATION  
  
AMANDA JACOBS  
STEPHEN SMITH  
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-8 were received at page 8.)

(Department's Exhibits A-O were received at page 8.)

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I N D E X

FINAL CLOSING STATEMENT

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By Mr. Trusso

44

1 State of California; Wednesday, February 24, 2021

2 10:10 a.m.

3

4 JUDGE STANLEY: This is Judge Stanley speaking.  
5 We're on the record in the appeal of Paul Battistoni, Case  
6 Number 20035913. It's February 24th, 2020 [sic], and the  
7 time is 10:10 a.m. The location was scheduled for  
8 Cerritos, California, but is being conducted  
9 electronically due to Covid-19, and all the parties and  
10 participants have agreed that this may proceed as an  
11 electronic hearing.

12 I am Judge Teresa Stanley. My panel members  
13 Judge Michael Geary and Judge Aldrich are here as well.

14 I'm going to ask, starting with Mr. Trusso, that  
15 you identify yourself for the record. And if you have a  
16 name that's difficult to spell, please spell that as well  
17 so our stenographer can catch that.

18 MR. TRUSSO: Sure. Attorney Paul Trusso,  
19 T-R-U-S-S-O.

20 JUDGE STANLEY: Excuse me. One more time. This  
21 is Judge Stanley, and I'm correcting the record that it is  
22 not 2020. Today is actually February 24th, 2021.

23 Okay. So, Mr. Trusso, you have with you a  
24 witness. Can you have that person identify themselves,  
25 please.

1 MR. HALLMARK: Yes. Michael S. Hallmark,  
2 H-A-L-L-M-A-R-K.

3 JUDGE STANLEY: Okay. And then Mr. Battistoni.

4 MR. BATTISTONI: Richard Battistoni,  
5 B-A-T-T-I-S-T-O-N-I, and I go by Rick.

6 JUDGE STANLEY: You go by Rick? Did I hear that  
7 correctly?

8 MR. BATTISTONI: That's correct.

9 JUDGE STANLEY: Okay. And Mr. Joe.

10 MR. JOHANSEN: Yes. Dana Johansen,  
11 J-O-H-A-N-S-E-N. And I don't know what you want to call  
12 me, a witness, I guess.

13 JUDGE STANLEY: Okay. Thank you, Mr. Johansen.  
14 And then let's have the Department identify  
15 themselves.

16 MS. JACOBS: Hello. Amanda Jacobs, Tax  
17 Counsel III, with the Department of Tax and Fee  
18 Administration.

19 MR. SMITH: Stephen Smith, Tax Counsel IV,  
20 representing CDTFA.

21 MR. PARKER: And Jason Parker, Chief of  
22 Headquarters Operations Bureau with CDTFA.

23 JUDGE STANLEY: Okay. This is Judge Stanley  
24 again. And, Ms. Jacobs, you will be the primary  
25 participant for purposes of the hearing; is that correct?

1 MS. JACOBS: Correct.

2 JUDGE STANLEY: Okay. Thank you.

3 All right. The issue in this matter we discussed  
4 at the prehearing conference is whether California use tax  
5 applies to Appellant's 2002 purchase in the use of a  
6 vessel.

7 Mr. Trusso, is that correct?

8 MR. TRUSSO: Yes.

9 JUDGE STANLEY: And Ms. Jacobs?

10 MS. JACOBS: Correct.

11 JUDGE STANLEY: Okay. This is Judge Stanley. At  
12 the prehearing conference, we also discussed exhibits.  
13 And at this time Exhibits 1 through 8 -- Appellant's  
14 Exhibits 1 through 8 will be entered into evidence without  
15 objection, and Respondent's Exhibits A through O will be  
16 admitted into evidence without objection.

17 (Appellant's Exhibits 1-8 were received  
18 in evidence by the Administrative Law Judge.)

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

21 We have some new documents that were submitted by  
22 Mr. Trusso. Does -- Ms. Jacobs, does the Department have  
23 an opinion of admission of these documents?

24 MS. JACOBS: We don't. We don't have an  
25 objection.

1           JUDGE STANLEY: Okay. This is Judge Stanley.  
2           The documents -- the newly submitted documents includes  
3           some CDTFA annotations and a brief. We do not consider  
4           that to be evidence but, rather, argument. So I am not  
5           inclined to admit these into the record as evidence but  
6           would allow Mr. Trusso to incorporate them into opening  
7           and/or closing statements and argue the relevance of them  
8           to Mr. Battistoni's case.

9           Mr. Trusso, do you have an objection to  
10          proceeding that way?

11          MR. TRUSSO: This is Mr. Trusso. No, I do not.

12          JUDGE STANLEY: Okay. Mr. Trusso, are there any  
13          other exhibits that you would like to present today?

14          MR. TRUSSO: No, Your Honor.

15          JUDGE STANLEY: And, Ms. Jacobs, does the  
16          Department have any new exhibits?

17          MS. JACOBS: Amanda Jacobs. No, we don't.

18          JUDGE STANLEY: Okay. This is Teresa Stanley.  
19          We're going to proceed with the case at this time.  
20          Mr. Trusso requested five minutes to present an opening  
21          statement to summarize the evidence that will be shown  
22          during this hearing today.

23          Mr. Trusso, you can proceed when you're ready.

24          MR. TRUSSO: Thank you, Judge Stanley.

25          ///



1 taxpayer's intent at the time of purchase. Was his intent  
2 to purchase and use the boat outside of California? The  
3 subjective test requires us to look at what evidence we  
4 have in front of us. And by the preponderance of  
5 evidence, the slimmest of margins, the panel must  
6 determine whether or not taxpayer presented such evidence  
7 to grant a sales and use tax exemption.

8 Thank you.

9 JUDGE STANLEY: This is Judge Stanley. Thank  
10 you, Mr. Trusso.

11 And, Ms. Jacobs, at the prehearing conference the  
12 Department indicated that they did not desire to have an  
13 opening statement. Is that still true?

14 MS. JACOBS: Amanda Jacobs. That is correct.

15 JUDGE STANLEY: Okay. Thank you.

16 This is Judge Stanley. We will begin then with  
17 the presentation of Appellant's case. Mr. Trusso, you can  
18 introduce your first witness, and let us know whether  
19 you're going to present the testimony via question and  
20 answer or whether you're going to have the witness testify  
21 in the narrative.

22 MR. TRUSSO: Thank you. This is Attorney Trusso.  
23 I would like to present Mr. Hallmark first. He has other  
24 appointments today. We're hoping to present him as the  
25 first witness, and it will be in question and answer

1 format.

2 JUDGE STANLEY: Okay. This is Judge Stanley  
3 again. Mr. Hallmark, I can't see you, but will you please  
4 raise your right hand.

5 MR. HALLMARK: Hi. This is Mike Hallmark, and I  
6 have.

7 JUDGE STANLEY: Okay. Thank you.

8

9 MIKE HALLMARK,  
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 JUDGE STANLEY: Thank you, Mr. Hallmark.  
15 You may proceed, Mr. Trusso.

16 MR. TRUSSO: Thank you this is Attorney Trusso.

17

18 DIRECT EXAMINATION

19 BY MR. TRUSSO:

20 Q Mr. Hallmark, what is your name and occupation?

21 A Michael S. Hallmark, and I am a yacht broker and  
22 a marina manager.

23 Q Mr. Hallmark, this is Attorney Paul Trusso. How  
24 long have you been a yacht broker?

25 A Since 1999, 22 years.

1 Q Attorney Trusso speaking. Mr. Hallmark, did you  
2 oversee the sale and purchase of the boat in question?

3 A Yes, I did.

4 Q Mr. Hallmark, did you also sublet a slip to  
5 Taxpayer Battistoni post-closing?

6 A Yes, I did.

7 Q Mr. Hallmark, did you control the purchase and  
8 sale funds for this transaction?

9 A Yes, I did.

10 Q Mr. Hallmark, did you release the purchase and  
11 sale funds after offshore delivery occurred?

12 A Correct.

13 Q Very good. Mr. Hallmark, you signed a  
14 declaration under penalty of perjury back in September of  
15 2014; is that correct?

16 A Yes.

17 Q On that declaration you stated that the vessel  
18 departed your marina on 9/17/2002. How can you be sure of  
19 that date?

20 A I originally pulled the files and checked them  
21 out, and that's the date that came up.

22 Q Is there any reason, Mr. Hallmark, that that date  
23 should be in question per your records?

24 A Not to my knowledge, no.

25 MR. TRUSSO: Very good. I have no further

1 questions of this witness.

2 JUDGE STANLEY: This is Judge Stanley. Thank  
3 you.

4 Ms. Jacobs, does the Department have any  
5 questions for Mr. Hallmark?

6 MS. JACOBS: Amanda Jacobs. No, Judge Stanley.

7 JUDGE STANLEY: Okay. This is Judge Stanley I'll  
8 ask my panel the same question. Judge Geary, do you have  
9 any questions for Mr. Hallmark?

10 JUDGE GEARY: No questions. Thank you.

11 JUDGE STANLEY: This is Judge Stanley. I'll ask  
12 Judge Aldrich. Do you have any questions for  
13 Mr. Hallmark?

14 JUDGE ALDRICH: Mr. Hallmark, just one brief  
15 question. How were you informed to release the funds?

16 THE WITNESS: As I remember I was on the -- on  
17 the offshore delivery.

18 JUDGE ALDRICH: So you were there present?

19 THE WITNESS: Correct.

20 JUDGE ALDRICH: Okay. Thank you.

21 THE WITNESS: Thank you.

22 JUDGE STANLEY: This is Judge Stanley. I don't  
23 have any questions for Mr. Hallmark. So he can be excused  
24 and go onto his next appointment.

25 I did need to backtrack a just little bit before

1 we go onto the next witness, Mr. Trusso. At the  
2 prehearing conference, the Department and Appellant  
3 stipulated that the vessel was delivered in international  
4 waters.

5 Is that still true, Ms. Jacobs?

6 MS. JACOBS: Amanda Jacobs. That is correct. We  
7 stipulate to that.

8 JUDGE STANLEY: Okay. Okay. Mr. Trusso, you can  
9 proceed with your next witness when you're -- well, why  
10 don't you tell me who your next witness is, so I can swear  
11 him in before you proceed.

12 MR. TRUSSO: Thank you, Judge Stanley. The next  
13 witness will be the taxpayer, Richard Battistoni.

14 JUDGE STANLEY: Okay. This is Judge Stanley.  
15 Mr. Battistoni, will you please raise your right hand.

16

17 RICHARD BATTISTONI,

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

21

22 JUDGE STANLEY: Thank you.

23 Mr. Trusso, you may proceed.

24 MR. TRUSSO: Thank you. Attorney Trusso  
25 speaking.



1 Cruiseport Village receipts, first, let's talk about the  
2 condition of the Cruiseport Village when you arrived.  
3 Could you tell the panel, just briefly, about the status  
4 of marina when you arrived in 2002?

5 A When we arrived in 2002, there were virtually no  
6 other vessels in the marina. It had just opened. In  
7 fact, I think I was the second vessel that they leased the  
8 slip to. And they were running their office out of a --  
9 for no better terminology -- it's, like a trailer. And  
10 then they weren't really that well organized. But we  
11 ended up going in, and we rented a slip from them on a  
12 month-to-month basis.

13 Q Got it. Attorney Trusso speaking. Regarding the  
14 first Cruiseport Village Marina exhibit, it identifies a  
15 harbor fee on arrival and an arrival date of  
16 September 20th, 2002. Is this an accurate date of when  
17 you arrived?

18 A That is correct. I arrived on the 20th of  
19 September.

20 Q Attorney Trusso speaking. And Mr. Battistoni,  
21 there are subsequent receipts showing the vessel remained  
22 at this Cruiseport Village Marina until 7/10/2003. Are  
23 those receipts true and accurate?

24 A Yes, they are true and accurate.

25 Q And what were you doing down there that whole

1 time?

2 A Doing a lot of fishing. We would go back and  
3 forth between Ensenada and San Diego and spend the  
4 weekends, sometimes go during the week. There's a lot of  
5 very, very, very good fishing grounds right off the  
6 Ensenada coast, the 1010 Trench, the Butterfly. And back  
7 in 2002 albacore fishing was very, very good in Southern  
8 California. Unfortunately, it's not that good now. But  
9 we had a very good -- good fishing year that year.

10 Q Got it. I'd like to go back to the first receipt  
11 that identifies you're check-in. This receipt was  
12 questioned by the Department because it has a fax send  
13 date and a receive date also on September 20th, 2002. But  
14 the fax went out at 11:11 or 11:04 a.m., and it was  
15 re-faxed, it appears, to the marina on 11:11 a.m.

16 When we were at the Department hearing, you  
17 didn't know why the marina would have faxed this check-in  
18 to anyone, and you didn't have an explanation why it was  
19 faxed.

20 A Yeah, the other person --

21 Q Since that --

22 A Go ahead.

23 Q -- have you learned anything about why perhaps  
24 the marina would fax this check-in receipt to someone?

25 A Yes, I have. If you look at the receipt, it

1 shows September 20th, and then -- which is a Friday at  
2 11:04 a.m., and the name Hosing [sic] Ann Hosing is my  
3 next-door neighbor. And my wife faxed over a credit card,  
4 and they faxed it back because it was in her name, and  
5 they wanted approval for them to use that credit card.  
6 The marina wanted two credit cards on file.

7 Q Very good.

8 A -- explain that properly. Sometimes a little  
9 confusing.

10 Q Well, it was very confusing to us at the  
11 underlying hearing because that caught us both off guard.  
12 And --

13 A I never seen the document before. That's why. I  
14 didn't even look at it. Until I looked at the name Hosing  
15 at the bottom, then I realized that we -- you know, we  
16 didn't have a fax machine at our house. So Peggy went  
17 next door, and she -- she faxed the information to the  
18 marina.

19 Q This is Attorney Trusso. Mr. Battistoni, who is  
20 Peggy?

21 A Peggy is my wife.

22 MR. TRUSSO: Very good. I have no further  
23 questions for the Taxpayer Battistoni.

24 JUDGE STANLEY: This is Judge Stanley. Thank  
25 you, Mr. Trusso.

1           Ms. Jacobs, do you have any questions for this  
2 witness?

3           MS. JACOBS: Amanda Jacobs. I do not.

4           JUDGE STANLEY: This is Judge Stanley. Judge  
5 Geary, do you have any questions for Mr. Battistoni.

6           JUDGE GEARY: Yes. This is Judge Geary. Thank  
7 you. I have a couple of questions, whether they're for  
8 Mr. Battistoni or for his representative, I'm not sure.  
9 I'll let them decide. But in reviewing the file, I  
10 believe I saw a reference to an, agreement, when the  
11 appeal was pending at the agency level, that the purchase  
12 price of the vessel was \$125,000. But I saw a later  
13 reference to a purchase price of \$105,000.  
14 Mr. Battistoni, what was the purchase price of the --

15           MR. BATTISTONI: The purchase -- this is Richard  
16 Battistoni. The purchase price was \$125,000.

17           JUDGE GEARY: All right. Thank you. Just a few  
18 more questions for you, Mr. Battistoni. This is  
19 Judge Geary. You said that when the vessel was in  
20 Ensenada you would go back and forth from San Diego. I  
21 realize that distance is not far. Typically, how would  
22 you travel to Ensenada for the purpose of going fishing on  
23 the boat?

24           MR. BATTISTONI: In my vehicle.

25           JUDGE GEARY: Okay. And typically would you stay

1 on the vessel if it was for an overnight trip?

2 MR. BATTISTONI: Yes.

3 JUDGE GEARY: Those are my only questions. Thank  
4 you.

5 JUDGE STANLEY: This is Judge Stanley.  
6 Judge Aldrich, do you have any questions for  
7 Mr. Battistoni?

8 JUDGE ALDRICH: Hi. This is Judge Aldrich. Just  
9 a couple of brief questions. So you indicated that the --  
10 the place in Mexico was relatively new. Did they have a  
11 place to purchase gasoline?

12 MR. BATTISTONI: No.

13 JUDGE ALDRICH: Okay. And so where would you  
14 refuel for your fishing trips?

15 MR. BATTISTONI: You would have to go -- this is  
16 Rick Battistoni. You would have to go to the corral,  
17 which is another marina that's about five to six miles  
18 away from Cruiseport Village. They had fuel up there.

19 JUDGE ALDRICH: Okay. Thank you.

20 JUDGE STANLEY: This is Judge Stanley. I did --  
21 I believe I did have a question, and I have to look back  
22 at the receipts. But I think there was a month or two of  
23 receipts that were missing. Do you recall that,  
24 Mr. Battistoni?

25 MR. BATTISTONI: I do not. No. All I know I was

1 there until, I think, July and then we went back to San  
2 Diego. And I paid for every month.

3 JUDGE STANLEY: Okay. And Mr. Trusso, didn't ask  
4 you questions about your one-day fishing trips while you  
5 were still renting the San Diego marina slip. Could you  
6 explain those trips that your witness declarations attest  
7 to?

8 MR. BATTISTONI: Well, we were doing a lot of  
9 work on the boat. And on the weekends, we would -- we  
10 would take the boat out, do some fishing, come back. And  
11 I think we left on the 17th, if I remember right, and we  
12 actually had until the 20th to leave, I think, if I  
13 remember. We left early permanently to Ensenada.

14 But we -- we would take the boat out do some  
15 fishing, enjoy the boat. That's what we bought it for.  
16 And most of the time that would be in Mexican waters.  
17 Because if you go out of San Diego harbor about nine  
18 miles, you're in Mexican waters.

19 JUDGE STANLEY: This is Judge Stanley. Were --  
20 I'm talking about just the time prior to when you left for  
21 Ensenada. Were those trips out into Mexican waters, were  
22 those one-day trips?

23 MR. BATTISTONI: I would have to look at the log,  
24 but generally they would be one-day trips, yes. We would  
25 go out and then come back in.

1 JUDGE STANLEY: Okay. Thank you.

2 This is Judge Stanley. Mr. Trusso, do you have  
3 any follow-up questions for Mr. Battistoni?

4 MR. TRUSSO: Yes, Your Honor. This is Attorney  
5 Trusso.

6

7

REDIRECT EXAMINATION

8 BY MR. TRUSSO:

9 Q Rick -- excuse me. Taxpayer Battistoni, in the  
10 declaration you signed on 9/23/14, I believe you had  
11 reviewed your log, and you stated as follows in the  
12 declaration, "That the vessel fished the Outer Banks for a  
13 couple of days." It went out on 6/30/2002, on 7/6/2002,  
14 on 7/20/2002, on 8/2/2002, on 8/19/2002, on 8/22/2002, on  
15 8/25/2002, and on 9/1/2002 you did a two-day fishing trip.  
16 And I believe that's what corresponds in your vessel log.  
17 Does this refresh your recollection that you made multiple  
18 trips while the vessel was still in California during this  
19 initial 90-day period --

20 A That is --

21 Q -- after you bought it?

22 A That is correct, yes.

23 Q And, Mr. Battistoni, the Outer Banks, could you  
24 please tell the panel how far out that is and how long it  
25 would take a boat like this to get out there and do

1 fishing?

2 A You would -- it would be an overnight trip. The  
3 Outer Banks are 60 to 80 miles out, you know. And at  
4 night you don't travel real fast. I wouldn't go over 10  
5 knots in case you hit something. It would be a little  
6 dangerous. So there would be an overnight trip. We'd  
7 fish. If we decided to stay another night, we would put  
8 the sea anchor out, which is basically a parachute, and  
9 save our spot, and then fish the next day, and then cruise  
10 back to San Diego. Normally, all those trips were  
11 overnight if we went to the Outer Banks.

12 MR. TRUSSO: Thank you, Mr. Battistoni.

13 Attorney Trusso speaking. I have no questions  
14 for Taxpayer Battistoni.

15 JUDGE STANLEY: Okay. This is Judge Stanley.  
16 Ms. Jacobs, after that follow up do you have any  
17 questions?

18 MS. JACOBS: Amanda Jacobs. No, thank you.

19 JUDGE STANLEY: Judge Geary?

20 JUDGE GEARY: Judge Geary speaking. No. Thank  
21 you.

22 JUDGE STANLEY: And Judge Aldrich?

23 JUDGE ALDRICH: Judge Aldrich speaking. No.

24 JUDGE STANLEY: Okay. This is Judge Stanley.

25 Mr. Trusso, your next witness, I assume, will be

1 Mr. Johansen?

2 MR. TRUSSO: Yes, Judge Stanley.

3 MR. JOHANSEN: Dana Johansen here.

4 JUDGE STANLEY: Mr. Johansen, would you please  
5 raise your right hand.

6 MR. JOHANSEN: It's raised.

7 JUDGE STANLEY: Excuse me?

8 MR. JOHANSEN: Go ahead.

9 JUDGE STANLEY: Okay.

10

11 DANA JOHANSEN,

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

15

16 JUDGE STANLEY: Thank you.

17 Mr. Trusso, you may proceed.

18 MR. TRUSSO: Thank you. Attorney Trusso  
19 speaking.

20

21 DIRECT EXAMINATION

22 BY MR. TRUSSO:

23 Q Mr. Johansen, how do you know the Taxpayer  
24 Battistoni?

25 A Rick is my best friend, and he used to live

1 across the street from me.

2 Q Attorney Trusso speaking. Mr. Johansen, have you  
3 been aboard the Hatteras in question?

4 A Yes, numerous times.

5 Q I was going to say when, but I'm not going to go  
6 there? Did you review the tax --

7 A Okay. Thank you.

8 Q Did you review the taxpayer's vessel log?

9 A Yes, I did.

10 Q Attorney Trusso speaking. Did you witness the  
11 taxpayer preparing the log in making entries in the log?

12 A This is Dana Johansen. Yes, I did numerous  
13 times.

14 Q It's very important. Attorney Trusso speaking.  
15 Mr. Johansen, it's important for the panel to understand.  
16 Did you witness Mr. Battistoni creating this vessel log at  
17 the times and dates reflected therein? For example, you  
18 saw him writing these entries on the boat, yes or no?

19 A This is Dana. Yes.

20 Q Attorney Trusso speaking. To the best of your  
21 knowledge, is the vessel log true and accurate?

22 A This is Dana. Yes.

23 Q And, Mr. Johansen, do you remember checking in to  
24 the Cruiseport Village? Were you present?

25 A This is Dana. Yes, I do. It was a new marina,

1 and we were, like, the only ones there.

2 Q And was the office, in fact, in a trailer back  
3 then?

4 A Yes, it was. It was parked up on -- on land just  
5 overlooking the marina.

6 MR. TRUSSO: Very good. This is attorney Trusso.  
7 I have no further questions from witness Johansen.

8 JUDGE STANLEY: This is Judge Stanley. Thank  
9 you.

10 Ms. Jacobs, do you have any questions for  
11 Mr. Johansen?

12 MS. JACOBS: Amanda Jacobs speaking. No. Thank  
13 you.

14 JUDGE STANLEY: Judge Geary, do you have any  
15 questions?

16 JUDGE GEARY: No questions. Thank you.

17 JUDGE STANLEY: Judge Aldrich any questions?

18 JUDGE ALDRICH: No questions. Thank you.

19 JUDGE STANLEY: And this is Judge Stanley. I  
20 also do not have any questions. So I'll turn it back to  
21 Mr. Trusso.

22 Do you have any other evidence or witnesses to  
23 present at this time?

24 MR. TRUSSO: No, Your Honor.

25 JUDGE STANLEY: Okay. Then we're going to move

1 to the presentation of the Department of Tax and Fee  
2 Administration's case. And I will point out for those who  
3 are viewing this, that I will not be swearing in  
4 Ms. Jacobs because she's not presenting evidence. In  
5 fact, she is only presenting argument and summarizing the  
6 Department's position in this case.

7 So, Ms. Jacobs, when you're ready, you may  
8 proceed.

9 MS. JACOBS: Amanda Jacobs speaking. Thank you.  
10

11 PRESENTATION

12 MS. JACOBS: As you're aware, under the  
13 Revenue & Taxation Code Section 6201 and 6401, use tax  
14 applies to the purchase of vessels for use in California,  
15 unless an exemption applies. The taxpayer bears the  
16 burden of establishing their entitlement to any claimed  
17 exemption or exclusion by a preponderance of the evidence.  
18 See Regulation 35003 and Paine versus the State Board of  
19 Equalization (1982) 137 Cal. App. 3D 438, pincite 443.

20 Prior to October 2nd, 2004, and from  
21 July 1st, 2007, and through September 30th, 2008, a vessel  
22 purchased outside of California and first functionally  
23 used outside of California, is presumed to have been  
24 purchased for use in this state, if it was brought into  
25 California within 90 days after its purchase, unless it

1 was used and/or stored outside of California one-half or  
2 more of the time during the six-month period immediately  
3 following its entry into the state. See regulation  
4 1620(b)(4)(a). This is often called the 90-day or 6-month  
5 test.

6 In this case it is undisputed that the vessel  
7 USCG ID 1043075 was purchased outside of California on  
8 June 20th, 2002, where it was first functionally used and  
9 then brought into California on that same date.  
10 Therefore, according to regulation 1620(b)(4)(a), it is  
11 presumed that the vessel was purchased for use in the  
12 state and use tax applies.

13 To qualify for an exclusion from use tax,  
14 Appellant must establish, by a preponderance of the  
15 evidence, that the vessel was used or stored outside of  
16 California for half or more of the 182 days or 91 or more  
17 days during the period of June 20th, 2002, through  
18 December 19th, 2002. Appellant contends he used or stored  
19 the vessel outside of California for 103 days. 91 days of  
20 which he states were spent in Ensenada, Mexican.

21 Thus, the case turns on whether the vessel was  
22 truly used or stored in Mexico during the relevant period.  
23 The only evidence Appellant provided the Department were  
24 inconsistent and unsubstantiated invoices, a handwritten  
25 ship's log, an affidavit executed 12 years after the

1 events at issue. As to the invoices, Appellant supplied a  
2 document dated September 20th, 2002, invoicing a slip  
3 rental at Ensenada Cruiseport Village for September 20th  
4 through December 21st, 2002. See Exhibit L along with  
5 separate invoices for November 2002 through December 2002,  
6 Exhibit M.

7 Because the September 20th invoice appeared to  
8 begin on and was faxed to and from the United States on  
9 the same day, and because there were overlapping and  
10 inconsistent invoicing, for example, there was no separate  
11 invoice for September and October 2002, it raised  
12 questions as to whether Appellant was actually in Mexico  
13 with the vessel on that date; which is why the Department  
14 asked for corroborating documentation.

15 The Department communicated with the Appellant  
16 within three years of the event informing him of the  
17 requirements of consumer use tax returns for vessels. See  
18 Exhibit C. As early as 2005, the Department has been in  
19 communication with Appellant regarding this purchase and  
20 requested additional documentation, such as customs  
21 documents, which would include port entry papers or even  
22 just a copy of Appellant's passport, insurance documents,  
23 or proof of payment of the invoices, such as bank or  
24 credit card statements verifying his claims that the  
25 vessel was in Mexico for the relevant period.

1           Mr. Hallmark's testimony today, an affidavit in  
2 Exhibit 6, that he sublet a slip to Appellant, and that  
3 the vessel vacated on September 17th, 2002, does not  
4 establish that the vessel left the state or speak to  
5 whether the vessel was used or stored during the remainder  
6 of the period. And while Mr. Johansen stated today in  
7 reiteration of his affidavit in Exhibit 8 that he was  
8 onboard the vessel when it arrived in Mexico on  
9 September 20th, 2002, he did not and cannot speak to the  
10 vessel's whereabouts for the remainder of the test period.

11           As for the ship's log and Appellant's testimony,  
12 we are left to take Appellant's word for it. If Appellant  
13 had customs documents to show the vessel entered Mexico  
14 on/or before September 20th, when the lease in Mexico  
15 began and returned to California on or after  
16 December 19th, 2002, when the test period ended, we would  
17 not be here today. However, without such documentation  
18 the Department believes Appellant has not met his burden  
19 establishing his purchase was excluded from use tax. The  
20 Department always request custom documents for claims  
21 under the 90-day 6-month test.

22           When analyzing such a short time frame, it is  
23 imperative that the Department have documentation for  
24 every day of the test period. And customs documents are  
25 the most reliable method of verifying location.

1                   JUDGE STANLEY: Ms. Jacobs, this is  
2 Judge Stanley. Can I stop you for a second? I'm not sure  
3 we haven't lost Judge Geary. So we're going to see where  
4 he is.

5                   Judge Geary, if you can hear us, did you just  
6 turn off your video feed or are you not with us? I'm not  
7 here. Okay. We're going to have to recess for a couple  
8 of minutes and figure out how to get him back. So I'm  
9 going to go mute for the moment.

10                   (There is a pause in the proceedings.)

11                   JUDGE STANLEY: We went off, and we're back on  
12 the record, now that we have Judge Geary back.

13                   Mr. Geary, I will tell you that you are -- you  
14 got the little circle on your face when you talk. So you  
15 may need to enunciate all your words when you do talk  
16 because your technical difficulties are still there.  
17 Judge Geary, can you tell us where you think you left  
18 Ms. Jacobs' presentation?

19                   JUDGE GEARY: This is Judge Geary. I estimate I  
20 was away for maybe 40 to 50 seconds.

21                   JUDGE STANLEY: Okay. This is -- Judge Geary, I  
22 thought I heard 40 to 50 seconds. So if you could start  
23 over a minute before you -- okay. We're going to need to  
24 go off the record again. We've lost -- oh, he's back.

25                   Judge Geary, are you here?

1 JUDGE GEARY: Yes.

2 JUDGE STANLEY: Okay. This is Judge Stanley.

3 Ms. Jacobs, can you please --

4 JUDGE GEARY: Can you hear me?

5 JUDGE STANLEY: Yes. Yes, we can.

6 JUDGE GEARY: All right. I just wanted to --

7 JUDGE STANLEY: Go ahead.

8 JUDGE GERY: I just want to indicate that you  
9 seemed to think I was off again, but I wasn't. I heard  
10 everything once I came back on. I heard everything other  
11 than that 50 seconds.

12 JUDGE STANLEY: Both your video and your voice  
13 are going in and out. So I'm going to assume you're there  
14 and let Ms. Jacobs backup for one minute and restart her  
15 presentation.

16 Ms. Jacobs, you may proceed.

17 MS. JACOBS: Amanda Jacobs speaking. Thank you.

18 Mr. Hallmark's testimony today and an affidavit  
19 in Exhibit 6, that he sublet a slip to the Appellant and  
20 that the vessel vacated on September 17th, 2002, does not  
21 establish that the vessel left the state or speak to where  
22 the vessel was used or stored during a major period. And  
23 while Mr. Johansen stated today, in reiteration of his  
24 affidavit in Exhibit 8, that he was onboard the vessel  
25 when it arrive in Mexico on September 20th, 2002, he did

1 not and cannot speak to the vessel's whereabouts for the  
2 remainder of the test period.

3 As for the ship's log and Appellant's testimony,  
4 we are left to take Appellant's word for it. If Appellant  
5 had customs documents to show the vessel entered  
6 Mexico on -- should I proceed?

7 JUDGE STANLEY: This is Judge Stanley.  
8 Judge Geary, did we lose you this time, or are you still  
9 there? Okay. Judge Geary, you're back with us?

10 JUDGE GEARY: Judge Geary here. I'm here. I'm  
11 not sure why it's cutting in and out. The hot spot is a  
12 weak signal, but no power at the location from which I am  
13 participating.

14 JUDGE STANLEY: Okay. You may proceed,  
15 Ms. Jacobs.

16 MS. JACOBS: Amanda Jacobs. Thank you.

17 If Appellant had customs documents to show the  
18 vessel entered Mexico on or before September 20th when the  
19 lease in Mexico began, and returned to California on or  
20 after December 19th, 2002, when the test period ended, we  
21 would not be here today. However, without such  
22 documentation, the Department believes Appellant has not  
23 met his burden in establishing his purchase was excluded  
24 from use tax.

25 The Department always requests custom documents

1 for claims under the 90-day 6-month test. When analyzing  
2 such a short time frame, it is imperative that the  
3 Department have documentation for every day of the test  
4 period. And customs documents are the most reliable  
5 method of verifying location.

6 In briefing, Appellant claimed that his customs  
7 documents were seized by the San Diego Harbor Police but  
8 has presented no evidence of attempts to retrieve the  
9 documents or any proof verifying the alleged seizure. In  
10 the Department's view, this is not sufficient for  
11 Appellant to meet his burden in establishing his purchase  
12 was excluded from use tax. For these reasons, we request  
13 the appeal be denied.

14 Thank you.

15 JUDGE STANLEY: This is Judge Stanley. Thank  
16 you.

17 Judge Geary, do you have any questions for the  
18 Department?

19 JUDGE GEARY: I do not. Thank you.

20 JUDGE STANLEY: Okay. That was not entirely  
21 clear, but it sounded like you said, "I do not. Thank  
22 you."

23 Judge Aldrich, do you have any questions for the  
24 Department?

25 JUDGE ALDRICH: Judge Aldrich. No questions.

1 Thank you.

2 JUDGE STANLEY: Okay. I have one question,  
3 Ms. Jacobs. There was some indication in the briefing  
4 that it was not -- I'm confused about whether it is, or it  
5 is not considered to be a day off outside of California  
6 when you have a one-day fishing trip that starts and ends  
7 in San Diego. Can you tell me the Department's position  
8 on that?

9 MS. JACOBS: It is the Department's position that  
10 if the vessel was used in California on that day, then it  
11 does not count that it was used elsewhere. I hope that  
12 answers your question.

13 JUDGE STANLEY: This is Judge Stanley. So if it  
14 starts and ends in San Diego, it's the Department's  
15 position that it was not used outside of California. Is  
16 that what you said, or did you say the opposite?

17 MR. SMITH: I think the way we would put it is if  
18 it's used within California and outside of California both  
19 in the same day. We still count that as a day that it was  
20 used within California.

21 JUDGE STANLEY: This is Judge Stanley. Thank  
22 you. Okay. This is Judge Stanley. I'm pausing because  
23 it looks like Mr. Geary's issues have been worked out or  
24 will be shortly. I don't want to get ahead of him. Okay.  
25 We can move now to closing statements.



1 California for two minutes of a day, that will somehow  
2 negate your location outside of California, directly  
3 conflicts with the plain meaning of Regulation 1620. One  
4 half or more of the time during the six-month period means  
5 one half or more of the time. Therefore, when we're  
6 looking at the total evidence, we need to credit the  
7 taxpayer for that time outside of the state during the  
8 initial 90 days he was here.

9 So let me see here. So what do the evidence  
10 show --

11 JUDGE STANLEY: This is Judge Stanley. Please  
12 just stop a minute, Mr. Trusso. It looks like we lost  
13 Judge Geary again. Let me see if his electricity came  
14 back on, and he's just reconnecting. So we'll give him a  
15 minute.

16 MR. TRUSSO: Very good.

17 JUDGE STANLEY: Sorry everyone for the typical  
18 electronic errors that discourage today's meetings.

19 We'll pause for the record, Ms. Alonzo.

20 (There is a pause in the proceedings.)

21 JUDGE STANLEY: Okay. This is Judge Stanley.  
22 We'll go back on the record.

23 And, Mr. Trusso, you may proceed where you left  
24 off. Sorry for the delay.

25 MR. TRUSSO: Thank you, Your Honor. Attorney

1 Trusso speaking, closing argument.

2           So what did the evidence show? The evidence  
3 showed the taxpayer's intent to purchase and use the  
4 vessel offshore by entering into a binding purchase and  
5 sale agreement that obligated the seller to deliver the  
6 vessel in international waters. The taxpayer first used  
7 the vessel offshore. The vessel yacht broker only  
8 released funds after offshore delivery occurred. And the  
9 reason I really harp on this point is, again, to go to the  
10 taxpayer's intent at the time of the purchase because  
11 that's what we're really here to decide today.

12           Does the taxpayer intend to use this vessel  
13 outside of the state? We look at the physical evidence  
14 that shows what he did. We have receipts from Mexico  
15 showing an arrival date of September 2nd, 2002, and the  
16 initial departure of December 2nd, 2002. The initial  
17 receipt -- and its Exhibit Number 3, I believe, in my  
18 package -- shows docking for three months. This covers  
19 the test period that Department wants proof of the vessel  
20 being gone. This is evidence and proof that the vessel  
21 was in Mexico for requisite time period during the 90-day  
22 test.

23           The receipts from Mexico, from this Cruiseport  
24 Village that just opened up, are not perfect, but they are  
25 what the taxpayer was provided. That's all the taxpayer

1 can present is what was provided to him. The taxpayer  
2 testified that he intended to purchase and use the vessel  
3 offshore. The taxpayer testified that the vessel log was  
4 created contemporaneously with the events as referenced in  
5 the vessel log. The vessel log corresponds exactly to the  
6 receipts that we have.

7 We then had a witness, a yacht broker licensed in  
8 California, stating when the vessel left California, when  
9 it left his slip. This testimony corroborates with the  
10 receipts that the taxpayer provided and the vessel log of  
11 the taxpayer. And then, finally, we have eyewitness  
12 Johansen who physically fished with the taxpayer multiple  
13 times while the vessel was in California during the  
14 initial 80-some day period it was here, and then he  
15 physically took the vessel to Mexico with the taxpayer and  
16 fished with him.

17 Contrary to the Department's position, taxpayer  
18 Johansen [sic] did, in fact, confirm the location for the  
19 entire test period based on the taxpayer's vessel log.  
20 Eyewitness Johansen reviewed that log and confirmed that  
21 it was true and accurate. So now we have the taxpayer  
22 testimony, the taxpayer vessel log, an eyewitness that was  
23 there that reviewed the taxpayer's vessel log, and  
24 confirmed it as well. We have marina check in receipts,  
25 and we have a preponderance of the evidence test.

1           The Department has not presented one stitch of  
2           contradictory evidence that the taxpayer was here during  
3           the test period in question. The Department hasn't  
4           presented one stitch of evidence that any of this is  
5           inconsistent. The preponderance of the evidence test is  
6           the slimmest of margins that the taxpayer must overcome to  
7           rebut the presumption that this vessel was purchased for  
8           use in California based on everything that the taxpayer  
9           has presented.

10           There's overwhelming evidence for the Court, for  
11           this panel to rely on to grant the exemption. In the  
12           exhibits that I presented the annotations in which the  
13           Department has used other taxpayer's self-created logs.  
14           In the two cases that I have referenced, they are aircraft  
15           logs, but they're still self-generated taxpayer logs. And  
16           the State used one in particular against the taxpayer to  
17           deny exemption from what was reported in the taxpayer's  
18           self-reporting aircraft log. So the panel has the right  
19           and obligation to rely on these vessel logs as true and  
20           accurate, unless there's evidence to the contrary.

21           Finally, there is the question of if the panel  
22           determines the tax is due, was there unreasonable delay on  
23           the part of the Department to get where we are now for  
24           interest and penalties. And this matter started back in  
25           2002, and it's now, when I checked the calendar, 2021. If

1 I ask for an exemption -- or if I ask for an extension  
2 today for a taxpayer filing, I can't get one. The  
3 Department will say you have 30 days to bring -- to obtain  
4 any evidence in response to an inquiry.

5 And, yet, we are held to a different standard  
6 when it comes to unreasonable delay. The Department says  
7 if we sit on the file for six months and do nothing with  
8 it, that's not unreasonable delay. And, yet, when it's  
9 time for the taxpayer to present evidence, we have a  
10 30-day window to respond to a request for information. So  
11 if the panel were to decide the tax was due, the taxpayer  
12 is going to request that we waive interest and penalty  
13 based on unreasonable delay.

14 Thank you, Your Honor.

15 JUDGE STANLEY: This is Judge Stanley. Does the  
16 Department wish to have an additional closing statement as  
17 well, Ms. Jacobs?

18 MS. JACOBS: Yes. Thank you.

19 JUDGE STANLEY: You may proceed.

20

21 CLOSING STATEMENT

22 MS. JACOBS: Appellant is requesting the interest  
23 and penalties be waived. However, our Appeals Department  
24 did a thorough analysis of the penalties and interest and  
25 relieved the failure to file penalty, the amnesty penalty

1 doubling the failure to file penalty, and interest for the  
2 following periods: May 17th, 2006 through  
3 September 31st, 2007; February 8th, 2011, through  
4 October 2011; April 19th, 2013, through  
5 February 19th, 2014; and June 21st, 2017, through  
6 December 19th, 2017.

7 That analysis can be reviewed on pages 13 to 21  
8 of the December 17th, 2019, decision in Exhibit A.  
9 Appellant has not presented evidence establishing  
10 unreasonable delay on the part of the Department for any  
11 remaining periods or set forth any facts explaining why  
12 his failure to pay the tax was due to any unreasonable  
13 cause and circumstances beyond his control,  
14 notwithstanding the exercise of ordinary care and absence  
15 of willful neglect, as required by Revenue & Taxation Code  
16 Section 6592.

17 Therefore, no remaining interest and penalty  
18 relief is warranted. Appellant's vessel was presumed to  
19 be purchased for use in this state under Regulation  
20 1620(b)(4)(a). And Appellant failed to establish, by a  
21 preponderance of the evidence, that the vessel was used  
22 outside of California for one half or more of the time  
23 during the six-month period immediately following its  
24 entry into California. Therefore, we request the appeal  
25 be denied.

1 Thank you.

2 JUDGE STANLEY: This is Judge Stanley. And,  
3 Mr. Trusso, I'm going to give you the final word here. If  
4 you would like to say anything else, please proceed.

5 MR. TRUSSO: Thank you, Your Honor.

6

7

FINAL CLOSING STATEMENT

8 MR. TRUSSO: The evidence -- the taxpayer met its  
9 burden by not only a preponderance of the evidence, but  
10 I'd suggest an even higher standard. When you look at the  
11 totality of the facts presented, the panel can come up  
12 with one and only conclusion, and that is the exemption be  
13 granted; that the taxpayer met its burden by a  
14 preponderance of the evidence; that he intended to and, in  
15 fact, did use this vessel outside of the State of  
16 California for a majority of the first six months he owned  
17 it; and then continued to use it outside of the state for  
18 the next, almost, year.

19 Thank you, Your Honor.

20 JUDGE STANLEY: Thank you.

21 This is Judge Stanley. Before I conclude the  
22 manner, I did make some statements that were off the  
23 record. So for purposes -- mostly for the viewers of our  
24 hearing videos. I wanted to reiterate that the Office of  
25 Tax Appeals is an independent body. We are not affiliated

1 with the California Department of Tax and Fee. And the  
2 only evidence that the Office of Tax Appeals has in its  
3 record is the evidence that's been submitted by either  
4 party in this case. None of the -- if there were other  
5 documents presented to the Department, we do not have that  
6 in our file unless somebody sent it to us.

7 We have admitted Exhibits 1 through 8 for  
8 Appellant, and A through O for Respondent. And at this  
9 point, the record will be closed, and the panel will  
10 deliberate and reach a decision and issue a written  
11 opinion within 100 days from today. The hearing -- we're  
12 going to not adjourn but recess until 1 o'clock where  
13 another hearing will adjourn at that point.

14 Are there any other questions before we go,  
15 Mr. Trusso?

16 MR. TRUSSO: This is Mr. Trusso. No, Your Honor.

17 JUDGE STANLEY: Okay. Thank you everyone for  
18 attending and presenting, and we'll issue our decision  
19 soon.

20 Thank you for your patience as well.

21 (Proceedings adjourned at 11:17 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 25th day of March, 2021.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER