

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
R. JACKSON and A. JACKSON,) OTA NO. 19024287
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 APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, February 9, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:40 a.m. and concluding at 10:49 a.m. on
Wednesday, February 9, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ ANDREW KWEE

Panel Members: ALJ ANDREA LONG
ALJ ANDREW WONG

For the Appellant: R. JACKSON
M. JACKSON

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION

COURTNEY DANIELS
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 7.)

(Department's Exhibits A-E were received at page 7.)

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California; Wednesday, February 9, 2022

9:40 a.m.

JUDGE KWEE: We're opening the record in the Appeal of Ronald A. and Angela F. Jackson. This matter is being held before the Office of Tax Appeals. The OTA Case Number is 19024287, and today's date is Wednesday, February 9th, 2022. The time is approximately 9:40 a.m. So this hearing is being -- well, it was originally noticed for Cerritos, California, however, it is being conducted electronically with the participants, with the agreement of the participants.

Today's hearing is being heard by a panel of three Administrative Law Judges. That's myself, Judge Andrea Long and Judge Andre Wong. My name is Andre Kwee and I'm going to be the lead judge. All three judges, we will meet after the hearing, and we'll discuss the case and produce a written decision as equal participants. Although the lead judge, that's myself, will be conducting the hearing today, any judge on this panel may ask questions or otherwise participate in today's proceedings to ensure that we have all the information decided -- all the information that we need to decide this appeal.

So for the record, I'll just ask that the parties

1 state their names and who they represent, starting with
2 representatives for the CDTFA.

3 MS. DANIELS: Hello. This is Courtney Daniels
4 representing CDTFA.

5 MR. SMITH: This is Steven Smith representing
6 CDTFA.

7 MR. PARKER: And this is Jason Parker also with
8 CDTFA.

9 JUDGE KWEE: Okay. Thank you. Three
10 participants for CDTFA and three boxes.

11 So for the taxpayer, would you please state your
12 name for the record.

13 MR. JACKSON: Ronald Jackson.

14 JUDGE KWEE: Okay. Thank you.

15 So we have one -- just as a reminder, a recap --
16 we have one witness scheduled to testify today, and that
17 is Ronald Jackson. And CDTFA does not have any objections
18 to Mr. Jackson testifying.

19 Is that correct? Is that still correct,
20 Mr. Jackson?

21 MR. JACKSON: Yes.

22 JUDGE KWEE: Okay. And for CDTFA, is that still
23 correct that you have no objections?

24 MS. DANIELS: That's correct.

25 JUDGE KWEE: Okay. Thank you.

1 As far as the exhibits, I did send out a copy of
2 the exhibit binders for both parties after our most recent
3 prehearing conference that we held on, I believe, the 18th
4 of January. So those exhibits included A through E for
5 CDTFA and 1 through 8 for the taxpayer. And my
6 understanding is that there were no objections to
7 admitting any of the exhibits that were submitted and
8 distributed after the prehearing conference. There're no
9 objections to admitting those evidence into the record.

10 Is that correct for CDTFA?

11 MS. DANIELS: This is Courtney Daniels. Yes,
12 that's correct.

13 JUDGE KWEE: Okay. And was that correct for the
14 taxpayer?

15 MR. JACKSON: Ronald Jackson. Yes.

16 JUDGE KWEE: Okay. Thank you. So with that, I
17 will admit the evidence. That's A through E -- Exhibits A
18 through E for CDTFA and Exhibits 1 through 8 for the
19 taxpayer. I'll admit those into the evidence -- into the
20 record.

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

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

25 And as far as -- oh, and I was, actually, just

1 going to disclose, because in reviewing the record, I
2 noticed that the seller's last name was the same as my
3 last name, Kwee. So I did want to disclose for the record
4 that I have no known relationship with that seller. I've
5 never heard of them until today's hearing while
6 researching for today's hearing. So I just wanted to
7 mention that for the record.

8 And then just a reminder about the issues that
9 are being heard today, we have two issues before us. The
10 first was whether California use tax applies to
11 Appellants' purchase and use of the vessel; and then the
12 second issue that we're being asked to decide is whether
13 Appellants' established a basis to relieve the liability.

14 So the time estimate that we have today was
15 approximately 90 minutes, and that was going to be
16 45 minutes for the taxpayer's opening presentation,
17 20 minutes for CDTFA's opening presentation, and then each
18 party will be allocated five minutes for any closing
19 remarks that they wish to say.

20 Are there any questions before we move on to the
21 presentation aspect?

22 MS. DANIELS: Courtney Daniels. No questions for
23 the Department.

24 JUDGE KWEE: Okay. Thank you. So with no
25 questions from either party, I will first start by

1 swearing in the witness, Mr. Jackson.

2 And then after that, you may go ahead, and you
3 have 45 minutes to say anything that you wish to say about
4 this case. So, Mr. Jackson, would you please raise your
5 hand.

6

7 RONALD A. JACKSON,

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

11

12 JUDGE KWEE: Okay. Thank you. Please proceed
13 with your testimony.

14

15 PRESENTATION

16 MR. JACKSON: Your Honor, first of all, I want to
17 tell you that I have Parkinson's disease, and it affects
18 my speech a little bit. So if I'm stammering, I'll get
19 through it, but I'm going to have a little problem
20 speaking. So I just want to let you know that that's
21 coming.

22

23 First of all, I want to address the issues
24 regarding the presumption that's triggered by the vessel
25 being returned to California within one year of the close,
which to our contention is in May of 2010.

1 Section 1620(b) sub (5) sub (a) sub (1) creates a rebuttal
2 presumption that if a vessel is purchased outside of the
3 State of California and is brought back to the State of
4 California within 12 months of the purchase it was
5 acquired for use in California, and the tax is due.

6 So I'm going to present evidence necessary as
7 part of our case. And on this issue, it kind of gives a
8 historical background to show what actually happened. On
9 September 13th of 19 -- or 2009, I turned 70. My -- I was
10 a lawyer. My practice was a sole practitioner, and my
11 practice was limited to representing people charged with
12 driving under the influence and related matters in the
13 Department of Motor Vehicles. The reason why I -- I'll
14 demonstrate why that's relevant a little later on.

15 I was in sole practice in Ventura, California,
16 for 15 years prior to December 2009. We had an office
17 condominium where an office was on the -- our office was
18 located on the first floor, and we lived in an apartment
19 on the second floor of the building. I had a secretary.
20 Her name was DeVonne Saunders, and DeVonne was a legal
21 secretary as well as office manager. She had control of
22 the office -- the functioning of the office. She had to
23 write checks and pay bills, that kind of thing. And
24 again, I'll make that relevant a little later on.

25 A couple years before 2009 I was diagnosed with

1 cancer Waldenstrom macroglobulinemia, which is cancer that
2 has -- it's a bone marrow cancer, and it affects your
3 immune system. At the time of the diagnosis and
4 treatment, we were told that the average life expectancy
5 for a person with Waldenstrom was about seven years from
6 the date of diagnosis. I had chemo treatment, and that
7 was doing pretty well for me.

8 Over the years before this time, we had
9 vacationed in Baja, California, in Loreto and Port of
10 Escondido. Loreto is located about 700 miles south of the
11 California Mexico border on the Sea of Cortez side. And
12 Port of Escondido is about 17 miles south of Loreto. It's
13 a desert, tropical area. Very hot in the summer. Very --
14 with 100-degree temperatures is common. It's also very
15 humid.

16 So what happened was we decided to retire, given
17 the circumstances of where we were. We were in fairly
18 good health at the time, so we wanted to enjoy what we had
19 left. So we decided to retire by buying a boat and moving
20 to -- living on the boat in Port of Escondido. I had
21 owned Catalina Yachts before, and so I contacted Bob Nahm
22 who was a broker at Catalina Yachts regarding a purchase.
23 I told him what I wanted. I wanted a California 42, and I
24 described to him what would be necessary to do to the boat
25 to make it usable in the weather situation in Loreto.

1 It was going to require air conditioning, a
2 generator, revamping, you know, the air conditioning
3 system, fans, new plumbing. A whole list of things which
4 I described to him prior to ever getting involved in the
5 sale of the boat. And so what happened was he had this
6 boat for sale, and we agreed to purchase the boat on the
7 condition that it was brought up to my circumstances that
8 I described to him to make it livable in the tropics.

9 The seller agreed, and this was an agreement as
10 to all of the things, the sale of the hull as well as the
11 condition -- bringing the boat up to condition that I
12 needed for living in the tropics. So it's our position
13 that what in fact happened here was the seller agreed to
14 sell the hull and authorized and directed his or her agent
15 Mr. Nahm at Catalina Yachts to do the work that we were
16 requiring to be done. The boat was always in the
17 possession of Mr. Nahm and Catalina Yachts until it was
18 delivered to us in May of 2010 in Escondido -- Port of
19 Escondido.

20 We did not pay Mr. Nahm anything. We never had
21 anything to do with that. We did not supervise the
22 construction and additions. It was all done by him based
23 upon the instructions that we had given him prior to the
24 sale. He's the one who explained to us the requirements
25 for an offshore purchase so it would be exempt from sales

1 tax. So we agreed that we would want to be in compliance
2 with those conditions, and that's how this was structured.

3 And the structure was for us to obtain a loan,
4 which we did, open an escrow, and the escrow would over a
5 period of time, make the disbursements that are necessary
6 to carry out the instructions that we had to purchase and
7 improvements for the boat. We expected the improvements
8 to be done some time close to end of January or early
9 February. That didn't happen. And, ultimately, we moved
10 to Loreto and lived with friends for a while until the
11 boat arrived in the Port of Escondido.

12 So once we had started the process, we put our
13 condo up for sale and decided to close the practice. The
14 closing wasn't particularly difficult because my clientele
15 were not my friends. The -- a DUI case is resolved
16 relatively shortly, so in September we just stopped taking
17 new clients and, ultimately, by the end -- the first of
18 January, we were able to close the office and sell it to
19 close the sale. We used the proceeds from the sale of the
20 condominium to pay the difference between the amount of
21 the loan and the ultimate sales price.

22 A boat has very limited storage space, so we had
23 to sell everything. We gave most of our property to our
24 children in San Jose and Toronto. So at the end of this
25 process, we had no contact with California whatsoever; no

1 address, no phone number. The only contact we had was a
2 post office box that was -- our accountant's post office
3 box, and she monitored our mail for us. I resigned from
4 the state bar. I did not pay my 2010 dues because I knew
5 I was never coming back to California, and I was not going
6 to be practicing law again.

7 During the process we bought an insurance policy
8 for the boat. And when you buy an insurance policy for a
9 boat, you have to designate the place that the boat is
10 going to be located and where it's going to be sailed.
11 And in the case of the tropics, you have to designate
12 what's called a hurricane hole. So insurance was told.
13 And part of that insurance process we designated that the
14 boat would be located for a year in the Port of Escondido.

15 Once we were down there, we a bought a moor. We
16 bought a mooring fee for one year. There's certainly no
17 intention demonstrated there to bring the boat back as we
18 certainly would not pay in advance for a year of mooring
19 fee if we intended to bring the boat back to California.
20 It's our contention that these issues clearly rebut the
21 presumption under 16 -- under the code section I
22 previously cited. It's documentary, circumstantial, and
23 direct evidence that clearly rebuts the presumption.

24 Now, there's another factor involved. Shortly
25 after the time of the sale while this was going on waiting

1 for the boat to be delivered, I bought gas at a gas
2 station and my credit card was rejected. So I ran a
3 credit check and was totally surprised to find that I had
4 all kinds of credit cards set up all over Ventura area in
5 various businesses.

6 So we did a further inquiry, and I had my
7 accountant involved. We discovered that what was
8 happening was my secretary DeVonne had been embezzling
9 funds from me for over two years and ran up all kinds of
10 bills that we didn't know anything about. And she was
11 using the office income so we didn't discover this until
12 we shut the office down to keep the credit cards current
13 so that there wasn't -- we didn't discover this until we
14 shut the office down and there was no income coming in for
15 her to use to pay these bills. She was charged. We
16 turned it over to the Ventura Police Department. She was
17 charged with multiple counts of felony, fraud, theft, and
18 identity theft. Ultimately, she pled guilty and was
19 sentenced to one year in jail and five years' probation
20 with restitution of over \$200,000.

21 The reason that this is relevant is because what
22 happened was it forced us into bankruptcy. Well, the boat
23 was part of our estate and was subject to the bankruptcy
24 rules. But my attorney for the bankruptcy, her office was
25 in the same building as the Ventura Yacht was. So she

1 went to talk to Mr. Nahm about what we could do about the
2 boat, and he arranged to have a buyer. He had a buyer,
3 and it was Catalina Yachts that sent a skipper to the Port
4 of Escondido to bring the boat back to California. And
5 the trustee released the boat so it could be sold outside
6 of the bankruptcy proceedings.

7 My point is that we never brought back this boat
8 to California. It was brought back pursuant to the order
9 of the bankruptcy trustee that it be sold, and it was
10 totally out of our control. That, again, is evidence that
11 at no time in this proceeding have an intent or a purpose
12 to bring this boat back to California.

13 So I'd like to turn now to the issue of the sale
14 and discuss what goes on -- what went on as far as the
15 acquisition of this property and the relevance there. The
16 Code Section 1620 talks about a purchase, and the purchase
17 applies to acquiring something and paying for it. The
18 section also says that the amount of the tax is based upon
19 the gross receipts from the -- from the sale. Gross
20 receipts, that's the word used. Gross receipts. That's
21 extremely important because it sets the parameters on
22 which you evaluate a sale.

23 So what happened here was -- you can see the
24 nature of the transaction. It was a single transaction.
25 The purchase carried out through the loan application of

1 the escrow, and ultimately, the payment and delivery of
2 the final fees, which occurred in May of 2010.

3 Originally, the Department in this case imposed a tax on
4 the gross sale price of \$222,000 and change.

5 It appears -- and what happened is that sometime
6 after they imposed this tax on the gross amount of the
7 sales price, they determined that this was not the
8 appropriate way to tax. And my position is it was because
9 they discovered and concluded that if they based the sales
10 tax on the gross receipts, it would establish that this
11 sale was an out-of-state sale and in compliance with the
12 out-of-state sales provisions and no tax would be due. I
13 can absolutely guarantee you that nobody at the Department
14 decided that they would see if there was a way to reduce
15 our tax liability out of charity, they felt for us. That
16 didn't happen.

17 So what they did was they tried to impose tax
18 where none was due by focusing on the transfer of the
19 title of the property. And since that took place when the
20 boat was in California, it negated the out-of-state sales
21 provision. Well, that is absurd. If you look at all the
22 circumstances of this case, it was clearly intent. And
23 what was actually done was that this was a single
24 transaction, not two transactions. We did not have a
25 separate transaction for the purchase of the hull and then

1 the purchase of the improvements to be done to the boat.

2 It's our contention that the determination by the
3 Department that there was an out-of-state sale -- this
4 complied with an out-of-state sale is a determination, and
5 it's binding upon them. They made this decision, and it's
6 the only reason -- the only reason that they abandoned
7 taxing the gross sales price. So it's our position that
8 once that's done it's binding. And, ultimately, it would
9 be binding upon this court as well because that's the
10 status of the evidence.

11 I'd like to give you an example I think that more
12 clearly illustrates my position here. Let's assume that a
13 buyer goes to a Chevrolet agency and tells the dealer that
14 he wants to buy a 2000 Corvette Stingray, yellow in color
15 with a 424 engine. And the dealer says, you know what, it
16 just so happens that I have a 2000 Stingray on
17 consignment, but it's black in color, there's no engine in
18 it, and it has no tires, and the upholstery needs to be
19 replaced, but we can do that all for you. The price of
20 the body is \$10,000, and it'll be around \$30,000 to make
21 the improvements that you're requesting to be made.

22 So the seller agrees to the \$10,000 and agrees
23 that the dealer can make the improvements necessary.

24 Well, I think we all agree that the gross sales price is
25 \$30,000 plus \$10,000, so about \$40,000. So the tax would

1 be based upon roughly \$40,000. However, if you add the
2 fact that the buyer lived in Mexico and told the dealer to
3 move -- to bring the boat to Mexico when once it was
4 finished in compliance with the delivery requirements of
5 the code so it qualified as an out-of-state sale, then
6 there would be no tax.

7 Well, based upon what we've seen from the
8 Department in this case, they apparently would take the
9 position of, well, oh, no. No. No. You don't get away
10 with not paying any tax. You have to pay tax on the cost
11 of the body even though it was absolutely in no usable
12 condition at that time. So this illustrates our position
13 that the absurdity of the position of the Department that
14 the transfer of the title somehow changes this, what is an
15 out-of-state sale, to something that is not.

16 The boat in our case was equally as un-useable as
17 it was to the buyer of the Corvette in this case. It had
18 no equipment that would qualify it to make it usable or
19 livable in a tropical area. So what our position is, is
20 that the evidence in this case clearly establishes that
21 the transaction in this case was a sole transaction with
22 multiple parts, but not separate and not the basis for
23 tax.

24 I'm asking you to find that this was the case,
25 that it was an out-of-state sale, and there was no tax

1 due. And I agree that the boat was brought back to
2 California but not by us. And if there was a presumption
3 triggered, it was absolutely, clearly rebutted, and
4 there's no tax due.

5 I'd also like to address briefly constitutional
6 issues, which I think are important. We're contending
7 that this process denies both due process and equal
8 protection under the constitution. And I'd like to point
9 out -- and I mean no disrespect to the Court in this
10 regard -- but this is not an appeal. An appeal is done
11 by -- if this was truly an appeal, we would have a
12 transcript of what took place in the hearing with the
13 Hearing Officer Ken, and I would be able to attack what he
14 made in the basis for his findings.

15 This is really a trial de novo, even though it's
16 entitled an Appellant situation, it is our position that
17 it is not. And so it's a denial of our due process, and
18 we were not given a proper appeal procedure. And, for
19 example, in the -- if this was an appeal based upon the
20 findings of the Hearing Officer, we would be able to point
21 out to Mr. Kim that Mr. Kim made findings that were not
22 based upon any evidence at all.

23 The issue of the one-year statute never came up
24 in the hearing. It was not mentioned by anybody at any
25 time, yet, Mr. Kim made findings on it. And, of course, I

1 was not given an opportunity to address that during the
2 time of the hearing, and we would be able to show it's not
3 fair and impartial and made findings on something that he
4 had no right to do.

5 The Department also has a financial incentive to
6 make a wrong decision. What happens here is if a tax is
7 imposed wrongfully, usually one or two things or three
8 things; number one, if the taxpayer can't pay the tax, it
9 never gets challenged because rules require that the tax
10 be paid and all of the tax, penalties, interest, and fees
11 be paid before you can appeal. We're in a good position
12 here. That's what took place here. We couldn't do an
13 appeal until after the money was paid and, consequently,
14 counting on it the tax is not due.

15 What happens? The employees of the Department
16 are exempt from damages. There's nothing that happens.
17 All the State has to do is return the money, and it's had
18 the use of the taxpayer's money for the year or several
19 years as this takes place. So that's what happens. They
20 have a financial incentive to make wrong decisions with no
21 consequence whatsoever. In addition, it denies equal
22 protection. The wealthy can afford to pay the tax and get
23 the appeal.

24 In this case we were not able to do this. We had
25 no money to pay this. And as you can see, the funds that

1 were paid were paid by my son, Paul. And he is the person
2 who paid it, and without his generosity we would not even
3 have this appeal today. So there's a denial of an equal
4 protection issue as well.

5 I'm asking you to find, again, that this process
6 was constitutionally deficient and because of that, the
7 imposition of the tax was void and it should be returned.
8 All the monies collected from my son and I should be
9 returned. And I specifically ask you to find in our favor
10 that you order the Department to make the funds -- to
11 return the money to Paul, my son, instead of me. He was
12 the one who paid. It's his money that you have -- the
13 State has been using.

14 So that's my presentation. I thank you very much
15 for your attention.

16 JUDGE KWEE: Okay. This is Judge Kwee. Thank
17 you.

18 I will turn to CDTFA to see if CDTFA has any
19 questions for the witness at this time.

20 MS. DANIELS: No. We do not have any questions.

21 JUDGE KWEE: Okay. Thank you.

22 So before I turn it over to the panel for
23 questions -- and I believe there may be questions for both
24 parties -- I would like to CDTFA to make their opening
25 presentation first.

1 And CDTFA, if possible, could you also address
2 the contention, which I believe might be a new one, that
3 the rules prohibited the taxpayer from filing an appeal
4 until the liability was paid. So with that, I turn it
5 over to CDTFA for their opening presentation before we
6 turn it over to the panel for questions.

7
8 PRESENTATION

9 MS. DANIELS: Okay. This is Courtney Daniels for
10 CDTFA.

11 Respectfully, this panel doesn't have
12 jurisdiction to decide any constitutional issues. Office
13 and Tax Appeal Regulation Number 30104 specifically says
14 that, "The constitutionality of any California statute
15 constitution is outside of the jurisdiction of this
16 panel."

17 So I'm not clear as to how we can even decide
18 this matter here. With that being said, I'll go ahead and
19 present our argument.

20 So this case centers around Appellants' claim for
21 refund on use tax assessed for their purchase and use of a
22 2000 Catalina 42 Yacht, herein after referred to as the
23 vessel. Appellants' believe that the Appeals Bureau
24 incorrectly denied their claim for refund. Appellants'
25 argue that the taxes are not owed because the transaction

1 is exempt from use tax under Regulation 1620 because
2 Appellants allegedly took possession of the vessel outside
3 of California's territory waters.

4 Here, the seller was not required to hold a
5 seller's permit, thus, the applicable tax in this case is
6 use tax. And that's Revenue & Taxation Code Section 6283.
7 Every person storing, using, or otherwise consuming
8 tangible personal property purchased in this state from a
9 retailer is liable for the tax in the State of California.
10 And that's Revenue & Taxation Code Section 6202
11 subdivision (a).

12 For an exclusion under Regulation 1620 to apply,
13 Appellants must show that they purchased the vessel
14 outside of California. See Regulation 1620(b)(5)
15 subdivision(a). However, the facts of the timeline in
16 this case did not support this conclusion. Appellants'
17 argument hinges upon when title to the vessel was
18 transferred from the seller to them. Specifically,
19 whether title transferred while the vessel was in
20 California or later when it was transported to Mexico,
21 thus the facts surrounding the sale are imperative to
22 deciding this matter.

23 Sometime in 2009, as Appellant said, he and his
24 wife approached Catalina Yacht Anchorage, herein after
25 referred to as the broker, to inquire about purchasing a

1 vessel. The broker informed Appellants about a listing
2 for a vessel located at Marina Del Rey in California and
3 owned by Margaret Kwee, herein after referred to as the
4 seller. According to the vessel purchase and sale
5 agreement, herein after referred to as the purchase
6 agreement, see Exhibit B pages 1 through 5, Appellants
7 offered to purchase the vessel from the seller for the
8 purchase price of \$132,000, and the seller accepted the
9 Appellants' offer.

10 The purchase agreement was signed by Mrs. Jackson
11 and the seller on December 1st, 2009. The purchase
12 agreement indicates that the vessel will be sold, quote,
13 "As is, where is," end quote with purchaser assuming
14 responsibility for any necessary cost of servicing,
15 repairs, or replacements. And that's at Exhibit B,
16 page 3, Section 9. The purchase agreement also states,
17 quote, "Should sales tax, use tax, or any other
18 transaction tax be imposed on this transaction, buyer
19 shall timely pay such tax in full," end quote; Exhibit B,
20 page 3, Section 11.

21 So here the purchase agreement only calls for
22 seller to deliver the vessel to Appellants as is, where
23 is; again, Exhibit B, page 3, Section 9. There is no
24 mention within the agreement of any repairs or foreign
25 delivery. The only requirements for completion of the

1 sale were the exchange of funds for the vessel in its
2 current condition and location.

3 California law states that unless it is
4 explicitly agreed that title passes at an earlier time or
5 a bill of sale is delivered at an earlier time, a sale
6 occurs at the time and place at which the retailer
7 completes his or her performance with reference to the
8 physical delivery of the property; Revenue & Taxation Code
9 Section 6010.5. Also, see Regulation 1628(b)(3)
10 subdivision (D).

11 The place of sale is the place where the property
12 is physically located at the time of the act constituting
13 the sale; Revenue & Taxation Code Section 6010.5,
14 Regulation 1628(b)(4). In order for a sale of a vessel to
15 be considered made at a point outside of California, title
16 must not have previously passed to the purchaser, and the
17 delivery of the vessel must occur more than three miles
18 from any point on the California coast. That's Regulation
19 1628(b)(3) subsection (D), and CDTFA's Annotation
20 585.0004.500. The evidence shows that title to the vessel
21 passed to Appellants' on December 23rd, 2009. Again, see
22 Exhibit B, page 6.

23 It is clear that the vessel was located at Marina
24 del Rey in California at this time. The information --
25 this information is corroborated by an information request

1 that was signed by the seller under penalty of perjury
2 stating that she sold the vessel on December 23rd, 2009,
3 with a delivery location of Marina del Rey, California;
4 see Exhibit B, page 12. The sales price for the vessel
5 was also paid at the same time the bill of sale was
6 executed.

7 Appellants' recorded a mortgage on the vessel for
8 approximately \$152,000 on December 23rd, 2009, and that's
9 at Exhibit B, page 16. According to the abstract of
10 title, Exhibit B, page 15, the seller satisfied her
11 mortgage to PNC Bank, formally National City Bank, on
12 December 31st, 2009, which strongly suggest that the sale
13 had already occurred by that date, and that the proceeds
14 from the sale were disbursed to the seller and was used to
15 satisfy the seller's mortgage in this case. This is also
16 corroborated by a FAX from Trident Funding Corp. And
17 that's Exhibit B, page, which also indicates that
18 approximately \$120,000 was paid to National City Bank to
19 pay off the existing loan.

20 As previously stated, delivery and payment were
21 the only prerequisites to the execution of the purchase
22 agreement. Absent any other contingencies, title to the
23 vessel passed at this time. Appellants argue that repairs
24 and foreign delivery were prerequisites for the passage of
25 title, but the evidence does not support this conclusion.

1 In fact, the information request, which again is signed by
2 seller under penalty of perjury, states that the delivery
3 location was, in fact, Marina del Rey, California, on
4 December 23rd, 2009. Again, this is Exhibit B, page 12.

5 Seller has provided an offshore delivery
6 affidavit, but this document is not signed by the seller
7 and was instead signed on May 7th, 2010, by an unknown
8 individual purporting to be the seller's representative.
9 And you can see this document at Exhibit B, pages 8
10 through 10. This document was executed five months after
11 the transaction had already taken place. And quite
12 frankly it does not suffice to show that the foreign
13 delivery was agreed upon by the parties prior to the
14 vessel's title transferring from seller to Appellants.

15 Moreover, Appellants' argument that the broker
16 was acting as an agent and seller and making repairs and
17 providing vessel transport to Mexico are also contradicted
18 by the evidence that's before the panel. The purchase
19 agreement specifically denotes that the broker was acting
20 in a dual capacity in representing both seller and buyer.
21 And that's at Exhibit B, page 4, Section 16. Once the
22 sale of the vessel was completed on December 23rd, 2009,
23 the broker was acting solely as Appellants' agent in
24 making repairs and improvements to the vessel.

25 This is supported by first, the funding document

1 from Trident in the account disbursement document, both of
2 which are Exhibit B, pages 7 and 11, indicating that
3 Appellants paid for all repairs that the broker managed on
4 their behalf. Second, the yacht delivery document,
5 located at Exhibit B, pages 13 through 14, indicating that
6 the customer is Appellants and not the seller. And third,
7 Appellant stayed within their written July 8th, 2018,
8 post-conference submission, at Exhibit B, page 21, that
9 they had an oral agreement with the broker, not the
10 seller, and that they instructed the broker, Mr. Nahm, to
11 perform repairs on the vessel before they would take
12 delivery from him.

13 These facts show that the broker acted as
14 Appellants' agent after the bill of sale was executed.
15 Appellants directed all of the repairs and paid for them.
16 They also directed and paid for the cost associated with
17 the vessel's transportation to Mexico. As such, the
18 evidence shows that Appellants purchased the vessel in
19 December 2009, and that the vessel was in Marina del Rey
20 at the time of the sale. The vessel remained in Marina
21 del Rey for four months while the broker arranged for
22 vessel repairs pursuant to Appellants' instructions.

23 Later in April 2010, Appellants had the broker
24 deliver the vessel to them in Mexico. Because the vessel
25 was in California at the time of purchase, Appellants'

1 purchase and use of the vessel is subject to use tax. For
2 the same reasons, Appellants' request for relief from
3 penalties, fees, and interest should be denied. Revenue &
4 Tax Code Section 6592 and 6833 allow for relief of
5 penalties only where the failure was due to reasonable
6 cause and circumstances beyond a person's control and
7 occurred notwithstanding the exercise of ordinary care and
8 in the absence of willful neglect.

9 Revenue & Tax Code Section 6593.5 subdivision (a)
10 allows for relief of all or any interest imposed where the
11 failure to pay tax is due in whole or in part to an
12 unreasonable error or delay by an employee of the
13 Department acting in his or her official capacity. Here,
14 Appellants' request for relief is based on their
15 contention that the Department incorrectly assessed use
16 tax on their purchase and use of the vessel.

17 Since use tax was correctly assessed in this
18 matter, they have not provided any basis for relief.
19 Therefore, Appellants' request for relief from penalties,
20 fees, and interest should be denied. In sum, the facts in
21 this case show the title to the vessel passed to
22 Appellants while the vessel was located in California.
23 And as such, the use tax, penalties, fees, and interest
24 assessed by CDTFA are correct.

25 For the foregoing reasons, we ask the panel to

1 affirm the Appeals Bureau's decision finding that
2 Appellants are liable for use tax on the purchase and use
3 of the vessel in California.

4 Thank you.

5 JUDGE KWEE: Hi. This is Judge Kwee, and I just
6 had a quick follow-up clarification for CDTFA. So at the
7 start of your preparation you had mentioned that
8 OTA didn't -- CDTFA's position was that OTA did not have
9 jurisdiction. And so I just wanted to clarify that. Were
10 you saying that we don't have jurisdiction to address as
11 equal -- the constitutional documents -- the taxpayer's
12 constitutional documents, or that we don't have
13 jurisdiction over the appeal to address the issue of tax
14 and the request for relief of taxes, interest, and
15 penalties, which were the two issues that were noticed?

16 MS. DANIELS: It's our contention that OTA does
17 not have jurisdiction to address constitutional arguments.

18 JUDGE KWEE: This is Judge Kwee. Thank you for
19 the clarification.

20 So I did have one additional follow-up question
21 on CDTFA's position, at least with respect to the issue
22 that was before us for their request of taxes, interest,
23 or penalties. And my understanding was that the taxpayer
24 had brought up the contention that they were advised that
25 they couldn't file an appeal until they had paid the

1 liabilities as one of the reasons for requesting relief.
2 So I guess that was why I was wondering if CDTFA had a
3 position on whether or not the taxpayer was advised that
4 they cannot file an appeal until they paid the liability
5 in full.

6 MS. DANIELS: We do not have information as to
7 the conversation that went on, other than the allegations
8 presented by Appellants. I think it is of note that the
9 amount had gone final and the time to appeal had already
10 passed prior to the funds being paid and then this matter
11 coming to the -- being appealed. So I mean, it is our
12 contention that had the Appellant appealed this matter
13 previously to the Notice of Determination becoming final,
14 that probably would not have been an issue. This appeal
15 was brought years after the Notice of Determination became
16 final.

17 JUDGE KWEE: Okay. Thank you.

18 And I did have one additional -- or I did have
19 one question for Appellant, Mr. Jackson. So I think the
20 position that you had been taking in your presentation was
21 that the vessel wasn't brought back into the state. Well,
22 I guess it was purchased outside of the state, and it
23 wasn't brought back into the state within the one-year
24 period.

25 And for CDTFA, my understanding is the primary

1 position that they're taking is that the purchase occurred
2 in California because they had various documents that
3 title transferred in California even though possession
4 didn't -- might not have transferred until later on in May
5 of 2010. I think, for example, the title had been
6 recorded on December 23rd, that the seller had filed a
7 signed statement that the vessel was sold as is on
8 December 23rd.

9 And I was wondering if you could address
10 briefly -- I guess it's your contention that the sale
11 occurred outside the state of Mexico solely because
12 possession transferred at that time, or do you have any
13 arguments about when title actually transferred? Or are
14 you contending that -- or do you concede, I guess, that
15 title transferred in California, but you're focusing on
16 when possession occurred?

17 MR. JACKSON: My position is that the title issue
18 is irrelevant. It doesn't matter when title is passed
19 because the tax has to be based upon the gross sales price
20 of the transaction, and that's what wasn't done here. In
21 fact, it was done here originally. And Ms. Daniels did
22 not address the issue that the Department originally based
23 the tax on the gross sales price of \$222,000-plus dollars.

24 And as I said in my previous presentation, I
25 think that's binding on them. They made the

1 determination, and they had to change positions later when
2 they discovered that if they stayed with that contention
3 the terms and conditions of an out-of-state sale were met,
4 notwithstanding the issue of the price -- of the title.
5 What actually happened here is we told Mr. Nahm what we
6 wanted to have done early on. I think the evidence
7 clearly supports that we intended from the outset that
8 this boat was going to have substantial changes made in
9 order for us to be present.

10 We relied upon him, and he is the seller's agent
11 telling us what to do and how to do it. It is Mr. Nahm,
12 the seller's agent, who showed us this was the -- the
13 documents that we had to do. And this was done to
14 accommodate the seller receiving the purchase price of the
15 hull at an earlier time prior to the actual closing of the
16 transaction. But it didn't close at the time, so the
17 title passing is irrelevant.

18 If you follow the position of the Department
19 here, no sale of a vehicle, vessel, or aircraft could ever
20 qualify for out-of-state consideration under these
21 circumstances because title is involved. Well, they
22 originally discerned that title wasn't really important.
23 The gross sales price is what the statute sets up. So I
24 don't think that's the dispositive issue.

25 One of the things I didn't address to you earlier

1 is that I think you do have the ability to kind of split
2 the award here. You can determine that the tax was due
3 but not the penalties and interest. And, of course,
4 that's part of our contention that we're entitled to at
5 least that relief, if not all of the relief.

6 Thank you.

7 JUDGE KWEE: Thank you. So I do have one
8 additional follow-up question because I was just -- I was
9 hoping you could explain one document to me, which was
10 page 26 of 42 of CDTFA's exhibit package. It was titled
11 Exhibit 8, page 2 of 3, CDTFA's Decision on the Appeal.
12 And basically what that document was it identified Bank of
13 America as the preferred mortgage, and it recorded a
14 mortgage amount of \$151,000 -- \$151,920 on
15 January 7th, 2010, with the sale date of
16 December 23rd, 2009, and it listed you as mortgager,
17 Ronald Jackson and Angela Jackson and Bank of America as
18 the mortgagee.

19 So I'm wondering if you could explain, I guess,
20 the mortgage to me, which appears to coincide with the
21 date that CDTFA says the title transferred. So I guess
22 since you were talking about the gross receipts aspect, I
23 was wondering how that played a role in the sale.

24 MR. JACKSON: Are you addressing that to me?

25 JUDGE KWEE: Yes, I am.

1 MR. JACKSON: Well, what happened was there was
2 an escrow opened, and part of this thing was to determine
3 what the total amount that we were ultimately going to pay
4 is, and so the mortgage was actually done. The final
5 mortgage was done once we determined or at least the bank
6 determined what the maximum amount of the loan would be
7 after determining that was, you know, so much for the hull
8 and then so much for repairs. They were only going to pay
9 a percentage of it. So that percentage was not
10 determined. The final amount was not determined until
11 later as the dates on the document.

12 But the process was at the beginning all of the
13 money was going to be funded through a loan. We never --
14 we never wrote a check to anybody until it was started --
15 until the thing was done; all of the boat was delivered.
16 So it's kind of -- there's no documents that I know of to
17 show how this progressed except that, you know, that there
18 was a disbursement for -- to the seller well before this
19 mortgage was done, and I had the credits to cover that.
20 And with the ultimate decision to be made as to the
21 amount, then it was concluded and the mortgage done.

22 JUDGE KWEE: This is Judge Kwee. Thank you for
23 the explanation.

24 I will turn it over to my co-panelists to ask if
25 either of my co-panelists have questions for either party.

1 I'll start with Judge Wong.

2 Judge Wong, did you have any questions that you
3 would like to ask?

4 JUDGE WONG: This is Judge Wong. I did have some
5 questions for Appellant, Mr. Jackson.

6 I know you indicated that you thought when title
7 passed was an irrelevant issue, but I wanted to see if you
8 had a position on when title actually passed.

9 MR. JACKSON: This was all done by the broker
10 outside of our knowledge. We were not part of conducting
11 that part of the sale.

12 JUDGE WONG: I'm sorry. Mr. Jackson, I think
13 we're having connections issues with you.

14 MR. JACKSON: It looks like it. Yeah.

15 JUDGE KWEE: Can you hear me? I did not hear
16 about the first 15 seconds of your answer. Would you
17 mind --

18 MR. JACKSON: No. I would be glad to.

19 JUDGE WONG: Thank you.

20 MR. JACKSON: My position is that the documents
21 speak for themselves. I do not dispute the accuracy of
22 the documents and the dates involved. But I don't have
23 any personal knowledge about how this occurred because all
24 of that was conducted by the broker. We had no
25 participation in the transfer of the title. That was

1 accomplished outside of our participation in this
2 transaction.

3 JUDGE WONG: Okay. Thank you. I also had a
4 question about the -- let's see -- the purchase and sale
5 agreement. Ms. Daniels had alluded to a clause that said
6 that the boat would be purchased as is. Could you address
7 that? What's your position with regards to that
8 contractual provision?

9 MR. JACKSON: The broker came to us and said,
10 look, this is what we need to do to accommodate paying the
11 seller her part of the proceeds at an early stage. You
12 know, as a lawyer you might think I should know better,
13 and probably it is true because I really didn't review
14 that, but this is -- it was represent to us that this was
15 the accepted procedure involved in this transaction. And
16 he told us, you know, this did not affect the validity of
17 the out-of-state sale.

18 He's the one who put it all together and told us
19 all these things are consistent with what it takes to have
20 a transaction that's not subject to use tax. And I agree
21 it's use tax, not sales tax.

22 JUDGE WONG: This is Judge Wong. Thank you,
23 Mr. Jackson. Have you purchased boats in California
24 before or owned boats in California before?

25 MR. JACKSON: Yes.

1 JUDGE WONG: Okay. I just had another question
2 and wanted to get your position on another contractual
3 provision in the purchase and sale agreement. It said
4 that broker was representing both the buyer and the
5 seller. Could you address that?

6 MR. JACKSON: That was never the -- you know,
7 Judge, there's sometimes the things that are boilerplate
8 in an agreement, and that was really part of what we had
9 here. I really didn't inspect the agreement to see the
10 terms. I relied upon Mr. Nahm and his representation that
11 these documents were consistent with what it took to
12 comply with the out-of-state sale. It might have been
13 negligence on my part, but I just relied upon him, and I
14 didn't inspect it thoroughly.

15 JUDGE WONG: This is Judge Wong. Thank you.
16 Another question I had is, so when the boat was
17 undergoing, I guess, refurbishment in the first part of
18 2010, where was the boat located, to your knowledge?

19 MR. JACKSON: It was located in either one of two
20 locations. It went back and forth between -- at least
21 that's what I was told. I never went down and was on the
22 boat. I was not part of this. But they have two offices.
23 Catalina Yachts has an office in Marina del Rey, and they
24 had another office in Ventura. So according to Mr. Nahm,
25 some of the work was done in the shop in Ventura, and some

1 of it was done in Marina del Rey.

2 JUDGE WONG: This is Judge Wong. Thank you.
3 Last two questions. I appreciate your patience. Do you
4 have any documentary evidence that would corroborate your
5 testimony today that your purchase of the boat was
6 conditioned on its refurbishment, such as adding air
7 conditioning and whatnot?

8 MR. JACKSON: No.

9 JUDGE WONG: Okay. And you had just mentioned
10 that you had owned boats in California. Sorry. This is
11 Judge Wong. You had mentioned you had owned boats in the
12 past in California; is that correct?

13 MR. JACKSON: Yes.

14 JUDGE WONG: Are boats subject to property tax?

15 MR. JACKSON: I don't know. I don't think so,
16 but I really can't say for sure.

17 JUDGE WONG: Okay. Because I was wondering,
18 like, for the first part of 2010, if boats are subject to
19 property tax, who was liable for that property tax?

20 MR. JACKSON: All I can tell you is that to the
21 best of my knowledge, I was never assessed a property tax
22 for the boat.

23 JUDGE WONG: This is Judge Wong. Thank you very
24 much, Mr. Jackson. That's all the questions I had.

25 JUDGE KWEE: Okay. This is Judge Kwee. I'll

1 turn it over to Judge Long. Judge Long, do you have any
2 questions for either party?

3 JUDGE LONG: This is Judge Long. I have no
4 questions. Thank you.

5 JUDGE KWEE: Okay. This is Judge Kwee. Then I
6 will turn it over to the parties for their final
7 five-minute presentations or final five-minute
8 conclusions.

9 Mr. Jackson, you have five minutes to say
10 anything that you would like to add in conclusion before
11 we conclude.

12 And then after, CDTFA will have their five
13 minutes, and then we'll conclude the hearing.

14 So I turn it to you, Mr. Jackson.

15

16 CLOSING STATEMENT

17 MR. JACKSON: I want to reiterate my contention
18 regarding the determination by the Department initially
19 that the sales tax or the tax was due on the gross
20 receipts. And it's our position that it's that provision
21 of the code that requires the tax to be imposed on gross
22 receipts is controlling, and that the Department is not
23 entitled to disregard that issue. And once they
24 originally determined that it was due on the \$222,000, it
25 was the total amount, that's binding upon them. They have

1 not denied that.

2 I don't think to repeat all of my other
3 contentions. I think I've made it clear what our position
4 is, and I again request that you find for us. And I do
5 want to repeat that while we think we are entitled to the
6 return of the entire monies paid to the Department, the
7 principal interest, taxes, and fees, that if you find the
8 tax is due, I'm asking you to find that the interest,
9 taxes, and penalties are not appropriate in the case and
10 return that.

11 Thank you very much.

12 JUDGE KWEE: Okay. This is Judge Kwee. Thank
13 you.

14 And now I'll turn it over to CDTFA. Would CDTFA
15 like to make any closing remarks before we conclude today?

16

17 CLOSING STATEMENT

18 MS. DANIELS: We would just say that I believe
19 the original taxation amount was prior to the Department
20 having the actual purchase agreement, and that it was
21 modified when we had the actual purchase agreement to see
22 that the vessel was sold on December 23rd, 2009, for --
23 closer to, I believe, was \$123,000 instead of the original
24 purchase amount that they had thought it was.

25 I mean, we would just say the evidence shows that

1 Appellants purchased the vessel in December 2009, and that
2 the vessel was purchased in Marina del Rey at the time of
3 sale sold as is, where is, and that Appellants have failed
4 to provide any evidence that repairs or delivery were a
5 condition of the sale.

6 Moreover, they have not satisfied any of the
7 requirements under Revenue & Tax Code Section 6592, 68334,
8 6593.5 subdivision (a) that would entitle them to relief
9 from penalties, fees, and interest. So we would ask that
10 you affirm the appeals decision in this matter.

11 Thank you.

12 MR. SMITH: This is Stephen Smith. I'd like to
13 get one more point into the record, I guess. The reason
14 petitioner had to prepay the tax was because he didn't
15 file a timely petition, and he didn't respond to the
16 Department until we had intercepted a refund issued to him
17 from FTB. And the penalty in this instance is the
18 finality penalty for failure to timely pay or petition the
19 liability.

20 In the request for relief of the penalties and
21 interest, the grounds stated were that the tax isn't due,
22 and that's not grounds for what -- you know, the penalty
23 can only be relieved for reasonable cause. And reasonable
24 cause hasn't been provided under statement of penalty and
25 perjury.

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Thank you.

JUDGE KWEE: This is Judge Kwee. Thank you.
I believe we're ready to conclude.

Judge Wong, are you ready to conclude?

JUDGE WONG: This is Judge Wong. I'm ready.

JUDGE KWEE: Okay. And, Judge Long, are you
ready to conclude.

JUDGE LONG: This is Judge Long. Yes, I'm ready.

JUDGE KWEE: Okay. Great. So thank you
everyone. We're going to conclude this hearing. This
case is submitted on Wednesday, February 9th, 2022. The
record is now closed.

So I thank everyone for coming in today. The
judges will meet after today's hearing to discuss your
appeal, and we'll send a written opinion to the parties
within 100 days from today. So that concludes the hearing
in the Appeal of Ronald and Angela Jackson. This case is
now adjourned, and that concludes the hearing calendar for
today also.

I believe the next hearings are scheduled for
February 23rd, 2022.

Thank you everyone for coming in. Goodbye.

(Proceedings adjourned at 10:49 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 28th day of February, 2022.

ERNALYN M. ALONZO
HEARING REPORTER