

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
R. PERRILLO, ) OTA NO. 19024329  
K. WHITEMAN, ) 19024331  
 )  
APPELLANT. )  
 )  
 )

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## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, November 16, 2022

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 1:00 p.m. and concluding at 2:14 p.m. on  
Wednesday, November 16, 2022, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ JOSHUA ALDRICH

Panel Members: ALJ KEITH LONG  
ALJ JOSHUA LAMBERT

For the Appellant: R. PERRILLO  
K. WHITEMAN

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE DEPARTMENT  
  
SUNNY PALEY  
STEPHEN SMITH  
JASON PARKER

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I N D E X

E X H I B I T S

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California; Wednesday, November 16, 2022

1:00 p.m.

JUDGE ALDRICH: This is Judge Aldrich. We're opening the record in the Appeal of R. Perrillo and K. Whiteman before the Office of Tax Appeals, OTA Case Numbers 19024329 and 19024331. Today's date is Wednesday, November 16th, 2022, and it's approximately 1:00 p.m. This hearing is noticed for a virtual hearing consistent with our October 6th, 2022, prehearing orders.

This hearing is being heard by a panel of three Administrative Law Judges. My name is Josh Aldrich. I'm the lead judge for purposes of conducting the hearing. I'm joined by Judges Keith Long and Josh Lambert. During the hearing, Panel members may ask questions or otherwise participate to ensure that we have all the information we need to decide this appeal. And after the conclusion of the hearing, we three will deliberate and decide the issues presented.

And as a reminder the Office of Tax Appeals is not a court. It is an independent appeals body, the Panel does not engage in ex parte communications with either party. Our Opinion will be based off the parties' arguments, admitted evidence, and the relevant law. And we have read the parties' submissions, and we are looking

1 forward to hearing your arguments today.

2 So for on the record, who is present for the  
3 Appellants?

4 MR. WHITEMAN: Both of us.

5 JUDGE ALDRICH: Would you mind stating your name?

6 MR. PERRILLO: Richard John Perrillo,  
7 P-e-r-r-i-l-l-o.

8 JUDGE ALDRICH: Thank you.

9 MR. WHITEMAN: Keith Eric Whiteman, E-r-i-c  
10 W-h-i-t-e-m-a-n.

11 JUDGE ALDRICH: Thank you.

12 And who is present for the Department or CDTFA?

13 MS. PALEY: Sunny Paley with CDTFA.

14 MR. SMITH: Stephen Smith with CDTFA.

15 MR. PARKER: And Jason Parker with CDTFA.

16 JUDGE ALDRICH: Thank you.

17 So with respect to issues, the issues were  
18 provided on the hearing agenda, which was last updated on  
19 October 20th, 2022. Does that correctly summarize the  
20 issues before us?

21 CDTFA, we'll start with you.

22 MS. PALEY: Yes. Thank you.

23 JUDGE ALDRICH: And for the Appellants.

24 MR. PERRILLO: I don't know what document you're  
25 referring to, I assume they got it right. I mean, I don't

1 know.

2 JUDGE ALDRICH: Okay. Well, how about I read it  
3 for you, or what I have is on there. That way we're on  
4 the same page.

5 So the issues are whether Appellants are liable  
6 for use tax on the purchase and use of the imported items;  
7 whether any adjustments are warranted to the determined  
8 sales price or taxable measure; whether Appellants are  
9 entitled to relief based off of a reasonable reliance of  
10 written advice from CDTFA; whether interest relief is  
11 warranted; whether relief from failure-to-file penalty is  
12 warranted; and whether relief of the collection cost  
13 recovery fee is warranted. Those are basically the  
14 summaries of the issues for today.

15 Does that sound correct to you, Mr. Perrillo?

16 MR. PERRILLO: That sounds about right except  
17 that the thing about interest was when I got an anonymous  
18 call -- oh, gosh maybe seven years ago -- saying that I  
19 owed \$5,000. And I didn't know what it was about, and  
20 stupidly I just paid it because they said they were going  
21 to seize my bank account. So I was asking for the  
22 interest to be paid on that money if it's determined that  
23 I was correct and not in arrears.

24 And so, you know, that interest from then till  
25 now, they would owe me about \$7,500 or \$8,000. I had to

1     pay it off on my credit card because I didn't have enough  
2     cash for my mortgage and -- but I didn't want to fight  
3     with this. I forgot who called. It was just an anonymous  
4     call with no notice, no process, no nothing.

5             JUDGE ALDRICH: Okay.

6             MR. PERRILLO: And they just said I owed this  
7     money, so I said okay.

8             JUDGE ALDRICH: Thank you. I understand that's  
9     your position, and you're welcome to make arguments  
10    regarding during your time for argument. And we may  
11    adjust the issue statements accordingly. Okay?

12            MR. PERRILLO: Okay.

13            JUDGE ALDRICH: And Mr. Whiteman?

14            MR. WHITEMAN: Yes. The only thing that's not  
15    including -- included in that description is reliance upon  
16    oral reliance. We were told things verbally, and those  
17    were reneged upon. So there was -- we had an oral  
18    contract initially for them to go out and look for  
19    additional advice regarding the point which I had raised.  
20    Somebody subsequently wrote a letter, but we relied upon  
21    that oral contract that we would abide by the State's view  
22    of the situation, which was oddly enough in our favor.

23            JUDGE ALDRICH: Similarly, you're welcome to make  
24    that argument or include that in your argument, and we may  
25    make some adjustments to the issue statements in our



1 written Opinions. Okay?

2 MR. WHITEMAN: Thank you.

3 JUDGE ALDRICH: Moving on. So regarding  
4 exhibits, the Department identified exhibits  
5 alphabetically with Exhibits A through F. Those were  
6 provided during the briefing process.

7 Appellants, do you have any objection to  
8 admitting the Exhibits A through F into the record?

9 MR. PERRILLO: I don't know what A through F is.  
10 I -- I don't have an objection to anything. I would just  
11 simply like to outline -- not in argument form -- as I  
12 know the facts. And, you know, if they have contrary  
13 facts, that's fine. We could, you know, screen share or  
14 whatever. But I really would like to just give an  
15 overview of what I perceive to be what happened here.

16 JUDGE ALDRICH: Right. And right now we're just  
17 discussing the admissibility of exhibits, but you're  
18 welcome to incorporate an overview in your argument later.  
19 The question posed is whether or not you object to the  
20 admission of the exhibits. And so those exhibits were  
21 referenced at the prehearing conference statements from  
22 CDTFA. And A through F is basically the decision for  
23 Mr. Perrillo, together with the exhibits attached to that  
24 decision, the Notice of Determinations, and then -- let me  
25 see. There's a third item.

1 MR. PERRILLO: Well, I hope there's -- excuse me,  
2 Your Honor. I hope there's the letter from their own  
3 expert. You know, they went to their own expert. They  
4 got a letter from their own expert. The letter is very  
5 clear that they received, and I sure hope in the interest  
6 of fairness they included that letter.

7 JUDGE ALDRICH: Well, both parties are allowed to  
8 submit the exhibits that they'd like to use to present  
9 their case.

10 CDTFA, did you include the letter that  
11 Perrillo -- that Mr. Perrillo is referencing?

12 MS. PALEY: Yes. It is at A-7.

13 JUDGE ALDRICH: Okay. Thank you.

14 So, Mr. Perrillo, it looks like there's about  
15 three exhibits -- proposed exhibits anyways -- for each of  
16 the parties. And I think one is the decision, two is the  
17 Notice of Determinations.

18 Department, could you refresh my memory on the  
19 third one?

20 MS. PALEY: Yes.

21 MR. PERRILLO: I'm sorry. Oh, are you asking me  
22 or --

23 JUDGE ALDRICH: I'm asking the Department.  
24 Thanks.

25 MR. PERRILLO: Oh, sorry.

1 MS. PALEY: A is the Appeals Bureau decision. B  
2 is the Notice of Determinations. C is the custom import  
3 reports.

4 JUDGE ALDRICH: Okay.

5 MS. PALEY: D is -- and then D. E is the same  
6 but for the other Appellant.

7 JUDGE ALDRICH: Okay. All right. So going back  
8 to my question. Mr. Whiteman, Mr. Perrillo, do you have  
9 any objection to admitting those documents into evidence?

10 MR. PERRILLO: No. Whatever -- I have no  
11 objection. I mean, whatever they have is fine. I just  
12 want to make sure that you have my information.

13 JUDGE ALDRICH: Great.

14 And, Mr. Whiteman, did you want to say something?

15 MR. WHITEMAN: No. I have no objections.  
16 Although, I haven't seen them, but I'm not sure that it's  
17 part of this file. So I will have seen it at some point,  
18 I hope.

19 JUDGE ALDRICH: Okay. All right. Since you  
20 don't have any objections to the admission, I'm going to  
21 go ahead and move them into evidence. And so Exhibit A  
22 through F are admitted.

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

25 And then, Appellants, I didn't get my exhibits

1 identified from either of you, and the deadline was to  
2 submit exhibits by October 26th, 2022. Did you have  
3 additional exhibits that you're requesting to admit  
4 untimely or --

5 MR. WHITEMAN: Well, actually what I had stated  
6 in that request was the submission of all 7,000 of those  
7 documents plus the ones which are not included as a result  
8 of my request. I don't know what to do about the ones  
9 that are missing, but clearly there's a very big file  
10 here. And so what we decided to do really was to try and  
11 keep it very simple, tell a very simple story, and then  
12 you guys can decide what you think is fair.

13 JUDGE ALDRICH: So the request that you're  
14 referring to is to admit the 7,000 pages, could you -- is  
15 there something in writing that you're referring to?

16 MR. WHITEMAN: Yes. When they requested that I  
17 had the timeframe to submit the exhibits that I had, I  
18 explained to them that I would like to include all of the  
19 file, which I had in my possession. And it wasn't until  
20 last week that I discovered that I didn't have any  
21 paperwork referencing the lien that they had filed on a  
22 piece of real property without notice, which during the  
23 middle of the pandemic I managed to reach somebody at one  
24 of your three agencies.

25 He apologized to me after I was refused credit at

1     Bloomingdale's, and then hounded by, literally, more than  
2     100 lien collectors who grabbed the information, which was  
3     publicly available. He removed it and said that he would  
4     call the people that were hounding me, both by telephone  
5     and by letters, to call it off, and he removed the lien on  
6     a piece of real property without notice because he  
7     realized that he, himself, didn't have the paperwork.

8             JUDGE ALDRICH: Okay. Thank you, Mr. Whiteman.  
9     So I guess what I'm hearing is that you do have exhibits  
10    that you want admitted into evidence, or you do not?

11            MR. WHITEMAN: Yes. We have just a few, which  
12    was the last letter that I wrote on June 10th, 2019, and  
13    the letter which the State had provided after the review  
14    saying that tax was not due on a gift, and a letter which  
15    is in the record in many different places, which I'm sure  
16    is there, which is an under oath statement saying that, in  
17    fact, it was a gift.

18            JUDGE ALDRICH: Okay. All right. So I don't  
19    have an exhibit index from you, and I'm not sure whether  
20    those things that you're referencing are in the record or  
21    not.

22            CDTFA, do those three items ring a bell?

23            MS. PALEY: I believe what he's referring to is  
24    the -- what's in exhibit -- our Exhibit A-7 as far as the  
25    letter from previous BOE, from 2015 in response to his

1 request for advice. Other than the statement, I believe  
2 maybe the Form 735 is what he's referring to, which is in  
3 evidence as Exhibit A-2.

4 JUDGE ALDRICH: Okay.

5 MS. PALEY: I believe that's what he's referring  
6 to. And otherwise as far as admitting his June 10th  
7 letter, I reviewed that letter. I would object as  
8 untimely but otherwise would submit to the Panel.

9 JUDGE ALDRICH: Okay. Thank you.

10 MR. PERRILLO: Your Honor, the June 10th letter  
11 was written June 10, 2019. The letter that she's  
12 referring to from their expert is October 16, 2015. I  
13 mean, I'm not a lawyer or anything. I'm a  
14 neuropsychologist. I don't see how, you know, something  
15 written in 2019 is untimely. We didn't have the hearing  
16 dates at that point. And all Mr. Whiteman was doing here  
17 was chronologically putting everything in order based on  
18 the information he had and trying to tell the story.

19 JUDGE ALDRICH: Okay. Mr. Whiteman, it looked  
20 like you had something to say.

21 MR. WHITEMAN: I was thinking that she was -- I  
22 don't see her name -- thinking that it was untimely  
23 because it wasn't submitted by October the 15th. But my  
24 original intent was to just make sure that we had access  
25 and the ability to include the information which we kept

1 to a bare minimum to make it very easy. So we just wanted  
2 to be able to sort of tell the story concisely without  
3 getting overwhelmed because you can see that this is very  
4 overwhelming.

5 JUDGE ALDRICH: Okay. Just a moment.

6 MR. WHITEMAN: It is just for the stenographer,  
7 it is 28 inches high stack of paper.

8 JUDGE ALDRICH: Thank you, Mr. Whiteman.

9 So to the extent that the exhibits that you're  
10 referencing are already incorporated into CDTFA's  
11 exhibits, those have been admitted. Whether there's -- so  
12 with respect to the letter, it looks like that was part of  
13 the opening brief in response to CDTFA's -- or in  
14 connection with the request for appeal. Excuse me. And I  
15 mean, that's part of the hearing record. Whether or not  
16 that is something that you wanted to have in evidence,  
17 that would have been something to let us know to let CDTFA  
18 know by the deadline, and that we prescribed in the  
19 prehearing order that was not done. And so to the extent  
20 that it's not already incorporated, I'm not going to admit  
21 it.

22 So since it looks like the exhibits have been  
23 addressed, we're going to transition to statements. And  
24 as provided we plan for the hearing to proceed as follows:  
25 Appellants' opening statement, which we estimated at

1 30 minutes. Next, the Department will present a combined  
2 opening and closing statement for 30 minutes, and then the  
3 Panel will ask questions for 5 to 10 minutes. And then  
4 Appellants will have the opportunity for closing remarks  
5 for approximately 10 minutes.

6 These are estimates made for accounting purposes.  
7 If you need additional time, please request it. And my  
8 understanding is that neither party will be presenting  
9 witness testimony.

10 Is that correct Department?

11 MR. WHITEMAN: Other than ourselves?

12 MR. PERRILLO: He knows that.

13 MR. WHITEMAN: Correct.

14 MS. PALEY: We do not have any witnesses.

15 JUDGE ALDRICH: And so -- sorry. Mr. Whiteman  
16 and Mr. Perrillo, you're saying you want to provide  
17 testimony?

18 MR. PERRILLO: Oh, absolutely. Yes.

19 MR. WHITEMAN: And I was also wondering since  
20 the, I guess, June 10th, 2019, letter, which is six years  
21 old now is not being admitted as evidence, I suppose that  
22 I could read it into the record.

23 JUDGE ALDRICH: So we could consider it as  
24 argument.

25 MR. PERRILLO: Your Honor, I'm very sorry because



1 I've never attended a hearing like this ever, and I'm a  
2 little bit confused. And here's what I'm confused about.  
3 During this ordeal, which has lasted now some seven or  
4 eight years, there were times when I was accused of doing  
5 things that would -- somebody else's file.

6 Like in this very hearing, they have the child  
7 issue of Keith Whiteman. I don't know what they're  
8 talking about. And there was a clock that I got, but it  
9 came all broken and they tried to charge me tax on it. I  
10 received it, but I sent it back. So I really never  
11 received it because it was all broken. It was all  
12 smashed.

13 You know, when I pointed that out to them, they  
14 did remove it. But my question here about this -- there's  
15 been numerous situations like this but, you know, do they  
16 submit that as evidence? I mean, you know, part of this  
17 has been a -- look, I've never tangled with the State  
18 before. And no disparagement of them, but what I felt was  
19 incredible harassment here. And, you know, they just --  
20 every time something --

21 JUDGE ALDRICH: Mr. Perrillo, I'm going to  
22 interrupt you now. But I want to go back to the witness  
23 issue.

24 So, Department, it sounds like Mr. Whiteman and  
25 Mr. Perrillo would like to provide testimony. Do you have

1 any objections to providing testimony?

2 MS. PALEY: No objection.

3 JUDGE ALDRICH: Okay. And so you're welcome to  
4 provide testimony during your argument. I will swear you  
5 in, if that's all right.

6 Mr. Whiteman, start with you. Would you mind  
7 raising your right hand.

8  
9 K. WHITEMAN,  
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 ALDRICH: Mr. Perrillo, could you raise  
15 your right hand. Thank you.

16  
17 R. Perrillo,  
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 ALDRICH: Great. Thank you.

23 So now I think we're going to move on to  
24 presentations. As I stated before, you have 30 minutes,  
25 and you can use it as argument or as testimony. But the

1 both of you have 30 minutes combined.

2

3 PRESENTATION

4 MR. PERRILLO: All right. I'm going to go first  
5 here. I'm just going to give you a one-minute sketch of  
6 who I am.

7 I'm a neuropsychologist. I've been practicing in  
8 the State of California since 1986. I'm a lifetime member  
9 of the California Psychological Association as well as the  
10 American Psychological Association. I have never had,  
11 ever, in my career any credit issues or any ethical  
12 violations or anything like that. I just wanted to give  
13 you just a thumbnail, you know, of this here. All right.  
14 I'm a Ph.D. with distinction from the University of Utah  
15 in Salt Lake City.

16 Unbeknownst to me I get a call. I can't quite  
17 remember when it was. It was about seven or eight years  
18 ago from someone who said they were seizing my bank  
19 account. This is without notice, without, you know, any  
20 kind of adjudication for \$5,000. I -- I stupidly, I want  
21 to say, I paid them because I didn't know what end was up  
22 and what it was all about. So I paid them.

23 And then we had numerous conversations with the  
24 Department, which actually merged -- you probably know  
25 this -- but they merged into the departments or other

1 departments got involved and this and that. But at any  
2 event, finally about a couple of years later, I said to  
3 them -- and we had my agreement, Your Honor. I'm sorry.  
4 We made an agreement.

5 My agreement to them was, go out and hire your  
6 own expert. I will agree to whatever your expert says.  
7 I'm not going to challenge your expert. I'm not going to  
8 give you a rebuttal. I'm not going to get another expert.  
9 Whatever your expert says, can we agree to that and put  
10 this to bed and not cost the State any more money? Okay.

11 Well, there was an agreement. We made a verbal  
12 that they would go out, and they would get their own  
13 expert, which they did. So on October 16, 2015, they got  
14 a letter from their expert -- I'm sure you have it --  
15 answering all of their questions, okay, by a John Puim,  
16 P-u-i-m. And I subsequently find out -- I thought they  
17 were going outside of the agency. But I subsequently  
18 found out it was somebody within the agency. It was  
19 somebody they knew and within the agency.

20 And basically this person said that if a gift was  
21 made outside of California there was no user tax. It's  
22 exempt from user tax. I'm looking at it right here. If  
23 the gift is to me, it's not subject to user tax when I  
24 transfer them to California. If I bought the items and  
25 gave it to somebody else, it's not subject to user tax

1       because it was outside of California. So I thought that  
2       was the end of the story.

3               So I called them back. I said, oh great. We  
4       have this letter now. This is great. Well, I was told  
5       that they didn't believe, you know, their expert, that he  
6       made a mistake. But meanwhile they never got another  
7       opinion. There was no rebuttal opinion. Nothing. So  
8       you'll see in the constellation of evidence you have there  
9       that there's no rebuttal letter that they have. They just  
10      arbitrarily decided that they were wrong.

11             Then they came up with this idea that well, we  
12      don't believe that you gave it as a gift. So this went on  
13      for several years, and I said well, you know, I'm sorry,  
14      but you weren't there. I was there. I know what I did.  
15      And what evidence do you have to say that I didn't do it.  
16      I didn't even know what the law was, Your Honor. I had no  
17      idea that this was even an issue, and I had no idea.  
18      Nothing.

19             I mean, maybe 35 years ago I bought my mother a  
20      necklace -- you know, she died recently -- from Capri, you  
21      know, when I was there, and I had no idea of this gift  
22      thing and, you know, whatever. So anyway this was their  
23      determination. I had no influence over their expert, no  
24      input over their expert. This was their determination.  
25      Then we wrote declarations, and we said, no, these were

1       given as gifts.

2               And during this time, there were like mishaps.

3       And I mean, I know the state is big and millions of people  
4       in the state, and I'm sure things get misappropriated all  
5       the time. But, you know, like I said this clock. They  
6       billed me on the clock, and I didn't even get the clock.  
7       It was all smashed. And it was stuff like that.

8               And then the last incident of note was I had no  
9       idea that they had put a lien on my property. This is the  
10      only piece of real estate I have ever owned in my whole  
11      life. I'm 72 years old. Okay. I've been working since  
12      I'm 13, and I don't -- I don't expect you to feel  
13      sympathetic to me, but jeez, for you to accuse me of  
14      cheating someone is -- is very, very offensive to me. And  
15      so then they put a lien. And then Keith got involved, and  
16      he called them up, and he straightened it all out.

17              They said they were sorry, and they removed the  
18      lien, and all of that. But meanwhile it caused harm, you  
19      know, during that period of time. It caused harm. And so  
20      I could never ever get a sort of a straight answer here,  
21      you know. I -- we made an agreement. They reneged on the  
22      agreement as far as I'm concerned. The proof is in the  
23      pudding. They got the letter from their expert. Their  
24      expert disagreed with them, but that wasn't good enough.  
25      Then they said okay, if you write declarations that it was

1 a gift, you know, we'll accept it. So we write  
2 declarations that it was a gift. That wasn't good enough.

3 So, finally, you know, I think they claimed  
4 collectively we owed about \$10,000. It's not the money,  
5 Your Honor. It's the principle of the thing. I don't  
6 like to be treated, you know, as some sort of, you know,  
7 wayward thug here which is just trying to get away with  
8 something.

9 I mean, I know people try to get away with taxes,  
10 but that's not me. You know, I've been paying my taxes  
11 here in California since I've lived here, you know. And  
12 on occasion I've even overpaid and they had to give me a  
13 refund, you know. So I -- that's all I have to say about  
14 this. That's the story in a nutshell. This whole ordeal  
15 generated 28 inch -- you know, 7,000 pages and 28 inches  
16 of records. And half the time, you know, and Keith was  
17 frustrated because he wouldn't even get the records.

18 Oh, you know, and there was just one other thing  
19 I want to bring out, and I want you to take note of this,  
20 you know. I don't know how you -- it should be in their  
21 files. But they called Christie's and Sotheby's and --  
22 I'm not going to use the word fraud -- but they  
23 represented to them that they were working on my behalf.  
24 Now, of course, I never spoke to these people. I never  
25 gave them permission to call Christie's and Sotheby's and

1 tell them anything of the sort that they were working on  
2 my behalf.

3 I -- I just don't understand what gives the state  
4 the right to invade my privacy like this and misrepresent  
5 what they're doing to achieve their own gain. I'm really  
6 sorry. I have -- I have -- I've bit my tongue not going  
7 to civil court on this because I have just -- I'm just  
8 flabbergasted that I would be treated like this, okay,  
9 like some sort of small-time crook, you know, that's  
10 trying to get away with something.

11 And I made a request that if the hearing was in  
12 my favor, I requested to have the -- my money back, the  
13 \$5,000 they took plus the interest, you know. I mean --  
14 and there's been no -- you know, there's been no movement  
15 on that, but that was part of what I was requesting today.  
16 I would like to have my money back that they took without  
17 notice and without process. So whatever you guys decide,  
18 it is fine with me, you know.

19 I -- I don't want this to drag on. I want it to  
20 end now because it's cost me too much. It's cost the  
21 State too much, as you see from the all those papers, you  
22 know. And it's just not a productive way to move forward.

23 JUDGE ALDRICH: Thank you, Mr. Perrillo.

24 Mr. Whiteman, did you have anything to add?

25 MR. WHITEMAN: Yes. I think what the most



1 efficient thing for me to do since this June 10th, 2019,  
2 letter to Stanley [sic] Fitzwater Business Tax Analyst is  
3 not admitted into the record, I'll take a different  
4 approach and I will just read the letter into the record.

5 So that will be part of my testimony because it  
6 basically, is my case, explains the immense efforts that I  
7 went to to go through all these papers that are behind me  
8 to try and get a handle on how I think the State has  
9 wasted an enormous amount of taxpayer's money on -- I'm  
10 sure that there are more man hours in the generation of  
11 this paperwork than the tax that's being requested.

12 The other thing is I suspect that some of the  
13 files that are here are not in the records of the three  
14 agencies because I believe at some point that you actually  
15 sent me your original file. Because I've got a file here  
16 that's got tabs and handwriting on it that would lead me  
17 to believe that it's, in fact, your internal file. But  
18 that's only my assumption and there's no way of -- you  
19 know, I'm just telling you just for general reference.

20 But I'll read this into the record as quickly as  
21 I can, and I'm sorry if it gets a bit boring. But I  
22 wanted to make sure that this letter was heard because,  
23 again, like Richard, this ordeal that's been going on from  
24 2014, I think, has been going for far too long. So this  
25 is a letter that I wrote in response June 10th, 2019th to

1 Ms. Shanley Fitzwater.

2 "In compliance with your letter dated  
3 February 14th, 2019, please find a request to cancel all  
4 accounts for two individuals that were never supposed to  
5 file a return with your agencies because they are engaged  
6 in business, merely recipients of each other's generosity  
7 nearing the culmination of a successful ongoing successful  
8 career of a private medical practice. The Franchise Tax  
9 Board trolled for U.S. Customs data and made errors  
10 interpreting customs forms, invoices, and shipper's  
11 documents regarding both of us.

12 "Dr. Perrillo seeks the return of \$7,572.48 plus  
13 interest taken in clear violation of due process from two  
14 bank accounts. Oddly, the extreme measures were not taken  
15 against myself. Privacy violations occur by dissemination  
16 of information to more than 40 people. At this point,  
17 those 40 people have probably increased to about 65, I  
18 would say.

19 "April 15th, 2015, Richard Perrillo and Keith  
20 Whiteman received consumer use tax notice saying that we  
21 may be subject to use tax. August 20th, 2015, and  
22 September 11th, 2015, the FTB obtained unnecessarily a  
23 comprehensive report listing information that we both  
24 consider sensitive and private, including social security  
25 numbers. We were verbally bullied, literally bombarded

1 with papers, assigned multiple account numbers, forced to  
2 reply to unwarranted requests by a few of the Board of  
3 Equalization employees, and treated like common criminals,  
4 despite being exemplary taxpaying and law obeying citizens  
5 of California.

6 "We have been told repeatedly that we are  
7 entitled to a hearing in person in San Francisco, and none  
8 materialized. In sort, the files became so confusing and  
9 account numbers randomly assigned, that special training  
10 is required. Dr. Perrillo and Keith Whiteman continue to  
11 work together for more than 35 years testing the severity  
12 of brain injuries sustained by individuals in separate  
13 need.

14 "We're not involved in a commercial business, and  
15 as such, religiously file our state and federal income  
16 taxes like a good percent of our citizens. In addition,  
17 we have transitioned through three organizations, the  
18 Board of Equalization, California Department of Tax Fee  
19 Administration, and the Office of Tax Administration. The  
20 employees have built a case on a literal house of cards  
21 using essentially three pieces of paper, an invoice, a  
22 customs declaration, mostly Federal Express Airway bills.

23 "You simply cannot read these three documents and  
24 ascertain the exchange of money or a lot of relevant  
25 information in an effort to tax. You cannot cherry pick

1 large amounts because they excite the senses either, as  
2 they have done for taxpayer equality is thrown out the  
3 window, harming individuals. In one case, your employee  
4 Vanessa Martinez, contact on January 26th, 2016, writing  
5 to Sotheby's in London stating in, quotes, 'I am working  
6 with a customer, Richard Perrillo, who purchased through  
7 Sotheby's at two separate auctions,' end of quote.

8 Maryanna Csan, it's C-s-a-n, writes back her  
9 contact details and documents are redacted, stating that  
10 VAT was paid on one lot, and the other lot California tax  
11 was paid. Vanessa was not working with but against  
12 Richard Perrillo and Keith Whiteman, lying in the process.  
13 Sotheby's and Christie's routinely mix up account names  
14 and numbers, a simple result of being long-time customers  
15 individually and jointly.

16 In another case, tax was requested on a clock  
17 that arrived broken. Only your obtaining was only the  
18 front end of delivery documents does not put you in the  
19 full loop in understanding a transaction or its  
20 dissolution. In your records is the June 9th, 2014, email  
21 regarding a smashed clock that was returned. The Board  
22 may relieve a person from taxes, interest, and penalties  
23 if the Board finds that the person's failure to make a  
24 timely return or payment was due to the person's  
25 reasonable reliance on written advice from the Board.

1 I wrote to the Board on the 24th of September  
2 2015 and received a favorable response on which I relied  
3 on from Johnny, P-u-i-m, Business Tax Compliance  
4 Specialist, on 16th of October 2015. I will not quote the  
5 entire letter because it speaks for itself. But in short,  
6 when a gift is made and title to the gift transfers  
7 outside of California, it is exempt from California use  
8 tax. On June 27th, 2017, B-o-u-a, Yang, Y-a-n-g, another  
9 tax specialists, disputes my reliance and furthermore  
10 states documentary evidence does not support my  
11 contention.

12 I would like to know how he knows, not only the  
13 fact that we gave each other gifts, but how he can enter  
14 the mind of a gift giver for the financial transactions  
15 that took place to make the gift a reality unless, of  
16 course, he is relying on three pieces of paper the house  
17 of cards this entire case is built upon. The truth of the  
18 matter is you have two individuals that have stated gifts  
19 were given and received outside the country.

20 The State has not procured proof that funds were  
21 even exchanged. An invoice does not prove anything. In  
22 one instance, it is relevant Richard Perrillo bought a  
23 stone sink for Keith Whiteman in Paris. Mr. Whiteman used  
24 a VISA card generating a receipt in his name but, in fact,  
25 the account was paid for by Dr. Perrillo, completing the

1 full circle of a gift given outside the jurisdiction of  
2 California and shipped in his name directly to San  
3 Francisco.

4 Certainly, your employees cannot be allowed to  
5 troll for information, draw erroneous false  
6 conclusions in a tax hunt, and then force the unwilling  
7 participants to literally strip down for their enjoyment.  
8 This is why Keith Whiteman wrote to Bonnie Sue Barrow on  
9 March 14th, 2016. Keith Whiteman requested something in  
10 writing from the Board constituting what they define as a  
11 gift and asking if they will accept the VISA bill invoice  
12 and passports as proof. His concern is well warranted as  
13 one invasive request could slide into something else in a  
14 never-ending spiral.

15 Incidentally, no response was received. I've  
16 learned in life that things are often not as simple as  
17 what meets the eye. And in this trumped-up case, nothing  
18 can be more revealing. The fact is that the state has not  
19 provided the burden of proof to even have bothered us in  
20 the first place. You cannot ask for bank records to prove  
21 the purchase. It's very likely in some cases none exist.  
22 Financial transactions can indeed be complicated by all  
23 sorts of variables, and using the crude information  
24 supplied is actually irresponsible.

25 On November the 15th, 2015, Dr. Perrillo receives

1 a letter with account number SD BH 102-651733 from Erica  
2 Johnson, business tax rep from the State Board of  
3 Equalization with an attached Customs Import Report  
4 replete with duplicate entries and wanton non-decipherable  
5 descriptions added on customs documentation by third  
6 parties. We will both testify to having never purchased  
7 pearls, precious stones, et cetera, despite it somehow  
8 being listed on a customs form by an anonymous stranger.

9 We understand how a state employee might find  
10 this exotic and fascinating or even high finance, but I  
11 can assure you these are sentiments expressed to me by  
12 three of your employees. On August 20th, 2015, a  
13 comprehensive report pulled one of ten pages on Richard  
14 Perrillo. On August 20th, 2015, I received a threatening  
15 phone call from Erick, E-r-i-c-k, [sic] Johnson documented  
16 in a letter where Ericka said she did not want to  
17 correspond via letter but would continue to phone.

18 We requested a complete file for our records as  
19 we were convinced that the Board was over extending the  
20 reach and further disseminating our personal and private  
21 information needlessly. After blocking her number because  
22 of threatening phone calls, we started to receive numerous  
23 phone calls from a blocked number thereafter. On August  
24 20th, 2015, at 12:55 p.m. after my phone call, Ericka  
25 Johnson, she does a web search and emails Dr. Perrillo at

1       our office addresses. And search of this is in the  
2       records detailing our phone numbers and address contact  
3       information at the same location.

4               I reply with a power of attorney at 2:10 p.m. via  
5       email to her address. On the August 21st, 2015,  
6       Dr. Perrillo receives a letter from Yvette Godfrey.  
7       That's Y-v-e-t-t-e, Godfrey, G-o-d-f-r-e-y, from the State  
8       Board of Equalization with U.S. Customs entry detail and  
9       consumer use tax. No mention is made of our objections to  
10      the allegation that tax is owing.

11             On August 21st, 2015, a Gauding, G-a-u-d-i-n-g,  
12      creates an account for antiques with a declared value of  
13      \$54,677. On August the 31st, 2015, we have internal  
14      records showing my objections via telephone with entries  
15      from 1/9 /2015 to 8/28/2015, including many entries  
16      stating my objections. In addition, spelling error of  
17      Dr. Perrillo's name -- he was referred to as T.P. Was it  
18      a misspelling or an office joke? I don't know. Ericka  
19      Johnson describes Keith Whiteman as incoherent.  
20      Interestingly, no record of their dialogue exists in the  
21      records, but only a one-sided portrayal as though I was  
22      talking to a wall.

23             Ericka Johnson is described as a collector in the  
24      records I obtained. Records are made again for the  
25      complete file that to the present is replete with



1 omissions. The reliance on the broker documents is proof  
2 of nothing but erroneous information compiled on top of  
3 the other saying Richard Perrillo is the purchaser until  
4 someone or everyone believes the lie.

5 I will point out that the lack of dialogue coming  
6 from Pamela Bennett, Ericka Johnson is telling. I  
7 understand from these conversations that the State  
8 cherry-picked what they believe to be large amounts simply  
9 to collect the most tax from residents. Taxpayer equality  
10 literally is thrown out the window. Pamela Bennett was  
11 shocked that she was having conversations with individuals  
12 that she presumed to have bought more than she made in a  
13 year and could not remember the details.

14 I'm going to continue reading this letter. It's  
15 only -- it's only a few more pages, so hang in there with  
16 me.

17 On September the 1st, 2015, we received a partial  
18 file of documents collected by Yvette Godfrey on  
19 Dr. Perrillo regarding account number SD BH 102-651733.  
20 No mention of Keith Whiteman's separate request is  
21 forthcoming. On January the 22nd, 2015, Dr. Perrillo  
22 receives a notice of delinquency for 2012 and is asked to  
23 file a return. On May the 1st, 2015, Dr. Perrillo again  
24 receives a letter from Ericka Johnson with an amount due  
25 of \$8,838.84, including interest and penalties. And we,

1 again, inform her and her office they have reached the  
2 wrong conclusions.

3 On April the 17th and 30th, 2015, they assign a  
4 Customs import report with values of \$5,943 for rags, worn  
5 clothing, stone, plaster, et cetera. Descriptions that  
6 are simply arbitrary and meaningless as they are figures.  
7 Perhaps I shipped my dirty laundry back home. On July  
8 28th, 2015, K. Keller, K-e-l-l-e-r, received FedEx  
9 shipping documents for 2014 for three shipments to Keith  
10 Whiteman for \$7,785, \$7,133, and \$19,759. The Franchise  
11 Tax Board is contacted and show that Richard Perrillo's  
12 filing status is single. No use tax was paid on the 2013  
13 and the 2014 return.

14 I'm going to skip over these bits because they  
15 just reference information, but I will skip to the very  
16 last part of this letter to sum it up because we are all  
17 going to get bored out of our minds.

18 I knew at this point that Bonnie Sue Barrow did  
19 not have a case and was year after year, month after  
20 month, intimidating and bamboozling us into submission.  
21 Each successive bureaucrat-built cases on assumption  
22 building on lies thinking that after enough time those  
23 would turn into truths. She did not have the ability nor  
24 the authority to read all the smudge Custom stamps in our  
25 passport, my travel itineraries and airplane tickets from

1       years passed are of no use. And then she was hoping for  
2       our bank records to draw erroneous conclusions.

3               Ending in the position, I predicted that  
4       definitions need to be clearly defined, not made up to  
5       suit the interested snooping of an employee reaching  
6       around the globe from California with 40 people's  
7       assistance. And then I ask for, please cancel all  
8       accounts for two individuals they were never supposed to  
9       file a return with your agencies because they are not  
10      engaged in business, merely recipients of each other's  
11      generosity.

12             The Franchise Tax Board -- I just end it by  
13      saying privacy violations occur by dissemination of  
14      information to more than 40 people on the -- this bill  
15      cannot be un-wronged. The -- sorry for reading that into  
16      the record. It would have been easier just to submit it  
17      as evidence. But I guess that my general contention is  
18      that we were bullied. We were harassed. We were not  
19      taken for our word, and it was unnecessary to generate and  
20      waste all these people's time.

21             I mean, all of you who are here clearly have got  
22      better things to do than this. And I know that it's your  
23      job to collect tax, but in this particular case and in  
24      many of these cases, we've already paid tax. And I  
25      think -- I think you've done us a great disservice, and

1     that is -- you know, this letter was dated 2019. Between  
2     2019 and this moment, we've had a lot of things that have  
3     occurred, including in the middle of the pandemic when  
4     everything was shut down in the city, which was the most  
5     extreme place to be living.

6             We were being hounded by your group until I  
7     finally screamed at them for calling me, asking for money  
8     saying that it wasn't the right time to be asking for  
9     somebody for money in the middle of a pandemic on a case  
10    which we -- has been dragging on since 2014. I mean, it's  
11    not been timely. It's not been transparent, and it's  
12    certainly not been fair to us. I've spent more time  
13    trying to answer your questions and organize something  
14    that I felt that I shouldn't have to have done in the  
15    first place.

16            I regret that I've been a recipient of a gift,  
17    and I would gladly have given it all to you if you knew  
18    that that gift would waste so much of my time or our time.  
19    So thank you for listening to me, and I'm sorry if the  
20    letter was boring.

21            JUDGE ALDRICH: Thank you, Mr. Whiteman.

22            So that's about the end of the 30 minutes that  
23    was allotted for both of the Appellants. So at this time  
24    we're going to transition to the Department's combined  
25    opening and closing.

1           You'll have another opportunity to speak at the  
2           end for a closing or a rebuttal. Okay?

3           MR. WHITEMAN: Yes.

4           JUDGE ALDRICH: All right.

5           And, Ms. Paley, are you ready to proceed?

6           MS. PALEY: Yes, thank you.

7           JUDGE ALDRICH: Thank you. Go ahead.

8

9                                   PRESENTATION

10           MS. PALEY: These consolidated hearings involve  
11           the imposition of use tax on items imported into  
12           California for use in California. Revenue & Taxation Code  
13           Section 6201 imposes tax on the use or consumption in this  
14           state of tangible personal property purchased from any  
15           retailer for use or consumption in this state. Property  
16           purchased outside of California, which is brought into the  
17           state is regarded as having been purchased for use in the  
18           state if the first functional use of the property is in  
19           California, regulation 1620(b)(3).

20           Section 6009 defines use to include the exercise  
21           of any right or power over tangible personal property  
22           incident to the ownership of that property. Use or  
23           consumption specifically includes making a gift of  
24           property to others, regulation 1670(a). A person who  
25           transfers property without receiving any consideration,

1       whether the transfer is characterized as a contribution,  
2       donation, or gift, is the consumer of that property for  
3       the application of the sales and use tax.

4               The elements of a gift are illustrated in the  
5       1999 case *Yamaha Corporation of America versus the State*  
6       *Board of Equalization*. They were one, competency of a  
7       donor to contract; two, a voluntary intent on the part of  
8       the donor to make a gift; three, delivery, either actual  
9       or symbolic; four, acceptance, either actual or imputed;  
10      five, the complete divestment of all control over the  
11      property by the donor; and six, lack of consideration for  
12      the gift, quote, "It is the intent with which the delivery  
13      is made that is essential. For unless the donor intends  
14      to divest itself completely of control and dominion over  
15      the property, the gift is incomplete," end quote.

16             For both Appellants, the Notice of Determinations  
17      issued are based on entry summary forms from the United  
18      States Department of Homeland Security Customs and Border  
19      Protections or Customs, indicating that the Appellants  
20      imported goods from Europe; Exhibits A-1, C, D-1, and F.  
21      The Determinations were made based on information received  
22      from customs that Appellants made purchases of antiques,  
23      art, and other goods in Europe and had them shipped to  
24      their shared residence in California.

25             Use tax is measured by the sales price, which

1 means the total amount for which the tangible personal  
2 property is sold, according to Revenue & Taxation Code  
3 Sections 6201 and 6011(a). The value declared at Customs  
4 is a representation of the sales price. And absent  
5 documentary evidence to establish a more accurate sales  
6 price, we accept the amount represented to Customs as the  
7 sales price. The Department used the already converted  
8 U.S. dollar amounts that appeared on the entry summaries  
9 as appropriate by Regulation 1654(d), for foreign currency  
10 measurements on the date of the contract.

11 For Appellant Perrillo, there are two Notice of  
12 Determinations at issue found at Exhibit B. For liability  
13 period 2012 issued June 18th, 2015, the Determination was  
14 adjusted from \$7,213 to \$5,149 in tax, and a 10 percent  
15 failure-to-file penalty was imposed. It was for the  
16 import from the U.K., Netherlands, and Sweden, a tea caddy  
17 parchment stand, perfume burner, a games table, a bronze  
18 candle stick, coffee set, and a lamp with a declared value  
19 of \$84,886. A collection cost recovery fee of \$570 was  
20 subsequently imposed for failure to pay for more than 90  
21 days.

22 On January 27th, 2016, the Department agreed to  
23 remove the failure-to-file penalty, but not the collection  
24 cost recovery fee or interest. As discussed in  
25 communications leading up to this hearing, this

1 Determination was not petitioned. After the Determination  
2 went final, collection action was taken and the Department  
3 received payment of the tax. Dr. Perrillo then filed a  
4 timely claim for refund, which is now before the Office of  
5 Tax Appeals.

6 For liability period 2014, issued December 16th,  
7 2015, a Determination was made for \$4,784 and tax. And,  
8 again, the ten percent failure-to-file penalty. For  
9 import from the U.K., lighting fixtures, a marble mantel  
10 time piece, an ornamental candle stick with a declared  
11 value of \$54,667. A redetermination was made on  
12 November 29th, 2016, reflecting that Sotheby's Auction  
13 House had collected \$1,728 in California sales tax  
14 reimbursement on the marble mantel timepiece, and the  
15 account was credited.

16 For Appellant Whiteman, there are three Notice of  
17 Determinations at issue found at Exhibit E. \$2,809 in tax  
18 for the 2013 liability period issued January 2nd, 2016,  
19 for import from the U.K., a painting and a set of four  
20 armchairs with a declared value of \$32,105; \$2,673 in tax  
21 for the 2014 liability period issued January 28th, 2016,  
22 for import from the U.K., an antique cabinet and porcelain  
23 figurines with a declared value of \$30,549; and \$520 in  
24 tax for the 2015 liability period issued April 17, 2017,  
25 for import from France and Italy, linens, glass beads, and



1 a marble wash basin with a declared value of \$5,943.

2 As held in Riley B.'s Incorporated versus the  
3 State Board of Equalization in 1976, when the Department's  
4 determination is reasonable, the burden of proof shifts to  
5 the taxpayer to explain why the deficiency is not valid.  
6 And according to Payne versus State Board of Equalization  
7 from 1982, Appellant has the burden of establishing  
8 entitlement to an exemption or exclusion.

9 Appellants contended at the appeals conferences  
10 that Dr. Perrillo purchased the items as gifts for  
11 Mr. Whiteman and shipped the gifts to their shared home in  
12 California. Appellants have not provided supporting  
13 documentation for their claims, whether traveling solo or  
14 together. There is no evidence that anyone, other than  
15 the named Appellant, purchased the items from customs or  
16 shipping records, invoices obtained, or brokerage  
17 documents; Exhibits A-1, 4, 5, and D-1 through 3, nor  
18 evidence of presence out of the country by either  
19 Appellant no evidence of a gift.

20 Instead what we do have is a documented  
21 multiple-year pattern of importing household furnishings  
22 and decorative items of substantial value to a shared  
23 residence. As stated earlier, one of the elements of a  
24 gift is that the donor completely divests all control over  
25 the gifted property. In this appeal, the property

1 allegedly gifted were household furnishings and decorative  
2 items shipped to the shared home of the alleged donor.

3 Under these facts, the elements for a gift set  
4 forth in Yamaha are not met, for the alleged donor has not  
5 completely divested all control over the property --  
6 property to furnished and decorate his own home.

7 Appellants have also asserted that they are entitled to  
8 relief based upon reasonable reliance on erroneousess  
9 written advice from the Department, Exhibit A-7, pursuant  
10 to Revenue & Taxation Code 6596(a) and Regulation 1705(b).

11 Given that the liabilities were incurred before  
12 the advice was procured, 6596 is not applicable. One  
13 cannot reasonably act in reliance on something that was  
14 obtained after the fact. In addition, Appellant's email,  
15 Exhibit A-6, did not contain a full description of the  
16 facts and circumstances surrounding the transactions,  
17 which is a requirement in order to obtain relief under the  
18 law.

19 Appellants are also seeking relief of the failure  
20 to file penalties, although, the June 18th, 2015, penalty  
21 was already relieved. Appellants imported the items and  
22 did not file a use return. Accordingly, a ten percent  
23 failure-to-file penalty was imposed in accordance with  
24 Revenue & Taxation Code 6591. Section 6592(a) provides  
25 that the failure-to-file penalty may be relieved if a

1 person's failure to make a timely payment or file a return  
2 was due to reasonable cause and circumstances beyond the  
3 person's control, and occurred notwithstanding the  
4 exercise of ordinary care, and in the absence of willful  
5 neglect.

6 Appellants signed under penalty of perjury  
7 Form 735 Request Relief on the purported basis of the  
8 written advice received after the fact. As previously  
9 discussed, that occurred after the fact. Thus, there is  
10 no basis to grant relief of the penalties. Appellants  
11 have also alleged undue delay as a basis of relief of  
12 interest. Imposition of interest is mandatory by Revenue  
13 & Taxation Code 6513, and may be relieved only under very  
14 narrow circumstances such as when failure to make a timely  
15 return or payment was due to a disaster or unreasonable  
16 error or delay by a CDTFA employee.

17 Pursuant to Revenue & Taxation Code 6593.5, an  
18 error or delay will be deemed to have occurred only if no  
19 significant aspect of the error or delay was attributable  
20 to an act of or a failure to act by the taxpayer. Aside  
21 from the pandemic, which interrupted the world, any  
22 significant delays during the appeals process may be  
23 attributed to the postponement and accommodation request  
24 of the Appellants themselves.

25 Based on the law and evidence, we ask that the

1 Panel deny Appellants' appeal and uphold the liabilities.  
2 You cannot furnish your own home and avoid use tax by  
3 calling it a gift.

4 Thank you.

5 JUDGE ALDRICH: Thank you, Ms. Paley.

6 Before we move on to questions from the Panel, I  
7 wanted to give the Department an opportunity to ask  
8 questions of the Appellant since they provided testimony.

9 MS. PALEY: We do not have any questions. Thank  
10 you.

11 JUDGE ALDRICH: Thank you.

12 At this time I'm going to refer to my Panel  
13 members to see if they have any questions for the  
14 Appellant.

15 Judge Long, do you have any questions for either  
16 party?

17 JUDGE LONG: I do. This is Judge Long. I do  
18 have some questions for both Mr. Whiteman and  
19 Mr. Perrillo. Actually, maybe CDTFA can clear this one up  
20 first, though. In Mr. Perrillo's testimony he said that  
21 the dispute over the smashed clock had been resolved, but  
22 Mr. Whiteman's letter which he read into the record also  
23 discussed the clock as if it was still in dispute. I  
24 wanted to verify with CDTFA.

25 Is this purchase of the clock subject to use tax

1 still in dispute?

2 MS. PALEY: I believe it has been resolved.

3 MR. PERRILLO: I think it was resolved.

4 JUDGE LONG: Okay. Thank you.

5 And then I just want to be clear with respect to  
6 Mr. Perrillo and Mr. Whiteman's positions. So within  
7 Mr. Whiteman -- sorry. Dr. Whiteman?

8 MR. PERRILLO: Dr. Perrillo and Mr. Whiteman.

9 JUDGE LONG: Sorry. Mr. Whiteman.

10 MR. WHITEMAN: I'll take the credit though. Why  
11 not.

12 JUDGE LONG: Fair enough. In your letter you  
13 discussed that the Customs documentation could not be  
14 relied on. So then with respect to the invoices from the  
15 various auction houses, you mention that Sotheby's and  
16 other auction houses in particular often mix up their  
17 customers' purchases and identifications. Is it your  
18 position, then, that these items that are listed in the  
19 various invoices attached to CDTFA's decision that you  
20 didn't purchase those?

21 MR. WHITEMAN: There are many misleading  
22 indiscrepant descriptions given on some of those  
23 documents. Some of the documents that Sunny was reading I  
24 think are not part of this dispute. I'm not quite sure  
25 where they came from. But to answer your question, I

1       assume generally speaking that the information that you  
2       have is -- is somewhat accurate. It's hard to know.

3               JUDGE LONG: Okay. And then --

4               MR. WHITEMAN: Because there's a lot of  
5       information there that spans over the course of almost a  
6       decade.

7               JUDGE LONG: Sure. I understand that. And then  
8       with respect to when the gifts were made, I just wanted  
9       to -- CDTFA's decision, which was issued to Dr. Perrillo,  
10      indicates that there were letters dated April 18th, 2016,  
11      and December 7th, 2016, where the items were delivered via  
12      a common carrier for delivering to California to  
13      Mr. Whiteman, but then at the appeals conference Mr. --  
14      according to the decision, it says that Mr. Whiteman  
15      stated that you were both together at the time of those  
16      purchases. And I'm just trying to get to, kind of, the  
17      bottom of which is true.

18              MR. WHITEMAN: So --

19              MR. PERRILLO: We were always together.

20              MR. WHITEMAN: Just to be clear, we were always  
21      together.

22              MR. PERRILLO: I have a doorman here. So if  
23      something is delivered, you know, I have a doorman that  
24      takes it. It doesn't mean that I'm here.

25              MR. WHITEMAN: So one thing -- one thing that

1       should be abundantly clear because much of the case is  
2       built on the notion that a gift was received in  
3       California. But the truth of the matter is that all of  
4       these transactions were conducted, not only outside of the  
5       state, they were conducted outside the country.

6               MR. PERRILLO: Your Honor, I -- I --

7               MR. WHITEMAN: And we weren't together.

8               MR. PERRILLO: I -- I just want to interject  
9       something on your earlier question. Do you remember in  
10      the Whiteman letter or maybe it was Counsel's letter from  
11      the State, you know, there were some references to dirty  
12      clothes and things like that. I mean, look, I'm not a  
13      lawyer here. I could have hired a lawyer. I mean, there  
14      may have been a time, you know.

15              I mean, you go away. I mean, who wants to clean  
16      your underwear. I put it in a box, and I shipped it.  
17      That's what their referring to? I owe user tax on my  
18      underwear that I already paid tax here in California, and  
19      I shipped it because I didn't feel like washing it while I  
20      was on vacation? I mean, this is how absurd some of this  
21      has gotten.

22              The other thing is in my mind and perhaps you  
23      would be good enough to help me with this, because I don't  
24      understand, I really don't, how you rely upon agreement.  
25      I always thought that verbal agreements in California were

1 binding. And Counsel's, you know, Ms. Paley's testimony  
2 here, you know, she kept saying, well, the letter was  
3 after the fact. Well, we made an agreement. The  
4 agreement was we would both abide by what the letter said.  
5 That was the agreement, and they didn't like what the  
6 letter said.

7 I had no influence over who they hired, who they  
8 went to, nothing. Okay. And they just simply didn't like  
9 it, and her testimony that, well, it was after the fact  
10 and you can't rely upon, exactly the crux of the matter  
11 for me. Please help me to understand how you can make an  
12 agreement with someone and then arbitrarily when it  
13 doesn't go in their favor, they just decide to undue it.

14 Think of what would happen in the civil cases we  
15 have here in California, people just decided to undue  
16 agreements that they make. You know, that's the thing  
17 that bothered me more about anything -- it's not the  
18 money -- is that they made an agreement. I went with the  
19 agreement. I got the letter. The proof is that they got  
20 the letter. And now to say in retrospect, well, it was  
21 after the fact. It had no meaning. You know, this is --  
22 and then quoting all of these different, you know --

23 JUDGE LONG: Mr. Perrillo, I'm sorry to cut you  
24 off, but I just want to keep on track with respect to my  
25 questions. I understand. I -- I think that you're



1 position with respect to the letter is pretty clear.

2 MR. PERRILLO: All right.

3 JUDGE LONG: So I just want to make sure that  
4 everyone has the opportunity to ask questions that is on  
5 this panel.

6 MR. PERRILLO: Sure. Sorry.

7 JUDGE LONG: So I'm just going to just go ahead  
8 and turn things back over to my co-Panelist, Judge  
9 Aldrich.

10 JUDGE ALDRICH: Hi. This is Judge Aldrich, and  
11 now I'm going to refer to Judge Lambert.

12 Did you have any questions for either of the  
13 parties?

14 JUDGE LAMBERT: This is Judge Lambert. I don't  
15 have any questions at this time. Thanks.

16 JUDGE ALDRICH: Okay. I guess then it's time for  
17 a closing rebuttal, if you would like one, Mr. Whiteman,  
18 Mr. Perrillo. I can give you approximately ten minutes.

19 MR. WHITEMAN: He's Italian by the way. It's  
20 Perrillo.

21

22 CLOSING STATEMENT

23 MR. PERRILLO: In the event I just said I think  
24 what I wanted to say. I just cannot -- I just cannot undo  
25 the fact that I relied upon an agreement. We made an

1 agreement, you know. The proof is in the pudding. We got  
2 the letter. It was at their choice. No inference from  
3 me. I never got a rebuttal expert. Nothing. And all of  
4 a sudden now I hear a litany of codes that were -- to undo  
5 an agreement they made with me.

6 The fact is they made this agreement with me, and  
7 they should be held to, you know, to be bound by it. You  
8 can't just make agreements, and that's what I relied upon,  
9 you know. And they went out. They spent the money or  
10 whoever, and they found this person, and the letter is  
11 there. You have it, you know.

12 And so the reason why I'm here is not because I  
13 told you earlier I am not in any way shape or interested  
14 in cheating the States if anything because the State needs  
15 lots of money to fix our roads and everything else. But  
16 I'll be darned if somebody makes an agreement with me and  
17 the proof comes in and then they're not bound by it, I  
18 just don't understand how that occurs. I really don't.

19 And so that's all I have to say in rebuttal. And  
20 I don't think her statements cure this problem for me,  
21 whether it was after the fact or before the fact or  
22 whatever the fact. You know, the fact is we made an  
23 agreement. We were supposed to rely upon this, and now  
24 all of a sudden, we're here because no one is relying upon  
25 it.

1 JUDGE ALDRICH: And Mr. Whiteman.

2 MR. WHITEMAN: All I can say really is that this  
3 is outside the jurisdiction of California. What we did  
4 outside the country is our business. You have statements  
5 to the fact that they were given as gifts when we were  
6 there, and you've chosen to ignore those statements and,  
7 in the process generating a huge amounts of material. The  
8 other thing is I think that you're currently -- and other  
9 states, even other countries are in a position that  
10 they're kind of organized to be able to deal with use tax.

11 And so at the moment I experience you as being  
12 very organized. I think early on, let's say in 2014, I  
13 think this was not the case. Which is why you then have  
14 ended up really evolving it to where you're at at the  
15 moment. And that transaction from 2014 until now has been  
16 nothing but unbelievably aggravating and convoluted and  
17 lots and lots and lots of disinformation. I don't know if  
18 it was intentional.

19 My guess is just we got caught in the transaction  
20 between then and now, and I think things are working much  
21 better now. Unfortunately, we've had a lot of loss time  
22 over this and a lot of anguish over it. And -- and I just  
23 look forward to it being over. Thank you.

24 JUDGE ALDRICH: Thank you, Mr. Whiteman.

25 Any other questions from my Panel members? Just

1       a -- nope.   Okay.

2               Well, I wanted to thank everyone for your time.  
3       We're going to conclude this hearing.   The record is now  
4       closed.   The Panel will meet and decide the case based off  
5       of the evidence and the arguments.   We'll send both  
6       parties our written decision no later than 100 days from  
7       today, and the hearing calendar for today has concluded.

8               (Proceedings adjourned at 2:14 p.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 15th day of December, 2022.

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