

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
M. DONALDSON,) CASE NO. 19105417
APPELLANT.)
_____)

CERTIFIED COPY

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

Cerritos, California

Wednesday, June 7, 2023

Reported by:

JENNIFER VALLEJO
Hearing Reporter

Job No.:
42314 OTA

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2 STATE OF CALIFORNIA

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15 TRANSCRIPT OF PROCEEDINGS, taken at
16 12900 Park Plaza Drive, Suite 300, Cerritos,
17 California, commencing at 1:07 p.m. and
18 adjourning at 1:59 p.m. on Wednesday,
19 June 7, 2023, reported by Jennifer Vallejo,
20 Hearing Reporter.

1 APPEARANCES:

2
3 Panel Lead: MICHAEL GEARY

4
5 Panel Members: SUZANNE BROWN
6 ANDREA LONG

7
8 For the Appellant: M. DONALDSON, TAXPAYER

9
10 For the Respondent: SUNNY PALEY, TAX COUNSEL
11 CARY HUXSOLL, TAX COUNSEL
12 JASON PARKER, HEARING REPRESENTATIVE
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I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received at page 9)

(Respondent's Exhibits A-E were received at page 10)

P R E S E N T A T I O N

PAGE

By M. Donaldson

12

By Ms. Paley

20

1 Cerritos, California; Wednesday, June 7, 2023

2 1:07 p.m.

3
4
5 JUDGE GEARY: All right, everybody. Welcome to
6 the Office of Tax Appeals. We are here for the hearing in
7 the appeal of M. Donaldson, which is Office of Tax Appeals
8 or OTA Case Number 19105417. Today is June 7, 2023, and
9 the time is 1:07 p.m.

10 This hearing is being heard in Cerritos,
11 California by a panel of three Administrative Law Judges.
12 As a reminder, OTA is not a court. It is an
13 administrative tribunal staff by tax experts and is
14 completely independent of the State's tax agencies.

15 My name is Mike Geary. I will take the lead in
16 conducting the hearing today, and I'm joined on the dais
17 by my colleagues, Administrative Law Judges Andrea Long
18 and Suzanne Brown.

19 After the hearing, the panel will discuss the
20 arguments and evidence. Each of us on the panel will have
21 an equal voice in those discussions, and a decision on an
22 issue is made when at least two of us agree.

23 Any of us on the panel may ask questions today or
24 otherwise participate in the hearing to ensure that we
25 have all the information needed to correctly decide the

1 appeal.

2 Consistent with OTA's goal to be completely open
3 and transparent, today's hearing can be seen and heard in
4 its entirety on OTA's YouTube channel. In addition, our
5 stenographer, Ms. Vallejo is helping us to make a record
6 of this hearing.

7 We can all help Ms. Vallejo by speaking loudly
8 and clearly and by not interrupting another speaker. I
9 should also caution you about not speaking too quickly.
10 When needed, Ms. Vallejo or perhaps one of us on the dais
11 may remind you or ask for clarification.

12 The YouTube recording of this hearing will remain
13 available to be viewed online for some period of time.
14 And I don't know how long they stay up. It could be
15 years. And, eventually, a written transcript of the
16 hearing will be available on OTA's website.

17 All right. We're ready to have Ms. Vallejo start
18 her record.

19 Ms. Vallejo, are you ready?

20 THE REPORTER: I am. Yes.

21 JUDGE GEARY: All right. Thank you. Let's go on
22 that record.

23 And we'll begin by asking the parties to identify
24 themselves.

25 Ms. Donaldson, I see you are here today. And you

1 are going to be representing yourself in this hearing;
2 correct?

3 MS. DONALDSON: Correct.

4 JUDGE GEARY: All right. And you have with you
5 your husband; correct?

6 MS. DONALDSON: Steve.

7 JUDGE GEARY: Steve Donaldson?

8 MR. DONALDSON: Correct.

9 JUDGE GEARY: Welcome to both of you.

10 Ms. Paley, I see you're here. Why doesn't the
11 Department identify themselves? Starting with you,
12 Ms. Paley?

13 MS. PALEY: Thank you. I'm Sunny Paley. I'm an
14 attorney with the Department.

15 MR. HUXSOLL: Cary Huxsoll, also an attorney with
16 the Department.

17 MR. PARKER: Jason Parker, Chief of Headquarters
18 Operations Bureau, with the Department.

19 JUDGE GEARY: Thank you. Welcome again,
20 everybody.

21 It's my understanding, Ms. Donaldson, that you
22 will be testifying today; is that correct?

23 MS. DONALDSON: That's correct.

24 JUDGE GEARY: All right. And do you have anyone
25 else that you expect to testify today?

1 MS. DONALDSON: No.

2 JUDGE GEARY: Respondent, does Respondent plan on
3 offering any witness testimony today?

4 MS. PALEY: No. Thank you.

5 JUDGE GEARY: The parties provided copies of
6 exhibits to each other and to OTA. The exhibits for --
7 have been marked for identification in this appeal. And
8 they have been included in an electronic binder. And I
9 believe the parties were notified that that binder was
10 available for download.

11 In that binder is Appellant's Exhibit 1 marked
12 for identification only so far. That exhibit is also the
13 same as one of Respondent's exhibits. That would be
14 Exhibit E-3 in Respondent's exhibits. So I assume
15 Respondent will have no objection to Appellant's
16 Exhibit 1.

17 Is that right, Ms. Paley.

18 MS. PALEY: Correct.

19 JUDGE GEARY: All right. Respondent's exhibits
20 are marked A through E, and E is actually sub-marked E-1
21 through E-4 for identification.

22 Ms. Donaldson, have you had an opportunity to
23 look over the documents that the CDTFA, that the
24 Department wants to offer into evidence?

25 MS. DONALDSON: Okay. Yes, I have.

1 JUDGE GEARY: Is your microphone on?

2 MS. DONALDSON: Yes, I have.

3 JUDGE GEARY: Thank you.

4 Do you have any objection to any of those
5 documents?

6 MS. DONALDSON: No.

7 JUDGE GEARY: I should have -- I should have
8 mentioned to the parties. And that was -- I neglected to
9 do that. The microphones that are in front of you have a
10 button. If you are speaking, press the button and the
11 green light will light. That means you have a live
12 microphone.

13 When you are not speaking, turn the microphone
14 off so it doesn't pick up speech that you do not want to
15 be part of the record. And when you are speaking on the
16 record, you need to speak right into the microphone. And
17 if you look away at a document, try to do it in a way that
18 keeps your mouth relatively close to the microphone.

19 If everybody would do that, it would make it
20 easier, particularly for the people who are watching the
21 live stream, to hear what is being said.

22 All right. I am admitting all the exhibits; that
23 is Appellant's Exhibit 1 --

24 (Appellant's Exhibit 1 was received in
25 evidence by the Administrative Law Judge.)

1 JUDGE GEARY: -- and Respondent's Exhibits A
2 through E.

3 (Respondent's Exhibits A-E were received in
4 evidence by the Administrative Law Judge.)

5 JUDGE GEARY: Let's talk about the issue that the
6 judges are going to be asked to address.

7 We -- we had a prehearing conference and
8 discussed the issue at that conference, and the parties
9 agree that the sole issue is whether Appellant is entitled
10 to a reduction of the measure of disallowed claimed
11 nontaxable labor.

12 Ms. Donaldson, do you agree that that is the
13 issue OTA will be addressing?

14 MS. DONALDSON: Yes, I do.

15 JUDGE GEARY: Thank you.

16 And, Ms. Paley, do you agree?

17 MS. PALEY: Yes.

18 JUDGE GEARY: All right. Any questions before --
19 let me talk briefly about time estimates.

20 At the prehearing conference, Ms. Donaldson said
21 she needed about 20 minutes for her presentation, and OTA
22 granted her that 20 minutes. Respondent also expected to
23 need about 20 minutes, and that was granted.

24 So today, Ms. Donaldson, do you think you still
25 will be able to complete your argument within about

1 20 minutes?

2 MS. DONALDSON: Yes.

3 JUDGE GEARY: Thank you. I wasn't sure whether
4 that came across or not.

5 MS. DONALDSON: Yes, I will.

6 JUDGE GEARY: Okay. Thank you.

7 MS. DONALDSON: Thank you.

8 JUDGE GEARY: Ms. Paley, is 20 minutes still
9 going to be enough for Respondent?

10 MS. PALEY: Yes. Thank you.

11 JUDGE GEARY: And I think I mentioned to you and
12 to the parties at the prehearing conference that, at the
13 conclusion of Respondent's argument, I will allow you and
14 other -- you, Ms. Donaldson, another five minutes or so if
15 you want to give some concluding remarks; okay?

16 MS. DONALDSON: Yes, sir. Thank you.

17 JUDGE GEARY: Yes. You don't have to use those,
18 but they're available for you and I'll give you an
19 opportunity to use them.

20 MS. DONALDSON: Okay.

21 JUDGE GEARY: Any questions, Ms. Donaldson,
22 before I begin and you are allowed to start your argument?

23 MS. DONALDSON: No questions.

24 JUDGE GEARY: Thank you.

25 Ms. Paley, any questions?

1 MS. PALEY: No. Thank you.

2 JUDGE GEARY: All right. Ms. Donaldson, you may
3 begin.

4 MS. DONALDSON: Thank you.

5 JUDGE GEARY: Excuse me. You're going to be
6 giving, probably, I take it, a combination of testimony
7 and argument at the same time?

8 MS. DONALDSON: Yes, sir.

9 JUDGE GEARY: Probably?

10 MS. DONALDSON: Yeah.

11 JUDGE GEARY: All right. Let me administer an
12 oath or affirmation to you.

13
14 M. DONALDSON,
15 produced as a witness, and having been first duly sworn in
16 by the Administrative Law Judge, was examined and
17 testified as follows:

18
19 JUDGE GEARY: Thank you.

20 Now you may proceed.

21

22 PRESENTATION

23 MS. DONALDSON: Okay. First of all, I'd like to
24 thank the OTA panel judges and the other persons that are
25 present today for allowing this hearing to be changed due

1 to an ongoing health issue. I appreciate the
2 consideration in accommodating my request.

3 So I feel the best way to address the appeal
4 decision is to address the central issue of whether the
5 alterations performed during the time frame of
6 July 1st, 2014 through June 30th, 2017 should have been
7 considered as nontaxable labor.

8 First, I'll point out that the bridal industry in
9 itself has two season. It's the spring and the fall. The
10 bridal company or the wholesalers present their
11 collections at these times.

12 And because trends and styles change, this season
13 system forces the retailers to purchase sample gowns twice
14 a year and to turn inventory in order to stay relevant and
15 current. So this will be important as we look at the
16 cyclical process of the conception of the sale of the
17 bridal gown.

18 So a bridal gown begins with a concept or a
19 design created by an individual or a team of designers
20 associated with a bridal company, who we will call the
21 wholesaler. Once the designs for numerous styles are
22 created, the bridal companies or the wholesalers then
23 present these designs to a factory -- normally, in China
24 or Vietnam -- for fabrication or manufacturing.

25 So the prototypes are then created and supplied

1 to the bridal companies or the wholesalers for their
2 approval or modifications. If they approve them, then
3 multiple samples of the chosen styles are produced for the
4 purpose of showcasing these styles to the bridal retailers
5 via industry markets or sales reps, store visits or
6 catalogs. So if they're not approved, the prototype then
7 remains with the bridal company to be disposed of because
8 it will not go into production.

9 Okay. So the bridal retailers subsequently place
10 orders and purchase those samples from the bridal
11 companies that they think will be good sellers in their
12 stores. Upon arrival, these samples are then placed in
13 the stores as inventory for the consumer to try on and
14 potentially order.

15 So any time you walk into a bridal store, you're
16 not looking at gowns that you're going to buy. You're
17 looking at samples that you're going to try on and then
18 place an order for purchase. So the bridal companies, the
19 wholesalers, require a keystone or a markup anywhere
20 between two and three times the wholesale cost. In other
21 words, the MSRP, the manufacturer's suggested retail
22 price, is two to three times the price of the sample that
23 the bridal retailer originally purchases from that
24 wholesaler.

25 So once that sample is placed on the floor, the

1 consumer comes in, tries on the garment, makes a selection
2 and then places an order. In turn, the bridal retailer
3 places the order with the wholesaler or the bridal
4 company, who then sends off that order to the factory to
5 be produced or manufactured.

6 Upon completion of the garment, it's sent back to
7 the wholesaler, who then inspects the garment and ships it
8 to the bridal retailer. That bridal retailer then ships
9 or gives the gown to the customer brand new, never tried
10 on, with tags. So that's how that dress gets to that
11 consumer and that bride.

12 Okay. So it's clear at this point that the gowns
13 that are purchased from the bridal companies or the
14 wholesalers by the bridal retailers are -- that are used,
15 the samples to be tried on, are, in fact, used for their
16 intended purchase. They're purchased from the bridal
17 companies to be used as samples in their stores for the
18 consumers to try on, not to buy.

19 Bridal companies prohibit bridal retailers from
20 selling their samples off the rack to the consumer, and
21 they also require that keystone, that markup of two to
22 three times of that wholesale cost.

23 So to continue the life cycle of the bridal gown,
24 go back to my introduction where I mentioned trends and
25 seasons. In order for bridal retailers to stay relevant

1 and current and in business, they are faced with the issue
2 of turning over their inventory each season.

3 So the inventory that they've created in their
4 stores is with sample gowns that were purchased from those
5 wholesalers and used for try-ons. So at the end of the
6 season, to make room for the samples that they buy for the
7 next season, they need to dispose of that inventory.

8 And that inventory now are used bridal gowns that
9 they can't sell in their stores because the wholesalers
10 don't allow it. If they do that, then they are not
11 allowed to repurchase from that line in the future. So
12 that -- that has stood for years and years and years,
13 until the pandemic. So -- but the time frame we're
14 looking at, that was still in place.

15 So now what happens is they have to figure out
16 what to do with that used inventory, and that's where
17 Beverly Hills Bridal ExChange comes into the picture. So
18 Beverly Hills Bridal ExChange provides a valuable service
19 to the retailers and to some individuals.

20 Instead of adding more textiles, the used gowns,
21 to landfills, Beverly Hills Bridal ExChange offers the
22 bridal retailers and individuals a consignment option. So
23 Beverly Hills Bridal ExChange is not a reseller, not a
24 thrift store or not a manufacturer. It is, in fact, truly
25 a consignment store.

1 So Beverly Hills Bridal ExChange works with the
2 bridal retailers for the individuals to place their used
3 gowns on contracts with terms specified as to the length
4 of the contract, the percentage split, the condition of
5 the garment, the ownership and transferability and
6 liability.

7 Beverly Hills Bridal ExChange sells used gowns
8 acquired through consignment. No gowns are purchased
9 either from bridal retailers, wholesalers or
10 manufacturers.

11 Beverly Hills Bridal ExChange offers additional
12 services, such as selling bridal accessories, garment
13 preservation service, tuxedo rentals, complimentary gown
14 storage until their wedding date and garment steaming.
15 Alterations are also offered through the store as a
16 convenience to that customer but are performed by a
17 subcontractor.

18 These additional services not only provide the
19 store with an additional revenue stream but offer the
20 customer a one-stop shopping experience 'cause, while
21 they're in the store, they can decide if they need
22 something else. Alterations are never included with the
23 sale of a dress. They have not been from the time the
24 store came into being until today.

25 The service is offered at the time that the

1 customer pays for the dress as a convenience, but they are
2 also told, even if we store their dress for them, they may
3 come back, pick it up, take it and take it out to somebody
4 else to have it altered. They can take it to a local
5 seamstress. They can take it to the friend of a family.
6 But if they choose to have their alterations done in the
7 store, then we set up a future appointment.

8 None of those dresses that they purchase in our
9 store are new dresses. These are all used dresses that
10 come from the retailers or from individuals. If it's an
11 individual, it was used for the purpose it was intended.
12 It was worn down the aisle. But if it's from a bridal
13 retailer, it also was used for its purpose before we got
14 it because it was purchased from the manufacturer or the
15 wholesaler as a sample and used as a sample until they had
16 to get rid of it.

17 So to the contention that Beverly Hills
18 Bridal ExChange restores the gowns to their original
19 condition or new condition, as stated in CDTFA's appeal
20 decision, we're not a fabricator. We don't restore gowns.
21 We don't have the ability to restore gowns, nor do we have
22 the knowledge to do that.

23 We at times need to perform some minor repairs or
24 cleaning to the samples in order to place them on the
25 sales floor, but in no uncertain terms are we able to

1 restore a gown to its original condition. We can't make
2 that gown brand new anymore and we can't put new tags on
3 it and we can't sell it at the MSRP because it no longer
4 is a new dress.

5 So Beverly Hills Bridal ExChange offers those
6 dresses at 50 percent of the MSRP or less, and those
7 prices indicate to those consumers that walk through the
8 door that these are not new dresses. So it is impossible
9 for us or for anybody else to restore a bridal gown, a
10 used bridal gown, back to its original condition. It
11 can't be done.

12 So for the reasons that I've presented today, I'd
13 ask that you consider dismissing the claim and finding
14 that the alterations were, in fact, nontaxable labor
15 because the alterations were performed on used garments.

16 And I don't think I used up my whole 20 minutes,
17 but --

18 JUDGE GEARY: No. You were very efficient.
19 Thank you. I'm going to find out if my colleagues have
20 any questions for you. Or they may choose to reserve
21 until after they hear from CDTFA.

22 Judge Brown, did you have any questions?

23 JUDGE BROWN: I will reserve my time until after
24 we hear CDTFA's presentation. Thank you.

25 JUDGE GEARY: Thank you.

1 Judge Long?

2 JUDGE LONG: I have no questions. Thank you.

3 MS. DONALDSON: Thank you.

4 JUDGE GEARY: I may have questions after CDTFA
5 gives its presentation also. Thank you very much.

6 MS. DONALDSON: Okay. Thank you.

7 JUDGE GEARY: Ms. Paley, are you ready?

8 MS. PALEY: Yes. Thank you.

9 JUDGE GEARY: You may proceed.

10
11 PRESENTATION

12 MS. PALEY: Good afternoon. From 2008 to 2017,
13 Appellant operated Beverly Hills Bridal ExChange in
14 Corona, California. In 2018, Appellant incorporated the
15 business. The business model involved the consignment
16 sale of bridal and prom dresses and accessories.
17 Appellant also rented tuxedos, offered dress steaming and
18 preservation services and alterations to clothing
19 purchased by customers.

20 Appellant contracted with bridal dress vendors to
21 sell sample bridal dresses that had been discontinued by
22 the manufacturer or from a prior fashion season or tried
23 on, displayed at bridal shows or worn by models at photo
24 shoots and runway shoots at bridal stores.

25 For each dress sale, Appellant remitted

1 approximately 40 to 50 percent of the sales price to the
2 vendor. If a dress was not sold within a specified
3 period, the dress was returned to the vendor or donated.
4 That's from Exhibit E-3, the Stephanie Leigh Bridal
5 letter.

6 Sales tax is imposed upon all retailers for their
7 retail sales of tangible personal property in the state
8 measured by the retailer's gross receipts, unless a
9 specific exclusion or exemption applies; Revenue and
10 Taxation Code, Section 6051. All of the retailers gross
11 receipts are presumed subject to tax, unless the retailer
12 can prove otherwise; Revenue and Taxation Code,
13 Section 6091.

14 Appellant added sales tax reimbursement to the
15 sales price. For the liability period July 1, 2014 to
16 June 30th, 2017, Appellant reported total sales of 751,481
17 and claimed deductions of 32,853 for nontaxable labor for
18 alteration services on new and used dresses and 124,915 as
19 other deductions.

20 During the audit, Appellant indicated deductions
21 represented nontaxable alteration services performed on
22 bridal dresses and tuxedo rentals. Revenue and
23 Taxation Code, Section 6006, Subdivision B, define sale to
24 include the producing, fabricating or processing of
25 tangible personal property for consideration for

1 consumers.

2 Pursuant to Regulation 1524, alterations to new
3 clothing -- meaning any work performed on new clothing to
4 meet the requirements of the customer -- is fabrication of
5 tangible personal property, and charges for those
6 alterations are subject to tax. Charges for alterations
7 to used clothing are not subject to tax.

8 At issue for this hearing is whether Appellant is
9 entitled to a reduction of the measure of disallowed
10 claimed nontaxable labor; more plainly, whether the
11 alterations were of new or used clothing.

12 Appellant informed customers that the dresses
13 were new. Yet, Appellant contends that the sample wedding
14 dresses it altered were used. There is no dispute that
15 some of the sample wedding dresses had been discontinued
16 styles or deployed by the bridal salon as model dresses
17 for purposes of demonstration or display to allow brides
18 to see what the dresses look like on them. Yet, there
19 hadn't been a taxable use prior to their sale at retail.

20 Much like allowing customers to test drive a car
21 or taking a photograph of it for an advertisement, such
22 use is demonstration and display and doesn't make a new
23 car used. They take on miles. They get dirty. But like
24 a car or TV, these dresses have never been sold before.
25 Discounted in price perhaps, but not used.

1 Since the bridal vendors did not make any use of
2 the sample wedding dresses other than demonstration and
3 display and these dresses were not functional and used
4 until after the Appellant altered the dresses for its end
5 consumers, the sample dresses were new items under
6 Regulation 1524. The fact that they were sold at a
7 discount to account for wear and tear or outdatedness does
8 not change the application of tax.

9 With regard to the question of alterations,
10 Regulation 1524 provides that charges for alterations
11 performed to new clothing are subject to sales tax because
12 such alterations are considered fabrication labor. The
13 charges for alterations performed to used clothing are not
14 subject to sales tax because such alterations are repair
15 labor.

16 The Court of Appeals upheld the validity of
17 Regulation 1524 in the 1984 California 3rd District
18 Court of Appeals case of Duffy versus State Board of
19 Equalization.

20 Again, during the appeals process, Appellant
21 stated that she told customers the dresses were new and
22 did not indicate to them that the sales were on
23 consignment because oftentimes customers believe that
24 dresses on consignment may be used. This was not a
25 secondhand shop selling functionally worn products from

1 end customers and were selling them.

2 We submit, therefore, that the sample wedding
3 dresses constituted new clothing under Regulation 1524 at
4 the time that they were altered by Appellant and
5 Appellant's charges for alterations were subject to tax.

6 During the audit, the Department compared
7 reported total sales and recorded total sales based on
8 point of sale or POS records for the liability period and
9 found no material difference.

10 In order to verify Appellant's claimed nontaxable
11 labor reductions, the Department examined Appellant's POS
12 records and found that Appellant charged her customers for
13 alteration services when selling bridal dresses and
14 claimed these charges as nontaxable labor or as the other
15 deductions on her sells and use tax returns.

16 In this case, Appellant contends that she also
17 performed alterations on used clothing brought in by
18 customers not sold at the store. The evidence does not
19 support a greater percentage of nontaxable labor than the
20 7.93 percent allowed in the audit. That's Exhibit A-1,
21 Schedule 12-B.

22 When a taxpayer challenges a notice of
23 determination, our Exhibit B, the Department has the
24 burden to explain the basis for that deficiency.

25 Here, the Department compiled and examined

1 Appellant's own sales invoices for a test period -- fourth
2 quarter, 14, third quarter, 15, second quarter, 16 and
3 first quarter, 17 -- and used a recognized audit
4 procedure, the use of a block test, with the best
5 available evidence, Appellant's own sales invoices, to
6 determine the measure of disallowed nontaxable labor
7 sales.

8 When the explanation appears reasonable, the
9 burden of proof shifts to the taxpayer to explain why the
10 asserted deficiency is not valid. Except as otherwise
11 specifically provided by law, the burden of proof is upon
12 the taxpayer to prove all issues of fact by a
13 preponderance of the evidence. That is, the taxpayer must
14 establish by documentation or other evidence that the
15 circumstances it asserts are more likely than not to be
16 correct.

17 In this case, Appellant has not produced any
18 evidence establishing that the measure of disallowed
19 nontaxable labor is overstated. Instead, Appellant
20 contends that all the wedding gowns she altered were used
21 because they had been worn by models for photo shoots and
22 modeling events and displayed at bridal shows and required
23 restoration before she offered them for sale to customers.

24 Again, we submit that discontinued fashion or
25 such demonstration and display did not render these items

1 used for the purposes of the alterations she performed.
2 Appellant has not provided any evidence that the wedding
3 gowns were used for any purpose other than demonstration
4 or display prior to being sold to Appellant's customers.
5 And, in fact, by her own admission, she represented them
6 as new for sale to her customers.

7 Therefore, we submit that the sample wedding
8 gowns constituted new clothing at the time in which they
9 were sold and altered by Appellant and that the
10 alterations were a step in fabricating new
11 custom-fitted wedding gowns for her customers. Based on
12 the law and evidence, we submit to the panel that there is
13 no basis for the adjustment to the measure of disallowed
14 claimed nontaxable labor. Thank you.

15 JUDGE GEARY: Thank you, Ms. Paley.

16 I neglected to offer Respondent an opportunity to
17 ask the Appellant witness questions. Did you have any
18 questions, factual questions, for Ms. Donaldson?

19 MS. PALEY: No. Thank you.

20 JUDGE GEARY: All right. And I also want to
21 explain to Ms. Donaldson, who may be asking herself, why
22 did that man put me under oath but not the lady who is
23 speaking for Respondent, it's because you actually
24 testified to factual matters and Ms. Paley only gave
25 argument, in case you were wondering about that.

1 Before I allow you to give any concluding remarks
2 that you wish to give, I'm going to turn again to my
3 co-panelists to see if they have questions. We'll start
4 with Judge Brown.

5 JUDGE BROWN: Thank you. I'll start with
6 questions for CDTFA.

7 Earlier, during your presentation, Ms. Paley, you
8 said that -- you referred to how these dresses are sold at
9 a discount to account for wear and tear. So how is that
10 different from used?

11 MS. PALEY: It's much like when you test drive a
12 car. A car gets miles put on it. You probably have to
13 clean the car prior to selling it, but it's still
14 considered a new car. But that is why it is sold for much
15 less than another shop or normal as if it had not been
16 displayed and had that wear and tear.

17 JUDGE BROWN: And you referred to the standard of
18 demonstration and display, which, of course, is part of
19 the definition that we look at when determining whether
20 something is a sale for resale. But why does that apply
21 to whether clothing -- why is that the standard that
22 you're applying for whether clothing is new or used?
23 Because can't there also be use that is different from
24 sale?

25 MS. PALEY: Yes. However, we have no evidence

1 that there is a taxable use in that chain. There is --
2 when it goes from the wholesaler to the retailer, that is
3 not taxed. When the retailer uses them in their store,
4 they're not paying a use tax. So this is the first
5 taxable sale.

6 MR. HUXSOLL: And with respect to used clothing,
7 Court and Duffy, which upheld the Department's contention
8 in that case that the principle that fabrication of a
9 product is not complete until the purchaser has used the
10 product for its intended purpose.

11 And so when we're looking at used clothing, we're
12 looking at whether it's reached that stage and the
13 fabrication has been completed. And the use that
14 Appellant is discussing in terms of arguing why it's used
15 clothing is stuff that we would normally consider
16 demonstration or display. And so that does not change the
17 fact that the fabrication process is ongoing before the
18 clothing is used, ultimately, for its intended purpose.

19 JUDGE BROWN: But some of the letters from the
20 suppliers mention that one of the uses of the dresses were
21 models wearing the clothing for fashion shows and photo
22 shoots. Is that not a functional use?

23 MS. PALEY: It is not a taxable use. And, again,
24 we would draw that comparison much like the decision
25 discussed; televisions on for display, that they are being

1 used and that you can check them out to see how the screen
2 looks, what the quality is like. But, ultimately, when
3 that television is sold or the car is sold, it is still
4 new. And, again, it'd be different if there had been a
5 prior taxable --

6 JUDGE BROWN: I guess, the --

7 MR. HUXSOLL: Sorry. May I add on to that?

8 JUDGE BROWN: Sure. Go ahead. Yes.

9 MR. HUXSOLL: Annotation 210.0180 also recognizes
10 that jewelry that's loaned out for a demonstration in
11 motion picture by actors is considered demonstration and
12 display.

13 So it's -- again, it's -- it's not a taxable use
14 of the activity. We don't have the retailer doing that.
15 We don't have -- we haven't reached the point. The fact
16 that it's -- I'm just trying to point out that the use of
17 it in the modeling or the -- is considered still
18 demonstration and display, nontaxable demonstration and
19 display.

20 JUDGE BROWN: And I'm sorry. Could you repeat
21 that annotation number, 210. --

22 MR. HUXSOLL: 210.0180.

23 JUDGE BROWN: Thank you.

24 I think that's all I have right now.

25 JUDGE GEARY: Thank you, Judge Brown.

1 Judge Long, do you have any questions?

2 JUDGE LONG: Not at the moment. Thank you.

3 JUDGE GEARY: I think I may have a few questions;
4 first for Ms. Paley and Respondent.

5 Respondent's contention is that the key is, is it
6 new or is it used and that the -- the answer lies in
7 whether or not the object on which the fabrication labor
8 is being applied has yet been the subject of a taxable
9 sale.

10 MS. PALEY: It's the totality of the
11 circumstances, but yes. That is a factor.

12 JUDGE GEARY: Okay. What about Ms. Donaldson's
13 argument that -- it's all right if I refer to you as
14 Ms. Donaldson? Is that okay?

15 MS. DONALDSON: Uh-huh.

16 JUDGE GEARY: Okay. The argument that these
17 gowns were provided to the retailer not for use as a gown
18 to be worn at a wedding or other event but to be used only
19 for demonstration. Therefore, her contention is that they
20 were used for the purpose for which they were intended.

21 What about that argument?

22 MS. PALEY: Well, just because that one retailer
23 was not allowed to? Ultimately, she is a retailer who is
24 being allowed to use it for that --

25 MS. DONALDSON: I'm not a retailer. I'm not a

1 retailer.

2 JUDGE GEARY: All right. You'll be able to
3 respond in a moment. And when you do, make sure you have
4 your microphone on.

5 Go ahead.

6 MS. PALEY: Their contract may prohibit that
7 retailer from doing so. But, ultimately, it's still in
8 the line of sales. It may go to a different storefront to
9 sell to an end user, but ultimately it is getting there.
10 And, again, they are not paying a use tax. There is not
11 a -- a taxable occurrence happening prior to that sale.

12 MR. HUXSOLL: Yeah. And just to add on
13 another annotation. 210.0068 recognizes that someone, a
14 salesperson, may use a product for demonstration and
15 display, then subsequently make a sale of that product for
16 resale to a retailer.

17 So it's similarly to -- like, the fact that
18 the -- the fact that there's that restriction does not
19 change the fact that -- or that purported restriction does
20 not change the fact that they are still holding this --
21 they are demonstrating, displaying it, they're ultimately
22 selling it, they're selling it through the consignment
23 through Ms. Donaldson, but there has not been a use other
24 than demonstration and display.

25 And so we still have not completed -- we still

1 have not had used clothing. It's still new under the
2 Regulation 1524 in the analysis of Duffy.

3 JUDGE GEARY: Mr. Huxsoll, if we -- if we accept
4 the representation that these gowns are -- are provided to
5 the -- I guess, they're the wholesalers, is what they're
6 called.

7 Ms. Donaldson, correct me if I'm wrong.

8 Provided to the wholesalers as samples only, not
9 to be sold -- she indicated they were not to be sold. And
10 I'll be asking her a question about that in a minute. But
11 if they were being provided to the wholesalers with the
12 understanding that they are not allowed to sell those --
13 those gowns, that they're only for demonstration and
14 display, would that have been a taxable use, the use as
15 for demonstration and display, for use tax purposes?

16 MR. HUXSOLL: For purposes of determining that
17 the retailer -- there was use tax on that particular use.
18 Here, we have the fact, though, that they're -- they are
19 selling it after it's being demonstrated and displayed,
20 though. It's not -- I mean, there's the contractual --
21 purported contractual restriction, but it's being
22 demonstrated and displayed, then it's being sold in a,
23 essentially, resell transaction to Ms. Donaldson for sale
24 at -- through consignment.

25 And so that -- it's still -- factually, what's

1 occurring is that that -- that dress that's being
2 demonstrated and displayed is being sold by the retailer
3 or being sold in a subsequent transaction.

4 JUDGE GEARY: Let me ask you a couple questions,
5 Ms. Donaldson. Is your microphone on?

6 MS. DONALDSON: It is now.

7 JUDGE GEARY: Okay. You said that these gowns
8 are provided to the wholesaler -- right? -- for use as
9 samples.

10 MS. DONALDSON: To -- to the bridal retailer.

11 JUDGE GEARY: To the bridal retailer.

12 MS. DONALDSON: The manufacturers get the dresses
13 from -- the manufacturers provide the dresses to the
14 wholesalers.

15 JUDGE GEARY: Okay.

16 MS. DONALDSON: Then the wholesalers provide them
17 to the bridal retailers, which are the stores that you see
18 out here. And that isn't one store. That is the industry
19 that does not allow samples to be sold by the bridal
20 retailers. That's not just -- you can go in any store
21 and -- well, in that time frame anyway.

22 And just to correct -- just to correct them. I
23 opened my business in 2009, not 2008, and I incorporated
24 it in 2015.

25 JUDGE GEARY: Okay.

1 MS. DONALDSON: Just as a matter of correction.

2 JUDGE GEARY: Okay. So if, in fact, the
3 retailers were under some kind of contractual or ethical
4 obligation not to sell them -- but they do, in fact, sell
5 them, don't they?

6 MS. DONALDSON: They don't sell them. They
7 didn't sell them then. Now they've lifted that a little
8 bit, but they were not permitted to sell them.

9 JUDGE GEARY: What do you call the transaction
10 that your company was involved with if not a sell?

11 MS. DONALDSON: It wasn't a sell. I didn't
12 purchase it from the retailers. I got it on consignment.
13 When I -- when I sold the dress to my consumer -- okay? --
14 then there was a sell and it was a taxable sell and I
15 reported every single sale and paid collected tax on every
16 single sale.

17 JUDGE GEARY: Did you pay some of the money to
18 the person or the company that supplied you the dress?

19 MS. DONALDSON: Absolutely.

20 JUDGE GEARY: Was that not a sell by that
21 company?

22 MS. DONALDSON: It was a sale once that -- once
23 that garment sold, then by contract they got a percentage.

24 JUDGE GEARY: Correct.

25 MS. DONALDSON: But I didn't outright up-front go

1 and buy the dresses from them. They gave them to me on
2 consignment. If the dress sold, they got their share. If
3 it didn't sell, then it either got donated or it went back
4 to that individual retailer.

5 JUDGE GEARY: Okay. Let's assume that one of
6 those retailers supplied you with a dress and it sold.
7 Wouldn't that have been in violation of this rule that you
8 referred to that prevented them from selling the dresses?

9 MS. DONALDSON: They are not allowed to sell them
10 directly to consumers off the rack. They can dispose
11 them, but they can't sell them because the problem is that
12 they have the keystone and they have the MSRP.

13 So if they allow bridal retailers to start
14 selling those dresses at a discounted price, then the next
15 retailer down the street is still selling that dress at
16 the regular price. And they're not going to be able to
17 sell it because Mary Smith down the street is selling it
18 for 50 percent off.

19 So as a consignment store, I can sell it because
20 I'm not in direct competition with the retailer. I'm not
21 a retailer. I don't sell dresses at the MSRP. I sell
22 them at a significantly reduced rate, and that's why I'm
23 consignment and not a full-blown retailer.

24 JUDGE GEARY: Is there a document that sets forth
25 this rule or policy in the industry regarding retail sales

1 of samples?

2 MS. DONALDSON: I'm sure that the bridal
3 retailers have a contract with the wholesalers.

4 JUDGE GEARY: Okay. But --

5 MS. DONALDSON: I'm not privy to that.

6 JUDGE GEARY: Okay.

7 MS. DONALDSON: I'm not a retailer.

8 JUDGE GEARY: All right. So we don't have any in
9 evidence here that you're aware of?

10 MS. DONALDSON: No.

11 JUDGE GEARY: Okay.

12 MS. DONALDSON: Because I'm not a retailer so I
13 can't get that contract from a wholesaler because I'm not
14 one of their authorized retailers.

15 JUDGE GEARY: Ms. Paley said that you represented
16 to your customers that these dresses were new; is that
17 correct?

18 MS. DONALDSON: That is not correct. I have
19 never represented to any of my customers that these
20 dresses were new. I run an honest business. And, I mean,
21 if I would have been told in the very beginning that I
22 needed to collect taxes on alterations, I would have
23 collected taxes because, honestly, it makes no different
24 to me. It doesn't affect my bottom line if I collect the
25 tax or I don't collect the tax.

1 So when I got my resale license, the lady that
2 sat in the window, I asked her, if I did alterations on
3 dresses that were consigned to me, did I need to charge
4 tax and she told me no. So I didn't charge tax. And
5 until I got audited, I didn't know any different. I was
6 doing what I thought I was supposed to do. They checked
7 my records and there were no discrepancies on my sales and
8 the collection of taxes.

9 You know, as a test for myself, I went to a
10 person that does alterations in my city and I took in a
11 brand new dress and I asked to have it altered and they --
12 I told them what I wanted done to it, and I asked them how
13 much it would cost. They gave me a cash price, a Zelle
14 payment -- or a Zelle payment price and a credit card
15 price. If I paid -- they didn't ask me if my dress was
16 new or used. If I paid them cash, I didn't have to pay
17 tax. If I paid them Zelle, I didn't have to pay tax. But
18 if I paid them by a credit card, I had to pay tax.

19 You know, I -- I have done everything that I
20 thought I was supposed to do. I didn't try and be
21 dishonest. I'm not dishonest with my customers. They
22 come in, and they want to know why are these dresses so
23 affordable. My answer is, because these are sample
24 dresses that have been tried on, you know, have been used.
25 And they go, oh, they look so beautiful. I go, well, we

1 take good care of them. We put them all in plastic bags.

2 People that walk in my store think it's
3 beautiful, and they think the dresses are gorgeous because
4 we take care of them and we try and make them as good as
5 possible because that's the way we stay in business.

6 JUDGE GEARY: You anticipated one of my questions
7 by -- by describing what you tell people. And is that
8 basically it? You basically give them the -- the history
9 of the types of dresses you take in?

10 MS. DONALDSON: Yes.

11 JUDGE GEARY: Just like you described for us
12 today?

13 MS. DONALDSON: And, you know, when the auditor
14 came out, I invited the auditor to come to the store and
15 look at the store and look at the dresses. And he said --
16 he told me, oh, I'm new. I don't really know anything
17 about the bridal industry, but, boy, it sure is pretty in
18 here and the dresses look nice.

19 So I brought a dress from the back to show him.
20 Well, this is one that I just got in, and I have to fix
21 the beading a little bit. 'Cause some of the beads were
22 hanging down and the hemline was dirty from people
23 dragging it across the floor.

24 So I said to him, you know, I need to spot clean
25 the hem and fix the beads before I can put it out on the

1 floor because, you know, we don't put dresses out there.
2 And He said, well, do you tell people these dresses are on
3 consignment? I said, no, I don't. I tell them how I got
4 those dresses, that they were used dresses, they're sample
5 dresses.

6 But people seem to use the word "consignment" and
7 "thrift shop" interchangeably. And when they think you're
8 a thrift shop, they think they can come in, they can
9 bargain and they can buy a dress for 50 dollars. We're
10 not a thrift shop. We have quality merchandise that we
11 sell at a reasonable rate because it's already been used.

12 And if those bridal retailers don't pay on their
13 transaction when they purchase those samples, that's not
14 my issue. That's an issue maybe CDTFA needs to take up
15 with the bridal retailers because they purchase those
16 samples outright for the purpose of using them, the
17 samples, in their store in order to get people to buy
18 those styles.

19 And that's how they make their money. They get
20 orders off of those samples. And those samples -- some of
21 them may be tried on two or three times. Some of them
22 tried on a hundred times, depending on the style and the
23 size because those samples don't come in sizes 0 to 32. I
24 do have those sizes in the store, and that's because I get
25 some of them from individuals.

1 JUDGE GEARY: Thank you. Let me ask Ms. Paley a
2 question.

3 You were talking about Respondent's determination
4 of a percentage of the fabrication labor that was actually
5 nontaxable because it pertained to fabrication on the
6 dresses that were, in the Department's view, used, the
7 ones that were obtained from former brides or people who
8 had worn the dresses. Is that how you made that
9 determination?

10 MS. PALEY: No. We actually have no evidence of
11 consignment from -- I'm sorry. I'll turn my sound on.

12 I do not have in evidence --

13 JUDGE GEARY: Try to speak into the microphone
14 phone a little bit better.

15 MS. PALEY: Yes.

16 There were other alterations done, such as pants
17 and things of that sort. I do not have any of the
18 consignment records from individuals. I have the
19 indication that -- such as Exhibit E-3, the vendor
20 letters, that information.

21 And if may I address some of your other
22 questions. May I respond to those as well?

23 JUDGE GEARY: Questions that I asked
24 Ms. Donaldson?

25 MS. PALEY: Ms. Donaldson and Mr. Huxsoll.

1 JUDGE GEARY: Sure.

2 MS. PALEY: You had asked about the difference of
3 trying on a dress but ordering a different one. And,
4 again, I would draw that similar analogy to the car
5 industry in which you go and test drive a Tesla, but you
6 don't get to take that specific one home. You place an
7 order, and that car comes in for you at a later time. So
8 it's -- it's not -- I mean, it's different, but there is
9 also, again, that same overlap.

10 As far as the contention that they had indicated
11 that they did not tell -- or excuse me, that they told
12 customers that they were new, I would just point the panel
13 to Exhibit A, page 3, footnote 6, which is the 15th page
14 of the PDF in which that statement is attributed to her
15 and preserved. And, again, we do not have those
16 consignment records of individuals --

17 JUDGE GEARY: All right.

18 MS. PALEY: -- in the record.

19 MR. PARKER: Judge Geary, I just want to add
20 something on. Some of the nontaxable items that we
21 identified in the record, including preservation of gowns.
22 There were tuxedo rentals that I believe they rented from
23 somewhere else that we treated as nontaxable in the
24 nontaxable amounts, and that's what makes up the
25 7.93 percent to be allowed as nontaxable items.

1 JUDGE GEARY: Thank you.

2 MS. DONALDSON: If I may respond to that. I
3 never told the auditor that I tell people they're new.
4 His interpretation of what I said might have been that,
5 but I never said that because I never ever have told my
6 customers that these dresses are new.

7 I said -- I said, I don't tell them -- he asked
8 me directly, do you tell them they're on consignment? I
9 said, no, I do not. If that was his interpretation then,
10 that because I don't tell them they're on consignment that
11 I tell them they're new, that's his interpretation. But I
12 never tell my customers these dresses are new.

13 And as far as the car, I mean, a car dealer demos
14 a car; okay? But they don't buy that car for the purpose
15 of using it as a sample. It just -- they take a car out
16 of their fleet, and they let people test drive them. But
17 then when they sell it, they don't sell it as a -- that
18 they took it in on consignment and they're selling it at
19 50 percent of the MSRP. I mean, that's kind of not the
20 same. And I don't know.

21 You know, the auditor also went through all my
22 contract books. And I did show him -- 'cause every --
23 every garment that comes into the store goes on a
24 contract. And I did show him contracts from individuals,
25 as well as from the bridal retailers. So if he didn't

1 make note of that, I mean -- and they asked me to produce
2 records, which I did. But they never asked me to see
3 contracts of individuals 'cause I could have provided
4 those.

5 JUDGE GEARY: All right. Thank you,
6 Ms. Donaldson. Did you have anything else you wanted to
7 add, Ms. Donaldson? I know we've asked quite a few
8 questions, and you've provided additional information. Is
9 there anything else you wanted to cover in your final
10 concluding remarks?

11 MS. DONALDSON: I do want to just say that we do
12 not perform fabrication of garments. You know, we -- we
13 take them in. We hem them. We do simple things, but we
14 don't fabricate or restore garments. So I don't know how
15 that came into being, but we do not.

16 We don't make dresses. We don't take dresses.
17 Like, I've had customers ask me if they could bring in
18 their mother's dress and we could redo it and make it
19 their wedding dress. No. We don't do that. You know, we
20 refer them to somebody who might.

21 And I can tell you, on a regular basis, from my
22 alterations, the question I get asked all the time is, how
23 come my alterations cost almost as much as my dress? And
24 the answer is, because the dress you bought you bought at
25 a reduced price.

1 The alterations that are performed on your dress,
2 if you paid one dollar for that dress or you paid
3 10,000 dollars for the dress, the labor that it takes to
4 hem your dress or take in your dress or add bust pads is
5 the same amount. You don't get a reduction on the
6 alterations cost.

7 So once you educate that customer why their dress
8 is not at the full MSRP and why the alterations cost that
9 much, you know, then it's okay. But that is the question
10 that they always have.

11 JUDGE GEARY: Okay.

12 MS. DONALDSON: Thank you.

13 JUDGE GEARY: You're welcome.

14 Ms. Donaldson, you submit the matter?

15 MS. DONALDSON: Yes.

16 JUDGE GEARY: Ms. Paley, you submit?

17 MS. PALEY: Yes. Thank you.

18 JUDGE GEARY: You're welcome.

19 This case is submitted on June 7, 2023 at
20 1:59 p.m. The record in this hearing is now closed, and
21 the hearing is concluded.

22 Thank you everybody for participating. In the
23 coming weeks, the panel will meet to consider the matter,
24 and OTA will send a written opinion to the parties within
25 100 days of today's date.

1 This concludes OTA's afternoon calendar for
2 today. OTA will reconvene tomorrow morning at 9:30 for
3 some other matters.

4 Thank you very much, everybody.

5 (The proceedings adjourned at 1:59 p.m.)
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1 HEARING REPORTER'S CERTIFICATE

2
3 I, Jennifer Vallejo, Hearing Reporter in and for
4 the State of California, do hereby certify:

5 That the foregoing transcript of proceedings was
6 taken before me at the time and place set forth, that the
7 testimony and proceedings were reported stenographically
8 by me and later transcribed by computer-aided
9 transcription under my direction and supervision, that the
10 foregoing is a true record of the testimony and
11 proceedings taken at that time.

12 I further certify that I am in no way interested
13 in the outcome of said actions.

14 I have hereunto subscribed my name this 5th day
15 of July, 2023.

16
17
18 A handwritten signature in cursive script, reading "Jennifer Vallejo", is written over a horizontal line.

19
20 JENNIFER VALLEJO
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