

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
N S PATEL DENTAL CORPORATION, ) OTA NO. 220710811  
 )  
 ) APPELLANT.  
 )  
 )  
 )

## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, June 15, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 1:53 p.m. and concluding at 2:46 p.m. on  
Thursday, June 15, 2023, reported by Ernalyn M.  
Alonzo, Hearing Reporter, in and for the State  
of California.

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APPEARANCES:

Panel Lead: ALJ MICHAEL GEARY

Panel Members: ALJ SUZANNE BROWN  
ALJ SHERIENE RIDENOUR

For the Appellant: N. PATEL

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE ADMINISTRATION  
  
KEVIN SMITH  
JARRETT NOBLE  
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-10 were received at page 7.)

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

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California; Thursday, June 15, 2023

1:53 p.m.

JUDGE GEARY: Let's go on the record.

We'll begin by asking the representatives to identify themselves. Let's start with the Appellant, please.

MR. PATEL: Yes. I'm Neilesh Patel, president of N S Patel Dental Corporation.

JUDGE GEARY: Thank you, Dr. Patel.

And for CDTFA or Respondent.

MR. SMITH: I'm Kevin Smith from the CDTFA Legal Division.

MR. NOBLE: I'm Jarrett Noble also with the CDTFA.

MR. PARKER: And I'm Jason Parker, Chief of Headquarters Operations Bureau at CDTFA with CDTFA.

JUDGE GEARY: Thank you.

The exhibits marked for identification in this appeal consist of Appellant's exhibits that OTA has marked 1 through 10 for identification, and Respondent's exhibits that OTA has marked A through E for identification. OTA has incorporated those exhibits into a digital hearing binder, which OTA made available to the parties for download. Let me first ask Dr. Patel if he has had an

1 opportunity to review the hearing binder and confirm that  
2 all of his proposed exhibits have been included in the  
3 binder.

4 Dr. Patel?

5 DR. PATEL: Yes. I have reviewed them, and they  
6 are all in the binder. Thank you.

7 JUDGE GEARY: Thank you.

8 And now turning to Respondent. Can you,  
9 Mr. Smith, confirm that you have the electronic binder  
10 available, that you have reviewed the evidence and  
11 confirmed that all of Respondent's proposed evidence has  
12 been included in the binder?

13 MR. SMITH: Yes. I reviewed the binder and  
14 everything -- all of our exhibits are contained in there.

15 JUDGE GEARY: Thank you, Mr. Smith. Now, will  
16 Respondent indicate whether it has any objections to  
17 Exhibits 1 through 10 proposed by Appellant?

18 MR. SMITH: We have no objection.

19 JUDGE GEARY: Thank you.

20 And Dr. Patel, did you have any objection to the  
21 Exhibits A through E proposed by Respondent?

22 DR. PATEL: No, I do not have any objections.

23 JUDGE GEARY: Thank you, Dr. Patel.

24 All of those exhibits are now admitted.

25 ///

1 (Appellant's Exhibits 1-10 were received  
2 in evidence by the Administrative Law Judge.)

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

5 JUDGE GEARY: The parties agree that the issue to  
6 be decided in this appeal is whether Appellant is entitled  
7 to additional adjustments to the measure of unreported  
8 purchases subject to use tax.

9 Dr. Patel, do you agree that is the issue?

10 DR. PATEL: Yes, that's the central issue.

11 JUDGE GEARY: Thank you.

12 And Mr. Smith, does Respondent agree that that is  
13 the issue?

14 MR. SMITH: Yes, we agree.

15 JUDGE GEARY: Thank you.

16 During our prehearing conference, we discussed  
17 time estimates. And at the conference, Appellant  
18 indicated that it would require approximately 20 minutes  
19 to present argument and testimony.

20 Dr. Patel, is that still your estimate?

21 DR. PATEL: Yes, it is.

22 JUDGE GEARY: Thank you.

23 Respondent indicated at the conference that it  
24 would also need approximately 20 minutes for its argument.  
25 Is that still Respondent's estimate, Mr. Smith?

1           MR. SMITH: Yes. That's correct, though it  
2           probably will be a little bit shorter.

3           JUDGE GEARY: Thank you.

4           In addition, when the Respondent has completed  
5           its argument, Appellant will be allowed approximately five  
6           minutes for its final comments or rebuttal argument should  
7           it choose to give that. It's my understanding that  
8           Dr. Patel will be testifying today.

9           Is that correct, Dr. Patel?

10          DR. PATEL: I personally don't have any reason to  
11          testify. I'd just be sharing evidence.

12          JUDGE GEARY: All right. So you have -- and you  
13          have no other witnesses; correct?

14          DR. PATEL: Correct.

15          JUDGE GEARY: All right. So you will giving only  
16          argument?

17          DR. PATEL: Correct. Only argument.

18          JUDGE GEARY: All right.

19          And Respondent, do you have any witnesses to  
20          present today?

21          MR. SMITH: No, we do not.

22          JUDGE GEARY: Okay. So the way this will work is  
23          we'll begin with -- in a moment, we'll begin with  
24          Mr. Patel's -- Dr. Patel's argument followed by Mr. Smith  
25          giving the argument on behalf of Respondent. And then



1 Dr. Patel will have approximately five minutes to make  
2 final comments, closing comments before we include the  
3 hearing.

4 Are there any questions before we begin?

5 Dr. Patel, any questions?

6 DR. PATEL: No. I do not have any.

7 JUDGE GEARY: Mr. Smith, any questions?

8 MR. SMITH: No questions.

9 JUDGE GEARY: All right. Dr. Patel, you may  
10 begin whenever you're ready. Remember that the judges all  
11 have the electronic hearing binder. If you would like to  
12 refer us to any particular exhibits in the course of your  
13 argument, same for Respondent. It's most helpful to refer  
14 to the PDF page number, but all of our exhibits are book  
15 marked, so we should be able to get to any exhibit that  
16 you refer to if you would like us to look at while you're  
17 giving your argument. You may proceed.

18 DR. PATEL: Thank you.

19

20 PRESENTATION

21 DR. PATEL: So the reason for my appeal on behalf  
22 of N S Patel Dental Corporation is in regards to  
23 out-of-state purchases for dental laboratory items that  
24 were purchased from a corporation based out of Savannah,  
25 Georgia. The relationship started in early 2017. And as

1     for -- as for the law that passed, you know, in the  
2     judgment of South Dakota versus Wayfair, certain companies  
3     out of state were getting an unfair advantage against  
4     California companies.

5             We were approached by a sales representative of  
6     Pan-Am Dental Corporation. And that person, our sales  
7     representative, was based out of the San Francisco area  
8     and therefor, created a California nexus with -- with  
9     Pan-Am Dental Corporation to California. We chose to  
10    switch our current vendor for dental products,  
11    specifically, dental laboratory products because we were  
12    promised that -- what our current fees were, plus the  
13    sales tax, would be matched, but instead it would pay the  
14    current fee X, which would include the sales tax in a lump  
15    sum.

16            So that was why we switched. There was a  
17    pricing -- there was a pricing, you know, advantage for us  
18    as a company to switch. So the lump sum was now included  
19    in the tax. In early 2017, as you can see, you know, the  
20    invoices were off, and we addressed those issues very  
21    early on with the company. Which because they had a  
22    California nexus and the sales rep lived in San Francisco  
23    or thereabouts, we understood that this company had a  
24    seller's permit, a sales permit to collect taxes on behalf  
25    of CDTFA.

1           So if we look at the exhibits, there was an  
2     attempt very early on in January of 2017 to rectify the  
3     invoices that were being sent. If you go to Exhibit 2,  
4     you also see that from the get go, the prices included the  
5     tax. If you look at Exhibit 3, there was an attempt  
6     further into the relationship to make sure that the  
7     pricing was still accurate and as seen in the attachment,  
8     including taxes. As I mentioned this was all done as part  
9     of a lump sum.

10           Going back to just the third month in 2017 after  
11    the relationship started, there was an email sent by  
12    myself specifically to Jules Victor who was the sales rep  
13    based out of California that our price, including tax,  
14    shouldn't be \$79 for the non-precious PFM. Can you please  
15    update it? So it was known by both the CFI, Carolyn  
16    Snyder, and myself, and Jules Victor who was the sales rep  
17    based out of California that the taxes were included.

18           Now, if we continue on, the taxes were included  
19    as a lump sum. That's what was promised us by Jules  
20    Victor, and that was why we believed that there was a  
21    seller permit because of the fact that Jules Victor was a  
22    California, you know, sales representative and, therefore,  
23    there should have been a seller, you know, permit for  
24    Pan-Am Dental Corporation.

25           Now, after we had a conference call, James Hitch

1     who sent an email on May 5th, 2021, saying, "We'll be  
2     working on the documents." He would be sending me the  
3     revised invoices. I believe CDTFA wanted invoices that  
4     delineated the taxes separately from the invoice -- from  
5     the product purchases. Our understanding was that it was  
6     included in the lump sum. And, you know, because it was  
7     offered as a lump sum and to make the accounting easier is  
8     what we were told originally that we would be, you know,  
9     that they -- they would be handling the taxes on the back  
10    end with their seller's permit.

11           He got back to us after the conference call, and  
12    I had a conversation with him that he would be working on  
13    the documents and getting the revised invoices. He also  
14    agreed that he would be responsible for the tax  
15    liabilities during the audit period. And this is based  
16    out of -- and this is from James Hitch, as you can see in  
17    Exhibit Number 4. Now, after asking several times after  
18    May 20, 2021, the retailer then somehow had an internal  
19    change -- and we don't know where that's from -- but  
20    failed to give the receipts that the CDTFA requested  
21    delineating the separate tax amounts.

22           At that point, the business relationship was  
23    suspended. And we pulled out some information here on  
24    Exhibit 6. What you can see is the example of an invoice  
25    where the credited amount for \$65 was -- matches with the

1 original exhibit. I believe it's Exhibit Number 2 where  
2 it shows the porcelain went to non-precious for \$65, which  
3 would therefore include the tax. So the invoices were  
4 correct. The pricing were recreated and, you know, they  
5 were now operating off of the pricing that we had agreed  
6 to on those spreadsheets.

7 Continuing along to Exhibit 6-A, as I mentioned  
8 we got invoices corrected right from the get go. Pricing  
9 had been adjusted so that we would not -- this is now  
10 Exhibit 6-A -- so that we would not run into this issue  
11 moving forward. Exhibit 7 is simply a message interaction  
12 that I had with Jules Victor who basically, you know -- I  
13 mean, you can -- you can infer what you want from that by,  
14 you know, he -- basically, that he was a sales rep for the  
15 company in the past and no longer there. And, of course,  
16 his email is also on some of the earlier exhibits.

17 Exhibit A, so the central issue or the central  
18 argument here is simple. So in essence I walk into a  
19 store and I purchase X, Y, Z subject to sales tax. The  
20 advertised price is \$100, including tax. However, the  
21 receipt when I receive it does not show the sales tax  
22 delineating separately as a line item. The price in the  
23 item is \$100 now. I ask for the receipt to be corrected,  
24 but the vendor refuses. I ask for the vendor to issue me  
25 a new receipt, and the vendor refuses.

1           They've collected my sales tax. Basically, the  
2       vendor attempts to obtain an extra profit bump and, you  
3       know, the CDTFA sales and use tax rules is that the  
4       customer is not responsible for the vendor's tax payment  
5       refusal when the customer paid the taxes in good faith  
6       expecting the vendor would remit the sales tax to CDTFA.  
7       And this was the central argument from, you know, the  
8       original contact, which I believe was Mohini Naidu, which  
9       was we delivered the money in good faith to this company  
10      who had a nexus to California and, therefore, should have  
11      registered first for a seller's permit.

12           Now, as I mentioned as the synopsis of the  
13      central hearing from earlier says -- it says that the  
14      central standard terms for Pan-Am Dental Corporation, if  
15      you look now at Exhibit 9, shows towards the bottom that  
16      there's a taxes and duties. Prices quoted reflect the  
17      price of a given product do not include taxes or duties of  
18      any kind. This was the central argument also as a  
19      rebuttal to what I suggested. However, using the Wayback  
20      Machine, which has an archive of all -- archive.org, has  
21      an archive of all the different terms and conditions.

22           You'll see that taxes were never an issue, never  
23      mentioned in any of the years in which we created the  
24      business relationship or had a business relationship until  
25      the audit came about. And then you'll see that the --

1       that the tax policy has changed where it -- where it no  
2       longer includes duties or taxes. So if you look on the  
3       one from the second page of exhibit -- of exhibit -- or  
4       third page of Exhibit Number 9, you'll see that -- or  
5       second page of Exhibit Number 9 will show you that there's  
6       no mentions of any taxes.

7               There was something about the warranty and such  
8       but nothing about taxes. If you look, that was from a  
9       2017 archive. If you continue along, you can go through  
10      any of the ones you'd like. But basically what you'll see  
11      is in 2016, even prior to the relationship, there was  
12      nothing about taxes. So neither before or after the  
13      relationship started was there anything related to taxes.  
14      And as you go further on, you'll see that the captures  
15      further on show that even in late 2017 there was nothing  
16      related to taxes, that the taxes were not included.

17              Again, this was part of the sales pitch from the  
18      company. The company was trying to compete with  
19      California-based laboratory companies. And one of their  
20      sales pitches from Jules Victor was that the taxes would  
21      be included. If you go to Exhibit 10, you'll see that was  
22      when -- by the way this is after the audit had already  
23      started. That was when the taxes and duties were updated,  
24      in late 2020s. We know the audit was sometime in late  
25      2019 or early 2020 timeframe.

1           So the central issues are the company purported  
2       to be a collector of taxes on behalf of CDTFA. They had a  
3       nexus to California, and California had a duty -- the  
4       State of California has a duty to collect taxes from  
5       companies that do business there and that have a nexus to  
6       that state. The invoices were stated in a lump sum as was  
7       explained and -- and agreed to early on when they gave us  
8       very round numbers for pricing that included the taxes.

9           Now there was also a good faith attempt by myself  
10      personally on behalf of the company to make right the  
11      invoices and to -- as you can see in one of the emails  
12      that had an agreement that we had taxes included. Now,  
13      the central issue is, you know, CDTFA has the fiduciary  
14      duty to prevent fraud of its sales and tax use permit  
15      system from out-of-state vendors. And that was the very  
16      essence of South Dakota versus Wayfair central case.

17           The idea was to give in-state vendors an equal  
18      competitive stance. Whereas, namely, in this particular  
19      case it actually gave an out-of-state vendor a profit bump  
20      equal to the tax amount on top of the reduced operating  
21      cost of doing business in a lower priced or lower cost  
22      state, such as Savannah, Georgia. This concept actually  
23      undermines and negates the very ruling of South Dakota  
24      versus Wayfair. Okay.

25           There should have been no -- there should be no



1 possibility of double taxation as well. Okay. The taxes  
2 were paid, and it was understood, and it was collected on  
3 behalf of California. CDTFAs have a duty to -- two-fold,  
4 number one, collect the taxes from its sellers who collect  
5 on behalf of them, especially, if they have a nexus to  
6 California. And number two, allow -- allow businesses and  
7 individuals even, that are conducting business, with  
8 out-of-state vendors the ability to check the seller  
9 permit status of -- of vendors.

10 And therefore, per Jason Parker -- and I'm sure  
11 he'll probably respond in his arguments -- that still does  
12 not exist as of our pretrial conference, that there is no  
13 public database by which myself or any other business in  
14 the State of California can check on a seller's permit in  
15 realtime. Understand that in a digital economy, the speed  
16 of business transactions are extremely rapid. I should be  
17 able to go to the attorney bar's website and look at what  
18 law school he went to, as easily as I should be able to  
19 find out if a seller's permit exists for an outside  
20 company.

21 And it shouldn't be -- you shouldn't be lost in a  
22 black hole email, you know, that probably won't ever get  
23 responded to. It should be in realtime. It should be  
24 accessible. So I think there was a knowledge and  
25 understanding that the taxes were included. I think it's

1 quite clear in this situation. I think there's an  
2 attempt, I believe, to show that possibility the terms and  
3 conditions exonerated him from collecting tax, even though  
4 they actually did collect tax on behalf of the State of  
5 California CDTFA.

6 And personally -- and I'll just say this. You  
7 know, personally I object to paying taxes doubly. But I  
8 especially object to paying taxes on behalf of Pan-Am  
9 Dental. You know, James Hitch is seventh generation  
10 Savannah, Georgian, you know. He comes from a family of  
11 plantations, and I'm pretty sure you can understand where  
12 all that -- what that also leads to when you talk about  
13 the early 1800s. I personally have a moral objection also  
14 to paying taxes on behalf of somebody who already  
15 collected the taxes.

16 I can't -- I can't understand, you know, how we  
17 ended up here, frankly, because the State of California as  
18 far as I understand and the CDTFA has done nothing. Has  
19 done nothing to A, check whether their assertion that they  
20 had revenues of less than \$500,000, therefore, are not  
21 required to sign for a seller's permit; B, whether they  
22 had a nexus to the State of California, even though they  
23 had a paid sales representative in California and  
24 specifically in the San Francisco area; and C, allow me  
25 the opportunity, on behalf of the company, to conduct my

1 own due diligence on the status of a purported seller --  
2 you know, sales tax collector.

3 And for those reasons, you know, I have -- I have  
4 also a moral issue with the fact that this amount,  
5 although seemingly small sales, of I believe \$71,858.42  
6 with the disputed tax minus penalties and interest of  
7 \$8,221.63, I think it's quite fair to say, given the  
8 amount of people that are in this room, that that amount  
9 probably would have been easier paid by a corporation in  
10 terms of the amount of lost income, revenue, et cetera, et  
11 cetera, taxpayer money. But on a moral basis, I think  
12 it's quite clear that the company attempted to create a  
13 competitive edge on the sales call by including the tax  
14 and apparently now keeping the tax as well.

15 And there's been no ramifications for that on the  
16 behalf of CDTFA. At least I'm not aware of it, and I  
17 think that's also a second part of the objection here are  
18 these appeal requests.

19 JUDGE GEARY: Does that conclude your initial  
20 argument, Dr. Patel?

21 DR. PATEL: Yes, that's everything. Thank you.  
22 Thank you, Your Honor.

23 JUDGE GEARY: Thank you very much. I'm going to  
24 ask my colleagues if they have any legal questions for you  
25 before I ask the Department to begin their presentation.

1 Judge Brown, did you want to ask any questions of  
2 Dr. Patel?

3 JUDGE BROWN: I will reserve my questions until  
4 after CDTFA has made its presentation. Thank you.

5 JUDGE GEARY: Thank you.

6 Dr. Ridenour, would you like to -- excuse me.

7 Judge Ridenour, would you like to ask any  
8 questions of the doctor.

9 JUDGE RIDENOUR: This is Judge Ridenour. No  
10 questions at this time. Thank you.

11 JUDGE GEARY: Thank you.

12 All right. Mr. Smith, are you ready to give  
13 CDTFA's argument?

14 MR. SMITH: Yes, I am.

15 JUDGE GEARY: You may begin.

16 MR. SMITH: Thank you.

17

18 PRESENTATION

19 MR. SMITH: Good afternoon.

20 At issue today is whether adjustments are  
21 warranted to unreported purchases of dental products  
22 subject to use tax. Appellant, a California corporation,  
23 operates a dental office in San Pablo, California. From  
24 January 1st, 2016, through December 31st, 2019, Appellant  
25 purchased dental products from an out-of-state supplier,

1 Pan-Am Dental, Inc., located in Savannah, Georgia.

2 Appellant did not file consumer use tax returns  
3 or pay use tax during the liability period. After the  
4 Department received a lead, they requested that Appellant  
5 provide purchase invoices from Pan-Am Dental. Appellant  
6 provided some purchase invoices and a pricing guide for  
7 2018. The Department then obtained complete sales records  
8 for Appellant from Pan-Am. After obtaining the complete  
9 records from Pan-Am, the Department determined that the  
10 invoices did not include any charge for tax or tax  
11 reimbursement, Exhibit A.

12 The Department searched agency records and found  
13 that Pan-Am has never held a California seller's permit or  
14 a certificate of registration for use tax and, therefore,  
15 is not authorized to collect California use tax. Based on  
16 this, the Department determined that Appellant owes use  
17 tax on his ex-tax purchases of dental products from Pan-Am  
18 since the products were shipped to Appellant in California  
19 and Appellant stored, used, or otherwise consumed the  
20 products in California.

21 On June 25th, 2020, Appellant registered for a  
22 use tax account and filed use tax returns for 2016 to 2019  
23 reporting minimal purchases subject to use tax. After  
24 comparing Pan-Am's sales records to amounts reported by  
25 Appellant on its return for the liability periods, the

1 Department calculated on an actual basis unreported  
2 purchases of dental products totaling \$71,857 for the  
3 liability period. That's Exhibit D.

4 Use tax is imposed on the storage, use, or other  
5 consumption in the state of tangible personal property  
6 purchased from any retailer measured by the sales price of  
7 the property. It is presumed that tangible personal  
8 property shipped or brought into the state was purchased  
9 from a retailer for storage use or other consumption in  
10 the state until the contrary is established.

11 Every person storing, using, or otherwise  
12 consuming in the state tangible personal property  
13 purchased from a retailer is liable for the use tax,  
14 unless they produce a receipt from a retailer engaged in  
15 business on the state or from retailer authorized by the  
16 Department to collect use tax showing that the tax had  
17 been paid. Purchaser should pay the tax only to a person  
18 who holds either a seller's permit or certificate of  
19 registration for use tax. Payment of tax to an  
20 out-of-state vendor who is not registered to collect tax  
21 does not relieve the purchaser from its obligation of the  
22 tax.

23 Further, while Regulation 1700 subdivision (c)  
24 contains provisions allowing a retailer to include sales  
25 tax reimbursement in the selling price of property, there

1 are no such provisions allowing the inclusion of use tax  
2 and the selling price of property. This is further  
3 discussed in annotation 460.0256. Here, Appellant  
4 purchased dental products from Pan-Am, an unregistered  
5 out-of-state seller for storage use or other consumption  
6 in California, and Pan-Am delivered that merchandise to  
7 Appellant in California where Appellant used the  
8 merchandise.

9 Therefore, Appellant owes use tax on its storage,  
10 use, or other consumption of the dental products purchased  
11 from Pan-Am. Unless Appellant can establish it paid taxes  
12 to the State or provide a receipt from a retailer engaged  
13 in business in the state or from a retailer otherwise  
14 authorized to collect the tax showing that Appellant paid  
15 the tax. While Appellant argues it paid the tax to  
16 Pan-Am, Pan-Am did not hold a seller's permit or a use tax  
17 registration certificate.

18 And therefore, even if Appellant paid the tax to  
19 Pan-Am, this would not extinguish Appellant's liability  
20 for the use tax because Pan-Am was not authorized to  
21 collect the tax. Although the foregoing is dispositive,  
22 we also know that Pan-Am sales invoices issued to  
23 Appellant do not show that use tax was paid to Pan-Am as  
24 required by Section 6202.

25 Regarding Appellant's argument of Pan-Am's

1 selling prices were tax included, as stated previously,  
2 unlike sales tax use tax cannot be included in the price  
3 of tangible personal property. And thus, the fact that  
4 the Pan-Am's 2018 pricing guide stated that taxes were  
5 included does not relieve Appellant of its use tax  
6 liability.

7 Finally, contends that Pan-Am agreed to pay the  
8 tax due on Appellant's behalf during a conference call  
9 and, therefore, Pan-Am should be held liable for the tax.  
10 Revenue & Taxation Code Section 6202 subdivision (a)  
11 places liability for the use tax squarely on the purchaser  
12 who stores, uses, or otherwise consumes the tangible  
13 personal property in this state.

14 In this case, Appellant was the purchaser not  
15 Pan-Am. Any promise by Pan-Am to pay the tax for  
16 Appellant is a private matter between Pan-Am and  
17 Appellant. It does not shift Appellant's legal liability  
18 for the tax. We also note that Pan-Am later informed  
19 Appellant that it would not voluntarily register with the  
20 Department or pay Appellant's use tax liability.

21 In summary, use tax is imposed on the purchaser.  
22 And the only way that Appellant would not be liable for  
23 use tax on the property it consumed in this state, is if  
24 it was issued a receipt showing that use tax was paid to  
25 the retailer, was engaged in business in California, or



1 otherwise authorized to collect use tax. There's no  
2 evidence that Pan-Am was authorized to collect the use  
3 tax, and it did not issue a receipt showing that use tax  
4 was collected from Appellant. Therefore, Appellant is  
5 liable for the tax.

6 This concludes my presentation. Thank you.

7 JUDGE GEARY: Thank you, Mr. Smith.

8 I'm going to ask my colleagues if they have any  
9 questions.

10 Judge Brown, do you have anything?

11 JUDGE BROWN: I think I might have a question.  
12 Let me ask CDTFA first about Exhibit D. I just wanted to  
13 ask Mr. Smith about the enclosures showing the invoice  
14 numbers and the amounts. Did CDTFA get these pages from  
15 Pan-Am directly, or is this a summary of invoices that  
16 CDTFA put together?

17 MR. SMITH: Are you talking about exhibit -- what  
18 was it? Sorry.

19 JUDGE BROWN: I'm sorry. This is Exhibit D.

20 MR. SMITH: D. Okay.

21 JUDGE BROWN: I'm looking at the enclosures to  
22 the Notice of Proposed Liability. I believe they begin on  
23 page 87 of the PDF.

24 MR. SMITH: Right. So those would have been  
25 records that we received from Pan-Am.

1 JUDGE BROWN: So when Appellant argues that it  
2 doesn't have the invoices that CDTFA received -- or is it  
3 CDTFA's position that this is what you received from  
4 Pan-Am, not the actual invoices themselves, just the  
5 summary?

6 MR. SMITH: Okay. I believe we just received the  
7 summary.

8 JUDGE BROWN: Okay. And then I guess I want to  
9 ask Appellant about its argument as well because on --  
10 Dr. Patel, in your request for appeal, you wrote that you  
11 dispute the amount because -- the \$71,857 amount because  
12 the invoices haven't been provided. Are you saying that  
13 the actual -- that the pages that we are looking at in  
14 Exhibit D that list the invoices, that these aren't  
15 accurate to the best of your knowledge?

16 DR. PATEL: I -- I -- I can't confirm that  
17 they're accurate, right. James Hitch, who was the CEO  
18 wrote in that email and in one of the exhibits that he  
19 would be getting the documents together and providing them  
20 to us. This was something that he apparently sent to  
21 CDTFA. I haven't received the invoices, you know. He  
22 never got them -- he never got them back to me.

23 I don't know what happened behind the scenes  
24 between him and CDTFA after we had the oral conference to  
25 try and settle or come to an agreement. There was

1 obviously something that happened after that, I guess,  
2 made him change his mind to no longer accept the tax  
3 liabilities and, you know, provide the invoices that were  
4 supposed to be updated with the taxes. So yes, I cannot  
5 confirm that these are the correct ones, you know, that  
6 all these are my invoices.

7 JUDGE BROWN: I guess my question then is, are  
8 you arguing this -- there's something inaccurate about the  
9 summary of the invoices?

10 DR. PATEL: I mean, yeah. If -- if somebody who  
11 has already shown that they were not authorized to collect  
12 tax according to the CDTFA and yet, purported to collect  
13 tax on behalf of CDTFA, I don't know that -- I can't feel  
14 confident that these are all accurate, especially, when  
15 the invoices were never provided to me, the updated ones  
16 that he said he would send to me.

17 The ones that I have -- the ones that are there  
18 that are attached are the ones I had in an email when  
19 there was an early pricing dispute and to correlate  
20 basically, where I said my price should be X, including  
21 taxes, in the email to correlate it with one of the  
22 invoices that I had in the email. But in terms of the  
23 whole list of invoices, yeah, I don't -- I mean, I dispute  
24 it. I don't have that, you know. And CDTFA hasn't  
25 provided them either. They just have this printout.

1 JUDGE BROWN: I think that's all of my questions  
2 for right now. Thank you.

3 JUDGE GEARY: Thank you, Judge Brown.

4 Judge Ridenour, do you have any questions?

5 JUDGE RIDENOUR: No questions. Thank you very  
6 much.

7 JUDGE GEARY: Thank you.

8 I have a question for CDTFA, and I'm not sure  
9 which of the gentleman might best respond. Dr. Patel has  
10 indicated that he was unable to verify a valid seller's  
11 permit or certificate to collect use tax. He didn't refer  
12 to that specifically, probably was not aware of what it  
13 was. But was there a system in effect when these  
14 transactions were taking place that would have allowed a  
15 California purchaser to confirm the status of a seller's  
16 permit of a seller with whom that purchaser was detailing?

17 MR. SMITH: This is Kevin Smith. I can --

18 MR. PARKER: This is Jason Parker.

19 MR. SMITH: Yeah, Jason. If you want to talk --

20 MR. PARKER: I'm sorry.

21 MR. SMITH: No. Go ahead.

22 MR. PARKER: We have had a seller's permit  
23 verification on our website for probably well over ten  
24 years. So it was something that could have been done at  
25 the time. Generally, the person wanting to verify it

1 needs the seller's permit number. Usually locations in  
2 California, they are on the wall of the business. For the  
3 out-of-state companies, they are supposed to put them on  
4 the invoice. If they don't, you can always ask the  
5 company for their seller's permit number and then verify  
6 that it is a valid seller's permit or certificate of  
7 registration use tax. So the electronic verification has  
8 been on the website for quite a long time.

9 JUDGE GEARY: This is Judge Geary again. Is  
10 there a way for a California purchaser or potential  
11 purchaser to check the status without a seller's permit  
12 number, or was there during the time in question?

13 MR. PARKER: There isn't a mechanism to search by  
14 name. The seller's permit number should be given by a  
15 company when they are asked for it. It's also  
16 available -- people can call our 800 number and ask to see  
17 if a certain company has a valid permit. We won't give  
18 out the permit number, but we will at least indicate that  
19 they do have a valid permit.

20 JUDGE GEARY: So a telephone call you can ask  
21 based only on the name of the company?

22 MR. PARKER: Correct.

23 JUDGE GEARY: Okay.

24 MR. PARKER: Or an address.

25 JUDGE GEARY: Okay. Dr. Patel, can you tell me

1        what you actually did or tried to do to verify the  
2        seller's permit? You indicated in your argument that you  
3        could not have done, but I'm not sure you indicated that  
4        you actually tried to do so. Did you?

5                DR. PATEL: Well, my understanding as a layperson  
6        and, you know, citizen of the state is if you go the  
7        Department of Consumer Affairs, whether it's the attorney,  
8        Barber and Cosmetology, or the Dental Board, every single  
9        company or division of the Department of Consumers allows  
10       you to search for somebody's status or a company status by  
11       name. That's the way the databases work with the State of  
12       California when we're searching public.

13               For instance, the California Secretary of State,  
14       if I wanted to see if a corporation is a corporation in  
15       California, we can search by state. That's pretty  
16       standard across all the -- as far as I'm aware, all of the  
17       governmental state agencies in California. I should be  
18       able to go CDTFA website, which I have. It's not there.  
19       The point I'm trying to make is whether or not I knew how  
20       to do it, if the ability for me to check in realtime a  
21       seller's permit -- because I understand there can be  
22       alleged fraud on companies.

23               If the ability for me to not be able to check in  
24       realtime is not there, again, stating the fact that we  
25       live in a digital economy that moves very quickly with

1 transactions, then I shouldn't be responsible if a company  
2 allegedly or possibility commits fraud and collects taxes  
3 on behalf of the State of California or CDTFA in this  
4 matter, because that's the way every other state agency in  
5 California has trained us, right.

6 If I go to the Secretary of State, I can -- I can  
7 do a business search very easily. If you go to the bar  
8 website, I can find out what -- what law school you went  
9 to. If I go to the dental board website, I can search and  
10 see, you know, my own license. I mean, those are things  
11 that anybody who has done a search can find easily. But  
12 the CDTFA doesn't have that mechanism, and that's my point  
13 is that even somebody who tries to do a due diligence  
14 process enacting with a business from out-of-state, which  
15 at the time was a little bit of a murky situation because  
16 there was the South Dakota Wayfair law that was settled  
17 but not -- not a lot of items had not been enacted at that  
18 time as you're aware.

19 You're right. I did not know about all of these  
20 sales and use tax issues at that time. But when I go to  
21 the CDTFA website, I should have -- I should have been  
22 able to see that I was able to easily, without having to  
23 log in, confirm that this company has or does not have a  
24 seller's permit. And as Jason Parker has suggested, you  
25 need to have the seller's permit number. That -- that

1 doesn't work in realtime, and none of the other agencies  
2 operate that way.

3           So that's my point is that if a company is -- I  
4 guess whatever you want to call it, you can call fraud or  
5 whatever -- collecting taxes on behalf of CDTFA and a  
6 layperson doesn't know, they shouldn't be responsible.  
7 The purchaser should not be responsible in a case where  
8 there is possible fraud, right. Somebody as Mr. Smith  
9 said, the State did not authorize -- according to him --  
10 the ability for them to collect sales tax on their behalf.

11           And in terms of the use tax, you know, I think  
12 we're discussing certain things because a use tax is  
13 defined as a tax on the storage, use, and consumption of  
14 taxable items on which no sales tax has been paid, but the  
15 sales tax had been paid. So, therefore, the argument of  
16 the use tax is -- is not valid. Use tax is a  
17 complimentary or compensating tax to the sales tax, but  
18 does not apply if the sales tax was not charged.

19           So in my eyes, you know, I couldn't -- I didn't  
20 have the opportunity to even verify that this company was  
21 not authorized especially, since they had a nexus, right.  
22 If they didn't have a sales rep, you know, lived  
23 20 minutes away and walking in and out of dental offices  
24 and making sales pitches that, hey, we'll pay the taxes;  
25 we'll include the tax in a lump sum, we probably would not



1 be here, you know. I would have paid it, and we would  
2 have moved on.

3 As you know -- and you may not know, there were  
4 other vendors in this audit that had not collected sales  
5 tax, and they didn't purport to collect sales tax. And as  
6 a result of that audit, you know, we were made aware and  
7 we paid those taxes for those vendors. So, you know,  
8 Mr. Smith is right. During the audit period, there was  
9 nothing.

10 During the annual period, nothing was paid.  
11 During the audit period, the vendors where we had state  
12 taxes due, we did pay those and including interest  
13 balances. This is the one vendor that in my eyes isn't a  
14 valid tax request.

15 JUDGE GEARY: Thank you, Doctor.

16 I believe Judge Ridenour might have a question.  
17 Is that right, Judge Ridenour?

18 JUDGE RIDENOUR: Yes. Thank you very much.

19 This question is for CDTFA. Mr. Smith, if I  
20 remember correctly, you mentioned that use tax could not  
21 be included in an invoice that says tax included. It must  
22 be separately stated. Did I understand that correct?

23 MR. SMITH: Yes. Yes, that's correct.

24 JUDGE RIDENOUR: Can you please provide me or the  
25 Panel with authority for that?

1           MR. NOBLE: Hold on. This is Jarrett Noble. I  
2 just happen to have it in front of me. Sorry, Kevin.

3           MR. SMITH: That's all right.

4           MR. NOBLE: It's 6206.

5           JUDGE RIDENOUR: Thank you very much. No further  
6 questions.

7           JUDGE GEARY: Thank you, Judge Ridenour.

8           Judge Brown, did you have anything at else?

9           JUDGE BROWN: I do not have anything at this  
10 time. Thank you.

11           JUDGE GEARY: All right. Dr. Patel, this is an  
12 opportunity for you to take approximately five minutes, if  
13 you would like, to give some closing remarks or rebuttal  
14 to what the Department argued. Would you like to make  
15 some closing remarks?

16           DR. PATEL: Yes, I would. Thank you, Your Honor.

17           JUDGE GEARY: Okay. Go ahead.

18           DR. PATEL: Thank you.

19

20                           CLOSING STATEMENT

21           DR. PATEL: So as was discussed in this hearing,  
22 Pan-Am Dental had a clear nexus to the State of California  
23 as early as 2017 and late 2016. It purported to be  
24 registered in California when they made a statement that  
25 they would be including the taxes in any of their sales

1 and paying for the taxes. As a customer or a purchaser in  
2 the State of California, we had no ability to verify that  
3 at that time based off of a name of the company.

4 CDTFA has a fiduciary duty to prevent fraud in  
5 sales and use tax permit system from out-of-state vendors,  
6 as was established in the very essence of the South Dakota  
7 versus Wayfair case. The idea of the South Dakota versus  
8 Wayfair case was to centrally provide in-state companies  
9 an equal playing field with out-of-state vendors who may  
10 have cheaper and less expensive business environments and  
11 abilities to provide services at a lower cost. And also  
12 perhaps also to be -- and to also have to pay taxes from  
13 out of state.

14 In this particular case, the in-state vendor  
15 should have an equal competitive stance. Whereas, namely  
16 in this case, the taxes that were collected on behalf of  
17 CDTFA would actually give an out-of-state vendor a profit  
18 on equal to the tax amount on top of reducing the  
19 operating cost since the company operated in a lower-cost  
20 business environment in Savannah, Georgia.

21 If this amount of tax is held valid in this case,  
22 it actually undermines and negates the ruling of South  
23 Dakota versus Wayfair case. Because in this situation,  
24 taxes would have been collected by the out-of-state vendor  
25 and not turned over to CDTFA after the company purported

1 and represented itself as an agent of CDTFA, able to  
2 collect taxes.

3 As a result that would make the whole South  
4 Dakota and Wayfair case negated. And my understanding is  
5 that we should create a level playing field for in-state  
6 and out-of-state companies. And the only way to do that  
7 is to create A, more transparent system for out-of-state  
8 vendors to be checked on their seller's permit; and B,  
9 there should be repercussions for companies that operate  
10 from out of state or allegedly or purposely representing  
11 or purporting to be an agent of CDTFA able and authorized  
12 to collect sales tax. Without those two concepts, the  
13 whole system is frankly, subject to fraud, as in this  
14 case.

15 Lastly, nobody who makes a good faith payment for  
16 taxes, okay, should be liable for taxes if there was fraud  
17 that could and should be stopped and terminated by the  
18 CDTFA and the State of California. That's the fiduciary  
19 to ensure that out-of-state vendors do not take advantage  
20 of in-state customers and fail to deliver the sales, you  
21 know, the sales tax they collect over to CDTFA.

22 And my understanding is, as of today Pan-Am  
23 Dental still has the ability to A, not register in the  
24 State of California and B, possibly collect taxes without  
25 any sort of repercussions. To me that doesn't sound like

1 a system that works for everyone, especially if we're  
2 trying to create a deeper playing field.

3 Nothing further to say. Thank you.

4 JUDGE GEARY: Thank you, Doctor.

5 Bear with me for a second. Okay. Do the parties  
6 submit the matter for decision?

7 Mr. Smith?

8 MR. SMITH: Yes, we do.

9 JUDGE GEARY: Dr. Patel, submitted?

10 DR. PATEL: Yes, Your Honor. Thank you.

11 JUDGE GEARY: All right. This case is submitted  
12 on June 15th, 2023, at 2:46 p.m. The record in this  
13 hearing is now closed, and this hearing is concluded.

14 I want to thank everyone for participating. In  
15 the coming weeks the Panel will meet to consider the  
16 matter, and OTA will issue a written decision and send  
17 that decision to the parties within 100 days of today.

18 This concludes OTA's afternoon calendar for  
19 today. We will adjourn. However, OTA will reconvene in  
20 the morning -- tomorrow morning at 9:30 a.m. for  
21 additional hearings.

22 Thank you, everybody. I hope you all have a  
23 great day.

24 (Proceedings adjourned at 2:46 p.m.)  
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I further certify that I am in no way interested  
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I have hereunto subscribed my name this 18th day  
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