

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
PACIFIC LIFE INSURANCE COMPANY,) OTA NO. 21119089
)
APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, November 15, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
PACIFIC LIFE INSURANCE COMPANY,) OTA NO. 21119089
)
)
APPELLANT.)
)
_____)

Transcript of Electronic Proceedings,
taken in this state of California, commencing
at 1:11 p.m. and concluding at 2:44 p.m. on
Wednesday, November 15, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for this state of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Panel Lead: ALJ NATASHA RALSTON

Panel Members: ALJ JOSHUA LAMBERT
ALJ KEITH LONG

For the Appellant: ROGER WANG

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

COURTNEY DANIELS
CHAD BACCHUS
JASON PARKER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-44 were received at page 6.)

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

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

P A G E

By Mr. Wang	7
By Ms. Daniels	24

C L O S I N G S T A T E M E N T

P A G E

By Mr. Wang	34
-------------	----

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Wednesday, November 15, 2023

1:11 p.m.

JUDGE RALSTON: We are opening the record for the Appeal of Pacific life Insurance Company, Office of Tax Appeals Case No. 211190089. Today's date is November 15th, 2023, and the time is approximately 1:11 p.m. My name is Natasha Ralston, and I am the lead Administrative Law Judge, ALJ, who will be conducting the hearing for this case. We also have Judge Lambert and Judge Long on this panel.

The Office of Tax Appeals is not a court but is an independent appeals body, which is staffed by tax experts and is independent of any tax agency. Excuse me. Okay. Just a moment please.

Also present is our Stenographer Ms. Alonzo, who is reporting this hearing verbatim. To ensure that we have an accurate record, we ask that everyone speaks one at a time and does not speak over each other. Also, please speak clearly and loudly. And when you're not speaking, please mute. When needed, Ms. Alonzo will stop the hearing process and ask for clarification. After the hearing, Ms. Alonzo will produce the official hearing transcript, which will be able available on the Office of Tax Appeals website.

1 This hearing is being live streamed to the public
2 and is being recorded. The transcript and video recording
3 are part of the public record and will be posted on the
4 Office of Tax Appeals website. So keeping that in mind,
5 please make sure you don't show any sensitive or private
6 information on the screen.

7 The prehearing conference in this matter was held
8 on October 9th, 2023. And at that conference, Appellant
9 initially submitted exhibits labeled 1 through 40.
10 Respondent did not submit any objections to Appellant's
11 Exhibits 1 through 40. Subsequently, Appellant submitted
12 Exhibits 41 through 44.

13 Has Respondent received those additional exhibits
14 and had a chance to review them?

15 MS. DANIELS: Yes, we have.

16 JUDGE RALSTON: Okay. Thank you. Did you have
17 any objection to those documents?

18 MS. DANIELS: We do not.

19 JUDGE RALSTON: Okay. Thank you.

20 Therefore, Appellant's Exhibits 1 through 44 are
21 admitted without objection.

22 (Appellant's Exhibits 1-44 were received
23 in evidence by the Administrative Law Judge.)

24 JUDGE RALSTON: Respondent has submitted Exhibits
25 A through M, and Appellant did not raise any objections to

1 Respondent's exhibits. So Respondent's Exhibits A through
2 M are admitted without objection.

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

5 JUDGE RALSTON: Neither party will call any
6 witnesses in this case.

7 Is that still correct Mr. Wang.

8 MR. WANG: Yes, it is.

9 JUDGE RALSTON: Okay. And Ms. Daniels?

10 MS. DANIELS: Yes, that's correct. Thank you.

11 JUDGE RALSTON: Thank you.

12 Okay. So the Appellant will have 30 minutes to
13 present their case. Respondent will also have 30 minutes
14 to present their case. Appellant will then have 10
15 minutes for rebuttal, and the Panel may have questions for
16 either party at either time.

17 Does anyone have any questions before we move on
18 to the opening presentations?

19 Okay. Seeing no questions, Mr. Wang, please
20 begin when you're ready. You have 30 minutes.

21

22 PRESENTATION

23 MR. WANG: Yes. Good afternoon to everyone.

24 Yes, my name is Roger Wang. I'm representing Pacific Life
25 Insurance Company, which is the Appellant in this case.

1 And first of all, the Appellant asked me to thank everyone
2 for the opportunity to present his case of use tax, which
3 they -- the tax that should apply to the transaction it
4 entered with RRD Insurance Services, Xerox Corporation,
5 and Share Technology, also known as Arrow S3.

6 And again, the -- throughout the refund claim to
7 this juncture of this -- this now it's before the OTA.
8 The Appellant believes, you know, the applicable tax in
9 this case should be use tax, not sales tax, and should
10 apply to its transaction, and the transaction at issue can
11 be discussed -- will be discussing more detail later in
12 this hearing.

13 First, the Appellant believes that the case based
14 on the law and the facts. First, with respect to the law,
15 is to when the sales tax or the use tax apply to the
16 transaction is very clear in this regard. This Regulation
17 1620 lower case(a) and (1), and that's subdivision, saying
18 that the use tax applies when the sales occur, or the
19 title transfer to the buyer, and the location outside of
20 California, outside of this state. And the use tax
21 applies into that without regard of any participation to
22 any extent by the retailer's in-state's office.

23 Now, in the event the sales or title passes
24 inside this state, use tax -- use tax still applies. And
25 pursuant to Regulation 1620, also lower case (a) (2) and

1 capital (A) for the sales tax to apply, there must be two
2 conditions. First, the sales or title must take place or
3 occur inside California, in this state. Second -- and
4 second requirement is that there must be participation in
5 the sale by the retailer's local office. So that is very
6 clear. I mean, two, what extent participation of sale,
7 what constitute the participation in the sale. The
8 regulation is very clear on that.

9 The first sentence of that subdivision, the
10 regulation says that define participation as when the
11 order sent to the retailer's office -- a local office or
12 the delivery of the sole property is made by the same
13 local office. If it is this fact is true, then there
14 would be participation in the sale by the local office.
15 And that is very clear in the regulation. So based on
16 that, this language in the regulation, the Appellant has
17 presented this transaction. And I believe, he continues
18 to believe that use tax should apply these transactions.
19 At the beginning of the refund claim, the Department
20 auditors present this Regulation 1620 should not apply to
21 these transactions because for the fact the sales occurred
22 inside this state.

23 In the situation when the sales occur in this
24 state or title pass inside this state, this when, you
25 know, the generally mostly result from the fact that the

1 property is located inside this state before the sale.
2 And in which -- yeah, which should be the case with this
3 transaction with these three vendors. And that's why, you
4 know, the -- the refund, the dispute keeps going on until
5 today.

6 And in rebut -- rebuttal, the Appellant presented
7 that even though the sales that the property even located
8 inside this state before the sale, or even, if in the
9 event that the retailer has a place of business. It's
10 argued by the Department use tax -- I mean, this
11 participation, still define by regulation which either the
12 auditors, when the order is sent to this state, I mean,
13 they are inside the local office inside this state or if,
14 you know, deliver -- property is delivered by local
15 office. And until -- and also Appellant to support its
16 position has cited the decision by the Department. This
17 is the decision by the Department in various -- in
18 numerous appeals by between the taxpayer and the
19 Department.

20 First, the first case which I can find, the first
21 appeal or the first case when the -- first case when the
22 -- where the Department or the CDTFA in the past still
23 define -- I mean, still decide wrote that use tax still
24 apply even if the property is located inside this state
25 before the sale. That case is a Long Beach Container

1 Terminal, which Exhibit 4, which can be found on the
2 page 74, it's a define of the hearing binder.

3 In this case, basically, the property was
4 transferred by the seller in Italy -- from Italy into
5 California for sale. And even though -- I mean, then
6 even -- pursuant to -- the fact is this. The seller is in
7 Italy and the petitioner, in this case Long Beach Terminal
8 Container -- Container Terminal, Inc., is a contract
9 whereby the property -- the seller is required to install
10 and erect the container cranes at the -- by the terminal
11 in Long Beach. And for that purpose, the seller is
12 required also pursuant to contract -- pursuant to the
13 contract, also required to establish the temporary
14 construction site within the terminal to complete during
15 the installation -- to complete the installation of the
16 cranes.

17 And the more important in this case that the
18 seller even hired local inside this state, a local
19 subcontractor to some portion of the installation. Even
20 all -- I mean, despite of all these facts, the Department
21 or the CDTFA decided back in 1994 that use tax apply
22 because there were the fact that the installation work by
23 the local subcontractor, which is the seller agent, was
24 not -- this activity was not enough. It was not
25 sufficient to establish the participation in the sale.

1 And this even clear because this -- that -- that
2 decision is very important as to -- because important in
3 the sense that when -- first, the Department, beginning of
4 the refund claim back in 2014, 2015, the Department
5 would -- did not regular position which was not whatever
6 the decision or interpretation of the Regulation 1628 cap
7 (A), is Appellant transaction because, again, the fact --
8 I mean, even the fact based on the -- because the fact
9 pattern are different because arbitrarily. The Department
10 arbitrarily contested that this one of the ruling or the
11 interpretation of a regulation by the Department does not
12 apply to Appellant, this transaction.

13 And, again, there is no back and forth between
14 the -- how the participation in the sale be interpreted
15 between the two part -- I mean, back and forth, like, in
16 between the Appellant and the Department. And in addition
17 to this case Long Beach case, Appellant also presents this
18 in the two different cases following the Long Beach, which
19 you can find is page 76. Case number -- the one case is
20 Lands' End issue paper. Very lengthy and so many pages is
21 between like -- the total page is, like, between 76 all
22 the way to 144 pages, but you can find, you know, later.

23 But, in any event, the reason the Appellant cited
24 these case, the Long Beach case, the Lands' End, is
25 that -- and also the Buena Park case is Exhibit 5 and 6.

1 I apologize Lands' End issue paper is Exhibit 5.
2 Exhibit 6 contain the content of the Buena Park case. In
3 any event, these cases cited by the Appellant to show the
4 Department that the regulation also interpreted -- and
5 also according to the Department interpretation of the
6 regulation with respect to the participation in the sale,
7 is that the only two activities very clearly is that it
8 constitutes to participation by the local office is,
9 again, very simple, very clear.

10 What if the order of negotiation of the contract
11 of the sale is to take place with this state, with the
12 retailer's local office or delivery of the property to the
13 purchaser if made by the retailer local office. And they
14 say very clearly in this. And if you can see on page 87
15 of the Lands' End issue paper on the page -- I show you.
16 If you browse to page 87 of the hearing binder, you see
17 very clear that this code, this issue paper by -- I mean,
18 by the Department code. The Board which is now is the
19 Department. The Board has consistently viewed
20 participation in sales negotiated with customers by taking
21 orders or shipping or delivering property by the retailer
22 employees in California.

23 That is -- and when -- and later on another
24 taxpayer brought the question on participation in the City
25 of Buena Park case, which is page -- you can see on

1 page 152 of the hearing binder. Okay. Again, in another
2 case the City of Buena Park, this case indicate the Board
3 has the way is its view, a longstanding view of
4 participation as it negotiating with customer by taking
5 order and by delivering probably -- delivering property by
6 the retail employee inside California -- I mean, the local
7 office. So it's very clear.

8 Now, so that is the cite what the law -- and what
9 the law and regulations promulgates when and whether sales
10 or use -- I mean, use tax applies is just like in those
11 two transactions. Now, in --

12 Does Panel have any questions on the discussion
13 of the law so far?

14 JUDGE RALSTON: We will check for questions after
15 your presentation.

16 MR. WANG: Okay. Yeah.

17 Now, that on respect to the facts from the
18 beginning very clear. And both parties Appellant and the
19 Department agreed that with exception of intangible
20 soft -- property like software or services, tangible
21 personal property was delivered to Appellant via common
22 carrier, not by the retailer's local office or employees
23 inside this state. And also based on the evidence and --
24 I mean, supporting the facts submitted by the Appellant,
25 and so far negotiation of the contract of the sale term or

1 sale with respect to these, the transaction at issue with
2 these three vendors, all took place outside of California.

3 In the case of -- first, let's go in order by
4 transaction, the transaction invoice with the vendor, go
5 by the vendor in terms of numerical order of the pages of
6 the hearing binder. First, R. R. Donnelley -- I'm sorry.
7 RRD Insurance office -- services invoice -- invoices,
8 which you can find in pages 24 and 25 of the hearing
9 binder. And that's the invoice is detail invoice. And
10 let me go here. I apologize for so many length. It takes
11 so many -- so much information, so many pages in here.
12 Okay. So until 84, so that is sample of invoices of the
13 invoice with this transaction. With this vendor, there
14 are ten invoices under this field currently.

15 And the evidence of so far and from the beginning
16 back in 2014, 2015, from the beginning of the refund
17 claim, evidence supported Appellant for audit review
18 showing that the orders were placed with the office in New
19 Jersey. And that -- the evidence provided is Exhibit 34,
20 and this content of this evidence, again, Exhibit 34 and
21 cover the pages from 289 through 298. And this, again,
22 this evidence contends a string of emails exchanged
23 between Appellant and this vendor. And as it shows very
24 clearly that on page 1 of this -- this is, again, this
25 vendor we iterated that order in which the place with this

1 office in New Jersey.

2 And on page 6 of this string of emails and the
3 vendor also confirmed that the sole property, the annual
4 statement, the printed annual statement were delivered to
5 Pacific Life via a third-party hand-mail courier. They
6 call it via hand messenger service. So based on this
7 evidence, I mean, with regard to the RRD Insurance
8 Services invoices, it shows very clear that there's no
9 participation of sales by this vendor, I mean, in local's
10 office. Number one, again, it's confirmed orders were
11 sent. So placed with the -- its office in New Jersey, and
12 the delivery by, like, third-party mail courier.

13 I will go now to the next vendor, Xerox invoices.
14 So there are three invoices in this -- with this vendor.
15 And the content, detail of these invoices can be found on
16 pages 299 through 312 of the hearing binder. And also,
17 with these pages -- in the pages very clearly show that,
18 again, this is a string -- let me step back about why, you
19 know, the evidence, the type of evidence on -- which was
20 shown here is the -- I mean, in the type of emails
21 between -- I mean, the communication between Appellant,
22 Appellant and the these vendors.

23 For this refund period for the -- for this refund
24 period, the information -- majority of the information was
25 lost during the Appellant's transition from an old

1 accounts payable system to a new one back in sometime
2 between 2012 and 2013. As such, lot of records were lost
3 and the -- for the -- for instance, with -- in the case of
4 the insurance services invoices, the Appellant had to
5 reach out to this vendor to help us -- help to retrieve
6 all the carbon -- the duplicate copies of the invoices.
7 And it's the same with Xerox here, in the sense that
8 the -- some records here have to -- was retrieved with the
9 help from this vendor.

10 But, in any event, the evidence shown by for --
11 in regard to the Xerox invoices, again, it's a string of
12 email exchange between these vendors and the Appellant for
13 the fact that -- for the record. The orders for this --
14 again, these invoices charge for the -- purpose of this
15 transaction is paper supplies purchased from this vendor
16 Xerox. So, but anyway, the orders for this -- all the
17 paper supplies here, show on this email in this email here
18 was ordered -- was placed with Xerox in Dallas, Texas.

19 And in addition to the --

20 JUDGE RALSTON: Mr. Wang, you cut out for a
21 second. So if you could repeat last comment.

22 MR. WANG: So, I mean, yeah. I was -- the last
23 comment was that these orders of these paper supplies
24 purchased from this -- from Xerox, were placed with this
25 office in Dallas, Texas. So -- and then the person that

1 made -- the accounts representative in this case here,
2 that is on the Pacific Life -- I mean, the Appellant's
3 account is name Nita Shofner. And when the notice
4 information -- this evidence was presented to the
5 Department, the auditor questioned her, Ms. Shofner, what
6 about. And that's why in addition to the string of
7 emails, Appellant also provides -- I mean, excerpt from
8 Linkedin, which is Exhibit 44. Which you can find them on
9 page 324 of the hearing binder, which show that in this,
10 Ms. Shofner was located -- was based in off -- I mean, in
11 Texas back in during the time, you know, this transaction
12 took place.

13 And moreover, the Appellant -- now Appellant
14 pointed Ms. Shofner that -- I mean, in addition to -- I
15 mean, Appellant also submitted affidavit signed by an
16 official -- by officer to the effect that orders for the
17 paper supplies were placed -- were then placed with Xerox
18 office in Texas. And finally, we also show the Department
19 that if you took -- if you look at the contact
20 information -- Ms. Shofner contact information in the
21 email -- let me show you. On page 300, Ms. Shofner
22 contact information, her phone number is toll free 800
23 number is 800-822-2200. Her number is -- her number is on
24 the invoice for ordering purposes. On page 310 on top of
25 invoice the highlighted -- the on top of the invoice the

1 portion highlighted it show to -- the contact information
2 for the information with -- the vendor contact information
3 for order supplies. The same information.

4 And we -- I mean, still until today and all --
5 with all this evidence presented to the Department, still
6 today the Department's claim that it's insufficient or no
7 evidence have been presented with respect to Xerox
8 office -- I mean, invoices and the other two with -- also
9 with the other vendors. One last thing I really want to
10 point out to the Panel is that originally -- initially,
11 there's more than three invoices claimed under this
12 vendor. If you look at these three vendors -- these three
13 invoices, there's another invoice for the same pattern --
14 I mean, same purchase of same pattern, same property,
15 which is paper supplies.

16 And for some reason for that invoice, the vendor
17 retrieves a copy -- a duplicate copy of bill of lading.
18 And on that, on the bill of lading showing that the paper
19 supplies was dropped ship to -- by in-state a
20 California -- an in-state supplier located in La Mirada.
21 And this -- and the paper -- and this -- and the supply,
22 the paper supply, which are from this vendor -- this
23 supplier inventory in La Mirada and shipped to Cal -- I
24 mean, Appellant via common carrier. And for some reason,
25 based on this information, even the Department concurs

1 with Appellant that this transaction was not subject to
2 sales tax. So, therefore, it's a refund to Appellant on
3 this invoice. The invoices, for some, reason the
4 Department arbitrarily denied for some reason and, again,
5 send this. So that, I just want to bring that to the
6 Panel's attention.

7 And last and not least now is the invoice the
8 Arrow Shared Technologies or Arrow S3 invoices. And the
9 details of the invoices can found on pages 268 to 277 of
10 the hearing binding -- I'm sorry -- hearing binder. Let
11 me show you. Like the other two purchases with the other
12 two vendors, this invoice involves charges for maintenance
13 service of Appellant's form in voicemail servers and
14 related software, all this thing. Yeah. There's no --
15 it's just a -- there's no sales of tangible personal
16 property with these three invoices.

17 The evidence for this to support these three
18 invoices was presented by the Appellant can be found in
19 Exhibit 22, which the MTS stand maintenance and tech
20 support agreement enter between the vendor and Appellant.
21 And this, the detail of this can be found on pages 271
22 through 277 of the binder. On page 4 of the agreement,
23 which it correspond to the page 274 of the binder, clearly
24 show that the signer of the -- representing ST stand for
25 tech share -- Share Technology. For representing ST is

1 Ms. Betsy Baker.

2 So to show that -- to show that this agreement
3 was negotiated initially with ST office in Texas. We did
4 provide it. We did provide a LinkedIn profile of
5 Ms. Baker, which it can be found in Exhibit 43,
6 corresponding to page 3 -- hold on a minute.
7 Corresponding to page 323 of the binder showing clearly
8 that Ms. Baker was based -- yeah -- is based in Texas. In
9 addition to that evidence, Appellant also provided
10 evidence showing that negotiation of all purchases from
11 ST, in fact, took place with this vendors' office outside
12 of California. Details of such evidence can be found on
13 Exhibit 41 through 43, corresponding to pages 313
14 through 322 of the hearing binder.

15 It shows on all these pages here, and all contact
16 information for these vendors that's from representative
17 outside of California, either Texas or Wisconsin. No --
18 none of the contact information inside California. And
19 finally -- and to finally to show with respect to these ST
20 invoices, Appellant also presented an evidence showing
21 that in the past the Department has -- over the years, the
22 Department has consistently issue refund of use tax on
23 same maintenance agreement services to other taxpayers.

24 In Exhibit 31, corresponding to page 87 of the
25 binder, show very clearly that the Department issue refund

1 to a health-care company based on the same fact that the
2 software maintenance agreement was negotiated with the
3 software vendors location -- I mean, located outside
4 California. So what's here and we're trying to point to
5 the Panel that there's an inconsistency with regard to the
6 Department's position on whether use or sales tax applies
7 or, you know, like whether, you know, these vendors or
8 this transaction is deserves a refund versus the others,
9 and no -- not.

10 So even though on the same fact pattern, same
11 kinds of services or property transacted between taxpayer
12 and the vendor. So in any event, the -- based on the
13 facts and also based on the law being discussed so far,
14 again, the Appellant believes that these -- I mean, these
15 transactions should be subject to use tax, not sales tax
16 for California sales and use tax purposes. And such, you
17 know, it's entitled to refund because as insurance company
18 it pays for premium tax in lieu of use tax exempt from
19 California -- from use tax based on the provision inside
20 this state Constitution and also based on the regulation.

21 But, again, before I conclude on behalf of the
22 Appellant, just want to -- to either way that, first of
23 all, the -- based on the law and the facts, these
24 transactions are subject to use tax, not sales tax. And
25 evidence -- number two, evidence have been provided to the

1 Department for review over the years since the beginning
2 of the refund claim dated back in 2014. Appellant
3 believes that it's abundant and just -- but,
4 unfortunately, for some reason, the Department either
5 disregard certain evidence or cherry picked some evidence
6 and reached -- I mean, verified -- it verifies some
7 information is related to what constitute participation in
8 the sale as pursuant to regulation.

9 So number three is also, yeah, is -- and the last
10 one I want to make here is that the Department have been
11 inconsistent in terms of interpreting the law regulation,
12 or apply the same law regulation to certain transaction in
13 saying that okay, this transaction this will be subject --
14 I mean, refund this. Not. So that one, yeah. All this
15 have led to -- led to what going on today.

16 So I -- I hope, you know, this I have made, you
17 know, on behalf of Appellant, you know, this. I have
18 this -- presented all facts, the law, and evidence before
19 the Panel and welcome any question the Panel may have for
20 the end of this presentation.

21 JUDGE RALSTON: Okay. Thank you, Mr. Wang. I'm
22 going to check in with my Panel to see if my Panel members
23 have any questions.

24 Judge Lambert, did you have any questions for the
25 Appellant?

1 JUDGE LAMBERT: This is Judge Lambert. I don't
2 have any questions. Thanks.

3 JUDGE RALSTON: Okay. And, Judge Long, did you
4 have questions for the Appellant?

5 JUDGE LONG: This is Judge Long. I don't have
6 any questions. Thank you.

7 JUDGE RALSTON: Thank you.

8 Okay. We're going to move into the Respondent's
9 presentation.

10 Ms. Daniels, you have approximately 30 minutes or
11 so. Please begin when you're ready.

12 MS. DANIELS: Thank you.

13

14 PRESENTATION

15 MS. DANIELS: So my name is Courtney Daniels.
16 I'm here on behalf of the Department with my colleagues
17 Mr. Bacchus and Mr. Parker.

18 So the issue to be decided today is whether
19 Appellant is entitled to a refund of tax paid, which is
20 sales entered into with three vendors, RRD Insurance
21 Services, Shared Technologies, and Xerox Corporation.
22 Appellant alleges that the tax paid to these vendors was
23 incorrectly assessed as sales tax, and that the sales
24 transactions were, in fact, use tax transactions that are
25 exempt under Tax Code section 6352 and Regulation

1 section 1567 subsection (b). For the following reasons,
2 the Department was correct in determining that sales tax
3 applies to the transactions at issue.

4 Use tax is imposed on the storage, use, or other
5 consumption in this state of tangible personal property.
6 That's Tax Code section 6201. Every person storing,
7 using, or otherwise consuming in this state tangible
8 personal property purchased from a retailer is liable for
9 the tax. Tax Code section 6202. Insurance companies are
10 subject to the gross premiums tax pursuant to Article 13
11 section 28 subdivision (f) of the California Constitution
12 and, thus, are not subject to use tax on their storage,
13 use, or other consumption of tangible personal property in
14 the state. You can see Tax Code section 6352 and also
15 Regulation 1567 subdivision(b).

16 Because use tax is imposed on the purchaser, if
17 an insurer makes a purchase of tangible personal property
18 that is otherwise subject to use tax, i.e., the sale
19 occurs outside of California, the insurer is exempt from
20 the use tax under Tax Code section 6202, 6352, and
21 Regulation 1567 subdivision(b). However, California
22 imposes a sales tax on a retailer's retail sale of
23 tangible personal property in this state measured by the
24 retailer's gross receipts, unless the sale is specifically
25 exempt or excluded from taxation by statute. That's Tax

1 Code section 6051.

2 Thus, sales of tangible personal property in this
3 state to an insurance company by a retailer are subject to
4 sales tax, and that retailer can collect sales tax
5 reimbursement from its customer, the insurance company;
6 Regulation 1700 subdivision(a). So pursuant to
7 section 6051 and Regulation 1620 subdivision (a), a retail
8 sale is subject to sales tax if two conditions are
9 satisfied. First, the sale occurs in California and
10 second, there's participation in the sale by a California
11 place of business of the retailer. If title to the
12 property sold passes to the purchaser at a point outside
13 this state, sales tax does not apply regardless of the
14 extent of the retailer's participation in California in
15 relation to the transaction.

16 Title to property generally passes no later than
17 the time when the seller completes its responsibilities
18 with respect to the physical delivery of the property.
19 And that's California Commercial Code section 2401
20 subdivision(2). Participation in a transaction
21 necessarily means that the local place of business of the
22 retailer must have some meaningful effect on the sales
23 process. That is the participation must serve some real
24 purpose in the actual sales process and involves some
25 genuine physical interaction with the sale from that

1 location, such as taking orders from the customer and
2 delivering goods to the customer.

3 Tax Code section 6203 subdivision (c)(1), which
4 addresses whether a retailer is required to collect use
5 tax in California is instructed in this case. It provides
6 that a retailer is engaged in business in this state and,
7 thus, required to collect use tax from its California
8 purchasers if that retailer maintains in California
9 permanently or temporarily an office, place of
10 distribution, sales, or sample room or place, warehouse or
11 storage place, or other place of business.

12 So with this in mind, we'll discuss each of the
13 vendors separately. There are ten purchases from RRD
14 Insurance in dispute, which were made between March 15th,
15 2011, and March 19th, 2013. A list of which was provided
16 by Appellant as Exhibit 27. Now, Appellant does not
17 dispute that each of the listed purchases were printed and
18 shipped from one of RRD's California locations within
19 Temecula or Santa Fe Springs. Instead, Appellant contends
20 that the printing and delivery does not constitute
21 participation in the sale because the in-state offices
22 were not involved in the initial negotiation of the sale.

23 Appellant simply argues that because it
24 originally ordered these reports from RRD's employees in
25 the West Caldwell, New Jersey, that the sale occurred

1 there and use tax would apply to these purchases, but this
2 interpretation is not supported by the language of
3 Regulation 1620. Regulation 1620 simply states, quote,
4 "Sales tax applies when the order for the property is sent
5 to the purchaser to, or delivery of the property is made
6 by any local place of business of the retailer in this
7 state," end quote.

8 Participation in a sale has consistently been
9 interpreted to include shipping or delivery of property by
10 the retailer's employees to the customers. In fact,
11 Annotation No. 570.0350 explains that property sold by an
12 out-of-state vendor but shipped to the customer in
13 California from and in-state warehouse of the seller is
14 subject to sales tax and not use tax. Further, Annotation
15 No. 700.0180 explains that sales tax applies if
16 merchandise is delivered to a California consumer from the
17 seller's California warehouse, even when the order is
18 placed with an out-of-state office of the seller.

19 Moreover, Appellant's own exhibits are consistent
20 with this interpretation. For example, Appellant's
21 Exhibit 5, the Formal Issue Paper Number 04-003 at page 12
22 provides, quote, "The Board has consistently viewed
23 participation in sales as negotiating with customers by
24 taking orders or by shipping or delivering property by the
25 retailer's employees to customers in California," end

1 quote.

2 Similarly, Appellant's Exhibit 11, which is
3 Annotation Number 175.00125 states, quote, "The type of
4 participation looked for is local participation in the
5 sale or delivery of the goods," end quote. And
6 Appellant's Exhibit 13, the back-up letter to Annotation
7 Number 325.0057, at page 2, states, quote, "Sales tax
8 applies if the order for or the delivery of the part is
9 made by any local place of business of the vendor inside
10 this state or by any agent or representative of that
11 vendor operating out of or having any connection with such
12 local place of business." And it's citing to Regulation
13 1620 subdivision (a) (2) (A) .

14 These interpretations of Regulation 1620 are also
15 consistent with Tax Code section 6203 subdivision (c) (1),
16 which finds that a retailer has a distribution center
17 within California is engaged in business within
18 California. So in the instant matter, the reports that
19 Appellant purchased from RRD were printed in California by
20 RRD Insurance's California employees. Appellant does not
21 dispute that title passed in California. The reports were
22 then also delivered to Appellant by RRD's in-state
23 facilities and employees. This clearly shows
24 participation within this state and thus, satisfies the
25 language of Regulation 1620. And thus, sales tax and not

1 use tax applies to these transactions.

2 Similar to our situation with Xerox, Appellant
3 has provided three invoices from Xerox, Exhibits 38, 39,
4 and 40 and a number of emails showing that the sales
5 representative that they regularly order paper from was
6 located at Xerox' Dallas, Texas office. The Department
7 does not dispute that Appellant likely communicated with
8 sales representatives that were outside of California and
9 placed orders for products with those individuals.
10 However, in its prehearing conference statement, Appellant
11 conceded that title to the items at issue transferred
12 within this state.

13 Moreover, Appellant has not provided evidence to
14 show that there was no participation in the transaction by
15 one of Xerox' California warehouses. In fact, when the
16 Department contacted Xerox by telephone, its
17 representative stated that there was no way to confirm
18 that the supplies ordered by Appellant originated from an
19 in-state or out-of-state warehouse. Here, Appellant is
20 seeking a refund. It has the burden of showing that it is
21 entitled to this refund, and that's Paine v State Board of
22 Equalization, a 1982-case which is available at 137 CalAp
23 3D 438 at 442.

24 Any taxpayer seeking exemption from tax must
25 establish that right by the evidence specified by the

1 relevant regulation. A mere allegation that sales are
2 exempt is not sufficient. Again, Paine at page 442. As
3 such, it's Appellant's burden of proving its right to a
4 tax exemption. Appellant has failed to provide evidence
5 establishing that the sales from Xerox were made without
6 in-state participation. And thus, Appellant has not met
7 its burden.

8 Lastly, the transactions for Shared Technologies
9 involve three different invoices, which include charges
10 for maintenance, technical support, and software upgrades.
11 And they are dated May 15th, 2011, which is Exhibit 21,
12 page 1, May 15th, 2012, Exhibit 21, page 2, and May 15th,
13 2012, Exhibit 21, page 3. Shared Technologies operated a
14 facility in Santa Fe Springs, California, and also
15 employed in-state technicians and delivered tangible
16 personal property to customers within California.

17 The audit work papers state that the Department
18 contacted Shared Technologies by telephone on March 12th,
19 2015, and spoke with a representative of the vendor named
20 Ms. Amelia. And she confirmed that the software upgrades
21 provided to Appellant in associates -- association --
22 sorry -- with the invoices at issue were installed via a
23 CD by an instate technician at Appellant's California
24 facility. The representative also stated that the
25 technician delivered the CD to Appellant.

1 As is noted in the decision, the sale of
2 prewritten software program involving the transfer of
3 tangible personal property is subject to tax. That's
4 Regulation Section 1502 subdivision (f)1) (D). And since
5 the CD was delivered in this state by Shared Technologies'
6 in-state employees, California's sales tax is imposed on
7 the retailer. So that's Tax Code section 6051. Thus, the
8 applicable tax as applied to the software upgrade is sales
9 tax.

10 Now, the invoices provided by Appellant also
11 contain sales tax charges that appear to pertain to
12 maintenance and technical support. Specifically on page 1
13 of Exhibit 21, the supplemental decision correctly
14 identified that this invoice appears to be solely for
15 maintenance services, and there's no indication of
16 tangible personal property having been transferred. And
17 thus, these sales of services were not subject to the tax
18 and the supplemental decision that provides this
19 information is Exhibit B at page 34.

20 So while the Department agrees that Shared
21 Technologies erroneously charged this tax, Appellant's
22 recourse is with Shared Technologies, not the Department.
23 Amount paid by the purchaser to the retailer to reimburse
24 the retailer for sales tax is a matter of contract between
25 that retailer and the purchaser. And that's California

1 Civil Code section 1656.1, that is an amount paid to the
2 retailer by the purchaser itemized as sales tax is not, in
3 fact, sales tax imposed by the state on the purchaser but
4 instead on the retailer.

5 So the purchaser has no standing to file a claim
6 for refund with the Department for such amounts, since the
7 purchaser made no payments of sales tax to the Department.
8 This is supported by Annotation Number 460.0171, which
9 cites to the California Supreme Court's decision in
10 McClain v. Sav-On Drugs, which is a 2019 case available at
11 6th cal 5th 951. So instead, the retailer is the only
12 person who may file a claim for refund of sales tax, which
13 the retailer believes it overpaid.

14 To the extent that Appellant argues that Tax Code
15 section 6901 allows it to recover an overpayment of tax
16 directly from CDTFA, Appellant's understanding of this
17 section is misguided. As I just stated, only the person
18 who paid the tax to the Department, in this case Shared
19 Technologies, can request a refund of the tax it believes
20 it overpaid. And you can see also State Board of
21 Equalization v. Superior Court, a 1980 case available at
22 111 Cal.App.3d 568 at 570. And it upheld the general rule
23 that purchasers cannot obtain from CDTFA direct refunds of
24 sales tax reimbursement paid to retailers.

25 So for the foregoing reasons, Appellant is not

1 owed for taxes paid in association with its purchases from
2 RRD Insurance, Xerox, and Softchoice. And as such, we
3 would ask that you deny this appeal.

4 Thank you for your time.

5 JUDGE RALSTON: Thank you.

6 Judge Lambert, did you have any questions for the
7 Appellant or Respondent?

8 JUDGE LAMBERT: This is Judge Lambert. I don't
9 have any questions. Thanks.

10 JUDGE RALSTON: Thank you.

11 Judge Long, did you have any questions for either
12 party?

13 JUDGE LONG: This is Judge Long. I don't have
14 any questions. Thank you.

15 JUDGE RALSTON: Thank you. Okay.

16 Mr. Wang, you have 10 minutes for your rebuttal.

17 MR. WANG: Yes. Thanks again, Judge Ralston and
18 the Panel.

19

20 CLOSING STATEMENT

21 MR. WANG: First of all in rebuttal, the which
22 regard to the RRD Insurance invoices at the -- one thing
23 to know the Department was wrong on with its argument is
24 that the printed matters of this case, the annual
25 statements, were delivered to Appellant by the printer, by

1 the RRD location, this RR Donnelley -- RR Donnelley
2 location in Temecula. That's not the case.

3 If you look at the audit working paper and also
4 the evidence presented by the Appellant in 2014, 2015,
5 sometime ago like that, showing the -- the statement were
6 delivered by a Southern California mail courier named --
7 no -- it's a mail dispatch. That's a third-party, kind of
8 like common mail courier, yeah, contacted by Appellant to
9 like provide a service. Pick up this statement from the
10 printer and deliver to the Appellant in Newport Beach,
11 California. So that's the facts is. So again, that hand
12 messenger service or mail courier has no relationship at
13 all with the printer, the third-party vendor that
14 provide -- that produce the printed material on behalf of
15 RRD Insurance Services. So that for the record.

16 And secondly on Xerox invoices and, again, is the
17 Department was wrong in saying that the Appellant has not
18 met its burden of evidence. If you look at exhibit --
19 existed -- I'm sorry -- Exhibit 14, about the
20 section 5523.6, talking about the rules of evidence. That
21 is on -- so according to this section subdivision (a),
22 this section of the Rules of Evidence, the -- for
23 California sale and use tax purposes, the evidence, which
24 is any evidence is admissible for any -- I mean, for
25 California sales and use tax purposes as long, you know,

1 the evidence is relevant and verifiable to the
2 transaction.

3 In this subdivision also very clearly say, quote,
4 "Any relevant evidence, including affidavits, declarations
5 under penalty of personal and hearsay, and hearsay
6 evidence may be presented at the Board hearing. Its party
7 will be permitted to comment on/or respond to any
8 affidavit, declaration, or other evidence," unquote. So
9 it's again, at beginning it's very clear -- made it clear
10 to the Department that a lot of this -- a lot of records,
11 accounts payable records, yeah, was lost during the
12 transition of new -- between the old and to the new
13 system.

14 And with respect to Xerox invoices, the Appellant
15 did provide the proof of how is the order placed with this
16 vendor. And in addition, the Appellant also provide
17 information -- contact information for -- to the audit
18 team to verify how this -- the paper supplies were
19 delivered to the Appellant's location. In fact, you know,
20 again, beginning I said -- mentioned at the beginning of
21 this refund claim or also the appeal, the Appellant, yeah,
22 considered that for -- with regard to these three
23 transactions with these three vendors, the sales did
24 occur.

25 Consistent with the fact that the sales did occur

1 inside California because for the fact that if you look at
2 back to the Excel file, part of exhibit provided by the
3 Appellant for the prior refund periods and known label is
4 a cycle, Period 1 and Period 2. Period 1, with respect is
5 paper supply -- this is also a big corporation. They
6 have, you know, like also locations are inside, outside of
7 California across U.S. And also, yeah, for someone -- in
8 some instances, Xerox also contract with other supplier to
9 drop ship paper supply to Pacific Life in this instance.

10 So that's why that you saw that's the case of
11 transaction the invoice refunded by the Department where
12 is the bill of lading showing that the supplies was, yeah,
13 I mean, drop shipped from another supplier and with from
14 its location in La Mirada. So that the case. But any way
15 the contact information for this vendor were provided to
16 the auditors at the beginning of the refund claim.

17 Again, if you look at the audit working paper for
18 the current period for the refund claim at issue, very
19 clear that the auditors -- the audit team did not even
20 verify the information provided by the Appellant on the
21 premise that -- well, they say that the -- pretty much
22 that any property withdrawn or shipped from in-state
23 inventory automatically subject to sales tax regardless --
24 whether, you know, there's a part -- they say basically
25 the Department back then was just that participation

1 itself is a non-issue.

2 It's relevant for the fact the property was
3 shipped from in -- withdraw -- shipped from a location
4 inside of California. Period. So they didn't even bother
5 to verify that. So for the Department now they are saying
6 that the Appellant has not met its burden of evidence
7 is -- it's misleading. It's not true, so in the final
8 fact. So, again, you know, the Panel can go back to the
9 details of the audit working paper from the -- for the
10 three period so far involved this -- I mean, the
11 Appellant, Period 1 and Period 2 and this current period.
12 So that's what happened.

13 Now, I mean, basically since I mention about the
14 audit working papers, so Periods 1 and 2, if you go back
15 there you look at historically -- I mean, historically and
16 traditionally, the way it work out between the Appellant
17 and Department, all way back, dated back in early 2000,
18 2005, 2006 is that in the prior to refund periods, the
19 Department and Appellant, I mean, sat down at the
20 beginning of the refund claim and worked, I mean, like
21 they go -- I mean, talk out who would in terms of burden
22 of evidence, who would -- which party would go and do
23 whatever, and like would agree.

24 And basically one trying to say which agreement
25 to -- between the two sides. That in the prior periods,

1 Appellant agreed to let the Department initiate and reach
2 out to the vendors to do. I mean, like, you look at the
3 comment -- auditor comments in those periods. You can see
4 that all -- I mean, what happened that Appellant provided
5 contact information for the vendors and the auditors for
6 those periods that took that information and go from there
7 and then just to find out and find -- do finding. And
8 then, you know, at the end of the day sat down with the
9 Appellant to go verify -- to validate new evidence or the
10 findings by the Department, so how it works. But any way
11 just to know just for a background of what's going on
12 between the two parties over the years.

13 Lastly, in terms of the ST Sale Technology
14 invoices, again, it's -- the Department brought -- keeps
15 bringing up the fact that there's a CD brought by the
16 vendor technician and then come to -- and then on-site at
17 the office in California and work on that. That's not
18 irrelevant because, again, if you look at the invoices --
19 I mean, for this current appeal the invoices, there's
20 about -- another set, four invoices. In total seven
21 invoices for transaction between Appellant and the vendor.

22 The other four invoices for -- and get refund
23 back, refunded from -- get refunded by refunds issued by
24 the Department. A fact that those are the -- I mean, for
25 the purchase of phone equipment to upgrade -- to upgrade

1 the phone system at the Appellant's two offices; one in
2 Newport Beach and the other one at Aliso Viejo location.
3 So but in any event, those -- the CDTF, I mean, mentioned
4 by, I mean, like documented by the Department, those are
5 the CD, not the CD involved in -- brought by the ST
6 technician go on-site for the related to the other four
7 invoices for the purchase of phone equipment.

8 And because those four invoices paid by Appellant
9 for a job of the project -- special project to upgrade its
10 phone system, including installation and freight. That --
11 Appellant already explained to the Department that the CD
12 was brought on-site. It's for configuration at the end --
13 it's part of the installation of the new upgrade phone
14 system to use. I mean, to configure that phone to work
15 with the upgrade -- the server the existing server to work
16 with the new phone. Now, these three, if you look at the
17 dates of invoices between those four invoices and the
18 three invoices and the MTS agreement, you look at the
19 account.

20 The MTS agreement is for the periods of May --
21 June 1st, 2010, for the three-year period. From June 1st,
22 2010 to May 31st, 2013, and that's when. Yeah. And this
23 invoice is for the equipment that involved the CD. This
24 invoice, the transaction came later dated 11/2012. So
25 this, again, you know, if you look at the details of all

1 the invoices here, they're not related one -- I mean, two
2 groups of invoices. One group of four invoices they
3 charge it for upgraded equipment. These three invoices
4 under dispute here is for the services which, you know,
5 it's dated way before or prior to the job of install -- I
6 mean, phone upgrade the phone system.

7 Again, that's -- and then it's -- it's -- so I
8 explain to the Department. It's kind of explaining the
9 music to the deaf ear. Period. And so that I just want
10 to -- again, you know, you look at the dates of invoices,
11 very clear to show the Department. I said it's not
12 related, the two groups of invoices. So again, that CD
13 have nothing to do with this.

14 So and one last thing I want to communicate and
15 share with the Panel is that the -- for a long time since
16 early 2000, Pacific Life policy in terms of software --
17 use of software, no -- it's always downloaded. I mean, in
18 the format that electronically downloaded software. They
19 don't use -- they don't -- no transfer. They have --
20 their policy excludes any -- does not accept any transfer
21 with tangible media like CD or DVD. That is for sure. So
22 that's a fact.

23 JUDGE RALSTON: Okay. Thank you. Very much.

24 I did have a question for Ms. Daniels.

25 The Appellant stated that with regard to the

1 documents that were delivered, I believe by RRD, that they
2 were delivered by a third-party courier. Would that
3 change Respondent's assessment, or did you have any
4 comments?

5 MS. DANIELS: No. It would not because there was
6 still local participation. It was all these reports were
7 printed and created, actually within California. So even
8 if after they were created they then used a third-party
9 courier to send them over, they're still local
10 participation here in this state.

11 MR. BACCHUS: Let me just clarify that these
12 items were printed, prepared for shipping by RRD's local
13 place of business. This wasn't a third-party place of
14 business. This was RRD's local place of business. And
15 just because a common carrier or a third-party carrier
16 actually delivers it, it doesn't change the fact that
17 RRD's local place of business participated by printing and
18 then preparing the items for shipment.

19 MS. DANIELS: Judge Ralston, you're muted.

20 JUDGE RALSTON: Thank you.

21 So, Mr. Wang, I think in your last statement you
22 were stating that the CD that Respondent asserts was used
23 to upload the software related to a different set of
24 invoices. And the way that we would be able to tell that
25 is just by looking at the dates. I mean, do any of the

1 invoices mention the CD or how it was delivered?

2 MR. WANG: No. That information you don't find
3 on the invoice. And that CD that information, for some
4 reason, you know, like first discovered by the Department
5 auditor by calling the -- by reaching out to the vendor.
6 The difference is this, Judge Ralston, is that the person
7 who spoke with the auditor is just, you know, a customer
8 service office is my understanding. But that because said
9 by that, and then we took that information. We verify
10 with the vendors, the people -- the group who involved in
11 the project. And we were told that, yeah, if that's the
12 case -- because, you know, this again the vendors, this
13 kind of like big project. And that's how that -- and then
14 also the fact that the vendors are based out in Texas.

15 So they said that there might be a chance that
16 possibility that they involve in the -- a third-party
17 service, a local service. And they formulate like -- but
18 in any event, the CD there is just for configuration of
19 the new equipment to work with the upgrade server system
20 or the existing system already exist there. It's just an
21 upgrade. This project is for the upgrading phones, and
22 it's just -- if you look at the invoices found among the
23 exhibits provided by the Department, you can see that very
24 clear these invoices.

25 The group of the four is for the upgraded phone

1 system. They upgraded phone system. It's nothing to do
2 with these three invoices. This agreement is all -- dated
3 prior to these invoices. So we try to connect the link,
4 the dots. And again, just to know how I play the music in
5 the deaf -- I mean, in the ear. So, they don't care about
6 this thing. Again, you know, if you -- I mean, the
7 Department -- also back then I asked the Department to
8 verify with the Appellant, Pacific Life, with respect to
9 their policy, I mean, in terms of the license software.

10 And starting in early 2000, they start -- the
11 policy -- the active policy is no more transfer of license
12 software via tangible media. Period. No. That is the
13 fact. I can guarantee you that is the fact because I've
14 been involved with the company in early 2000 until today.
15 I know. So based on the -- again, you know, just want to
16 share with the Panel is that after following at the end of
17 the period -- of the refund claim for Period 1, the
18 company change the policy to no longer accepting any
19 transfer of software via tangible media because they want
20 to take the full advantage of the law, the exemption of,
21 yeah, policy. They entitle to that.

22 JUDGE RALSTON: Thank you.

23 MR. WANG: Yeah. So that's a fact. Now for --
24 can I chime in. I have a comment about the -- just to,
25 you know, the recent comment by the Department on the

1 printed statement. Can I have a last comment with that?

2 JUDGE RALSTON: Sure. Go ahead.

3 MR. WANG: Yeah. So I'm totally disagreeing with
4 Mr. Bacchus about, you know, that for the sales tax to
5 apply, the regulation says very clear there's two factor.
6 There must be a sale and legal participation inside the
7 California. Now, a lot of time the property would drop
8 ship or, you know, like printed on behalf of the true
9 retailer. So in this case the true retailer is RRD
10 Insurance Services based in New Jersey. And RR Donnelley
11 also -- I mean like RR Donnelley and RRD for short, you
12 know, RRDIS, they are related entities in the -- under the
13 common parent entity. So they're related.

14 So for the RRDIS specialize in printed
15 statutory -- I mean, annual statement for statutory
16 purposes for insuring companies. Just in case, you know,
17 you're not -- I just want to share with you. For
18 insurance company, they have two sets of books. They have
19 statutory reporting with the state of the Department of
20 Insurance with multi -- for 50 states for a premium
21 payment purposes. The other book is a gap, a book of
22 financial statements. So that is it they have. All the
23 insurance, regardless type of life insurance, the
24 property, the casual, they two set of books.

25 So RRDIS specializes in the printing the content

1 of annual statement for statutory public list. So there's
2 not -- this -- that's why sensitive and confidential. So
3 that's why the specialize in that. But in any event,
4 to -- for some reason, maybe for cost purposes, they
5 have -- they -- since, you know, RR Donnelley already have
6 a printing plant in Temecula, so they engage. Now, it's
7 beyond control -- beyond Appellant's control say no. So
8 RRDIS engages RRD in Temecula to print -- to produce the
9 printed materials on his behalf.

10 Now, the title of a property, they're not --
11 okay. The printing -- the print, the products, and when
12 the piece of materials are finished, that is -- and then,
13 you know, when they know the printer it's just like, you
14 know, the comment Ms. Daniel said earlier, the comment
15 said about the sale how, what in, and when and where the
16 sales occur. The sale occurs is when the retailer -- or,
17 you know, the retailer supplier or third-party -- and is
18 in this case RD -- completes performance of delivery of
19 the product to the common carrier, in this case the mail
20 dispatch.

21 So that -- so the fact that they produce the
22 material and deliver to -- I mean, like handed to mail
23 dispatch, a third-party carrier for final delivery to
24 Pacific Life, that at point that is the sales. That's
25 when the sales occur when the title passes from -- title

1 to the material or the statement passes from RR Donnelley
2 IS slash RRD in Temecula to Pacific Life. That is the
3 process of completing the sale factor, the first
4 requirement. That have nothing to do with the
5 participation. I just want to make clear to the Panel.

6 So, again, back to the Mr. Bacchus' comment, that
7 we disagreed with him about. I mean, that whatever the
8 activity occur -- take -- I mean, going on at that plan
9 from the production to the time it hand-delivered to mail
10 dispatch for the final delivery. That is just part of the
11 process that sales occur or title passes. It's only the
12 first factor, first requirement. So for sales tax to
13 apply, first, requirement requires the sales or title must
14 take place inside California, and it did.

15 So we agree the sale took place inside
16 California. But the second requirement was not met. It's
17 missing because the RR Donnelley Temecula employees did
18 not deliver that property, and that the statement to
19 Pacific Life. Indeed the third party carrier delivers
20 that.

21 JUDGE RALSTON: Okay. Thank you.

22 MR. WANG: So based on that. So therefore, so I
23 wanted to make clarify that the two requirements. So no
24 middleman. That's why, you know, the Department position,
25 you know, has been very untrue and misleading so far.

1 Because --

2 JUDGE RALSTON: Okay.

3 MR. WANG: Yeah.

4 JUDGE RALSTON: Mr. Wang, I think like now you're
5 going into more argument, and I think --

6 MR. WANG: Sure.

7 JUDGE RALSTON: Yeah. So I think we have your
8 response.

9 I'm going to check with my panel members again
10 just to see if there are any questions.

11 Judge Lambert, any questions?

12 JUDGE LAMBERT: This is Judge Lambert. No
13 questions.

14 JUDGE RALSTON: Thank you.

15 And Judge Long, any questions?

16 JUDGE LONG: This is Judge Long. No questions.

17 JUDGE RALSTON: Okay. Thank you.

18 So at this point, we are ready to conclude the
19 hearing. The panel will meet, and we will issue a
20 decision in 30 days.

21 Thank you everyone.

22 I mean, sorry, not 30 days. I'm sorry.

23 100 days. The Panel will meet and issue a decision within
24 100 days. Thank you.

25 And we are ready to conclude this hearing. Thank

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

you everyone for attending.

(Proceedings adjourned at 2:44 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for
the State of California, do hereby certify:

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

I further certify that I am in no way interested
in the outcome of said action.

I have hereunto subscribed my name this 14th day
of December, 2023.

ERNALYN M. ALONZO
HEARING REPORTER