

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
HAEMONETICS CORPORATION, ) OTA NO. 220811047  
 )  
 APPELLANT. )  
 )  
 )

## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, November 16, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 1:07 p.m. and concluding at 2:02 p.m. on  
Thursday, November 16, 2023, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ LAUREN KATAGIHARA

Panel Members: ALJ JOSHUA ALDRICH  
ALJ ANDREW WONG

For the Appellant: JOHN RIELLY  
REX HALVERSON

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

KEVIN SMITH  
CARY HUXSOLL  
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-12 were received at page 6.)

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

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California; Thursday, November 16, 2023  
1:07 p.m.

JUDGE KATAGIHARA: Let's go on the record.

We're opening the record in the Appeal of  
Haemonetics Corporation before the Office of Tax Appeals.  
This is OTA Case Number 220811047. Today is Thursday,  
November 16th, 2023. The time is 1:07 p.m. We're holding  
this hearing electronically with the agreement of all the  
parties.

I'd like to begin by asking the parties to please  
identify themselves by stating their name for the record.  
Let's begin with Appellant.

MR. RIELLY: John Rielly.

MR. HALVERSON: Rex Halverson.

JUDGE KATAGIHARA: And who is here for the  
Respondent?

MR. SMITH: This is Kevin Smith from the Legal  
Division with CDTFA.

MR. HUXSOLL: Carry Huxsoll from CDTFA's Legal  
Division.

MR. PARKER: And Jason Parker, Chief of  
Headquarters Operations Bureau with CDTFA.

JUDGE KATAGIHARA: I am Judge Lauren Katagihara  
the lead Administrative Law Judge for this case. And with

1 me today are Judges Josh Aldrich and Andrew Wong. We are  
2 the panel hearing and deciding this case.

3 As we confirmed at the prehearing conference, the  
4 issue we're considering today is whether further  
5 adjustments to the measure of disallowed claimed  
6 nontaxable sales are warranted.

7 Appellant also made the following concessions at  
8 the prehearing conference: One, Appellant does not  
9 dispute CDTFA's audit methodology and only disputes  
10 CDTFA's finding Appellant's sale of harness or collection  
11 sets are taxable; two, Appellant no longer contends that  
12 its sales of harness or collection sets constitute a  
13 nontaxable sales for resale; and last, three, Appellant  
14 does not dispute CDTFA's exclusion of Appellant's sales of  
15 centrifuge bowls from the measure of tax. Therefore, that  
16 portion of the audit is not before us on appeal today.

17 I'm admitting Respondent's Exhibits A through F,  
18 and Appellant's Exhibits 1 through 3 into the -- I'm  
19 sorry -- 1 through 12 into the record over Appellant's --  
20 sorry -- over Respondent's objections. The panel will  
21 give each exhibit the appropriate weight based on its  
22 probative value.

23 (Appellant's Exhibits 1-12 were received  
24 in evidence by the Administrative Law Judge.)

25 ///

1 (Department's Exhibits A-F were received in  
2 evidence by the Administrative Law Judge.)  
3 And with that, we can move on to the parties'  
4 presentations.

5 Appellant, you have ten minutes for your  
6 presentation. You may begin.

7

8 PRESENTATION

9 MR. HALVERSON: Good afternoon. My name is Rex  
10 Halverson & Associates. I've been practicing state and  
11 tax for the last 45 years and had the pleasure of sitting  
12 on the Board of Equalization from 1995 to '98 as the  
13 Deputy State Controller Taxation for State Controller  
14 Kathleen Connell. In that capacity I heard tax arguments  
15 and voted on tax cases each month, just as you're doing  
16 today.

17 Assisting with my argument today is John Rielly  
18 with Gagnon and Boston.

19 JUDGE KATAGIHARA: Mr. Halverson, I hate to  
20 interrupt you, but would you mind slowing down just a tad  
21 bit for the stenographer. Thank you.

22 MR. HALVERSON: Well then, we're never going to  
23 do it in 10 minutes. It's going to take more like 25.  
24 All right.

25 We represent Haemonetics Corporation which is a

1 manufacturer of blood and plasma collection devices and  
2 related collection components. These blood product  
3 collection components consist of a bag of anticoagulant  
4 tubing, plastic bulb containing a stainless-steel  
5 centrifuge and pooling bag. Haemonetics components are  
6 sold to hospitals, plasmapheresis centers, and blood  
7 banks, and are exclusively used for blood product  
8 collection. There's no alternative use. These components  
9 are used in connections with the Haemonetics device and  
10 machine to form the automated system analogous in form and  
11 function to a blood collection unit.

12 Modern blood collection systems today require the  
13 sterile separation of whole blood donation into their  
14 component parts. This blood collection unit and its  
15 components are the subject of this hearing. Appellant  
16 believes their blood collection components are exempt from  
17 California sales and use tax pursuant to Section 6364.5  
18 that was added to the law in 1997 after the passage of AB  
19 993 that was sponsored by the blood centers of California  
20 and supported by the Board of Equalization, which at the  
21 time included myself, Johan Klehs, John Chiang, Ernie  
22 Droneburg, and Dean Andal. AB 993 and the analysis in the  
23 Assembly, Senate, and BOE committees are marked as  
24 Exhibit 4.

25 MR. RIELLY: Until 1997, California sought to

1     assess tax on tubing, needles, clamps, filters, and  
2     presumably bowls while exempting only the blood bags and  
3     any tubing sold together with the blood product. This  
4     fact led to the sponsorship of AB 993 by the blood centers  
5     of California. Here today 25 years later, Respondent is  
6     again attempting to assess sales tax on these same items  
7     simply because they are packaged separately for health and  
8     safety reasons. As I'm sure we can all appreciate  
9     sterility in the medical world as a chief concern.

10           In doing so, Respondent wants you to ignore the  
11     plain language of the bill analysis of AB 993, the plain  
12     language of Revenue & Tax Code Section 6364.5, and the  
13     plain language of Regulation 1589. The language in AB 993  
14     provides important context.

15           Purpose of the bill: According to the sponsor,  
16     this bill is intended to clarify the blood collection  
17     units and blood pack units are exempt from the sales used  
18     in the manner described in this bill. The definitions  
19     proposed in this bill are intended to clarify the entire  
20     unit is so integrated and so interconnected to preclude  
21     the taxation of any portion of the units. They have  
22     introduced this measure to provide a specific exemption in  
23     the law for their blood and plasma bags and kits.

24           It is evident that this bill was introduced  
25     specifically to provide an exemption for every component

1 of the plasma kit. Because the entire unit is so  
2 integrated and interconnected as to preclude from taxation  
3 any portion of the kit recognizing that the blood  
4 collection process has evolved simply a bag filled with  
5 blood product and the tubing directly connected to it.

6 The purpose and intent of AB 993 is expressed in  
7 clear and unambiguous language to communicate a plain fact  
8 pattern". Number one, plasma kits are included in the  
9 calculation of physical effect; Number two, plasma kits  
10 are blood connection units or blood pack units when used  
11 in the manner described in the bill; three, plasma kits  
12 are exception; four, every component of the plasma kit is  
13 intended to be exempt, even if the components are  
14 discarded or not sold with the blood.

15 The legislative history of AB 993 provides  
16 further insight into what types of products fall within  
17 the scope of this exemption. The June 1997 Assembly Floor  
18 Analysis indicates that the bill was intended to overturn  
19 BOE's decision that blood processing kits consisting of  
20 tubing, needles, clamps, and filters are sold together  
21 with otherwise exempt blood bags were taxable. According  
22 to this analysis, the sponsor's office indicated that the  
23 existing law which had exempted blood bags as  
24 nonreturnable containers had not kept with the  
25 technological changes in blood processing, specifically

1 the development of the multicomponent integrated  
2 disposable blood collection units before you today.

3 Additionally, the fiscal effect of AB 993 was  
4 calculated using total sales and average costs of blood  
5 bags, platelet apheresis kits, plasma kits, and transfer  
6 bags. It cannot be disputed that the purpose of AB 993  
7 and subsequently Section 6364.5 were to provide a specific  
8 exemption for the entirety of the plasma kits expressly to  
9 avoid improper taxation of any individual components of  
10 the kit. The individual components plainly include the  
11 bowls and harness set tubing. Section 6364.5(b)  
12 specifically enumerates the integral and interconnected  
13 nature of the automated system with harness set tubing and  
14 a plastic bowl containing a stainless-steel centrifuge  
15 plainly listed as exempt.

16 Per Section 6364.5, California exempts from sales  
17 tax the gross receipts from the sale of any container used  
18 to collect or store blood plasma, including but not  
19 limited to blood collection units and blood pack units.  
20 Blood collection units and blood pack units are defined as  
21 all items that form an integral, interconnected package  
22 that, when sold to plasmapheresis centers and blood banks,  
23 are used to collect blood product, which are then sold  
24 together with the bags and tubing in which they are  
25 contained.

1           Blood collection units are either a manual system  
2   that includes a needle, multiple bags, a bag containing  
3   saline solution, tubing, filter, grommets, and a pooling  
4   bag, or most relevant to the case before you her today, is  
5   the automated system that consist of a needle, a bag of  
6   anticoagulant, tubing, and a plastic bowl containing a  
7   stainless-steel centrifuge and a pooling bag. Blood  
8   collection units and blood pack units also include plastic  
9   bags and tubing sold to plasmapheresis centers when those  
10   centers use them to collect blood plasma or platelets, and  
11   then sell the plasma and platelets together with the bags  
12   and tubing in which they are contained.

13           MR. HALVERSON: Respondent's case relies most  
14   heavily on Business Taxes Law Guide annotation 195.0085  
15   that concluded that Revenue & Taxation Code Section 6364.5  
16   provides an narrow exemption. It noted that the reference  
17   within the statute related to blood collection or blood  
18   packed units include, not only a bag but also integrated  
19   components which collect the blood stored in the bag.  
20   However, the annotation continues to state that the  
21   exemption does not include slides, syringes, pipets, which  
22   may collect blood or an item in which blood may be tested  
23   or temporarily held for other purposes.

24           Haemonetics understands the intent of annotation  
25   195.0085 was to exclude transactions involving the sale of

1 items like syringes, microscopic slides, and pipets which  
2 may collect blood but would serve only some testing or  
3 temporary storage purpose. This is critical. Items of  
4 this nature are not in dispute here. Rather, the items  
5 under review are analogous in form and function to  
6 platelet apheresis kits, plasma kits, and blood collection  
7 units. It is crucial that you note that platelet  
8 apheresis kits and plasma kits were considered in the  
9 fiscal effect of AB 993.

10 Respondent relying on the published guidance of  
11 annotation 195.0085 has taken the position that the words,  
12 "any container," is limited to a blood bank system that  
13 includes needle guards, tubing, and platelet bags for  
14 blood collection and storage. As such, separate sales of  
15 plasma collection bags and bottles are not considered to  
16 be blood collection units or blood pack units. It makes  
17 no sense to us. Bowls and tubing are what we call a  
18 harness and collection set, are items specifically  
19 enumerated in the exemption provided in Rev & Tax Code  
20 Section 6364.5. These components, like every component in  
21 this automated system, are used to collect and store the  
22 blood product and are thus exempt from the application of  
23 sales tax.

24 The Respondent's assertion that because the  
25 tubing used to collect the blood is not sold along with

1 the blood product itself contradicts the statute, as well  
2 as common and best practices involving the sale of blood  
3 and blood products. Furthermore, the Respondent is taking  
4 a position that is contradictory to the specific language  
5 of the statute. Respondent would also have you believe  
6 that annotation 195.0085 provides all the intent --  
7 provides that the intent of Section 6364.5 was to provide  
8 a narrow exemption. That is not at all true. I know that  
9 for a fact because I sat on the Board of Equalization at  
10 the time.

11 The fiscal effect of AB 993 was calculated using  
12 total sales in average cost of blood bags, platelet  
13 apheresis kits, plasma kits, and transfer bags. Clearly,  
14 the Appellant's plasma bowls and plasma donors harness  
15 tubing sets fall within this list. So let's dig into  
16 Appellant's exhibit before you. Let's start with  
17 Exhibit 4. In Exhibit 4, we'd like to draw your attention  
18 to the first analysis dated May 5, 1997. If you skip down  
19 to No. 3A at the bottom of page 2, it provides, as BOE  
20 Assistant Chief Counsel Gary Jugum stated in his  
21 February 27 -- pardon me -- February 24th, 1997, letter to  
22 COBE laboratories in 1995, the Board of Equalization  
23 viewed the tubing and clips as ancillary to the blood bags  
24 and as such, nontaxable sales.

25 Now, two things are very important about this.

1 First, Assistant Chief Counsel Gary Jugum was  
2 well-respected by both the Board and staff and considered  
3 one of the very brightest attorneys. Second, he states  
4 that prior to the BOE decision that was later reversed by  
5 the passage of AB 993, it was staff's position that items  
6 used with blood bags, like tubing and clips, were  
7 considered exempt as ancillary to the blood bags. Then  
8 came the Board decision in 1996 that held the same product  
9 was taxable. Only then did the blood centers of  
10 California sponsor AB 993 to reverse the decision, and the  
11 Board of Equalization supported this effort to overturn  
12 the '96 decision.

13 Once overturned, the Board's assumption was that  
14 items used with blood bags, like tubing, clips, and bowls  
15 would once again be exempt as ancillary to the blood bags.  
16 Moreover, the language in AB 993 that was later enrolled  
17 and became Section 6364.5, found in your Exhibit 5, was  
18 even broader as it exempted, quote, "Any container used to  
19 collect or store human whole blood plasma, blood products,  
20 or blood derivatives that are exempt from taxation  
21 pursuant to Section 33, including but not limited to blood  
22 collection units and blood pack units. There's no doubt  
23 that the Haemonetics device and all of its components  
24 comprise a blood collection unit.

25 Now, Exhibits 6 and 7 are two affidavits signed

1 by two former BOE members sitting on the Board of  
2 Equalization at the time that AB 993 was proposed and  
3 supported. These affidavits signed by Dean Andal and  
4 myself sitting on the Board for State Controller Kathleen  
5 Connell, represent our harmonious opinions of why the  
6 Board supported this important legislation. And this is  
7 critical, you have to take you back to the time and why we  
8 were doing something.

9 Those affidavits both agree that the efforts were  
10 to broaden the exemption, rather narrow it, and make that  
11 fact clear to staff. Clearly, language, like, "any  
12 container, including but not limited to," is just such  
13 all-encompassing language. And as Board members we knew  
14 that staff would be hard pressed to narrow the definition  
15 set forth. And, in fact, we used similar language in  
16 several of the Board regs and legislative amendments while  
17 I sat on the Board.

18 MR. RIELLY: Turning your attention to Exhibit 8,  
19 an example of Haemonetics Corporation, Inc. --

20 JUDGE KATAGIHARA: Mr. Rielly?

21 MR. RIELLY: Yes.

22 JUDGE KATAGIHARA: Can you please repeat which  
23 exhibit number you're referring to.

24 MR. RIELLY: Exhibit 8.

25 JUDGE KATAGIHARA: Also, just to let you know,

1       there's about five -- you've gone a little over your time,  
2       but I'll give you five more minutes to conclude.

3               MR. RIELLY: Okay. I'll be quick.

4               Yeah. I was stating an example of a Haemonetics  
5       Corporation invoice reflecting how the various components  
6       of the blood collection unit are commonly purchased.  
7       Hospitals and blood banks purchase the various components  
8       in one purchase in nearly identical quantities because  
9       each component must connect in a one-to-one ration to form  
10      a blood collection unit at the time of collection. This  
11      invoice provides critical context. These items are sold  
12      separately for health and safety reasons and come with  
13      bacterial filters to ensure safe connection when all the  
14      components must come together at the time of collection to  
15      form the blood collection unit. Whether sold together or  
16      sold separately, these components snap together at the  
17      time of collection forming an interconnected package for  
18      the sole purpose of blood product collection.

19              Exhibit 9 is a copy of Regulation 1589 pertaining  
20      to containers and labels. This language is nearly  
21      identical to the statute, and it accepts any container  
22      used to collect blood, including but not limited to blood  
23      collection units and blood pack units. Please note that  
24      staff were not allowed to change a single word of the  
25      statute and clearly did not narrow the language in

1       Section 6364.5.

2               MR. HALVERSON:   Now, Exhibit 5 -- pardon me.  
3       Exhibit 10 contains a copy of the annotation in 195.0085.  
4       This annotation was strictly limited to a blood container  
5       in the definition.   The annotation concludes, for this  
6       particular taxpayer involved, that blood bags are exempt  
7       under Rev & Tax Code Section 6364.5, but the following are  
8       not:   Specimen bags, sample bags, bag holders, microscopic  
9       glass slides, microscopic glass slide covers, test cards,  
10      reservoirs and well-plate covers, beakers, filter systems,  
11      flasks, graduated cylinders, needles, pipets and pipet  
12      aids, tips, shipping containers, tubes, tube covers, caps,  
13      stoppers, and a testing device known as a  
14      spectrophotometer.   All are taxable.   All of these items  
15      are for testing and diagnostic purposes, rather than blood  
16      product collection.   Again, Haemonetics collections sets  
17      exist only to collect blood products.

18              Now, annotations are summaries of the conclusions  
19      reached in selected opinions of the Board's legal  
20      department and Board staff and are intended to provide  
21      guidance regarding the interpretations of statutes and  
22      regulations as applied by staff to specific factual  
23      situations.   Nowhere in this annotation is a blood  
24      collection unit that is similar to Haemonetics  
25      Corporation's blood collection unit.   That's critical to

1       remember.

2               MR. RIELLY: Our final exhibit, Exhibit 12,  
3       illustrates the Haemonetics Corporation blood collection  
4       unit's components and machine. These illustrations  
5       provide critical context and highlight the integral  
6       interconnected nature of the harness sets and bowls in  
7       their fit into the interconnected blood collection unit.

8               Illustration 1 shows the Haemonetics machine and  
9       an overview of the collection process. Illustration 2  
10       shows the Haemonetics blood collection unit resting above  
11       the aforementioned machine. And Illustration 3 shows the  
12       closed set in isolation. Illustration 4 is simply showing  
13       marketing materials from a competitor's harness set to  
14       show how other companies in the industry market their  
15       harnesses.

16              MR. HALVERSON: In conclusion, the items at issue  
17       here are used exclusively to collect and store blood and  
18       blood plasma and comprise of plasma kit, platelet  
19       apheresis kit that forms an integral interconnected system  
20       that California defines as a blood collection unit. These  
21       items are analogous in function to the unit specifically  
22       exempted in Section 6364.5 Moreover, these plasma kits,  
23       platelet apheresis kits were taken into account when the  
24       legislature had staff calculate the physical effect of  
25       AB 993.

1           For all the reasons elaborated upon today, the  
2           Office of Tax Appeals should find for Appellant and  
3           reverse the decision of the CDTFA as it relates to these  
4           items.

5           Thank you for the opportunity to present these  
6           arguments. We'd be happy to take any questions.

7           JUDGE KATAGIHARA: Thank you for your  
8           presentation.

9           Do the Panel members have any questions they  
10          would like to ask of the Appellant? Judge Wong?

11          JUDGE WONG: This is Judge Wong. I do have a few  
12          questions regarding Exhibit 8, that's the invoice. It  
13          lists several tangible personal properties. You're  
14          talking about bowls, bottles, and then the harness. So  
15          what's at issue is the harness here. Is that the only --

16          MR. RIELLY: Yes. Yeah. The harness sets are at  
17          issue. The bowls the CDTFA gave us relief under the  
18          written advice under a prior audit because I was able to  
19          locate work papers with them citing the bowls as exempt  
20          per 6364.5. They attempted to assess tax on the harness  
21          sets. I raised the issue of, you know, how is -- how is  
22          the logic that you're applying, you know, to assess tax  
23          and it's different than bowls. And then that's when they  
24          decided to assess tax on bowls as well. And then I  
25          stopped. I stopped talking and didn't bring up anymore.

1           MR. HALVERSON: Now, if we had our way, we'd love  
2     the decision of the OTA to include the bowls. But since  
3     we've been granted, as I understand it, relief under 6596,  
4     we're only here to discuss harness sets, sadly.

5           JUDGE WONG: This is Judge Wong. Thank you. And  
6     so the pooling bottles are not at issue; is that correct?

7           MR. RIELLY: Correct.

8           JUDGE WONG: Okay. And then the harnesses, you  
9     mentioned that they are packaged separately. On this  
10    invoice they are listed as separate item. Can they be  
11    sold separately, like individually if I just wanted to --  
12    a business just want to buy the harness set?

13          MR. RIELLY: It only works -- it only works in  
14    concert with the other Haemonetics components. And so  
15    that -- that's why it's most commonly invoiced this way.  
16    We would sell them individually, but that would only be  
17    because there would be bowls and bags also other invoices  
18    with the bowls and bags also in its possession. So it all  
19    comes together to form the kit, all the components.

20          JUDGE WONG: Okay. Thank you for that. I did  
21    have another question. Another question is, so the  
22    harness set in Exhibit 12, which is a kind of an image.  
23    It's the tubes; is that right? The tubes that --

24          MR. RIELLY: Yes. Yes. Exactly. It's a -- we  
25    call it in the industry -- it's sometimes referred to as a

1 collection set. Because, again, it's used to collect the  
2 blood product.

3 JUDGE WONG: Okay. Thank you. This is  
4 Judge Wong again. And I had a question about just kind of  
5 general principles of statutory interpretation. So we  
6 would only have to resort to rule making intent if the  
7 language of the statute and regs were not clear; is that  
8 correct?

9 MR. HALVERSON: I wouldn't. As an attorney, I  
10 wouldn't just say that emphatically. I would say you have  
11 to put some things into perspective. And sometimes as our  
12 two affidavits do, you get a better idea of what was going  
13 on. I think that you're probably correct. The general  
14 rule is as you've stated it. I just don't think it gives  
15 you the full picture of what was going on.

16 JUDGE WONG: Okay. Thank you for that. So if --  
17 do you think the statute or the regulation is unclear in  
18 any aspect?

19 MR. HALVERSON: Not at all. I think the words  
20 of, "any container" and "including but not limited to,"  
21 means you can throw in the kitchen sink.

22 JUDGE WONG: Okay.

23 MR. RIELLY: And -- and again, the automated  
24 system they reference in the second half of 6364.5. It  
25 says the automated system. It's an automated system

1     because you have an equipment, a machine, a device to run  
2     on top of -- underneath the disposable sets. And so the  
3     idea is there's a disposable set that snaps together. The  
4     bowl comes into the machine, spin the blood product to  
5     separate the denser components from the less dense  
6     components, and you have your blood product in your bag.  
7     Dispose of everything, essentially, except for the bag.  
8     Give the bag to the plasma centers.

9             JUDGE WONG: This is Judge Wong. Thank you. So  
10    I do have a question about how the product at issue fits  
11    into the language of 6364.59(a) and (b). As far as (a) is  
12    concerned, how is the harness set -- how does it qualify  
13    as a container?

14            MR. RIELLY: The harness set is essentially just  
15    a series of tubes. So tubing being specifically  
16    enumerated in -- in 6364.5, we view it as, essentially, a  
17    series of tubes, so tubing -- a tubing set.

18            JUDGE WONG: Okay. And as far as 6364.5(b), I  
19    had a question about the phrase. It's in the first  
20    sentence, and it says, "Which are then sold together with  
21    the bags and tubing in which they are contained." So you  
22    would sell the bags and tubing to a center. They would  
23    collect the blood products or blood. And then,  
24    presumably, they would sell it subsequently to another  
25    customer; is that right?

1           MR. RIELLY: I'm not -- not sure what the  
2 customers do once they -- once they have the blood the  
3 product in the bag. The -- the blood product gets  
4 collected and there's the various components of the set.  
5 I think Exhibit 12, I think the -- and Figure 2 and  
6 Figure 3, I think show the disposable set together. I  
7 think with Figure 2 showing the name of each of the item.  
8 And you could see them, you know, come together to form  
9 that blood collection.

10           JUDGE KATAGIHARA: This is Judge Wong. Thank  
11 you.

12           Mr. Halverson, since you were there at the birth  
13 of the statute, do you know what that phrase means, "Which  
14 are then sold together with the bags and tubing in which  
15 they are contained?" What was the context, or what's  
16 going on there?

17           MR. HALVERSON: I -- you know, at the time and as  
18 I recall, and as Dean and I both recall, we were -- we  
19 probably were not happy with the earlier decision. Now, I  
20 can't recall that piece of it as clearly as I can the  
21 change and revision. And so it was our, sort of, calling  
22 is to make sure that the new legislation would encompass  
23 anything with regard to blood collection and bags and  
24 bowls and tubing, et cetera. There was never any idea  
25 that staff would continue this breaking of them apart.

1           And I think that even the evidence of the fact  
2       that bowls were ruled exempt in the last two audits -- or  
3       one or two audits anyway -- for this client, Haemonetics.  
4       And they had to grant 6596 relief. This is a perfect  
5       example of how farfetched and how carried away this thing  
6       became. The -- it's just when you use the words, "any  
7       container. Including but not limited to," you allow  
8       anything to be thrown in there that gets included in a  
9       blood collection of plasma collection or sale, et cetera.

10           Clearly, we didn't want patients -- and I should  
11       add that many people don't -- when they get a bill from  
12       Haemonetics and it's got tax included, they scratch it off  
13       because they -- they know that blood is exempt. So this  
14       is a really problem area, and we viewed it.

15           JUDGE WONG: Thank you, Mr. Halverson. So just  
16       going back to the language of 6364.5(b), so it's talking  
17       about plasmapheresis centers and blood banks, presumably  
18       the customers for blood collection units and blood pack  
19       units. Do you know what these plasmapheresis centers and  
20       blood banks do once they collect the blood and blood  
21       products? Because it seems to imply that they sell them  
22       along with bags and tubing. At least that's what the  
23       language of 6364.5 (b) indicates that's what these  
24       plasmapheresis centers and blood banks do. Do you have  
25       any insight as to what they do with the blood bags and

1 tubes and whatnot after they purchase the TPP from  
2 Haemonetics?

3 MR. HALVERSON: I don't think we can put a  
4 general rule in.

5 John, you can cut in here.

6 But the problem is that some of it is probably  
7 donated. Some of it is, you know, used for patients that  
8 could never afford an operation and all of the ingredients  
9 that go into it. And in other cases, they're sold. It  
10 would probably very much depend on the type of hospital  
11 you're at or type of operation you're going through. So I  
12 don't think it's a -- you can't say this is 100 percent.  
13 It could be covered with a sales tax resale certificate.  
14 That just doesn't happen.

15 JUDGE WONG: Mr. Rielly, did you have anything to  
16 add?

17 MR. RIELLY: I just wanted to just note, I've  
18 never -- I've only seen in every demo, kind of, every  
19 plasma center I've ever been in, I don't see the tubing  
20 come out. The tubing usually gets discarded with the  
21 bowl, with all the other contaminated disposable aspects  
22 of the set. And the bag -- the bag is what goes into  
23 storage, in a refrigerator.

24 JUDGE WONG: Thank you. I have no further  
25 questions at this time.

1 JUDGE KATAGIHARA: Thank you, Judge Wong.

2 Judge Aldrich, do you have any questions at this  
3 time for the Appellant?

4 JUDGE ALDRICH: Good afternoon. This is  
5 Judge Aldrich. I do have a follow-up question for  
6 Mr. Rielly. Judge Wong referred you to Exhibit 8, which  
7 is the invoice. And in response one of his questions, I  
8 think you indicated that the harness set is designed to  
9 work, basically, with the other two items. Is that,  
10 right?

11 MR. RIELLY: Yup.

12 JUDGE ALDRICH: Or designed to work in concert  
13 with those items.

14 MR. RIELLY: Exclusively. Exclusively designed.

15 JUDGE ALDRICH: Exclusively designed to work in  
16 concert. Okay.

17 MR. RIELLY: No alternative use. No secondary  
18 use. And only on Haemonetics propriety machines.

19 JUDGE ALDRICH: Thank you. So I was looking at  
20 that particular invoice, and why would -- if they are  
21 designed to work concert and exclusively work with one  
22 another, why would they need different quantities of the  
23 harness set versus the plasma bowls?

24 MR. RIELLY: Yeah. I noticed the quantities were  
25 a little bit off. I think, you know, in my -- in my

1 statement, I think I said near identical quantities. They  
2 would be a little bit off, I would suspect, because the  
3 inventory levels at that center, maybe they have some left  
4 over from a prior order, and they don't need to order as  
5 much of one or the other. Maybe some got damaged,  
6 returned, et cetera, lost.

7 And so depending on the inventory levels of the  
8 customer, we might see some small differences. But,  
9 again, the differences are -- are minor. I don't think  
10 you'll ever see, you know, more than a ten percent  
11 difference, you know what I mean, between those -- between  
12 the items. Just, again, because they are usually  
13 restocking. But obviously, you know, the type of restock  
14 they could have varying levels of each individual item.

15 JUDGE ALDRICH: Thank you.

16 I'm going to refer back to the Judge Katagihara.

17 JUDGE KATAGIHARA: Thank you.

18 I have a follow-up question to Judge Aldrich's  
19 question, Mr. Rielly. I understand that sure, a  
20 plasmapheresis center may have additional tubing but --  
21 you know, left over from a prior order perhaps. But in  
22 your Exhibit 8, it looks like this particular client had  
23 actually ordered more of the harness sets than the pooling  
24 bottles or plasma bowls. So could you please explain  
25 that?

1           MR. RIELLY: My guess would be that they have  
2       reserve inventory of the other two items. And maybe  
3       perhaps their harness set inventory was damaged, broken,  
4       know an RMA for a return. They must have had other  
5       inventory items, bowls and bags on hand, and they just  
6       needed to order a few more harnesses.

7           JUDGE KATAGIHARA: Okay. And just to confirm,  
8       you indicated that the harness sets are packaged with the  
9       plasma bowls and the pooling bottles, but they're not  
10      connected together when they're shipped from your --

11          MR. RIELLY: Correct.

12          JUDGE KATAGIHARA: -- warehouse; is that correct?

13          MR. RIELLY: Correct. So that they can be  
14      snapped together at the time of blood collection.

15          JUDGE KATAGIHARA: Okay. And then referring to  
16      the figures in Exhibit 12, I see that the pooling harness  
17      set, you know, is one tube that goes into a bag with six  
18      ports or additional tubes.

19          MR. RIELLY: Yup.

20          JUDGE KATAGIHARA: Could you on exhibit -- oh,  
21      I'm sorry -- Exhibit 12, Figure 1 or 2, show us where  
22      exactly that connects? Figure 2 has some numbers.

23          MR. RIELLY: Yeah. So I think it's Figure 2.  
24      Figure 2 is good because all the components are clearly  
25      labeled. And so you can see the main line going into the

1       vein of the customer on the right there.

2               JUDGE KATAGIHARA:   Okay.   That's 200?

3               MR. RIELLY:   Yup.   200.   And it's leading to  
4       multiple leads because it's anticoagulant, you know, the  
5       temporary storage we have.   And so the multiple leads are  
6       essentially to collect -- to connect to the multiple other  
7       bags, solutions, et cetera, so that they can flow into the  
8       tube because the blood can't be congealing on the way  
9       through or else it won't be separated and collected.   And  
10      it's saline for the donor.

11              JUDGE KATAGIHARA:   Okay.   So is the bag in the  
12      pooling harness set photograph with the yellow contents?  
13      Is that No. 216 on Figure 2 or 212?

14              MR. RIELLY:   So that would be --

15              JUDGE KATAGIHARA:   Or 2014?

16              MR. RIELLY:   I think -- I think it be -- I think  
17      it would be 2018, right, or 2 of 2.   It's tough to follow  
18      the arrows.   The arrow is there, but it would essentially  
19      be -- do you see from the bowl -- from the bowl entrance  
20      to the connector on the right side of top of the bowl in  
21      220 to the right?

22              JUDGE KATAGIHARA:   Okay.

23              MR. RIELLY:   This -- this would be the harness.  
24      You can see leads going up to the temporary storage bag  
25      down to the anticoagulant.   And then, obviously, the

1 needle to draw from the donor. And so the harness set  
2 would most appropriately be, kind of, that right side of  
3 the bowl, that lead there.

4 JUDGE KATAGIHARA: I see. Okay. Okay. Thank  
5 you.

6 I don't have any additional questions for  
7 Appellant at this time. So we can move onto Respondent's  
8 presentation.

9 MR. RIELLY: Thank you, Your Honors.

10 JUDGE KATAGIHARA: You have 20 minutes. Thank  
11 you.

12

13 PRESENTATION

14 MR. SMITH: Okay. Good afternoon.

15 At issue today is whether any further adjustments  
16 to the measure of disallowed claimed nontaxable sales of  
17 blood collection components is warranted.

18 Appellant, a Massachusetts corporation, is a  
19 seller of blood and plasma equipment, supplies, and  
20 services. Appellant operates a manufacturing facility in  
21 California, and it also employs sales-persons to  
22 facilitate sales of its products throughout California.  
23 During the liability period, Appellant sold various items  
24 which they describe as components of a plasma kit. The  
25 items consisted of harness set, a bag of anticoagulant,

1 tubing, a centrifuge bowl, and pooling bags.

2 As relevant here, Appellant also sold components  
3 of the plasma kit, specifically the harness sets, for a  
4 separate price to its customers. At issue here today is  
5 the taxability of Appellant's separate sales as a harness  
6 sets. Sales tax is imposed on a retailer's retail sales  
7 of tangible personal property in the state measured by the  
8 retailer's gross receipts, unless the seller is  
9 specifically excluded or exempt from taxation by statute.  
10 Exemptions are to be strictly construed against the  
11 taxpayer who has the burden of proving that the exemption  
12 requirements have been satisfied.

13 Revenue & Taxation Code 6364.5 subdivision (a)  
14 and Regulation 1589 exempt from tax the sale in the state  
15 of certain containers used to collect or store human whole  
16 blood, plasma, blood products, or blood derivatives. They  
17 are exempt from tax pursuant to Revenue & Taxation Code  
18 Section 33, including but not limited to blood collection  
19 units and blood pack units. Section 33 provides that  
20 human whole blood, plasma, blood products, and blood  
21 derivatives are exempt from tax.

22 Blood collection units and blood pack units  
23 include all item that form an integral interconnected  
24 package that, when sold to plasma centers and blood  
25 blanks, are used to collect blood or blood components, and

1       then are sold together with the bags and tubing, in which  
2       they are contained. Regulation 1589 defines a container  
3       as an article in or on which tangible personal property is  
4       placed for shipment and delivery. Regulation 1589  
5       explains that non-returnable containers are exempt from  
6       tax when they are sold to persons who fill the container  
7       and then sell the contents together with the container.

8               Assembly Bill 993 enacted Revenue & Taxation Code  
9       Section 6364.5 with the expressed intent of the sponsors  
10      to statutorily overturn a Board of Equalization decision  
11      concerning the sale of blood processing kits and blood  
12      pack units. Here, Appellant's argument that Section  
13      6364.5 exempts every component part of a blood pack unit,  
14      blood collection unit, or plasma kit from tax when sold  
15      separately is incorrect. The legislative history is found  
16      in Exhibit 7 to the decision and the Department's  
17      Exhibit A, explains that the exemption is intended to  
18      specifically exclude from tax all of the items purchased  
19      as an integrated unit to collect blood.

20             The purpose of the bill was not to exempt items  
21      that are sold as individual components. AB 993, in the  
22      enactment of Section 6364.5, exempted from tax sale of  
23      blood collection units and blood pack units. The revenue  
24      estimate that is part of the BOE bill analysis, which is  
25      our Exhibit F, provides a projected revenue loss for four

1 types of blood collection and storage containers. They  
2 include blood bags, platelet kits, plasma kits, and  
3 transfer bags.

4 There's no indication in any of the legislative  
5 history that AB 993 was intended to create an exemption  
6 for each individual portion of the blood pack unit or  
7 blood collection kits that sold separately. To the  
8 contrary, consistent with the statute's language, the  
9 legislative history explains that the exemption was  
10 intended to apply to integrated units. The harness kits,  
11 when sold on their own, are not blood collection units and  
12 blood pack units. Their sales are not exempt from tax.  
13 They are not containers as defined by Regulation 1589  
14 because they are not articles in or on which tangible  
15 personal property is placed for shipment and delivery.  
16 Their sale is only exempt when sold as part of a blood  
17 collection unit or blood pack unit. Thus, the harness  
18 sets do not meet the definition of container, and they are  
19 not blood collection units or blood pack units. For these  
20 reasons, their sale is the exempt.

21 The Department has reviewed Appellant's exhibits,  
22 and they do not change our position in this case. Nothing  
23 in the exhibits establish that the sales at issue are  
24 exempt pursuant to 6364.5. With respect to Exhibit 8, we  
25 first know that the invoice is from outside the audit

1 period. It does not show that the sales of the harness  
2 kits were exempt sales of blood collection and blood pack  
3 units. The invoice showed separate sales of the harness  
4 sets for a separate price, and that the purchaser required  
5 different quantities of each of the items sold.

6 The sales at issue are subject to tax, and  
7 there's no basis for adjustments.

8 This concludes my presentation. Thank you.

9 JUDGE KATAGIHARA: Thank you.

10 I'd like to direct Respondent to exhibit -- to  
11 Exhibit 1, page 58. It's actually page 12 of Publication  
12 45, if that makes it a little bit easier. In the section  
13 that's titled, "Blood Centers and Banks," it states,  
14 "Sales of these blood collection and pack units are not  
15 taxable, even if the tubing, needles, filters, et cetera,  
16 are discarded and not sold together with the blood."

17 Will you please explain CDTFA's position given  
18 that Section 6364.5 subsection (b) states that for  
19 exemption to apply, either the blood or blood components  
20 must, quote, "Be sold together with the bags and tubing in  
21 which they are contained," end quote?

22 MR. SMITH: What page is the publication? I'm  
23 sorry.

24 JUDGE KATAGIHARA: It's listed as page 12 of the  
25 publication or page 58 of the exhibit binder.

1           MR. SMITH: I'm not sure. Can you repeat your  
2 question?

3           JUDGE KATAGIHARA: Sure. Do you have the page  
4 open in front of you?

5           MR. SMITH: I have it now, yes.

6           JUDGE KATAGIHARA: Okay. Great. So on there it  
7 says, "The sales of these blood collection and pack units  
8 are not taxable, even if the tubing, needles, filters,  
9 et cetera, are discarded and not sold together with the  
10 blood." Can you explain CDTFA's position, given that  
11 Section 6364.5 states that for the exemption to apply,  
12 that either the blood or blood components must be sold  
13 together with the bags and tubing in which they are  
14 contained?

15           MR. SMITH: I mean, it's our understanding that  
16 at the time the exemption was put in place, it was  
17 intended to cover everything that's part of these blood  
18 collection units. You know, even when certain parts of  
19 them are sold, they are discarded after use. But what it  
20 was not intended for was to apply to each individual  
21 separate component sold separately. The exemption was for  
22 the kits themselves, the entire package of kits. That's  
23 our understanding.

24           MR. HUXSOLL: We do recognize that the exemption  
25 in 6364.59(b) refers to the tubing and the bag sold

1 together with the blood in order -- by the plasma center  
2 or the blood center for the exemption to apply; is that  
3 correct? Your concern is that this sentence includes  
4 tubing or something that can be discarded --

5 JUDGE KATAGIHARA: Correct.

6 MR. HUXSOLL: -- by the blood center with the  
7 exemption applying. I understand the conclusion of the  
8 needles and filters, but the statute itself does refer to  
9 tubing. And so I cannot without, you know, looking into  
10 it further explain why the tubing is included here when  
11 the exemption itself refers to tubing. But again, we're  
12 looking -- for the record, we're looking there at the  
13 activities of the blood collection center and what they're  
14 doing with these products in the next step of the process.  
15 And this is separate from what petitioner's sales -- or  
16 Appellant's sales to the -- to the blood centers or the  
17 plasma centers.

18 JUDGE KATAGIHARA: Okay. Thank you.

19 Judge Wong, do you have any questions for  
20 Respondent?

21 JUDGE WONG: This is Judge Wong. Yes, I do.  
22 It's just -- it's the same question that I had for  
23 Respondent that if we would only look to legislative  
24 intent or the rule making file if there was some ambiguity  
25 in the statutory language or in the regulation, does CDTPA

1       have an opinion as to whether there is ambiguity here? Or  
2       what's your position on that?

3               MR. HUXSOLL: Not with respect to these sales.  
4       With respect to these sales, we recognize that the statute  
5       requires the sale of a container, and that a container can  
6       include the blood collection unit or a blood pack unit  
7       when it's sold as an integral unit to a blood bank. And  
8       that's how you have an actual container. When you have a  
9       separate sale of an individual component, there's no sale  
10      of a container. So -- but we were looking at the  
11      legislative intent to further, you know, show the  
12      consistency with our opinion and our reading of the  
13      statute. We believe the statute, with respect to these  
14      sales, is clear.

15             JUDGE WONG: In general, do you think the statute  
16      is clear wholly apart from these sales?

17             MR. HUXSOLL: Well, as has been referenced  
18      previously in this appeal, there had to be an annotation  
19      written in order to address contentions by parties that  
20      the "collect" or "store" terminology could be referring to  
21      things like microscope slides, pipets, syringes, anything  
22      that touch blood at any second. And so there has been --  
23      there has been dispute about what the -- the extent of the  
24      statute.

25             We feel that the statute -- the legislative

1 history in our interpretation thereof are consistent. We  
2 believe that we can look to what the statute says in order  
3 to arrive at the answer that we have here and in that  
4 particular opinion. But that was then going to support  
5 the position we were taking in order to emphasize that,  
6 like, collect or store did mean what the annotation says  
7 it does.

8 JUDGE WONG: So there are parts of the statute  
9 that CDTFA thought was ambiguous, and so they required an  
10 annotation to clarify that? Is that the position that I'm  
11 hearing?

12 MR. HUXSOLL: The annotation was written in order  
13 to address contentions that were being made as to whether  
14 the term "store" could be the equivalent of, essentially,  
15 the term "storage" in the sales and use tax law, which is,  
16 you know -- or not just storage but any type of blood  
17 touching any object at one time would be something that  
18 moves in any direction could be seen as a container that  
19 stores blood. And so we did need to look at the  
20 legislative history in order to get to what the purpose of  
21 the statute was.

22 JUDGE WONG: Got it. Okay. Thank you.

23 I have no further questions at this time.

24 JUDGE KATAGIHARA: Thank you, Judge Wong.

25 Judge Aldrich, do you have any questions for

1 Respondent at this time?

2 JUDGE ALDRICH: Just a quick question. With  
3 respect to the regulation, is it CDTFA's position that the  
4 regulation is interpretive or legislative slash quasi  
5 legislative?

6 MR. HUXSOLL: I would have to -- I cannot say off  
7 the top of my head. I believe the language of the  
8 regulation is pretty consistent with the language of the  
9 statute. It doesn't expand on it. It just -- but I'd  
10 have to look at the regulation and the statute.

11 JUDGE ALDRICH: Okay. Thank you.

12 Back to Judge Katagihara. Thank you.

13 JUDGE KATAGIHARA: Thank you.

14 I do have a final question, actually, for  
15 Appellant. I understand that you're harness set is used  
16 specifically for your machine. Is the machine used to  
17 collect blood in general or just plasma and platelets, if  
18 there's a way to do that?

19 MR. RIELLY: Blood products. So blood or plasma.

20 JUDGE KATAGIHARA: Thank you.

21 With that, Appellant, you can proceed with your  
22 rebuttal and closing remarks. You have five minutes.

23

24 CLOSING STATEMENT

25 MR. HALVERSON: I would like to comment on a

1 couple things. The annotation 195.0085, remember is  
2 involving a totally different taxpayer. And what I find  
3 remarkable in 2011, which was some 14 years after AB 993,  
4 the list of items that the Board staff went through. And,  
5 I mean, my God, there must be 20 items. The only item  
6 they agreed to that was exempt was a bag -- a blood bag.  
7 And, you know, if that was the original intent back in '97  
8 when this legislation came through, we would have said  
9 blood bags, and that's the only thing. And that's not in  
10 there.

11 It says, "Any container, including but not  
12 limited to." And instead, the staff comes up with an  
13 annotation years later that eliminates everything and only  
14 allows bags. Well, bags wasn't even the reason we took up  
15 AB 993 or made sure that it was broadened. Okay. So it  
16 makes no sense. It just to me it doesn't make any sense  
17 at all. And then the fact that they wanted it sold  
18 separately. So if the harness sets were sold separately,  
19 they might be considered exempt. Now, typically you see  
20 that's not the way they're sold.

21 Exhibit 8 has got all sorts of items on it that  
22 we would consider part of a blood kit or blood bag kit or  
23 and/or the material that belongs in this device. If -- if  
24 the annotation 195.0085 came up during the time we were on  
25 the Board, it would never have seen the light of day. It

1 was not at all what was intended when we passed that bill,  
2 or I should say when supported that bill on the Board.

3 And it's phenomenal that, you know -- of course  
4 every Board is different, you know, five elected members.  
5 But when you're looking at it at the time and what was  
6 going on, there was no reason to narrow it. It had to be  
7 broadened. And it had to be broadened because we had at  
8 one point had a case before the Board that the Board  
9 decided they had to vote against the taxpayer because of  
10 an interpretation and because the statute was too narrow.  
11 Okay. It just doesn't make sense that it would stay  
12 narrow, and they would narrow it. Okay. It doesn't  
13 make -- it makes absolutely no sense.

14 MR. RIELLY: And, again, the annotation was  
15 not -- was not -- this was not -- these were not blood  
16 collectors. These were testers. These were  
17 diagnosticians. Right. So in our view, the annotation is  
18 essentially irrelevant because the annotation, just like  
19 all of the opinions and records we received via Freedom of  
20 Information request, I didn't find anybody that was like  
21 Haemonetics, and that they were exclusively blood  
22 collectors. Right.

23 All these other companies had secondary uses or  
24 alternative uses. Haemonetics, that is just not the case  
25 here. Haemonetics is a blood collection company. We

1 design blood collection sets purely to collect blood or  
2 plasma. And that's why we've always felt Section 6364.5  
3 fit.

4 MR. HALVERSON: And I would lastly say that the  
5 devices shown in all of these illustrations, including the  
6 whole machine itself, et cetera, is a blood collection  
7 unit. And that language is in 993 and in the statute.  
8 And to break it up just doesn't make sense.

9 JUDGE KATAGIHARA: Thank you.

10 Do my Co-Panelists have any final questions?

11 Judge Aldrich?

12 JUDGE ALDRICH: No final questions. Thank you.

13 JUDGE KATAGIHARA: Judge Wong?

14 JUDGE WONG: I have no final questions. Thanks  
15 to both parties for your presentations today.

16 JUDGE KATAGIHARA: Thank you.

17 This brings us to the close of our hearing. I  
18 will send out post-hearing orders providing Respondent  
19 time to submit additional briefing regarding Exhibit 4  
20 through 12 and to send questions or documents to Dean  
21 Andal or Mr. Halverson. The post-hearing orders will also  
22 specify any other briefing the Panel would like to request  
23 and the deadline at which the parties are to submit their  
24 briefs and evidence. With that said, we'll be leaving the  
25 record open at this time. You will be notified when the

1 record is closed, and our opinion will be issued no later  
2 than 100 days from that date.

3 This concludes the last hearing for today. The  
4 Office of Tax Appeals is now adjourned. You may all exit  
5 the meeting. Thank you.

6 (Proceedings adjourned at 2:02 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 12th day  
of December, 2023.

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