

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
ACRE GARDEN SUPPLY,) OTA NO. 231214880
)
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APPELLANT.)
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, December 11, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken
at 12900 Park Plaza Drive, Suite 300,
Cerritos, California, 90703, commencing
at 9:35 a.m. and concluding at 10:36 a.m.
on Wednesday, December 11, 2024, reported
by Ernaly M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ GREG TURNER

Panel Members: ALJ STEVEN KIM
ALJ TERESA A. STANLEY

For the Appellant: MANNY ALMEIDA

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

RAVINDER SHARMA
CHAD BACCHUS
JASON PARKER

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Cerritos, California; Wednesday, December 11, 2024

9:35 a.m.

JUDGE TURNER: All right. We're going to go on the record now.

This is the Appeal of Acre Garden Supply doing business as Green Acre Hydroponics. The OTA Case Number is 231214880. The date is December 11th. The time is approximately 9:35 a.m. We are located in the Cerritos office of the Office of Tax Appeals in California.

I am -- as I said, I am Judge Turner. I'm joined by my panelists Judge Stanley and Judge Kim. We are equal participants in this process. Each of us may have hearings. I'm sort of the conductor today for the hearing but, otherwise, my panelists and I are co-participants. After the hearing we will deliberate on it, and we'll render our decision within 100 days. We may each individually ask questions and, if you have any questions of us, we'll go forward.

We'll take this time real quick for the parties to introduce themselves.

If you could introduce yourself for the record.

MR. ALMEIDA: Manny Almeida. I'm representing Acre Garden.

JUDGE TURNER: Excellent.

1 MR. SHARMA: Ravinder Sharma, Hearing
2 Representative for CDTFA. Thank you.

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

5 JUDGE TURNER: Welcome.

6 MR. BACCHUS: Chad Bacchus with the CDTFA's legal
7 division.

8 JUDGE TURNER: Welcome.

9 Okay. So we had a prehearing conference. We
10 established what the issues were. I'll state them for the
11 record: Whether further adjustments to the measure of
12 Appellant's unreported taxable sales are warranted as
13 related to certain sales for resales; and then certain
14 sales, whether they are exempt pursuant to Regulation
15 1588; and whether or not the imposition of a negligence
16 penalty was warranted.

17 Does everybody agree with that statement of the
18 issues?

19 MR. SHARMA: That's correct. Thank you.

20 MR. ALMEIDA: Correct.

21 JUDGE TURNER: Excellent. Okay.

22 Briefed exhibits. At our prehearing conference
23 we talked about the taxpayer is going to rely on exhibits
24 that were presented by the Department.

25 We're going to label them A through E; is that

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correct?

MR. SHARMA: That's correct. Thank you.

JUDGE TURNER: Okay. Excellent.

So those will be our exhibits for today, labeled A through E.

We're not going to have any witnesses today.

I think that that's pretty much it. Any other questions before we get going?

MR. SHARMA: No questions.

JUDGE TURNER: Excellent.

MR. ALMEIDA: None here.

JUDGE TURNER: All right. Well, we're going to start with you. Our allotted time was 45 minutes, you requested initially. We may have questions after that as the panel, and then we'll proceed with the Department.

The Department has, I think, 30 minutes, we talked about; right?

MR. SHARMA: Yeah.

JUDGE TURNER: And then we'll proceed with maybe questions then. And then you'll have an opportunity for some closing remarks. There may be questions before or after as well. So just try to get as much information as we can. Okay.

MR. ALMEIDA: Okay.

JUDGE TURNER: All right. So we'll start with

1 COVID pandemic hit and a lot of these audits were being
2 done remotely and auditors were not in our office getting
3 feedback from us and asking questions, we had this
4 situation where they wound up disallowing a significant
5 amount of sales for resale.

6 And, again, going back to Regulation 1668, yeah,
7 you can have a resale certificate. You should have a
8 resale certificate on file. But if you're making sales
9 and your facility is clearly not the type of facility that
10 you would have for walk-in traffic retailer -- retailer,
11 for example, that should be considered; and none of that
12 was ever considered. In fact, we gave a list of about 10
13 or 12 customers to the auditor, to the supervisor, to the
14 principal auditor in the Glendale office, and at no point
15 in time did they make any adjustments. There was a lot of
16 money on the table, a lot of sales, a lot of transactions.
17 And a lot of the customers were the same over and over
18 again. And there was no emphasis put on that whatsoever.
19 Again, maybe some of these customers may not have been
20 compliant. Maybe they didn't have a sales tax permit, a
21 seller's permit, but at the end of the day, you know,
22 based on my experience -- and I've been doing this for a
23 long, long time -- a resale is a resale.

24 And whether somebody has a document that
25 demonstrates that, supports it, yeah, that's one item.

1 But, at the end of the day, if you've got customers that
2 maybe aren't compliant with the sales tax laws, then my
3 recollection -- and the way we've always handled it, even
4 when I was an auditor -- we would try to get that customer
5 registered. And we would make sure that, if in fact, it
6 was clearly a sale for resale just because of volume and
7 the type of product, that it would be a sale for resale.
8 And if the customer needed to be registered, then they
9 should be registered. And that was not, to the best of my
10 knowledge, that was not something that was done.

11 And, again, we've got so much correspondence
12 going back and forth from the time that the audit was
13 completed, and the results were given to us -- or the
14 findings, the preliminary findings, there was really no
15 other adjustment that was ever made simply because the
16 auditor, supervisor, and principal auditor in that office
17 felt that our client was not compliant. And, yeah, to a
18 certain extent, they weren't compliant. But at the end of
19 the day, like I said, a sale for sale is, in fact, a sale
20 for resale.

21 And like I said, we provided numerous names of
22 customers, volumes of transactions, you know, left and
23 right where you can actually see that not an individual is
24 going to buy these products. In addition to that, there
25 are certain products that were -- that were considered

1 under, I believe, Regulation 1583 where you're basically
2 involving the hydroponics industry where some of these
3 clearly were not consumables. And there was not enough
4 emphasis put on that. And if there was question, it was
5 disallowed as a taxable transaction.

6 So, you know, that's ultimately the decision or
7 conclusion that they came to. And I just feel that the
8 Department didn't do its due diligence. They wanted to
9 get this thing fast-tracked. They wanted to just disallow
10 based on the fact that the resale certificates were not
11 available. And even when we provided resale certificates
12 subsequent to the audit, they really didn't accept any of
13 them. And they said well, it's after the fact. And I
14 understand, you know, XYZ letters. But, at the end of the
15 day, XYZ letters, which are typically, you know, used to
16 support transactions thereafter, the auditor doesn't have
17 to -- they don't have to accept it because maybe that
18 particular business didn't have a permit at the time of
19 the transaction. But, you know, that's -- you know, at
20 the end of the day, that's a taxable transaction on their
21 end, not on our end.

22 And I just think the due diligence and the -- and
23 the things that needed to be done to complete this audit
24 in a reasonable methodology was not done, and, ultimately,
25 that's our position.

1 Obviously, the negligence penalty, yeah, there's
2 a lot of money on the table. And I know the Department
3 seems to penalize taxpayers on a first audit back in the
4 day, you know, BOE days. They didn't necessarily penalize
5 a taxpayer if it was their first audit just simply on the
6 basis that, you know, we're dealing with an industry, in
7 this particular case, an industry that's relatively, I
8 guess, new as far as the growth potential. And there was
9 a penalty given just to add more fuel to the -- or more
10 salt to the wound. And, you know, it's an unfortunate
11 situation, but it's the taxpayer's first audit. They just
12 were not familiar with the resale process. The guy that
13 basically we work with, it was like a learning experience
14 for him on a day-to-day. And, you know, he was just
15 trying to make a -- trying to make the money and, you
16 know, trying to take advantage of the fact that the
17 business was growing.

18 But, you know, to me it's just one of those
19 things that's really easy to just finish the audit,
20 complete it, and not have to worry about, you know, going
21 to the location of business and seeing the type of
22 location and the type of facility that they have, which is
23 basically a facility that sells in bulk. It's not you
24 just walk in and buy one particular item. That's not --
25 that's not this particular business.

1 JUDGE TURNER: Is that the extent of your
2 testimony?

3 MR. ALMEIDA: Yeah. Yeah. That's it. Yeah.

4 JUDGE TURNER: Okay. Any questions?

5 JUDGE STANLEY: Not at this time.

6 JUDGE TURNER: Any questions?

7 JUDGE KIM: Not at this time.

8 JUDGE TURNER: Okay. I'm going to -- I have some
9 questions, but I'm --

10 MR. ALMEIDA: Okay.

11 JUDGE TURNER: -- come back after the Department
12 has made their presentation.

13 MR. ALMEIDA: Okay.

14 JUDGE TURNER: All right.

15 MR. SHARMA: Thank you.

16 JUDGE TURNER: Welcome.

17

18 PRESENTATION

19 MR. SHARMA: Appellant operated a gardening and
20 hydroponic supply store in Woodland Hills, California,
21 during the period June 2012 through August 2022. The
22 Department performed an audit examination for the period
23 of July 1, 2018, through June 30, 2021. Appellant
24 reported taxable sales of approximately \$2.6 million and
25 claimed no deductions for the audit period; Exhibit A,

1 page 10.

2 Records available for the audit. Appellant
3 provided federal income tax returns for years 2018 to
4 2020, recorded sales summary, customer detailed reports,
5 and profit and loss statements for the audit period. The
6 Department compared gross receipts by federal income tax
7 returns and reported total sales for sales and use tax
8 returns and noted a difference of around \$23 million for
9 2018 to 2020; Exhibit A, page 745.

10 During the audit process, appellant informed the
11 Department that it did not include nontaxable sales and
12 exempt sales in its reporting to the Department. To
13 verify the accuracy of reported amounts, nontaxable sales,
14 and exempt sales, the Department and Appellant agreed to a
15 block test. After discussion with Appellant's
16 representative, it was agreed to examine sales invoices
17 and supporting documents for first quarter 2021. The
18 Department reviewed sales, invoices, customer details
19 reports, available resale cards, and other best available
20 information, including the Department's internal system to
21 determine taxable sales ratio of 67 percent for first
22 quarter 2021; Exhibit A, pages 14 to 737.

23 The Department used Appellant's provided sales
24 and reports and determined audited total sales of \$29.6
25 million for the audit period; Exhibit A, page 743. The

1 Department applied the taxable sales ratio of 67 percent
2 to the audited total sales of \$29.6 million and determined
3 audited taxable sales of a little more than \$19.8 million
4 for the audit period; Exhibit A, page 13. Appellant
5 reported taxable sales of approximately \$2.6 million
6 resulting in unreported taxable sales of a little more
7 than \$17.2 million for the audit period; Exhibit A,
8 page 12. When the Department is not satisfied with the
9 amount of tax reported by the taxpayer, the Department may
10 determine the amount required to be paid based on any
11 information which is in its possession or may come into
12 its possession. In the case of an appeal, the Department
13 as a minimum initial burden of showing that its
14 determination was reasonable and rational. Once the
15 Department has met its initial burden, the burden of proof
16 shifts to the taxpayer to establish that a result
17 differing from the Department's determination is
18 warranted. Unreported assertions are not sufficient to
19 satisfy a taxpayer's burden of proof.

20 The Department used Appellant's books and records
21 and other best available information to determine the
22 audit liability. Doing so produced a reasonable and
23 rational determination. Appellant disagrees with the
24 findings of the first quarter 2021 block test. Appellant
25 contends that some of the unreported taxable sales were

1 nontaxable sales for resale under Regulation 1668 and
2 provided 11 documents, which included 9 resale
3 certificates and 2 screenshots of the seller's permit;
4 Exhibit E, pages 864 to 874.

5 The Department examined each document and
6 observed the following: For Floraflex, Inc., the
7 Department noted that there were no sales during the test
8 period; Exhibit E, page 866. For We Grow Hydroponics the
9 Department verified the resale certificates were valid and
10 allowed all sales during the test period; Exhibit E, page
11 873. For the remaining nine customers in question,
12 Westside Caregivers Club, Inc., Kush LA, Inc., Malibu
13 Community Collective, Inc., Original Balboa Caregivers,
14 and SFVF, Inc., the Department noted that six of them are
15 cannabis dispensaries that grow and sell cannabis and
16 related products.

17 However, the resale certificates provided for
18 these customers state that they are in the business of
19 selling gardening equipment, nursery and grow supplies,
20 pest control, and all lighting, et cetera; Exhibit E,
21 page 865, 867 through 870, and page 874. Therefore, for
22 the six cannabis dispensaries, the Department determined
23 that majority of the sales were not for resale. In all
24 instances, billed customers purchased fertilizer for
25 products sold in the regular course of the business, the

1 Department gave the benefit of the doubt and allowed those
2 sales as exempt under Regulation 1588.

3 The remaining three customers are All Valley
4 Pawn, Superior Herbal Health, and Venus Beach Care Center;
5 Exhibit E, page 864, 871 and 872. For All Valley Pawn,
6 the Department noted that it claimed pawn interest
7 deductions on its sales and use tax returns. And further
8 research showed that it was a pawnshop, and was not in the
9 business of selling gardening equipment as listed on the
10 resale certificate; Exhibit E, page 864. Therefore, the
11 Department determined that the sales were not for resale.
12 For Superior Herbal Health and Venice Beach Care Center,
13 the Department noted that there was no resale certificate
14 provided; Exhibit E, page 871 and 872. And although
15 Appellant provided screenshots of the seller's permit for
16 these businesses, it has not identified which transactions
17 in the test period are at issue and has not provided
18 evidence to show that the sales were resales in fact.

19 In addition, for those businesses that provided
20 resale certificates, the Department attempted to validate
21 the submitted documents, but was not successful. In some
22 instances, the Department never received a reply and, in
23 others, no one in the business could confirm that they
24 issued the resale certificate. Based on the foregoing,
25 the Department determined that no further adjustments

1 warranted to the audit findings.

2 In regards to Appellant's contention that large
3 quantities of sales, such as \$30,000 or more in sales
4 amount, should be accepted as sales for resale without
5 valid resale certificates, the Department submits that
6 when it is making a determination as to whether a sale is
7 a resale in fact, it considers many different criterias;
8 one of which is the dollar amount, though that is really
9 the only criteria considered. Here, creating a \$30,000
10 threshold is not appropriate as there may be reasons other
11 than resale for a business to purchase over \$30,000 of
12 Appellant's product. Examples include, cannabis
13 dispensaries that purchase products for the cultivation
14 portion of their business and landscape businesses that
15 purchase products to fulfill their landscape service
16 contracts.

17 Appellant contends that some of the unreported
18 taxable sales were exempt under Regulation 1588 and 1668
19 and provided a worksheet with a list of claimed exempt
20 productions; Exhibit A, pages 747 to 775. The Department
21 reviewed the worksheet and claimed exempt productions to
22 determine an additional adjustment of \$975 for first
23 quarter 2021. However, the additional adjustment of \$975
24 was immaterial and would not change the calculated error
25 rate of 67 percent to determine the unreported taxable

1 sales of a little more than \$17.2 million.

2 Further, on June 5, 2024, Appellant submitted a
3 letter dated June 26, 2023, and three excel worksheets
4 named "Additional Per 1558, Additional Resales, and Resale
5 in Fact," to the Office of Tax Appeals. The Department
6 reviewed the submission and noted that the letter and the
7 worksheets were duplicate of what was previously submitted
8 by Appellant to the Department during the appeals process.
9 The Department had already reviewed those worksheets and
10 determined that no adjustments were warranted. In fact,
11 each line item listed in the three worksheets is included
12 in the schedule 12A-1A, audited taxable sales ratio for
13 first quarter '21 sales data analysis, along with the
14 detailed comments in Column J as to why the Department
15 disallowed the claimed exempt sales; Exhibit A, pages 14
16 through 737. Based on the foregoing, the Department has
17 fully explained the basis for the deficiency, and
18 Appellant has not met its burden of proof that
19 determination is overstated.

20 The Department assessed 10 percent negligence
21 penalty for the audit period. Unreported taxable measure
22 is 657 percent of the reported taxable sales, which is due
23 to negligence in maintaining necessary books and records
24 as required and mandated by Revenue & Taxation Code 7053
25 and 7054 and Regulation 1698. The understatement cannot

1 be attributed to a bona fide and reasonable belief that
2 the bookkeeping and reporting practices were sufficiently
3 compliant with the requirement of sales and use tax law.
4 Therefore, Appellant was negligent, and the penalty should
5 be upheld. Based on the evidence presented, the
6 Department requests that Appellant's appeal be denied.

7 This concludes my presentation, and I'm available
8 to answer any questions you may have. Thank you.

9 JUDGE TURNER: Thank you.

10 I'll open it up to the panel first before I get
11 going.

12 Anybody want to jump in first?

13 JUDGE KIM: You can start.

14 JUDGE TURNER: Okay. We'll start with the -- I
15 think there were 11 or so resale certificates that were
16 identified. I want to ask questions about those first.
17 So eventually I'll start with the other side. I want to
18 know first -- I'll let you both actually respond to this.
19 Are those 11 sales for resale part of the pool that were
20 used for -- oh. Sorry.

21 The 11 resale certificates that we're disputing,
22 were those part of the sample that was used for projecting
23 the amount that was nontaxable or sale for resale? Were
24 they part of the pool? I wasn't clear on the record for
25 that.

1 MR. ALMEIDA: Yeah. They were, but what we
2 did -- what we were trying to do at that point was we were
3 trying to get the total for each and every one of those
4 customers and trying to have those removed from the audit.

5 JUDGE TURNER: Understood.

6 MR. ALMEIDA: Yeah.

7 JUDGE TURNER: But the resale certificates in
8 question were part of --

9 MR. ALMEIDA: Yeah.

10 JUDGE TURNER: -- what became the --

11 MR. ALMEIDA: The first quarter of '21.

12 JUDGE TURNER: -- understatement --

13 MR. ALMEIDA: Yeah.

14 THE STENOGRAPHER: I need both of you to wait for
15 the other person to finish, please.

16 JUDGE TURNER: Sorry. Thank you.

17 Yeah. So they were --

18 MR. ALMEIDA: Yeah. So it was part of the first
19 quarter of '21 sample.

20 JUDGE TURNER: Okay. Any comment on that?

21 MR. SHARMA: Yeah. Because Department selected
22 first quarter '21 test period, when we determine the
23 taxable amount, in response to that, seven months later
24 Appellant submitted those 11 documents out of which 9 were
25 resale certificates and 2 were screenshots. Thank you.

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JUDGE TURNER: Yeah. Thank you.

Follow-up question then, part of the -- if I understand the Department's argument, part of the rejection of those resale certificates was with respect to the stated nature of the business was different than either an actual investigation determined what that retail business was in. Was that the basis of the rejection of the resale certificate was the retail certificate said, in the business of garden -- of selling garden supplies or something in the actual examination or investigation of the business found they were in a different line of business and than that -- was that the basis of the Department's rejection?

MR. SHARMA: Basically, Department questions the validity of these resale certificates. During the audit process, Appellant informed the Department that there was no resale certificates on file. Several month later they produced these nine resale certificates and two screenshots of seller's permits. Department questioned that. And then to verify the validity of these resale certificates, the Department contacted these signatories. In some cases, they never responded back. In other cases, they said, "We don't remember if we ever signed the resale card," and they don't remember that if they ever issued a resale certificate.

1 For the Department to accept those resale
2 certificates are valid, we have to basically make sure
3 those authentic certificates. Even though those are dated
4 in the past, but we could not verify that those were valid
5 resale certificates. That's the reason we question the
6 validity of those resale certificates.

7 JUDGE TURNER: Got it. So it had to -- it had to
8 do less with the fact that the statement on the resale
9 certificate was inconsistent with what the Department had
10 determined was the taxpayer's line of business, or was
11 there a specific attempt to verify those with the
12 taxpayer?

13 MR. SHARMA: That was one of the criteria.

14 JUDGE TURNER: Okay.

15 MR. SHARMA: The business -- they were not in the
16 same business which was listed on the resale certificate.
17 That is one of the criteria. The other was basically to
18 verify. The Department used their internal system to see
19 if they have a permit, or what kind of business they are
20 involved -- engaged in, or what kind of reporting they
21 have. So based on that, overall, after considering all
22 the facts available to the Department, all the other
23 information, including the internal system, Department
24 decided to reject those resale certificates. In spite of
25 that, some of the transactions were still allowed under

1 1558 to give the benefit of doubt to Appellant.

2 JUDGE TURNER: So was it -- and this was -- was
3 it the Department's discovery that each of the holders of
4 those resale certificates -- alleged resale certificates,
5 were they -- did they hold a seller's permit?

6 MR. SHARMA: Yes, that's correct. In some cases
7 they did. In some cases they were closed permit -- the
8 permit was closed during the period, but still the
9 Department gave the benefit of doubt. If we have excluded
10 those which were closed permit, then the error rate will
11 go from 67 to 83 percent.

12 JUDGE TURNER: Right.

13 MR. SHARMA: But we did allow them --

14 JUDGE TURNER: Understood.

15 MR. SHARMA: -- just to give the benefit of
16 doubt. Because once we see they had a permit, whether
17 they were open or closed during that period for the test
18 period, we allowed.

19 MR. ALMEIDA: Well, I disagree. I mean,
20 obviously, the adjustment of \$979, that in itself,
21 dictates. But a lot of the transactions, yeah, the
22 decision was made by the auditor. And the Department,
23 basically, that if whatever was on these sales tax permit
24 as a description of the type of business and they didn't
25 feel comfortable with the type of products they were

1 buying from my client, ultimately, they were disallowing
2 it just based on the fact that that business was not in
3 that business. But at the end of the day, like I said,
4 the volume of purchases that were involved and, you know,
5 there's a bunch of pages and there's a lot of
6 transactions.

7 The mere fact that you would make a decision
8 based on not having somebody give you a legitimate
9 answer -- and of course we all know, and this has been
10 known for many, many years. Any time an auditor calls --
11 and that's why a lot of times we want to be involved. But
12 any time an auditor calls a customer, the first thing that
13 comes to mind is fear. And fear, meaning I don't know who
14 you are, and I don't know what I'm answering. So I'm not
15 going to answer the question for various reasons. And
16 I've always felt that number one, not only are you
17 violating the confidentiality of the audit of the
18 taxpayer, but you're also putting a burden on the customer
19 to make the decision as to whether something is for resale
20 or not. Which, ultimately, that's not necessarily what
21 Regulation 1668 intends. But that's part of the issue.

22 And again, a mere fact that we gave them 11
23 separate customers and they made an adjustment of \$979,
24 clearly, they were not in a position or did not want to
25 proceed with doing additional due diligence. Which,

1 again, like I said, under Regulation 1588 there are
2 certain products that are exempt. Others, it's just a
3 sale for resale just based on volume. And if you look at
4 the volume, I mean, and you're -- you've got some common
5 sense, you're going to look at it and say, okay, well,
6 so-and-so is definitely not buying this product for their
7 own use.

8 And I'm not saying that was the case in every --
9 in every instance. Because, again, we believe that
10 there -- there are some discrepancies, and there's some
11 shortcomings when it comes to sales for resale. But a
12 whole heck of a lot of them should have been accepted by
13 the Department, and they really were not. And again, all
14 you got to do is show that you have an intent to make
15 adjustments if you're providing additional documentation.
16 Because not all of it, as I mentioned, was available at
17 the beginning of the audit simply because the taxpayer
18 didn't really know what they were doing.

19 JUDGE TURNER: So I want to follow up then on a
20 question I had about the nature -- one of the arguments
21 you made in the briefing was that you should be -- we
22 should recognize the sale for resale based upon the nature
23 of scope and character of the sales. Can you help me
24 understand the nature -- what that nature of scope and
25 character of those sales were. We talk -- we're talking a

1 lot about garden supplies. The briefing talks a lot about
2 garden supplies, but that's a very broad category of
3 stuff. Could you give me a sense for what type of
4 products we're talking about and -- at least in this
5 grouping of larger than \$30,000 in sales, what is the
6 nature of the customer? And why is it that based on those
7 facts alone it would suggest that a sale for resale
8 happened, not withstanding -- as opposed to a sale for
9 consumption, essentially?

10 MR. ALMEIDA: Well, in the \$30,000, I think we
11 were trying to be conservative because it could have been
12 anything. I mean, as far as I'm concerned, it could have
13 been anything \$5 to \$10,000, but wanted to be conservative
14 and, obviously, get a better perspective on what the
15 Department was going for. But at the end of the day, it's
16 stuff that you're going to find at OSH. There is
17 obviously equipment that is used in the growing industry.
18 And again, it's not necessarily cannabis. It could be
19 just growing of plants. It could be the growing industry.
20 So it wasn't necessarily that. And then, you know,
21 obviously there's a whole slew of supplements and things
22 like that are included in those sales. Once again, a lot
23 of times when you look at the volume, it's pretty clear
24 that that doesn't belong at -- excuse me -- yeah. It's
25 pretty clear that that doesn't have a situation where

1 you're going to use it. It's just not. It's going to be
2 used for something else.

3 So -- and the name of some of these businesses,
4 they don't necessarily coincide with the type of product
5 they sold. So there was always a question is well, that
6 doesn't look to be the type of business that they're in.
7 We're going to look at the information internally. So --
8 and I can tell you, you know, from my own personal
9 experience over the years, a lot of times when somebody
10 opens up a permit, they may be a general permit at the
11 time that they open it for some retail establishment. But
12 as the business grows, all of a sudden they start
13 expanding what they sell. And I don't think that was ever
14 considered or taken into account when the auditor decided
15 well, I'm going to accept it, or I'm going to disallow it.

16 Again, they accepted some, but 67 percent is a
17 pretty significant ratio. And again, when you incorporate
18 the fact that we did -- or the taxpayer did not include
19 the claim of the sales -- the exempt sales and the sales
20 tax return, yeah, then you wind up with an error
21 percentage that's, you know, basically -- what is it? --
22 twice -- almost twice the amount that was reported as
23 taxable. So there really -- that's not really a factor,
24 and it shouldn't really be a factor.

25 I mean, at the end of the day, \$19 million in

1 sales, 17 of it was disallowed and, you know, 2 was
2 allowed. So if you look at it that way, that doesn't
3 certainly seem like somebody that actually was in --
4 trying to be unbiased in making decisions. And like I
5 said, when you're talking about volume, we use the \$30,000
6 just to be conservative and kind of gage where the
7 Department was going with this.

8 JUDGE TURNER: Judge Stanley, do you have some
9 questions?

10 JUDGE STANLEY: Yes. I have a couple initially
11 for the Department. I know you've cast out on whether
12 these certificates that were submitted, the nine
13 certificates were taken contemporaneously. But even if
14 they weren't, couldn't they be considered XYZ -- akin to
15 XYZ letters?

16 MR. SHARMA: Yeah. That's right. The Department
17 offered that process to the Appellant, and they declined
18 it. They don't want to do it.

19 JUDGE STANLEY: But what I'm asking is whether
20 the Department could consider what they're calling resale
21 certificates as XYZ letters in fact.

22 MR. PARKER: Yeah. So we could treat it that
23 way. And if the customer claimed that they sold gardening
24 supplies, we would look into the business to see if they
25 actually sold those types of items. I know Judge Turner

1 asked about the types of items that may have been sold by
2 these businesses under the \$30,000 threshold. So Westside
3 was one of the resale customers that he claimed. There's
4 a number of items, including gloves, scalpels, trellises,
5 flanges, other things like that that are usually -- LED
6 lights that are used to grow cannabis and used in the
7 growing of cannabis operations; so we do look to the
8 business.

9 An XYZ letter does not relieve the taxpayer of
10 the liability. We look into it to see if we can accept
11 it. And in that regard, we would reject the XYZ letter in
12 this case because they aren't in the business of selling
13 gardening supplies.

14 JUDGE STANLEY: Thanks, Mr. Parker.

15 MR. BACCHUS: And just to add to that, a lot of
16 times in that XYZ letter process the Department reaches
17 out to the customer and talks to them. And in this case,
18 the Department attempted to reach out and talk to these
19 customers. And as Mr. Sharma noted, some didn't respond
20 to the calls, and others indicated that they didn't
21 remember signing or issuing a resale certificate.

22 And so in those cases, whether an XYZ letter is
23 sent and follow up is done, if the customer doesn't
24 confirm that they resold the product, as Mr. Parker
25 indicated, the Department looks and does additional

1 research. But ultimately, it's not -- it's just a method
2 or tool that can be used to try to confirm whether the
3 sale was a resale in fact but doesn't necessarily
4 automatically prove that it was.

5 JUDGE STANLEY: Thank you, Mr. Bacchus.

6 Mr. Parker, can you refer me to the page where
7 the -- the one that you just referenced that had lights
8 and other things on it.

9 MR. PARKER: Sure. Give me a second. I'll find
10 it for you. I was looking at the Excel working papers.

11 JUDGE STANLEY: Oh, okay. Well, there are only
12 nine pages. One of --

13 MR. PARKER: Oh, no. I'm looking at the Schedule
14 12A-1A, which is probably 6 or 700 pages of the file. So
15 I'll find it real quick though.

16 JUDGE KIM: Can I just ask a quick question while
17 you're looking for that, just to jump in on what
18 Judge Stanley said. When you were contacting those
19 customers and you were able to successfully reach them --
20 this might sound obvious, but did you ask them if they
21 sold those kinds of supplies just generally?

22 MR. BACCHUS: Just one second.

23 MR. SHARMA: I'm sorry. I didn't hear the
24 question. I'm sorry. I was concentrating on finding
25 those line items from the schedules.

1 JUDGE KIM: Sorry. I can wait until you're done,
2 or I can --

3 MR. SHARMA: I'm sorry. I apologize.

4 JUDGE KIM: I'll wait.

5 JUDGE STANLEY: If it's easier, you can refer me
6 to a different one in one of the nine resale --

7 MR. PARKER: No. I'll give you a -- I'll give
8 you a page number and a line item number for some of these
9 transactions. So page 736, this is the last page of the
10 Schedule 12A-1A. And let's see. Line 26,737 talks about
11 black lighting, gloves. Going to page 735, line
12 Item 26716, has LED Pro for \$2,700. Line 26713 has
13 scalpels. 26711 has pruning scissors. I'm trying to see
14 if there are some others. But those are the types of
15 items that obviously are used -- are generally used in
16 a -- for a farmer, a growing operation, especially a
17 cannabis type of business. So that's what we would look
18 to see are those types of items potentially resold.

19 JUDGE STANLEY: Okay. Thank you.

20 JUDGE KIM: I'll just repeat my question then.
21 So when you were contacting those customers on the retail
22 certificates, and you are able to get through to them, did
23 you ask them whether they just -- they generally did sell
24 that kind of equipment; gardening equipment, lights,
25 things like that?

1 MR. SHARMA: Yeah. That's generally what the
2 procedure is, okay, when we ask the customers. So
3 basically the signatory says -- in some cases they never
4 responded. The ones we talked to, they didn't give any
5 further information. They said we don't even remember
6 issuing resale certificate, or they say we never signed
7 it. And again, we can ask the question, but based on the
8 notes or based on the memo we got from field office, there
9 was nothing confirmed by the customers. Thanks.

10 JUDGE KIM: Okay. And I have a couple of
11 questions for Appellant. So Appellant, did you say that
12 you didn't collect any resale certificates, or they didn't
13 know to?

14 MR. ALMEIDA: No. No. They had resale
15 certificates.

16 JUDGE KIM: They had resale certificate.

17 MR. ALMEIDA: Yeah. But when you're looking at
18 the number transaction and all the different customers,
19 they clearly did not have them all. And --

20 JUDGE KIM: Sure.

21 MR. ALMEIDA: -- some of them they were able
22 secure --

23 JUDGE KIM: So -- so --

24 MR. ALMEIDA: -- after the fact.

25 JUDGE KIM: -- the ones that you -- the 11 that

1 you submitted, those were received contemporaneously with
2 the sale at the same time or around the same time?

3 MR. ALMEIDA: Possibly received. Possibly found.

4 JUDGE KIM: Okay. And other than those 11 -- so
5 those are all customers within the sample period; right?

6 MR. ALMEIDA: Yes.

7 JUDGE KIM: Okay. And Appellant didn't just
8 collect resale certificates for all its resale sales just
9 generally as a general practice?

10 MR. ALMEIDA: Well, as a general practice what
11 they did was they got a permit number --

12 JUDGE KIM: Okay. And so you --

13 MR. ALMEIDA: -- which. Yeah.

14 JUDGE KIM: So they didn't. Okay. And so you
15 talk about Appellant doing a lot of volume --

16 MR. ALMEIDA: Yeah.

17 JUDGE KIM: -- a high number of sales, several
18 millions of dollars through the liability period. At any
19 time did Appellant think that they should check whether
20 they're in compliance with the sales and use tax laws?

21 MR. ALMEIDA: Well, since we don't really do any
22 general bookkeeping, and we don't really do anything for
23 clients unless we have control of --

24 JUDGE KIM: Sure. But --

25 MR. ALMEIDA: -- filing --

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JUDGE KIM: -- do you know if --

THE STENOGRAPHER: I need both of you to please wait until the other finishes their sentence or thought.

JUDGE KIM: Sorry.

MR. ALMEIDA: Yeah. So this particular case, yeah, I didn't know what the day-to-day operations were about.

JUDGE KIM: And did they do their own accounting, filing their own sales and use tax returns?

MR. ALMEIDA: I believe that is the case. It's still the case.

JUDGE KIM: With millions of dollars in sales. Right. Okay. So you didn't get any XYZ letters; is that correct?

MR. ALMEIDA: Correct. Because we tried to do that, and, at the end of the day, we were not getting them. So that didn't work. Period.

JUDGE KIM: So did you send any of those out to your customers?

MR. ALMEIDA: We tried to send a few out to see what kind of response we would get. And since most customers don't know -- really know what it is, they were not in the mood to sign it and return it.

JUDGE KIM: Okay. But why didn't you send them out to all your customers then?

1 MR. ALMEIDA: The sample that we try to
2 incorporate did not work. So we thought it was a waste of
3 time.

4 JUDGE KIM: Okay.

5 MR. ALMEIDA: And we felt that if we can find a
6 resale certificate or get it and make sure that we can
7 verify the permit was open, then we felt that was a better
8 approach.

9 JUDGE KIM: Okay. So did you ever reach out to
10 these clients -- I mean, these customers by phone
11 explaining to them what this information it was that you
12 were trying to get?

13 MR. ALMEIDA: I did not, but the client did. And
14 again, that's where I explained that when you have some
15 third party calling you and asking you questions, a lot of
16 times you're not going to answer that question because you
17 don't know what it's going to get yourself into.

18 JUDGE KIM: But --

19 MR. ALMEIDA: So, no, we wouldn't do it because
20 we don't have the relationship.

21 JUDGE KIM: But you're not just any third party.
22 These are repeat customers; correct?

23 MR. ALMEIDA: Correct. But we don't do any
24 day-to-day operations for them. So we don't really know
25 those customers to us.

1 JUDGE KIM: But you do have an established
2 relationship with them. You're their vendor, and they --
3 and I'm assuming they return to you for a reason. So --
4 but they didn't want to answer any of those questions?

5 MR. ALMEIDA: No. No. Not -- no. You got me
6 wrong there. I'm talking about the customer and my client
7 having that conversation. Yeah. I don't know that they
8 went ahead and called every single one of the them. The
9 auditor, I believe, was the one that called, but I have no
10 idea who the auditor spoke with.

11 JUDGE KIM: Okay.

12 MR. ALMEIDA: A lot of times when they speak to
13 just an employee, that's just -- like I mentioned
14 that's -- it's a waste --

15 JUDGE KIM: Okay.

16 MR. ALMEIDA: -- because the employee is not
17 going to say anything, and they're going to -- you know,
18 they're going to answer, you know, in such a way as, well,
19 no, we don't do that, or I don't recall; because that's
20 the end of that conversation. They don't want to get in
21 trouble for something they're not familiar with. But,
22 yeah, if my client called a customer, they got a resale
23 certificate, or they found it.

24 JUDGE KIM: So you -- you said that sales for
25 resale were, in fact, sales for resale. Do you have any

1 evidence showing that they were, in fact, resold?

2 MR. ALMEIDA: Well, the way Regulation 1668
3 explains it, when you're talking a significant amount of
4 transactions, that clearly would not be considered a
5 consumable.

6 JUDGE KIM: I don't think the regulation -- the
7 volume of sales really has anything do with the character
8 of whether it's sales for resale or not.

9 MR. ALMEIDA: Well --

10 JUDGE KIM: Can you point me to which section of
11 the regulation it's in?

12 MR. ALMEIDA: Well, I -- it may be an annotation
13 that addresses that, but for somebody who has been doing
14 sales tax as long as I have, that has been the nature of
15 the business. So when you can show that the volume is
16 something that would not be -- something that you or I
17 would purchase or consume, that in itself dictates whether
18 it's probably a resale or not or likely a resale.

19 JUDGE KIM: Did Appellant find any evidence, or
20 did they look for any evidence that these customers that
21 provided these resale certificates actually sold these
22 types of items, such as a listing on their website, an
23 advertisement, anything like that?

24 MR. ALMEIDA: Well, if we try to get the
25 Department to accept the resale certificate or accept our

1 argument that it was a sale for resale, that was directly
2 based on information we got from our client. So they
3 would have known that they were in the business of
4 reselling those types of products. And again, under
5 Regulation 1588, there are certain products that are
6 considered exempt. So we use both to determine. I mean,
7 we -- our argument was not, okay, you need to accept this
8 because clearly that's a resale, even though they're
9 buying two or three of these items. No. And, obviously,
10 if it's somebody in farming that they're consuming it, our
11 argument was not that they're reselling it.

12 JUDGE KIM: So my question was, do you have any
13 evidence of that other than just what your client has told
14 you?

15 MR. ALMEIDA: No. No.

16 JUDGE KIM: Okay. I don't have any additional
17 questions at this time.

18 JUDGE TURNER: One more.

19 MR. ALMEIDA: Okay.

20 JUDGE TURNER: It has to do with the question of
21 alleged exempt sales. It was unclear by the briefing the
22 nature of the products that were sold as exempt and the
23 denial of the exemption. Could you walk me through that
24 real quick. If I recall, the argument was that there are
25 certain products sold that are exempt under 1588. And if

1 I recall, you had argued that the Department's denial of
2 those recognition of that exempt sale was for the lack of
3 a resale certificate. Can you help me understand the
4 nature of the products that were claimed to be exempt
5 under that reg?

6 MR. ALMEIDA: Yeah. Yes. There are certain
7 chemicals and certain products that are used in growing,
8 whether it be cannabis or growing plants or what-have-you,
9 that are considered to be exempt by nature under
10 Regulation 1588.

11 JUDGE TURNER: Yeah.

12 MR. ALMEIDA: So what we did was we identified --
13 try to identify as many of those products as could on the
14 transactions that were questioned. And then, obviously,
15 come up with a number that we felt should be deleted from
16 the taxable measure.

17 JUDGE TURNER: Department, can you help me
18 understand that, the denial for the exemption? It was
19 unclear whether it was because of the lack of a resale
20 certificate or the lack of qualification for the type of
21 the product.

22 MR. BACCHUS: Yeah. Oh, I will go ahead and
23 answer that one. So it's not a resale certificate, but it
24 would be an exemption certificate.

25 JUDGE TURNER: Got it.

1 MR. BACCHUS: And exemption certificates, much in
2 the same way as a resale certificate, if timely taken in
3 good faith, are -- is something that the retailer can show
4 the Department to say -- to basically prove that those
5 sales were either not for -- at retail or not taxable, or
6 exempt in this situation. So 1588 is specific to seeds,
7 plants, and fertilizers, and when those products are sold
8 to someone. And the product that those seeds, plants, or
9 fertilizer creates or grows, and if that product is sold
10 for human consumption or is sold in that taxpayer's
11 regular course of business, then those items are exempt.
12 And it doesn't matter if there's an exemption certificate.
13 It just has to be proven that that was the case.

14 Whereas, if a valid exemption certificate was
15 taken, then no further proof needs to be made. It's just,
16 here's the exemption certificate. It's a, you know, get
17 out of tax free card, essentially, if it's taken properly.
18 In this case where there weren't exemption certificates,
19 then it has to be proven that the customers purchased
20 these items, and that the product of them were either
21 going to be sold for human consumption or sold in the
22 regular course of that taxpayer's business, which was
23 taken into account, as Mr. Sharma said in his
24 presentation.

25 Mostly the fertilizers that were sold to growers

1 where they were growing cannabis, for example, and that
2 cannabis was sold in that taxpayer's regular course of
3 business, then the Department allowed the sales of those
4 fertilizers as exempt to those taxpayers, to those
5 customers.

6 JUDGE TURNER: Thank you.

7 Without any more questions, we'll let you have
8 five minutes for your close.

9 MR. ALMEIDA: Okay. Thank you. I appreciate it,
10 Judge Turner.

11

12 CLOSING STATEMENT

13 MR. ALMEIDA: Yeah. So -- and to the extent
14 that, you know, just a rebuttal to the Department's
15 position. Yeah, a lot of those products are usually sold
16 as something else. You know, they turn into something
17 else that's resold and hence, the exemption. But, yeah, I
18 just think the approach that was taken -- and again,
19 during COVID when you have an audit that's being performed
20 remotely, the questions are not being asked. It was a
21 monumental amount of work where we had to go through, and
22 I just felt that the Department was not being reasonable,
23 number one, to determine whether these transactions should
24 be allowed as exempt, or whether, in fact, the customers
25 were really in business.

1 And one other aspect of the -- of the
2 transactions -- and I think the Department alluded to
3 it -- was when you have a situation where a business is
4 closed or a permit has been closed, a lot of times what
5 we've noticed when we've done our due diligence is that
6 it's either it becomes incorporated or winds up turning
7 into a different type of corporate structure where they
8 wind up getting a new permit.

9 Now, a lot of times we can get that information,
10 but sometimes we couldn't. And, obviously, we rely on the
11 Department to do it, but we're not there sitting with the
12 auditor going through every single one of them. If we had
13 access to the system, that's what we would do. And we
14 tried to do that to the extent that we can on the CDTFA
15 website. However, if we don't have a permit number, we
16 can't punch in a name and come up with a permit number,
17 like I think, Texas allows us to do.

18 So it would be nice if that was an added feature
19 where you can actually look at that. Because we will go
20 through -- we we'll do Google search, and we'll do
21 whatever it takes to determine. And we use this because
22 when the client provided us information, we wanted to
23 check to make sure that that was a legitimate customer,
24 and we wanted -- you know, we weren't going to make the
25 argument that this is a legitimate resale customer if we

1 didn't do our own due diligence to make sure that they
2 were in business. And, you know, if we found an address,
3 then that was the position we took.

4 But I just felt they took an aggressive position.
5 They really didn't do anything. And, at the end of the
6 day, I don't know if they did it because the total exempt
7 sales that were not included -- they were not included in
8 the sales tax return, and they felt that that should be
9 included. Which again, by law, technically you don't have
10 to. But I do notice the Department is trying to make sure
11 that all sales are included. Because, at the end of the
12 day, sales for resale become an important factor in
13 determining whether somebody should be audited or not.

14 But again, the reasoning I don't know. I didn't
15 do the day-to-day sales tax returns, but that shouldn't be
16 a factor in determining whether something is for resale or
17 not. And like I said, I -- I don't -- I hadn't really
18 heard anybody state that if you have significant volume
19 that doesn't necessarily mean it's a sale for resale.
20 But, you know, based on my experience, for the most part,
21 it's usually a sale for resale. Whether the customer is
22 registered -- properly registered, that's another story.

23 So -- but that's it. That's our position. And
24 again, we feel strongly that there should be an adjustment
25 made. How we go about doing that? There's a lot of

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transactions.

Thank you for your time.

JUDGE TURNER: Thank you for presenting.

Thank you to the Department for presenting as well.

I think that that concludes our hearing. I think we're prepared to close the record at this time, so let's close the record.

And with that, thank you for all for coming. I appreciate it. We'll take it under submission. We will have a discussion, and we'll issue our opinion within the next 100 days.

Thank you for coming.

(Proceedings adjourned at 10:36 A.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 20th day of December, 2024.

ERNALYN M. ALONZO
HEARING REPORTER