

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:

SAILS BY SCHOCK, INC.,

APPELLANT.

$$\begin{array}{l}) \\) \\) \\) \\) \\) \end{array}$$

OTA NO. 230813983

CERTIFIED COPY

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

Wednesday, February 19, 2025

Reported by:

CHRISTINA RODRIGUEZ
Hearing Reporter

Job No. :
53307 OTA(A)

1 BEFORE THE OFFICE OF TAX APPEALS

2 STATE OF CALIFORNIA

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6 SAILS BY SCHOCK, INC.,) OTA NO. 230813983
7 APPELLANT.)
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16 TRANSCRIPT OF ELECTRONIC PROCEEDINGS,
17 commencing at 9:35 a.m. and concluding at 10:09 a.m.
18 on Wednesday, February 19, 2025, reported by
19 Christina L. Rodriguez, Hearing Reporter.
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1 APPEARANCES:

2
3 Administrative Law Judges: KIM WILSON
4 TERESA STANLEY
5 KEITH LONG

6 For the Appellant: KAI MICKEY
7 REPRESENTATIVE

8 For the Respondent: KEVIN SMITH
9 ATTORNEY

10 JARETT NOBLE
11 ATTORNEY

12 JASON PARKER
13 HEARING REPRESENTATIVE
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I N D E X

E X H I B I T S

(Appellant's Exhibits 1 through 6 were admitted into evidence, page 6)

(Department's Exhibits A through E were admitted into evidence, page 6)

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

PAGE

By Mr. Mickey

6

By Mr. Smith

17

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

PAGE

By Mr. Mickey

22

1 California; Wednesday, February 19, 2025

2 9:35 a.m.

3
4
5 JUDGE WILSON: This is the appeal of Sails By
6 Schock, Inc., dba Schock Boats. OTA Case No. 230813983.
7 The date is February 19, 2025, and the time is 9:35 a.m.
8 This hearing is being held in Sacramento, California.

9 I am the Hearing Officer Kim Wilson. My
10 co-panelists are Administrative Law Judges Teresa
11 Stanley and Keith Long. We are equal participants in
12 deliberating and determining the outcome of this appeal.
13 I will be the lead for purposes of conducting this
14 hearing.

15 Will the parties identify themselves and who
16 they represent, starting with the Appellant.

17 DFA TTY: I'm Kai Mickey. I'm President of
18 Sails Schock Specials. I'm here representing Sails By
19 Schock.

20 JUDGE WILSON: Thank you.

21 MR. SMITH: I'm Kevin Smith. I'm from CDTFA
22 Legal Division. Thank you.

23 MR. NOBLE: I'm Jarett Noble, also with
24 CDTFA.

25 MR. PARKER: Jason Parker, Chief of

1 Headquarters Operations Bureau, CDTFA.

2 JUDGE WILSON: Thank you.

3 As agreed to the parties at the prehearing
4 conference, the direct audit methodology is not in
5 dispute, and the issue to be decided in this appeal is
6 purely a legal question: Whether adjustments are
7 warranted to the manufacturer's rebates to which CDTFA
8 assess tax.

9 During the prehearing conference, neither
10 party raised objections to the other party's submitted
11 exhibits. Therefore, Appellant's Exhibits 1 through 6
12 are admitted into evidence.

13 (Appellant's Exhibits 1 through 6 are
14 admitted into evidence.)

15 JUDGE WILSON: And CDTFA's Exhibits A through
16 E are admitted into evidence.

17 (Department's Exhibits A through E are
18 admitted into evidence.)

19 JUDGE WILSON: Mr. Mickey, you indicated you
20 needed 15 minutes for your presentation, so please
21 proceed when you're ready.

22
23 PRESENTATION

24 MR. MICKEY: Well, thank you panel members for
25 the time that we have here to present our case. Our

1 goal and our hope is to show you that the documentation
2 and the facts of this case support that the assessment
3 of the tax on the rebates in question.

4 There are 77,250 total. They're broken up
5 between two individual manufacturers. There's 16 items
6 to Grady-White, and there are seven items to Boston
7 Whaler; those are the two manufacturers.

8 We hope to show you that the assessment of the
9 tax on those is incorrect. I could go back
10 through -- and they're very simple, I hope. I think
11 there's a lot of misinformation and misunderstandings, I
12 hope, by the staff, by the Department.

13 And I'm going to try to avoid all of that, but
14 there are a few points that I'm going to make regarding
15 the decision that I think have incorrectly directed the
16 auditors and the Department to make the decisions that
17 they have made.

18 There's two type of rebates that are typically
19 in question here: one is a consumer rebate, and one is a
20 dealer incentive rebate. And we believe that these are
21 dealer incentive rebates, they are not consumer rebates;
22 and, for that matter, Regulation 1671.1 has some
23 provisions in there, which I will talk about in a
24 second, that make it very clear that the facts in this
25 situation dictate that these are not taxable rebates.

1 A little homework -- first of all -- or little
2 back stop here -- we'll talk to you about Regulation
3 1671 first, and I trust that we're all aware of 1671.1,
4 but I do want to point out a couple of things anyway
5 just to make sure.

6 1671.1(c)(3)(a)(4) is where we are placing our
7 reliance on our determination that these are not taxable
8 rebates.

9 Starting with (a), it talks about when a
10 retailer enters into an oral or written contract with a
11 manufacturer or other third party that requires -- this
12 is a big thing -- that requires on a
13 transaction-by-transaction basis.

14 A specific reduction -- again, a specific
15 reduction -- very important -- in the retailers selling
16 price of specified products in exchange for a certain
17 payment of a like amount from the contracting part; such
18 payments received by the retailer are part of taxable
19 gross receipts or sales price of the sales.

20 For the record, we do not dispute that. Okay.
21 That's what the regulation says, and we accept that.
22 And if that's what is happening here, we would not be
23 here. But that's not what's happening here, and those
24 are the points that the Department -- lack of a better
25 word -- are kind of ignoring, in our opinion.

1 It says, further, "For purposes of this
2 subdivision, it is rebuttably (sic) presumed that any
3 consideration received by retailers from third parties
4 related to promotion for sales of specified products is
5 subject to tax until the contrary is established."

6 Again, I've been doing this for along time.
7 We know what the burdens are. We don't dispute that
8 either. We don't dispute that the -- until the contrary
9 is established, these would be taxable. Okay.

10 Now, here is where we get into the meat of our
11 position here. The third -- the types of documentation
12 that would generally rebut this presumption include but
13 are not limit to the following -- I don't need to talk
14 about one. There is no copy of the agreement. There's
15 no written or oral agreement in this package -- I'll
16 talk to you about that in a second.

17 Number two: a copy of the agreement that talks
18 about an advertising amount -- that is not related to
19 this case. A copy of an agreement between a retailer
20 and a third party that provides that the retailer will
21 only receive a payment if the retailers sells a certain
22 quantity of the products -- that's not relevant. That's
23 not what happened here.

24 Here is where the relevancy comes into place,
25 and this is the subsection of this regulation that -- up

1 until now and hopefully you will change -- the body
2 staff, the Department, and everybody that I talked to
3 has ignored, in my opinion.

4 And they're just ignoring it because maybe
5 they don't like it, or maybe they are misinterpreting
6 the facts of the situation, which is what I hope the
7 case is, and that's what I hope to clear up.

8 Number four: In the absence of a written
9 agreement or contract, the retailer may use any
10 verifiable method of establishing that the consideration
11 received from the third party was not subject to tax,
12 such as a signed and dated letter or other type of
13 documentation provided by the third party subsequent to
14 the contract or agreement verifying that the payment
15 received was not paid pursuant to a contract requiring a
16 reduction in the selling price of specified products on
17 a transaction-by-transaction basis.

18 That is so clear. It is explicit. It is not
19 ambiguous. It point blank tells that after the fact, in
20 the absence of a written agreement or contract, a letter
21 from the manufacturer that certifies certain things is
22 sufficient to rebut the above presumption.

23 Okay. I need you to remember that. I know
24 you know it, but I want to point this out because this
25 is the fundamental point of our position here.

1 Moving on, we have -- there is an annotation
2 that addresses the difference between consumer rebates
3 and manufacture rebates and the dealer incentives. I'm
4 not going to address that right now. I don't think it's
5 relevant.

6 Although, I will point out 295.09(4)(a) -- the
7 second section -- the second paragraph is explicit to
8 these dealer incentives, and it says that dealer
9 incentives are not taxable -- not part of taxable gross
10 receipts.

11 But here's where we're going to go now. We're
12 going to go to the two exhibits that we provided, and I
13 will even address the exhibit that the staff got.

14 Exhibit 3 of their decision, it's a Grady days
15 August 1st to November 8th, 2016, promotional
16 literature. It's dated July 25th, 2016.

17 I just want to point out that there's nothing
18 in this document that refuse, disputes, is contrary to,
19 contradicts, or any way, shape, or form says something
20 different than the letter that we got from the
21 manufacturer on two occasions as required by Regulation
22 1671.1.

23 In the DNR, they resort to this as being the
24 sufficient basis. They should override the letter, and
25 you will see that discussion on page 4 -- starting on

1 page 4 and 5 and 6 of their decision.

2 I can go back for you line by line and reread
3 all that to point that out to you, but I want to make
4 sure you know that it's on page 4, 5, and 6 where they
5 essentially determine that this overrides our letters.
6 We say it does not. Okay.

7 This does not -- number one, this is not the
8 promotion that was in play -- similar to the motions in
9 play -- but has nothing -- it is not a promotion that
10 was in play.

11 Number two: Again, there's nothing in here
12 that is contrary to our letter; number three, there's
13 nothing in this promotional package that says that the
14 retailer must reduce the selling price in order to
15 receive the dealer incentive rebate.

16 So it's simply saying -- if you read it the
17 way that it's written, it's an invitation to the dealers
18 to participate and receive these dealer incentives,
19 should they choose to do so, are selling the most.

20 They're not obligated to give the rebate to
21 the consumer. They're not obligated to reduce the
22 selling price in order to get the rebate. They sell a
23 boat, they get the dealer's incentive rebate, and that's
24 what this says. So we hope that the document -- that
25 the state that the Department is relying on -- actually

1 supports our position. Okay.

2 And I'll look at our exhibits, there's two of
3 them. There is a January 3rd, 2018, letter from
4 Grady-White Boats, and there's another September 6th,
5 2022, letter from Grady White's Boats that we got
6 subsequent to the first one because we asked Grady-White
7 to clarify the couple of points that the auditor
8 disagreed with me about in regards to the first letter.

9 So you can read the first letter, dated
10 January 3rd, Exhibit 2, and it's going to say the same
11 thing as Exhibit 4, dated September 6th. But let me
12 point out, in the September 6th letter, the key points
13 here.

14 Remember that 1671.1 says explicitly and
15 plainly that a letter such as this, that documents the
16 facts that are necessary, is sufficient to overcome the
17 rebuttal presumption. The auditor ignored this, just
18 wrote it off, and you can see in her comments on Audit
19 Schedule 12 B-2, she says, "manufacturer's rebates
20 authorize transaction-by-transaction basis."

21 And, okay, so they were periodically on a
22 transaction-by-transaction basis. The dealer, Schock
23 Boats, passed along the dealer incentive rebate to the
24 customer. Okay, so what.

25 On a sales contracts, the selling price of a

1 specific model reduced by the amount of rebate -- so
2 what. And sales was -- tax was not computed on the
3 rebate -- that's correct. It was not. That's why we're
4 here.

5 So the auditor took parts of what they
6 generally view as being taxable rebates and stopped
7 there. They refused to consider that somewhere along
8 the line after 2007 -- October 1st of 2007 -- somewhere
9 along the line, someone decided that they would change
10 the regulation, go through all the appropriate AOL
11 process, and they provided clarification, if you will,
12 of what type of evidence could be used to overcome what
13 the auditor is saying here on the their 12 B-2 Schedule.

14 So in our letter, it says -- on September
15 26th -- on page 2 -- well, actually, on page 1, he talks
16 about -- they have attached a document; a list of the
17 transactions that qualify for this Grady-White
18 promotion, and you will find that these are the 16 boats
19 on the Schedule 12 B-2 that were sold -- that were
20 Grady-White sales.

21 So they are confirming that the transactions
22 in the audit, on 12 B-2, were covered by the promotion
23 that they're addressing in this letter -- that we got
24 pursuant to 1671.1.

25 They go on to say -- and these are the key

1 points -- in paragraph two, on the second page, it says,
2 "Grady-White boats has no control over the selling price
3 offered by the dealer. Additionally, the selling price
4 of the boat has no impact on the receipt by the dealer
5 for any promotional allowance."

6 Paragraph three, third line down, "Dealers are
7 not required to reduce the selling price of the boat in
8 order to secure the promotional allowance. Although the
9 promotions are available for the consumer, dealers are
10 not required to extend it to them."

11 Then, the last sentence, "It is possible for a
12 consumer to buy a boat without the knowledge of the
13 promotion in process." These are dealer incentives.
14 These are not consumer manufacturers -- that's my phone.
15 I'm sorry. I turned it off. I don't know why it's
16 still going off. Sorry.

17 So our letter clearly states and certifies,
18 pursuant to 1671.1, the requirements to establish that
19 these are not taxable rebates. And up until this point,
20 this letter, is simply being ignored. Now, I think -- I
21 would like to believe that if everyone knew that these
22 facts were the case, we would not be here.

23 My presumption is that along the line here up
24 until now, everybody at the state, CDTFA, is just simply
25 ignoring the fact that this letter should be sufficient

1 to overcome the presumption -- directly in conflict to
2 what the regulations says, and that's why we mentioned
3 in the prehearing conference that the point of this is
4 really a legal argument.

5 We have the letter that certifies that all the
6 facts are specifically correct to make these nontaxable
7 rebates. The question is whether the state could ignore
8 the Section (c), (3), (a), and (4). Can the Department
9 choose to ignore what that sections says? If you
10 determine that they can ignore that section, then I
11 lose.

12 If you need determine that the state -- the
13 CDTFA does not have the authority to disregard what
14 their own regulation states because they don't like what
15 it says, are not used to what it says, it may not be
16 exactly like they'd like to do, other things, then can
17 they ignore it? I lose, can they not ignore it, you
18 win, and that's our case.

19 Thank you.

20 JUDGE WILSON: Thank you.

21 Judge Long, do you have any questions?

22 JUDGE LONG: I'll hold my questions for now.

23 Thank you.

24 JUDGE WILSON: Judge Stanley?

25 JUDGE STANLEY: I don't have any questions at

1 this time.

2 JUDGE WILSON: Okay. I don't have any
3 questions either.

4 Mr. Smith, you indicated you needed 15 minutes
5 for your presentation.

6 MR. SMITH: Correct.

7 JUDGE WILSON: You may begin when you're
8 ready.

9
10 PRESENTATION

11 MR. SMITH: Thank you.

12 Good morning. At issue today is whether an
13 adjustment is warranted to Appellant's unreported
14 taxable rebates from boat manufacturers.

15 Appellant operates a vessel dealership in
16 Newport Beach, California, from which it sells boats,
17 boat engines, trailers, and accessories. As relevant to
18 this appeal, during the liability period, Appellant
19 received \$77,000 dollar -- 250 dollar -- in rebate
20 payments --

21 THE REPORTER: I'm sorry. Can you repeat that
22 amount?

23 MR. SMITH: Sorry. \$77,250 in rebate
24 payments.

25 THE REPORTER: Thank you.

1 MR. SMITH: From two boat
2 manufacturers -- Grady-White Boats and
3 Boston Whaler -- which the Appellant did not report on
4 its sales and use tax returns.

5 The rebates consisted of 23 payments, ranging
6 from \$500 to \$8,500, that were issued to Appellant for
7 sales of vessels that are made to customers during
8 various national sails events offered by the two
9 manufacturers.

10 Upon audit, the Department examined
11 Appellant's sales contracts and found that they included
12 various manufacturer rebates, and that Appellant had
13 reduced the selling price of the boats to the purchaser
14 by the applicable rebate amount.

15 The Department determined that Appellant
16 collected and remitted sales tax reimbursement based
17 upon the adjusted selling price of each boat to the
18 purchaser, but did not report or collect sales tax
19 reimbursement on the rebate amounts that are received
20 from the manufacturers.

21 The Department determined that the measure of
22 tax should include amounts received by the non-retailer,
23 and that the rebates at issue were subject to tax.

24 California imposes sales tax on a retailer's
25 retail sales in the state of tangible personal property

1 measured by the retailer's gross receipts unless the
2 sales is specifically exempt or excluded from taxation
3 by statute.

4 All of a retailer's gross receipts are
5 presumed subject to tax unless the retailer can prove
6 otherwise. Gross receipts means the total amount of the
7 sale value to money whether received in money or other
8 value.

9 Regulation 1637.1, Subdivision (c)(3)(a),
10 provides that when a retailer enters into an oral or
11 written agreement with a manufacturer or other third
12 party that requires, on a transaction-by-transaction
13 basis, a specific reduction in the retailer's selling
14 price of specified products in exchange for a payment of
15 a like amount from the contracting party, such payment
16 received by the retailer is part of the taxable gross
17 receipts or sales price of the sale.

18 Here, initially, we know that Appellant has
19 not provided any documentation regarding the rebates it
20 received from Boston Whaler; and, thus, no adjustments
21 should be made to those amounts.

22 Turning to the Grady-White sales, the July
23 25th, 2016, promotional announcement, which is part of
24 Exhibit A, shows that Grady-White notified Appellant of
25 the Grady Day's promotion and instructed Appellant to

1 use a promotional allowance on its sales.

2 Grady-White also told Appellant that it would
3 advertise the event nationwide and recommended that
4 Appellant advertise the event locally to complement its
5 national campaign. Appellant then sold the Grady-White
6 boats at issue during the relevant promotional events,
7 advertised nationally by Grady-White, and reduced the
8 selling price of the boats by the promotional amounts.

9 It then received applicable rebates from
10 Grady-White for the boats sold. To be specific, the
11 available evidence shows that Appellant reduced the
12 selling price of the boats to its customer and received
13 payments from Grady-White for same amount.

14 This establishes that Appellant agreed to
15 reduce the selling price of the boats on a
16 transaction-by-transaction basis based upon the rebate
17 amount offered by Grady-White in exchange for the
18 payment of a like amount in the form of a rebate offered
19 by Grady-White.

20 This is similar to the situation discussed in
21 annotation 295.0948 for manufacturers rebates are
22 considered taxable as an inducement to the purchaser
23 because they were a reduction in the selling price
24 provided directly to consumers, and that's part of gross
25 receipts.

1 In other words, the evidence indicates that
2 Appellant received consideration for the full retail
3 value of the boats. It does not receive a discount on
4 its cost from the manufacturer.

5 Although Appellant has submitted letters from
6 Grady-White stating the contrary, these letter were sent
7 after the audit period, and the statements are contrary
8 to the documentation discussed previously. Thus, the
9 rebates from Grady-White at issue are subject tax, and
10 no adjustments are warranted.

11 This concludes my presentation. Thank you.

12 MR. NOBLE: If I could just add one
13 thing -- sorry. My internet went out while I was
14 looking up the citation on my phone. 1671.1, I believe
15 it's (d)(4)(f), contains an example addressing written
16 letters by manufacturers to rebut the the presumption at
17 issue in this appeal. And, in that example, they note
18 that there were no concerns with the letter, and
19 therefore it was accepted as was discussed in the
20 decision, the supplemental decision, and our briefing.
21 We think the evidence here is contrary to what the
22 letter says. I just want to make it clear that the reg
23 does address something like that, and we have discussed
24 it in the prior briefings.

25 Thank you.

1 JUDGE WILSON: Thank you.

2 Judge Long, any questions?

3 JUDGE LONG: No questions. Thank you.

4 JUDGE WILSON: Judge Stanley.

5 JUDGE STANLEY: I don't have any questions.

6 JUDGE WILSON: Okay. I don't have any
7 questions either.

8 Lets turn back to Mr. Mickey. You have -- if
9 you'd like to make a rebuttal argument, go ahead.

10
11 CLOSING STATEMENT

12 MR. MICKEY: Yes, please. Thank you.

13 The last point, whatever section he's
14 referring to that allows him to disregard the letters
15 based on not accepting the factual basis of the letters,
16 and he says that in the DNR, the decision, that that was
17 addressed.

18 The way it was addressed in the decision, as I
19 pointed out and acknowledged, is that they looked at
20 this Grady White's promotional literature here as the
21 supporting document for their position there. They have
22 nothing else, so it has to be this.

23 Number one: This is not the actual promotion
24 for the promotions that were in effect during this time,
25 like I said, and we acknowledge. It's similar to it.

1 And nothing in this document says that the dealer was
2 required to reduce the selling price. We are not
3 disputing that the selling prices were reduced. We're
4 not disputing that they received the rebate.

5 What's at dispute is that we are proving to
6 you through the letters that cannot be contradicted by
7 any information that the staff has -- that the dealer
8 was not required to reduce the selling price. That's
9 what the letter states in order to receive this rebate.

10 Secondly, another point was made that the
11 letters was gathered after the audit period -- that's
12 because the issue came about and questioned by the
13 auditor and so as for 1671(c)(3)(a)(4) -- that we're
14 citing -- it talks about being receive these letters
15 subsequent to the contractor agreement.

16 So, once again, the Department wants to say
17 that they had to have them at the time; they can't get
18 them after the contract. That's the whole point of the
19 letter -- is to get it when there isn't an agreement,
20 and you get it after the fact -- after the contract
21 agreement. That's what it says in the regulation.

22 So the regulation says we can get it
23 subsequent; the Department wants to say we got it
24 subsequent, so it can't be accepted. That doesn't make
25 any sense. They're ignoring what the statutory language

1 of their on regulation is.

2 We're not disputing the fact that these
3 rebates existed. Very clear -- we're not disputing that
4 rebates were applied to the sales. We're not disputing
5 any of that. And, yes, they got the money back from the
6 manufacturer.

7 We're disputing the fact that they were not
8 required to reduce the selling price. This document
9 that they rely on says nothing about that.

10 In fact, it says contrary. It just talks
11 about, "Hey, if you do this, send in the warranty
12 registration. We'll give you the money back." They're
13 not talking to anything to the dealers about having to
14 reduce the selling price on a transaction-by-transaction
15 basis. There's no contract.

16 So because there's no contract or written
17 agreement -- because they're just saying, "Do it if you
18 want. These are the terms. You do it. If you don't do
19 it, we don't -- we don't send you money."

20 Then, we get the letter -- that the regulation
21 says -- and the staff wants to say -- or the Department
22 wants to say they can't accept the letter because they
23 got this proof right here. This is no proof of
24 anything. I don't know what else to say about that. I
25 don't know how else I can do that.

1 It is addressed in the DNR, and the decision,
2 and that's the point that I wasn't going to read that
3 starts on page 4, 5, and 6. That's exactly what the
4 decision did. They said that they couldn't accept the
5 letter because the other documentary evidence was
6 stronger.

7 Well, if we want to get into the preponderance
8 of the evidence, and all those things, this letter
9 satisfy -- wrong one -- this letter satisfies by more
10 than preponderance of the evidence.

11 It's clear and convincing that the statutory
12 requirements of 1671 regarding these rebates has been
13 satisfied, as to these rebates, are not taxable rebates.
14 I don't know what else to say.

15 I hope that -- as the panelists -- I hope that
16 you will be able to see the difference between their
17 supporting documents -- so called -- and our letter; and
18 then look at what the statutory language says about the
19 validity of our letter and recognize that the point and
20 the purpose and the reason for that regulation was
21 exactly to avoid things like this right here where we're
22 here today.

23 In our opinion, this -- I shouldn't be here.
24 The taxpayer should not have to be here. These letters
25 should have been accepted at the lower level, and we

1 shouldn't be here because it's so explicitly clear in
2 the regulation.

3 If that section of the regulation was not
4 there, and we just came to the state with a letter --
5 I'm used to this. I know they're not going to accept my
6 letters. They're going to take my self-serving
7 documents, unsupported, and that's what they're going to
8 do.

9 In this -- and that's usually what they do.
10 In this case, they cannot do that. The regulation
11 provides for these letters being sufficient
12 documentation. They can't apply their normal routine to
13 this letter.

14 That's it. Thank you.

15 JUDGE WILSON: Mr. Mickey, could you please
16 address the -- or the law section that the Department
17 asked about, 1671.1 (d)(4)(F).

18 MR. MICKEY: Yeah, (d)(F), mm-hm.

19 1671.1 (d)?

20 MR. SMITH: (d)(4)(F)).

21 MR. MICKEY: Okay. So (4)(F) -- okay.
22 So -- what -- is there a question? I mean, that
23 supports my position, does it not?

24 JUDGE WILSON: I just wanted to clarify --

25 MR. MICKEY: The only reason -- I'm sorry to

1 interrupt. I'm sorry. Go ahead.

2 (No response.)

3 MR. MICKEY: "No concerns regarding the
4 authenticity of the letters exist since a subsequent
5 verification establishes the rebate revenue was not paid
6 in exchange for required deduction. The revenue is not
7 part of the retailer's gross receipts."

8 Is that not exactly what I'm doing?

9 JUDGE WILSON: Okay. So you're saying that
10 that does support your position?

11 MR. MICKEY: At first read, I don't know why
12 that's not exactly what we've done.

13 JUDGE WILSON: Okay.

14 MR. MICKEY: If you think I'm missing
15 something, point it out. I mean, I see --

16 JUDGE WILSON: Could you please clarify your
17 position there with that regulation.

18 MR. NOBLE: Not necessarily a position. He
19 was just noting that letters in that rebuttable
20 presumption wasn't really noted, and I wanted to point
21 out that there's an example here.

22 The Department's position in this case is that
23 despite the fact we have a letter from the manufacturer,
24 the other evidence we have indicates that the rebates
25 were consideration paid to the retailer, and those are

1 taxable.

2 JUDGE WILSON: Okay.

3 MR. NOBLE: Same thing we said before. That's
4 it.

5 JUDGE WILSON: Okay. Thank you.

6 MR. MICKEY: I would just say, I wish I would
7 have seen this section before, because I don't know why
8 that doesn't say exactly what I'm saying.

9 Four says -- if you start at four, "The
10 following are examples of transactional rebate.
11 Incentive payments are not included in the retailer's
12 gross receipts."

13 So that is what we're saying. These are not
14 included.

15 In the example here, is that, "During a
16 routine audit, the retailer is asked to provide
17 documentation. However, the retailer does not have
18 sufficient documentation" -- that is the Department's
19 position -- "to verify the revenue received from the
20 manufacturer was not part of gross receipts. The
21 retailer," -- us -- "we send a letter to the manufacture
22 requesting the manufacturer verify that the payment
23 received under the promotional agreement was not paid
24 pursuant to a contract requiring the retailer to reduce
25 the selling price of the products.

1 The manufacturer signs and dates the letter
2 verifying this fact -- returns it to the retailer. No
3 concerns regarding authenticity of the letter exists
4 since the subsequent verification establishes that the
5 rebate revenue was not paid in exchange for a required
6 reduction in the selling price. The revenue is not part
7 of a retailer's gross receipts."

8 Oh, I wish I had seen that before, because I
9 would have been -- I stopped with the law section -- the
10 first part that meant my case.

11 I believe that does satisfy exactly what we're
12 saying. We have a letter. There's no question of the
13 authenticity.

14 JUDGE WILSON: Okay. Does that conclude your
15 rebuttal? Or would you have anything other you would
16 like to add?

17 MR. MICKEY: I believe that concludes my
18 rebuttal for now.

19 JUDGE WILSON: Okay.

20 CDTFA, do you have anything further you'd like
21 to add?

22 MR. SMITH: No, we do not.

23 JUDGE WILSON: Okay. Great.

24 Judge Stanley, you have a question?

25 JUDGE STANLEY: It actually came from Judge

1 Long, so I won't take credit for it.

2 You didn't mention Boston Whaler; what's the
3 position with respect to that?

4 MR. MICKEY: Good point. Okay. So with
5 Boston Whaler, we acknowledge we do not have a letter on
6 Boston Whaler. Boston Whaler, they -- the Schock Boats
7 stopped selling Boston Whaler boats subsequent to all
8 this, so Boston Whaler was not cooperative in trying to
9 help them do anything at all. They're selling competing
10 boats right now, so we do not have the letter on Boston
11 Whaler.

12 Even at the appeal's conference, we
13 acknowledged that we didn't have a letter. Our point on
14 that one would be that they're similar. So had Boston
15 Whalers been able to give us a letter, it would have
16 said the same thing. I acknowledge, at this point, we
17 don't have the letter.

18 So Grady-White is satisfied by the letter;
19 Boston Whaler would not be. There's 16,250 in rebates
20 that are Boston Whaler. You can't rule the same way for
21 us -- that we have a letter on Boston Whaler. I
22 acknowledge that. What you could rule is that there's
23 similar types of transactions, and the letter would have
24 said the same thing; and we acknowledge that. But
25 Grady-White -- there's no question. Grady-White is

1 supported by what the regulation says.

2 JUDGE WILSON: Okay. And there's
3 no -- there's no documentation in regards to Boston
4 Whaler on --

5 MR. MICKEY: No.

6 JUDGE WILSON: No --

7 MR. MICKEY: We tried --

8 JUDGE WILSON: -- promotional ads or anything?

9 MR. MICKEY: No. The client didn't have
10 anything at that point for the Boston Whaler, so it was
11 kind of like -- I went on the presumption as, you know,
12 audits often do. You look at a sample, and based on the
13 sample, you accept the other things. We approached this
14 Boston Whaler the same way all the way through the
15 process, but we have no information on Boston Whalers.

16 JUDGE WILSON: Okay. Thank you.

17 Judge Long, any other questions?

18 JUDGE LONG: No questions. Thank you.

19 JUDGE WILSON: Judge Stanley?

20 JUDGE STANLEY: No questions.

21 JUDGE WILSON: All right.

22 I'd like to thank the parties for
23 participating today. The case is being submitted, and
24 the record is now close. The panel will meet to
25 deliberate and decide your case. We will issue a

1 written opinion within 100 days. Today's hearing in the
2 appeal of Sails Schock is now concluded.

3 (The hearing concluded at 10:09 a.m.)
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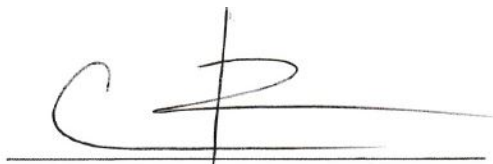
1 HEARING REPORTER'S CERTIFICATE

2
3 I, Christina L. Rodriguez, Hearing Reporter in
4 and for the State of California, do hereby certify:

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

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

14 I have hereunto subscribed my name this 11th
15 day of March, 2025.

16
17
18
19 

20 Hearing Reporter

21
22 CHRISTINA RODRIGUEZ
23
24
25

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