

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
HM CARPET, INC.,) OTA NO. 240616486
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, May 13, 2025

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 1:05 p.m. and
concluding at 1:44 p.m. on Tuesday, May 13, 2025,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for this state of California.

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APPEARANCES:

Panel Lead: ALJ ANDREW WONG

Panel Members: ALJ JOSH ALDRICH
ALJ SUZANNE B. BROWN

For the Appellant: MANNY ALMEIDA

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

KEVIN SMITH
JARRETT NOBLE
JASON PARKER

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I N D E X

E X H I B I T S

(Department's Exhibits A-E were received into evidence at page 8.)

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Cerritos, California; Tuesday, May 13, 2025

1:05 p.m.

JUDGE WONG: Let's go on the record.

This is the Appeal of HM Carpet, Inc., before the Office of Tax Appeals, OTA Case No. 240616486. Today is Tuesday, May 13th, 2025, and the time is 1:05 p.m. We're hearing this hearing in Cerritos, California.

I'm Andrew Wong, the lead panel member for this case. And with me, on today's three-person panel, are Judges Josh Aldrich and Suzanne Brown.

The individual representing the Appellant, the taxpayer, please introduce yourself.

MR. ALMEIDA: Yes. My name is Manny Almeida. I am the representative for HM Carpet, Inc. I am a tax representative.

JUDGE WONG: Thank you. Could you please pull the microphone a little bit closer to you --

MR. ALMEIDA: Sure.

JUDGE WONG: -- so it could be picked up.

MR. ALMEIDA: Is that better?

JUDGE WONG: Yes. Thank you.

MR. ALMEIDA: Okay.

JUDGE WONG: Even though it's loud in the room --

MR. ALMEIDA: Yeah.

1 JUDGE WONG: -- it might not be on YouTube land.

2 MR. ALMEIDA: You want me to repeat the
3 introduction or --

4 JUDGE WONG: No. I think we're good. Thank you.

5 And individuals representing the Respondent tax
6 agency, the California Department of Tax and Fee
7 Administration or CDTFA, could you please introduce
8 yourselves for the record.

9 MR. SMITH: Kevin Smith from the CDTFA Legal
10 Division.

11 MR. NOBLE: Jarrett Noble, also from the Legal
12 Division.

13 MR. PARKER: Jason Parker, Chief of Headquarters
14 Operations Bureau.

15 JUDGE WONG: Good afternoon. Thank you.

16 All right. On March 25th, 2025, and
17 April 3rd, 2025, OTA informed the parties that I and
18 Judge Brown respectively would be joining this panel as
19 substitutes for two other judges who had been previously
20 identified to the parties but subsequently, became
21 unavailable for this hearing. OTA gave the parties the
22 option to file a written objection or request for recusal
23 of the new judges for good cause within 15 days of those
24 notices. However, OTA received no objections from either
25 party, so Judge Brown, Judge Aldrich, and I will

1 constitute the panel hearing and deciding this case.

2 We are considering two issues today. Issue
3 number one is whether the amount of unreported taxable
4 purchases subject to use tax should be reduced. Issue
5 number two is whether Appellant was negligent.

6 Mr. Almeida, does that sound like a correct --

7 MR. ALMEIDA: That's correct.

8 JUDGE WONG: Okay.

9 MR. ALMEIDA: Thank you, Judge.

10 JUDGE WONG: No. Sorry.

11 CDTFA, does that sound correct?

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

13 JUDGE WONG: Okay. Let's talk about exhibits.
14 Appellant has not identified or submitted any exhibits.

15 And so, Mr. Almeida, you have no exhibits for
16 today; is that correct?

17 MR. ALMEIDA: Yeah. Nothing for today.

18 JUDGE WONG: Okay.

19 MR. ALMEIDA: Everything has been submitted
20 previously.

21 JUDGE WONG: Okay. And, CDTFA, you've identified
22 and submitted proposed Exhibits A through E as evidence.
23 You had no other exhibits; is that correct?

24 MR. SMITH: That's correct.

25 JUDGE WONG: Okay. And Mr. Almeida you had no

1 objections to those proposed exhibits; is that correct?

2 MR. ALMEIDA: Correct.

3 JUDGE WONG: Okay. CDTFA's Exhibits A through
4 will be admitted into the record as evidence.

5 (Department's Exhibits A-E were received
6 into evidence by the Administrative Law
7 Judge.)

8 JUDGE WONG: And as far as witnesses go,
9 Mr. Almeida, you had no witnesses today?

10 MR. ALMEIDA: That is correct.

11 JUDGE WONG: And, CDTFA, you have no witnesses
12 today?

13 MR. SMITH: That's correct.

14 JUDGE WONG: Okay. All right. It was
15 anticipated that this hearing would take approximately
16 65 minutes.

17 Mr. Almeida, you've asked for 30 minutes to be
18 divided between your opening presentation and your
19 rebuttal and closing. You can divide that however you
20 want.

21 And CDTFA has asked for 20 minutes. And then I
22 budgeted 15 minutes for judge's questions and what not.
23 Okay. Any questions from either party?

24 Mr. Almeida?

25 MR. ALMEIDA: Not at this time.

1 JUDGE WONG: Okay.

2 MR. SMITH: No.

3 JUDGE WONG: No. All right. So we will proceed
4 with your presentation, Mr. Almeida. You have 30 minutes.

5 MR. ALMEIDA: Okay. Very well. Thank you so
6 much, Judge.

7

8 PRESENTATION

9 MR. ALMEIDA: Yeah. I mean, the reality is I'm
10 very concerned about the fact that we actually are hearing
11 this particular case today. Because, you know, my 35-plus
12 years of experience in having to deal with sales tax
13 cases, this is the first one that I ever remember where
14 we're actually addressing transactions involving resale
15 certificates that were expired or no longer valid and
16 resale certificates that were not properly signed by the
17 authorized representative of my client HM Carpet, Inc.
18 And part of the reason is, I think ultimately the auditor
19 that went through and -- and reviewed these resale
20 certificates from the vendors decided that they had spent
21 so much time going through this process of getting resale
22 certificates that were expired or invalid needed some sort
23 of a back up to be able to present this audit.

24 I mean, this is the first time I'm I've ever
25 seen -- and again, I've got numerous cases involving sales

1 tax, but it's the first time I've ever seen where the
2 sales tax burden has not been given to the vendor, or the
3 seller, or the retail, whichever you want to call it.
4 There's numerous vendors where the resale certificates
5 were not valid. Either they weren't valid because the
6 permit number had been closed out, or the actual signature
7 on some of the resale certificates did not pertain to
8 anyone that was working for my client.

9 And, in fact, we identified numerous resale
10 certificates, and the Department never gave us any -- any
11 leeway whatsoever in trying to address which ones were
12 valid, which ones were not. They just basically said our
13 client was responsible because they submitted a resale
14 certificate, and their intent was to purchase items for
15 resale. Which, ultimately, they didn't because they're
16 actually a lump sum contractor for the most part.
17 They're, you know, basically buying flooring and carpeting
18 and things like that and, ultimately, the tax was not paid
19 by the vendors. Therefore, my client HM Carpet, Inc.,
20 became responsible.

21 But I have a case involving the opposite. So I'm
22 trying to understand -- better understand how the law is
23 being applied because we can't have it both ways. I mean,
24 either the vendor is responsible for a permit that's no
25 longer valid. The -- the number -- those permit numbers

1 has been closed out many, many years ago. Or again, the
2 signature on a resale certificate that was filled in, by
3 whoever it was, was signed by someone who was not
4 authorized. And, again, it doesn't have to be an officer
5 as far as I'm concerned or as far as I know. But if the
6 signature -- if you have multiple resale certificates and
7 the signature of one person is basically, you know,
8 something that you can't even identify as far as the
9 signature, which is actually the legitimate signature; and
10 then you have a printed signature from the same person,
11 there should be a question mark as to whether both resale
12 certificates should be accepted.

13 As far as I'm concerned, one should be if it's
14 determined that it's valid. The other one should not be.
15 But nevertheless, if you've got old resale certificates
16 where the permit has been closed out, if I'm auditing the
17 retailer, I'm going to disallow those sales for resale on
18 the retailer's side. I'm not going to go back to the
19 customer and say, oh, did you intend to -- because they
20 didn't intend to do that at the time of the transaction,
21 which was when there was a new seller's permit on file.
22 And, you know, again, you can't give guidance to a client
23 and say, okay. Well, no, you don't have to worry about
24 that as long as you didn't get a resale certificate.

25 Having said that, I know the Department generally

1 will come back and say, well, the customer needs to make
2 the vendor aware. But if the customer basically closes
3 out their permit, that permit is long gone. That's why
4 CDTFA and previously the BOE allows you to go online and
5 verify whether the number is accurate or not, or whether
6 it's open or not. And none of that seemed to have
7 occurred during this audit. It was just more, let's call
8 the vendors. Let's find out if they have a resale
9 certificate on file. And if they didn't have a resale
10 certificate, clearly, they must have signed it internally
11 because it wasn't the same signature as the customer
12 originally signed.

13 And, again, if you've got two different names
14 with two different signatures -- well, one being the
15 signature, and one is just like a printed name where you
16 can clearly read it, I think it should be questioned. And
17 it was never questioned. And throughout the appeals
18 process, we have contended that that should be the case,
19 and nothing has changed. So, again, it's important
20 because as a representative I never want to give somebody
21 the opinion that, hey, you closed out your permit. Your
22 resale certificate is still valid.

23 Well, in one particular case where I have an
24 audit where the retailer is being assessed, you know, the
25 same thing happened. So which one is it? Is it the

1 retailer's responsibility, or is it the buyer's
2 responsibility when you have a closed-out number or, you
3 know, a brand new corporation where it always requires a
4 new number? And I can tell you, having done this long
5 enough, one of the big issues that we always have is
6 whether someone has incorporated and established a new
7 seller's permit or sales and use tax permit; however, it's
8 referred to these days. Because ultimately, there's no
9 responsibility until you get out of it. And that is very
10 unfair and certainly doesn't seem justified.

11 On the penalty side, again, complicated matter.
12 I don't believe, based on what's being assessed, there
13 should be a penalty. Because, again, I don't believe my
14 client, as a purchaser that didn't issue -- I mean, if
15 they issue a new resale certificate, okay, I can
16 understand that. But for the most part, this is an audit
17 based on resale certificates that were no longer valid.
18 So the penalty should not be assessed because nobody
19 was -- you know, basically, committed negligence.

20 JUDGE WONG: Thank you, Mr. Almeida. Did you
21 have anything else? Or does that complete your --

22 MR. ALMEIDA: No, that's -- that's it. And,
23 again, I -- I find it to be a very simple situation but
24 certainly not consistent with Regulation 1668 or the sales
25 tax law in California.

1 JUDGE WONG: Okay. Thank you very much. You
2 will have 23 minutes for your rebuttal and closing.

3 MR. ALMEIDA: Good.

4 JUDGE WONG: All right. I will now turn to my
5 co-panelists to see if they have any questions for
6 Mr. Almeida, starting with Judge Brown.

7 JUDGE BROWN: Thank you.

8 Mr. Almeida, you may recall that during the
9 prehearing conference -- although, I was not there, I read
10 the Minutes and Orders that Judge Wong issued -- and he
11 asked that both parties be prepared to address the Edwards
12 Spurlock Board memorandum. I didn't hear you mention it
13 in your presentation. So I want to ask, how does your
14 argument comport with the Edwards Spurlock Board
15 memorandum?

16 MR. ALMEIDA: My argument is just based on my
17 30-plus years of experience. The retailer is generally
18 responsible, unless there's a particular reason, or
19 there's something that's been found within the records
20 where it clearly -- my client, as it stands today,
21 provided these resale certificates knowing that they were
22 closed out. And, you know, ultimately intended -- I think
23 the auditor referred to the fact that they intended to buy
24 these products for resale. But if I'm new to the company,
25 and I don't issue a resale certificate, why should I be

1 held, or why should my company be held responsible?

2 It's -- it's a judgment call. But at the end of
3 the day, you can't just say that all the resale
4 certificates that are located with the vendors are valid.
5 It just doesn't make any sense to me, and I've never had
6 the experience having a purchaser be responsible when
7 there's closed out resale certificates on file with the
8 vendors.

9 JUDGE BROWN: So you're saying that your client
10 should be able to issue a resale certificate to the vendor
11 and then claim that the resale certificate is not valid,
12 and that means that your client should not owe the tax?

13 MR. ALMEIDA: I didn't say that. I specifically
14 addressed resale certificates that were issued way, way
15 back before the new company was put in place, and the new
16 employees came into work. By no means did I -- did I ever
17 say that. So, no, the --

18 JUDGE BROWN: Well, I was referring to the Edward
19 Spurlock Board memorandum opinion that says that -- hold
20 on, I forgot the wording -- a buyer cannot issue a resale
21 certificate to the seller and then deny the validity of
22 the resale certificate because it failed to include all
23 the eliminates of a valid resale certificate.

24 MR. ALMEIDA: No. The reason these resale
25 certificates are not valid is because the sales tax permit

1 has been closed way back; way before this particular
2 taxpayer under this new structure was involved. It has
3 nothing to do with issuing a resale certificate and then
4 saying it wasn't my intention. They were never involved.
5 Whoever issued the resale certificate back then doesn't
6 know what's going on today.

7 JUDGE BROWN: So you're saying that your client
8 didn't provide the resale certificate to -- these resale
9 certificates to the vendors?

10 MR. ALMEIDA: Well, I wasn't there, but I'm
11 assuming if the sales tax -- if the sales tax permit is
12 closed, at some point, those resale certificates become
13 invalid, and that's what I'm stating. At the time of this
14 particular audit, those resale certificates were stale.
15 They were no longer valid. The permit had been closed
16 years before. And, at that point in time, that's why
17 you're able to go on the CDTFA or BOE website and verify
18 that those permits are open or closed.

19 JUDGE BROWN: I'll say I have nothing further
20 right now. Thank you.

21 JUDGE WONG: Thank you.

22 Judge Aldrich, do you have any questions for
23 Mr. Almeida?

24 JUDGE ALDRICH: I do not. Thank you.

25 JUDGE WONG: Okay. Thank you.

1 I just had one question about the purchases at
2 issue. So you're not disputing that your client made
3 these purchases; is that correct?

4 MR. ALMEIDA: Absolutely not.

5 JUDGE WONG: Okay. Got it. All right. Thank
6 you. That's all the questions I have for now.

7 Now, we will turn it over to CDTFA for their
8 presentation.

9 You have 20 minutes.

10 MR. SMITH: Thank you.

11

12 PRESENTATION

13 MR. SMITH: Good afternoon.

14 At issue today is whether an adjustment should be
15 made to the amount of Appellant's unreported purchases
16 subject to use tax. Appellant is a construction
17 contractor that furnishes and installs flooring materials.
18 As relevant to this appeal for the liability period,
19 Appellant filed sales and use tax returns in which it
20 reported taxable sales of approximately \$5 million.
21 Appellant did not report any purchases subject to use tax
22 for the liability period. Appellant's accounts payable
23 journal recorded taxable purchases of materials of
24 approximately \$25 million. The Department allowed
25 reductions totaling approximately \$16.2 million, resulting

1 in unreported purchases subject to use tax of
2 approximately \$8.8 million for the liability period.

3 California imposes a sales tax on a retailer's
4 retail sales in this state of tangible personal property
5 measured by the retailer's gross receipts, unless the sale
6 is specifically exempt or excluded from taxation by
7 statute. All of a retailer's gross receipts are presumed
8 subject to tax, unless the retailer can prove otherwise.
9 The burden of proving that a sale of tangible personal
10 property is not a sale at retail is upon the person who
11 makes the sale, unless the seller takes from the purchaser
12 a resale certificate. The certificate relieves the seller
13 from liability for sales tax only if taken in good faith
14 from a person who is engaged in the business of selling
15 tangible personal property, and who holds a California
16 seller's permit.

17 Use tax is imposed on the storage, use, or other
18 consumption of tangible personal property purchased from
19 any retailer for storage, use, or other consumption in
20 this state measured by the sales price. Use means the
21 exercise of any right or power over tangible personal
22 property incident to the ownership of that property. If a
23 person who timely issues to the seller a valid resale
24 certificate makes any storage or use of the property,
25 other than retention, demonstration, or display while

1 holding such property for sale in the regular course of
2 business, the storage or use is taxable at the time the
3 property is first stored or used.

4 It is presumed that tangible personal property
5 sold by any person for delivery in this state is sold for
6 storage, use, or other consumption in this state until the
7 contrary is established; and that tangible personal
8 property shipped or brought to this state by the purchaser
9 was purchased for storage, use, or other consumption in
10 this state until the contrary is established. A person
11 who stores, uses, or otherwise consumes tangible personal
12 property in this state is liable for the tax. A person's
13 liability for the use tax is not extinguished until the
14 tax has been paid to this state, unless the person can
15 produce a receipt from a retailer engaged in business in
16 this state or otherwise authorized to collect the tax. In
17 general, construction contractors, like Appellant, are
18 consumers of the materials they furnish and install, and
19 either sales or use tax applies with respect to the sale
20 of materials or the use of materials by the construction
21 contractor.

22 Appellant is incorrect in its assertion that its
23 vendors should be solely liable for tax because they did
24 not exercise due diligence in accepting invalid resale
25 certificates from Appellant. First, we note that any lack

1 of due diligence on the part of the vendor is also
2 attributable to the Appellant because it was the person
3 that included invalid or incomplete information on the
4 resale certificates it issued to its vendors.

5 Next, when Appellant's entity type changed and it
6 continued to purchase supplies without paying tax on the
7 invoices, Appellant never corrected the information or
8 notified its vendors that the entity had changed. It is
9 Appellant's obligation to notify the vendors that it is
10 purchasing materials from without paying tax, that the
11 entity has changed. This principal is also discussed in
12 annotation 475.0175. Next, Appellant induced its vendors
13 into thinking the sales were for resale. It would be
14 improper to allow Appellant to escape liability for
15 supplies it consumed on the basis that the resale
16 certificates it issued were invalid. That's Revenue &
17 Taxation Code section 6244 subdivision (a).

18 This is identical to the situation in the Board
19 memorandum opinion of Edward Spurlock, in which the Board
20 held that a buyer cannot issue a resale certificate to a
21 seller and then deny the validity of the resale
22 certificate because the certificate failed to include all
23 the eliminates required for a valid resale certificate.
24 Thus, Appellant is liable for use tax on its sales for
25 which it issued invalid resale certificates and then

1 failed to remit tax on its use of property in construction
2 contracts in this state.

3 Next, Appellant continues to assert it is being
4 held liable for tax on purchases or did not issue a resale
5 certificate to its vendors. Appellant has not identified
6 any specific transactions where this occurred. Next, to
7 the extent Appellant asserts that it thinks some of the
8 resale certificates may have been forged, we note that no
9 other evidence has been provided, such as police reports,
10 establishing that there was any forgery. In addition, no
11 context has been provided, and it is unclear why someone
12 would forge a signature on a resale certificate so that
13 Appellant can purchase materials without tax. Regardless,
14 Appellant is liable for the materials it consumed without
15 paying tax at the time of purchase under section 6244.

16 Finally, the negligence penalty was properly
17 imposed because this was Appellant's second audit. It
18 made the same errors found in the first audit. In
19 addition, it made its reporting error of 175 percent.
20 This indicates that Appellant could not have had a good
21 faith and reasonable belief its reporting was
22 substantially in compliance. Thus, the negligence penalty
23 was properly imposed. Thus, no adjustments were warranted
24 to Appellant's liability for unreported use tax or the
25 negligence penalty.

1 This concludes my presentation. Thank you.

2 JUDGE WONG: Thank you, CDTFA.

3 I'll now turn to my co-panelists to see if they
4 have any questions for CDTFA, beginning with Judge Brown.

5 JUDGE BROWN: I don't think I have any questions
6 at this time. Thank you.

7 JUDGE WONG: Judge Aldrich?

8 JUDGE ALDRICH: I do not have any questions
9 either. Thank you.

10 JUDGE WONG: Okay. Thank you.

11 I don't have any questions at this time either.
12 So we will turn it back to Mr. Almeida for your rebuttal
13 and closing, and you have 23 minutes.

14 MR. ALMEIDA: Okay. Thank you very much.

15

16 CLOSING STATEMENT

17 MR. ALMEIDA: Yeah. I think there's a number of
18 things stated that clearly, I don't know for a fact; and
19 it's really based on speculation in my opinion. I mean,
20 induced the vendor to not charge them tax. Again, the
21 resale certificates that were provided at the time they
22 were actually provided, I can understand that being an
23 issue. However, we're talking about resale certificates
24 that were provided at that time that permit was open, not
25 at the time that the audit was being performed on the new

1 permit.

2 And the mere fact that the statement -- and I
3 know this has been going on throughout the -- the appeals
4 process -- that the client, HM Carpet, Inc., intended for
5 those transactions that occurred after the closing, and
6 that they were intended to be purchased for resale, that
7 once, again, is speculation. I can tell you this, the
8 audit probably took so much longer than necessary. And,
9 again, I don't know who represented the client at the
10 time, but I can see the guidance not occurring. And
11 that's one of the issues I have with the way the CDTFA
12 works today and the way that some of the cases are being
13 approached.

14 You make a decision as to somebody owing the tax,
15 but in a situation where maybe you're suggesting that
16 entry fees are taxable in a particular case that I have,
17 but there's no guidance being given to the taxpayer, that
18 puts them at a disadvantage. So the fact that there was
19 resale certificates on file that at one time were valid --
20 and, again, this is where it differs from the -- from the
21 Spurlock case, because the client did not issue closed out
22 permit resale certificates at the time that these
23 transactions were -- that are questioned in the audit --
24 or actually assessed in the audit were a factor.

25 In addition to that, vendors can do just the same

1 as anybody else after the fact of the transaction, which
2 means, okay, they get a call from an auditor. They panic.
3 Now they're in a position where, oh, we don't have a
4 resale certificate from that particular vendor or
5 customer. Let's get their permit number, and let's put it
6 on the resale certificate, and let's just sign it. And
7 that's what we believe occurred in a number of these
8 resale certificates where the signature of one of the
9 corporate officers did not match the signature from, let's
10 say, the power of attorney or the waiver of limitation
11 that was signed at the time I was representing them. So
12 that doesn't necessarily -- that's just speculation. It
13 does not necessarily give me anything concrete.

14 In addition to that, police report -- well, doing
15 a police report in a case where the CDTFA is basically
16 saying that these resale certificates are valid, at no
17 point in time during the audit process, that somebody come
18 to us and say, okay, if you can get a police report that
19 suggest or that can prove that the signature is invalid,
20 then that will be proof. At the end of the day, all I did
21 was I used the signature on the power of attorney and the
22 waiver of limitation and compared it to the resale
23 certificates we had. Simply as that, because we know that
24 the signature on the POA and the -- and the waiver are
25 going to be the typical signature from that particular

1 person. So that's how we compared it.

2 But no, at no point in time, have we done that --
3 have we ever done that. I didn't even know you could
4 actually request a police report if you felt that the
5 resale certificates were being questioned simply because
6 of the signatures that does not match. But it's not
7 uncommon, and that's why generally -- and I think the
8 Department stated it -- resale certificates generally are
9 require a good-faith agreement between the purchaser and
10 the seller. If we didn't issue a timely resale
11 certificate with the proper permit number, then there is
12 no agreement between the buyer and the seller. And the
13 seller should do their due diligence and verify that that
14 permit has closed out and that there's a new one open.

15 Every audit -- again, I repeat. Every audit I
16 have been involved with where the retailer is being,
17 questioned, that's the fall back. Hey, did you verify
18 online? That's why we give you the opportunity to do
19 that. Is the date correct? Is the signature the
20 appropriate person? Do you have a profile on the client
21 that has the signature? Because generally, you're going
22 to have a credit report, or you're going to have some
23 credit information that's going to have a copy of that
24 signature.

25 But, at the end of the day, I don't know if the

1 vendor has basically asked the client -- my client for the
2 permit number but, again, they had the old one. If you
3 have the new one, that might be a different scenario that
4 we would -- you know, probably wouldn't be here for that.
5 But -- but we're talking about an old permit number that
6 had been closed, you know, several years back. So, in my
7 opinion, these -- the points that the Department made are
8 not valid, and it's only speculative.

9 JUDGE WONG: Does that conclude your closing
10 remarks, Mr. Almeida?

11 MR. ALMEIDA: Yes.

12 JUDGE WONG: Okay. Thank you very much.

13 MR. ALMEIDA: Thank you.

14 JUDGE WONG: All right. For one final time, I
15 will turn to my co-panelists to see if they have any
16 questions for either party, starting with Judge Brown.

17 JUDGE BROWN: No questions. Thank you.

18 JUDGE WONG: Judge Aldrich?

19 JUDGE ALDRICH: I do have a couple of questions.
20 The first is for Appellant.

21 There's no dispute -- to follow up on
22 Judge Wong's question earlier. There's no dispute that
23 the purchases were ex tax; is that correct?

24 MR. ALMEIDA: Based on my knowledge -- and,
25 again, I didn't do the detailed review. But based on the

1 sampling that we did, that is correct.

2 JUDGE ALDRICH: Thank you.

3 And for the Department, the Department made
4 reference to -- or CDTFA made reference to the prior
5 audits. In what ways was prior audits similar to the
6 audit at issue?

7 MR. PARKER: The prior audit was also based on
8 materials accountability test. So they looked at
9 purchases and ex tax purchases and came up with an
10 assessment in that audit as well. So it's similar in this
11 situation that they had some resale certificates in the
12 prior audit. Similar vendors that were in this audit as
13 well that were found to be subject to use tax.

14 JUDGE ALDRICH: Okay. And so there was an
15 issue -- was there the issue raised regarding the validity
16 of the resale certificates in the prior audit?

17 MR. PARKER: Based on some quick analyses, it
18 looked like there were some questioned resale certificates
19 or resale certificates that may not have been issued.
20 There were some adjustments for vendors where the -- where
21 we didn't have a resale certificate for those vendors.
22 They made that in the material accountability test.

23 JUDGE ALDRICH: And just to make sure I'm looking
24 at the correct things, in Exhibit E, there's two files.
25 So there's a multiple file PDF and Excel. There's a

1 document labeled Exhibit A, Prior Audit, and Exhibit B,
2 Prior Audit. Are those the things that you're
3 referencing?

4 MR. PARKER: Yes, they are.

5 JUDGE ALDRICH: Okay. All right. And does the
6 Department see any distinguishment between negligence and
7 intentional disregard, with respect to the negligence
8 penalty?

9 MR. NOBLE: I'm not sure the context of your
10 question. I mean --

11 JUDGE ALDRICH: Right. So Revenue & Taxation
12 Code section 6484 provides that if any part of a
13 deficiency for which a deficiency determination is made,
14 is due to negligence or intentional disregard of the law.
15 Is it accurate that the Department is only arguing that
16 negligence occurred in this particular appeal?

17 MR. NOBLE: No. I think it would be proper to
18 say the Department thinks that a 10 percent penalty is
19 warranted in this appeal. There are elements of
20 negligence in reporting, but there are also obvious
21 elements of intentional disregard with the law by issuing
22 invalid resale certificates.

23 JUDGE ALDRICH: Okay.

24 MR. NOBLE: We just think the evidence amounts to
25 a 10 percent penalty.

1 MR. SMITH: And it's also not informing its
2 vendors that it changed the entity.

3 JUDGE ALDRICH: Thank you.

4 I'm going to refer it back to the Judge Wong.

5 JUDGE WONG: Thank you.

6 I have one question for CDTFA.

7 I noticed that there were some excerpts from, I
8 guess, the audit working papers from that prior audit you
9 referenced but, the whole -- there are just excerpts.
10 There are no full audit working papers; is that correct?

11 I just want to make sure that the record is
12 complete.

13 MR. PARKER: That's my understanding, is that
14 we -- the prior -- this current audit included certain
15 parts that were relevant to this audit, which included the
16 material accountability test and the reporting of gross
17 sales from the prior audit as well to compare the two
18 audits.

19 JUDGE WONG: Okay. Got it. Do you happen to
20 know what the measure was with regards to that audit item
21 in the previous audit that is similar -- like, it's
22 essentially similar to the audit item at issue here,
23 purchase subject to use tax?

24 MR. PARKER: I can double check, but the
25 Exhibit B has just over \$12 million in measure of

1 unreported ex tax purchases of material in the material
2 accountability test.

3 JUDGE WONG: Okay. And the issue with that is
4 similar to the issue here? Is it just resale certificates
5 that were invalid or --

6 MR. NOBLE: The issue is that they were -- the
7 measures are unreported purchases subject to use tax. And
8 we're seeing a similar issue in this audit around.

9 JUDGE WONG: Okay. All right. One last question
10 for Mr. Almeida.

11 Could you address that there is a previous audit
12 of your client with a similar issue, purchases that are
13 subject to use tax that were not reported.

14 MR. ALMEIDA: That's correct. But I want to
15 clarify one thing. The audit that is in question here
16 today, those resale certificates that we are asking to be
17 removed from the audit, were actually based on previous
18 issuance, not during the audit period, not at that time.
19 So those resale certificates -- the client didn't just
20 issue resale certificates today and backdate it to 10,
21 15 years back. That's not the case. So, at no point in
22 time during my audit period. There may have some resale
23 certificates, but the ones that we're referring to, the
24 bulk of them, the majority, those were old resale
25 certificates issued by someone else at that time, not

1 during this audit.

2 I'm not as familiar with the prior audit, but my
3 understanding is that similar issues did occur. And my
4 concern -- my biggest concern going into this audit, and
5 part of the reason I believe the negligence penalty or the
6 10 percent penalty is not applicable, is because under any
7 condition where you have a prior audit, and the situation
8 hasn't been resolved, and there hasn't been guidance
9 given, this could happen. Because the audit takes so long
10 you can't -- I mean, honestly, you can't make changes
11 until the decision has been made. And I can honestly say
12 that it seemed to me like -- when I got involved, the
13 client seemed to be somewhat uneducated when it comes to
14 understanding what the resale certificate does when it
15 comes to having lump sum contracts for a construction
16 contractor.

17 And I can tell you I do a lot of work in that
18 area -- that industry, and that is confusing because they
19 think they're reselling it. So the issue, the resale
20 certificate, the question then becomes, okay, did they
21 have knowledge that they were supposed to put those
22 particular items on line 2, those purchases and pay the
23 use tax? And that is one of the more complex and
24 misunderstood portions of the California sales and use tax
25 laws when it comes to, you know, are you a time and

1 material contractor? Or are you a lump sum contractor,
2 and you're the consumer? And that's -- at the end of the
3 day, that's really what it come down to, in my opinion.

4 JUDGE WONG: All right. Thank you, Mr. Almeida.

5 MR. ALMEIDA: Thank you.

6 JUDGE WONG: I have no other questions for the
7 parties.

8 All right. This will conclude the hearing. The
9 record is closed, and the case is submitted today.

10 The panel will meet and decide the case based on
11 the exhibits presented and admitted as evidence. We will
12 send both parties our written decision no later than
13 100 days from today. The oral hearing in this case is now
14 adjourned.

15 Hearings will resume tomorrow at 9:30 a.m.

16 And thank you to both parties for your time and
17 presentations.

18 Off the record. Thank you.

19 (Proceedings adjourned at 1:44 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 20th day
of May, 2025.

ERNALYN M. ALONZO
HEARING REPORTER