

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
EAST WEST BANK,) OTA NO. 240115150
)
)
 APPELLANT.)
)
)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, July 16, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead:	ALJ TERESA A. STANLEY
Panel Members:	ALJ JOSH ALDRICH ALJ SHERIENE ANNE RIDENOUR
For the Appellant:	ROGER WANG
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION JENNIFER BARRY JARRETT NOBLE JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-16 were received into evidence at page 6.)

(Department's Exhibits A-D were received into evidence at page 6.)

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California; Wednesday, July 16, 2025

2:52 p.m.

JUDGE STANLEY: We're going on the record in the Appeal of East West Bank, Office of Tax Appeals Case No. 240115150. The date is July 16, 2025, and the time is 2:52 p.m. The hearing is being held electronically by the agreement of the parties.

Once, again, I am Judge Teresa Stanley. I will be the lead for purpose of conducting the hearing. My co-panelist, Judge Aldrich, Judge Ridenour, and I are equal participants in deliberating and determining the outcome of this appeal.

I'd like to the parties to introduce themselves and identify who they represent, starting with you, Mr. Wang.

MR. WANG: This is Roger Wang. Good afternoon, again, representing Appellant East West Bank.

JUDGE STANLEY: And CDTFA.

MS. BARRY: Jennifer Barry, Attorney III, representing the Department.

MR. NOBLE: Jarrett Noble, Attorney IV, representing the Department.

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

1 JUDGE STANLEY: Thank you.

2 As stated in the Minutes and Orders, the issue to
3 be decided in this appeal is whether Appellant is entitled
4 to a refund of excess tax paid to an out-of-state vendor
5 in connection with a purchase that was not subject to
6 California sales or use tax.

7 Mr. Wang, do you agree that that's the issue?

8 MR. WANG: Yes.

9 JUDGE STANLEY: And Ms. Barry?

10 MS. BARRY: Yes.

11 JUDGE STANLEY: Okay. Great. Appellant
12 submitted Exhibits 1 through 16. CDTFA did not object to
13 the admissibility of those exhibits, and they are admitted
14 into evidence at this time.

15 (Appellant's Exhibits 1-16 were received into
16 evidence by the Administrative Law Judge.)

17 JUDGE STANLEY: CDTFA submitted Exhibits A
18 through D. Appellant did not object to the admissibility
19 of those exhibits, and they are also admitted into
20 evidence.

21 (Department's Exhibits A-D were received into
22 evidence by the Administrative Law Judge.)

23 JUDGE STANLEY: Neither party intends to call any
24 witnesses to testify today, so I would not need to swear
25 anybody in.

1 Mr. Wang, you requested 30 minutes for your
2 presentation. So you can proceed when you're ready.

3 MR. WANG: Yes, I am. Thank you, Judge Stanley.
4

5 PRESENTATION

6 MR. WANG: Good afternoon, again.

7 Today, before the panel, is a case about the
8 California Department of Tax and Fee Administration or the
9 CDTFA's negligence and intense disregard of the law, based
10 on the evidence and the law that is relevant to the
11 transaction on the appeal. Again, details of the
12 transaction are found in the invoice referenced at
13 Exhibit 1.

14 First off, without any exceptions, the law is
15 very clearly about excess refund of excess sales and use
16 tax collected by the CDTFA. Subdivision B lower case b of
17 Revenue & Taxation Code or R&TC section 6901, declares
18 that any -- any overpayment of the use tax by a purchaser,
19 i.e., Appellant in this case, to a retailer, i.e.
20 Enterprise Network Solutions, or ENS, who is required to
21 collect the tax, and whose -- is whose gives the purchaser
22 received, therefore, i.e., Exhibit 1, shall be credited or
23 refunded by the State, i.e., the CDTFA to the purchaser.

24 This -- this specific rule of use tax refund is
25 further reenforced by the CDTFA in California Sales and

1 Use Tax Regulation 1684. Subdivision H lower case (h) of
2 this regulation promulgates that no use tax overpayment
3 shall be made to the retailer, even though the retailer
4 has paid the excess collection to the CDTFA, because R&TC
5 section 6901 requires that payment of use tax be credited
6 and refunded only -- only to the purchaser who made the
7 overpayment.

8 To distinguish, sales tax collection from the use
9 tax collected by not California retailers, like ENS, the
10 CDTFA issues a use tax permit commonly known as
11 certificate of registration use tax to these retailers as
12 required under subdivision D lower case E of Regulation
13 1684. Additional information about this use tax permit
14 and related use tax collection require of non-California
15 retailers is available in the CDTFA's possession or
16 discussion papers; reference is as Exhibits 5 and 6,
17 notably pages 6 through 8 in Exhibit 5. That is the law.

18 Now, as the panel browses through the evidence
19 presented by Appellant, it is undeniable that the excess
20 tax amount on page 2 of Exhibit 1, collected by ENS and
21 paid to the CDTFA is a use tax overpayment based on the
22 related corroborating evidence. First, in terms of the
23 corroborating evidence as displayed in Exhibit 2, ENS tax
24 permit or account start with two notable alphabet letters
25 S and Z. And pursuant to Exhibit 7 and 7.1, that's our

1 excerpts from the CDTFA's Audit Manual. These two
2 letters, again, S Z, are specially designated and used
3 only for certificates of registration use tax permit
4 holders like ENS.

5 Here, it should be noted that besides the use tax
6 overpayment made on this ENS transaction under appeal,
7 Appellant also pay hundreds -- hundreds of identical use
8 tax overpayments to other non-California retailers.
9 Exactly identical in terms of both forms and fact patterns
10 pertaining to all the invoices. The only difference
11 between these overpayments and that collected from ENS is
12 that the CDTFA has refunded all these identical use tax
13 overpayments to Appellant.

14 To wrap up, as of today and as confirmed in
15 Exhibits 14 through 16, the CDTFA still has not refunded
16 the use tax collected from ENS, the use tax overpayment
17 collected from ENS to Appellant, even though the tax --
18 the law clearly requires the CDTFA to do so.

19 Thank you.

20 Now, Appellant welcomes any questions the panel
21 may have.

22 Oh, by the way, earlier mention the identical use
23 tax of overpayment made to other non-California retailers,
24 several proofs of this pay use tax refund are found in
25 Exhibits 10 through 11.1.

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Thank you.

JUDGE STANLEY: Thank you, Mr. Wang.

Judge Aldrich, do you have any questions for Appellant?

JUDGE ALDRICH: Not at this time. Thank you.

JUDGE STANLEY: Judge Ridenour, do you have any questions?

JUDGE RIDENOUR: Also not at this time. Thank you.

JUDGE STANLEY: Okay. I may have one, but I'll hold it until after CDTFA's presentation to see if I still have the same question.

Ms. Barry, you requested 20 minutes for your presentation. So you may proceed when you are ready.

PRESENTATION

MS. BARRY: This appeal centers around a claim for refund that Appellant filed with the Department on July 30th, 2014, for the period April 1, 2011, through December 31, 2011, in the amount of \$10,822.88. A copy of Appellant's claim for refund is available as Exhibit C. Appellant's claim for refund relates to a transaction with its vendor Enterprise Network Solutions. The transaction is described on purchase invoice No. INV 4070A. That invoice is dated August 1, 2011, and shows that Appellant

1 purchased, among other things, computer hardware,
2 software, and licenses from Enterprise Network Solutions.
3 The invoice is available on pages 15 and 16 of Exhibit A.

4 The invoice included the \$10,822.88 charged for,
5 quote, "sales tax," which Enterprise Network Solutions
6 subsequently remitted to the Department. Despite
7 Enterprise Network Solutions charging and Appellant paying
8 the charge for sales tax, it is undisputed that the
9 transaction was not subject to California sales or use tax
10 because Enterprise Network Solutions shipped the property
11 in question from Arizona to Appellant's branch location in
12 Arizona for use in Arizona. Accordingly, on
13 November 18th, 2013, Enterprise Network Solutions filed a
14 claim for refund with the Department seeking a refund of
15 the \$10,822.88 in excess tax reimbursement that it
16 erroneously remitted to the Department for that invoice at
17 issue. Enterprise Network Solutions claim for refund is
18 available on page 17 of Exhibit A.

19 Enterprise Network Solutions also notified
20 Appellant of the error and pending claim for refund by
21 email, dated December 4th, 2013, and providing -- by
22 providing Appellant a Notice of Pending Refund of excess
23 sales tax reimbursement on form BOE 52-L2, dated
24 December 5th, 2013. A copy of the email and form are
25 available on pages 18 and 19 of Exhibit A. Along with the

1 email and form, on December 4th, 2013, Enterprise Network
2 Solutions issued a credit memorandum for the corresponding
3 charge and a separate invoice in the amount of \$9,957.04
4 for the corresponding amount of Arizona sales tax to
5 Appellant. The credit memo and invoice for the Arizona
6 sales tax are available on pages 22 and 23 of Exhibit A.

7 Thus, on December 4th, 2013, Enterprise Network
8 Solutions refunded Appellant the erroneously collected
9 California sales tax reimbursement attributable to the
10 original transaction and applied the refund amount as a
11 credit towards Arizona sales tax imposed on that
12 transaction. Thereafter, the Department issued a Notice
13 of Refund, dated May 16, 2014, granting Enterprise Network
14 Solutions claim for refund. This Notice of Refund is
15 available on pages 20 and 21 of Exhibit A.

16 As a general matter, pursuant to Revenue &
17 Taxation Code section 6051 and 6091, California imposes
18 sales tax on a retailer for its retail sales in the state
19 of tangible personal property measured by the retailer's
20 gross receipts, unless the sale is specifically exempt or
21 excluded from -- from taxation by statute. Where sales
22 tax does not apply, Revenue & Taxation Code section 6021
23 imposes use tax on the storage, use, or other consumption
24 in this state of tangible personal property purchased for
25 use in this state, unless the use is excluded or otherwise

1 exempt.

2 However, neither the sales tax nor the use tax is
3 imposed on retail sales of tangible personal property
4 occurring outside of California for storage, use, or
5 consumption outside the state. Additionally, sales tax is
6 legally imposed on the retailer, not the consumer. Civil
7 Code Section 1656.1 subdivision (a), authorizes a retailer
8 to collect sales tax reimbursement from its customers on
9 the sales price of tangible personal property sold at
10 retail. A retailer's collection of sales tax
11 reimbursement does not shift the legal liability for the
12 tax to the customer. It merely -- it is merely
13 reimbursement for the sales tax imposed on the retailer.

14 JUDGE STANLEY: Ms. Barry?

15 MS. BARRY: Yes.

16 JUDGE STANLEY: Can you slow down just a little
17 bit.

18 MS. BARRY: Sure.

19 JUDGE STANLEY: Thank you.

20 MS. BARRY: Do you need me to repeat anything?

21 No. Okay.

22 Pursuant to Civil Code section 1656.1 and
23 Regulation 1700 subdivision (a) paragraph 2, subparagraph
24 capital B, when sales tax reimbursement is shown on the
25 sales check or proof of sale, it is presumed that the

1 parties agreed to addition of sales tax reimbursement to
2 the sales price of tangible personal property sold at
3 retail to the purchaser.

4 As explained in Appeal of Body Wise
5 International, LLC, the citation of which is
6 20022-OTA-340P, there's a statutory presumption that tax
7 collected is a sales tax reimbursement where the following
8 apply: First, tangible personal property was sold;
9 second, the sale was at retail; and third, the retailer
10 charged an amount for sales tax reimbursement on the
11 document of sale. With regard to the collection of excess
12 tax reimbursement, Revenue & Taxation Code section 6901.5,
13 along with Regulation 1700, provide that when an amount
14 represented by a person to a customer as constituting
15 reimbursement for sales tax is computed upon an amount
16 that is not taxable or is in excess of the taxable amount
17 and is actually paid by the customer to the person, the
18 amount so paid is excess tax reimbursement.

19 Regulation 1700 further explains that excess tax
20 reimbursement is charged when, among other situations,
21 reimbursement is computed on a transaction that is not
22 subject to tax. Body Wise International also makes clear
23 that it is not necessary for a sale, purchase, or any
24 other type of transfer for consideration to be subject to
25 California's sales tax in order for the excess tax

1 reimbursement provisions of Revenue & Taxation Code
2 section 6901.5 to apply.

3 Once the retailer has remitted the tax
4 reimbursement to the Department to submit a -- sorry.
5 Once the retailer has remitted the tax reimbursement to
6 the Department, the sole legal avenue available for
7 determining the proper application of tax is for the
8 retailer to submit a claim for refund under Revenue &
9 Taxation Code section 6901 and following. This is also
10 set forth in the Business Tax Law Guide annotation
11 No. 460.0028. Pursuant to Revenue & Taxation Code
12 section 6901.5 and Regulation 1700 subdivision (b)
13 paragraph 2, whenever the Department ascertains that a
14 person has collected excess sales tax reimbursement, the
15 person will be afforded an opportunity to refund the
16 excess collections to the customers from whom they were
17 collected.

18 In the event of failure or refusal of the person
19 to make such refunds, the Department will make a
20 determination against that person for the amount of the
21 excess tax reimbursement collected and not previously paid
22 to the State, plus applicable interest and penalty. There
23 is no provision in the law for an action on the part of a
24 non-taxpayer, the purchaser, to dispute the application of
25 tax. Revenue & Taxation Code section 6901 provides, in

1 pertinent part, that if the Department determines that any
2 amount of tax, penalty, or interest has been erroneously
3 or illegally collected, and the Department determines that
4 the amount was not required to be paid, the Department is
5 required to credit or refund that amount to the person
6 from whom the money was collected or by whom it was paid.

7 Under Revenue & Taxation Code section 6901
8 subdivision (b), any overpayment of the use tax by a
9 purchaser to a retailer who is required to collect the tax
10 and who gives the purchaser a receipt, therefore, is to be
11 credited or refunded by the State to the purchaser. A
12 person who paid use tax has standing to file a claim for
13 refund of any such use taxes that the person claims is
14 overpaid. As set forth in *Honeywell Incorporated versus*
15 *State Board of Equalization* and Code of Civil Procedure
16 section 720.360, a third party claiming a refund, in this
17 case Appellant, bears the burden of establishing his or
18 her entitlement to the refund.

19 Turning to the facts of this case, we first note
20 that the invoice for this transaction clearly and
21 explicitly states that the tax charged and collected upon
22 the tangible personal property sold there under was sales
23 tax. This designation on the invoice triggers the
24 statutory presumption set forth in Civil Code section
25 1656.1, that the amount for sales tax reimbursement is

1 sales tax reimbursement.

2 As noted in Body Wise International, it is not
3 necessary for the invoice to use the exact phrase
4 "California sales tax reimbursement" in order for the
5 statutory presumption to apply. The Court in Loeffler v.
6 Target Corporation similarly held that a charge labeled
7 simply sales tax on an exempt food sale constituted excess
8 sales tax reimbursement. In this case, the invoice uses
9 the term, quote, "sales tax 8.75 percent," and Enterprise
10 Network Solutions subsequently remitted that corresponding
11 amount to the Department. Thus, the statutory presumption
12 set forth in Civil Code section 1656.1 applies here.

13 Moreover, as set forth in Body Wise
14 International, under the sales and use tax law, it is not
15 necessary for a sale purchase or any other type of
16 transfer for consideration to be subject to California
17 sales tax in order for the excess tax reimbursement
18 provisions of Revenue & Taxation Code section 6901.15 to
19 apply. And the requirements of that section apply,
20 whether the underlying transaction is nontaxable, taxable,
21 or exempt. In this case, as stated earlier, it is
22 undisputed that Appellant's purchase of the tangible
23 personal property in this transaction was not subject to
24 California sales or use tax, since the sale both occurred
25 in Arizona and was for use by Appellant in Arizona.

1 Thus, Enterprise Network Solutions charge and
2 collection of California sale tax reimbursement for this
3 invoice from Appellant upon a nontaxable transaction was,
4 by its very nature, excess tax reimbursement under
5 Revenue & Taxation Code section 6901.5 and
6 Regulation 1700. Moreover, the Department followed
7 applicable statutory law and procedures to review
8 Enterprise Network Solutions's claim for refund, and
9 correctly refunded the amount to Enterprise Network
10 Solutions. As discussed in Loeffler v. Target
11 Corporation, under the procedures established by the sales
12 and use tax law, the Department can ascertain whether
13 excess reimbursement was charged during an audit, during a
14 deficiency determination proceeding, or in reviewing a
15 taxpayer's claim for refund.

16 However, Revenue & Taxation Code section 6901.5
17 provides no procedure by which consumers, such as
18 Appellant, can require the Department to ascertain whether
19 excess tax reimbursement has, in fact, been charged.
20 However, this is exactly the remedy that Appellant is
21 seeking. Appellant's suggestion that the transaction
22 involved use tax rather than sales, ignores the undisputed
23 fact that this transaction was not subject to any tax,
24 whether sales or use, in California. Additionally,
25 Appellant relies on Revenue & Taxation Code section 6901

1 subdivision (b) to support its contention that the
2 Department must refund the amount Enterprise Network
3 Solutions remitted to the Department to Appellant.

4 Regulation 1684 subdivision (h), which governs
5 the refund of excess collections of use tax by a retailer,
6 requires the Department to refund these collections to the
7 purchaser when it ascertains that the retailer has either
8 collected use tax from a customer in excess of the amount
9 required or has collected from a customer an amount which
10 was not taxed but was represented by the retailer to the
11 customer as being use tax. Neither of these circumstances
12 are present here.

13 As a threshold matter, for Revenue & Taxation
14 Code section 6901 subdivision (b) and Regulation 1684
15 subdivision (h) to apply, the transaction must have been
16 subject to use tax in the first place. As we have noted,
17 Enterprise Network Solutions was not required to collect
18 or remit any California tax and, certainly, not use tax on
19 the transaction at issue here because the transaction was
20 not subject to California sales or use tax in the first
21 place.

22 Moreover, as discussed above, the invoice
23 explicitly describes the charge as sales tax, not use tax.
24 So there was no representation by Enterprise Network
25 Solutions that it was collecting use tax from Appellant.

1 Thus, Appellant's assertion that Revenue & Taxation Code
2 section 6901 subdivision (b) governs this claim for refund
3 is without merit. Appellant has not, therefore,
4 established that it is entitled to the refund that it
5 seeks.

6 Finally, it should be emphasized that the heart
7 of Appellant's contention is that the tax was erroneously
8 allocated to California by Enterprise Network Solutions
9 and later improperly reallocated to the state where the
10 sale was subject to tax. Hence, Appellant is essentially
11 arguing that it be unjustly enriched by granting it a
12 refund for the tax collected on the initial transaction.
13 And Appellant is attempting to assert that California
14 should reclassify the line charged for sales tax as use
15 tax simply because Appellant believes such
16 reclassification benefits their appeal. Therefore,
17 granting an additional refund to Appellant here would
18 result in Appellant being twice refunded for the same
19 charge without any legal basis to do so.

20 As discussed earlier, Enterprise Network
21 Solutions issued a credit memo and invoice for the
22 applicable Arizona sales tax to Appellant on
23 December 4th, 2013. To the extent that Appellant may
24 believe that Enterprise Network Solutions has erroneously
25 applied the credit amount to Arizona sales tax for the

1 transaction, Appellant's dispute is with Enterprise
2 Network Solutions, not the Department. Were Appellant to
3 receive a refund from the Department now, Appellant would
4 receive a windfall, while the State of California would
5 effectively offset the burden of Arizona sales tax on this
6 transaction for Appellant. There is no basis in law to
7 support such a result.

8 Thank you.

9 JUDGE STANLEY: Thank you, Ms. Barry.

10 Judge Aldrich, do you have any questions for the
11 Department?

12 JUDGE ALDRICH: Yeah, one quick question for the
13 Department.

14 So according the CCP 1656.1 the presumption is
15 rebuttal. How would one go about rebutting that
16 presumption?

17 MR. NOBLE: I have some information on that. If
18 we had a transaction that was indicative of use tax, such
19 if the shipment invoice notice that East West Bank was
20 receiving property in California versus in Arizona, we may
21 have an erroneous collection of use tax there. The
22 problem we have with this case is that there was no tax
23 subject at all. So that may be a situation where use tax
24 was erroneously charged and collected.

25 And, again, we would look at the invoice to make

1 sure that it had a designation for tax or use tax,
2 something along those lines; certainly, not a sales tax
3 designation on the invoice.

4 JUDGE ALDRICH: And one more question, and this
5 might be better director to Mr. Parker. But the 8.75 rate
6 that appears on the invoice, is that consistent with any
7 sales tax rate at that time in California?

8 MR. PARKER: Yes. I believe we had 8.75 tax
9 rates during that time.

10 JUDGE ALDRICH: Thank you.

11 No further questions from me, Judge Stanley.

12 JUDGE STANLEY: Judge Ridenour, do you have any
13 questions?

14 JUDGE RIDENOUR: No questions. Thank you.

15 JUDGE STANLEY: Okay. And I just have one
16 clarifying one for Mr. Wang. It sounds like the property
17 was never brought into California. So it was never stored
18 in California or delivered. I know it was delivered in
19 California, but it was never -- I mean, to Arizona. I'm
20 sorry. But it was never delivered -- it was never in
21 California, right?

22 MR. WANG: Yes.

23 JUDGE STANLEY: Okay. Mr. Noble.

24 MR. NOBLE: I just want to note, like, if we had
25 situations where it looked like the evidence indicated

1 that there was a potential of a use tax liability versus
2 sales tax liability, we would look at whether a refund was
3 granted to vendor or the taxpayer here. So the dispute we
4 have is the fact that this was not subject to any
5 California tax, and it never entered California, hence the
6 problem. So --

7 JUDGE STANLEY: Okay. Mr. Wang, you can have
8 5 minutes to make any final statement that you wish to.

9 MR. WANG: Yes. In addition to that,
10 Judge Stanley, you know, since you know I'm going to have
11 some more information, so could I -- can I use, you know,
12 some of the remaining time of my presentation to address
13 and know the issue presented by the CDTFA?

14 JUDGE STANLEY: By --

15 MR. WANG: In addition to the 5 minutes, yeah.

16 JUDGE STANLEY: Excuse me, but you want to
17 address an issue that they --

18 MR. WANG: No. I know it's rebuttal, you know,
19 rebuttal. You know, like -- within -- yeah. Our time is
20 allotted about 5 minutes. My question is that, since, you
21 know, we still have -- yeah, Appellant still has some
22 remaining time in his -- his presentation. Can we -- can
23 Appellant use some of -- those additional time in addition
24 to the 5 minutes allotted to it? No. That's my question.

25 JUDGE STANLEY: Oh, I see. I see. You didn't

1 take all of your 30 minutes at the beginning.

2 MR. WANG: Exactly.

3 JUDGE STANLEY: So you want to have --

4 MR. WANG: That's it. Yes.

5 JUDGE STANLEY: You want more than 5 minutes now?

6 MR. WANG: Yeah. Yeah. That's my question,
7 yeah. I apologize for not being clear on that.

8 JUDGE STANLEY: Okay. You can proceed.

9

10 CLOSING STATEMENT

11 MR. WANG: Yes. First and foremost, in rebuttal
12 to the presentation by the CDTFA, Appellant would like to
13 clarify something regarding the code section of the --
14 yeah, of Revenue & Taxation Code. The code section 6901
15 first of all, that the one, the first issue, you know.
16 Appellant want to address it. The 6901.5 Code section
17 only applies -- okay. Let me step back.

18 Both Code section 6901 and 6901.5 address no
19 refund of excess sales and use tax collected by the CDTFA,
20 now more important. But the only difference is that 6901
21 would apply in this case if -- only if the excess tax
22 amount collected by ENS did not pay to the CDTFA. That is
23 very -- that is the -- the -- the only distinction whether
24 you know it -- which Code section applies. First of all,
25 if as a retailer, on my invoice the sales tax amount, it's

1 up to me whether I term -- I label that as a sales tax and
2 some other.

3 In this case, ENS label it as a sales tax. But
4 other some retailers labels the sales forward slash use
5 tax on their invoice. And that amount -- that tax amount
6 is coming -- is well known as excess reimburse tax, if the
7 tax reimbursement. Any -- when -- when this -- when
8 there's a tax amount collected by a retailer, that is
9 known a term it's within the R&TC, the California sales
10 and use tax purposes. It's term is tax reimbursement.
11 Now, excess tax reimbursement say, oh, it's the same as
12 tax overpayment.

13 In 6901.5, the term excess tax reimbursement kind
14 of like overuse by the CDTFA as a sales tax overpayment.
15 No, it's not. It's only said excess tax reimbursement can
16 be either excess sales tax reimbursement or excess use tax
17 reimbursement. But once, you know, in this case, the
18 excess tax amount in this case already paid to the CDTFA
19 by ENS. Then, you know, that Code section 6901.5 no
20 longer applies, and now it's only the -- in that
21 situation, 6901 is the only section -- only statute
22 applies in this case.

23 Yeah, and that's true. I agree with the CDTFA
24 that 6901.5, of course, allows no -- the -- a retailer to
25 either re -- yeah, return the collector -- the over

1 collected tax amount back to the customer or pay to the
2 state. Now, because ENS already pay to the State, the
3 CDTFA, 6901.5 no longer apply. Out of the picture. It's
4 only 6901 applies. And then, you know, when it come to
5 6901, the -- the CDTFA already have the money in its hand,
6 and it's have to figure out is this a use tax error or a
7 sales tax error.

8 Oh, by the way, if it's knows -- highly
9 noticeable that in 60 -- in within the language of 6 --
10 language of Code section 6901 is that any -- the state --
11 the code -- the statute per any in there. Any means that
12 overpayment may result in inaccurate tax rate or, you
13 know, like double taxation. And even though the case, you
14 know, in this case, a transaction should have been subject
15 to -- the tax on this transaction should have been
16 collected and paid to the CDTFA because they probably
17 never set foot inside this state.

18 So -- so that if, you know, that kind of, you
19 know, like if -- if saying that assertion that
20 section 6901 -- Code section 6901, especially
21 subdivision (b), does not apply to this -- any to this
22 situation. It's invalid. It's no basis. Has no basis in
23 the eye of the law.

24 MR. WANG: Go ahead, Mr. Noble. If you want to
25 jump, jump in. You're welcome to jump in.

1 JUDGE STANLEY: Okay. Is this the right timing,
2 Mr. Noble?

3 MR. NOBLE: I -- I will wait for you to defer to
4 me to answer. I just wanted to offer a response, but I'm
5 not going to interject and interrupt anybody.

6 JUDGE STANLEY: Okay.

7 MR. WANG: No. Go ahead. Yeah.

8 JUDGE STANLEY: Okay. So you wanted to respond
9 to a question that was just raised?

10 MR. NOBLE: No. I just want to note that the end
11 result of this is that Appellant paid tax reimbursement to
12 the vendor for a tax liability that was allocated to the
13 wrong state. At the end of the day, the vendor remitted
14 tax to California, took that credit and remitted it to
15 Arizona, and Appellant is looking for a technicality to
16 result in unjust enrichment to get, basically, a
17 tax-exempt purchase.

18 JUDGE STANLEY: Okay. I think the panel
19 understands that --

20 MR. NOBLE: Thank you.

21 JUDGE STANLEY: -- Mr. Noble. So we'll return to
22 Mr. Wang and let him conclude.

23 MR. NOBLE: Yes, ma'am.

24 MR. WANG: Oh, yeah. So the first issue, you
25 know. The Appellant would like to bring to you, the

1 panel's attention the distinction between -- the
2 application between the Code sections. That is very
3 important. That's the only distinction is that. Okay.
4 So, again Section 6910.5 doesn't apply in this case.
5 Because, again, the fact is that ENS already paid this
6 excess tax amount to the CDTFA. That period.

7 Now, the other -- the second issue is about
8 the -- the other -- others identical use sales over -- use
9 tax overpayment paid that to -- Appellant paid to other
10 non-California retailers. It's the same pattern because
11 those -- in those case -- in those cases, the property --
12 again, never on those invoices, the property was shipped
13 outside of California and for use outside of California.
14 The only -- yeah. And then because just like ENS, these
15 use tax collection permit, these vendor holding a use tax
16 permit. And the nature of their tax, by default, is a use
17 tax, regardless of overpayment.

18 As soon, you know, as long, you know, the tax pay
19 to the California -- to the CDTFA, that is a California
20 sales and use tax. Regardless whether that transaction at
21 the be -- in the beginning were subject to California sale
22 and use tax or not. So that's another, the second issue
23 that Appellant would like to bring to the panel's
24 attention. Yeah. So --

25 JUDGE STANLEY: Mr. Wang, your screen froze.

1 MR. WANG: Now, the third issue one -- go ahead.
2 Hello.

3 JUDGE STANLEY: Your screen is frozen, but I can
4 hear your voice. So --

5 MR. WANG: Okay. Yeah. Obviously no good
6 connection. I apologize for that, Judge Stanley.

7 Now, I was saying that the tax, unfortunately,
8 it's an error. Should -- should never been collected and
9 paid to the CDTFA. And -- but then, you know, again,
10 code -- they only pay only to the CDTFA. Code
11 section 6901 applies, and the language in the Code section
12 doesn't say -- doesn't accept any exception, any
13 condition, including -- oh, in this case, because the tax
14 subject to Arizona tax is therefore, you know, is --
15 doesn't apply. Oh, by the way, whether and how the tax
16 should be paid to Arizona, it should not -- it's
17 irrelevant today. Because before the panel today is
18 matter of California use tax overpaid to the CDTFA.

19 So now, the issue number four mean that the CDTFA
20 claimed that in this case, you know, Appellant would
21 have -- would like wind -- double windfall. Let's --
22 the -- Appellant would like to share with the panel in the
23 short minute that what happened in -- in the back in 20 --
24 20 -- 2013. Back then Appellant was ready to file a use
25 tax refund claim with the CDTFA upon notification of this

1 use tax overpayment by ENS.

2 However, due to the same outcome, Appellant
3 agreed to -- with the recovery of this use tax refund
4 through ENS out of the convenience for the CDTFA and more
5 importantly, under the agreed -- fully agreed guarantee,
6 arrange by the CDTFA that ENS would return the refund
7 money to the -- to Appellant after it received from the
8 CDTFA. This fact is very clearly stipulated in
9 Exhibit 4 -- 14 -- 13 -- in 14, in which that it -- the
10 language in this, yeah, in that form 53 or 52-L that too,
11 it clearly say that. Yes, earlier I said that --
12 Appellant said that the Code section, this law does not
13 set any condition that would relieve the CDTFA of this
14 legal obligation -- of legal obligation with respect to
15 this real tax refund claim. We refund -- use tax refund
16 all to Appellant.

17 But yeah, the statute allows the CDTFA to recover
18 the money -- the refund money it issue -- it had issued to
19 the ENS. Again, is -- look -- yeah, look at the -- in
20 Exhibit 4 and 14 where it very clear say that ENS will pay
21 the refund to Appellant after -- once it received from
22 CDTFA. Otherwise, the ENS will be legally liable for
23 any -- any penny of the refund that not return to
24 Appellant. As a matter of fact, that's the case.

25 Now, the CDTFA can go after the -- the ENS

1 because the law allows the CDTFA to do so. In sum, in --
2 in -- in -- to wrap up again. As of today, based on the
3 evidence, based on the law -- the law in this case,
4 Appellants have not received any penny -- any penny of
5 this use tax refund collected by the CDTFA.

6 JUDGE RIDENOUR: Mr. Wang, I have a question with
7 regards to that. So did --

8 MR. WANG: Yeah. Go ahead.

9 JUDGE RIDENOUR: Did your client reject the
10 credit that EMS gave them with regards to the money that
11 is equated to the tax paid? Did they say, no, we don't
12 want this credit; we want cash instead?

13 MR. WANG: Yes. As this -- as this -- as this is
14 clearly stipulated in the -- in Exhibit 4 and 14 where,
15 you know, the Appellant checked the box.

16 JUDGE RIDENOUR: I understand they checked the
17 box --

18 MR. WANG: Yeah.

19 JUDGE RIDENOUR: -- electing that selection, but
20 I'm asking you when your client then got a credit for a
21 subsequent purchase, did your client reject the credit?

22 MR. WANG: Yes, they did. I mean is -- I mean
23 in -- in other -- I mean, in real terms -- in real terms,
24 Appellant did not have any choice. But I mean, now
25 back -- back then if you notice, Judge Ridenour, Appellant

1 and ENS cease to do business in 20 -- in 2012, and ENS was
2 audited by the CDTFA in 2013. Because of that fact,
3 Appellant only in process of working internally to receive
4 cash refund from the CDTFA and turn around to find some
5 way -- like for instance, you know, in Arizona just like
6 in Southern California.

7 If -- in the case, if you're a retailer you --
8 you miss -- you didn't properly collect the tax on the
9 invoice and then, you know, later on found out after the
10 fact, that tax -- that amount of tax original, even
11 there's a sales tax, it's no longer the sales tax
12 situation. Now, it become if there is a sales tax or the
13 use tax imposed on Appellant, in this case, by Arizona.
14 So, therefore, Appellant internally was in the process of
15 collect one hand, recover the use -- the money overpay to
16 know like erroneously pay to California, and then
17 internally turn around and pay in terms of use tax to
18 Arizona. It didn't take place.

19 That didn't -- again, Appellant didn't have a
20 choice because as you saw in Exhibit 16, ENS took the
21 liberty even though it signed the document, Exhibit 4 and
22 14, promising guarantee to the CDTFA that it will return
23 the refund money to -- to Appellant and did not. And not
24 only that, ENS went ahead and give a credit -- the credit
25 and issue the credit to Appellant, my client, without --

1 okay. Here you have no choice. You take it or leave it.

2 That is the situation. That's what happened back then.

3 JUDGE RIDENOUR: Okay. Thank you very much.

4 JUDGE STANLEY: Okay. Have you concluded,

5 Mr. Wang?

6 MR. WANG: Yes, I have, Judge Stanley. Yeah.

7 Thank you. Thank you.

8 JUDGE STANLEY: Okay. Thank you.

9 Let me ask Judge Aldrich if he has any final
10 questions?

11 JUDGE ALDRICH: I do not. Thank you.

12 JUDGE STANLEY: Okay. And I do not either.

13 So this case is now submitted, and the record is
14 closed.

15 Today's hearing in the appeal of East West Bank
16 is concluded. So we'll go off the record now.

17 I want to thank everyone for participating today.

18 The judges will meet to deliberate and decide the
19 case, and we'll issue a written opinion within 100 days.

20 (Proceedings concluded at 3:40 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 25th day of July, 2025.

ERNALYN M. ALONZO
HEARING REPORTER