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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
LIL' MAN IN THE BOAT, INC., dba) OTA NO. 240315753
JUST DREAMING YACHT CHARTERS,)
)
APPELLANT.)
)
_____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:07 p.m. and concluding at 1:56 p.m. on
Tuesday, July 15, 2025, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ SHERIENE ANNE RIDENOUR

Panel Members: ALJ JOSH LAMBERT
HEARING OFFICER KIM WILSON

For the Appellant: LAWRENCE MURRAY
DAVID ONGARO

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

AMANDA JACOBS
JARRETT NOBLE
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received into evidence via the Minutes and Orders.)

(Department's Exhibits A & B were received into evidence via the Minutes and Orders.)

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

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

	<u>P A G E</u>
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California; Tuesday, July 15, 2025

1:07 p.m.

JUDGE RIDENOUR: We are opening the record in the Office of Tax Appeals oral hearing for the Appeal of Lil' Man In The Boat, Inc., doing business as Just Dreaming Yacht Charters, OTA Case No. 240315753. Today's date is July 15th, 2025, and the time is 1:07 p.m. The hearing is being conducted virtually with the agreements of the parties.

Today's hearing is being heard by a three-person panel. My name is Sheriene Ridenour, and I'm the lead judge. My co-panelists are Judge Lambert and Hearing Officer Wilson. The panel will meet after the hearing and produce a written decision as equal participants. While I may be conducting the hearing, any panel member may ask questions or otherwise participate to ensure that we have all the information needed to decide this appeal.

For the record, will the parties please state their names and who they represent, starting with the representatives for Appellant.

MR. ONGARO: This is David Ongaro on behalf of Mr. Murray and Mr. Murray also appearing.

JUDGE RIDENOUR: Okay. Well, Mr. Ongaro, are you

1 taking lead or is Mr. Murray?

2 MR. ONGARO: We're both -- I'm going to do the
3 questioning so that it's clear, and then he's going to do
4 the statements.

5 JUDGE RIDENOUR: Okay. Thank you.

6 And for CDTFA.

7 MS. JACOBS: Amanda Jacobs, an attorney for the
8 CDTFA legal department.

9 MR. NOBLE: Jarrett Noble, also an attorney with
10 CDTFA's legal department.

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

13 JUDGE RIDENOUR: Great. Thank you, everybody.

14 As stated in my Minutes and Orders, dated July --
15 excuse me -- June 26, 2025, there's one issue in this
16 appeal: Whether OTA has jurisdiction to determine whether
17 Title 33 of the United States State Code section 5(b), a
18 federal statute, preempts or otherwise prohibits
19 California from taxing retail sales of alcoholic beverages
20 on a vessel under Revenue & Taxation Code section 6051;
21 and, if OTA has jurisdiction, whether California is
22 preempted.

23 The exhibits are listed in the exhibit log, which
24 has been distributed to the parties. During the
25 prehearing conference, CDTFA raised no objection to

1 Appellant's Exhibits 1 through 6, and they were admitted
2 into evidence. During the prehearing conference,
3 Appellant raised no objection to CDTFA's Exhibits A and B,
4 and admitted into evidence.

5 As for witnesses, CDTFA previously indicated it
6 will not call any witnesses, and Appellant indicated that
7 Mr. Murray will be testifying today, and CDTFA raised no
8 objection. As such, Mr. Murray will be sworn in before
9 Appellant's presentation. There are no other witnesses
10 today.

11 Mr. Murray, do you need something?

12 MR. MURRAY: No. I was just holding my hand to
13 get sworn.

14 JUDGE RIDENOUR: Oh, not yet, sir.

15 MR. MURRAY: Sorry. I'll put it down.

16 JUDGE RIDENOUR: As a reminder to the parties,
17 during our prehearing conference, we decided that
18 Appellant will have 20 minutes to make its presentation,
19 followed by CDTFA who will have 20 minutes. Then
20 Appellant will have 5 minutes to provide closing remarks,
21 if it so chooses. Each party is encouraged to monitor
22 their own time.

23 Does anyone have questions before we move onto
24 presentations?

25 Mr. Ongaro?

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Mr. Murray?

MR. ONGARO: No.

MR. MURRAY: No, Your Honor.

JUDGE RIDENOUR: Okay. CDTFA?

MS. JACOBS: None. Thank you.

JUDGE RIDENOUR: Thank you, Ms. Jacobs.

Okay. Before we proceed, Mr. Murray, I'm going to place you under oath so that we can consider your statements as testimony, and you will remain under oath until the close of the hearing. Will you please raise your right hand.

L. MURRAY,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined, and testified as follows:

JUDGE RIDENOUR: Thank you.

Okay. The time currently is 1:11, and when you're ready to proceed, Mr. Murray and Mr. Ongaro, you may begin your presentation.

MR. ONGARO: Sure. Thank you.

///

///

///

1 the vessel, also known as captain.

2 Q Great. And as part of the commercial operations,
3 have you paid any taxes to the California Department of
4 Tax?

5 A I may have knowingly or unknowingly, but I -- it
6 wasn't -- I -- I haven't paid sales tax because we weren't
7 doing any sales on the boat until 2003.

8 Q Right. And at that time -- after that time, did
9 you pay taxes?

10 A I am the one that calls every month to -- not --
11 excuse me. It was every month at first, then it was every
12 quarter. And now it's every quarter that call in and say,
13 here's the gross receipts. They calculate it and say,
14 okay, this is your bill. I believe the last few years our
15 bill has been paid by credit card. And so, I -- I've been
16 the one that does that every -- every quarter since we
17 started.

18 Q Okay. And do you have Exhibit No. 1 in front of
19 you?

20 A I have. I actually put it together and submitted
21 it. But, yes, I know Exhibit 1.

22 Q Okay. And can you explain to us what is
23 Exhibit 1?

24 A When I wanted to get a succinct statement of the
25 money that we paid to the Department in the time period

1 that we're appealing from -- it's not everything. We only
2 have a limited window. And in that limited window, I
3 asked the agent to help me. The agent -- they -- they
4 were very helpful. They said, yeah. Here, let's see --
5 let's see if we can do this.

6 This is the time frame for which I'm trying to
7 get a return of the funds for the taxes that we paid. I
8 think I started all this in 2023, and we have been
9 monitoring and trying to put together the exhibits that
10 were sent. The actual amount, within the time frame --
11 the window, that is subject to this appeal is \$17,218.

12 Q And in Exhibit 1 -- No. 1, the documents
13 themselves, where did you obtain those from?

14 A I'm sorry. What is the what?

15 Q The Exhibit No. 1 --

16 A Yeah.

17 Q -- the documents themselves, where did you obtain
18 those documents?

19 A I obtained them from my account in the CDTFA
20 computer system for the monies that we have paid. And I
21 did that with the assistance of the CDTFA agent who helped
22 me arrange to get the correct times and the correct
23 amounts listed.

24 Q Okay. And is your boat under the jurisdiction of
25 the Coast Guard?

1 A It's under the exclusive jurisdiction of the
2 Coast Guard. The Coast Guard is the only entity that can
3 order us to do things, and then we must comply.

4 Q And does the Coast Guard do inspections of your
5 vessel?

6 A At least two, sometimes three, sometimes four a
7 year. I just finished another inspection on another boat
8 that I own this last Friday. And they have everything
9 from annual inspections, haul-out inspections, new to --
10 zone inspections. Yes, I --I have to, not only get
11 inspected, but I have to comply with their -- their
12 document requirements. I have to show that our teams are
13 properly trained. They have the right medical
14 certificates. They have the right drug testing done.

15 We have people on the boat that have to produce
16 evidence that they are drug free and be subject to random
17 drug testing. And that's all done under the auspices and
18 control of the United States Coast Guard.

19 JUDGE RIDENOUR: Mr. Murray, Mr. Ongaro, I'm
20 going to interrupt here for a moment. I would like to
21 stay with the relevance as to what is at issue. I do
22 believe we understand the Coast Guard has given you
23 various certification and what not, but I would like you
24 to please be focused more on the issue at hand before this
25 panel. Okay.

1 MR. ONGARO: Well, thing Coast Guard having
2 jurisdiction over the vessel is -- is directly relevant --

3 JUDGE RIDENOUR: And I do believe --

4 MR. ONGARO: -- to the issues before the panel.

5 JUDGE RIDENOUR: Mr. Ongaro, and I do believe
6 that has been made. If we can just circle back to what is
7 at issue in front of us, which is whether there's
8 jurisdiction or preemption.

9 MR. ONGARO: Okay.

10 JUDGE RIDENOUR: I would appreciate that. Thank
11 you.

12 BY MR. ONGARO:

13 Q Mr. Murray, why do you believe there's no
14 jurisdiction by the State of California to tax your
15 vessel?

16 A Because the boat operates on what waters are
17 owned by the United States of America U.S. Coast Guard
18 controls. And it operates under the protection 5(b) of
19 the issue of navigating on law -- waterways -- navigable
20 waterways. The San Francisco Bay is a navigable waterway,
21 and it is also part of the Freedom to Navigate that we
22 operate right there.

23 Q And why do you believe that the -- any taxes by
24 the State of California would be present -- preempted?

25 A Because the section 5(b) specifically states no

1 taxes or other obligations, and the -- if I -- if I can
2 explain that, all of this comes about because when the
3 United States was formed, there was an effort to prevent
4 one entity or another from getting a better hold on
5 collecting taxes. And the way they did that was they
6 created the Tonnage Clause and the Dormant Commerce
7 Clause. And both of those clauses was to prevent local
8 entities from attempting to -- local, I mean, anything
9 other than the state -- the United States government from
10 getting taxes from people that go from one area to
11 another.

12 For example, when I come to San Francisco,
13 there's an 8.5 percent -- 8.75 percent tax. Now, that's
14 fine. But what happens when I go into Richmond? What
15 happens when I go into Alameda? What happens if I go into
16 Sausalito? If each one of those could add taxes to me --
17 which San Francisco does independent of the sales tax --
18 then they could wipe out -- they could wipe out our
19 business easily. When I started, we had 30 boats -- 30
20 charter boats going to San Francisco. When their new
21 contract came in 2016, it dropped down to 21. It is now
22 at 6. There's a lot of boats that cannot handle the
23 freight, if you will, the taxes that are being placed on
24 them.

25 And in San Francisco, if I take the 8.75 sales

1 tax and the additional 7 percent that they add by
2 landing -- the charter agreements that we have to sign --
3 and then I start adding on the possessory interest tax,
4 the transfer tax, et cetera, et cetera, et cetera, they
5 are approaching 20 percent of our gross income before we
6 pay anybody pay or pay for gas or anything else. And so
7 you will see the case -- one of the lead cases, Lil' Man
8 in the Boat versus City and County of San Francisco, is
9 because of those kind of taxes that are killing us. And
10 I'm a democrat, but I -- it's just killing us.

11 Q And does that -- would that effect interstate
12 commerce?

13 A It -- not only inter -- it prevents interstate
14 commerce. It prevents a lot of companies from doing
15 business in San Francisco. We had 21 companies in 2016.
16 It's now down to 6 because you cannot pay those kind of
17 rates and stay in business when you have a thin, thin
18 margin of profit.

19 Q And is your boat -- does your charters, do they
20 involve interstate commerce at any time?

21 A Oh, I'm always -- my boat does a lot of
22 interstate commerce because we have people fly in from New
23 Zealand, from Europe, from other states. They all come
24 here, and they transit the bay. They want to go out
25 sightseeing. They want to see things. We take them out

1 to, not only see the whales every now and then, we see --
2 we take them to Angel Island. We take them to Sausalito
3 for dinner.

4 There's a lot of interstate commerce that comes
5 through just streaming on a regular basis. And if I
6 didn't have that, I couldn't stay in business. I need to
7 bring at least \$600,000, at least, to begin the process of
8 paying off the expenses for that boat.

9 Q And, Mr. Murray, do you know -- are you aware or
10 have you done any research on whether there are any
11 exceptions to 33 USC Section 5(b)?

12 A There is -- there is exceptions. There's three
13 statements as to exceptions, and they are in the
14 conjunctive. That is, you have to one comply with A, B,
15 and C. One is safety. Two is -- I forget what the second
16 is. The third is it cannot amount to more than a small
17 in -- small amount of your gross income. So there's those
18 three. But the main one is it has to be providing a
19 service to the vessel. The exceptions are primarily
20 service to the vessel. And reason that came about -- you
21 can read it in the Lil' Man case that I argued in Court of
22 Appeal, or you can read -- you can hear. It is because
23 the Dormant Commerce Clause and the other clauses did not
24 make an exception for expenses of the boat.

25 So, technically, if I came in and I gassed up, or

1 I came in and I got them to do some work on my boat at a
2 port, that port could not technically charge me. However,
3 the exception has now been written into the statute. The
4 statute is embodiment of what Congress saw as laying out
5 the rules for states and local jurisdictions collecting
6 taxes. And it is just furtherance of the constitutional
7 protections afforded by the Dormant Commerce Clause and
8 the Tonnage Clause. And that's -- that's not me talking.
9 That's exactly what was said in the Lil' Man in the Boat
10 decision, which I argued and talked to the court about.

11 Q And are the -- any of the taxes at issue in this
12 case, fees charge for port or harbor dues?

13 A No. Absolutely not. They -- there -- to be
14 qualified, you have to be providing a service to the
15 vessel.

16 I remember the second one. The second is to --
17 to promote safety and efficiency of a vessel in the water.
18 And the third is it can't amount to more than a small
19 amount. There is nothing that is being provided by the
20 acting entity when they issue a tax. It does not qualify
21 as -- on the first prong, and it has to meet all three
22 prongs.

23 Q And are you aware of any other exceptions to the
24 section where it says no taxes, tolls, operating charges,
25 or fees, or any other impositions, whatever, shall be

1 levied against the vessel? Are you aware of any other
2 exceptions?

3 A I might be, but as I sit here right now, I'm kind
4 of drawing a blank.

5 Q Okay.

6 A Go ahead.

7 Q And why don't you tell the panel why you believe
8 that they do not have authority to collect the taxes that
9 they've been collecting?

10 A Because it has been demonstrated. The intent of
11 Congress was to protect boats to keep them so that they
12 can continue to function. If -- if we get hit with tax
13 here, and tax there, San Francisco, Berkley, Alameda, we
14 can't function. And it was a -- a reason that when we
15 went to war with England, that was one of the key things.
16 We're not going to tax these boats so that they can come
17 and go. The Freedom to Navigate requires that we don't
18 get overburdened with taxes on a regular basis by one or
19 another; and that includes the State of California
20 charging sales tax.

21 Q And you argued the Ninth Circuit case --

22 A I did.

23 Q -- Lil' Man in the Boat. And can you tell us
24 what the significance of that is?

25 A Okay. From my point of view, the bad part of it

1 is that you cannot sue as a cause of action for the Rivers
2 and Harbors Act. The good news is, from my point of view,
3 is that the court reaffirms, as does both Wendella cases,
4 that there's a prohibition. You are prohibited from
5 imposing any kind of charge or fee or whatever on a boat,
6 unless it qualifies under those -- the three-prong test.
7 And when it doesn't qualify under the three-prong test,
8 there's no way around it. You don't try to argue your way
9 out of it. You've got to leave the money alone. It's not
10 something that can be taxed.

11 Q Great. And I know we're running out of time
12 here, Mr. Murray. So is there anything else that you want
13 to tell the panel?

14 A I just want to put an explanation to the various
15 documents that we have in evidence. I know they are in
16 evidence, and I appreciate the -- the Department for not
17 making us fight over those things, but it's just real
18 simple. Those documents demonstrate who we are and what
19 we were. We are -- we have a license by the Coast Guard,
20 the COI. We have a document by the Coast Guard, the
21 doc -- certificate of documentations. It says that we are
22 operating on navigable waters.

23 We have -- I have gone through and listed things,
24 including the fictitious business name statement in case
25 somebody wants to argue that there's a difference between

1 the boat and the -- the corporation, because that defeats
2 that. And then, of course, Wendella Two goes into great
3 lengths about how the individual owner is a representative
4 of the boat, and our boats are protected under
5 33 USC 5(b). So all of those documents were put in for
6 the specific purpose of demonstrating that what I've told
7 you here is, in fact, documented by entities, like the
8 Coast Guard, et cetera.

9 Q Great. Anything else you would like to add,
10 Mr. Murray?

11 A No. I think we're done.

12 MR. ONGARO: Thank you.

13 JUDGE RIDENOUR: Thank you both very much.

14 Ms. Jacobs, does CDTFA have any questions for the
15 witness?

16 MS. JACOBS: No questions. Thank you.

17 JUDGE RIDENOUR: Thank you.

18 Judge Lambert, do you have any questions?

19 JUDGE LAMBERT: This is Judge Lambert. I don't
20 have any questions right now. Thanks.

21 JUDGE RIDENOUR: Thank you.

22 Hearing Officer Wilson, do you have any
23 questions?

24 HEARING OFFICER WILSON: I do have a question. I
25 didn't notice in the record if this was a sales tax

1 reimbursement we're talking about.

2 MR. MURRAY: I believe it is, yes.

3 HEARING OFFICER WILSON: Okay. And so that was
4 sales tax you collected from your customers and remitted
5 to CDTFA; correct?

6 MR. MURRAY: No. No. We do not necessarily
7 collect -- when somebody comes in and buys a beer, and we
8 don't say, oh, and there's an extra 8.5 percent on that.
9 We don't have time. When you've got 40 people on one
10 bartender, and they're all cruising through the boat real
11 fast, we collect the money for the sale. We -- I -- I
12 don't recall -- I don't recall as I've ever worked as a
13 bartender or any of the other bartenders collecting sales
14 tax on top of that.

15 HEARING OFFICER WILSON: Do you have any kind of
16 notice letting the customer know that sales tax is
17 included in the price, as is typical with a bar?

18 MR. MURRAY: I do not have any notice that's
19 posted. And I'm unaware of anybody telling the people
20 that come on the boat that the sales tax is included in
21 their -- in their purchase of a beer or wine or a shot.

22 HEARING OFFICER WILSON: Okay. So the sales tax
23 you remitted, can you explain that, that it was just based
24 on your gross receipts or on your sale of just alcohol, or
25 how did you determine how much to remit?

1 claim period is July 1st, 2018, through
2 December 31st, 2021.

3 The issue in this case, as stated, is whether OTA
4 has jurisdiction to determine whether 33 USC 5(b), which
5 we will refer to as the act, preempts or otherwise
6 prohibits California from taxing retail sales of TPP on a
7 vessel under Revenue & Taxation Code section 6051; and if
8 OTA has jurisdiction, whether California is preempted.

9 We will begin with the issue of jurisdiction.
10 OTA has jurisdiction to resolve appeals involving
11 California taxes, including sales and use tax appeals,
12 Government Code section 15671(a) and 15672(b). However,
13 OTA is not a court, and it does not have jurisdiction to
14 consider whether a California statute is invalid or
15 unenforceable under the U.S. Constitution, or to refuse to
16 enforce a statute on the basis that federal law prohibits
17 the enforcement of a statute, unless a federal or
18 California appellate court has already made such a
19 determination; see Regulation 30104(a) and California
20 Constitution Article 3 section 3.5(c), as well as Appeal
21 of J. Acosta and M. Castro 2022-OTA-235P.

22 As we will discuss in further detail later,
23 California, like most states, imposes sales and use tax on
24 retailer's sales of TPP in this state. To the
25 Department's knowledge, there is no federal or California

1 court opinion specifically determining whether application
2 of California sales tax to sales of TPP made on a vessel
3 is preempted by the act.

4 Appellant cites to a Ninth Circuit case brought
5 by Appellant, Lil' Man in the Boat Incorporated versus
6 City and County of San Francisco, a 2023 case. In that
7 case, Appellant brought an action against San Francisco
8 alleging that landing fees imposed on commercial charters
9 operating out of a marina in San Francisco Bay violated
10 the act. The Ninth Circuit court determined that there is
11 no private right of action in the act, meaning that the
12 law does not give private individuals, like Appellant, the
13 right to sue to enforce this law.

14 In sum, OTA lacks jurisdiction to determine
15 whether application of the California sales and use tax
16 law to Appellant's sales of TPP is preempted by the act.
17 And on that basis, this appeal should be dismissed.
18 However, even if OTA finds it has jurisdiction, the
19 application of tax to Appellant on its retail sale of TPP
20 is not preempted by the act. As you know, California
21 imposes sales tax on a retailer for its retail sales of
22 TPP in California measured by the retailer's gross
23 receipts, unless the sale is specifically exempt or
24 excluded from taxation by statute; Revenue & Taxation Code
25 sections 6012 and 6051. A retailer includes every seller

1 who makes retail sales of TPP; section 6015. All gross
2 receipts are presumed to be subject to tax, unless the
3 retailer can prove otherwise; section 6091.

4 The transactions at issue are Appellant's sales
5 of TPP, which are subject to tax under these statutes.
6 However, Appellant has requested a claim for refund on the
7 tax that -- on its sales, asserting that it's entitled to
8 a refund because California sales and use tax law has been
9 preempted by federal statute. If the Department
10 determines that any amount of tax penalty or interest has
11 been erroneously or illegally collected, and the
12 Department determines that such amount was not required to
13 be paid, the Department must credit or refund that amount
14 to the person from whom the money was collected, or by
15 whom it was paid, or their successors, administrators, or
16 executors; Section 6901.

17 The Claimant, Appellant in this case, bears the
18 burden of establishing entitlement to a refund. See
19 Honeywell Incorporated versus State Board of Equalization
20 (1982), which is 128 Cal.App.3d 739 at pages 744 to 745,
21 as well as the California Code of Civil Procedure
22 section 720.360. Likewise, the U.S. Supreme Court has
23 held that the burden of establishing preemption rest with
24 the party who is seeking the benefit of it. Again, in
25 this case, that would be Appellant. See, for example,

1 De Buono versus NYSA-ILA Medical and Clinical Services
2 Fund (1997) 520 U.S. 806 pin site 814.

3 This is a considerable burden because the quote,
4 "Starting presumption is that Congress does not intend to
5 supplant state law," end quote. That's De Buono at pin
6 site 814. In fact, preemption is disfavored, unless the
7 nature of the regulated subject matters permits no other
8 conclusion, or Congress has unmistakably so ordained. See
9 Florida Lime & Avocado Growers Incorporated versus Paul
10 (1963) 373 U.S. pin site 142. The statute which Appellant
11 relies on, 33 USC 5(b) states, in relevant part, no taxes,
12 tolls, operating charges, fees, or any other impositions
13 whatever, shall be levied upon or collected from any
14 vessel or other water craft or from its passengers or crew
15 by any nonfederal interest, if the vessel or water craft
16 is operating on any navigable waters subject to the
17 authority of the United States, or under the right to
18 Freedom of Navigation on those waters. And then it
19 continues with certain enumerated exceptions.

20 Appellant contends that no taxes in the act means
21 no taxes whatever. And also contends that the vessel,
22 passengers, or crew are synonymous with and/or include
23 many business entity connected to a vessel, such that it
24 prevents taxation on the business revenue or gross income
25 generated by a business operating the vessel. But let's

1 be clear. If Appellant were not making retail sales of
2 tangible personal property, there would be no tax at issue
3 in this appeal.

4 Unlike Appellant's cases that he cited in
5 briefing, Appellant's liability for tax on its sale of
6 tangible personal property is easily separated from its
7 operation of the vessel. As such, it clearly does not
8 fall within the purview of the act. In Real Hooker
9 Sportfishing Incorporated versus the State of Hawaii
10 Department of the Taxation (2010) 123 Hawaii 494, the
11 Intermediate Court of Appeals of Hawaii decided to broadly
12 construe the term vessel to include the gross income
13 generated by a taxpayer's use of its vessel -- oh,
14 declined -- I'm sorry -- not decided to broadly construe
15 the term vessel to include the gross income generated by a
16 taxpayer's use of its vessel in light of the strong
17 presumption against preemption. And that's Real Hooker at
18 page 498. Similarly, in this case, it would be
19 inappropriate to construe the term vessel in the act to
20 include the retail sale of TPP by a business entity
21 operating the vessel.

22 In briefing, Appellant talked about how the
23 Wendella case specifically disproves Real Hooker
24 Sportfishing. However, Wendella is distinguishable from
25 this case. The Court in Wendella found that an amusement

1 tax applied to patrons of city amusements, including
2 sightseeing boat tours, was preempted by the act.
3 However, the tax here is imposed on separate sales of TPP.
4 We again note, that unlike in Wendella, if Appellant stops
5 selling TPP, it would still be able to operate the vessel
6 without concern for the taxes at issue in this appeal.

7 The Eleventh Circuit Court of Appeals versus in
8 CSX Transportation Incorporated versus Alabama Department
9 of Revenue (2018) 888 F.3d 1163, determined that Alabama
10 state sales and use taxes on diesel fuel did not violate
11 the act. It found that properly construed, the federal
12 statute, quote, "Forbids taxes imposed on the vessel
13 itself, or on its crew members themselves, or on the
14 passengers themselves, not taxes imposed on property
15 purchased for use on/or by a vessel, or by its group, or
16 by its passengers," end quote. And that's CSX at pin site
17 1185. The Court determined that to find otherwise, quote,
18 "Would forbid states from taxing the purchase of any
19 tangible personal property for use on/or by a vessel, its
20 passengers, or crew, and that water carriers would become
21 floating tax-free zones," end quote; CSX at page 1184.

22 Similarly, Appellant's reading of the act would
23 entirely exempt from tax any sales of TPP made aboard a
24 vessel operating on navigable waters subject to federal
25 authority. This is an absurd conclusion that would grant

1 every operator of a vessel an unfair retail advantage.
2 There would be nothing to stop all retailers from deciding
3 to sell their TPP on vessels, thereby, ending the State's
4 ability to collect sales tax use for vital public
5 services.

6 Finally, we note that Appellant's interpretation
7 of the act is entirely inconsistent with the legislative
8 intent of the statute, and that the House Conference
9 Report for the 2003 amendments to the act specifically
10 state that it, quote, "Does not affect whether sales or
11 income taxes are applicable with respect to vessels," end
12 quote.

13 In conclusion, OTA does not have jurisdiction to
14 find that Appellant's sales are preempted from taxation
15 because there are no federal or California Appellate Court
16 decisions invalidating the relevant statutes and
17 regulations at issue in this appeal. Furthermore,
18 Appellant has failed to provide any relevant authority
19 preempting the imposition of sales and use tax aboard
20 vessels, and it is clear that there was never intent to
21 create such an exemption. As such, even if OTA had
22 jurisdiction in this matter, Appellant's arguments lack
23 merit. For these reasons we request the appeal be denied.

24 Thank you.

25 JUDGE RIDENOUR: Thank you, Ms. Jacobs.

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Judge Lambert, do you have any questions?

JUDGE LAMBERT: Hi. This is Judge Lambert. I don't have any questions. Thanks.

JUDGE RIDENOUR: Hearing Officer Wilson, do you have any questions?

HEARING OFFICER WILSON: No questions.

JUDGE RIDENOUR: Thank you.

I do not have any questions at this time either.

Mr. Murray, you have some time to make some closing remarks, or Mr. Ongaro, should you choose to. It can be response to CDTEFA's presentation or any questions Hearing Officer Wilson has made thus far, if you would like. Would you prefer to do that now?

MR. MURRAY: I would. I would, Your Honor.

JUDGE RIDENOUR: Please go ahead go ahead.

CLOSING STATEMENT

MR. MURRAY: Okay. A couple of things that I note right off the bat, we are not trying to claim that Lil' Man in the Boat is exempt from sales tax for things that it purchases on dry land. When I go to Safeway and buy a case of beer to bring on the boat, I don't ask them for an exemption. I don't put in a request to exempt those sales.

The cases that she cites -- and I believe it was

1 the CSX case -- talks about purchase of sales and goods
2 that we want to use on the boat. But I am not -- it does
3 not say that I have any issue with trying to buy stuff and
4 pay taxes outside of the boat. It's only when we are on
5 the water. And one of the things that I kind of hope that
6 I made clear, our sales only occur when we are on
7 navigable waters. Our license to sell alcohol prohibits
8 us from selling inside of the port. Only when we clear
9 the gates of port and stay outside, can we sell alcohol.
10 So we are necessarily on navigable waters.

11 The -- a couple of things. First, the Lil' Man
12 in the Boat case that I argued, and the Ninth Circuit said
13 there's no private right of action. It does not say that
14 the Code section is meaningless, and you can avoid it.
15 The Code section, section 5(b), is -- is upheld by the
16 Court. And, in fact, it goes into detail on how it came
17 about being developed where it is today. And they had no
18 problem in saying that prohibit sales -- or excuse me --
19 taxes on a boat. It's just you can't sue under a cause of
20 action named section 5(b).

21 There is -- there's a lot of talk by the State
22 that there is a presumption, and the presumption has to be
23 overcome, et cetera. If you read Wendella One, it says
24 there is an indirect conflict that has to be overcome, and
25 that they did overcome, that this Code section indirectly

1 conflicts; and therefore, there is preemption.
2 Wendella Two goes even further. Wendella Two says it's
3 not even an issue. It says that there is a conflict that
4 cannot be made to -- to be intelligent. Therefore, it is
5 a conflict that says the states cannot carry on their own
6 taxing when it comes to vessels on navigable waters.

7 I want to note that right off the bat, that when
8 we talk about Real Hooker and these other cases, there is
9 a discussion in Wendella Two and in other cases. I
10 believe it was also in Lil' Man. Wendella Two talks about
11 the proper interpretation of a statute. And it says that
12 you don't look to anybody who voted on it and say, well, I
13 didn't think it should be enforced, or I didn't think it
14 should mean what it says. It says you look at the plain
15 language of the statute and enforce the plain language.
16 And there's a reason behind that; 435 members of the
17 Congress, 100 members of the Senate, and the President of
18 the United States read it and did not understand that
19 there was a secret intent to defeat it. And that's what
20 was in Lil' Man in the Boat in the trial court and in Real
21 Hooker.

22 They said, well, this guy here didn't really want
23 to enforce or didn't want to have it be something that is
24 enforceable. And the Court said, no, you look at the
25 plain language of the statute. Only where there's an

1 ambiguity, do you go behind the language. Here there is
2 no ambiguity. No means no, means no. And no taxes
3 doesn't mean that there's an ambiguity. So there doesn't
4 have to be any kind of an interpretation of what that
5 person may have meant. One of the approximate 536 people
6 that voted on the statute, if one of them doesn't follow
7 it, that's okay.

8 JUDGE RIDENOUR: Mr. Murray. The purpose of this
9 was the closing, not a presentation again. And you've
10 gone over your 5 minutes.

11 MR. MURRAY: Okay.

12 JUDGE RIDENOUR: So I'm going to -- I'll give you
13 a quick moment to wrap up, should you want to.

14 MR. MURRAY: I just want to point out one thing.
15 The Department cited CSX Transportation versus Alabama,
16 and that case exactly -- if you read the language of it --
17 it upholds the statute again. And it says that we look at
18 what the statute says. And it -- it is as clear as can be
19 in there, at that point page that she mentioned, that it
20 is not something that can be ignored or avoided by an
21 attempt to interpret it otherwise.

22 Anyhow, thank you for giving me the time, and I
23 appreciate your attention.

24 JUDGE RIDENOUR: Thank you. I do have a couple
25 of questions for you, Mr. Murray, before I ask my

1 co-panelists if they have any as well. With regards to
2 the Ninth Circuit case and Lil' Man in the Boat that you
3 brought, and them holding that there is no private cause
4 of action when they're talking about clause 5(b), and I
5 was wondering how you reconciled that holding with this
6 case before the panel members.

7 MR. MURRAY: The case we're here on today?

8 JUDGE RIDENOUR: Correct.

9 MR. MURRAY: It's simple. Just because you can't
10 sue -- like, you can't sue by stating I am suing based
11 upon 33 USC 5(b). It doesn't mean the prohibition doesn't
12 apply. It just means you can't file a lawsuit on that.
13 And it, specifically, if you look at Wendella One and
14 Wendella Two, both of them say the prohibition is strong,
15 and you got to pay back the taxes because you shouldn't
16 have collected. It doesn't say that we're going to
17 dispute whether or not there's a cause of action.

18 There's no cause of action given. There's no
19 cause of action. Collecting the money is still illegal.
20 You can't do it. Whether you call it under a cause of
21 action, whatever. And that's what's going on now on --
22 with these case as they're going forward. Right. We
23 can't sue on it, but you still can't take our money.

24 JUDGE RIDENOUR: Thank you. I just want
25 clarification for the record as to the reconciliation of

1 that. Also, I did have one other question. In your reply
2 to the Department's additional briefing, you make a few
3 references to an internal memo, and I was hoping for
4 clarification as to what exactly you're referring to when
5 you speak of an internal memo, because there is not one in
6 the exhibits.

7 MR. MURRAY: I think prepared that response about
8 year-and-a-half ago, maybe a year ago. And I -- I -- off
9 the top of my head, I cannot recall where I got the
10 internal memo. But one of the things I noted the
11 Department said was you have to have a California statute
12 or California Court of Appeal decision. And when I read
13 the particular case, there's a particular ruling that
14 limited what you can do. It just said an appeal decision.
15 It didn't say from California. And that's one of the
16 things I brought out, at least in that memo.

17 JUDGE RIDENOUR: I see. Okay. I was just
18 wondering because I do note that Regulation section 30104,
19 which pertains to the Office of Tax Appeals, does say,
20 quote, end quote, "Unless the federal or California
21 Appellate Court has already made such a determination.

22 MR. MURRAY: Okay.

23 JUDGE RIDENOUR: And by reading the brief, I got
24 the impression that you were referring to that as an
25 internal memo. So I just wanted to get clarification if

1 there was an internal memo --

2 MR. MURRAY: Yeah. I --

3 JUDGE RIDENOUR: Wait. Mr. Murray, please wait
4 until I finish speaking for Ms. Alonzo's benefit, please.

5 So I just wanted to make sure there wasn't an
6 internal memo that -- a specific one that you were
7 referring to that I do not have a copy of, but that does
8 not seem to be the case.

9 MR. MURRAY: No, I don't.

10 JUDGE RIDENOUR: Okay. Great. I just wanted to
11 make sure we had a clean and efficient and the record was
12 complete.

13 MR. MURRAY: And if I may respond to that?

14 JUDGE RIDENOUR: Yes, please.

15 MR. MURRAY: The federal case decision that
16 upholds the statute and applies it, is Lil' Man in the
17 Boat. Because it says that is a valid statute. It's just
18 you can't name your cause action, 33 USC 5(b). You've got
19 to find another thing, like return of money, as they did
20 in Wendella. It's not -- I can't sue for that. I can say
21 you took money you shouldn't have and then give it back.
22 That's the federal decision that I'm relying on.

23 JUDGE RIDENOUR: Thank you for clarifying that
24 for the record for sure. I appreciate that. Before we
25 continue to conclude, I want to make sure first that

1 Judge Lambert doesn't have any further questions.

2 JUDGE LAMBERT: This is Judge Lambert. No
3 further questions.

4 JUDGE RIDENOUR: Thank you.

5 Hearing Officer Wilson?

6 HEARING OFFICER WILSON: Yes, I did have a
7 question for CDTFA.

8 I didn't see the refund in the briefing or
9 exhibits. Did the Appellant submit anything to support
10 the claim for refund, other than citing the -- the
11 preemption?

12 MS. JACOBS: Hi. This is Amanda Jacobs. I --
13 you asked if there's a claim for refund -- a copy of the
14 claim for refund, is that correct? We submitted an
15 acknowledgment of the claim for refund, but I could not
16 find a copy of the claim for refund in our files as well.
17 Normally, we would submit that as an exhibit, but I could
18 not find a copy. So I know -- there must have been one
19 because we acknowledged it, but I'm not sure where it is.

20 MR. PARKER: I think it's in the hearing binder.

21 MR. NOBLE: It was just based upon the preemption
22 argument. We didn't really have any dispute as to the
23 calculations of the numbers, or things along those lines.

24 HEARING OFFICER WILSON: Okay. Thank you. Also,
25 the Appellant mentioned in his rebuttal that he purchased

1 everything at Safeway, tax paid. I guess that's kind of
2 what I was going for, if there was any evidence to show --

3 MR. NOBLE: No. That's the first time we've
4 heard of it, and they would need to file a claim for
5 refund for any sort of tax-paid purchases resold
6 deduction. And, again, we've never conducted an audit
7 because this was denied on the substantive level. We
8 don't know if they collected tax reimbursement from the
9 customer or just paid out of the pocket on things. We
10 would need receipts from Safeway, Specs, BevMo, Wine
11 Warehouse. And, generally, we expect to see people with
12 ABC license and things buying from licensed distributors
13 of alcohol and from grocery stores. It could be the case,
14 but we don't know. It would be a verification audit after
15 that.

16 MR. PARKER: Hearing Officer Wilson, can I add
17 one thing real quick --

18 HEARING OFFICER WILSON: Sure.

19 MR. PARKER: -- or maybe two points. First off,
20 the -- what we consider the claim for refund is in our
21 Exhibit A, pages 10, 11 -- 10 and 11. And then I think
22 also, the supporting information was the payments made to
23 the Department, which is page 13 of Exhibit A, or 13
24 through 14. And then as far as the tax paid purchases
25 resold, I looked at some of the returns filed, and there

1 were some returns where there was a deduction for tax paid
2 on, you know, purchases that were resold. So not on every
3 return, but on some returns there was. But as Mr. Noble
4 mentioned, they should be purchasing from a licensed
5 distributor.

6 HEARING OFFICER WILSON: Thank you.

7 MS. JACOBS: I believe you referenced -- is it
8 page 34 of the hearing binder, Jason?

9 MR. PARKER: Sorry. Yes.

10 MS. JACOBS: 34, 35 just for -- sorry -- just for
11 the record.

12 MR. PARKER: Yes.

13 MS. JACOBS: That would be the claim for refund.
14 Yeah.

15 HEARING OFFICER WILSON: Got it. Thank you.

16 JUDGE RIDENOUR: Thank you very much.

17 Okay. All right. I don't have any follow-up
18 questions after Hearing Officer Wilson, so I want to thank
19 everyone for participating in today's hearing. I am now
20 concluding the hearing.

21 The record is now closed, and the panel will
22 issue a written opinion of OTA's decision within 100 days
23 of today.

24 Today's hearing in the Appeal of Lil' Man in the
25 Boat, Inc., doing business as Just Dreaming Yacht Charters

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is now closed, and we're off the record.

(Proceedings concluded at 1:56 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 24th day of July, 2025.

ERNALYN M. ALONZO
HEARING REPORTER