

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
LUXELINE INTERIORS, INC.,) OTA NOS. 240716873
I. CHEPELYUK,) 240716900
)
)
APPELLANTS.)
)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, December 17, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:33 a.m. and concluding at 10:26 a.m. on
Wednesday, December 17, 2025, reported by
Ernaly M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead:	ALJ SUZANNE B. BROWN
Panel Members:	ALJ KEITH T. LONG ALJ SHERIENE ANNE RIDENOUR
For the Appellant:	E. CHEPEL (I. CHEPELYUK)
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF 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

(Appellants' Exhibit 1 was received into evidence at page 14.)

(Department's Exhibits A-G were received into evidence at page 25.)

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California; Wednesday, December 17, 2025

9:33 a.m.

JUDGE BROWN: We can on the record, and we are now on the record for the Office of Tax Appeals consolidated hearing for the Appeals Luxline Interiors, Inc. and Chepelyuk. These are OTA Cases 240716873 and 240716900. Today is Wednesday, December 17th, 2025. It is approximately 9:33 a.m. We are holding this hearing electronically over Zoom with the agreement of all parties.

I will start by asking each of the participants to please identify themselves for the record by stating their names. And I will start with the representatives for CDTFA, if you could each identify yourselves. Thank you.

MR. SMITH: Hi. This is Kevin Smith from the CDTFA Legal Division.

MR. NOBLE: This Jarrett Noble, also with the Legal Division.

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

JUDGE BROWN: Thank you.

And now I will ask the representative for the Appellants to identify himself.

1 MR. CHEPEL: Elijah Chepel.

2 JUDGE BROWN: Thank you, everyone.

3 I'm Administrative Law Judge Suzanne Brown, and I
4 am the lead panel member for this case. My co-panelists
5 today are Judge Sheriene Ridenour and Judge Keith Long.
6 Although I am the lead panel member for purposes of
7 conducting this hearing, all three panel members are
8 co-equal decision makers in this process and are free to
9 ask questions or otherwise speak up at any time.

10 This hearing is before the Office of Tax Appeals,
11 which we also refer to as OTA. OTA is not a court but is
12 an independent appeals body. OTA is staffed by tax
13 experts and is independent from the State's tax agencies.
14 Because OTA is a separate agency from CDTFA, arguments and
15 evidence that were previously presented to CDTFA are not
16 necessarily part of the record before OTA. OTA's written
17 opinion for this appeal will be based upon the briefs the
18 parties have submitted to OTA, the exhibits that will be
19 admitted into evidence, and the arguments presented at the
20 hearing today. As a reminder, the panel does not engage
21 in what's called ex parte communications, which means that
22 the panel members don't speak to one party without the
23 other party present.

24 I will just summarize that this is a consolidated
25 hearing for two separate appeals. Appeal of Chepelyuk is

1 an appeal for the sole proprietor's liability, which is
2 for the period January 1st, 2017, through
3 December 31st, 2017. And the Appeal of Luxline Interiors,
4 Inc., is an appeal for the corporation's liability for the
5 period January 26th, 2018, through December 31st, 2019.
6 At times, the hearing participants may refer either to the
7 sole proprietor or the corporation separately or may refer
8 to the Appellants collectively.

9 We had a prehearing conference for these appeals
10 in November, and I issued prehearing conference Minutes
11 and Orders. At the time, I identified the hearing issues
12 as four issues. I recognize that in the Appeals Bureau
13 decisions they used -- they phrased them as two issues,
14 but I broke up Issue One into three separate items just
15 for clarification and identified them in the prehearing
16 conference order as: First issue is whether Appellants
17 have established that further adjustments to the measure
18 of unreported taxable sales are warranted; the second
19 issue is whether Appellants have established that further
20 adjustments to disallowed claimed sales for resale are
21 warranted; the third issue is whether Appellants have
22 established that further adjustments to disallowed claimed
23 nontaxable labor are warranted; and the fourth issue is
24 whether Appellants were negligent.

25 Now, I'm just going to pause and confirm with the

1 parties that these are still the issues for hearing.

2 Can I ask Appellants first, Mr. Chepel, is this a
3 correct summary of your issues?

4 MR. CHEPEL: I have only three, I guess, reasons
5 for this is the sales for resale, sales for nontaxable
6 labor, and negligence penalty. I'm not aware of the
7 fourth one.

8 JUDGE BROWN: Sorry. You said --

9 MR. CHEPEL: Yes.

10 JUDGE BROWN: So your just Saying sales for
11 resale, nontaxable labor, and you're not raising any other
12 issues about measures of unreported taxable sales, other
13 than sales for resale or nontaxable labor.

14 MR. CHAPEL: That's correct. I'm not aware of
15 anything else, other than negligence penalty. That would
16 just be the other issue.

17 JUDGE BROWN: Right okay. So then, if that is
18 the case, I will say that we will not -- that I -- we're
19 not going -- we're going to strike that issue that I had
20 previously phrased as whether there are -- oh, yeah.

21 Also, our hearing reporter asked if you can speak
22 up more loudly or get closer to your microphone so that
23 she can hear you better.

24 MR. CHEPEL: Okay. I will do my best.

25 JUDGE BROWN: Thank you. I will strike the issue

1 that I believe I had phrased as Issue One about measures
2 of unreported taxable sales. There will be three issues,
3 and those are: Whether Appellants have established that
4 further adjustments to disallowed claimed sales for resale
5 are warranted; and disallowed claimed nontaxable labor;
6 and then the negligence penalty.

7 CDTFA, I want to turn to you. Does this clarify
8 or does this summarize your understanding of the issues?

9 MR. SMITH: Yeah. We agree with Mr. Chepel. We
10 think those are the issues.

11 JUDGE BROWN: Okay. Thank you, everyone.

12 If there aren't any more questions or
13 clarifications about the issues right now, I will move on
14 to talking about the exhibits, and I'll admit exhibits
15 into evidence. So we didn't receive any documents from
16 Appellants that were marked as exhibits. However, I
17 realize that in Appellants' briefing there was an attached
18 version of schedule 12D-2 that initially I thought was
19 just a copy of the schedule 12D-2 that's in CDTFA's
20 briefing, but Appellants' version has comments from
21 Appellant. However, in comparing the two, I realize it's
22 not -- that's not the case. It's a different later
23 version that Appellant submitted. It's dated June 5th,
24 2023.

25 Let me ask Appellants, first.

1 Mr. Chepel, the version of schedule 12D-2 that
2 you're representative submitted, it was attached to your
3 briefing, I believe your letter to CDTFA dated
4 May 5th, 2023. Did you want to have that as an exhibit in
5 evidence?

6 MR. CHEPEL: That is the questions and evidence
7 that was submitted that proved CDTFA's audit recently or
8 what, you know, their perception of what was -- what they
9 are -- their determination on those invoices or separate
10 little contract. And we submitted to them detailed
11 information as to what was -- 'cause I guess they weren't
12 clear as to if they would allow or disallow. So we
13 clarified and laid it out shelf-by-shelf for them, but I
14 don't think they took any of that into consideration. I
15 don't think they even looked at it, because the appeal
16 after appeal for the same issue has been going on, and
17 I -- I don't even know if they ever considered or looked
18 at it.

19 JUDGE BROWN: Well, my question right now is just
20 whether this schedule 12D-2, dated June 5th, 2023, is --
21 it wasn't marked as an exhibit. When I -- and when we
22 held a prehearing conference, you didn't say it was an
23 exhibit, and I -- like I said, I thought it was just a
24 duplicate, but I realize it's a different version. You
25 would like this to be admitted into evidence as an

1 exhibit? Is that what you are saying?

2 MR. CHEPEL: Well, I'm not -- see, I took this
3 case over like, literally, the last week before the OTA
4 hearing. So I don't even 100 percent sure, like, what I'm
5 supposed to do. So I'm kind of scrambling here trying to
6 figure out what was looked, what was admitted, what was --
7 like I said -- well, I didn't say that yet, but the law
8 firm that I hired to represent me initially is out of the
9 picture now. So I'm not 100 percent certain what that is,
10 or if it should be, or it shouldn't be. But this was
11 submitted. It was looked at.

12 I've exhausted all my abilities to deal with
13 the -- either the CDTFA or law firm and try to figure out
14 the mess that they're going back and forth trying to -- I
15 gave them every piece of information that they needed.
16 I -- I gave -- I was as clear as possible. I explained
17 ever single question that they've asked. Submitted every,
18 like, documentation that they've asked. I -- I don't
19 think they -- there was maybe a lack of communication
20 between the -- the law firm and CDTFA because they kept
21 asking me the same questions over and over again.

22 JUDGE BROWN: But, Mr. Chepel, let me interrupt
23 you because I want to focus on admitting the exhibits, and
24 then --

25 MR. CHEPEL: Okay.

1 JUDGE BROWN: -- I will want to hear your
2 arguments. First, I want to admit exhibits.

3 MR. CHEPEL: Okay.

4 JUDGE BROWN: And then I want to make sure that
5 I've explained everything about the process, which I
6 thought I did during the prehearing conference, but I will
7 revisit it for whatever, you know, explanation is
8 necessary so that you can present your case thoroughly.
9 And then I'm going to swear you in as a witness like we
10 talked about, and then you can testify.

11 MR. CHEPEL: Yeah. I -- I don't think I'll be
12 swearing in as a witness because I'm not presenting any
13 new documents here or any witnesses.

14 JUDGE BROWN: All right. Well, we can talk about
15 that. First, like I said, I want -- it sounds like we
16 should admit this document into evidence, the schedule
17 12D-2 with Appellants' comments on it.

18 But first, I want to ask if CDTFA has any
19 objection to this document being admitted. CDTFA has had
20 this document for a long time, although, it was not
21 technically marked as an exhibit.

22 MR. SMITH: Yes. No, we don't object.

23 JUDGE BROWN: Okay. Thank you.

24 Then I'm going to label this document as
25 Exhibit 1, and I will include also -- there's an earlier

1 page that is like a graph that is titled "some disallowed
2 nontaxable labor." We can include that as an exhibit for
3 good measure. But it's -- so the total is four pages, and
4 this will be marked as Appellants' Exhibit 1 for both
5 Appellants; although, I believe that this is just --
6 technically, I think it's a schedule from the sole
7 proprietor's appeal because it says June 2017 to
8 October 2017. But I think I will, for good measure, admit
9 it as Appellants' Exhibit 1 for both cases, in case
10 there's relevance in the corporation's case as well.

11 Now, Mr. Chepel, you didn't submit any other
12 documents that would be considered exhibits. We do have
13 your briefs. One is dated May 2023; and the other one is
14 November -- May 5th, 2023; and then there's one dated
15 November 21st, 2023. I'm not treating these as exhibits,
16 but they're briefing. They just contain argument, and
17 we're going to consider that argument as part of what the
18 panel looks at when we are making our decision.

19 MR. CHEPEL: Okay.

20 JUDGE BROWN: I want to -- I'm going to move on
21 in a minute to CDTFA's exhibits and admit those. But
22 first I want to make sure that you understand the process
23 that exhibits are documents that the panel can look at as
24 evidence when we are making our findings in these -- for
25 these opinions, for these cases. Actually, single opinion

1 for two cases.

2 And I want to make sure you understand. I think
3 I talked about this at the prehearing conference. It
4 doesn't -- because a document is admitted into evidence
5 doesn't mean that the panel is going to assume it's all
6 true, but it's something that we evaluate as part of the
7 record when we're making factual findings.

8 Appellants haven't submitted any other documents
9 as exhibits; correct?

10 MR. CHEPEL: No.

11 JUDGE BROWN: Okay. So I will say that
12 Appellants Exhibit 1 is admitted in both cases.

13 (Appellants' Exhibit 1 was received into
14 evidence by the Administrative Law Judge.)

15 JUDGE BROWN: Now, I'm going to move onto talk
16 about CDTFA's exhibits. CDTFA previously submitted
17 Exhibits A through G in both cases. I will note my office
18 did compile them into an electronic hearing binder that we
19 distributed to the parties last week. This is just a
20 courtesy copy so that you could have it all in one place.
21 And I will note there was one -- I discovered there's one
22 page missing, but it's not a concern. The Exhibit 1 to
23 the appeals decision, which is CDTFA's Exhibit A, it was
24 the same document in both of the cases, but somehow it was
25 omitted from the Appeal of Chepelyuk in the binder.

1 It's still in the record as an attachment to
2 Exhibit A in Appeal of Luxline Interiors. It should have
3 been attached to both decisions, but it's in the record.
4 And it's in the original submission, so I'm not concerned.
5 The binder was just a summary of the documents. We know
6 that the documents -- this document -- this one page is
7 supposed to be an attachment to both Appeals Bureau
8 decisions.

9 Let me ask, CDTFA, you indicated -- you've
10 submitted Exhibits A through G, and CDTFA does not have
11 any additional exhibits to submit for either case;
12 correct?

13 MR. SMITH: Correct.

14 JUDGE BROWN: Okay. So I'm going to turn back to
15 Appellants.

16 Mr. Chepel, you didn't indicate any objection to
17 admitting any of these documents into evidence; correct?
18 You didn't raise any objection?

19 MR. CHEPEL: No.

20 JUDGE BROWN: Then if you have no objection, I'm
21 going to admit CDTFA's Exhibits A through G in Appeal of
22 Luxline Interiors and CDTFA's Exhibits A through G in
23 Appeal of Chepelyuk.

24 (Department's Exhibits A-G were received into
25 evidence by the Administrative Law Judge.)

1 JUDGE BROWN: All right. Now that I've submitted
2 exhibit -- admitted the exhibits, I'm going to move onto
3 talk about witnesses.

4 Now, Mr. Chepel, you indicated during the
5 prehearing conference, we had talked about that you might
6 testify as a witness. And let me spend some more time
7 talking about what that means. If you are not testifying
8 as a witness, meaning you are not under oath, then we will
9 consider what you're saying as argument but not -- it
10 won't be evidence that we can rely on in making factual
11 findings. If you have evidence, like to tell us about
12 something you observed, what you did, that you want us to
13 consider that as evidence when we make our factual
14 findings, then you would need to testify as a witness.
15 But the decision is up to you. Did I -- do you have any
16 questions about that?

17 MR. CHEPEL: No. No. I'm pretty clear on that,
18 and I -- I had to look it up after our conversation about
19 what that means. So yeah, I don't feel like I need to be
20 sworn in because -- for those reasons that you stated.

21 JUDGE BROWN: All right. That is your decision.

22 Then I will move on just to talk about our time
23 frame here today. We discussed at the prehearing
24 conference that the timeline of the hearing will be
25 approximately -- it might take about an hour, maybe less.

1 I don't know. Appellants' presentation will take up to
2 15 minutes, and CDTFA's presentation will take up to
3 20 minutes.

4 Let me pause and say, Mr. Chepel, is that
5 still -- is 15 minutes still an accurate estimate --

6 MR. CHEPEL: Yeah.

7 JUDGE BROWN: -- for how long you need?

8 MR. CHEPEL: Probably even less than that. I'm
9 going to be very brief and down to the point with my
10 presentation.

11 JUDGE BROWN: Okay. Let me ask, CDTFA, is 20
12 minutes still an accurate estimate for how much time you
13 need?

14 MR. SMITH: Yeah, that's correct. Like
15 Mr. Chepel, probably shorter, but 20 is fine.

16 JUDGE BROWN: Okay. Thank you.

17 So at any point during your presentations, but
18 typically we wait until your done, the panel members may
19 have questions for either party. When we've heard both
20 presentations and the panel members have asked their
21 questions, then Appellants will have a time for a brief
22 rebuttal. The rebuttal is sort of to cover anything new
23 that came up and wasn't addressed during Appellants'
24 initial presentation.

25 So let me pause now and see if anyone has

1 questions about anything we've talked about.

2 And in particular, Mr. Chepel, you indicated
3 earlier when we were talking about the exhibits that
4 you -- you were uncertain about this process. So I want
5 to address any questions you have about the process.

6 MR. CHEPEL: I don't have a question about the
7 process. I -- because I wasn't handling the main overall
8 audit, because the law firm was handling it, I wasn't
9 aware of ever detail. So I had to really quickly learn
10 and review the documents that were submitted. And I did
11 read, and I saw everything. So I'm aware of the process,
12 and I'm aware of what was discussed, what was going back
13 and forth. I wasn't clear on some things, that why they
14 weren't considered or the documents going that were going
15 back and forth between CDTFA and the -- the lawyers. But
16 I -- I'll, you know, I perceive the process. I -- I -- I
17 now see that -- well, let me make my presentation, and --
18 and we'll go from there.

19 JUDGE BROWN: I'm going to say hold -- hold on
20 just a minute. We'll just get to that just shortly.

21 MR. CHEPEL: Okay.

22 JUDGE BROWN: I want check with CDTFA and say, is
23 there anything else that CDTFA wants to raise or ask
24 before we begin with the presentations?

25 MR. SMITH: No, we don't.

1 JUDGE BROWN: Okay. Then I think I've covered
2 everything that we need. Yeah. I think so. I've
3 admitted the exhibits, and we can go ahead with
4 Appellants' presentations.

5 Mr. Chepel, you can begin whenever you're ready,
6 and you have 15 minutes.

7
8 PRESENTATION

9 MR. CHEPEL: Okay. I'm here by special
10 appearance to assisting settling or closing both cases,
11 and I'll try to be brief and to the point. First, I would
12 like to say that the law firm that was handling the audit
13 process with CDTFA, obviously, is not here today. I'm not
14 an expert and have no prior experiences of ever being in
15 an audit or presenting before the CDTFA or OTA, but I do
16 perceive the process, and I will do my best.

17 So the reason that we are here today is because
18 of CDTFA's audit of sales taxes that presumably were not
19 collected or believed to be owed by Luxline Interiors. So
20 number one issue is disallowed sales for resale.
21 Number two is disallowed sales for nontaxable labor, and
22 number three is imposed negligence penalty. So in my
23 opinion these are all accusations because this is exactly
24 what they are. I don't agree with any post-determinations
25 that CDTFA is suggesting.

1 I would like to clarify for the OTA members like
2 how Luxline Interiors conducts its business, and that just
3 so you have an idea of, you know, all the things in
4 question here. So we have three lines of businesses that
5 we do. As a reseller of goods to another business or a
6 company or a business that cannot order products directly
7 from a vendor, or a vendor is requiring them to purchase
8 product through an authorized dealer like Luxline
9 Interiors. And that could be due to them not being
10 competent to order the product or not have enough
11 experience in the industry. So they would refer them to
12 us to purchase that product, and then later we sell to
13 their own customers.

14 Number two, is we do operate as a service
15 provider for installation labor only. And this is when
16 our company purchases products on their own somewhere else
17 but is unable to provide installation. So they would
18 subcontract that portion to Luxline Interiors, or they
19 would hire us as a subcontractor to do that. And our
20 third line of business is end-user of consumer product of
21 sales where we sell, install, and collect taxes and
22 furthermore forward them to CDTFA.

23 So regarding sales for resale where Luxline
24 Interiors is in the business of reselling wholesale
25 products to retailers and the further contract with end

1 consumers to conduct final sales. Now, these are
2 independent companies that hold California resale tax
3 licenses that are on file with CDTFA. And CDTFA has full
4 access to those licenses in their database. In their
5 audits, CDTFA has basically stated that Luxline Interiors
6 had to collect sales tax from retailers that purchased
7 products from Luxline Interiors for the purpose of resale,
8 even though the sales tax has already been paid by the
9 consumer, collected by the retailer, and further paid to
10 the CDTFA.

11 So CDTFA wants Luxline Interiors to charge and
12 pay sales taxes once. Then they want the retailers to
13 also charge and pay sales taxes a second time, and we all
14 pay CDTFA multiple times for the exact same product. Now,
15 the question that I have is how is that not a double
16 taxation, or how is that not a violation of state law
17 against double taxation as well as Constitution of the
18 United States or a California Constitution?

19 So regarding the sales for nontaxable labor, the
20 very definition of that nontaxable labor should speak for
21 itself, but CDTFA sees it otherwise. We tried to explain.
22 So when contracted for installation labor services by
23 other vendors or other retailers of the final product, who
24 are also licensed resellers in California, but that
25 shouldn't even matter because there's no sales of any

1 product involved under such arrangements of any kind.

2 So CDTFA is basically saying that because
3 Luxline Interiors uses a tape measure prior to
4 installation therefore, that type of labor should be
5 considered taxable, as measuring for something is
6 considered, in CDTFA's opinion, to be a part of the
7 manufacturing process. I -- I want to say very clearly,
8 Luxline Interiors, in those cases, is not engaged in
9 manufacturing, altering, or adding any value to a
10 ready-made product that was purchased and sold by a
11 third-party vendor and contracted to Luxline Interiors to
12 be physically installed with a drill and a screwdriver.
13 There's no sales of product involved for those agreements.
14 Therefore, that's nontaxable.

15 Tape measure is not a manufacturing tool. It is
16 simply a tool used to measure things. Because with that
17 logic, a piece of paper should be taxable because it's
18 typed on the keyboard and where a keyboard could be
19 considered a taxable instrument. That's just absurd. I'm
20 sure CDTFA doesn't charge sales taxes for typing up stuff.
21 So -- or is there -- you know, labor is considered
22 nontaxable. So just draw your conclusions from that. I
23 have nothing further to say about that.

24 Regarding negligence penalty, CDTFA stated that
25 they're imposing a 10 percent negligence penalty over the

1 bulk presumed audit total, not actual, not guess. You
2 know, just like they just presume the -- the proposed
3 amount that they feel like the company should owe and that
4 CDTFA should collect. This should actually be illegal,
5 but who is to judge CDTFA, right? So CDTFA admitted that
6 negligence penalty is not generally imposed when the
7 taxpayer has not been previously audited, which I've never
8 been audited or the company has never been audited. And
9 the taxpayer is generally entitled to leniency in the
10 first time audit, but CDTFA decided to enforce the penalty
11 anyways. I -- I'm speechless. I have nothing to add here
12 overwhelming. The pure arrogance and sense of
13 superiority -- superiority is just overwhelming.

14 In conclusion, I mean, like I said, I'm going to
15 be brief because I -- I don't have much to say here. But
16 based on the whole experience of the audit, oh boy, really
17 gave me a -- a real impression of extortion-like tactics
18 by CDTFA. I've concluded that CDTFA is very well aware
19 that the main parties in both of these audits, Luxline
20 Interiors and Chepelyuk, does not actually owe any sales
21 taxes to CDTFA; but CDTFA is very determined to continue
22 with this twisting of the arm tactic, and they just can't
23 get their hand out of the candy jar it seems to me like.

24 But it's -- it's not going to -- you know, it's
25 not going make their point or -- or prove them right in --

1 in what they're trying to achieve because I still stand on
2 my own belief that all business was conducted in honor.
3 We've been straightforward, presented -- documented
4 everything and presented everything to them. They have
5 records of it. Argued with them over it, and -- yeah.
6 They -- they still make their presumption, you know, or
7 determination otherwise.

8 This will conclude my presentation.

9 JUDGE BROWN: Thank you.

10 I'm going to ask -- I'm going to pause, and we'll
11 see if we have any questions from the panel members at
12 this time, or we may wind up saving our questions until we
13 hear CDTFA's presentation as well.

14 I'll ask first, Judge Long, do you have any
15 questions for Appellants at this time?

16 JUDGE LONG: I don't have any questions at this
17 time. Thank you.

18 JUDGE BROWN: Okay. And, Judge Ridenour, do you
19 have any questions at this time?

20 JUDGE RIDENOUR: Also no questions at this time.
21 Thank you.

22 JUDGE BROWN: Okay. Then I'll hold my questions
23 also until we hear both presentations.

24 I will say, CDTFA, if you are ready, we can go
25 ahead and hear CDTFA's presentation.

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1 After the appeals conference, Appellant did
2 provide limited XYZ letters for approximately three
3 customers, and the liability was adjusted accordingly. A
4 negligence penalty was also imposed due to Appellants'
5 significant underreporting of taxable sales, as well as
6 its failure to provide sufficient records for sales and
7 use tax auditing purposes.

8 California imposes a sales tax on a retailer's
9 retail sales in the state of tangible personal property
10 measured by the retailer's gross receipts, unless the
11 sales are specifically exempt or excluded from taxation by
12 statute. A retail sale is a sale for any purpose other
13 than for resale. Gross receipts means a total amount of
14 the sale price of a retailer's retail sales of TPP,
15 whether received in money or otherwise. However, gross
16 receipts do not include the price received for labor or
17 services using or installing or applying the property
18 sold. All of a retailer's gross receipts are presumed
19 subject to tax until the contrary is established.

20 The taxpayer bears the burden of establishing its
21 entitlement to any claimed exemption or exclusion. The
22 mere allegation that sales are exempt is insufficient.
23 The burden of proving that a sale of TPP is not a sale at
24 retail is upon the person who makes the sale, unless the
25 seller timely and in good faith takes from the purchaser a

1 resale certificate. When the seller fails to timely
2 obtain a resale certificate in proper form, the seller
3 will be relieved of liability for the tax only where it
4 shows the property at issue was, in fact, resold by the
5 purchaser, and was not used by the purchaser for any
6 purpose other than retention, demonstration, or display
7 while holding it out for sale. The seller may use any
8 verifiable method of establishing that it should be
9 relieved of liability for the tax.

10 The application of tax to construction contracts
11 is explained in Regulation 1521. A contract to erect,
12 construct, alter, or repair any building or other
13 structure or other improvements onto real property is a
14 construction contract within the meaning of the
15 Regulation 1521. Window coverings installed onto real
16 property become an improvement to real property.
17 Accordingly, a contract to furnish and install window
18 coverings is a construction contract governed by
19 Regulation 1521. Regulation 1521 also defines the terms
20 materials and fixtures. Materials are construction
21 materials and components. Incorporated into attached or
22 affixed to real property by a contractor in the
23 performance of a construction contract; which when
24 combined with other tangible personal property loses its
25 identity to become an integral part of the real property.

1 Generally, a construction contractor is a
2 consumer of materials, which a contractor furnishes and
3 installs in the performance of a lump sum construction
4 contract. When the contractor is the consumer of
5 materials, tax applies to the sale or used by the
6 contractor of those materials. Fixtures are items which
7 are accessory to a building or other structure and do not
8 lose their identity as accessories when installed. A
9 construction contractor is generally the retailer of
10 fixtures, which a contractor furnishes and installs in the
11 performance of a construction contract, and tax applies to
12 the sale of the fixture by the construction contractor to
13 a customer measured by the sales price.

14 Appendix B of Regulation 1521 notes that blinds
15 are considered fixtures. Regulation 1521(c)(1) further
16 provides that persons who contract a sale and install
17 draperies and drapery hardware are retailers of the items
18 they furnish and install, and tax applies to the entire
19 contract price exclusive of the charge for installation.
20 Appellants' contention that it made valid sales for resale
21 is not supported by the evidence that it has provided.

22 The City of Newport Beach business license tax
23 certificate it provided is not a valid resale certificate.
24 A resale certificate must contain the signature of the
25 purchaser, the name and address of the purchaser, the

1 statement of the property described in the document as
2 purchase for resale, and a date of execution. The
3 business license tax certificate provided by Appellant
4 contains none of these, and thus, is insufficient to
5 demonstrate that a purchaser holds a seller's permit.

6 Next, Appellants' contention that the majority of
7 the transactions used in the disallowed nontaxable labor
8 sale for resale by virtue of Appellants' status as a
9 subcontractor is incorrect. Both Regulation 1521
10 subdivision (b) (2) (B) and (c) (1), state that a person who
11 contracts to sell and install draperies and other window
12 coverings is a retailer of the items which they furnish
13 and install. This is true regardless of their status as a
14 contractor or subcontractor. The Regulation allows resell
15 certificates to be accepted in situations where drapery
16 and associated hardware are being resold. However,
17 Appellants' assertion without supporting documents, such
18 as resale certificates, do not prove that the disallowed
19 sales in the test period were sales for resale.

20 Furthermore, it does not appear any of the disallowed
21 sales for resale contained in audit schedule 12C-1 involve
22 drapery and hardware, as opposed to window shades and
23 blinds, which are considered fixtures.

24 BT -- Business Taxes Law Guide annotation
25 190.0829 is directly on point here. In the annotation,

1 the tax application to a contract to furnish and install
2 plantation shutters by a subcontractor was discussed. The
3 annotation concluded that the sale of the plantation
4 shutters was a sale of tangible personal property and
5 improvement to real property. Therefore, the
6 subcontractor who furnished and installed the plantation
7 shutters was liable for the tax, not the general
8 contractor. This is the same situation as here, and the
9 tax application is identical.

10 Finally, the negligence penalty was properly
11 imposed. Although this is petitioner's first audit, the
12 substantial underreporting of taxable sales representing a
13 percentage error of 105 percent for the predecessor
14 account and 90 percent for Appellant is substantial and
15 constitutes evidence of negligence. In addition,
16 Appellant provided only limited records for the
17 predecessor account and no records for its audit. This is
18 also compelling evidence of negligence.

19 Although, taxpayer is entitled to some leniency
20 in a first-time audit, a significant underreporting
21 combined with the insufficient recordkeeping cannot merely
22 be attributed to a good-faith belief by Appellant. Its
23 record keeping and reporting practices were sufficient for
24 sales and use tax purposes. Accordingly, no adjustments
25 are warranted to Appellants' liability.

1 This concludes my presentation. Thank you.

2 JUDGE BROWN: Thank you, CDTFA.

3 And now we will have questions from the panel for
4 either party.

5 Judge Long, do you want to start with any
6 questions for either party?

7 JUDGE LONG: This is Judge Long. I do not have
8 any questions. Thank you.

9 JUDGE BROWN: Okay. Judge Ridenour, do you have
10 questions for either party?

11 JUDGE RIDENOUR: I also do not have any
12 questions. Thank you.

13 JUDGE BROWN: Okay. Thank you, both.

14 I may have a few questions.

15 For, CDTFA, I just want to confirm the error
16 rates you just cited, 105 percent for the sole proprietor
17 and 90 percent for the corporation. Those are the error
18 rates following the most reaudit that was ordered in the
19 Appeals Bureau decision that removed the sale -- a few
20 different sales to Serhal Interiors, Newport Floor
21 Covering, et cetera. I'm just confirming those are the
22 most recent error rates?

23 MR. SMITH: I think those were the error rates
24 prior to that. But, I mean, those were very insignificant
25 amounts. So we don't think it really affects the fact

1 that there was significant underreporting.

2 JUDGE BROWN: Well, I guess I'll say, Mr. Parker,
3 I know this might be your area, if you want to give me
4 a -- during the course of the hearing, if you want to give
5 an updated error rate. I understand it might not be that
6 much lower, but if you -- I trust your calculations, if
7 you have -- if you can do so. If you can't do so during
8 the hearing, you can submit it after -- at the end of the
9 hearing -- following the close of the hearing.

10 MR. PARKER: Yeah. Judge Brown, I just
11 calculated the updated numbers. So for the first audit,
12 the percentage additional taxable sales compared to
13 reported is 93 percent additional. And the second audit,
14 the additional taxable measure compared to reported
15 taxable sales is 79 percent.

16 JUDGE BROWN: Thank you very much.

17 And I guess I just want to revisit that briefly
18 with Mr. Smith. That does not change -- those lower rates
19 don't change CDTFA's position regarding the negligence
20 penalties; correct?

21 MR. SMITH: That's correct.

22 JUDGE BROWN: Okay. And then I want to turn back
23 to Appellants, Mr. Chepel.

24 MR. CHEPEL: Yeah.

25 JUDGE BROWN: All right. I want to ask if you

1 want to point us to any evidence that's in the record,
2 because you did receive the audit work papers that were in
3 CDTFA's exhibits, if there are any documents you want to
4 point us to that you think support your argument about,
5 you know, the nontaxable labor for the sales for resale.

6 MR. CHEPEL: Well, the nontaxable labor was --
7 see, they -- the certificates were submitted. They just
8 were dismissed. And they are on record with CDTFA. They
9 can look up any business, and they can see that we have --
10 you know, we are completely in honor of what we're doing,
11 and there's nothing. You know, we're not just selling
12 products to whoever wants to buy it. They're legit
13 businesses with legit resale licenses. Records were
14 ignored that were submitted. They weren't looked at.
15 Error rates are completely fabricated. They're untrue.
16 They didn't really perform a true audit. They just, you
17 know, generally applied their however -- the formula they
18 have. So I don't agree with any of that.

19 I didn't review all the records that you're
20 referring to, to point you to a specific one. But I know
21 100 percent, you know, there was not any sales for resale
22 that were conducted without a resale certificate. CDTFA
23 knows that very well. They -- just because I didn't get a
24 signature from them, for example, like stating what
25 they're going to be using that the product or who they're

1 selling it to at the ends, which is not any of my
2 business. But I guess CDTFA wants me to do their work for
3 them and -- or wanted to. But other than that, I don't
4 have a document to point you exactly because it's -- I
5 didn't study them well enough.

6 JUDGE BROWN: I think that is all that I have at
7 this time.

8 CDTFA, if you have anything further, I'll give
9 you a moment to respond before we move on to Appellants'
10 rebuttal.

11 MR. SMITH: Yeah. Well, I mean, I'll just
12 briefly say that the duty is on the Appellant to provide
13 us with retail certificates, you know, or other evidence
14 of resale. We did use the XYZ process and obtained some
15 limited responses. But, again, it's his duty to prove
16 they are sales for resale. And then also just quickly
17 that the audit amounts, I know he says are wrong. I mean,
18 they were derived because of the lack of records. So we
19 had to use other auditing processes to figure out how many
20 sales he made. So, again, if he had provided full
21 records, it would have been a different audit.

22 That's all. Thank you.

23 JUDGE BROWN: All right. Thank you.

24 MR. NOBLE: If I could add just one other thing,
25 Judge Brown?

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JUDGE BROWN: Yes.

MR. NOBLE: I apologize for interrupting you.

JUDGE BROWN: No problem. Go ahead.

MR. NOBLE: I just want to note that it appears a lot of the measure going on here has to do fixtures that were furnished and installed by the Appellant. You know, by Regulation 1521, a fixture, they are retailer of it. So, you know, resale certificates may have help differentiate between anything that wasn't a construction contract. But, again, due to a lack of records, it's -- it's very hard to tell what was going on there.

JUDGE BROWN: Thank you.

I think I've heard everything from CDTFA now.

So now we will go back to Appellants.

Mr. Chepel, at this time, you'll have the opportunity to make a brief rebuttal. If there's anything that you didn't have opportunity to cover in your presentation because -- initial presentation because it was -- things that have been raised since then, you can make a rebuttal. And then I'll have any final questions from the panel afterwards. If you're --

MR. CHEPEL: Thank you, Judge.

JUDGE BROWN: If you have a rebuttal, you can go ahead.

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STATE OF CALIFORNIA OFFICE OF TAX APPEALS

1 suggested practices. Hiring, you know, law firm to
2 represent the audit hoping to compel a righteous and fair
3 resolution. I was told that lawyers are the only ones
4 that are able to navigate this complex world of
5 unachievable resolutions for a living man. Turned out the
6 lawyers are only there when you have money to pay them. I
7 mean, who knew, right? Just like the CDTFA agency is only
8 there to collect from you when they feel like they can.
9 That's a nice coincidence there.

10 This very case is the perfect example why
11 businesses in California are forced to either leave the
12 state or forced to conduct and maintain their businesses
13 in private. And thank God for the Constitution of the
14 United States that protects us. A practice of state
15 institutions to threaten financial harm imposing fear.
16 Any of the tactics that they're using for noncompliance
17 has never made anybody more motivated to conduct their
18 business with the state and continue holding their
19 licenses that bring nothing but harm.

20 In conclusion, per SB 86 AB 102, the taxpayer
21 agency and Fairness Act of 2017 that created this very
22 Office of Tax Appeals to provide impartial resolution to
23 tax disputes, I'm asking you, Judge and the whole panel of
24 OTA, to truly examine and consider the circumstances
25 relative to both cases presented here today and administer

1 and equitable remedy to all accounts in today's hearing.
2 But if you still feel that -- or find that I still owe
3 some tax, please render the account in writing, and I will
4 honor it immediately.

5 I want to thank everybody here for your time
6 and -- and resolution for these cases.

7 JUDGE BROWN: Thank you very much, Mr. Chepel.

8 I'm going to just turn to the panel one last time
9 and confirm they don't have any additional questions for
10 either party.

11 Judge Ridenour, no questions?

12 JUDGE RIDENOUR: I do not have any questions. I
13 just want to thank everybody for being here today. Thank
14 you.

15 JUDGE BROWN: And, Judge Long, anything further?

16 JUDGE LONG: No questions. Mr. Chepel, thank you
17 for presenting your argument.

18 JUDGE BROWN: All right. Then I believe we have
19 concluded the hearing. I want to thank all of the
20 participants today. I can say that the record is closed,
21 and the case is submitted today.

22 The panel members will meet and decide the case
23 based on the evidence, arguments, and the applicable law.
24 We will mail both parties our written decision no later
25 than 100 days from the date the record closes, which is

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today.

And, therefore, the hearing is now adjourned.

And the next hearing will begin during the
afternoon session.

Thank you, everyone.

We have concluded the hearing.

(Proceedings concluded at 10:26 a.m.)

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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
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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 13th day
of January, 2026.

ERNALYN M. ALONZO
HEARING REPORTER