

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
EATON CORPORATION,) OTA NO. 221212041
) 230312830
)
 APPELLANT.)
)
 _____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, January 21, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Panel Lead:	ALJ STEVEN KIM
Panel Members:	ALJ SHERIENE ANNE RIDENOUR HEARING OFFICER KIM WILSON
For the Appellant:	MICHAEL RISCILI TIM GUSTAFSON
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION KEVIN SMITH JARRETT NOBLE JASON PARKER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

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

(Department's Exhibits A-L were received into evidence at page 7.)

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

	<u>PAGE</u>
By Mr. Gustafson	7
By Mr. Smith	23

W I T N E S S T E S T I M O N Y

	<u>PAGE</u>
By Mr. Riscili	19

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

	<u>PAGE</u>
By Mr. Gustafson	36

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

California; Wednesday, January 21, 2026

1:06 p.m.

JUDGE KIM: We are now going on the record.

This is the Appeal of Eaton Corporation, OTA Case Nos. 221212041 and 230312830. Today is January 21st, 2026, and the time is 1:06 p.m. This hearing is being held electronically on Zoom with the agreement of both parties.

I am Judge Steven Kim. I will be the lead ALJ for the purpose of conducting this hearing. My co-panelists are Judge Sheriene Ridenour and Hearing Officer Kim Wilson. We are equal participants in deliberating and determining the outcome of this appeal.

So parties, if you could please state your name and who you represent and your, title, starting with Appellant.

MR. GUSTAFSON: I am Tim Gustafson with Evershed Sutherland, appearing on behalf of Appellant Eaton Corporation.

JUDGE KIM: Thank you.

And, Mr. Riscili.

MR. RISCILI: Hello. I'm -- I'm Mike Riscili. I am director of state and local tax strategy for the taxpayer Eaton Corporation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE KIM: Thank you.

And for Respondent California Department of Tax and Fee Administration or CDTFA.

MR. SMITH: Hi. This is Kevin Smith. I'm from the CDTFA legal division.

MR. NOBLE: This is Jarrett Noble. I'm an attorney for -- with the CDTFA's legal division.

MR. PARKER: And I'm Jason Parker, Chief of Headquarters Operations Bureau with CDTFA.

JUDGE KIM: Thank you.

The issue to be decided in this appeal is whether Appellant is entitled to relief of any tax and interest under Revenue & Taxation Code section 6596 based on reasonable reliance on written advice from CDTFA.

Mr. Gustafson, is this the issue on appeal?

MR. GUSTAFSON: It is.

JUDGE KIM: And, Mr. Smith, do you agree?

MR. SMITH: I agree.

JUDGE KIM: Thank you.

Appellant submitted Exhibits 1 through 6, and CDTFA did not object to these exhibits. Therefore, Exhibits 1 through 6 are now admitted into evidence.

(Appellant's Exhibits 1-6 were received into evidence by the Administrative Law Judge.)

JUDGE KIM: And CDTFA submitted Exhibits A

1 through L. Appellant did not object to the admissibility
2 of these exhibits. Therefore, Exhibits A through L are
3 now admitted into evidence.

4 (Department's Exhibits A-L were received into
5 evidence by the Administrative Law Judge.)

6 JUDGE KIM: And at the PHC, the prehearing
7 conference, both parties indicated that they do not intend
8 to call any witnesses.

9 Just to clarify, Mr. Riscili is here as a -- he
10 won't be testifying as a witness; is that correct?

11 MR. GUSTAFSON: That's correct.

12 JUDGE KIM: Okay. All right. Mr. Gustafson, you
13 will have 30 minutes for your presentation, and you may
14 begin when you're ready.

15 MR. GUSTAFSON: Thank you very much, Judge Kim,
16 Judge Ridenour, and Hearing Officer Wilson.

17

18 PRESENTATION

19 MR. GUSTAFSON: We're here today on two
20 consolidated appeals involving tax periods 2011 to 2013 in
21 the first appeal, and 2014 to 2016 in a second appeal.
22 But this case involves four audits; audits for the two
23 periods subject to these appeals, and audits for two prior
24 periods; and those are 2005 to 2007 and 2008 to 2010. So
25 as a little, maybe preliminary housekeeping, I'll refer to

1 the audit for 2005 to 2007 as the "first audit;" the audit
2 from 2008 to 2010 as the "second audit;" the 2011 to 2013
3 as the "third audit;" and no surprise, the audit for 2014
4 to the 2000 -- to 2016 as the "fourth audit." I will also
5 refer to first and second audits collectively as the
6 "prior audits."

7 So with that in mind, there are -- now there are
8 some important consistencies of -- across all four audits,
9 and the first involves the facts, which remained
10 consistent. Eaton, the taxpayer, engaged in the same
11 business during all four audit periods. Eaton
12 manufacturers, sells, installs, and maintains high-end
13 power management products, such as switchgear, circuit
14 breakers, sensors, and uninterrupted power supply or UPS
15 products. On that -- on the last one, the UPS products,
16 Eaton has been manufacturing those for over 60 years.

17 Eaton operates sales and service facilities in
18 various California locations. And, in fact, has been
19 in -- operating in California for over 100 years. Eaton
20 contracts with a variety of customers, including the
21 United States Government and its agents located inside and
22 outside of California. And again, Eaton made, sold, and
23 installed the same products across all four audit periods,
24 and including those up UPS products. Eaton entered into
25 transactions with the U.S. Government and transactions

1 with private entities across all four audit periods. So
2 that's the first consistency across the audits.

3 The second consistency, and an important one,
4 involve the audit themselves, and the fact that the
5 auditors examined Eaton's sales and its transactions with
6 the U.S. government. That's the key consistency. Now,
7 there was one critical difference between the first two
8 and the last two audits, and that's really why we're here
9 today. While the first two auditors concluded that Eaton
10 sales to the U.S. government were exempt sales, the last
11 two auditors reached a different legal conclusion; and
12 that was that Eaton sales to U.S. government were
13 construction contracts. And consequently, CDTFA
14 determined that certain for those -- those last two
15 auditors determined that certain purchases related to
16 performing those contracts were taxable.

17 So we've got these four audits, and we have this
18 critical distinction between what happened in the first
19 two and what happened in the last two. And -- and this
20 case then, really raises the question, what is the purpose
21 of an audit? And CDTFA Regulation 1698.5 subdivision
22 (b)(1) tells us that the purpose of an audit is to
23 determine whether the taxpayer reported the correct amount
24 of tax. Now, if a taxpayer does not report the correct
25 amount of tax, then the auditor tells the taxpayer what it

1 did wrong. Then by implication, the auditor also tells
2 the taxpayer what it did right in an audit.

3 If the taxpayer reported the correct amount of
4 tax, then there are no adjustments. If the taxpayer did
5 not, and did something wrong, then CDTFA will make an
6 adjustment. And then the taxpayer is supposed to correct
7 what it did wrong going forward and to continue what it
8 did right going forward. And Eaton as a corporate
9 taxpayer is very familiar with this process. It collects,
10 reports, and remits millions in sales and use taxes each
11 year to California, and CDTFA, and the State Board of
12 Equalization before it, routinely audits Eaton's
13 California sales and use tax liability. And in each
14 audit, the State tells Eaton what it did wrong, if
15 anything, and confirms what it did right.

16 Here, in this case, there wasn't just one, but
17 two audits where the State told Eaton that how Eaton
18 treated its sales to the U.S. government was right, that
19 these were exempt sales. Consequently, Eaton continued to
20 treat its sales to the U.S. government as exempt sales and
21 to report those transactions accordingly into the periods
22 at issue in these appeals carried forward into 2011 to
23 2013, 2014 to 2016. It wasn't until 2017, which is after
24 the close of the fourth audit period, that CDTFA or the
25 Board of Equalization told Eaton that Eaton was wrong

1 about these transactions for the first time.

2 Revenue & Taxation Code section 6596 and CDTFA
3 Regulation 1705, which we're going to discuss a little bit
4 more in detail, say that a taxpayer gets to rely on what
5 the auditor says it did right. And that's what Eaton did.
6 Eaton never had a chance to correct what CDTFA was -- said
7 was wrong in the six years after being told that it had
8 been doing things right.

9 Now, regarding the law, section 6596 provides for
10 relief from sales and use tax liability when a taxpayer's
11 failure to pay such tax is due to reasonable reliance on
12 written advice from CDTFA. And there are four conditions
13 for relief under the statute: Taxpayer made a written
14 request to CDTFA. CDTFA responded in writing regarding
15 the request, stating the whether the described, quote,
16 "activity or transaction is subject to tax," end quote;
17 taxpayer in reliance on the advise did not collect sales
18 tax or pay use tax; and four, the tax liability applied to
19 a transaction or activity which occurred before CDTFA sent
20 the taxpayer written note of rescinding or modifying the
21 advice.

22 Now, only the second condition is at issue in
23 these appeals and, specifically, as set forth in CDTFA
24 Regulation 1705 subdivision (c). The issue here is
25 whether the prior audit documentation constituted written

1 advice by demonstrating that, quote, "The issue in
2 question was examined," end quote, or alternatively that,
3 quote, "The activity or transaction in question was
4 properly reported and no amount was due," end quote.

5 The issue in question in these appeals was the
6 nature of Eaton's sales of tangible personal property to
7 the U.S. government. Similarly, the activity and
8 transaction in question -- transactions in question were
9 the sales themselves; and this issue was examined by the
10 first auditor. We know that by looking at the workpapers
11 for the first audit. For example, the auditor labeled
12 Eaton sales to the U.S. government as exempt in its -- in
13 the workpapers. And these are found at Exhibit --
14 Appellant's Exhibit 3, pages 8 and 9, and also at 23.
15 Additionally from the audit work papers, we know that
16 Eaton sold UPS products to U.S. government, and Eaton
17 performed services for the U.S. government. These are
18 found at Appellant's Exhibit 2. These are invoices, pages
19 1, 4, and 5 and the for -- for the UPS products, and 3 for
20 the services.

21 The auditor in the first audit also reviewed a
22 large number of exempt labor invoices and optional
23 maintenance invoices. It's Appellant's Exhibit 3, pages 1
24 through 4 for the former, and 4 through 8 for the latter,
25 as well as invoices showing installation. Appellant's

1 Exhibit 3, pages 24 to 27, these are invoices. So the
2 auditor examined Eaton's transactions with the United
3 States government knowing the types of customers, the
4 property sold, and the accompanying services performed.
5 And based on this examination -- the whole context of
6 it -- the auditor concluded that the transactions with
7 U.S. government were except sales.

8 Now, turning back to Regulation 1705
9 subdivision (c), that provides that, quote, "Audit
10 comment, schedules, and/or other writings prepared by the
11 Board that become part of the audit workpapers which
12 reflect that the activity or transaction in question was
13 properly reported and no amount was due are sufficient for
14 a finding for relief from liability, unless it can be shown
15 that the person seeking relief knew such an advice was
16 erroneous," end quote. Well, Eaton properly reported its
17 sales to the U.S. government, and no amount was due from
18 those transactions. The auditor agreed with Eaton that
19 the sales were exempt. Together, under the regulation,
20 that's sufficient for a finding of relief from liability.
21 Eaton certainly didn't know that the advice that its sales
22 to the U.S. government was exempt was erroneousness and
23 that's why it was challenging in the -- in the third and
24 fourth audits. Eaton challenged the legal conclusion that
25 Eaton was a construction -- U.S. construction contractor.

1 Turning to the second audit, really, the second
2 auditor makes our case for us. And the second auditor
3 relied on the legal conclusion drawn by the first auditor.
4 As CDTFA note in -- in its briefing, the second auditor
5 refined Eaton's U.S. government invoices out of the audit
6 sample. He didn't need to see them. Why not? Well,
7 because the first auditor had determined that such sales
8 were exempt. So the second auditor relied on the
9 determination of the first auditor, and that's what the
10 Eaton did. And that's what the statute and regulation say
11 Eaton can do.

12 Now, the CDTFA for its part disagrees with us on
13 the relevant issue in question or the activity or
14 transaction. CDTFA contends that that issue is whether
15 Eaton paid use tax on its purchase of materials and
16 fixtures acquired to perform construction contracts. But
17 this presupposes that Eaton is a United States
18 construction contractor under Regulation 1521, and there
19 are a couple problems with this presupposition. The first
20 problem is that the determination of whether Eaton is a
21 construction contractor -- a U.S. construction contractor
22 is a legal one, not a factual one. And we include a
23 number of citations at pages 2 and 3 of our consolidated
24 supplemental opening brief demonstrating this point.

25 And legal determinations are what a taxpayer is

1 entitled to rely on under -- or 6596 -- section 6596. For
2 example, if an auditor gives written advice telling a
3 taxpayer that product X is exempt, then the taxpayer is
4 entitled to relief from liability on its sales of
5 product X; even if CDTFA later comes back and -- and says
6 that product X is taxable. Only after CDTFA notifies a
7 taxpayer of that change or correction, then the taxpayer
8 can no longer rely on the prior determination.

9 The second problem for CDTFA is that the legal
10 determination for a construction contractor doesn't depend
11 on a taxpayer's purchases. That determination is driven
12 by taxpayer's sales, its transactions with the -- the --
13 of the counter party; so here, the U.S. government. Here
14 -- and that's -- again, it's Eaton sales to the U.S.
15 government, which were examined during the first audit.
16 The first auditor did not conclude that Eaton was a United
17 States construction contractor; didn't even conclude that
18 Eaton was a construction contractor at all. And this is
19 even though Eaton engaged in the sale and installation of
20 the same products with non-governmental entities that it
21 did with the U.S. government. And neither did the second
22 auditor; he didn't conclude that Eaton was a construction
23 contractor either.

24 Now, it's interesting to note that the second
25 auditor reviewed a refund claim that Eaton made for tax

1 accrued for a different California construction
2 contractor. And so the -- the topic was even on -- on the
3 table during the second audit, but that auditor did not
4 find Eaton to be a construction contractor. And CDTFA
5 concedes this point in its Respondent's Exhibit B at
6 page 24 where it says, quote, "Nowhere in the prior audit
7 reports was Eaton referred to as construction contractor.
8 They were classified as a seller of equipment," end quote.

9 So both auditors examined Eaton's transactions,
10 and neither concluded that Eaton was a construction
11 contractor of any kind but instead, is classified as a
12 seller of equipment. Sales of equipment are not
13 construction contracts under Regulation 1521. Now, the
14 CDTFA also concedes that the prior audit workpapers do
15 indicate that purchases were examined or reviewed. This
16 is at Respondent's Exhibit B, page 23. But CDTFA
17 downplays this fact asserting that the first two auditors
18 were looking at the wrong purchases, and that Eaton's
19 purchases of -- and, quote, "Eaton's purchases of
20 materials to manufacture UPS systems and other property
21 that is considered a fixture as defined in Regulation 1521
22 were never examined in the prior audits," end quote.

23 Again, this presupposes a legal determination
24 that UPS products were fixtures under Regulation 1521 and
25 not machinery or equipment. But again, the prior auditors

1 classified Eaton as a seller of equipment, and that's
2 according to CDTFA itself. Neither found Eaton to be a
3 construction contractor of any kind. And additionally, as
4 a -- as a factual matter, we note that the second auditor
5 reviewed Eaton's purchase of maintenance parts consumed,
6 over 600 of them. And they show up in the -- in the
7 workpaper at -- the workpapers at Respondent's Exhibit L,
8 pages 174 to 205. And these parts included multiple UPS
9 related items -- UPS product related items. And those
10 show up at various rows throughout the -- those
11 workpapers, pages 175 through 178, 180, and so forth.

12 But it's not -- the purchases aren't the issue
13 here. The issue that -- that matters is sales. And
14 because it's -- it's a taxpayer's sales that determine
15 whether it is a construction contractor or United States
16 government construction contractor, not its purchases.
17 Only after that determination is made to particular
18 purchases matter -- or particularly, the ones that are
19 given rise to the liability in the -- the appeals here.
20 The first two auditors examined Eaton's sales to the U.S.
21 government and concluded that they were exempt. The first
22 one by taking a look at the sales, the second one by
23 relying on what the first auditor said.

24 Now, these two first -- these first two auditors
25 made these legal conclusions and -- and told Eaton what it

1 did right and what it did wrong, accordingly. But even if
2 they -- these auditors drew the wrong legal conclusions,
3 Eaton still was entitled to rely on that advice. CDTFA
4 Regulation 1705 contemplates the possibility of auditor
5 error. Then, written advice under the Regulation
6 expressly includes advice that was, quote, "incorrect at
7 the time it was issued," end quote. And this is in
8 Reg 1705 subdivision (a)(3).

9 Now, CDTFA now says that the first two auditors
10 made a, quote, "judgment call," that turned out to be
11 wrong; and this is Respondent's Exhibit B, page 25. Eaton
12 is entitled to rely on that judgement call. A judgement
13 call made by auditors required by CDTFA to be familiar
14 with the provisions and requirements of the laws they're
15 administering, including the sales and use tax law. And
16 these judgement calls that auditors make are even presumed
17 to be correct by law. So Eaton can rely on those, and
18 reasonably so. And that's what it did.

19 Now, CDTFA can reverse itself when it comes to
20 the application of law to particular facts. Say this item
21 we're saying consider it equipment, now we consider it
22 fixture, not a construction contractor, yes a construction
23 contractor. CDTFA can come in and make -- and -- and make
24 that -- take that all, that other position, that reversal.
25 Taxpayer can't be expected to anticipate that reversal and

1 certainly, not be penalized for doing so. Here, for
2 example, having six years of doing the same thing that the
3 first two auditors said it should do when in terms of
4 treatment of Eaton sales to the U.S. government before
5 hearing that treatment is now wrong. Eaton had no
6 opportunity to correct course during that period. And
7 that's what section 660-- 596 is designed to protect
8 against.

9 At this point I just wanted to turn to
10 Mr. Riscili and just ask if he as -- as just the taxpayer
11 representative anything to -- to add to our argument.

12

13

WITNESS TESTIMONY

14

15

16

17

18

19

20

21

22

23

24

25

MR. RISCILI: And -- and I realize -- and I'm not
making a legal argument here. I'm just saying from a --
from a taxpayer's perspective. Again, you get an audit
report. It tells you what you did wrong, but it also
tells you what you did right. So you're going to continue
to do what you think did right and -- and try to correct
what you did wrong. And from our perspective, again, why
would we change anything going forward. And just the
nature of these audits and these things take time, again,
we we're dealing with -- we were dealing with an audit
from '11 through '13 that we didn't get, essentially,
audit workpapers and reports for until 2017.

1 So, again, that -- that period is already --
2 there is -- there would be no chance for us to ever
3 correct that just by what the information we had from the
4 State of California is telling us we were doing; these
5 transactions are right. We couldn't change anything.
6 And, again, now that -- that they're telling us we had
7 done it -- potentially done it wrong, we'll look into
8 making corrections on that.

9 But just from a taxpayer's perspective just, you
10 know, we feel hamstrung is what -- what could we have done
11 in that situation, other than, again, bog it down even
12 more, which I don't think is the -- the intention of any
13 of the parties.

14 So that's all I have.

15 MR. GUSTAFSON: Okay. Thank you.

16 So just to -- to wrap up, Eaton reasonably relied
17 on the advice rendered in the first and second audits.
18 They told what it was doing right, and it continued doing
19 what it was doing right; namely reporting its sales to the
20 U.S. government properly. Section 6596 was enacted to
21 protect taxpayers and precisely this situation. And so
22 when Eaton continued to report its transactions based on
23 this advice, that's what it says 6596 allows for until
24 Eaton is put on notice that the advice would no longer be
25 followed or -- or there's a correction from CDTFA; which

1 CDTFA did for the first time in 2017, which was after the
2 close of the two audit periods at issue in this appeal.

3 And so for these reasons, we submit that Eaton is
4 entitled to relief from liability related to its
5 transactions with the U.S. government during the periods
6 in issue.

7 And to the extent there's a -- we need additional
8 time to reserve for -- for responding to question or -- or
9 rebuttal, we do so. But thank you very much.

10 JUDGE KIM: Thank you for your presentation.

11 Let me see if my panel has any questions.

12 Hearing Officer Wilson, did you have any
13 questions for Appellant?

14 HEARING OFFICER WILSON: I think I might, but I
15 think I'm going to hold off until after CDTFA's
16 presentation.

17 JUDGE KIM: Okay. Judge Ridenour, did you have
18 any questions at this moment?

19 JUDGE RIDENOUR: Yes. Just a couple real quick,
20 if you don't mind.

21 So just to confirm my understanding is correct,
22 during the prior audits, none of the contracts were
23 examined; is that correct? It's just the sales invoices,
24 Mr. Gustafson?

25 MR. GUSTAFSON: That -- that is correct. I don't

1 believe we have any -- any contracts with the U.S.
2 government in -- as -- as part of the record here.

3 JUDGE RIDENOUR: Okay. I was reviewing. I've
4 looked over the sales invoices in preparation, you know,
5 for this hearing, and I was unable to find any of the
6 sales invoices that would have gone to installation,
7 right, to give them -- is that correct? I was looking at
8 it, and I couldn't see anything about installation or
9 something that would give the impression of general
10 contractor. If I'm misunderstanding that, I was hoping
11 you could maybe point me to one?

12 MR. GUSTAFSON: Sure. The one invoice with --
13 and so there are invoices with installation, and those
14 would be at Appellant's Exhibit 3, pages 24 through 27.
15 And these -- these particular invoices, as part of the
16 sample, were not for the -- to -- to government entities,
17 but just as part of, you know, what -- what Eaton does.
18 Those are sales to not -- invoices to non-government
19 entities showing installation in -- for the first audit.

20 JUDGE RIDENOUR: I apologize. I guess I should
21 have narrowed my question to sales invoices to the
22 government. But there isn't any installation sales
23 invoices to the government that include installation, just
24 private entities like the ones you just pointed out?

25 MR. GUSTAFSON: We -- there are in -- in invoice

1 showing service to the U.S. government, but it doesn't
2 specifically say the word "installation."

3 JUDGE RIDENOUR: Okay. I just --

4 MR. GUSTAFSON: That's in exhibit -- Exhibit 2,
5 page 3, for example.

6 JUDGE RIDENOUR: Got it. Okay. Thank you. I
7 just wanted to make sure I wasn't missing anything. Thank
8 you very much. No further questions.

9 MR. GUSTAFSON: You're welcome.

10 JUDGE KIM: Thank you, Judge Ridenour.

11 I will reserve my questions for after CDTFA's
12 presentation as well.

13 Mr. Smith, you reserved 20 minutes for CDTFA's
14 presentation, and you may proceed when you are ready.

15 MR. SMITH: Okay. Thank you.

16

17 PRESENTATION

18 MR. SMITH: Good afternoon.

19 At issue today is whether Appellant is entitled
20 to relief under section 6596 based on prior audit advice.

21 Appellant is a multi-national corporation. It
22 was engaged in business in California during the liability
23 period selling power management products and other
24 property to its customers. Upon review of Appellant's
25 books and records for the liability periods, the

1 Department found that, among other things, Appellant
2 erroneously recorded transactions as nontaxable sales for
3 resale and disallowed some of those sales.

4 Among the disallowed claimed nontaxable sales for
5 resale, were transactions where the Department determined
6 that Appellant failed to report and pay use tax in
7 connection with its performance of construction contracts
8 with the United States. There are also related audit
9 measures for fixtures and materials Appellant acquired
10 without paying tax and consumed in the performance of
11 those construction contracts. Appellant contends that it
12 reasonably relied on erroneous written advice given by the
13 Department during prior audits in reporting its use tax
14 obligations connected to construction contracts with the
15 United States.

16 California imposes sales tax on a retailer's
17 retail sales in the state of tangible personal property
18 measured by the retailer's gross receipts, unless the sale
19 is specifically exempt or excluded from taxation by
20 statute. For example, gross receipts from the sale of any
21 tangible personal property to the U.S. government is
22 exempt from the computation of the amount of sales tax.
23 When sales tax do not apply, use tax applies to every
24 person storing, using, or otherwise consuming in the state
25 tangible personal property purchased from a retailer,

1 unless that use is specifically exempted or excluded by
2 statute.

3 A purchaser who gives a resale certificate or
4 purchases property for the purpose of reselling it makes
5 any storage or use of the property, other than retention,
6 demonstration, or display while holding it for sale in the
7 regular course of business, the storage or use is taxable
8 at the time the property is first stored or used. Now,
9 gross receipts from the sale of any tangible personal
10 property to the U.S. government is exempt from the
11 computation of the amount of sales tax.

12 However, United States construction contractors
13 are consumers of materials and fixtures, which they
14 furnish and install in performance of contracts with the
15 U.S. government; and either the sales or the use tax
16 applies with respect to sales of tangible personal
17 property, including materials, fixtures, supplies and
18 equipment to contractors for the use of the performance of
19 such contracts with the U.S. for the construction of
20 improvements onto real property -- to real property in the
21 state. Furthermore, a contractor repair fixture in place
22 or a fixture the contractor is acquired by the contract to
23 the reaffix to the reality is also a construction
24 contract. A United States construction contractor is a
25 consumer of the parts furnished in the performance of

1 construction contracts to repair a fixture.

2 Under Revenue & Taxation Code section 6596, if
3 the Department finds that a person's failure to make a
4 timely return or payment was due to the person's
5 reasonable reliance on written advice, the person may be
6 relieved of the taxes imposed and any penalty or interest.
7 If a previous audit of the person requesting relief
8 contains written evidence demonstrating that the issue in
9 question was examined, either on a sample or actual basis,
10 such evidence will be considered written advice from the
11 Department. Audit comment, schedules, and other writings
12 prepared by the Department that become part of the audit
13 workpapers, which reflect the -- of the activity or
14 transaction in question was properly reported and no
15 amount was due are sufficient for a finding for relief
16 from liability, unless it can be shown that the person
17 seeking relief knew such advice was erroneous.

18 To the extent Appellant asserts that it did not
19 perform contracts for the United States government, and as
20 more fully explained in the decision, we note that the
21 Department determined that Appellant was liable for
22 unreported use tax for the parts, materials, and fixtures
23 that it furnished and installed onto real property in
24 performance of construction contracts with the United
25 States. Therefore, in order to be entitled to relief

1 under section 6596, the Appellant must establish that
2 prior audits reviewed its construction contracts with the
3 United States and informed Appellant that it was reporting
4 tax correctly on those transactions.

5 Here, the documentation provided shows that
6 during prior audit 1, which covers the period
7 January 1, 2005, through December 31st, 2007, the
8 Department only examined sales invoices that shows sales
9 of tangible personal property by Appellant to its
10 customers. That is, there's no evidence that the
11 Department examined transactions or contracts where
12 Appellant furnished and installed or repaired affixed
13 fixtures for the U.S. government. In contrast, through
14 the audit at issue, the Department reviewed invoices in
15 detail and discovered transactions for installation or
16 repair services that led the Department to conclude that
17 Appellant was a United States construction contractor.

18 For instance -- and this is for the previous
19 audit 1 -- that NASA Dryden Flight Research Center
20 invoice, which is page 440 of the hearing binder, shows
21 charges for UPS receptacle, external battery pack, 4 post
22 rail kit, and an SNMP web card. The Veterans
23 Administration invoice, page 441 of the hearing binder,
24 shows charges for UPS, split phase power modules, and
25 battery modules. The Sverdrup Tech. Inc. invoice, which

1 is page 442 of the hearing binder, shows charges for
2 remote packing mechanism. And finally, the USA Navy
3 Military Sealift Command invoice, which is page 443 of the
4 hearing binder, shows charges for lighting circuit
5 material. All of these invoices is for direct sales of
6 tangible personal property.

7 Furthermore, upon the review of the invoices for
8 the USA Navy Military Sealift Command, page 444 of the
9 hearing binder, which shows charges for services, labor,
10 and -- and service, labor, and material, 30 percent of
11 order completed. And the Sverdrup Tech. Inc. invoice,
12 page 445 of the hearing binder, which shows charges for
13 brake or reconditioning, plus required parts; and the
14 Bureau of Reclamation invoice, page 446 of the hearing
15 binder, which shows charges for progress payment No. 3.
16 After reviewing all of those invoices, there aren't any
17 indications on the face of the invoices that Appellant
18 sold tangible personal property to the United States in
19 transactions where it also performed installation and/or
20 repair services. Notably, none of the invoices mention
21 installation services.

22 Further, the USA Navy Military Sealift invoice
23 does not describe the type of labor provided or the
24 context in which it was provided. Similarly, the invoice
25 reflecting progress payments do not indicate the nature of

1 the project for which progress payments were being made.
2 Likewise, Appellant's service of reconditioning a breaker,
3 are not synonymous with repair services for an affixed
4 fixture because there's insufficient information on the
5 face of the invoices indicating where the breaker was
6 located or if it was attached to real property. Further,
7 the spreadsheet with Appellant's sales information, which
8 is page 447 to 458 of the hearing binder, lacks important
9 details about the nature of the transaction that the
10 Department purportedly examined during prior audit 1 and
11 deemed exempt, specifically, whether any of the
12 transactions involved furnishing and installing fixtures
13 onto real property.

14 With regard to prior audit 2, which covers the
15 period January 1, 2008, through December 31st, 2010, the
16 Department agrees that some of the invoices show that
17 Appellant installed or fixed or repaired a fixture using
18 tangible personal property, which is sold to the United
19 States government. However, these invoices were not
20 reviewed by the Department because Department excluded all
21 U.S. government transactions from the scope of the audit.
22 In other words, these transactions were not part of the
23 audit. This is shown in two emails sent by the Department
24 to Appellant, pages 459 to 462 of the hearing binder. The
25 emails are contained in an Excel spreadsheet with a

1 question list of transactions, and requested invoices and
2 purchase orders related to those transactions.

3 Importantly, none of the questioned transactions involve
4 sales to the United States because the Department had
5 excluded them from the scope of the audit.

6 Thus, there is no evidence contained in audit 2
7 showing that the Department examined sales of tangible
8 personal property in connection with the United States
9 construction contracts. Accordingly, the Department was
10 unaware that Appellant sold tangible personal property to
11 the United States in transactions where it also performed
12 installation and/or repair services, and certainly did not
13 inform Appellant that it was reporting tax incorrectly.
14 Therefore, the evidence shows that the books and records
15 provided upon audit, in prior audits 1 and 2, did not
16 fully describe the fact that Appellant sold tangible
17 personal property to the U.S. in transactions where it
18 also performed installation and/or repair services. This
19 shows that the Department, in prior audit 1 and 2, did not
20 examine the activity of transaction at issue here, and
21 thus, no erroneous advice was provided.

22 Now, the facts here are similar to the OTA's
23 precedential opinion and Salam and Perveen. In that case,
24 the taxpayer asserted that it provided the Department with
25 documentation sufficient to disclose the existence of

1 third-party rebates, and that the Department erroneously
2 and failed to inform the taxpayer that those rebates were
3 taxable. In Salam and Perveen, it was concluded that no
4 relief could be granted, under section 69596, based on an
5 audit -- or an audit report that failed to notice an
6 error.

7 Accordingly -- I'm sorry. Accordingly, the
8 evidence from both prior audits does not show the
9 Department examined the exact activities or transactions
10 in question. It further shows that the Department was
11 unaware that Appellant sold tangible personal property to
12 the U.S. in transactions where it also performed
13 installation and/or repair, in other words, construction
14 contractor.

15 Based on all of the foregoing, we find that
16 Appellant has not established that it is entitled to
17 relief under section 6596, based on erroneous advice
18 received from the Department during prior audits.

19 This concludes my presentation. Thank you.

20 But Mr. Noble would like to provide few
21 additional comments in rebuttal to Appellant.

22 Thank you.

23 MR. NOBLE: Good afternoon. This is Jarrett
24 Noble.

25 In rebuttal, we reiterate that it is not enough

1 to just to provide all records during an audit in order to
2 qualify for relief pursuant to section 6596. The statute
3 requires that the issue be actually examined in an actual
4 or census review and inform the taxpayer the tax was
5 reported correctly. Despite the assertions by Appellant
6 made during this appeal, the Department excluded sales to
7 the U.S. government in one of the previous audits and only
8 saw direct sales without installation of tangible personal
9 property in the other.

10 A wrinkle, unmentioned by Appellant, is that they
11 made both sales of TPP without installation to various
12 parties, including the U.S. government, but also on
13 occasion installed them for the customer. There is zero
14 evidence that Department staff were provided with invoices
15 that were examined as part of the audit that demonstrated
16 installation of fixtures onto real property.

17 Furthermore, per the briefing, Appellant
18 repeatedly asserted that it was not a construction
19 contractor. Appellant is both implying that the
20 Department should have known they were a construction
21 contractor despite their assertions to the contrary, and
22 should have seen installation onto real property with zero
23 evidence that the Department ever saw invoices involving
24 this type of labor. The simple fact is that the
25 Department never examined invoices involving installation

1 for a construction contracts with the U.S. government
2 during the prior audits and informed Appellant that it was
3 reporting tax correctly.

4 The standard is not the Department should have
5 known or should have seen. The standard is the Department
6 actually saw and reported, and it informed the taxpayer
7 that they were reporting tax correctly. That did not
8 occur in this instance.

9 Thank you.

10 JUDGE KIM: Thank you for your presentation.

11 I'll see if my panel has any questions.

12 Hearing Officer Wilson, do you have any questions
13 for CDTFA?

14 HEARING OFFICER WILSON: I just wanted to clarify
15 a couple of things. It looks like in the first audit, on
16 hearing binder page 926, there are some general comments.

17 JUDGE KIM: Just to clarify, that's Exhibit K,
18 page 5.

19 HEARING OFFICER WILSON: Okay. On this page, it
20 looks like there's a couple of comments here. The first
21 one is the category tax returns, and it says, "Tax sales
22 were traced back to this worksheet." So is that just --
23 since the actual audit wasn't in the file, I was trying
24 to -- like, I'm not sure exactly what was provided, or is
25 there any indication?

1 MR. PARKER: Hearing Officer Wilson, this is --
2 this is Jason Parker. In looking at the file and the
3 information provided, this was a no change audit. So
4 there was limited working papers for the audit. And so it
5 appears that the auditor traced these amounts to the
6 returns, and the worksheet probably with the returns. But
7 the -- there -- there aren't really working papers for
8 this type of transaction in the audit.

9 HEARING OFFICER WILSON: Okay. I did notice that
10 it was only 24-hour audit. So I was thinking it was a no
11 change, but I couldn't determine that from the file.
12 Okay. Next question. For the second audit period, I
13 noticed -- it's hearing binder page 1072. Under the
14 penalty comment it says, "The taxpayer was made aware of
15 the proper reporting procedures for their ex-tax purchases
16 and maintenance parts consumed."

17 Is that -- would that have been in regards to any
18 U.S. government contracts, or do you know what -- what
19 that was about?

20 MR. PARKER: I can double check real quick, but
21 my understanding is that it was for consumables that they
22 assessed use tax on in the audit. And -- but I'm not sure
23 there were consumables on U.S. government warranty
24 contracts that -- that they were consumers of. But I'll
25 double check that and see if I can figure it out.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING OFFICER WILSON: Thank you.

That's all I have for now. I'll wait to see.

JUDGE KIM: Mr. Parker, did you mean you're going to look at that now or --

MR. PARKER: Well, it may take me some time, so if I --

JUDGE KIM: Okay.

MR. PARKER: -- figure it out before the end, I'll -- I'll try to respond.

JUDGE KIM: Okay. Thank you.

Judge Ridenour, did you have any questions for CDTFA?

JUDGE RIDENOUR: Just to clarify, though, it was Exhibit L, page 26, that Hearing Officer Wilson was referring to? Is that correct, just for my own -- thank you.

Yeah. No further questions for me at this time. Thank you.

JUDGE KIM: Thank you.

Okay. Mr. Gustafson, you have reserved 30 minutes to make a closing statement or a rebuttal to CDTFA's presentation.

MR. GUSTAFSON: Yes. Thank you.

JUDGE KIM: You may proceed when you're ready.

MR. GUSTAFSON: My apologizes and thank you. It

1 would be more just to respond to CDTFA's argument.

2

3

CLOSING STATEMENT

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. GUSTAFSON: I'd like to start at the end where -- we really do seem to be arguing passed one another in that CDTFA is -- takes for granted that Eaton is a construction contractor in this discussion, and it was found to be a construction contractor in this discussion which -- which the -- the third and fourth auditors did find that. But there has -- you have to get there.

CDTFA assumes that we're -- we're -- we're already there somehow. And -- and we are not arguing that the standard under 6596 is that the auditor should have known something. We are not arguing, as in the Appeal of Perveen that the auditor should -- there was enough there. They should have found -- they -- they missed something. That was a factual mistake. There was a -- was a factual item, the reimbursements or the -- that were -- that were missed. That -- that -- that's not what we're arguing here.

We're -- we're -- we're saying that the first auditor, in particular, saw the invoices to the United States government. They -- they examine the transaction with the United States government and -- and provide --

1 and Eaton providing the -- the invoices that it did and
2 determine that these were exempt sales. It did not
3 determine that Eaton was a construction contractor. And
4 that's based on what was on -- on the invoices. You --
5 you determine if the -- the products on the invoices, the
6 UPS products.

7 CDTFA repeatedly refers to fixtures. That is a
8 legal determination. The auditor can identify products
9 and say well, is it a fixture or not a fixture. Here as
10 CDTFA concedes, the first two audits categorized Eaton as
11 a seller of equipment. And with regard to the contracts
12 themselves, the -- the -- the underline contracts, which
13 Judge Ridenour, I believe you asked about, and then just
14 mentioned by CDTFA, the first auditor looked at the
15 invoices, didn't ask for any contracts. Eaton certainly
16 provided everything that the -- that the auditor asked
17 for.

18 The third auditor looking at invoices asked for
19 the contracts. And it's the -- if -- if -- if there are
20 no fixtures, if there is nothing there to raise the -- the
21 question as to why -- well, I should look -- I should look
22 at these contracts. And that's telling Eaton that is --
23 that in itself is a -- a determination that these -- these
24 are not construction contractors. That -- that if this is
25 equipment, then under Regulation 1521(a)(1), capital

1 (B) (1), that the sale of equipment sales -- sale of --
2 sale and installation of equipment are -- are not
3 construction contractors.

4 So we don't get to this whole question of well,
5 now we need to see the contracts. Now, we need to see the
6 purchases because the issue of the taxpayer, Eaton sales
7 to the United States government was examined. And on
8 the -- and even the invoices to the U.S. government didn't
9 specifically say installation, the other -- the invoices
10 to other non-government entities certainly had
11 installation, and Eaton was selling products -- the same
12 products to these other companies. But these first two
13 auditors, neither of them said you are a construction
14 contractor of any kind.

15 Whether something is a fixture doesn't depend on
16 if it's -- if it's in use for a government contract or a
17 non-government construction contract. The definition of
18 fixture is the same because they -- and -- and what CDTFA
19 was just saying was that the -- the looking at the invoice
20 was sufficient to find -- from the third and fourth audit,
21 to find that they were a construction contractor then the
22 spur in the -- the inquiry for the contracts. Well, in
23 the first two audit they considered it something
24 different, equipment. So there was need to go beyond.

25 So this -- if this were -- and so Eaton is being

1 told two separate things. First, your sales are exempt
2 sales to the United States government. And that shows up
3 in workpapers on -- as shown in the labeling of its sales
4 to the U.S. government as exempt in the audit workpapers
5 at Appellant's Exhibit 3.

6 So this was Eaton being told it was reporting
7 correctly. I think it was a couple of times where CDTFA
8 was -- was mentioning they -- they -- these gentlemen were
9 mentioning that it wasn't that Eaton was told it was
10 reporting correctly. Yes, it was. It was told it was
11 reporting its sales to the U.S. government correctly.
12 And -- and that is sufficient for it to be relieved from
13 liable -- for relief from liability because when it
14 reasonably relied on that.

15 That's all. Thank you very much.

16 JUDGE KIM: Thank you.

17 All right. One more time for the panel.

18 Hearing Officer Wilson, do you have any final
19 questions?

20 HEARING OFFICER WILSON: I do not. Thank you.

21 JUDGE KIM: And Judge Ridenour?

22 JUDGE RIDENOUR: No. Thank you, everybody.

23 MR. NOBLE: Panel, Mr. Parker --

24 MR. PARKER: Judge Kim. Sorry. Go ahead.

25 MR. NOBLE: -- can answer as to your earlier

1 question that was raised.

2 Jason.

3 JUDGE KIM: Yes.

4 MR. PARKER: Yeah. Hi, Judge Kim. I did, in
5 response to Hearing Officer Wilson's question on the
6 second audit, there were some transactions where they were
7 found to be the consumer of parts provided for
8 maintenance. So if you look at -- this is Exhibit L,
9 page 1123, line 53, as a transaction to the U.S. Naval Air
10 Weapons Base. And there are \$16 worth of parts consumed
11 under that maintenance contract.

12 And then on page 1126, line 102 and 106, had a
13 couple of more transactions involving the U.S. government.
14 Some there are some U.S. government transactions where we
15 assessed use tax on parts consumed under maintenance
16 contracts in the second audit.

17 I hope that answers Ms. Wilson's question.

18 HEARING OFFICER WILSON: Yes. Thank you.

19 JUDGE KIM: All right. Thank you both for the
20 presentation, everyone.

21 I don't have any additional questions.

22 This case is submitted on January 21st, 2026, and
23 the record is now closed.

24 Thank you everyone for participating today.

25 My panel and I will meet to deliberate this

1 appeal, and we will issue a written opinion within
2 100 days of today.

3 Today's hearing in the Appeal of Eaton
4 Corporation is now concluded, and this concludes the
5 hearing calendar for today.

6 And the hearing is adjourned.

7 Thank you, everyone.

8 (Proceedings concluded at 2:02 p.m.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 12th day of February, 2026.

ERNALYN M. ALONZO
HEARING REPORTER