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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
PETERSON TRUCKS, INC.,) OTA NO. 240516244
)
)
 APPELLANT.)
)
 _____)

Transcript of Electronic Proceedings,
taken in this state of California, commencing
at 9:35 a.m. and concluding at 11:06 a.m. on
Wednesday, January 14, 2026, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ JOSH ALDRICH

Panel Members: ALJ HUY "MIKE" LE
ALJ ANDREW WONG

For the Appellant: TREVOR MAUCK
KIMIE PELLIZARO

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

(Appellant's Exhibits 1-5 were received into evidence at the previously held prehearing conference.)

(Department's Exhibits A-F were received into evidence at the previously held prehearing conference.)

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California; Wednesday, January 14, 2026

9:35 a.m.

JUDGE ALDRICH: This is Judge Aldrich. We're opening the record in the Appeal of Peterson Trucks Incorporated before the Office of Tax Appeals, OTA Case No. 240516244. Today's date is Wednesday, January 14th, 2026, and it's approximately 9:35 a.m. The hearing is being live streamed on OTA's YouTube channel.

This hearing is being heard by a panel of three. My name is Josh Aldrich. I'm the lead Administrative Law Judge for purposes of conducting the hearing. I'm joined by Administrative Law Judges Mike Lee and Andrew Wong. We three are co-equal decision makers. And as such, during the hearing, panel members may ask questions or otherwise participate to ensure that we have all the information needed to decide this appeal. After the conclusion of the hearing, we will deliberate and decide the issues presented.

As a reminder, the Office of Tax Appeals is not a court. It is an independent appeals body. The panel does not engage in ex parte communications. Our opinion will be based on the parties' arguments, admitted evidence, and the relevant law. And we have read the parties' submissions, and we're looking forward to hearing your

1 arguments today.

2 So who is present for Appellant, beginning with
3 counsel?

4 MR. MAUCK: Good morning, Your Honors. This is
5 Trevor Mauck on behalf of Peterson Trucks, and I'm joined
6 by Kimie Pellizaro the CFO of Peterson Trucks who will be
7 offering testimony.

8 JUDGE ALDRICH: Thank you.

9 And who is present for Respondent or the
10 California Department of Tax and Fee Administration, which
11 I may refer to as CDTFA, slightly shorter?

12 MR. SMITH: This is Kevin Smith from the legal
13 division of CDTFA.

14 MR. NOBLE: This is Jarrett Noble, attorney for
15 the legal division at CDTFA.

16 MR. PARKER: And Jason Parker, Chief of
17 Headquarters Operations Bureau with CDTFA.

18 JUDGE ALDRICH: Great. Welcome everyone, and
19 thank you for your time.

20 The issues to be decided are as follows: One,
21 whether Appellant has shown error in Respondent's
22 determination that \$384,961 collected from Appellant's
23 lessee on nontaxable subleases constitutes excess tax
24 reimbursement; and two, whether an adjustment is warranted
25 to the measure of disallowed claimed exempt sales in

1 interstate or foreign commerce of \$368,811.

2 Mr. Mauck, do these issue statements correctly
3 summarize the issues before us?

4 MR. MAUCK: Yes, Your Honor. But for today's
5 hearing, we're going to focus primarily on the excess tax
6 reimbursement issue.

7 JUDGE ALDRICH: Thank you.

8 And for Respondent, Mr. Smith?

9 MR. SMITH: Yes. That's correct.

10 JUDGE ALDRICH: Great. So regarding exhibits as
11 memorialized in OTA's December 15th, 2025 Minutes and
12 Orders of prehearing conference, both parties confirmed
13 receipt of the other party's respective exhibits. For
14 Respondent, Respondent's exhibits are identified
15 alphabetically as Exhibits A through F. Appellant raised
16 no objections to admitting Respondent's Exhibits into
17 evidence. For Appellant, Appellant submitted Exhibits 1
18 through 5. Respondent had no objections to admitting
19 Appellant's exhibits.

20 By agreement of the parties, the aforementioned
21 exhibits were admitted into the record in anticipation of
22 the hearing. And just for purposes of the record, I
23 wanted to confirm that these statements regarding the
24 exhibits are accurate.

25 Mr. Mauck?

1 MR. MAUCK: Confirmed, Your Honor.

2 JUDGE ALDRICH: And Mr. Smith?

3 MR. SMITH: Yes. That's correct.

4 JUDGE ALDRICH: Okay. So to give everybody an
5 idea of how this hearing is going to proceed, as discussed
6 previously, Appellant's opening presentation -- we'll
7 start with Appellant's opening presentation, including
8 testimony, which we allotted 60 minutes for. Next, we'll
9 have Respondent presenting a combined opening and closing
10 for approximately 20 minutes. And finally, Appellant will
11 have approximately 5 to 10 minutes for closing remarks or
12 a rebuttal. And I've also allotted time for questions
13 from the panel. And these are estimates made for
14 calendaring purposes. If you need additional time, please
15 make the request. We have a little bit of flexibility
16 today. This is only hearing on the morning calendar. So
17 we have some leeway there.

18 Regarding witness testimony, my understanding is
19 that Appellant intends to call the following individual as
20 a witness, Ms. Kimie Pellizaro, Appellant's chief
21 financial officer or CFO. So at this time I was going to
22 swear her in.

23 Ms. Pellizaro, could you unmute and if you could
24 raise your right hand.

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K. PELLIZARO,

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

JUDGE ALDRICH: Thank you. And you will remain under oath until the conclusion of the hearing. Okay.

MS. PELLIZARO: Okay.

JUDGE ALDRICH: As discussed during the prehearing conference, Appellant may ask questions of the witness, or the witness may testify in the form of a narrative. That being said, I ask that the witness testimony make a constructive use of time. That is, the testimony should be relevant to the issues, and extraneous information should be omitted.

Both parties, including the witness, should understand that we have read the briefs, and we have all the evidence available to us. So at this time we're moving to presentations.

Mr. Mauck, would you like to begin with an opening, or do you plan to move directly into testimony?

MR. MAUCK: Yes. Thank you, Your Honors. We plan to present our case as follows: I'll begin by quickly teeing up the issue; and then we will move into witness testimony; and then I'll conclude with a more

1 substantive presentation of our argument. And as I noted
2 before, we're going to focus primarily on the excess tax
3 reimbursement issue, and we'll otherwise rely on our
4 briefs and supporting documentation for the position
5 related to the interstate commerce issue.

6 JUDGE ALDRICH: Great. Please proceed when you
7 are ready.

8 MR. MAUCK: Okay. I respectfully request to
9 reserve any remaining time for rebuttal.

10

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PRESENTATION

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MR. MAUCK: And so now turning to the questions raised during the prehearing conference. The first question was, which purchases, if any, were made by Doudell Trucking Co and Diamond Tank Lines. In response to that question, we confirm that VIN No. 326360 was purchased by Diamond Tank Lines, and VIN No. 326359 was also purchased by Diamond Tank Lines but was delivered to Doudell Trucking Co. And we understand Diamond Tank Lines and Doudell Trucking Co are related companies.

The second question from the prehearing conference was related to VIN No. 632051 and whether it was disallowed as exempt. In response to that question, we confirm that this transaction was allowed as exempt. So unless there's any follow-up questions on these items,

1 we'll turn to the excess tax reimbursement issue.

2 JUDGE ALDRICH: Nope. Please proceed.

3 MR. MAUCK: Okay. So Peterson Trucks is
4 primarily in the business of selling and leasing trucks.
5 This case is about whether a charge on certain truck
6 sublease invoices constitutes a sales tax reimbursement.
7 The charge at issue was labeled LSR RMB TX. It was a
8 charge to recoup Peterson's overhead cost related to the
9 subleases. As the CFO will explain in today's testimony,
10 this overhead reimbursement charge was never intended to
11 be a tax, nor did Peterson Trucks ever communicate to its
12 customers that it was a tax. So under the clear statutory
13 definition, the LSR RMB TX charge did not constitute an
14 excess tax reimbursement.

15 And if I may, Your Honors, I'd now like to
16 proceed with Ms. Pellizaro's testimony.

17

18 DIRECT EXAMINATION

19 BY MR. MAUCK:

20 Q Good morning, Ms. Pellizaro.

21 A Good morning.

22 Q Can you please state your full name?

23 A Yes. My name is Kimie Pellizaro.

24 Q And what is your current role at Peterson Trucks?

25 A I am the CFO at Peterson Trucks.

1 Q What are your responsibilities as CFO?

2 A I lead the back office of Peterson Trucks, which
3 includes finance, accounting, and the taxes, among other
4 roles.

5 Q And what other roles have you had at your history
6 of Peterson Trucks?

7 A I joined Peterson Trucks as the financial analyst
8 in 2014. I was then promoted to senior financial analyst.
9 Then I became the senior manager of finance and FPNA.
10 Then I was promoted to director of FPNA and treasury.
11 Then I became the VP of finance, and the last I was
12 promoted to the CFO position.

13 Q What is your educational background?

14 A I graduated in Brazil at University of Brasilia.
15 And then I acquired three different graduate degrees: One
16 in capital markets; one in banking, both of them in
17 Brazil; and one with UC Berkley in accounting.

18 Q What is Peterson Trucks' line of business?

19 A Peterson Trucks is a full truck dealership
20 representing International Navistar. As a full dealership
21 we sell, we rent, we service trucks, we sell parts, we
22 sell service, and we also lease. A very large piece of
23 the business is renting and leasing trucks. For leasing
24 trucks, we go to market under the name of Idealease.

25 Q And you noted in your role as the CFO that you

1 oversee the tax department. What role, if any, does the
2 tax department at Peterson Trucks play in invoicing?

3 A The tax department is responsible for the back
4 office setup of all of the functions related to invoicing.
5 That will include making sure that the different charge
6 codes have the right taxability, and that all of the tax
7 tables are updated in the system, in the ERP system; once
8 tax rates are changed or updated, that those tax rates are
9 also updated in the ERP system.

10 Q And does this role include decisions related to
11 the sales tax treatment of any goods or services sold by
12 Peterson Trucks?

13 A Yeah. Most of our customers are businesses, and
14 these customers are, most of the times, very business
15 savvy and tax savvy. And whenever we have a transaction
16 that is out of ordinary or has a different tax treatment,
17 the sales group will reach out to the tax group to
18 understand what -- how to tax that transaction. And the
19 tax group will support the sales force in identifying the
20 correct taxability for each one of these transactions.

21 Also, if a customers have questions on taxability
22 of the transactions that they are putting through Peterson
23 Trucks, the tax group will work together with the sales
24 force to respond to any questions or reveal any questions
25 that our customers might have on taxability.

1 Q Got it. I want to turn now to the sale and lease
2 back transactions from June of 2016 with BMO Harris Bank.
3 Are you familiar with this transaction?

4 A Yeah. I didn't sign the document that created
5 the transaction, but I read all of the documents related
6 to this transaction at the occasion of the audit and --
7 well, yeah.

8 Q Can you summarize the transaction?

9 A Yeah. Peterson sold MTE units to BMO Harris
10 Bank -- also known as simply BMO -- and then leased these
11 MTEs back from BMO. These MTEs were -- oh, I'm sorry. I
12 lost my train of thought for a little. Let me repeat that
13 so I can gain my train of thought back.

14 Q Sure. Yeah. No problem.

15 A So Peterson sold MTE units to BOE and then leased
16 back these MTE units from BMO. These trucks that were
17 sold to BMO were trucks under a lease agreement with our
18 customers. So at the time that we sold these trucks to
19 BMO and then leased them back from BMO, these leases
20 be -- the leases that Peterson Trucks had with its
21 customers became subleases under the new acquired lease
22 with BMO.

23 Q Okay. When you say "MTE", that's Mobile
24 Transportation Equipment or just another word for the
25 trucks that you're talking about; is that correct?

1 A Right. Right. As I understand, there is a
2 different tax guidance for MTE. So we refer to them
3 internally as MTEs so we can have a correct understanding
4 for taxability.

5 Q Got it. And just so I'm clear, before this
6 transaction with BMO Harris Bank, Peterson Trucks was
7 leasing these trucks to its customers, and then sold these
8 trucks to BMO Harris Bank. And, at that point, the leases
9 between Peterson Trucks and its customers became
10 subleases?

11 A That's correct. And --

12 Q Okay. What was the -- go ahead.

13 A -- at the time, the prime lease, instead of being
14 the lease between Peterson Trucks and its customers,
15 became the lease between BMO and Peterson Trucks.

16 Q What was the purpose of this transaction?

17 A Seek financing. Peterson was needing a
18 different -- to make use of a different sources of a
19 financing at the time.

20 Q And how does this transaction achieve that goal?

21 A The fleet of trucks that were leased to our
22 customers became financed through a line that matched the
23 life of the lease, versus the arrangement we had before,
24 which was a simple working capital line, which was a
25 short-term financing.

1 Q Got it. So stepping back before the BMO Harris
2 Bank transaction. When Peterson Trucks was the primary
3 lessor, did Peterson Trucks charge sales tax on the
4 leases?

5 A Yes. Most of our customers had the ability to
6 make an election on whether they would like their sales
7 taxes to be charged at the inception of the lease or at
8 the -- through the life of the lease on the basis of the
9 fair rental value of the MTE. And depending on the
10 customer's election at the time, we would charge either at
11 the inception for the full value of the vehicle, of the
12 MTE or through the life of the lease based on the fair
13 rental value.

14 Q And how was the sales tax communicated to
15 Peterson Trucks' customers when Peterson Trucks was the
16 primary lessor?

17 A On the invoice, you mean?

18 Q Yes.

19 A We would label in the invoice as sales taxes, and
20 those sales taxes would be calculated on each invoice
21 based on the tax rate that was -- on the tax rate of the
22 period. And that tax rate would obviously change through
23 time if the tax rate for -- where the MTE was located
24 would have changed.

25 Q For this sublease transactions, after the

1 transaction with BMO Harris Bank, how did Peterson Trucks
2 bill its customers?

3 A Peterson bills -- Peterson Trucks' practice is to
4 bill customers on a monthly basis. Yeah.

5 Q And what's included on these -- these monthly
6 invoices?

7 A Usually, we have a fixed charge. We have a
8 variable charge. The variable charge is usually to
9 account for usage of the MTE. And, at times, we could
10 have some accessory charges, which could be services
11 provided to the customers. It could be a repair that we
12 might have made to the trucks. And also, after the BMO
13 transaction for all of the leases, for all of the MTEs
14 that were sold to BMO and then leased by Peterson from
15 BMO, we would include a overhead reimbursement item line
16 that we -- that we called LSR RMB TX.

17 Q And what does LSR RMB TX stand for?

18 A That was an item line created to help us
19 reimburse for the lessor reimbursement transaction for the
20 cost that we incurred with the BMO leases.

21 Q So LSR -- Just so I'm clear. LSR RMB TX stands
22 for "Lessor Reimbursement Transaction," and it was a
23 charge to recoup any overhead cost related to the sublease
24 invoice -- the sublease transactions?

25 A Right. Yeah. Right.

1 Q Okay. So why does Peterson Trucks separately
2 include this overhead charge, rather than just include it
3 as part of the fixed charge?

4 A At the time that we entered into the sale lease
5 back agreement with BMO, all of the trucks that we sold to
6 BMO at that time were leases or were MTEs under an
7 existing lease agreement with our customers. And per the
8 lease agreement we have with our customers, the fixed
9 charge, which accounts for the cost of the vehicle, cannot
10 be changed once the lease has been placed into service.
11 The only changes to the fixed charge is an adjustment that
12 some of the leases allow for inflation. Most of the
13 times, our agreements allow for a CPI inflation
14 adjustment, but no other adjustment.

15 So once we had a different -- a different source
16 of a financing, our cost changed. What our lease
17 agreement with our customers allowed was a recoupment and
18 a reimbursement of additional costs from Peterson to serve
19 as those leases to our customers, and that was what we
20 elected to do.

21 Q Okay. So this LSR RMB TX charge stands for
22 Lessor Reimbursement Transaction. Why wasn't it
23 explicitly identified as Lessor Reimbursement Transaction
24 on the invoices?

25 A Our system, unfortunately, has limitation of the

1 characters. We wouldn't -- we are not able to add -- or
2 to create charge codes or item lines that has as many
3 characters as we would like. So we created an acronym
4 that used the totality of the characters available to us.
5 And the only way to add that was to kind of shorten what
6 each of one of those words meant. We wouldn't be able to
7 spell out the whole line item as we would have liked to.
8 The acronym was needed.

9 Q What was the rate of the LSR RMB TX charge?

10 A The intent at the time of the -- at the time we
11 entered into the lease -- the sale lease back agreement
12 with BMO, we modeled what those additional cost would have
13 be. And, at the time, we estimated that approximately
14 10 percent was the -- was the over -- the additional
15 overhead cost that Peterson would incur because of these
16 arrangement with BMO. We -- so we sat -- well, I'm sorry.
17 To answer your question, we estimated at 10 percent of the
18 value of the leases.

19 Q And how did Peterson Trucks implement this rate
20 on the invoices?

21 A So CDK, which is the ERP system that Peterson
22 Trucks uses, has only one tool in the system that allows
23 for a variable charge item line charge to be used or to be
24 created. And that tool so happens to be the same tool
25 that is used for sales taxes. The ERP does not have any

1 other tool that allows for a variable percentage base
2 charge line. So we created a separate model within that
3 tool that would allow for the lessor reimbursement item
4 line to be charged to each invoice.

5 That should have been -- well, that was entirely
6 separated. That never really tracked taxability of the
7 item line because it was not taxes. It simply calculated
8 a percentage of the invoice and charged that with the
9 description of LSR RMB TX, but it really never checked
10 taxability. It only charged a percentage over the total
11 invoice as that item line.

12 Q Okay. So just to make sure I'm clear on this.
13 After entering into the transaction with BMO Harris Bank,
14 Peterson Trucks realized that their cost related to the
15 subleases increased, and they modeled that increase to be
16 about 10 percent of their fixed charge?

17 A Correct.

18 Q They wanted to recoup this charge, but the only
19 way to do so on the invoices was to use the sales tax
20 function because that was the only per transaction
21 percentage charge available within the operating software?

22 A Right. There is a model in CDK that allows for
23 sales taxes to be charged. And it is also the same tool
24 that we used for this charge since it is the only tool in
25 CDK that allows for a percentage-base charge to be issued

1 in the invoice.

2 Q There are invoices L13798 and L13799, which are
3 part of the record, a representative sample of the
4 sublease invoices that included the LSR RMB TX charge?

5 A Yes, they are.

6 Q So what would happen then if a sublease
7 transaction also included a taxable component?

8 A Yeah. So as I mentioned, LSR RMB TX was never
9 really set to track taxability, and it didn't do so. If
10 a -- if an item line was taxable, that was -- then the
11 sales tax tool would verify taxability. And if taxable,
12 it would calculate sales taxes, charge as sales taxes, and
13 we would collect those dollars and remit to the CDTFA. If
14 I may, can I call an invoice as an example to walk us
15 through how this would happen in real life?

16 Q Sure. Please.

17 A Okay. So one of the invoices that I would like
18 to call is one that we sampled during the audit and in
19 this appeal. It is invoice labeled L13729. And if you
20 look at that invoice -- last page of the invoice, there is
21 a subtotal, which is the sum of all the charges listed in
22 the seven page -- I'm sorry -- in the nine pages of the
23 invoice. Then we have LSR RMB TX, and that was a charge
24 that was calculated based on 50 units that were listed
25 through the nine pages of this invoice. And then you have

1 sales taxes.

2 While one of the units listed in this invoice,
3 unit PR048 was not leased from Peterson -- or by Peterson
4 from BMO, that was a unit that Peterson owned. So
5 Peterson was the prime lessor of that truck. As such,
6 Peterson calculated sales taxes, and that is the item line
7 called sales taxes in the invoice, charged the customer
8 with the sales taxes and remitted those dollars to the
9 CDTFA.

10 Q Okay. And so I think the other invoice that's
11 part of the record, in addition to the one you referenced,
12 L13729, is L13458. And are these a representative sample
13 of sublease invoices that included both the LSR RMB TX
14 charge and a sales tax charge on a separate line?

15 A Yes, they are. And they are also representative,
16 I would say, of Peterson's practices through the invoices
17 that I revealed as we sampled for the audit. Peterson's
18 practice is -- these invoices, they truly represent the
19 practices at the time through the audit.

20 Q And who were Peterson Trucks' primary sublease
21 customers?

22 A Mostly businesses. Possibly over 90 percent of
23 Peterson's customers are businesses with fleet, not only
24 one truck fleet, but several vehicle fleets.

25 Q Did any of Peterson Trucks customers ask whether

1 the LSR RMB TX charge was a sales tax, since the subleases
2 were a nontaxable transaction?

3 A Yeah. No. I have -- I have no record of this
4 ever being an issue with any one of our customers or ever
5 having any questioning or comments or, really, any
6 communication between Peterson Trucks and our customers on
7 those charges. I think that maybe what I would like to
8 add is that as business customers, I referred earlier in
9 this call, that many times our customers have questions on
10 taxability of the transactions. And the tax team is the
11 team that helps the sales force in answering any
12 taxability questions.

13 So I believe that if the customers had any
14 questions on what this is or what this referred to, we
15 would have heard from them. And I have no record of that
16 ever happening.

17 Q And you believe there is no record of complaints
18 relating to this LSR RMB TX charge because your customers
19 understood it was an overhead reimbursement charge?

20 A I believe so. I believe that most of our
21 customers have a very clear understanding of what their
22 tax is, what -- how these invoices are taxed. And I
23 believe most of our customers have a very good
24 understanding on whether these invoices are due sales
25 taxes or not. And many times, when our customers believed

1 that taxes were not due, we end up with a lot of
2 questioning and the sales -- I'm sorry -- the tax group
3 helps with those -- handling those questions.

4 Q Did Peterson Trucks ever intend for the LSR RMB
5 TX to be a sales tax reimbursement?

6 A No. And we never described as such, and we never
7 really labeled the item line as such.

8 Q Did Peterson Trucks ever communicate to its
9 sublease customers that the LSR RMB TX charge was a sales
10 tax reimbursement?

11 A No, because it wasn't.

12 Q And did Peterson Trucks, in any way at all,
13 represent that the LSR RMB TX charge was a sales tax
14 reimbursement?

15 A No. No, because it never really was.

16 MR. MAUCK: Thank you.

17 Your Honors, that concludes the witness
18 testimony. I respectfully request to continue with our
19 argument, unless you'd like to either give the CDTFA the
20 opportunity now to question Ms. Pellizaro, or unless you
21 have any questions.

22 JUDGE ALDRICH: You can proceed with your
23 argument, and then CDTFA will -- or Respondent will have
24 the opportunity to ask questions of Ms. Pellizaro after
25 you conclude.

1 MR. MAUCK: Perfect. Thank you, Your Honor.

2 So this is -- is a simple case. For a charge to
3 constitute an excess tax reimbursement, it must be
4 communicated as a sales tax to the customer. Such
5 communication never happened in this case. The charge at
6 issue was an overhead reimbursement, not a tax charge.
7 Specifically, under California Revenue & Tax Code
8 section 6901.5, to constitute an excess tax reimbursement,
9 the charge must be, quote, "An amount represented by a
10 person to a customer as constituting reimbursement for
11 taxes."

12 As Ms. Pellizaro just testified, the LSR RMB TX
13 charge was never represented as a tax reimbursement
14 charge. In fact, Peterson Trucks went out of its way to
15 clearly label this charge, right, within the parameters
16 allowed by the billing software as the LSR RMB TX charge,
17 which, as Ms. Pellizaro testified, stood for lessor
18 reimbursement transaction. This was a clear signal to its
19 customers that this was an overhead reimbursement charge,
20 not a tax reimbursement. And, frankly, these efforts
21 worked. As Ms. Pellizaro testified, Peterson Trucks
22 primary subleased to business customers who would have had
23 their own competent tax teams.

24 Such customers would have been fully aware that
25 sublease transactions at issue in this case were not

1 taxable. So if they thought they were being charges tax
2 transactions, it's only natural to include that they would
3 have disputed the charge with Peterson Trucks. No such
4 dispute ever occurred. So, clearly, the customers of
5 Peterson Trucks did not think the LSR RMB TX charge was a
6 tax reimbursement.

7 This is further illustrated by invoices L13458
8 and L13729, which are part of the record, since these
9 invoices include both the LSR RMB TX tax charge and a
10 separate line for a sales tax charge. If the LSR RMB TX
11 charge was a sales tax reimbursement, Peterson Trucks
12 would not have included a separate line item that is
13 clearly labeled sales tax. These invoices also make clear
14 that in cases where there was a sales tax reimbursement,
15 right, because there were some taxable component on the
16 invoice, Peterson Trucks clearly labeled it as such on the
17 invoice using the unambiguous words "sales tax."

18 In contrast, by labeling the overhead
19 reimbursement charge as LSR RMB TX, Peterson Trucks was
20 making clear this charge was not a sales tax. And given
21 the system limitations, there's nothing else Peterson
22 could have done to clarify that the LSR RMB TX charge was
23 not a sales tax reimbursement. The California regulation
24 addressing tax reimbursement also makes clear that the
25 LSR RMB TX charge is not a tax reimbursement. And like

1 the controlling statute that we discussed before, section
2 1700 of Title 18 of the regulation states that a sales tax
3 reimbursement must be, quote, "Represented by a person to
4 a customer as constituting a reimbursement --
5 reimbursement for sales tax," end quote.

6 As all the evidence in this case and the
7 testimony we just heard makes clear, Peterson Trucks never
8 represented, in any way, to its customers that the LSR RMB
9 TX charge was a sales tax reimbursement. So under both
10 the controlling statute and regulation, a sales tax
11 reimbursement requires a direct communication between the
12 seller and the buyer that the payment is a sales tax.
13 That didn't occur here. There's no such communication in
14 this case.

15 The regulation also sets out certain presumptions
16 for sales tax reimbursement, none of which are met in this
17 case. The first presumption, the agreement of sale
18 expressly provides for such addition of sales tax
19 reimbursement. This presumption is not met because no
20 agreement of sale involved in this case expressly provides
21 that the LSR RMB TX charge is a sales tax reimbursement.

22 Second presumption, sales tax reimbursement is
23 shown on the sales checks or other proof of sale. This
24 presumption is not met because nowhere on the invoices
25 does it say that the LSR RMB TX charge is a sales tax

1 reimbursement.

2 And the third presumption, the retailer post in
3 their premise visible to their customers that sales tax
4 will be added to the sales price. This presumption is
5 also not met because Peterson Trucks never posted in its
6 premise that it would charge sales tax on its nontaxable
7 subleases, or that the LSR RMB tax line item -- TX line
8 item was a sales tax. All of these presumptions make
9 clear that for the excess sales tax reimbursement
10 provisions to be triggered, the seller must clearly
11 communicate to the buyer that the line item is a sales
12 tax.

13 You know, as we stated throughout, no such
14 communication happened in this case. So the excess tax
15 reimbursement provisions are not applicable. The whole
16 point of the excess tax reimbursement provisions under
17 California law is to prevent a seller from including a
18 line item on a receipt that says, quote, "Sales Tax," and
19 then not remitting such sales tax to the CDTFA. This
20 purpose is highlighted by the numerous statutory
21 references to the communication between seller and buyer
22 that a charge is a sales tax. This law is not designed to
23 recast overhead charges as sales tax charges. The
24 statutes and regulations make this clear by stating that
25 sales tax must be expressly represented to the customer.

1 This did not happen in this case.

2 Another item, both the auditor in this case and
3 the CDTFA decision focus on, is the rate of the LSR RMB TX
4 charge. This is a total red herring. As Ms. Pellizaro
5 explained in her testimony, given the system limitations,
6 the sales tax rate was the only per transaction percentage
7 charge that Peterson Trucks could levy on the subleases.
8 This was a reasonable workaround because the sales tax
9 rate closely approximated the overhead cost related to the
10 subleases based on Peterson Trucks' modeling.

11 And focusing on this rate is also a red herring
12 because nothing in the sales tax reimbursement statute or
13 regulations state that a charge that equals the sales tax
14 rate will be presumed to be a sales tax reimbursement.
15 This is particularly to -- particularly true when the
16 charge is clearly labeled as something other than a sales
17 tax. Regulation 1700 highlights the lack of importance of
18 the rate in the sales tax reimbursement analysis by
19 stating that a sales tax charge at a higher than the rate
20 imposed by law will also be considered an excess tax
21 reimbursement, if it is communicated to the customer as a
22 sales tax.

23 This demonstrates that the rate has no bearing on
24 whether a charge constitutes a sales tax reimbursement.
25 What is important, right, as we noted throughout, is that

1 the seller communicates to the customer that the charge is
2 a sales tax, which did not happening in this case. In
3 short, holding in favor of the CDTFA in this case amounts
4 to impermissible double taxation. Miss Pellizaro's
5 testimony and the evidence submitted in this case makes
6 clear that the LSR RMB TX charge was not a tax
7 reimbursement. Treating it as such results in double
8 taxation.

9 This case ultimately boils down to whether the
10 facts are based on an auditor's assumption or the sworn
11 testimony of the CFO. We agree that under the auditor's
12 assumption, the LSR RMB TX charge is an excess tax
13 reimbursement, but that's only an assumption; and an
14 incorrect one. The CFO of Peterson Trucks, under sworn
15 testimony today, told us that the LSR RMB TX charge was
16 not a tax reimbursement and explained the supporting
17 mechanics. The CFO's sworn testimony constitutes actual,
18 facts, not an assumption. And under those facts, the
19 LSR RMB TX charge is clearly not a tax reimbursement.

20 Thank you, Your Honors. We are happy to address
21 any questions at this time, and we respectfully request to
22 reserve any remaining time for rebuttal.

23 JUDGE ALDRICH: Thank you.

24 At this time I'm going to offer CDTFA or
25 Respondent the opportunity to cross the witness.

1 MR. SMITH: No. Thank you.

2 JUDGE ALDRICH: Okay. And then I guess I will
3 refer to my panel for questions.

4 Judge Wong, did you have any questions for
5 Appellant's counsel or the witness?

6 JUDGE WONG: Yes. Thank you.

7 So I just wanted to ask about -- so this overhead
8 reimbursement charge, you indicated that it was authorized
9 under the lease, the original lease between Peterson
10 Trucks and its customers; is that correct?

11 MS. PELLIZARO: Are you ask -- I'm sorry. Are
12 you asking me or Trevor?

13 JUDGE WONG: Oh, yeah. Sure. Sure.

14 MS. PELLIZARO: Sorry. Not -- well, not
15 specifically that line item. But the lease that we have
16 with our customers allows Peterson Trucks to recoup
17 additional costs related to the maintenance of the leases.
18 So on a more broadly manner, yes, that was allowed.

19 JUDGE WONG: Okay. And was there any internal
20 discussion about charging this overhead reimbursement
21 charge? Like how -- what was the decision making process
22 to say, okay, we're going to add this charge?

23 MS. PELLIZARO: I -- I apologize.

24 MR. MAUCK: I -- maybe -- maybe I can jump in
25 here, Judge Wong.

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JUDGE WONG: Sure.

MR. MAUCK: The way I understand it -- and can you please correct me if I'm wrong -- is after the transaction with BMO Harris Bank in June of 2016, Peterson Trucks evaluated their financial position and determined that the subleases, right, the -- the -- the -- what were previously leases with their customers, which became subleases, they now became more costly based on the financing transaction with BMO Harris Bank. They modeled out those costs and determined that it was about 10 percent of additional costs. And so they wanted to recoup those additional overhead costs related to the subleases. And to do so, they charged this LSR RMB TX charge on the transactions.

JUDGE WONG: Okay. And is there any documentation or evidence of those discussions or analysis that those overhead costs came out to 10 percent? Then internal emails going on saying, hey, we should charge this to our sublease customers?

MS. PELLIZARO: We -- most of -- well, the tax individuals that were helping with these transactions at the time, they don't work at Peterson anymore. So the knowledge that we have is limited on what were the exact conversations that happened at the time. I do know from our recollection and just out of people's memories, that

1 those conversations happened. I don't have specific
2 material that I could provide.

3 MR. MAUCK: And, Your Honor, just to fill in
4 there a little bit more, right. We're talking about a
5 transaction that is now, yeah, about 10-years old. So
6 contemporaneous documentation is -- is difficult to
7 obtain. But based on Kimie's conversations with her tax
8 team and the understanding of everyone there, that this
9 was modeled out and was communicated internally that this
10 was going to be a reimbursement charge for the overhead
11 cost.

12 MS. PELLIZARO: If I may add, a question similar
13 to that came up during the audit period. And I rebuilt
14 that model because I could not find the original model in
15 our files. But I -- I rebuilt that model, and I provided
16 the auditor with that modeling on what -- you know, at the
17 time of the audit.

18 JUDGE WONG: Okay. Thank you.

19 MS. PELLIZARO: Yeah.

20 JUDGE WONG: Also, so as far as how to name this
21 charge the LSR RMB TX, is there any also, contemporaneous
22 documentation about how -- between internal communication
23 about how this would be named; email, things like that,
24 that would support your testimony today?

25 MS. PELLIZARO: Yeah. I was not part of the

1 setup of that transaction at the time. At the time, I was
2 an financial analyst, and I was not overseeing taxes.
3 However, in conversations with the teams internally, my
4 understanding was that that was quite a bit of back and
5 forth to figure out what -- how we could label this
6 acronym. We knew that we could not spell out all of the
7 words because we did not have enough characters. So and
8 we would need it to be an acronym. And we thought that
9 that acronym would best label the intent of the charge.

10 JUDGE WONG: And so was there any documentation
11 that would, I guess, corroborate that; like I said,
12 emails, internal emails? Do you have like old emails?
13 I'm not sure what your document or retention policies are
14 or what not but --

15 MS. PELLIZARO: Right. I don't have at this very
16 moment.

17 JUDGE WONG: Okay. Did anyone take a look just
18 to -- or did you take a look at old emails and what not?

19 MR. MAUCK: Yeah, Your Honor. We -- we looked in
20 the past. And, I think, due to document retention
21 policies and the age of the transaction, we were not able
22 to find that documentation when we looked.

23 JUDGE WONG: Okay. And then just one last
24 question about the billing software, the CDK system
25 limitations. Again, were there any contemporaneous

1 documentations on the topic of the limitations of the
2 system, the billing software, regarding the charge?

3 MR. MAUCK: Yeah. Kimie, correct me if I'm
4 wrong. But I don't believe there is any contemporaneous
5 documentation around that. I don't think -- right. This
6 was not -- this was never thought to be an issue
7 internally. So there wasn't a lot of communication about
8 it. It's just it is what it was. It was a limit on the
9 number of characters that could be included, and they
10 adapted to that limit. And since this was never thought
11 it was going to be an issue 10 years later related to
12 sales tax. Because this was clearly just a recoument for
13 overhead costs, people weren't talking about it a lot
14 internally.

15 JUDGE WONG: Okay. And then you had mentioned
16 earlier -- I think this is the last question. You had
17 mentioned earlier that no customers questioned you about
18 this charge. Was there any communication proactive to
19 prep the customers, like, oh, lookout, this charge is
20 coming; anything like that?

21 MR. MAUCK: So the invoices after the BMO Harris
22 Bank transaction, the invoices all changed to the
23 customers. Whereas, under when -- when Peterson Trucks
24 was the primary lessor, the invoices all included just a
25 sales tax line item for the transactions that were

1 taxable. And after the transaction, the invoice changed
2 that the line item was now LSR RMB TX, and only included a
3 sales tax if there was a separate component of the
4 transaction that was taxable.

5 MS. PELLIZARO: If I may add, Trevor, at the time
6 that these leases were assigned to BMO, all of these
7 schedules and all of the leases that were then assigned to
8 BMO were collected and stamped with a note. And I can
9 read what this note says. It says, "This contract
10 security agreement promissory note and/or lease and all
11 its schedules and all rights, rents, and monies due
12 hereunder, and any property listed herein or therein, is
13 owned by or has been assigned to BMO Harris Bank or its
14 affiliates and subsidiaries and is subject to the security
15 interest of the bank. Any attempted or actual assignment
16 or transfer of an interest in this contract to any person
17 other than bank, violates the rights of the bank and is
18 void."

19 So the customers knew that this -- that was a
20 change in financing, and that this lease was now being
21 assigned to BMO.

22 JUDGE WONG: Okay. Thank you very much. That's
23 all the questions I had at this time.

24 MR. MAUCK: Thank you, Your Honor.

25 JUDGE ALDRICH: And just a quick question. That

1 portion that was read, do we have anything in the record
2 that includes that statement?

3 MR. MAUCK: No, not currently, Your Honor, but
4 we're happy to submit that.

5 JUDGE ALDRICH: Okay. Judge Le, did you have any
6 questions for the counsel or witness?

7 JUDGE LE: Yeah, just one question. The lease
8 agreement that was mentioned, is that in the record?

9 MR. MAUCK: That is also not in the record, but
10 we can supplement the record if it would be helpful.

11 JUDGE LE: Thank you. No further questions at
12 this time.

13 JUDGE ALDRICH: So this question is about the
14 MTE. So previously, Peterson Trucks was the lessor
15 instead of the -- was the direct lessor/lessee kind of
16 arrangement on the MTE. And I note that there was a
17 mention of the election of whether or not to pay tax on
18 the full amount initially or to pay tax on the rental
19 rate. For each of these transactions on the MTE, did any
20 of them pay tax on the initial full amount, or were they
21 all -- did they all make the elections to pay at the
22 rental rate?

23 MR. MAUCK: And, Your Honor, just to clarify,
24 this is prior to the BMO Harris Bank transaction when --

25 JUDGE ALDRICH: Correct.

1 MR. MAUCK: -- when Peterson Trucks was the
2 primary lessor?

3 JUDGE ALDRICH: Right.

4 MR. MAUCK: And, Kimie, are you aware of how
5 that --

6 MS. PELLIZARO: Yeah. Yeah. I don't have
7 exactly the trucks identified right now in front of me,
8 but some customers would elect to pay at the, yes, at the
9 inception of the lease, and some customers would make the
10 election to pay at the fair rental value. However, when
11 Peterson sold these trucks to BMO and made a -- Peterson
12 made an election with BMO, Peterson made an election for
13 all of the leases sold to BMO for sales taxes should be
14 charged on the fair rental value of the MTE.

15 JUDGE ALDRICH: Okay. Thank you for that
16 clarification.

17 MR. MAUCK: Judge Aldrich, it's an important
18 point that you raise because some of the -- when -- prior
19 to BMO Harris Bank transaction, some of the customers,
20 when Peterson Trucks was the primary lessor, did elect to
21 pay the entire tax. And so if any of those customers then
22 thought they were being charged a tax, they would have had
23 serious questions. And I think that further demonstrates
24 that this LSR RMB TX charge was not believed to be a tax
25 by any of Peterson Trucks' customers.

1 JUDGE ALDRICH: Thank you. So we're about an
2 hour into the oral hearing, and the next step would be
3 start the combined opening and closing for CDTFA or
4 Respondent. But at this time I think we're going to take
5 a 10-minute recess. And there's a couple of requests that
6 I have: One, don't leave the Zoom meeting. Instead, at
7 the bottom left of the corner, there's an audio button and
8 a video button, if you could click both of those to turn
9 off your audio and your video but remain in the meeting.
10 We're going to resume the oral hearing at approximately
11 10:37.

12 (There is a pause in the proceedings.)

13 JUDGE ALDRICH: We're going to go back on the
14 record.

15 And, at this time, we're going to turn it over
16 first to CDTFA or Respondent to begin with their opening
17 and closing.

18 MR. SMITH: Thank you.

19

20 PRESENTATION

21 MR. SMITH: Good morning.

22 The issue today is whether an adjustment is
23 warranted to the amount of excess tax reimbursement in the
24 measure of disallowed claimed exempt sales in interstate
25 or foreign commerce. Appellant operates a truck

1 dealership that sells and leases new and used trucks, as
2 well as performing repairs. Appellant also operates a
3 truck leasing company. Upon audit, the Department
4 reviewed Appellant's sales invoices and noted a line item
5 titled LSR RMB TX on some of these lease invoices dated
6 after June 2016. The Department determined that this line
7 meant lessor reimbursement tax. The Department then
8 determined that this charge was excess tax reimbursement
9 because the lease payments received by Appellant were for
10 subleases and not taxable.

11 In addition, the Department reviewed recorded
12 claimed sales in interstate and foreign commerce greater
13 than or equal to \$50,000 on an actual basis. The
14 Department found sales that were subject to use tax for
15 which Appellant was obligated to collect the tax from its
16 customers because it knew that the purchases were
17 California -- purchasers were California residents.
18 California imposes sales tax on a retailer's retail sales
19 in this state of tangible personal property measured by
20 the retailer's gross receipts, unless the sale is
21 specifically exempt or excluded from taxation by statute.

22 A lease is a temporary transfer of possession and
23 control of tangible personal property for consideration.
24 For purposes of its sales and use tax law, a taxable sale
25 or purchase in this state includes any lease of tangible

1 personal property for consideration, except a lease of
2 MTE. With respect to leases of MTE, the sale to the
3 lessor is the retail sale, and the lessor is the consumer
4 of the equipment. Thus, either sales tax applies to the
5 sale of the MTE to a lessor, where use tax applies to --
6 on a lessor's use of the MTE in this state for leasing
7 purposes.

8 If the use of MTE purchased without payment of
9 tax is limited to leasing the MTE, the purchaser may elect
10 to report and pay its use tax liability on the fair rental
11 value of the MTE. Such election must be made on or before
12 the due date of the return for the period in which the
13 equipment is first leased, otherwise, use tax is imposed
14 on lessor's entire purchase price. When a timely election
15 to pay tax on the fair rental value of MTE is made, use
16 tax must thereafter be paid with the lessor's return for
17 each reporting period measured by fair rental value
18 regardless of whether or not the MTE is thereafter located
19 within this state.

20 When an amount represented by a person to a
21 customer as constituting reimbursement for tax due is
22 computed upon an amount that's not taxable or is in excess
23 of the taxable amount and is actually paid by the customer
24 to the person, the amount paid is excess tax
25 reimbursement. A person who collects excess tax

1 reimbursement is either refund that tax -- that excess tax
2 reimbursement to the customer from who it is collected, or
3 remit it to the state.

4 Here, it's undisputed that Appellant's trucks are
5 considered MTE, and the Appellant's lease of the trucks
6 are subleases and thus, not subject to tax. Appellant's
7 claim that the amount designated LSR RMB TX represents
8 charges for overhead and other cost incurred with the
9 leases lacks merit. This is made clear by looking at
10 Exhibit 1 to the decision, which is attached as Exhibit A.
11 The amount identified as LSR RMB TX is \$8,509.29, and the
12 sales tax listed is \$197.09. The sum of these numbers is
13 \$8,706.38. When you divide that sum by the historical tax
14 rate of 9.75 percent, it equals \$89,296.21, the exact
15 subtotal for the invoice. This is also true for the
16 amounts on the invoices contained in Exhibit 2 to the
17 decision. Thus, the idea that the amount is anything
18 other than excess tax reimbursement collected is simply
19 not plausible.

20 Therefore, because no tax was due, this amount
21 collected constitutes excess tax reimbursement, and
22 Appellant must either remit to the State or refund to its
23 customer. In addition, Appellant has failed to provide
24 any other documentation establishing the amount it charged
25 represent any -- represents any other costs. Therefore,

1 based on the available evidence, it is clear that these
2 amounts represent tax reimbursement that Appellant
3 collected on leases that were not subject to tax.

4 I'm going to just briefly, in response to what
5 was argued today about how they decided to shorten, like,
6 what they said was lessor reimbursement transaction. I
7 guess I would question why they couldn't have shortened it
8 to something that was maybe less confusing, like, a
9 shortened version of overhead charge. I think that would
10 fit there for them. So I just wanted to point that out
11 that they probably had other choices for what they could
12 have called this charge in a shortened version. But
13 instead, they chose something that, I think, everybody
14 would read as lessor reimbursement tax.

15 Okay. Thank you.

16 I'm turning to the disallowed claimed exempt
17 sales in interstate of foreign commerce. Sales tax does
18 not apply to sales of tangible personal property, which is
19 shipped to a point outside of the state pursuant to a
20 contract of sale by facilities operated by the seller.
21 When sales tax does not apply, use tax is imposed on the
22 storage, use, or other consumption of tangible personal
23 property purchased from any retailer for storage, use, or
24 other consumption in this state measured by the sales
25 price, unless that use is specifically exempted or

1 excluded by statute.

2 As relevant here, every retailer engaged in
3 business in this state in making sales of tangible
4 personal property for storage, use, or other consumption
5 in this state is required to register with CDTFA; and, at
6 the time of sale, must collect the use tax from the
7 purchaser, unless the sale is exempt or excluded from tax.
8 The use tax required to be collected by the retailer
9 constitute a debt owed by the retailer to the state.
10 Pursuant to Revenue & Taxation Code section 6247 and
11 Regulation 1620 subdivision(b) (3), it is presumed that
12 tangible personal property delivered outside of California
13 to a purchaser known by the retailer to be a resident of
14 the state was purchased for storage, use, or other
15 consumption in this state.

16 This presumption may be controverted by a
17 statement in writing signed by the purchaser that the
18 property was purchased for use at a point outside the
19 state. This presumption may also be controverted by other
20 evidence that the property was not purchased for storage,
21 use, or other consumption in this state. As relevant
22 here, R&TC Section 6248 subdivision (a) establishes a
23 12-month test for determining whether a vehicle was
24 purchased for use in California, unless it's subject to
25 use tax.

1 Under this test, it was rebuttably presumed that
2 the vehicle was acquired for storage, use, or other
3 consumption in this state if the vehicle was purchased for
4 its first functional use outside of California. It was
5 brought into the California within 12 months from the date
6 of the purchase. And as relevant here, the vehicle was
7 purchased by a California resident as defined in
8 section 516 of the Vehicle Code; or if the vehicle was
9 used or stored in this state more than one half of the
10 time during the first 12 months of ownership.

11 The presumption that a vehicle was purchased for
12 use in California may be rebutted by documentary evidence
13 that the vehicle was purchased for use outside of the
14 state during the first 12 months of ownership. The
15 presumption that a vehicle was purchased for use in
16 California may also be rebutted by evidence that one-half
17 or more of the miles traveled by the vehicle during the
18 six-month period immediately following the vehicle's entry
19 into the state or commercial miles traveled in interstate
20 or a foreign commerce.

21 This requirement is also discussed annotation
22 580.0307 regarding the sale of a motor home that was
23 delivered outside the state; and annotation 325.0428,
24 which discusses the sale of a vessel delivered outside the
25 state. In both of those annotations, the Department

1 advised the dealer that when a retailer makes an exempt
2 sale in interstate commerce, they still have an obligation
3 to collect use tax from the purchaser if they are a known
4 California residence. Lastly, we note that CDTFA's
5 Memorandum Opinion for Holiday World, Inc., which involves
6 sales of recreational vehicles, further reiterates that a
7 retailer has a use tax collection obligation when sales
8 are made in interstate commerce.

9 Here, although there's no dispute that the
10 vehicles were delivered to locations outside of
11 California, it is clear that Diamond Tank Lines was a
12 California corporation. California Secretary of State
13 records, which are Exhibit 6 to the decision, which is
14 attached as Exhibit A, show that DTL as a California
15 corporation. Furthermore, the sales invoices Appellant
16 issued to DTL, which are part of the auto workpapers, and
17 attach as Exhibit F, list California addresses for the
18 purchaser. In addition, both of the trucks sold to DTL
19 were registered at an address in San Jose, California, as
20 shown in the DMV application for registration for a new
21 vehicle, which is Exhibit 3 to the decision. In addition,
22 the apportioned registration cab card, Exhibit 4 to the
23 decision, states the same -- same thing. Finally, a bill
24 of lading from Navistar, Inc., which is Exhibit 4 to the
25 decision, shows a Milpitas, California, address for DTL.

1 We note that all of these documents were signed
2 by Appellant. Based on all of this documentation, it is
3 clear that Appellant must have known DTL was a California
4 resident. Because DTL was a California resident,
5 Appellant was required to obtain a statement from its
6 customers stating that the trucks were not purchased for
7 use in this state. Here, Appellant failed to secure this
8 statement as Appellant must establish that the trucks were
9 not subject to use tax in this state. Appellant has
10 failed to provide any evidence that the trucks were not
11 purchased for use in this state or subject to an exemption
12 unless -- sorry -- in this state or subject to any
13 exemption, and thus, is liable for use tax on these sales.

14 For the trucks sold at Teocal Transport, again,
15 there is no dispute that the vehicle was delivered to a
16 location outside of California per records from the
17 California Secretary of State, Exhibit 7 to the decision,
18 which is attached to Exhibit A, shows that Teocal is a
19 California resident. Moreover, the sales invoice
20 Appellant issued to Teocal, which is part of the audit
21 workpapers and attached to Exhibit F, list a California
22 address for the purchaser, and so does the application for
23 vehicle registration.

24 Accordingly, the relevant sales and registration
25 documents establish that Appellant must have known that

1 the purchaser was a California resident, and Appellant was
2 required to obtain a statement from the customer that the
3 trucks were not purchased for use in this state.
4 Appellant failed to secure the statement. Thus, Appellant
5 must establish that the trucks were not subject to use tax
6 in this state. Appellant has failed to provide any
7 evidence that the trucks were not purchased for use in
8 this state or subject to any exemption, and thus it's
9 liable for use tax on this -- on this sale.

10 In summary, Appellant is being held liable for
11 use tax on these sales because it delivered vehicles to
12 known California resident -- known California residents
13 and failed to secure a signed statement that the property
14 was not purchased for use in California as required under
15 Revenue & Taxation Code sections 6247 and 1620. Further,
16 Appellant has failed to otherwise establish that the sales
17 of these vehicles were not subject to use tax, unless no
18 adjustments are warranted.

19 This concludes my presentation. Thank you.

20 JUDGE ALDRICH: Thank you, Mr. Smith. I do have
21 a question. So Appellant made the argument that it was
22 never communicated to Appellant's sublessees that they
23 were collecting tax. I guess I wanted to hear CDTFA or
24 Respondent's response to that argument.

25 MR. SMITH: I mean, our -- our response would be

1 that again, what -- what I -- you know, what was my
2 initial presentation that that amount was -- when you
3 calculate it, it comes out to the exact same tax rate. I
4 mean, I don't know what the relevance of them
5 communicating it to their customer. I think their
6 customer probably saw it and assumed that it was just an
7 ongoing tax like they had been charged previously.

8 MR. NOBLE: Judge Aldrich, if I could -- if I
9 could also add?

10 JUDGE ALDRICH: Okay.

11 MR. NOBLE: The -- the sales receipt, you know,
12 since we have concluded that the acronym stood for lesser
13 reimbursement tax, is a communication to the customer.
14 It's -- it's -- it is evidence of the contract.

15 JUDGE ALDRICH: Okay.

16 MR. NOBLE: Same as anytime you go to a store and
17 sales tax reimbursement, even if it's clear -- more clear
18 on the receipt, it's there. Like, that is a
19 representation and communication to the customer.

20 JUDGE ALDRICH: Thank you.

21 At this time, I'm going to open it up to the
22 other panel members.

23 Judge Wong, did you have any additional questions
24 for the parties?

25 JUDGE WONG: No questions. Thank you.

1 JUDGE ALDRICH: Judge Le?

2 JUDGE LE: Yeah. I have a question regarding
3 Teocal Transport. I believe you cited the information
4 from the Secretary of State. What was the other
5 information you cited? I missed the second part.

6 MR. SMITH: Well, let me pull it up. It was from
7 the audit workpaper. It was a sales invoice Appellant
8 issued to Teocal, which is part of the audit workpapers
9 and also the vehicle registration.

10 JUDGE LE: What does the invoice say that --

11 MR. SMITH: Oh -- oh, sorry. It shows a
12 California address for Teocal, indicating that Appellant
13 must have known that Teocal was a California resident.

14 JUDGE LE: Okay. Thank you. No further
15 questions.

16 JUDGE ALDRICH: So I just wanted to go back a
17 bit. So with respect to the BMO transaction,
18 Ms. Pellizaro, Appellant made the election for tax to be
19 collected on the fair market rental value of those trucks;
20 is that accurate?

21 MS. PELLIZARO: That's correct. We made that
22 election with BMO at the time that we sold these trucks to
23 BMO and entered into the lease back arrangement with them.

24 JUDGE ALDRICH: And that was for all of the
25 trucks?

1 MS. PELLIZARO: That's a -- that's a great
2 question. So in June of 2016, we had a very large batch
3 of trucks. All the trucks that we had in the fleets that
4 met the required amounts to -- to enter into this
5 arrangement with BMO, were sold to BMO all at once in a --
6 in a big batch.

7 JUDGE ALDRICH: Okay.

8 MS. PELLIZARO: So, at the time, yes, we made a
9 big election for all of the trucks. But then from that
10 time and on, as new trucks were placed into service, they
11 would be financed with BMO on separate schedules. So, at
12 the time that each schedule was entered into -- that we
13 would enter into lease -- into a lease back arrangement
14 with BMO, we would make that election at each schedule.

15 JUDGE ALDRICH: Okay. And so as part of the
16 lessor/lessee arrangement, BMO would charge you -- or
17 would charge Appellant use tax on that fair market rental
18 rate?

19 MS. PELLIZARO: Right. So every invoice that we
20 would have received from BMO would include a sales tax
21 item line, which BMO would have charged Peterson Trucks.
22 Peterson Trucks would pay BMO. And BMO, I believe,
23 would -- was remitting to the CDTFB timely.

24 JUDGE ALDRICH: Okay. And then -- then those
25 trucks were then in -- they were subleases of those same

1 trucks to customers both in and out of the state?

2 MS. PELLIZARO: Correct.

3 JUDGE ALDRICH: Okay. But all the trucks had the
4 use tax collected based off the election; is that correct?

5 MS. PELLIZARO: If they were leased in
6 California, yes. But Peterson Trucks also, at the time,
7 had businesses in Oregon and Washington. So there could
8 have been leases that were signed with BMO in Oregon or
9 Washington, and then were subject to either Oregon or
10 Washington tax rules. Peterson Trucks has branches --

11 JUDGE ALDRICH: Okay.

12 MS. PELLIZARO: -- across all over the West
13 Coast.

14 JUDGE ALDRICH: Understood.

15 And I guess this question is back to CDTFA or
16 Respondent. Was BMO registered to collect and remit use
17 tax during the period at issue?

18 MR. SMITH: I don't -- I'd have to check.

19 JUDGE ALDRICH: Okay. I guess -- I think there
20 might be -- so towards the conclusion of the hearing, I
21 think it might be a good idea to hold the record open.
22 There's a few items that I think that the panel might like
23 to help this appeal be more clear. So Appellant's counsel
24 indicated that there was a document that the witness read
25 from that might be available to us, as well as a copy of

1 some sort of lease. And so I -- I'm inclined to hold the
2 record open at the conclusion of the oral hearing to get
3 those two documents.

4 I would also extend Appellant the opportunity to
5 provide internal documentation regarding the LSR RMB TX
6 charge and then, basically, to corroborate CFO's
7 testimony. I would ask that CDTFA provide some sort of
8 indication whether or not BMO is registered to collect and
9 remit a use tax during the liability period or the audit
10 period.

11 And just so the parties are clear, I will prepare
12 orders after the hearing that memorialize the scope of the
13 request, and then also give a timeline as when we could
14 expect those things.

15 Is that understood, Mr. Mauck, and Mr. Smith?

16 MR. MAUCK: Understood, Your Honor.

17 MR. SMITH: Yes.

18 JUDGE ALDRICH: All right. So, at this time, I
19 think we're going to transition back to Mr. Mauck for the
20 rebuttal or closing. You do have some additional time,
21 other than the 5 to 10 minutes, because you reserved. And
22 so please proceed with your rebuttal or your closing
23 remarks, and --

24 MR. MAUCK: Thank you, Your Honor. And I expect
25 this to be relatively brief.

1 relevance. The statute says you must represent it as a
2 sales tax, which did not happen in this case, right.
3 Ms. Pellizaro testified under oath that the LSR RMB TX
4 charge was not a tax reimbursement. It was never intended
5 to be a tax reimbursement and was never represented to any
6 customers that it was a tax reimbursement. This testimony
7 proves by a preponderance of the evidence that the LSR RMB
8 TX charge was not a tax reimbursement.

9 And also, just so we're all clear. The excess
10 tax reimbursement law in California is designed to make
11 sure that charges labeled as sales tax are remitted to the
12 CDTFA or returned to the customer. This law is not
13 designed to recast overhead charges as sales tax charges.

14 We respectfully request that the OTA not allow
15 the CDTFA to use this provision to recast Peterson Trucks
16 overhead recruitment charge as a sales tax reimbursement,
17 which would result in double taxation.

18 Thank you, Your Honors.

19 MS. PELLIZARO: Trevor, if I could maybe just add
20 two things to what you said.

21 At the time, and despite our system limitations,
22 we made every effort -- as I talked to my teams
23 internally -- every effort we could have possible make to
24 make sure that that charge, the item line for
25 reimbursement, was stated and communicated to our

1 customers in a very different way than sales taxes so
2 there would be no confusion on the customer's part that
3 that was not sales taxes. I believe -- and in talking to
4 my team members, I believe that we couldn't think of
5 anything else that we could do to communicate that more
6 clearly that that was simply a reimbursement for
7 additional costs that Peterson Trucks, at the time, had
8 for in covering this arrangement with BMO.

9 Also, I wanted to state that Peterson has gone
10 through a few different system changes through time since
11 the 2016. And some of our ability to provide internal
12 communications or documents as such, is because we don't
13 use the same system anymore. In 2016, we were using a
14 communication system called Lotus Notes. And we haven't
15 been using that in a number of years now, and that those
16 backups were made available to us for years after the
17 transition happened. But once we didn't need, and once
18 the retention policy for us went through, we just -- we
19 didn't keep all of those records for that communication
20 system that we had at the time.

21 Today we use Outlook for our emails. We use
22 Teams for internal communication between the teams. But
23 we don't use any one of the Lotus Notes communication
24 tools anymore. So I just wanted to clarify that some of
25 our difficulty in getting some of these historical records

1 has to do with the timeline.

2 One more point that I would like to add, is that
3 CDK as a system, has its own retention policy as well.
4 And the system itself purges documents automatically once
5 it meets a timeline. And Peterson does not have the
6 ability to actually retain documents in the system outside
7 of those timelines that the system automatically purges.

8 Thank you.

9 JUDGE ALDRICH: Okay. What's the approximate
10 timeline for purging?

11 MS. PELLIZARO: Yeah. It is, for invoices, I
12 believe it is five years for purging.

13 JUDGE ALDRICH: Okay. Thank you for --

14 MS. PELLIZARO: And for -- and for the email
15 communications and internal communications, we
16 transitioned from Lotus Notes to Outlook and the Microsoft
17 Tools in 2019. And most of those records were kept for a
18 number of years after, but now most -- they're not
19 available anymore.

20 JUDGE ALDRICH: Understood. And I appreciate
21 that clarification.

22 I want to thank both parties for their time and
23 for the witness joining us today. Thank you for the --

24 MR. SMITH: Judge Aldrich?

25 JUDGE ALDRICH: Yes.

1 MR. SMITH: This is Kevin. If you don't mind,
2 Jason Parker can address your question you asked earlier
3 about BMO --

4 JUDGE ALDRICH: Okay.

5 MR. SMITH: -- at the time. That would be cool.

6 MR. PARKER: Sorry, Judge Aldrich. I just looked
7 it up. Actually, in Exhibit F, there is a file that has
8 the resale card from BMO. And I checked in our system.
9 They've been registered to collect tax, and they've been
10 reporting tax since 2015.

11 JUDGE ALDRICH: I appreciate that. I may still
12 include that as part of the AB order so if I find that
13 that's insufficient, but I appreciate the clarification.

14 And with that, I wanted to conclude the hearing
15 but note that the record is being held open. I'll be
16 issuing orders after this hearing to further clarify what
17 I'm requesting and the timelines that I'm providing. And
18 then also note that the morning calendar has concluded,
19 but there's another hearing on calendar this afternoon
20 that will begin at approximately 1:00p.m.

21 And thank you, everyone.

22 Please end the live stream.

23 (Proceedings concluded at 11:06 a.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 9th day of February, 2026.

ERNALYN M. ALONZO
HEARING REPORTER