BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,	
24 CARROTS SPECIAL EVENTS, INC.,	OTA NO. 240817036
APPELLANT.	

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, March 10, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF, 24 CARROTS SPECIAL EVENTS, INC., APPELLANT.	OTA NO. 240817036

Transcript of Proceedings,

taken at 12900 Park Plaza Drive, Suite 300, Cerritos, California, 90703, commencing at 1:03 p.m. and concluding at 2:19 p.m. on Tuesday, March 10, 2026, reported by Ernalyn M. Alonzo, Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead:	ALJ ANDREW WONG
Panel Members:	ALJ STEVEN KIM HEARING OFFICER KIM WILSON
For the Appellant:	MARDIROS H. DAKESSIAN BENJAMIN K. LEE ALMA MARTINEZ
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION JENNIFER BARRY JARRETT NOBLE JASON PARKER

I N D E X

E X H I B I T S

OPENING STATEMENT

CLOSING STATEMENT

Cerritos, California; Tuesday, March 10, 2026

1:03 p.m.

JUDGE WONG: Let us go on the record.

This is Appeal of 24 Carrots Special Events Incorporated before the Office of Tax Appeals, OTA Case No. 240817036. It is Tuesday, March 10th, 2026, and the time is 1:03 p.m. We are holding this hearing in Cerritos, California. I'm Andrew Wong, the lead member of the three-member panel hearing this case. And with me are Administrative Law Judge Steven Kim and Hearing Officer Kim Wilson.

Will the parties introduce themselves, beginning with the Appellant.

MR. DAKESSIAN: Good afternoon, Honorable Judges. Marty Dakessian, representing the Appellant.

MR. LEE: Good afternoon. Benjamin Lee, representing the Appellant.

MS. MARTINEZ: Good afternoon. Alma Martinez, paralegal with the Appellant.

JUDGE WONG: Good afternoon. Thank you.

And will the individuals representing CDTFA please introduce yourselves.

MS. BARRY: Jennifer Barry, attorney representing the Department.

MR. NOBLE: Jarrett Noble, attorney also representing the Department.

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

JUDGE WONG: Thank you.

All right. Before we turn it over to the parties, we're going to go over the substitution, the issues, exhibits, declarations, witnesses, and what not.

Originally, Judge Keith Long was to be a member of this panel, but he's unavailable. So Hearing Officer Wilson is subbing in for him. Does either party object to the substitution?

Turning first to Appellant, Mr. Dakessian?

MR. DAKESSIAN: Appellant has no objection.

JUDGE WONG: Thank you.

CDTFA?

MS. BARRY: We have no objection. Thanks.

JUDGE WONG: Okay. Then this will be the three-member panel that will hear and decide this case.

We are considering four issues today: Number one, whether Appellant is a retailer who made taxable sales during the liability period; number two, what is the applicable statute of limitations; number three, whether Appellant was negligent; number four, whether the failure to file penalty should be relieved.

Is that correct, Mr. Dakessian?

MR. DAKESSIAN: Yes, it is.

JUDGE WONG: CDTFA?

MS. BARRY: Yes.

JUDGE WONG: Thank you.

All right. As far as exhibit goes, Appellant has identified and submitted proposed Exhibits 1 through 27, and then there's also two declarations.

No other exhibits to submit; is that correct?

MR. DAKESSIAN: Correct.

JUDGE WONG: Okay. CDTFA, any objections?

MS. BARRY: No objections.

JUDGE WONG: Okay. So Appellant's Exhibits 1 through 27 will be admitted into the record as evidence.

(Appellant's Exhibits 1-27 were received into evidence by the Administrative Law Judge.)

JUDGE WONG: And CDTFA has identified and submitted proposed Exhibits A through D as evidence.

Is that correct, CDTFA?

MS. BARRY: Yes.

JUDGE WONG: And no other additional exhibits?

MS. BARRY: Correct. No more.

JUDGE WONG: Any objections, Appellant?

MR. DAKESSIAN: No. No objections.

JUDGE WONG: Okay. CDTFA's Exhibits A through D

will be admitted into the record as evidence.

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

JUDGE WONG: And also, the parties do not intend to call any witnesses.

But, Mr. Dakessian, you've submitted two declarations from Mr. Norman Bennett and Mr. Andrew Rosen.

Does CDTFA have any objections to these declarations?

MS. BARRY: No, we have no objections.

JUDGE WONG: Okay. Did CDTFA want an opportunity to address what's in these declarations, since they were kind of filed close to the hearing date, or do you want to decline that or waive that?

MS. BARRY: Are we able to respond to that by the end of the hearing, or would you like the answer at this time?

JUDGE WONG: We can do it at the end of the hearing. Sure.

MS. BARRY: Okay.

JUDGE WONG: Yeah. Okay. Yeah. We'll revisit this at the end of the hearing. Remind me to do that.

Okay. And then CDTFA has no witnesses either. All right.

The time allocation, originally, this hearing was

scheduled for approximately 170 minutes.

Mr. Dakessian, you've asked for 2 hours, 120 minutes; is that still correct?

MR. DAKESSIAN: I think we'll be able to do a lot better than that, Your Honor, given that we're not calling the witnesses.

JUDGE WONG: Okay. And then, CDTFA, you've asked for 30 minutes; is that right?

MS. BARRY: Yes.

JUDGE WONG: Okay. Great. All right. Any final questions before we turn it over to the parties?

Mr. Dakessian?

MR. DAKESSIAN: Just one logistical question.

JUDGE WONG: Sure.

MR. DAKESSIAN: I think it would be better for everyone concerned if I move the poster back here. Is that okay? Am I --

JUDGE WONG: Sure.

MR. DAKESSIAN: With your permission?

JUDGE WONG: Yeah, yeah, yeah. That's fine. Absolutely.

Let's go off the record while that takes place.

(There is a pause in the proceedings.)

JUDGE WONG: Let's go back on the record.

We will turn it over to Appellants for their main

presentation. You have 120 minutes. You also have a chance to rebut and close at the end, so you can divide that 120 minutes however you'd like.

Over to you, Mr. Dakessian.

MR. DAKESSIAN: It's a little bit low, but I'll -- do we have a book or something that we can -- perfect. Thanks.

PRESENTATION

MR. DAKESSIAN: Okay. Thank you. Thank you for your time. I appreciate the opportunity to speak to you today about what is a very, very important matter for my client. And I think I'm just going to get right to the two issues that the panel posed during the prehearing conference.

The first issue was whether or not 24 Carrots Special Events, Inc. -- to which I will refer to as "Inc." for shorthand -- is a retailer. The second question posed by the panel was whether Inc. is an caterer. Then we'll go over the application of the sales and use tax law to the facts of this case. And then we'll wrap up the opening with how we got here in the first place.

So to answer the first question, is 24 Carrots Special Events, Inc., is Inc., a retailer? The answer is unequivocally no. And the reason for that is quite

simple. The definition of retailers, or retailer under Rev & Tax Code section 6015 requires three things. It requires that an entity be a seller. It requires that that entity make a retail sale, and that the retail sale be of tangible personal property. It's undisputed here that Inc. does not sell tangible personal property, that Inc. sells services. So it fails the test on that ground.

To remove the issue from doubt, the definition of retail sale itself includes a requirement that the property sold be tangible personal property. The definition of retail sale is a sale other than for the purpose of resale of tangible personal property. So Inc. is not making a retail sale. Inc. does not sell tangible personal property. Inc. is not a retailer.

As to the second question, whether Inc. is a caterer? The answer to that is also unequivocally no. Regulation 1603 subdivision (i) says, "The term cater does not include employees hired by the hour or by the day," and that's exactly what Inc. does. Inc. is a staffing services company. Customers hire Inc. employees by the hour. That's not disputed. That's not controversial. So Inc. is not caterer by 1603(i)'s own terms.

So then we have kind of the larger question of what is the appropriate treatment under California sales and use tax law of what is happening in this case. And

for that, I'd like to direct the panel's attention to what looks like a compass. It didn't start out that way when we developed this graphic, but I think it's actually an apt metaphor. Because since the inception of California sales and use tax in 1933, the core concept of California sales tax is that it applies to the sale of tangible personal property. The imposition of tax is a tax on retailers for the privilege of selling tangible personal property at retail in this state. So it's not a tax on services.

There are a lot of states that tax services. California is not one of them. The animating force behind the tax is the sale of tangible personal property. And it gets us back, again of course, the definition of retailer and retail sale, but this concept is present, not only in those two statutes, but in the imposition of tax itself in the definition of seller, in the definition of sale, in the definition of gross receipts even. And so it's really important for us, as we're thinking about this case, and we're thinking about Inc. as a staffing company that sells services, which is undisputed; it's very important that we think about the case in the -- within the statutory framework.

And one of the important things -- and we all do it. We all talk about taxable versus nontaxable services

as a short of shorthand to talk about, you know, when something is subject to tax or isn't. But really, at its core, the imposition of tax is not on the sale of services ever. The sale of services is not taxed ever directly. Rather, the sale of services comes into play in the definition of gross receipts, which is how the tax is measured; and then only if the services are part of the sale.

Now, the Department is going to present its case, and I don't presume to try to present their case for them. But in essence, the Department's position imposes taxes directly on the sale of services. That is, at its core, what their argument is, based on their read of the statutory tax, and that's an incorrect read. At no point in time can we ever consider the sale of services to be taxed directly. The sale of services is accounted for in the measure of the tax in the definition of gross receipts, and then only again if the services are part of the sale of tangible personal property; which has its own meaning in case law which has interpreted these statutes; which brings up cases like Dell and so forth that talk about bundled versus unbundled transactions; the true object test, whether the true object is the sale of tangible personal property or the sale of services; whether the sale of services is incidental to the sale of

tangible personal property.

In those circumstances, it would be subject to tax. So we have to start with the right framework. And so this entire discussion today and the decision that this panel makes, should be informed by whether services are a part of the sale of tangible personal property within the definition of gross receipts. And, of course, the answer to that question is unequivocally no, based on the undisputed facts. Again, it's undisputed that Inc. sells services, not tangible personal property. Its undisputed that Inc. and 24 Carrots LLC -- which we can call LLC for short. It's undisputed that Inc. and LLC are separate entities. It's undisputed that they observed all appropriate corporate protocols and formalities. It's undisputed that there are separate contracts. It's undisputed that there are separate invoices. It's undisputed that there are separate payment methods. It's undisputed that these are truly separate entities. It's beyond dispute.

So in applying the law and in asking whether these services that Inc. provides are part of the sale of tangible personal property, the answer is, of course, not. How can it be? We have these two admittedly undisputedly separate entities, separate transactions, and so forth. There's no tangible personal property that's sold. So it

can't be a part of the sale of tangible personal property. And even if we were to entertain some sort of collapsing of the transaction, then we would get into a Dell-type analysis and look at the separate and independent objects of the contracts as between sales and services that could -- that is easily broken out.

We've established that the services are clearly separate. We've established that the services are optional. And so under no theory, under no circumstances are these services taxable. To do so would be a departure from California law, as its been on the books since 1933. There's no support for the notion that a sale of services without a corresponding sale of tangible personal property; and, of course, it must be a part of that sale. It just can't be related to that sale, which is what the Department has alleged. It must be a part of the sale to the faithful to the statute and statutory scheme. Under no circumstances in this case can the services performed by Inc. be considered within the definition of gross receipts.

So with that in mind, I'd like to address why we're here in the first place. And the reason that we're here in the first place is because my client -- who could not be here today, unfortunately, who would have liked to have been here, but he had a significant health issue.

The reason that we're here today is because my client did what very, very few taxpayers ever do. He'd called the agency and asked for advice.

There was more than one phone call. There were several phone calls that culminated in a request for written advice. The request for written advice was a detailed request that recited the relevant facts, told the agency what the question was, why he was asking it, and requested a response. He got back a response. The response essentially said, if you want to setup your own staffing company so that you can be placed on equal footing with other staffing companies in the industry, you need to go through steps 1 through 20. And if you do that, then the sales of tangible personal property will be subject to tax, and the sales of services will not.

So my client, whose sole motivation was to follow the law and do right by his clients, his customers, got the answer back and faithfully executed on the advice provided by the agency. Had the agency told him this is not an achievable, this is not possible, he would not have setup the business the way that he did, and he would not have interacted with his customers the way that he did. He was following the advice.

So fast forward several years later. He gets audited by the agency. The agency, instead of standing by

the advice, disavowes the advice and says you can't rely on that. You didn't provide your name. Here are various other reasons why. Instead of standing by the advice, they disavow it. Not only do they disavow it, they issue an assessment, not for three years, going back eight years, and they hit the taxpayer with penalties. Now, we're not going to say much more about this, other than to reserve all of our rights regarding 6596, 6593.5, estoppel, penalty relief, and all these sorts of reliance concepts because we don't need to. And you know why? It's because the advice was correct.

The advice that my client got was correct, and he followed it to a T. He did exactly what he was told to do. Had he been told otherwise, he wouldn't have done it. And that's why we're here. It's important context for the panel to understand as to why they're here, as to why we're all here.

So with that in mind, Honorable Panel Members, I think I can conclude our opening presentation. I reserve the rest of my time for rebuttal, or if there are any questions from the panel.

Thank you.

JUDGE WONG: Thank you, Mr. Dakessian.

All right. I'll now turn to my co-panelists to see if they have any questions for Appellant, beginning

with Hearing Officer Wilson.

HEARING OFFICER WILSON: I do not have any questions. Thank you.

JUDGE WONG: Judge Kim.

JUDGE KIM: Not right now. Thank you.

JUDGE WONG: I did have one question -- maybe a couple of questions. What about the case of fabrication labor. Isn't that a case where California does tax services apart from tangible personal property? For example, a tailor, customer brings him a bolt of clothing, tailor, you know, fabricates a suit, and sales tax is charged on that?

MR. DAKESSIAN: So, you know, I think the law in that area has evolved a bit differently. But, again, the animating factor here is a transfer of tangible personal property in some way that property is being altered, and those are not the facts that we have here. But I return, at its core, the definition of sale requires a transfer of tangible personal property. Whether under those facts that's been interpreted as such, I can't speak to. Happy to brief that.

But under these facts, when we're talking about staffing events, services related to weddings and so forth, that paradigm, that framework does not exist. There has to be transfer of tangible personal property

under 6006 subdivision (a) of the code. Absolutely has to be.

JUDGE WONG: Okay. Thank you. Also another question about your client Incorporated -- Inc., they also rented equipment; is that correct?

MR. DAKESSIAN: Yes, that is.

JUDGE WONG: Okay. And do you know what type of equipment? I saw tables and chairs in the record.

MR. DAKESSIAN: I think, yeah, party supplies, tables and chairs. All tax paid. All leased in substantially the same form as acquired. They're not considered sales within the definition of 6006. That's based on Regulation 1660 subdivision (b).

JUDGE WONG: Okay. And section 6006(d), which talked about the defined sales, and it talks about includes the serving of food for a consideration in that definition of sale. In your briefs, you had kind of made a -- you went back into this legislature history statutory analysis. Do we even get there if 6006(d) is just plain on its face and --

MR. DAKESSIAN: Oh, absolutely. I -- I don't think it's plain on its face, and I think that's why you had the Select Base Materials court interpret 6006, and describes subdivision (a) as the basic definition -- the principle definition of a sale, which is any transfer of

title of tangible personal property for a consideration. And then described subdivisions (b) through (g), I think it is, as the refinements of that basic rule, which means that 6006 presupposes a transfer of tangible personal property.

Select Base Materials, Judge Wong, went even further and said that the definitions -- the basic principal definition of sale is under subdivision (a), the refinements must harmonize and correspond to the definition of gross receipts in 6012. The definition of gross receipts, as we mentioned, says that services must be part of the sale of tangible personal property. So the definition that you have to read subdivision (d) in a way that brings it into harmony and compatibility with 6012(d). That's what the California Supreme Court said in Select Base Materials. And our reading of that does exactly that. We say that you don't tax services under subdivision (d) that presupposes sale of tangible personal property because it's a refinement of the general rule under subdivision (a) that requires that transfer. Which, by the way, is consistent with the whole of California sales and use tax law, which is focused on the sale of tangible personal property. And you must look to whether the services are part of the sale.

And what the Select Base Material court said, the

California Supreme court said you cannot interpret the refinements under 6006. I think in that case they were talking transportation charges. You cannot talk about the refinements under 6006 subdivision (b) through (g) in a way that would render other provisions of the sales tax law nugatory. So you would never need to look to whether the services are a part of the sale under the facts of this case if you interpret it the way the Department does, which is a direct tax on services. That's not the case.

So Select Based Materials, I think, provides the appropriate framework that should inform this panel's decision. 6006(a) is the principle basic definition; (b) through (g)are the refinements, including subdivision (d), presupposing the transfer of tangible personal property; and the entire analysis of services under the facts of this case must be governed by 6012 and its discussion and it's rule that the services must be a part of the sale. And there's a lot of other things I can say about that. I mean, there's the analysis mandatory versus optional gratuities. If we take the interpretation the Department urges, then we would never have a Regulation 1603.

We would never have a rule distinguishing between mandatory and optional warranties because that would be a charge for serving food, which would be, by the

Department's urging, automatically taxable regardless of whether it were part of the sale of tangible personal property. So our interpretation is harmonized -- harmonizes and coordinates with 6012. Their interpretation narrows the scope of -- of what brings, I should say, 6012 into conflict with 6060.

Does that make sense?

JUDGE WONG: Thank you. And last question just regarding the -- I know you weren't there at the time. I just have questions about the request for advice. My understanding it was done through, at the time, an independent consultant, Mr. Rosen, and it was, anonymous, I guess; is that correct?

MR. DAKESSIAN: So yeah. So the -- that's partially correct. Mr. Rosen worked for Mr. Bennett, and wrote in on Mr. Bennett's behalf. And we have an email chain, along with the declaration, that establishes that. So as far as anonymous, they submitted the request through the portal. I'm not -- I'm not aware that the name of the entity or the business was provided.

JUDGE WONG: Okay. Thank you very much, Mr. Dakessian. That's all the questions I had.

All right. We will -- and you still have about an hour and 46 minutes, if you need that at the end.

So, okay. We will now turn it over to CDTFA for

their presentation for 30 minutes.

Whenever you're ready. Thank you.

MS. BARRY: Thank you.

PRESENTATION

MS. BARRY: This case stems from an audit of 24 Carrots Special Events Incorporated, hereafter, referred to as Appellant, for the period 4Q '13 through 3Q '21. Appellant is a California corporation that operates in Costa Mesa, California. Appellant provides event venue services, including among others, chefs, wait staff, bartending staff, and equipment rentals. During the liability period, Appellant operated in conjunction with 24 Carrots LLC, hereafter referred to as the "LLC", which is separate but closely related company. Purchasers enter into one comprehensive agreement with Appellant and the LLC under the general name 24 Carrot Special Events.

As relevant here, the LLC would provide an invoice to the purchaser that included charges for food, beverages, and administrative fees. The LLC's invoice also included a charge for sales tax reimbursement for the food and beverages. On a separate invoice, Appellant charged the purchaser for, among other things, the venue, equipment, staffing for the event, and most importantly,

including the labor charges related to chefs, wait staff, and bartending staff required to prepare and serve the food and beverages. The invoices also included delivery and setup charges. Appellant's invoices did not include a charge for sales tax reimbursement.

Upon audit, Appellant did not provide any records for review. The Department obtained Appellant's federal income tax returns, hereafter FITRs, for calendar years 2013 through 2019. Through an audit of the related LLC, the Department also obtained sales summaries and select sales invoices for both Appellant and the LLC. Based on this information, the Department scheduled audited total sales of $62,511,112 for the liability period. Using a test period of 1Q '18 through 1Q '20, based on the LLC's sales summaries and available sales invoices, the Department calculated a taxable sales ratio of 37.49 percent for Appellant. This ratio included taxable sales for chefs and kitchen staff, wait staff, and bartending staff, food delivery, setup, and pick up, and gratuity. Finally, the Department applied the taxable sales ratio of 37.49 percent to Appellant's audited total sales to compute unreported taxable sales of $23,435,417 for the liability period.

Revenue & Taxation Code section 6051 imposes sales tax on a retail -- imposes tax on a retailer's sales

in this state of tangible personal property measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. Under section 6091, all of a retailer's gross receipts are presumed subject to tax, unless the retailer can prove otherwise. Section 6481 provides that the Department may base its determination of the tax due upon the facts contained in the taxpayer's return or upon any information that comes within its possession.

Further, under Section 6481, when it is determined that a taxpayer's records are insufficient or are proven unreliable, it is appropriate for the Department to compute and estimate the taxpayer's liability by alternative means. As set forth in Regulation 30219, where the Department's determination is reasonable, the burden of proof is upon Appellant to prove all issues of fact by a preponderance of the evidence. Appellant must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct.

As a threshold matter and in direct response to the panel's first and second questions, Appellant is a retailer within the meaning of section 6015 and section 6019, and Appellant was making sales within the meaning of subdivision (d) of section 6006. As set forth

in Section 6015, the term retailer includes every seller who makes any retail sale of tangible personal property. Section 6019 specifies, as relevant here, that every corporation making more than two retail sales of tangible personal property during any 12-month period shall be considered retailer within the provisions of the sales and use tax law in its own corporate capacity.

Appellant is a corporation operating separately from the LLC. Thus, the taxable sales that Appellant made during the liability period are attributable to Appellant, not the LLC. Subdivision (d) of section 6006 explicitly defines the term "sale" to include the furnishing, preparing, or serving for consideration of food, meals, or drinks. Section 6007 defines the term "retail sale" or "sale at retail" to mean a sale for a purpose other than resale in the regular course of business in the form of tangible personal property. Section 6016 defines tangible personal property to mean personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses. Food and drink are tangible personal property.

Lastly, paragraph 2 of subdivision (a) of Section 6012 specifies that the measure of gross receipts includes the cost of material used, and most importantly, labor or service costs. Here it is undisputable that

Appellant provided chefs and kitchen staff, wait staff, bartending staff, and food delivery, setup, and pickup services during the liability period.

Further, it's undisputed that Appellant's customers purchased fully prepared food and drinks served on premises provided by Appellant. In fact, in Appellant's supplemental opening brief, it described the duties of its employees stating, quote, "The food and beverages sold by LLC were prepared by LLC's employees at a commissary kitchen in Costa Mesa. Incorporated employees then picked up the food and beverage and delivered it to a venue leased by Incorporation. At the venue, Incorporation service staff, which comprised of chefs, servers, and bartenders, was responsible for serving the food and beverage to the event's attendees. The chefs plated the food and ensured that it was served at proper temperature, and Incorporated servers brought the food to the attendees. Beverages were poured and served by Incorporated's bartenders and servers," end quote.

Thus, by Appellant's own description, it took possession of the food and beverages directly from the LLC, and then Appellant's chefs engaged in the final preparation of the food, and its other employees served and poured the food and beverages at the events. These

activities, plating, serving, and pouring, clearly meet the criteria set forth in section 6006 of furnishing, preparing, and serving food and beverages. These services are clearly connected to the furnishing of tangible personal property; here, the food and beverages that the LLC provided.

Appellant's customers could not obtain the food and beverages from the LLC for these events without also utilizing Appellant's staff to furnish, prepare, and serve the food and beverages at the event. We also note that Appellant's sales contract show that it received consideration from the purchasers for the labor charges related to these services. A sample of Appellant's sales contracts and invoices are available within Exhibit A, beginning at page 21.

In summary, Appellant clearly meets the definition of the term "retailer" set forth in Section 6015 and 6019 because Appellant was a seller who made retail sales of tangible personal property during the liability period. Accordingly, Appellant's charges for chefs and kitchen staff, wait staff, and bartending staff, and food delivery, setup, and pickup during the liability period were subject to sales tax. The Department's determination in the audit is based upon Appellant's own federal income tax returns and records maintained by the

related LLC. Thus, the Department's determination was reasonable and rational, and the burden of proof is upon Appellant to establish that adjustments are warranted.

Appellant asserts that it did not sell any tangible personal property during the liability period because the sales of the food and the services were unbundled from each other. In a related argument, Appellant asserts the Department has attributed the LLC's sales of food and beverages to Appellant. However, Appellant and the related LLC's practice of separately invoicing the purchaser for different portions of one event does not negate the fact that Appellant's staff were engaged in activities that clearly meet the definition of a retail sale under section 6006 and 6007. The outcome would be the same if Appellant's purchasers had instead obtained the food and beverages from unrelated sources, and then Appellant's staff prepared and served the food and beverages.

Additionally, contrary to Appellant's assertion that Dell Incorporated versus Superior Court controls here, the issue in Dell was optional warranty contracts. Appellant's customers could not obtain the meals that they contracted with the LLC without also paying the service charges for Appellant's venue staff. As such, Appellant's service chargers were mandatory and thus, are considered

part of the sales price of the tangible personal property, pursuant to paragraph 1 of subdivision (b) of section 6011.

To the extent that Appellant also argues that, under Regulation 1501, the true object of the contracts with its customers were the services, per se, we note that the contracts clearly establish that Appellant's customers were purchasing food and beverages to be served by Appellant. Thus, it is clear that the entire point of the contract was obtaining food and beverages for consumption at the events. Therefore, the property Appellant transferred was clearly not incidental to Appellant's services and thus, the true object of the contract were not the services, per se. Accordingly, Regulation 1501 is not applicable here.

As to Appellant's related argument that the Department has attributed the LLC's retail sales of food and beverages to Appellant, the audit working papers demonstrate that the Department has only attributed liability for taxable labor and services to Appellant. The audit working papers are available within Exhibit C, starting at page 133.

We next to turn to OTA's third question, whether subdivision (i) of Regulation 60 -- 1603 regarding caterers is applicable to this case. Subdivision (i) Of

Regulation 1603 defines the term "caterer" to mean a person engaged in the business of serving meals, foods, or beverage or drinks on the premise of the customer or on premises supplied by the customer, including premises leased by the customer from a person other than the caterer. Additionally, subparagraph (3) of subdivision (i) of Regulation 1603 provides, as relevant here, that tax applies to the entire charge made by caterers for serving meals, food, and drinks, and that tax applies to charges made by caterers for preparing and serving meals and drinks, even though the food is not provided by the caterer.

Here, Appellant's charges pertain to furnishing, preparing, and serving meals, foods, or drinks on premises that it leases to its purchasers as part of an event agreement. Thus, Appellant is not a caterer within the meaning of subdivision (i) of Regulation 1603. Instead, Appellant was acting equivalent to a restaurant because it was serving meals for consumption on premises it provided to the customer. Accordingly, tax applies to the labor charges related to serving the food and beverages as I've previously described, even if Appellant did not initially provide the food itself. Furthermore, even if OTA were to find that Appellant was acting as a caterer, the applicability of tax to its sales would be no different

under subdivision (i) of Regulation 1603.

In summary, Appellant clearly qualifies as a retailer pursuant to sections 6015 and 6019, and Appellant's sales were clearly sales at retail within the meaning of section 6006, the gross receipts of which were subject to tax pursuant to 6012 -- sections 6022 and 6051. Moreover, Appellant has not established that any adjustments are warranted to the determination at issue here.

Next, we turn to Appellant's argument that it relied upon erroneous written advice from the Department and, therefore, it should be relieved from the liability at issue here. Section 6596 provides that if a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the Department, the person may be relieved of any sales or use tax imposed. A person's failure to make a timely return or payment is only considered to be due to reasonable reliance on written advice from the Department if, among other conditions, the person requested it in writing that the Department advised him or her whether a particular activity or transaction is subject to the tax. Their request must be fully described -- I'm sorry. The request must be fully describe the specific facts and circumstances of the activity or transaction.

Additionally, the Department must have responded in writing, to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax.

Lastly, paragraph 1 of subdivision (b) of Regulation 1705 specifically provides that a representative must identify the specific person for whom the advice is requested. Appellant relies on a July 14th, 2010, letter from the Department in response to a June 18th, 2010, email or electronic submission. The Department's July 14th, 2010, letter states that a contract for separately stated nontaxable services offered by a separate legal entity would not be subject to tax. A copy of that letter is available in Exhibit A, starting at page 70. We first note that the request for written advice did not identify the taxpayer in question, which does not meet the requirement set forth in paragraph 1 of subdivision (b) of Regulation 1705. Additionally, the Department's letter simply stated that nontaxable services offered by a newly created separate entity would not be subject to tax. It did not state that the furnishing, preparing, or serving of food and beverages was not subject to tax.

Finally, the Department's letter explicitly stated that the answer given was intended to provide

general information regarding the application of tax, and that it would not serve as a basis for relief of liability under Revenue & Taxation Code section 6596. Thus, even if the letter supported Appellant's position, in light of the explicit disclaimer, Appellant's reliance on the letter would not be reasonable. Thus, Appellant has not established that its failure to make a timely return or payment is due to reasonable reliance on written advice from the Department, and Appellant is, therefore, not entitled to relief on this basis.

Turning now to the question of the applicable statute of limitations in this case. Section 6487 requires the Department to serve a Notice of Deficiency within three years after the last day of the calendar month following the quarterly period for which the amount it proposed, except as relevant here, where the taxpayer fails to make a return. In that case, the Department is required to serve the Notice of Determination within eight years after the last day of the calendar month following the quarterly period for which the amount is proposed was due to be determined.

The Department issued the NOD on January 28th, 2022. Appellant did not file any sales and use tax returns for the periods 4Q '13 through 4Q '20. Thus, the eight-year statute of limitations applies to these

quarters. As set forth in section 6452, the sales and use tax return for the earliest quarter in the liability period, fourth quarter of 2013, was due on January 31, 2014. Thus, the statute of limitations for this period expired eight years later on January 31, 2022. Since the Department served the Notice of Determination on Appellant on January 28th, 2022, the Notice of Determination for the periods fourth quarter 2013 through fourth quarter 2020 -- 2020 -- sorry -- was timely.

Appellant did file sales and use tax returns for first quarter 2021 through third quarter 2021. Thus, the three-year statute of limitations applied to these quarters. The three-year statute of limitations for first quarter '21 would have expired on April 30th, 2024. Since the Department issued the Notice of Determination on January 28th, 2022, the Notice of Determination for these remaining quarters was also timely. The dates that the LLC filed its sales and use tax returns are not relevant to the statute of limitations applicable here because Appellant and the LLC are separate entities, and the LLC did not make the retail sales that the Notice of Determination at issue here relates to.

We next turn the issue of the penalties imposed on the Notice of Determination. The Department asserted a 10 percent negligence penalty against Appellant for the

period 1Q '21 through 3Q '21. It is our position that the imposition of the negligence penalty is appropriate in this case. Though Appellant filed sales and use tax returns for this period, Appellant reported zero dollars in taxable sales, while reporting gross sales of $3,537,271 for the same period. The Department established unreported taxable sales of $2,319,744 for the same period, and a total of $23,435,417 in taxable sales for the entire liability period, both of which are evidence of significant underreporting. Although this is Appellant's first audit, Appellant did not provide records for review for the liability period during the audit which necessitated using an alternative method to verify and estimate Appellant's taxable sales for the liability period. This is also evidence of negligence.

As discussed earlier, Appellant's assertion that it reasonably relied upon written advice from the Department is without merit because, among other things, the written advice that Appellant relies upon specifically states that it cannot be relied upon for these purposes. Moreover, the written advice did not advise Appellant that its services were not subject to tax. Appellant has not established any other basis upon which to relieve the negligence penalty. Accordingly, the negligence penalty should not be relieved.

Finally, the Department imposed the 10 percent failure to file penalty pursuant to section 6511 for the period fourth quarter 2013 through fourth quarter 2020 because Appellant did not file a return during these periods. Section 63592 provides that a taxpayer may be relieved of the failure to file penalty if the taxpayer's failure to report and timely pay the tax due was due to reasonable cause and circumstances beyond a taxpayer's control and occurred, notwithstanding, the exercise of ordinary care and in the absence of willful neglect.

Appellant, again, asserts the failure to file penalty should be relieved based on its reliance on written advice from the Department. As we discussed earlier, the written advice that Appellant relies upon specifically states that it cannot be relied upon for these purposes. Moreover, the written advice did not advise Appellant that its services were not subject to tax. Appellant has not provided any other bases upon which to relieve the failure to file penalty. Accordingly, the failure to file penalty should not be relieved.

Thank you.

JUDGE WONG: Thank you, Ms. Barry.

Okay. I will now to turn to my co-panelists to see if they have any questions for CDTFA, beginning with

Hearing Officer Wilson.

HEARING OFFICER WILSON: I do not have any questions. Thank you.

JUDGE WONG: Judge Kim?

JUDGE KIM: Yeah, I had a question for clarification. So the LLC charged for the food; is that correct?

MS. BARRY: Yes. They charged for the food and beverages unprepared.

JUDGE KIM: And Appellant, the Inc., only charged for labor and services relating to furnishing of the food and beverage?

MS. BARRY: Yes. The Appellant's services included picking up, setting up -- picking up the food from the LLC, taking it to the event space, and then setting up, serving -- plating, serving, and pouring the drinks.

JUDGE KIM: And CDTFA argues that there was a retail sale by Appellant; is that correct?

MS. BARRY: Yes, under the definition in 6006 subdivision (d), and they were transferring tangible personal property as part of that sale.

JUDGE KIM: And CDTFA asserts this would be true even if it was an unrelated company that was providing the food and beverage?

MS. BARRY: Yes, similar to cake cutting services or other bartending type of services where the customer provides the alcohol, but there are still bartending staff on site.

JUDGE KIM: So is it CDTFA's position that the furnishing, preparing, or serving of food is considered a retail sale of tangible personal property?

MS. BARRY: Yes.

JUDGE KIM: Okay. And do you have any response to Appellant's argument that this interpretation is inconsistent with the legislative history?

MR. NOBLE: The statute is plain meaning on its face, and I also disagree with their interpretation of the legislative history. I mean, you're essentially -- this is putting food, which is TPP on the same bases as any sort of fabrication labor when TPP is provided by a consumer, right. So the customers aren't just buying the food. They're buying plated food served hot at an event. It's no different than a tailor making alterations to a suit. The final product is the serving.

JUDGE KIM: Okay. Thank you.

JUDGE WONG: Thank you, Judge Kim.

I just had one follow-up question to that for CDTFA. In Appellant's presentation, they had referenced the case of Select Base -- let's see -- Select Base

Materials Incorporated versus BOE. It's a 1959 case. Did CDTFA have a response, or did they want to respond to Appellant's arguments regarding that case and how it interpreted 6006?

It's okay if you don't. I just want to throw that out there.

MS. BARRY: We don't have a response.

JUDGE WONG: Okay. Got it. Thank you.

All right. All right. We'll now turn it back over to Appellants -- Appellant for the rebuttal and closing remarks.

Mr. Dakessian, the floor is yours.

MR. DAKESSIAN: Thank you, Judge Wong. I appreciate it.

CLOSING STATEMENT

MR. DAKESSIAN: So there's a lot to cover, so I'm going to try and get to as many of the questions as I can.

First, with respect to Select Base Materials, I do believe the California Supreme Court's formulation of 6006 is the correct one, and it is still good law today. So subdivision (a) is the general rule that requires a transfer of title or possession -- which I'll get to in a second -- of tangible personal property for consideration with the remaining subdivisions being refinements.

So the key difference to me, you know -- and I heard what Mr. Noble had to say about, you know, putting this on equal footing with the fabrication labor statute. The only problem with that is that the text of subdivision (e) -- subdivision (d) does not support that. The fabrication labor statute, which is subdivision (b), talks about producing fabricating, processing, or printing of tangible personal property for a consideration. And it's -- it's defined specifically in, you know, that this -- it considers specific refinement and a transfer of tangible personal property. And it says for consumers who furnish either directly or indirectly the materials used and producing and processing and so on and so forth.

Subdivision (d) does not contain that information, and it requires the transfer of TPP. This is what is so crucial about this. That's -- that is defined statutorily by the legislature to constitute TPP. The serving of food by itself is not. It would create a lot of disruption in California sales and use tax law because you would no longer have a need, at least in this industry, and the food beverage industry. You would no longer have a need for 6012 and the fact that services must be a part of the sale. That whole GMRI paradigm, optional versus mandatory gratuities, we would never get there because what are gratuities? They are charged for

serving food.

Why would we even get to that if subdivision (d) were interpreted the way that they're saying? It would all be taxable. There could be no distinction between mandatory and optional, and this is what the Select Base Materials court meant when it said you must harmonize the statutory framework. And, specifically, 6006 must be harmonized with the definition of gross receipts under 6012. That's what the court said. And it said that it is reasonable to consider the definition of sale in the refinements as the same definition in the definition of gross receipts. So that's -- that's really important. That's really important for the panel to consider.

I wanted to make one evidentiary correction. I'm not sure if the Department is aware, but food was not prepared on-site. Food was prepared -- I think they had it right the first time. Food was prepared at a central kitchen off-site delivered to the venue. And, at that point, the venue staff, which yes, did include chefs and wait staff and bartenders, were part of the staffing of the event to make sure that the customer experience went the way that it should and to the customer's satisfaction. One important distinction there, which is that the chefs that produced and fabricated the food, if you will, if you want to use those terms, or prepare the food more

colloquially, were salaried employees of LLC.

So their job -- and they were full-time employees of LLC. Their job was to prepare the food. The chefs that Inc. hired, and that Inc.'s customers hired from Inc. by the hour, those were part-time chefs that were there just to assist in the presentation of the event. So that's an important distinction. And so it gets back to Judge Kim's core question, which is, the Department is attempting to assess tax against an entity that admittedly did not sell tangible personal property. They say there was a transfer of possession of tangible personal property. But if you read the statute closely, transfer of possession under 6006 subdivision (a) only can be invoked in lieu of a transfer of that property -- a transfer of title of that property. So, you know, the fact that they physically had a plate of food and put it down does not constitute transfer of possession because there was already transfer of title. The transfer of possession must be in lieu of a transfer of title. That's what the statute says. So there is no transfer of possession within the meaning of 60069a) of tangible personal property.

It's undisputed this is a staffing company. They provides services. There's nothing untoward happening here. This is no different, really, from separating out

services from the sale of TPP in a gratuity context, right. And that's if you were to consider this all part of one transaction, which the Department admits they were not one transaction. It was two separate transactions, separate invoices, so on and so forth. So that's important.

So another thing that I heard the Department say that I think is not accurate, is they said the services are connected to the sale of tangible personal property. Now, again, Inc. didn't sell it. So the only party that sold it here, as Judge Kim pointed out, was the LLC. So I would say two things on that. One, test is not connected to the test. It's not related to. It's not connected to. It's -- it must be a part of the sale of tangible personal property. That's what the statute says, and this is not a part of the sale of TPP. The fact that it might be related in some abstract sense or, you know, connected or -- that's not what the statutory text says. So that's incorrect.

I want to correct something else from a factual perspective, evidentiary perspective. The evidence in the record is that these services are optional. The customer is not required to use Inc.'s services if it buys food from LLC. That's not accurate. That is not what the evidence shows. Rather, the evidence shows that the

customers have a choice. That's not only apparent just based on the face of the contracts, which reflect the intentions of the party to have, you know, sort of separate contracts with the two entities.

In Mr. Bennett's declaration, he says that, "We're in the customer satisfaction business. We do whatever the customers wants. If the customer wants to use Party Staffing" -- what is the name of the company? -- "Party Staffing, Inc. to staff the venue, then fine. If they want to use Inc., that's fine. If they want to use some other company, that's fine. We will do what the customers want because, at the end of the day, this a customer service business. We need to make the experience at the highest level to the satisfaction to the customer." So these are optional. So if we're going to use the Dell paradigm, clearly optional and separately stated. Again, presupposing that this is one transaction, which it's not.

The audit work papers actually say that Inc.'s sales are -- of services are part of the sale of LLC's tangible personal property. So, again, the audit work papers acknowledging that Inc. is not selling TPP, its LLC, and they are characterizing Inc.'s services as being a component part of LLC's sales of tangible personal property; which is very important because that comes back to the whole question of are we a retailer? Is Inc. a

retailer? And the answer is no. The retailer in this case is LLC. And so what the Department should have done -- well, it shouldn't have assessed tax to begin, of course, you know. But what it should have done, if it decided that tax was due, is it should have assessed LLC. It got the wrong entity.

This -- in their sort of way of thinking, if this is truly a part of the sale of tangible personal property, it can only be a part of LLC's sale of tangible personal property. By the way, LLC and Inc., different vendors. Inc. does not buy food. Inc. buys, as Judge Wong pointed out, tax-paid party furniture, napkins, forks, et cetera. They don't buy food. The only entity that buys food is LLC, which is another very important distinction. And they maintain faithful to the separation of these two different components as advised by the Department.

I'll say one other thing on the statutory interpretation, which is that we've all heard the maxim of tax exemptions are construed narrowly against taxpayers and in favor of the government. In this case, we have statutes imposing taxes. These are taxing statutes. And as such, all doubts must be resolved in favor of the taxpayer. So to the extent there's any question by anyone over how 6006 subdivision (d) should be interpreted, I think Select Base Materials tells us it presupposes the

transfer of TPP. But any doubts in that regard must be resolved in our favor.

I'd like my colleague, Mr. Lee, to address the cake cutting services and the corkage fees and why those are different from what we have here.

MR. LEE: Sure. Thank you, Marty.

So -- let me bring this closer. Is that better? Okay.

So, yeah. So, I think the distinction here between those two annotations on the corkage fees and the cake cutting services, is the fact that in both of those situations, they would be all part of a single transaction and the sale of TPP. So in the context of a corkage fee, when a customer goes to a restaurant and bring their own wine or champagne, the restaurant might charge a corkage fee, which would be part of the sale of TPP, since they're selling the meal. And so that case, since it's all part of the sale of TPP and as one transaction, then it would be considered part of the sale of TPP and would be included in the taxpayer's gross receipts under 6012. Here, the difference is, as Marty has outlined, Inc. is only selling the service. LLC is selling the TPP. And so that's the distinction between those corkage fees and what we have here in this case.

The second annotation that the Department has

cited to is related to cake cutting services. And it says, like, cutting and serving customer furnished wedding cake by a country club constitutes a sale, and such charges are considered taxable gross receipts. Again, it's not clear from the annotation itself as to whether that country club is also selling meals or other TPP in connection with that service. But, typically, a country club would sell meals to its members and their guests as part of the services that they provide. And so in addition to providing that taxable TPP, that meal, if they're also providing cake cutting services. Then that would, again, be part of the sale of the TPP, and those services could be picked up under 6012 as part of the sale.

MR. DAKESSIAN: Thank you, Ben.

So I wanted to address briefly -- I said we weren't going to talk about 6596 too much. I would point out that the requirement of the name being present is not in the statute. That's in regulation. And, you know, I -- I just -- I have a hard time with this one. I have a hard time with the assessment in this case, and the fact that -- that we're here because you heard the Department. They're sort of doubling down. They're saying that -- that my client had no right to rely on the advice; that, you know, they have language on there that said it

couldn't be relied on, and so on and so forth. And to me, I just -- what do you expect of taxpayers?

Mr. Bennett did something that, as I said, very few taxpayers ever have the gumption to do, which is to call in in a forthcoming way to the agency and ask for advice. And the advice they got was detailed. I think we're parsing words a little bit to say, you know, nontaxable services. That's what it said. And I -- I think we're reading too much in into the ruling. I think you have to look at this from a real world standpoint. And you have to look at the -- put yourself in the position of the taxpayer. You get this advice. You rely on it. You do exactly what it says, and oh, by the way, it's correct. It aligns with the statute. It aligns with the law. It aligns with the all the appropriate Regulations and so forth.

So I won't say more about that, but I -- I think that's a harsh. And the imposition of penalties, again, you know, I think this entire assessment should go away. But the imposition of penalties is just insult to injury from our perspective. And, you know, you have Mr. Bennett's declaration. You have the declaration of Mr. Rosen to speak further to their thought process in seeking the advice and how they reacted to it. So I'll just leave it there on that.

Can I have just a moment to confer with my colleague?

JUDGE WONG: Sure.

MR. LEE: Just one more brief point for the panel. So I think, you know, there's been some discussion today on fabrication labor, tailoring, and why those types of services should be taxable, and why the services in this case should be not. And so I think there's a good discussion in the case In re Advance Schools, Inc., which was cited in the Dell decision, so, in that case, the court stated that the test is appropriate -- talking about the true object test -- where the services rendered are inseparable from the property transferred; that is where the services, so to speak, find their way into the property.

All the examples used in Regulation 1501 to illustrate the true object test involve transactions in which the services become an integral part of the property. As an example, the artist's skill and labor are embodied in his painting. The recordkeeping, tax, and similar services affirm, which performs business advisory, are embodied in the forms, binders, and other property transferred during the course of the transaction. And so, ultimately, they conclude, thus, the true object test should be used where the services and property are

separable and is inapplicable where these two elements are distinct.

And I think here, again, the key is that the labor that goes into producing or the actual property itself, the TPP, the food and beverage, is all being done by LLC chefs at their location in Orange County. None of that is being performed by Inc. and the services that they are providing on-site.

JUDGE WONG: Mr. Lee, do you have a specific cite? You had mentioned what is cited in Dell.

MR. LEE: Yes, I do have the citation here.

JUDGE WONG: Sure. For the record, please.

MR. LEE: Sure. It's 2BR231.

JUDGE WONG: Thank you.

MR. DAKESSIAN: So panel members, thank you for your patience.

I want to address one final point before I close, which is this idea about the appropriate statute of limitations. Our observation, as I mentioned before, is that because LLC is the one selling the food and beverage, the sale of tangible personal property is within LLC. The Inc.'s services, although we believe are completely separate from that sale, were they to be considered part of the sale of tangible personal property, they would be considered part of LLC's sale of tangible personal

property. And those receipts should have been attributed to LLC. The assessment should have been issued to LLC. And so the statute of limitations to do that is -- is now expired, so void. So, you know, an assessment against LLC would be void.

As to the statute of limitations relating to Inc., my observation is the following: The Department, essentially, is trying to collapse the two entities without saying they're doing that. They want to combine this as one entity and/or one transaction for purposes of assessing tax. But for purposes of the statute of limitation, they want the entities -- or they consider the entities separate. You cannot have it both ways. You cannot have it both ways. If this is one transaction as they say, LLC is the appropriate assessee, the appropriate taxpayer. And if this is one company, then they should have gone back three years instead of eight.

But I don't think we get that there. And the reason we don't get there is we come back to the core question posed by the Department in the prehearing conference. Namely, is Inc. a retailer? Inc. does not sell TPP. I think they admitted that Inc. does not sell TPP. They tried to say that there were some transfer of possession of TPP to wiggle into the definition of 6006(a). But as we mentioned, that's an incorrect read.

Inc. is not a retailer. Inc. does not make retail sales. Inc. does not sell tangible personal property. And so that's the threshold question. Tax cannot properly be imposed on Inc.

And so with that in mind, we thank the panel for its patience, and we'll close our presentation subject to any additional questions.

JUDGE WONG: All right. Thank you, Mr. Dakessian and Mr. Lee.

I will now turn to my co-panelists for the final time for any questions for either party, beginning with Hearing Officer Wilson.

HEARING OFFICER WILSON: I do not have any questions. Thanks.

JUDGE WONG: Thank you.

Judge Kim?

JUDGE KIM: No further questions. Thank you.

JUDGE WONG: Thank you.

I also do not have any final questions for the parties. So we will go back to CDTFA to revisit the question about the declarations and whether they would like an opportunity to provide a submission regarding those after the hearing.

MR. NOBLE: It won't be necessary. Thank you.

JUDGE WONG: Okay. Thank you very much.

In that case, this will conclude the hearing. The evidentiary record is closed, and this case is submitted today.

The panel will meet and decide the case based on the exhibits presented, as well as the declaration that is admitted as evidence, and we will send the parties our written decision no later than 100 days from today.

The oral hearing in this case is now adjourned.

(Proceedings concluded at 2:19 p.m.)

HEARING REPORTER'S CERTIFICATE

I, Ernalyn 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 20th day of March, 2026.

_____

ERNALYN M. ALONZO
HEARING REPORTER