BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

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IN THE MATTER OF THE APPEAL OF,   )
                                  )
YORICK, INC.,                     ) OTA NO.  21078238
G. DECKEY and G. DECKEY,          )          21078249
D. JESSEN and H. JESSEN,          )          21088316
J. JESSEN,                        )          21088317
M. JESSEN and K. JESSEN,          )          21088318
                                  )
                   APPELLANT.     )
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TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Tuesday, April 21, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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________________________________	)	

Transcript of Proceedings, taken at 400 R Street, Sacramento, California, 95811, commencing at 2:28 p.m. and concluding at 3:57 p.m. on Tuesday, April 21, 2026, reported by Ernalyn M. Alonzo, Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead:	ALJ CHERYL L. AKIN
Panel Members:	JOSH LAMBERT KENNETH GAST
For the Appellant:	CHRISTOPHER KARACHALE TRENT TANZI
For the Respondent:	STATE OF CALIFORNIA FRANCHISE TAX BOARD HANNAH CHO DELINDA TAMAGNI

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-13 were received into evidence at page 7.)

(Department's Exhibits A-Y were received into evidence at page 8.)

OPENING STATEMENT

CLOSING STATEMENT

Sacramento, California; Tuesday, April 21, 2026

2:28 p.m.

JUDGE AKIN: We are opening the record in the consolidated Appeals of Yorick, Inc., George and Gowan Deckey, Dirk and Heidi Jessen, Julie Jessen, and Mark and Katherine Jessen, OTA Case Nos. 21078238, 21078429, 21088316, 21088317, and 21088318. This matter is being held before the Office of Tax Appeals in Sacramento, California. Today's date is April 21st, 2026, and the time is approximately 2:28 p.m.

My name is Cheryl Akin, and I am the lead Administrative Law Judge for this hearing. With me today are Administrative Law Judges Kenneth Gast and Josh Lambert. While I am the lead Administrative Law Judge for purposes of conducting this hearing, we are all co-equal participants in making the decision in this appeal; and any of us may ask questions of the parties here today.

With that, let me please have the parties introduce themselves and who they represent for the record, starting with the representatives for Appellants.

MR. KARACHALE: My name is Christopher Karachale on behalf of Yorick and its shareholders.

MR. TANZI: Good afternoon. Trent Tanzi on behalf of Yorick and again, its shareholders.

JUDGE AKIN: Okay. And representatives for Franchise Tax Board.

MS. CHO: Hannah Cho for Respondent Franchise Tax Board.

MS. TAMAGNI: Delinda Tamagni, also with the Franchise Tax Board.

JUDGE AKIN: Okay. Thank you very much.

Next, I'm going to go over the issue to be decided. As confirmed at the prehearing conference and in my Minutes and Orders, the issue to be decided in this appeal is whether Yorick, Inc., derived more than 50 percent of its gross business receipts from agricultural business activity, as defined in Revenue & Taxation Code section 25128(d)(2), such that it shall apportion its business income to California using the three-factor (single-weighted sales factor) formula provided in Revenue & Taxation Code 25128(b).

I wanted to check with the parties to make sure that is consistent with their understanding of the issue to be decided in this appeal.

MR. KARACHALE: Yes, that's correct.

JUDGE AKIN: Okay. Thank you.

And Respondent Franchise Tax Board?

MS. CHO: Yes, that's correct.

JUDGE AKIN: Okay. Thank you.

With that, I'm going to move on to the evidence in this appeal. Appellant submitted Exhibits 1 through 12 prior to the prehearing conference. At the prehearing conference, Franchise Tax Board did not object to the admissibility of these exhibits. Following that prehearing conference, Appellants timely submitted an additional exhibit, Appellant's Exhibit 13, which is a declaration by Yorick's California and Arizona regional sales manager.

Ms. Cho, does Franchise Tax Board have any objection to the admissibility of this additional exhibit?

MS. CHO: No objection.

JUDGE AKIN: Okay. Thank you.

Appellant's Exhibits 1 through 13 are now admitted into the evidentiary record.

(Appellant's Exhibits 1-13 were received into evidence by the Administrative Law Judge.)

JUDGE AKIN: Respondent Franchise Tax Board submitted Exhibits A through W prior to the prehearing conference. At the prehearing conference, Appellants did not object to the admissibility of these exhibits. Following the prehearing conference, Franchise Tax Board submitted timely two additional exhibits, Exhibits X and Y. That's a merriamwebster.com web page, and 7 USC Section 1518.

I wanted to check with the Appellants to see if they had any objections to the two additional Franchise Tax Board exhibits.

MR. KARACHALE: No objections, Judge Akin.

JUDGE AKIN: Okay. Thank you.

Appellants Exhibits A through Y are now admitted into the evidentiary record.

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

JUDGE AKIN: All right. And finally, before we get to each parties' presentations, I was going to quickly go over how this proceeding will go forward. So, as noted in my Minutes and Orders, Appellants will present first and have 45 minutes. After that, I will turn to my panel for any questions they may have of Appellants, after which Franchise Tax Board will also have 45 minutes for their presentation. That will also be followed by any questions my panel or I may have. After that, each party will have 10 minutes for a rebuttal or closing statement, with Appellants presenting first. And finally, Appellants will have 2 minutes for any final statement they might want to make. Following that, I will turn it back to my panel for any final questions we may have for either party before concluding the hearing.

Any questions before I turn it over to the parties for presentations?

MR. KARACHALE: No.

MS. CHO: No questions.

JUDGE AKIN: Okay. Thank you.

With that, then I think we are ready for Appellants' presentation. It's approximately 2:32 p.m., and you have 45 minutes. You may proceed when you're ready.

MR. KARACHALE: Thank you, Judge Akin.

PRESENTATION

MR. KARACHALE: Appellant is a crop development company based in Arizona. Appellant develops, manufactures, and sells agricultural chemicals, including herbicides, insecticides, and fungicides to California farmers. Its crop protection products, along with similar products from other crop development companies, are integral to the cultivation of the soil of California farms, including many of the farms right outside this building here in the Central Valley.

Respondent asserts that Appellant is not engaged in agricultural business activity within the meaning of Revenue & Taxation Code section 25128. Respondent contends that, for the purposes of California apportionment rules, the Appellant is simply a wholesaler of crop protection products. This position could not be farther from the truth. The very lettuce and tomatoes that were on your sandwiches at lunch today would not have been as juicy or as crisp without the Appellants' contribution. Appellants' business activity in California is fundamentally an agricultural business activity, and its business income should be taxed consistently.

In this respect, the issue before the panel is simply a statutory interpretation question. What is the scope of Revenue & Taxation Code section 25128? Did the California legislature intend to give the benefit of three-factor apportionment to taxpayers like Appellant who derive income from agricultural business activities? Specifically, your job is to determine what is the ambit of section 25128's expansive definition of business -- of agricultural business activity, including, quote, "Activities related to cultivating the soil or raising or harvesting any agricultural or horticultural commodity."

Today we will show why Appellant derives nearly all its gross receipts from agricultural business activity within the meaning of Revenue & Taxation Code section 25128. First, based on the plain reading of the statute, Appellant is clearly the very sort of taxpayer that California legislature intended to benefit from the three-factor apportionment as to deriving gross business receipts from agricultural business activity.

Second, we will demonstrate that Respondent's regulatory framework for interpreting Revenue & Taxation Code section 25128 is excessively narrow and invalid. A recent Superior Court case in Los Angeles County, Smithfield Packaged Meat versus FTB determined that a portion of the very regulation fundamental to Respondent's case in chief is invalid under California Government Code section 11342.2. This panel has the authority to decline to apply this same him regulation to Appellant. If this panel properly asserts its rule, it will disregard the application of Regulation section 25128-2 to Appellants' case and find that Appellants' gross receipts stem from an agricultural business activity within the meaning of the statute.

My colleague, Mr. Tanzi, will provide background on the facts.

MR. TANZI: Thank you, Mr. Karachale.

In 1962, Arizona farmer John Jessen formed Appellant as a crop consultancy company. Over time Appellant's business has expanded. However, in over 60 years, Appellant's core business philosophy has not changed. Appellant's philosophy has always been to keep its boots muddy and its ears tuned to the thorny challenges of agriculture. Today, Appellant develops, manufacturers, and sells a variety of agricultural chemicals. The types of herbicides and insecticides and fungicides that Appellant produces are not just tangentially related to helping California farmers grow crops, they are essential.

Those not involved in the farming industry and probably a few parents buying organic fruits and vegetables for their kids might be surprised to learn that every single commercial California grower uses agricultural chemicals like the ones that Appellant produces. Appellant produces over 30 different chemical-based agricultural products. Appellant also develops biologicals, which are non-chemical insecticides and fungicides created using living plant matter. Appellant sells these chemicals and biologicals to distributors who then sell it to the farmers that actually use the product.

However, Appellant maintains hands-on relationships with those farmers. Appellant's employees conduct development trials in California studying the effects of Appellant's products on California crops. Appellant's field representatives write monthly reports detailing their work with the California farmers who use Appellant's products. In one such report in September 2020, a Gowan field representative documented that the farmers told her she was one of the only representatives from any company that they had seen in months.

Since California is the biggest agricultural producer in the United States, Appellant is heavily involved in California-based production. It is an essential part of California's agricultural ecosystem. An Appellant's estimation is one of the single largest agricultural chemical providers in California, following just behind BASF Agricultural Solutions, Bear, Syngenta, and Corteva. Appellant doesn't passively sell into the California market either. Rather, Appellant is directly involved in providing solutions to California's specific problems. In one notable instance, California's rice crops faced danger as they were threatened by weeds that had built up a resistance to existing commercial herbicides.

You may not think of rice as being a California agricultural staple, but California is the United States' largest producer of those sweet rice and wild rice. In fact, California is the country's sole exporter of sweet rice. Overall, rice was California's seventh biggest agricultural export in 2012. If these weeds continue to run rampant, a chunk of California's rice fields would have been left un-farmable. California's rice farmers and thus, its agricultural economy as a whole, would have suffered.

Thankfully, Appellant came to the rescue. Appellant developed a new herbicide that used a completely novel mechanism to kill the resistant weeds. This was not by accident or happenstance. Appellant worked directly with the California Rice Commission and the California Rice Research Board, which is an extension of UC Davis, to develop this herbicide and save the day for California's rice farmers.

Appellant solved another similar problem for California's citrus farmers. In 2012, California citrus fruits were its eighth biggest agriculture export just behind rice. California leads the nation in the production of many citrus fruits, including lemons, limes, mandarin oranges, kumquats, and tangerines. California's citrus crops are constantly under threat from pests called citrus thrips. These thrips eat and destroy citrus fruits making them un-sellable. California citrus crops eventually developed a resistance to citrus thrip insecticides, and California farmers were unable to grow a marketable fruit as a result.

The Appellant saved the day once again. Appellant produces a pesticide called Carzol that kills citrus thrips and was effective against these resistant crops. Today California's growers use Carzol as an important tool to grow citrus crops and prevent the spread of pests like citrus thrips.

These examples show that Appellant is not just selling product that happen to end up in California. Rather, Appellant is an integral part of California's agricultural economy. All California commercial farmers use products like the one that the Appellant -- that Appellant produces. Without these products, California farmers would not be able to consistently grow marketable crops.

MR. KARACHALE: Okay. Could we start the slides now, please. Oh, that was good. Thank you.

MR. TANZI: Thank you.

Compare Appellant's actual demonstrated business activities with the definition of agricultural business activity described in section 25128(d)(2). The statute defines agricultural business activity as meaning activities relating to any stock, dairy, poultry, fruit, fur-bearing animal, or truck farm, plantation, ranch, nursery, or range. Agricultural business activity also includes activities relating to cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including but not limited to the raising, shearing, feeding, caring for, training, or management of animals on a farm, as well as the handling, drying, packing, grading, or storing on a farm any agriculture or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated.

While the legislators included examples in section 25128(d)(2), the general idea that they conveyed is quite clear. This is a broad definition with few stated limitations. The only real limitation is that if an activity involves handling, drying, packing, grading, or storing any unmanufactured commodity on the farm, the owner, tenant, or operator of that farm must regularly produce more than half of that unmanufactured commodity. Nothing in the statute states or even suggests that an agricultural business activity is only limited to farmers. Given its chemical production, an ongoing tailored involvement with California farmers, Appellant's business activities are directly relating to any fruit, plantation, ranch, or range. Tell the California citrus farmers who are able to grow citrus again, thanks to Appellant's products, that Appellant's business activities don't relate to fruit.

Appellant's business activities directly reflect the activities described in the first sentence of section

25128(d)(2). Looking to the second sentence of section 25128(d)(2), Appellant's business activities also clearly relate to cultivating the soil or raising any agricultural or horticultural commodity. Appellant's products aren't just tangentially related to cultivating the soil. Farmers who use Appellant's herbicides, for example, must incorporate those herbicides into the soil, either mechanically or through irrigation. In other words, if those farmers don't cultivate the soil using very specific methods, Appellant's herbicides will not be effective.

Beyond this, there's no question that Appellant's business activities are related to raising any agricultural or horticultural commodity. Appellant's products are specifically designed to raise these commodities. Appellant doesn't just passively sell into California's market. It creates products specifically designed to raise California-specific commodities, like sweet and wild rice. Without products like the fungicides, herbicides, insecticides, and biologicals that Appellant produces, California farmers would not be able to consistently grow marketable crops.

Section 25128(d)(2) does not require Appellant to cultivate the soil or raise the agricultural commodity itself. If this were the case, California's legislature would certainly not have included the broad term "relating to." Courts from the Supreme Court to the Ninth Circuit have clarified that the phrase "relating to" is to be construed broadly. In Prima Paint Corp versus Flood & Conklin Manufacturing Incorporation, the Supreme Court construed a "relating to" clause broadly in the context of an arbitration issue.

In Luu-Le versus I. N. S., the Ninth Circuit also construed a relating to clause broadly in the context of immigration law. In Tachiona versus United States, the Second Circuit noted that when used in statutes, the term "relating to" is broadly construed to mean connection with, reference to, or association with. Just recently in Smithfield, the Los Angeles Superior Court found that slaughtering cattle was an agricultural business activity because it was relating to harvesting any agricultural commodity. A Superior Court expressed that the phrase "relating to" reflects the legislator's content to capture a broad range of activities.

The Smithfield court quoted the Supreme Court in Morales versus Trans World Airlines, Incorporated, who affirmed that the ordinary meaning "of relating to" is a broad one: To stand in some relation; to have bearing or concern; to pertain, refer; to bring into association with or connection with. The text of the statute is unambiguous. Activities connected with cultivating the soil or raising an agricultural commodity represent agricultural business activities under section 25128. In an attempt to avoid this obvious result, Respondent attempts to twist the words of the statute in a manner that quite simply does not make sense.

The second section of section 25128(d)(2) begins with the phrase "agricultural business activity also includes." Respondent is going to ask you to believe that the word also serves as a limitation on the first sentence. This can't be correct. If the draft was intended for the second sentence to serve as a limitation on the preceding sentence, the word "also" is probably the worse choice they could have made. In DeFonte versus Up-Right, Incorporated, a California Supreme Court reasoned that when determining the intent of a statute, courts looks first to the words of the statute, giving them their usual and ordinary meaning. The U.S. Supreme Court stated in U.S. National Bank of Oregon versus Independent Insurance Agents of America, Incorporated, that statutory construction is a holistic endeavor and, at a minimum, must account for statute's full text, language, as well as punctuation, structure, and subject matter. California Supreme Court further stated in People v. Craft, that a statute should not be given a construction that results in rendering one of its provisions nugatory.

These cases demonstrate that Respondent's reading of section 25128(d)(2) cannot be correct. The usual and ordinarily meaning of "also" is in addition. Respondent is going to provide you with a dictionary definition showing that the definition of "also" is likewise. But even if one replaced the term "also" with "likewise" in section 25128(d)(2), it wouldn't change the outcome. The second sentence would still not serve as a limitation to the first sentence but would just provide more examples similar to those already stated.

Appellant does not seek to take a phrase or word out of context. In fact, it is Respondent that seeks to do so by rendering the first sentence completely meaningless. Respondent argues that the first sentence is broadly written, so the second sentence serves as a limitation. Even ignoring the presence of the word "also", this reading of the statute would completely invalidate the purpose of the first sentence. Under Respondent's reading of section 25128(d)(2), there would be no difference in outcome if the first sentence was entirely removed. This can't be the right result.

California's legislators knew they drafted the first sentence broadly. If they intended to create an airtight precise definition of agricultural business activity, they wouldn't have included that first sentence at all. In its analysis, Respondent does not account for the statute's full text and language. Respondent also argues -- we intend to also mean in addition here -- that section 25128(d)(2) requires all qualifying agricultural business activities to be tied to the land. Respondent basis its position entirely off the phrase "owner, tenant, or operator," which appears in the second sentence of the statute. However, even Respondent's own regulations don't follow this argument.

Regulation 25128-2(b)(6) states the following: Under section 25128(d)(2), the following are also included in the definition of agricultural business activity: A, Cultivating the soil or raising or harvesting any agricultural or horticultural commodity; B, Raising, shearing, feeding, caring for, training, or management of animals on a farm; and C, Handling, drying, packing, grading, or storing on a farm, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity, handled, dried, packed, graded, or stored.

Respondent fails to explain how it could interpret all agricultural business activities describes in section 25128(d)(2) to be tied to the land, when its own regulation specifically states that the agricultural business activities described in subsections (a) and (b) do not have this requirement. Respondent's assertion that a taxpayer must be an owner, tenant, or operator of a farm is, therefore, incorrect.

Stepping back to understand the meaning of section 25128, it is important to understand its legislative history. In 1993, California's legislature amended section 25128 to modify the three-factor apportionment formula, requiring most businesses to double weigh their sales factor instead of weighing all three factors equally. California's legislature wanted to encourage businesses to locate or remain in California. But the legislature also recognized that this new policy could unfairly impact businesses in certain industries. The legislators added an exception for oil and agricultural industries, in part, because those industries can't pick up and move from state to state.

In one letter, the Board of Equalization Chairman Brad Sherman wrote to a colleague who sought to include the pharmaceutical and biotech companies within the single-factor exclusion. Specifically, Mr. Sherman mentioned Abbott Laboratories, a medical device company. Mr. Sherman stated, "The purpose of the bill is to encourage those businesses, which can choose to locate in any state, to locate in California. Agriculture, mining, and oil drilling will be conducted where good farmland or/and petroleum reserves are located."

Respondent uses this legislative history to argue that the agricultural business activity exception, therefore, must be tied to the land. However, there are two key problems with this argument. First, Appellant does not disagree with Mr. Sherman's statement. Agriculture will be conducted where good farmland is located. But Respondent does not consider that this statement applies to the entire agricultural industry, not just the farmers themselves. If Appellant creates products to be used by California farmers, it simply cannot choose where its customers are located.

California is the biggest agricultural by far in the United States. Appellant must sell products into California. This would be true, even if California -- or even if Appellant was not in the business of developing products that solved California's specific problems. For the years at issue, approximately 25 to 30 percent of Appellant's total sales were attributable to California. Unlike Abbott Laboratories or any ordinary manufacturer that California's legislature sought to attract to the state, Appellant can't shift its sales to other states. Respondent will tell you that, as a chemical producer, the point of section 25128 was to incentivize Appellant to pick up and move to California; but this can't possibly be true.

Appellant, as a company based in Arizona, holds most of its property and payroll outside of California. As we've established, Appellant cannot feasibly shift its sales outside of California. So, what would the result be if Appellant moved its production entirely to California? It would now hold significant property and payroll inside California, massively increasing its California tax liability into the new rules. Appellant's California sales would remain constant because its customers are tied to California. Therefore, if Appellant was not accepted as a part of the agricultural industry, this bill would punish Appellant without recourse. It seems logical that in California's legislature wanted to discourage companies that can sell their goods anywhere, like medical device manufacturers, from selling -- simply selling into California's market without having a presence in the state; but Appellant is not that kind of business.

Second, the California legislature clearly understood that taxpayers like Appellant would be hurt by a change in three-factor apportionment. In 1994, then California Senator Tom Campbell introduced a bill amending section 25128. As part of the rationale for the change, Campbell stated the objective of double weighing the sells was to give an advantage to California-based businesses which manufacture primarily in California but sell primarily outside of California. The effect is to shift taxable profits where the sales take place to give a tax break to businesses which produce value here and sell it elsewhere. The exclusion for extractive in agricultural industries was explained as a point of fairness based on the inability of those industries to shift their sales out of California.

The very same logic applies to Appellant. Appellant has a true inability to shift its sales out of California. If the double-weighted sales factor was limited only to industries that could not move their jobs to California, as Respondent argues, Senator Campbell's bill would have been flatly rejected. However, the legislature understood that it was unfair to punish these industries for their inability to shift their sales elsewhere. If the legislature had sought to include only farmers in section 25128(d)(2), it would have done so. California's legislature is made up of well-spoken individuals and sharp drafters. The statute went through many rounds of revision and review. At no point did the legislators limit the definition of section 25128(d)(2) to farmers only. That limitation was quite clearly not their intent.

Despite the facts that we have presented, Respondent will still tell you that Appellant is not engaged in an agricultural business activity. Respondent will tell you that Appellant is an ordinary wholesaler. Respondent would like you to ignore all the facts that we have shared with you and all the surrounding context. Instead, they would like you to focus on the California Principal Business Activity Code that Appellant used on its returns from 2013 to 2015. It is true that Appellant originally reported its business activities as wholesale agricultural chemicals on its California returns between 2013 and 2015.

However, similar to a taxpayer filing an amended return, Appellant has sought to correct this oversimplification. On reflection, Appellant's former tax director provided declaration to this panel admitting that Appellant was mistaken. Appellant should not have reported itself as a chemical wholesaler because that does not accurately describe its business. Instead, Appellant should have listed itself as engaged in pesticide, fertilizer, and other agricultural manufacturing, or support services for a crop production with the focus on soil preparation, planting, and cultivating. Respondent refuses to let Appellant correct the record despite the evidence it has provided to the contrary.

Respondent does not have to take statements made on the taxpayer's return as fact. In fact, Respondent regularly quibbles with statements made on taxpayer's returns. In the Matter of the Appeals of Ponticopoulos, Incorporated, Respondent investigated a taxpayer's business activity and reclassified that taxpayer from a non-financial corporation into a financial corporation. Respondent clearly has the power to reclassify Appellant's business activities. Here, it is inconvenient for Respondent to reclassify Appellant as a crop production supporter or agricultural manufacturer. So, they will not do so.

Respondent also notes that in years prior to 2013, Appellant apportioned its California income using the double-weighted sales factor formula. However, it follows that when California's apportionment rules changed in 2013, Appellant was forced to reassess its chosen apportionment method. Upon review, Appellant recognized that it was engaged in an agricultural business activity within the meaning of section 25128 and therefore, qualify for the single-weighted formula. This panel should place little importance on this fact as it has no bearing on whether Appellant is actually engaged in a qualified business activity.

Respondent believes that if you agree Appellant's business activities are in agricultural business activity, then this panel will broaden the scope of the statute to render the provision meaningless. Respondent believes that our reading of section 25128 would allow a business that sells grain or feed to farmers as considered engaged in activities related to the cultivation of the soil or harvesting agricultural commodities. This is not our position.

Appellant agrees with Respondent that section 25128's legislative history is helpful to understand how the statute should be applied. Appellant simply disagrees with Respondent's narrow interpretation of the legislative history. We don't believe that California's legislature intended to provide an exception to every business even remotely related to agriculture. Based on the legislative history, our belief is that section 25128 provides an exception for two kinds of agricultural businesses; those that cannot change their location, and those that cannot shift their sales outside of California. Unlike the crops that only grow in California soil, livestock can and do live in dozens of states throughout the country. A grain or feed seller that pays higher California tax, as a result of the increased sales factor, has the ability to shift its sales into other states. Appellant who tailors its products to California growers cannot do the same.

We believe that the California legislature intended for section 25128 to be applied to a range of agricultural businesses. However, our reading of the statute and its legislative history does not require that all agricultural businesses be included within the statute's purview. While broader than Respondent's reading of the statute, our interpretation applies the legislature's intent in a clear and consistent manner without rendering any part of the statute meaningless.

I'll now turn it back over to Mr. Karachale to discuss Regulation 25128-2's conflict with the underlying statute.

MR. KARACHALE: Thank you.

Since the initial audit, the Respondent has been unable to articulate why Appellant is not engaged in an agricultural business activity within the meaning of Revenue & Taxation Code section 25128. Rather, Respondent has relied almost entirely on its regulatory framework to argue that Appellant is not entitled to the three-factor apportionment. Unfortunately, Respondent's flawed regulation impermissibly restricts the scope of the definition provided by the California legislature in section 25128. Regulation 25128-2(1)(b) provides that, in general, the term agricultural business activity applies quote, "Only to taxpayers engaged in the business of farming as defined in Treasury Regulation Section 1.75-3 and includes only activities encompassed within the business of farming as so defined."

Treasury Regulation section 1.75-3's definition of farming encompasses far fewer activities than the definition set out in section 25128(d)(2). Under the Treasury Regulation, a taxpayer is only engaged in the business of farming if he cultivates, operates, or manages the farm for gain or profit, either as owner or tenant. The more restricted definition set by Treasury Regulation section 1.175-3 is not included or even implied by the text of section 25128(d)(2). Instead, Respondent attempts to justify this aggressive limitation of agricultural business activities by relying purely on legislative history. But that legislative history, as we've described, does not demonstrate that the legislature solely intended to limit this definition to farmers.

In the draft regulation symposium, the Respondent held for regulation 25128-2, Respondent's own staff expressed concern with how the regulation was drafted. According to the symposium report, quote, "FTB staff also commented that it is concerned about the draft regulation's interpretation of the following language in R&TC section 25128(d)(2), but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated. This -- the provision of the Internal Revenue Code, which contains this language only apply in -- only apply to the handling, drawing, packaging, grading, or storing of the commodity. The discussion draft regulation would apply it much more broadly. Staff will reconsider this issue."

Respondent's own staff pointed to the inaccuracy of the draft regulation in this respect. Yet, Respondent disregarded this concern and decided to interpret the owner, tenant, operator language more restrictively in the final regulation. Respondent limited agricultural business activity to those in the business of farming as defined by Treasury Regulation section 1.175-3. This definition did not appear in the original draft regulation and was not discussed in -- at the regulation symposium. Respondent doubled down on its stance despite having no clear statutory basis to do so. Regulation section 25128-2(b)(1) is simply not consistent with section 25128, nor is it reasonable -- reasonably necessary to effectuate the statute's purpose.

The Los Angeles superior court recently reviewed Regulation section 25128-2, and just as we're arguing, found that a portion of the regulation is invalid. In other words, a higher court just months ago found for a taxpayer similar to Appellant on almost identical facts to Appellant. In Smithfield Package Meats versus FTB, the taxpayer raised and slaughtered pigs and then processed them into products, such as bacon and sausage. Regulation section 25128-2 excludes slaughtering of animals or processing of livestock products as an agricultural business activity. Respondent therefore, argued that the taxpayer was required to apportion under the single sales factor.

The Superior Court took issue with Respondent's product base approach. The court also disagreed with the additional restrictions that Respondent added, which were not included within the text of the statute. The Superior Court reasoned that, quote, "Nowhere in section 25128 does the term 'product' or 'processing' appear, nor is there any indication in the statute that the nature of the product matters." Yet, regulation 25128-2 impermissibly narrowed the scope of the statute to exclude pork products.

The Superior Court cited California Government Code section 11342.2, which states that, quote, "No regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." Because the regulation's product-base approach is inconsistent with the plain text and the purpose of Section 25128-B, the court ruled that regulation 25128-2 was invalid as applies to the taxpayer. Specifically, the Superior Court ruled that Regulation 25128-2(b)(3) exceeded the scope of the statute.

This panel should not allow Respondent to continue brazenly disregarding the text of the statute it interprets. Rather, this panel should follow the Smithfield lead, like Smithfield refused to apply Regulation 25128-2(b)(3), this panel should refuse to apply Regulation 25128-2(b)(1) against Appellant. We have shown you that regulation 25128-2 impermissibly restricts the scope of Revenue & Taxation Code section 25128 and, therefore, should not be applied here.

The next logical question is, what action can the OTA take in response? Respondent will tell you that there's nothing this panel can do about Respondent's regulation besides blindly apply it. Respondent is hoping -- Respondent is hoping to enforce a system where it can interpret laws any way it sees convenient without a taxpayer being able to appeal Respondent's regulations to the form specifically designed to handle California tax disputes. Instead, Respondent will tell you that California's taxpayers can only seek relief from an invalid regulation in Superior Court. A weak OTA combined with a more complicated tax appeals process for taxpayers would keep Respondent's power mostly unchecked.

Thankfully, on July 31st, 2025, the California Attorney General issued Opinion 23-701. This -- that opinion clearly states that the OTA has the power to choose not to apply a regulation to a particular taxpayer. Although, the panel must afford appropriate deference to the view of the agency that promulgated the regulation, if an OTA panel determines that applying a tax regulation to a taxpayer's circumstance would conflict with the governing statutes, it may decline to enforce that regulation against the taxpayer.

We are not asking this panel to invalidate Regulation section 25128-2(b)(1) as a Superior Court recently did in Smithfield. But we are asking the OTA to follow the Supreme Court's lead and refuse to apply Regulation 25128-2 with respect to Appellant. As Smithfield then demonstrates, this is not some kind of outrageous Hail Mary request. This is a request that, as far as we know, is one-for-one in terms of success rate in front of California courts.

Thank you.

JUDGE AKIN: Okay. Thank you for your presentation.

I'm going to turn to my panel now to see if they have any questions for you at this time.

Judge Lambert, do you have any questions for

Appellants at this time?

JUDGE LAMBERT: I have no questions at this time.

JUDGE AKIN: Okay. And Judge Gast?

JUDGE GAST: No questions at this time. Thank you.

JUDGE AKIN: Okay. I had one question, and it's focusing on the language of the statute. If I'm understanding you correctly, it's Appellant's position that they qualify under both the first sentence and second sentence. Maybe I can put it back up.

MR. KARACHALE: Yeah. Yeah. I'll put it back up. There you go, Judge Akin.

JUDGE AKIN: Right. So activities related to cultivating -- oh, excuse me. Activities relating to any stock, dairy, poultry, fruit, fur-bearing animal, or truck farm, planation, ranch, or nursery; and then also under the second sentence which says, "Activities relating to cultivation of the soil or raising or harvesting any agricultural or horticultural commodity." Am I correct in understanding Appellant's position?

MR. TANZI: Yes, you're correct.

JUDGE AKIN: Okay. And which specific activities of Appellant's -- of Yorick qualify? I think I know, but I want to make sure I'm understanding correctly.

MR. TANZI: The production of the chemicals that are used to cultivate the soil and raise any agricultural or horticultural commodity. In the first sentence, there would be activities. I mean, it -- it could fit into a couple of these, but I think we would say probably activities relating to any fruit, plantation, ranch, or range.

JUDGE AKIN: Okay. Thank you. And does Yorick engage in any activities that in your view would not qualify under one of these two sentences?

MR. KARACHALE: I -- I do think that Yorick does. So they don't apportion -- there's apportion, I believe, that 94 percent of their activity was related to these sales in California. But there's a small portion, I think 6 percent or something close to that; less than 10 percent that's not within that ambit.

JUDGE AKIN: Okay. I understand. Yeah. I think there's a breakdown that was provided from the financial statements that have the product sales, consulting --

MR. KARACHALE: Right.

JUDGE AKIN: -- and I forget what else. But it's Appellant's position that those product sales are what qualify?

MR. KARACHALE: That's correct.

JUDGE AKIN: Okay. Just making sure I correctly understand. My next question was, when determining whether or not the regulation is consistent with the statute, in Appellant's view, what deference should OTA be giving to FTB's interpretation in that regulation?

MR. KARACHALE: Do you want to speak to that?

MR. TANZI: Sure. Yeah. I mean, we would say interpretive. I think we didn't highlight that as much because in Smithfield, they didn't look at it. It was just in conflict. So, they didn't raise that issue, but we would say that 25128-2 is an interpretive rule, which is entitled to a lesser deference.

JUDGE AKIN: And so kind of Yamaha-type deference and elements in that, if I understand you correctly.

MR. TANZI: Yes. Yes. Definitely.

JUDGE AKIN: Okay. Let me look at my notes real fast to see if I have any additional questions. If not, I think we are ready for Franchise Tax Board's presentation. Give me just one moment.

MR. TANZI: Sure. Thank you.

JUDGE AKIN: Okay. Yeah. That's -- that's it from me for now. I believe we're ready for Franchise Tax Board's presentation, if everybody is comfortable with continuing at this time.

Okay. Franchise Tax Board, if you're ready, you have 45 minutes and may begin when you're ready.

MS. CHO: Yes, thank you.

PRESENTATION

MS. CHO: Hello, and good afternoon. My name is Hannah Cho attorney for Respondent Franchise Tax Board. With me today is Delinda Tamagni, Assistant Chief Counsel of the Multistate Tax Bureau, also with Franchise Tax Board.

There's only one issue to be decided in this appeal, whether Appellant Yorick, Inc., has shown that more than 50 percent of its gross business receipts were derived from an agricultural business activity as defined in Revenue & Taxation Code section 25128 subdivision (d)(2), such that it shall apportion its business income to California using the equally weighted three-factor formula provided in subdivision (b). Simply stated, Appellant has not demonstrated that more than 50 percent of its gross business receipts were derived from agricultural business activity under section 25128.

The following core facts regarding Appellant's business activities are not in dispute. Appellant is in the chemical products business. Appellant developed, manufactured, marketed, and sold chemical products, which included herbicides, insecticides, and fungicides. Appellant developed its products by repurposing molecules to create new or improved chemical compounds, conducting research and field testing for viability.

Once deemed viable, the chemical products were manufactured by Appellant in its laboratories and manufacturing facilities. The products were registered for intellectual property protection, warehoused, and eventually sold to wholesalers who ultimately sold the products to other retailers and farmers who used the chemicals to enhance the crops on their farms. Appellant also provided advice to farmers to assist in determining what products to use and how best to use them. Appellant did not own, rent, or operate a farm during the years at issue.

With the facts largely uncontested, the dispute in this appeal is whether Appellant's business activities constitute agricultural business activity as defined in subsection (d)(2) of section 25128, and, if so, whether Appellant has demonstrated that more than 50 percent of its gross business receipts were derived from those activities. This presentation will show that the answer to both questions is a clear no.

First, we turn to the statutory language. Subdivision (b) and (c) provide for the use of an equally weighted three-factor formula if business derives more than 50 percent of its gross business receipts from conducting one or more qualified business activities, which includes agricultural business activity.

Agricultural business activity is defined in subdivision (d)(2) and is provided here on slide 4 of the presentation for reference. Under the plain meaning of the statute, Appellant's business activities clearly do not constitute agricultural business activity. Appellant is in the chemical products business. Research and development, manufacturing, registration, marketing, and warehousing and sales of chemical products are not activities contemplated under the section.

These activities are not related to any stock, dairy, poultry, fruit, fur-bearing animal, or truck farm, plantation, ranch, nursery, or range. These activities are also not related to cultivating the soil, or raising or harvesting any agricultural or horticultural commodity. The chemical products are not produced on a farm and are fully manufactured. And Appellant was not an owner, tenant, or operator of any farm. Ignoring this plain reading, Appellant seeks to interpret the phrase agricultural business activities also includes activities relating to cultivating the soil to, in its own words, quote, "Expand the scope and type of activities that are agricultural business activities, and not limited to the actual cultivation of soil," end quote. As will be explained in this presentation, such an interpretation is simply inappropriate and against the plain meaning of the statute.

Appellant argues that the term "related to" should be broadly construed to include chemical products business for two reasons: One, because chemical products are integral to growing agricultural commodities, and without it farmers could not engage in cultivating their crops; and two, because other cases have construed the term broadly. Both assertions are incorrect.

First, it is simply untrue that a farmer could not engage in cultivating crops without Appellant's products. While Appellant's products may provide value to a farmer in growing its crops, it's completely unsubstantiated that a farmer could not engage in cultivating its crops without it. Second, subdivision (b) requires more than 50 percent of Appellant's gross business receipts to be derived from the activities listed in subdivision (d)(2). In this case providing value or even being integral or necessary to a farmer's activities is neither a qualified business activity under section 25128, nor an activity that is generating Appellant's gross business receipts. And the cultivation of soil by the farmer is certainly not the activity that is generating Appellant's gross receipts.

The fact that these chemicals allow others to cultivate their soil and grow agricultural crops is not the relevant consideration under Section 25128. Appellant's receipts are not derived from the production and sale of such crops but rather, from the development and sale of chemical products, which are clearly not activities listed in subdivision (d)(2).

Finally, although the phrase "relating to" is generally a phrase of enlargement, the use of this phrase in a statute does not conclusively demonstrate that the legislature intended a category to be without limit. The items must be similar to those that are specifically listed in the provision. The rule of statutory construction, called ejusdem generis or of the same kind or class, instructs that when a statute contains a list of catalog of items, a court should determine the meaning of each by reference to the others, giving preference to an interpretation that uniformly treats items similar in nature and scope. The class of things is restricted to those things that are similar to, of the same general nature or class as those that are enumerated specifically to prevent broad untended interpretations.

Appellant's chemical business activities are not of the same kind or similar in nature and scope as the activities listed in subdivision (d) and, therefore, fails to meet this canon of construction. Even in the cases cited to by Appellant that interpret the term "related to" broadly, did not do so without limitation. For example, in Luu-Le v. INS, while the court appeals interpreted the term "relating to" broadly, it did so by analyzing the term within the context of the entire statute utilizing definitions and factors in other parts of statute to inform its decision.

Here, Appellant's interpretation fails to do the same. Rather, Appellant seeks to isolate the term "relating to" and apply a broad meaning based solely on other cases having interpreted the term broadly, leading to an interpretation that goes beyond those encompassed by the statutory framework. When read plainly and in its entirety, there is nothing in the activities listed in subdivision (d)(2) that indicates that the development and sale of chemical products is intended to be included in the definition of agricultural business activity. Such a fragmented approach that interprets a statute by looking only to one single word or sentence without construing it in context and without harmonizing it with other provisions relating to the same subject matter is improper.

In fact, the Court of Appeal in Luu-Le made clear that any interpretation of the term "relating to" should have limits. For example, the scope has been limited in instances where broad reading would render other word in the statute language meaningless. Here, under Appellant's broad interpretation, any business that sells its products to a farmer could arguably fall within the meaning of agricultural business activity. For example, a retail seller of farm tractors could be found to be conducting activities relating to cultivating the soil because farm tractors aid and allow farmers to more effectively plow the soil on their farm.

Such an expanded interpretation could also include a fence company that provides the materials to build a fence on a farm, an irrigation company that sells equipment needed to distribute water on a farm, and even a data analytics company that sells software enabling farmers to help make informed decisions about crop management, would be included; and the list would go on. If allowed to stand, Appellant's proposed interpretation creates the unintended and absurd result of permitting nearly any business to use the special three-factor apportionment formula, which would render the standard apportionment formula essentially meaningless.

Appellant also incorrectly argues that its interpretation is clear and unambiguous under the plain meaning rule and therefore, there is no need to resort to legislative intent. However, in Prima Paint Corp., the United States Supreme Court makes abundantly clear that when determining the proper application of a statute, the intent of the legislature must be considered. It is well established that the plain meaning rule does not prohibit courts from ensuring a statute's literal text comports with its intended purpose and functions cohesively with its other provisions.

A strict literal interpretation should not override the clear intent of the legislature. Ultimately, the spirit and purpose of the statute prevail over its literal phrasing, and the text should be interpreted whenever possible to uphold that underlying purpose. Thus, it is clear that an interpretation of a term must be considered within the context of the statute and must comport with the intention of legislature.

So, now we turn to the intent of the legislature. In 1993, the California legislature amended section 25128 through Senate Bill 1176 to modify California's apportionment formula from an equally weighted three-factor formula to a double-weighted sales formula with the specific exception for businesses that derive more than 50 percent of their gross business receipts from extractive or agricultural activities. According to the bill analysis documents previously submitted in Exhibits S and R of Respondent's additional brief, this change resulted from a growing shift among states moving away from an equally weighted formula to an apportionment formula with increased weight on sales, which placed California businesses at a disadvantage.

The purpose of the bill was to improve California's business climate by shifting the corporate tax balance against those who simply sold into California's huge consumer market and to encourage businesses to relocate their manufacturing jobs in the state. The exception in the bill for extractive and agricultural industries was placed to prevent penalizing businesses which arguably have no choice as to their manufacturing location. Appellant's argument that the carveout should also apply to businesses that cannot shift their sales outside of California, which appears to be based on its reliance on Senate Bill 1880, is misplaced.

First, Senate Bill 1880 did not provide the carveout for the extractive and agricultural industries. Senate Bill 1880 provided a carveout for the savings and loan and bank and financial industries. Appellant appears to hang its argument on an isolated sentence from the Bill's third reading, which summarizes the extractive and agricultural industry exclusions as a fairness measure based on those industries' inability to shift sales outside of California. However, a single sentence without any other context in a Senate Bill that addresses a different measure cannot be relied upon to provide an accurate or reliable description of the intent of the legislature for the carveout provided to the agricultural industry.

Second, when looking at the bill analysis for Senate Bill 1176, which is the actual bill that addresses the carveout for the extractive and agricultural industries, it is clear that the changes were made with the understanding that agricultural, mining, and oil drilling are conducted where good farmland or/and petroleum reserves are located, which makes these businesses have essentially no choice as to their manufacturing location. In other words, the innate character of these businesses is that they have a fixed connection to a specific land resource, which cannot easily be relocated.

Generally, this applies to owners, renters, or operators who are tied directly to and are dependent on that specific piece of land to generate income. This is in sharp contrast to Appellant's business, which develops and produces chemical products in laboratories and manufacturing facilities that are then sold globally. Such activities are not dependent on the location of good farmland. As a result, unlike businesses that are in the business of farming, Appellant is not restricted from relocating its research or manufacturing locations, and are like any other non-agricultural business in that regard. Simply put, nothing in the bill supports the Appellant's argument that the legislature intended to exclude businesses that are dependent on their sales location.

In fact, it appears that Appellant's business is exactly the type of business that was meant to be included without exception in Senate Bill 1176. In a letter to the California State Assembly, which was previously submitted in Exhibit U of Respondent's additional brief, the chairman of the State Board of Equalization recognized that the bill sought to apply the double-weighted sales factor formula specifically to manufacturing and research businesses to encourage those businesses to relocate to California to secure those jobs in the state. Thus, it is apparent that Appellant's business, which conducted manufacturing, research, and sales activities was precisely the type targeted by the shift to a double-weighted sales factor formula.

Given this framework, the only reasonable interpretation that aligns with legislative intent is that the Appellant's chemical products business is not -- does not conduct agricultural business activity under section 25128. To the extent Appellant argues that it is engaged in cultivating soil for itself for demonstration and research purposes, such activities also do not constitute agricultural business activity. For one, Appellant is not conducting these activities for the production of its own agricultural or horticultural commodity. Rather, these activities are conducted for the production of its chemical product.

Two, Appellant is also not conducting these activities for gain or profit. While there are certainly benefits received from field testing its products or providing demonstration, Appellant does not derive income directly from these activities, even if these activities occur on a farm. Appellant's income is derived from the development and sale of chemical products. And three, Appellant does not conduct these activities as owner, tenant, or operator of the farm.

Assuming, for the sake of argument, that these activities do constitute agricultural business activities, which Respondent has already shown that it does not, Appellant has the burden of proof to demonstrate that those activities constituted over 50 percent of its gross business receipts. Appellant simply has not met that burden. Appellant's activities involving any actual cultivating of soil itself appears to be minimal in comparison to its numerous other activities, including

R&D, manufacturing, marketing, registration, warehousing, and sales that clearly occurred off the farm, did not relate in any way to cultivating the soil and appears to constitute the vast majority of Appellant's business activities.

Other than attempting to emphasize its activities of walking the fields for research or demonstration purposes, Appellant has not demonstrated that more than 50 percent of its gross business receipts were generated from those activities. Based on the foregoing, Appellant clearly has not demonstrated that more than 50 percent of its gross business receipts were derived from a qualified business activity under section 25128. However, since Appellant has made some additional arguments with regard to Regulation section 25128-2, those argument will be addressed here briefly.

Regulation 25128-2 is consistent with the only proper and logical reading and application of the statute and legislative intent. Dash 2 provides that agricultural business activity applies to taxpayers engaged in the business of farming, which is defined in Treasury Regulation section 1.175-3 as cultivating, operating, or managing a farm for gain or gain or profit, either as owner or tenant. First, Appellant takes particular issue with the phrase "owner or tenant." However, the proper reading of the statutory language and the legislative history support the interpretation that the terms "owner or tenant" is contained in the meaning of agricultural business activity under subdivision (d)(2).

(D)(2), when read as a whole and in context, is clear, by its terms, that the listed activities must occur on a farm and by the owner, tenant, or operator of the farm. Any attempt to limit those terms as applying only to the final activity listed would create a fundamental inconsistency within the provision. To illustrate, the final clause states that the handling, drying, packing, grading, or storing on a farm of any agricultural or horticultural commodity is an agricultural business activity, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated. This conditional language presumes that the taxpayer must be an owner, tenant, or operator of a farm, and that the taxpayer is regularly producing the commodity. From that baseline, activities such as handling, drying, packing, grading, or storing are only considered agricultural business activity if more than 50 percent of the commodities involved are produced by such a taxpayer.

As this presumption applies to the taxpayer and not the specific activity, there is no rational reason to interpret this presumption as only applying to the final listed activity. Thus, applying the presumption to all the listed activities in the statute maintains consistency and harmony with the other provisions of the statute. However, to the extent there is any ambiguity as to the interpretation of the phrase, legislative history unequivocally supports the position that a taxpayer must be an owner, tenant, or operator of the farm. As already discussed, the intent of the statute was to provide an exception only to those businesses and specific land-tied industries, such as farms, that did not have any choice as to its manufacturing location.

A taxpayer that owns, rents, or operates a farm for its business is unavoidably tied to that farmland. Regulation 25128-2 is thus, consistent with the statute's only reasonable interpretation, ensuring it applies only to those who own, rent, or operate a farm as intended by the legislature. Appellant also argues that the regulation is overbroad or narrow because neither FTB Notice 95-5 -- 97-5, nor the regulations rule making file, indicate an intent to qualify the definition of agricultural activity by reference to Treasury Regulation 1.175-3. This is incorrect. As stated in Respondent's reply brief, it is clear that the relevant federal provisions were considered and incorporated when drafting the regulation.

In the regulation's rule-making file, staff noted that the statute itself used language out of various provisions of the Internal Revenue Code and that the drafters of the legislation were using the IRC sections as a model and looked to the federal provisions for guidance. That the specific federal section numbers were later added does not demonstrate that the rule-making process did not properly consider the substance contained in those provisions. In addition, Appellant's contention that its chemical products constitute an agricultural commodity is also without merit. Appellant asserts that it produces its own agricultural commodity because its chemical product cannot process beyond what is normally incident to production. This is clearly incorrect.

While the statute and regulation do not define the term agricultural commodity, the language of the regulation sheds light on the meaning of this term by its use in its definition of other terms. Subdivision (b)(3) provides in part that wherever the definition of the agricultural business activity in this regulation refers to the production of a product, the term "production" means planting, growing, breeding, raising, or fattening one's own agricultural commodity. Based on this language, it is clear that an agricultural commodity is generally considered to be a commodity that can be planted, grown, bred, raised, or fattened.

Chemical products, such as pesticides are not planted, grown, bred, raised, or fattened. Appellant's chemical products are used on or for the agricultural commodities and are not the agricultural commodities themselves. In addition, contrary to Appellant's assertion, nothing in this plain language of the regulation suggest that any commodity that cannot be processed will be considered one's own agricultural commodity. Accordingly, Appellant's chemical products do not constitute agricultural commodities.

Finally, it is important to point out that Smithfield is not applicable to this case for three reasons. First, the Smithfield litigation is still pending and is not yet final. Second, the facts in Smithfield are completely different from the Appellant's facts from this appeal. Smithfield was a hog farmer that owned and operated farms. Appellant is in the chemical products business and does not own or operate any farms. And lastly, Smithfield involved an analysis of issues and specific provisions of the regulation that are simply not at issue in this appeal.

In conclusion, Appellant simply has not demonstrated that more than 50 percent of its gross business receipts were derived from agricultural business activity as required by section 25128. The only proper interpretation of the statute that aligns with legislative intent is that Appellant's chemical business activities do not constitute agricultural business activity. There is nothing in the plain language of the statute that specifically states that activities related to the development, manufacture, and sales of chemical products are included in the meaning of agricultural business activity. Legislative intent to provide a carveout for the agricultural industry, which is based on the rationale that these businesses have essentially no choice as to their manufacturing location does not apply to Appellant's business.

Appellant's business, which conducted research, manufacturing, and sales, was the exact type of business for which the standard formula was intended to apply. Expanding the meaning of agricultural business activity to include businesses, such as Appellant's, would create an absurd result of requiring nearly any business to use the special equally weighted formula, rendering the standard formula meaningless. In addition, Regulation 25128-2 section 25128 and legislative history all consistently support the position that a taxpayer must be an owner, tenant, or operator of a farm. Appellant clearly is not in the business of farming and does not produce an agricultural commodity.

For the reasons articulated today, Respondent respectfully asks the Office of Tax Appeals to sustain its determination that Appellant has not demonstrated that more than 50 percent of its gross business receipts were derived from agricultural business activity pursuant to section 25128.

With that, we conclude our presentation and are happy to answer any questions you might have.

JUDGE AKIN: Okay. Thank you for your presentation.

Let me turn to my panel again to see if they have any questions for Franchise Tax Board.

Judge Lambert?

JUDGE LAMBERT: I don't have any questions. Thanks.

JUDGE AKIN: Judge Gast?

JUDGE GAST: I don't have any questions at this time. Thank you.

JUDGE AKIN: I had one question. I had asked Appellants what deference they felt the regulation should be given. I wanted to ask Respondent Franchise Tax Board the same question.

MS. CHO: Regulation 25128-2 is a

quasi-legislative regulation -- is a quasi-legislative regulation, and the authority was confirmed by Revenue & Taxation Code Section 19503. And as such, it has the full force and effect of a statute.

Also, may I add one more thing?

Respondent also maintains that the regulation is consistent and does not conflict with the statute. The language of the regulation is also not at issue in this appeal. What is at issue is whether Appellant has met its burden to demonstrate that 50 percent of its gross business receipts were derived from agricultural business activity under the statute. Appellant is in the chemical products business and is not an agricultural business activity under the -- underneath -- under the statute. And that is supported by legislative intent.

JUDGE AKIN: Understood.

Okay. I think we're done with questions at this point, unless the parties want a break before we move to closing, we can move on to closing statements.

MR. KARACHALE: Thank you, Judge Akin. I would just --

JUDGE AKIN: I'm sorry to interject. I was just going to say you have 10 minutes, and you may begin when you like. And after that, Respondent Franchise Tax Board will also have 10 minutes. Sorry for the interpretation.

MR. KARACHALE: No. I apologize. Thanks for that.

CLOSING STATEMENT

MR. KARACHALE: I would simply query some of Respondent's positions. In particular, much to my own mother's dismay, I would direct your attention to the declaration of Dominic Alonso. This is in Exhibit 13. Mr. Alonso works for Gowan Company Yorick as a California regional sales manager. And Mr. Alonso, in his declaration, indicates that every single commercial grower in California, and even organic growers, need chemicals like Yorick. So Respondent's position that you can't -- or that it's improper to say you can't cultivate crops or flowers or produce without chemicals -- at least according to Mr. Alonso -- appears not to be true.

Second -- and I think this is for the panel the most important question. Respondent feels that if you agree with our argument, fence sellers and irrigation ditch diggers and tractor makers will all claim three-factor apportionment. We're not suggesting this. All of those examples that Respondent uses are people who can sell or build elsewhere. Fences go around houses, not just farms. Irrigation ditches are dug in construction sites, not just farms. Our point is that a company like

Yorick and Gowan is integral to the success of the farmers in California and therefore, is distinguishable from the examples that the Respondent uses.

With -- with those clarifications, Mr. Tanzi, anything else?

MR. TANZI: No.

MR. KARACHALE: Thank you.

I just want to conclude by making a few final points.

I think that today Appellant has demonstrated two key concepts for the panel. First, we've shown you that based on the text of section 25128, Appellant derives practically all of its gross receipts from agricultural business activity. Appellant both develops and produces chemical products that are essential for raising California props -- crops. Appellant does not just passively sell. It creates chemical solutions to California specific problems like rice weeds and citrus thrips.

All commercial California farmers use the type of products that Appellant creates. Without Appellant's herbicides, fungicides, and pesticides, California farmers, I say even those organic farmers, would not be able to consistently grow marketable crops. Therefore, under section 25128, Appellant is engaged in the activities related to the cultivating soil or raising any agricultural commodity.

Second, we have shown you that Regulation 25-128-2 is excessively narrow and is therefore, invalid. Just a few weeks ago in Smithfield, the Los Angeles Superior Court found that Regulation 25128-2's product-based definition used by Respondent just recently, was inconsistent with section 25128's text. That California trial court found that Regulation 25128-2(b)(3) exceeded the scope of the statute and was therefore, invalid as applied to taxpayer. Just like regulation 25128-2(b)(3), Regulation 25128-2(b)(1) -- (2)(b) impermissibly narrows the meaning of section 25128. The FTB's requirement that all qualified agricultural businesses be engaged in the business of farming as defined in Treasury Regulation section 1.175-3 is simply not reflected in the statute, the legislative history, or even the discussion drafts of the regulation.

California's Attorney General has made clear that this panel has the authority to refuse to apply particular regulation against the taxpayer. Because Regulation 25-1 -- 251 -- 25128-2(b) is inconsistent with both the text and the legislative intent of the statute, this panel must do so here. California is one of the largest economies in the world because of its agriculture.

Companies like Appellant help make that possible.

Based on both section 25128's text and the legislative history, Appellant is the very type of agricultural business the drafters had in mind when drafting the statute. Accordingly, we respectfully request that this panel find that Appellant was engaged in agricultural business activity for tax years 2013 through 2025.

Thank you.

JUDGE AKIN: And thank you. And before I turn to my panel for final questions, I'm going to allow Franchise Tax Board to do their closing statement.

You have 10 minutes and may begin now.

MS. CHO: Thank you.

CLOSING STATEMENT

MS. CHO: Just to quickly address Appellant's points with regard to the declaration of Dominic Alonso. Mr. Alonso's statements lack personal knowledge and are unsubstantiated. Mr. Alonso cannot attest to what California farmers would and would not have been able to harvest without Appellant's products. And even if Appellant was able to substantiate those statements, it is Respondent's position that it would not matter. As discussed in the presentation, those activities do not constitute agricultural business activity.

And also, with regard to Appellant's statement that Appellant's business is distinguishable from other businesses because it is integral to the farming industry is unconvincing. Other businesses that sell products to farmers that could -- would also assert that its products are integral to the farming industry.

So, to keep this as simple as possible, the issue here is whether Appellant has shown that more than 50 percent of its gross business receipts were derived from an agricultural business activity. Statutory language and legislative history clearly indicate that a qualifying taxpayer must cultivate, operate, or manage a farm to regularly produce an agricultural or horticultural commodity, either as owner or tenant. Appellant does not.

Again, Appellant is in the chemical products business. There's nothing in the plain language of the statute or in legislative history that states that activities related to the development, manufacture, and sales of chemical products were intended to be included in the meaning of agricultural business activity. Expanding the definition to include businesses like Appellant's would frustrate the legislative purpose and would lead to unintended and unreasonable results.

In closing, Appellant simply has not met its burden to demonstrate that more than 50 percent of its gross business receipts were from agricultural business activity as required by Revenue & Taxation Code section 25128.

Thank you.

JUDGE AKIN: All right. And I wanted to give Appellant the final word if they wanted to respond to that.

Mr. Karachale, did you have a response? If you do, you have up to two minutes.

MR. KARACHALE: No response. Thanks, Judge Akin.

JUDGE AKIN: All right. I'm going to check with my panel to see if they have any final questions for either party before we wrap up.

Judge Lambert?

JUDGE LAMBERT: I have no questions.

JUDGE AKIN: And Judge Gast?

JUDGE GAST: No questions. Thank you for your presentations.

JUDGE AKIN: And I've asked all my questions, so I don't have anything either. I just wanted to thank both parties for coming here in the rain and everything else. So, thank you for your presentations.

Sorry. Finding my notes.

Okay. With that, we are ready to conclude the hearing. This case is submitted on April 21st, 2026. The record is now closed.

Again, I want to thank the parties for their presentations here today.

The panel of Administrative Law Judges will meet and deliberate and decide the case based upon the arguments presented here today, along with the briefing and the exhibits in the record. We will issue our written opinion no later than 100 days from today.

This concludes the hearing.

Thank you, everyone. And we are done. Thanks.

(Proceedings concluded at 3:57 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 26th day of May, 2026.

____
ERNALYN M. ALONZO
HEARING REPORTER