

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
TREASURE BOX, INC.,) OTA NO. 18011941
)
)
APPELLANT.)
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TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Wednesday, April 24, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE OF,)
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Transcript of Proceedings, taken at
355 South Grand Avenue, South Tower, 23rd Floor,
Los Angeles, California, 91401,
commencing at 1:02 p.m. and concluding
at 2:32 p.m. on Wednesday, April 24, 2019,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: Hon. NGUYEN DANG

Panel Members: Hon. KENNY GAST
Hon. MICHAEL GEARY

For the Appellant: PATRICK E. MCGINNIS
OSAMA MOUSA
CARMEN MOUSA

For the Respondent: State of California
CDTFA
By: PAMELA BERGIN
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CROSS

REDIRECT

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Los Angeles, California; Wednesday, April 24, 2019

1:02 P.m.

ADMINISTRATIVE LAW JUDGE DANG: On the record.

Good afternoon, everyone. We're opening the record in the appeal of Treasure Box, Inc., before the Office of Tax Appeals. The Case No. is 18011941. This hearing is being convened in Los Angeles on April 24th, 2019. The time is 1:02 p.m.

Today's case is being heard and decided equally by a panel of three judges. My name is Nguyen Dang. I'll be acting as the lead judge today for purposes of conducting this hearing, although, all three of us, as I said, will be coequal decision makers in this appeal. On the panel with me today is Judge Michael Geary, as well as Judge Kenneth Gast.

Will the parties at this time please introduce themselves for the record, and please spell your last name. And include any titles that you would like for the record. Beginning with the Appellant, please.

MR. MCGINNIS: Patrick McGinnis. The last name is spelled M-c, capital G-i-n-n-i-s. I'm the attorney for the petitioners or the appellants.

MR. MOUSA: Osama Mousa. The last name -- the first name is O-s-a-m-a. The last name is M-o-u-s-a.

1 MRS. MOUSA: Carmen Mousa. The last name is
2 M-o-u-s-a.

3 ADMINISTRATIVE LAW JUDGE DANG: Thank you.
4 CDTFA?

5 MS. BERGIN: Pamela Bergin, B-e-r-g-i-n. I'm
6 representing the department.

7 MS. RENATI: Lisa Renati, R-e-n-a-t-i.

8 MS. WILSON: I am Kim Wilson.

9 ADMINISTRATIVE LAW JUDGE DANG: Thank you. At
10 this time I'd like to go over the issues in this appeal
11 just to make sure everyone is on the same page in that
12 regard.

13 The issues I have today, which we've discussed at
14 the prehearing conference, is whether the tax penalty, and
15 interest associated with the measures for unreported
16 taxable sales should be abated -- or should be deleted --
17 I'm sorry -- because appellant relied on erroneous advise
18 from CDTFA.

19 The second issue I have is whether appellant has
20 established that adjustments are warranted to the measure
21 for unreported ex-tax purchases subject to use tax.

22 And I believe at the prehearing conference
23 Mr. McGinnis stated that only the purchases from Youa Jifh
24 are in dispute?

25 MR. MCGINNIS: That's correct, Your Honor.

1 ADMINISTRATIVE LAW JUDGE DANG: There's no
2 dispute as to the consumable supplies?

3 MR. MCGINNIS: No. No.

4 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.
5 And whether the amnesty interest penalty should be abated
6 due to reasonable cause?

7 MR. MCGINNIS: Yes, sir.

8 ADMINISTRATIVE LAW JUDGE DANG: And in that
9 respect, you said you brought today the request?

10 MR. MCGINNIS: Can I approach?

11 ADMINISTRATIVE LAW JUDGE DANG: Yes, please.

12 (Paperwork was presented to the Judges.)

13 Thank you. Do you have a copy for respondent?

14 MR. MCGINNIS: No, I'm sorry. I think I do, yes.

15 MS. WILSON: It was sent to us. Claudia sent it
16 to us.

17 ADMINISTRATIVE LAW JUDGE DANG: You have the
18 unsigned version?

19 MS. WILSON: We have the unsigned version, that
20 is correct.

21 MR. MCGINNIS: It's an unsigned version, but here
22 it is.

23 MS. BERGIN: Is there a signed version somewhere?
24 As long as you have -- that's fine.

25 ADMINISTRATIVE LAW JUDGE DANG: Okay. We have a

1 copy. We can give you a copy following this.

2 MS. BERGIN: Okay.

3 ADMINISTRATIVE LAW JUDGE DANG: I'd like to note
4 that in the decision and recommendation, I believe that
5 CDTFA had proceeded to abate the amnesty interest penalty.

6 MS. BERGIN: Not the amnesty interest penalty. I
7 believe it was negligence penalty and the -- was it the
8 amnesty penalty?

9 MS. RENATI: The amnesty interest penalty, not
10 the negligence.

11 MS. BERGIN: Not the negligence. Sorry. I
12 switched it.

13 ADMINISTRATIVE LAW JUDGE DANG: I believe at the
14 prehearing conference you had agreed to abate the
15 negligence penalty. But in the decision and
16 recommendation it recommended that the amnesty interest
17 penalty would be abated if the written statement were
18 provided.

19 MS. BERGIN: I think the decision stated that it
20 would be considered.

21 ADMINISTRATIVE LAW JUDGE DANG: It would be
22 considered?

23 MS. BERGIN: Yes. We don't object to this, and
24 I'll address that in my presentation. But we don't object
25 to this.

1 ADMINISTRATIVE LAW JUDGE DANG: Is this still an
2 issue?

3 MS. BERGIN: I would like to briefly touch on it,
4 if that's okay, in my presentation.

5 ADMINISTRATIVE LAW JUDGE DANG: Sure.

6 MS. BERGIN: I'm not going to go into it too
7 much, but I would like to state the law of what of the
8 amnesty interest penalty is and how it's applied, just for
9 the record.

10 ADMINISTRATIVE LAW JUDGE DANG: Okay. And
11 Mr. McGinnis, are there any issues with the issue
12 statements as I've read them?

13 MR. MCGINNIS: No, there isn't, Your Honor.

14 ADMINISTRATIVE LAW JUDGE DANG: Okay. And CDTFA,
15 as far as the issues, do they sound correct to you?

16 MS. BERGIN: Yes.

17 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

18 At the prehearing conference, parties stated that
19 that they would be submitting as evidence the exhibits
20 that were previously attached to their briefs, as well as
21 additional submissions following the prehearing
22 conference. We sent that to you in a PDF electronic file.

23 Mr. McGinnis, have you received that file and
24 have had a chance to review it?

25 MR. MCGINNIS: Yes. I've had a chance to review

1 it. I have a copy here.

2 ADMINISTRATIVE LAW JUDGE DANG: Okay. Great.

3 MR. MCGINNIS: And they're all acceptable.

4 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

5 And Ms. Bergin, regarding the electronic file and
6 your intended submissions, does that look accurate to you?

7 MS. BERGIN: Yes. Thank you.

8 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

9 And are there any objections by the parties to admitting
10 this evidence in this file into the record today?

11 MR. MCGINNIS: No.

12 MS. BERGIN: No objection.

13 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

14 With that being said, this file to the extent that there
15 is evidence contained within, is admitted into the record.

16 (Electronic Exhibit File was received
17 in evidence by the Administrative Law Judge.)

18 ADMINISTRATIVE LAW JUDGE DANG: As we discussed
19 at the prehearing conference, we begin today with
20 appellant's presentation, your opening statement. You'll
21 have 10 minutes, Mr. McGinnis, if you would like to begin.

22

23 OPENING STATEMENT

24 MR. MCGINNIS: I would like to stage the stage in
25 this for the Court. This is a case where most taxpayers

1 ask for the understanding of the court. This is almost a
2 case of a perfect storm of either mistakes,
3 misunderstandings, and outright malevolent conduct.

4 We start out -- the Treasure Box has arcade
5 games. They do what any normal taxpayer would do. They
6 call their CPA, and ask, "What should we do?" The CPA
7 says call the Board of Equalization, which they do. And
8 based on the answer, any attorney would have known that
9 they had to file sales tax returns. And they knew that
10 the answer was not in context or it was not understood
11 properly.

12 I already know what happened. They said, "Do we
13 have to pay it if we've already paid at retail?"

14 I said, "No, but you have to file a sales tax
15 return to claim credit for it." And the CPA should have
16 known that. And so they go around, and they don't. And
17 the CPA gives them no advice on what records to keep. We
18 go fast forward and an audit starts. And they don't have
19 the records because they were disposed of.

20 And the report is issued in late 2010. They're
21 in the middle of reconstructing records. And the police
22 come around, and they seize everything that they have:
23 All their money; all their books and records; all their
24 computers; all their backups. Everything was taken away.
25 And to make matters worse, they went around to everybody

1 who are their business contacts and said they were --
2 accused them of money laundering for Islamic terrorist.

3 Now, you know how that would have gone over with
4 people after 911. So essentially, they came up and they
5 were shut down. And they couldn't -- the police would not
6 give them access to any of their records until roughly
7 2016. The criminal case, whatever it was, was dismissed
8 for failure to properly prosecute by Roger Diamond, who is
9 their criminal lawyer.

10 In 2017 they got their records back, and they
11 were in a shambles. All the computers were inoperable.
12 All the backup data was unreadable. The information was
13 corrupted. And yes, we could have ordered the -- we could
14 have tried to reconstruct the records, but they had no
15 money. They were essentially -- everything was taken from
16 them.

17 And that was the essence of the request for
18 abatement of the amnesty interest penalty. And the reason
19 they really couldn't is because they couldn't even get the
20 police to let them look at their records. As far as the
21 main issue here is the purchases from Youa Jifh. Those
22 were all handled by Mr. Mousa. And there was a lot of
23 back and forth, as what you would expect, and what they
24 ended up with is what we submitted.

25 They had purchases of \$65,000. As far as what

1 happened with the depreciation, Mrs. Mousa will tell you
2 what happened was Mr. Goetsch came to their office and
3 looked at the machines in their warehouse and said, "Oh,
4 we should claim depreciation." And so he put it on there.

5 I called him and said, "Give me the back up on
6 all your files. What was the PNLs? Give me the trial
7 balances, and give me what -- the detail on that
8 depreciation." I don't have the file.

9 ADMINISTRATIVE LAW JUDGE GEARY: Are you
10 testifying?

11 MR. MCGINNIS: I'm summarizing.

12 ADMINISTRATIVE LAW JUDGE GEARY: Mr. McGinnis,
13 can I interrupt you for a second? Are you testifying?

14 MR. MCGINNIS: No. I'm not trying to testify.
15 I'm just summarizing.

16 ADMINISTRATIVE LAW JUDGE GEARY: Are you
17 summarizing evidence? Because you just told me something
18 that you did. Is Mr. Mousa going to testify to that?

19 MR. MCGINNIS: I don't --

20 ADMINISTRATIVE LAW JUDGE GEARY: You said that
21 you called the accountant and did some things.

22 MR. MCGINNIS: Yeah. I'm trying to represent
23 them. I tried to call him.

24 ADMINISTRATIVE LAW JUDGE GEARY: Okay. So if
25 you're not going to testify to a fact like that, you

1 probably shouldn't make a reference to it. We're
2 trying to -- you should be outlining the evidence is what
3 I'm saying.

4 MR. MCGINNIS: Okay. So the taxpayers will
5 testify regarding what was purchased from Youa Jifh, and
6 state that it was \$65,000. And that completes my opening
7 statement.

8 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

9 Ms. Bergin, if you're ready, you may have 10
10 minutes for your opening statement.

11 MS. BERGIN: We can waive our opening and go
12 straight to testimony, if that's okay.

13 ADMINISTRATIVE LAW JUDGE DANG: Okay. Sure.

14 Mr. Mousa, I believe you're testifying first?

15 MR. MOUSA: Yes.

16 ADMINISTRATIVE LAW JUDGE DANG: Okay. Well, we
17 need to place you under oath because our rules require
18 that we can only accept testimony under oath. Do you have
19 any objection to be placed under oath?

20 MR. MOUSA: No.

21 ADMINISTRATIVE LAW JUDGE DANG: Okay. Please
22 stand and raise your right hand.

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OSAMA MOUSA,

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

THE WITNESS: Yes.

ADMINISTRATIVE LAW JUDGE DANG: Thank you. You may be seated.

Mr. McGinnis, whenever you're ready you may begin.

DIRECT EXAMINATION

BY MR. MCGINNIS:

Q Could you state your name for the record?

A Osama Mousa.

Q Okay. Could you tell the court what was Treasure Box in 2001 and in 2007? What did you buy? What did you sell? What did you do?

A We start buying machines locally from -- okay. To understand our business to make it foundation, there's two types of arcade. There is arcade place like Chuck E. Cheese. You go there. There's machines, and there's different type of arcade. We call it route arcade. Which when you go to Kmart or restaurants, you find these machines.

1 So we were the other side, number two, which we
2 have machines in different locations, we call it. So we
3 base machines in these restaurants. So when I start, I
4 introduced by somebody who have machines. At that time I
5 was looking for business to do. And he told me that it's
6 a good business. It bringing money and easy. So I bought
7 some of these machines.

8 We start with two machines, and then I start
9 buying some machines from either manufactures at that
10 time. There's two manufactures in California called
11 Mission Trails, and there is NAMCO. After that, we start
12 buying machines, like, could be 20 machines in different
13 locations, sometime five machines. And all these, most of
14 them are either video games or crane toy. We call it
15 crane, which is grab the toy.

16 Mission Trail, the company be sold. It used to
17 be in Anaheim. It sold to a company in New York called
18 the Sugar Loaf. You know we have -- I had at that time we
19 had 20 of these machines, and we had problem with parts.
20 The company closed. And the company who bought them, they
21 do their own parts. And you go out and if you see those
22 machines, they don't sell any parts. They keep it for
23 themselves.

24 So at that time I have problem. I tried to
25 contact different factories out of California, but they

1 would not sell parts for this because each machine needs
2 parts for each, that machine. We used to go also to -- in
3 Vegas there's two shows a year for this type of business.
4 I used to go there looking for different machines.

5 I met accidentally with a guy from Taiwan. He's
6 American, but he's in Taiwan. He's from Taiwan. He told
7 me, "Why don't you go to Taiwan. I can help you get the
8 parts you want." I thought about it. I went there. We
9 talked to people who do parts for this type of business,
10 and I show him our parts. They say yes, they can build
11 it. It will be cheaper for me than do America, and buy
12 more quantity than I need. So it's fair.

13 And then they introduce me. They told me that
14 they are -- they make machines different than American,
15 but they do make same principle, and if I would like to
16 buy machines from them. And I said, yeah, why not. We
17 were talking about making these machines. Then at that
18 time we have problem, especially in California, that you
19 have to have specific things in the machine to make it
20 skill game. Because there's two types of machines, either
21 dumping machines or skill game machines.

22 So I contact with the lawyer. I think his name
23 is Bob Snyder. He used to have -- he used to work with
24 the government here. And he used to have company called,
25 I think, Nation Laboratory or something like that. So

1 first time they make the machine I want to see. I took
2 pictures. You know, you have to change. So every time we
3 sign a contract to build these machines, there's changes
4 in the machines to meet the American -- the California
5 standard of machine.

6 Finally we get that game in. We can buy, I
7 think, 45 machines. I don't remember numbers exactly,
8 either 45 or 46 something of that number that will fit in
9 the container. And at that time in America here, as what
10 I say, we used to buy routes. Which like what I say, a
11 guy who owns machines in different locations, we buy the
12 business from him. So even the machine -- just say this
13 phone cost \$1,000, if you buy location making money, the
14 phone is no more one \$1,000 or \$5,000. It depends on how
15 much the machine break.

16 So at that time, the same time I making the
17 machines in China or they making it. We paid like to do
18 it. We lost a big accounts here, which is, I think, Value
19 Plus. And I think there's two or three companies. We
20 lost them. And we have to pull all the machines from the
21 locations because somebody else is going to be there,
22 other company.

23 It was a big headache for us. So then I had to
24 bring all these machines to the warehouse. At that time,
25 of course, we already have contract with Taiwan to make

1 the machines for us. So we cannot cancel it because they
2 already make it. At that year I remember, either that
3 year -- I can't remember exactly. They stay in our
4 warehouse for so long. So the accountant at that time he
5 asked me why you are doing bad. I went to show him the
6 warehouse, and how many machines we have over there.

7 So I think he said I can take it from as a loss,
8 write it off the tax. And I think he -- yeah. He said
9 like depreciation or something like that. So I don't know
10 anything about accountant. So that's what happened.

11 Q So were those the same machines that you
12 ultimately bought from Taiwan from Youa Jifh?

13 A No, no. This is the machines we buy it from the
14 routes in California.

15 Q When was the first time you were told that you
16 owed sales tax on the receipts of Treasure Box?

17 A I think 2009, 2010. Something like that.

18 Q Okay. So what was the sum and substance of the
19 phone call that was made to Board of Equalization in 2002?

20 A What's happening at that time is what I say. Our
21 focus in the machines, that's how I started, was the crane
22 and the video games and the kiddy rides, you know, outside
23 the store like horse. So that's our business. And the
24 video games we got them very cheap. But the problem is
25 they did not do anything because at that time the games in

1 the house was started. So it was not doing good for us.
2 Some of the locations they requested for us to have these
3 machines. They're called bulk. You put in \$0.25 and you
4 get the gum or stickers.

5 So we start -- we bought at that time, I think --
6 I don't know, 100 in 2008, a year after we start. We
7 start buying one machine at that time or sometime with the
8 route. We did not have much. And we used to buy them
9 from a company called A and A Global.

10 So we used to get -- mainly these machines are
11 gum ball because they do good and Chiclets. And we have,
12 like, they come with containers. So one gum ball, one
13 Chiclets, one runts they order. It's like candy. And the
14 rest we have peanuts. In the super markets you have,
15 like, gumballs, Chiclets, Runts and we have capsule. And
16 sometimes we have stickers.

17 When we used to buy it, we used to pay tax on
18 that. Taxable item we used to pay tax for it. And I
19 don't know. I think Carmen, she knows. When she called
20 the Sacramento regarding if we have to file tax for it
21 because we already paying tax for it. So she can -- I
22 mean, what she told me she call Sacramento, and they told
23 her there's no tax on tax. If you're paying tax, that's
24 it.

25 And over the years we -- like from 2002 to 2007

1 or '08, we buy few machines. We did not have that many
2 machines, but we used to buy it. Not all at the same time
3 but according to the location that it was.

4 Q What -- when was the search warrant executed
5 against your business and your property?

6 A When the police came?

7 Q Yeah.

8 A It was February 10th or 11th of 2011.

9 Q Okay. And what did they took?

10 A They took everything from the house and from the
11 business.

12 Q Were you left with any computers, backups, bank
13 statements? Did you have any of that?

14 A No. They took -- they took us to the police
15 station. Just in the car first, and then they brought
16 trucks and vans, I think so. And they took everything
17 from the house and from the warehouse.

18 Q And what did they do to effectively destroy your
19 goodwill?

20 A They -- first of all, they came with Homeland
21 Security, and they start searching everywhere claiming we
22 had weapons in the warehouse. Anyway, they took
23 everything. The Homeland Security they last there for,
24 like, two hours and they left. That's what I have been
25 told because they came when I wasn't there. And then I

1 was told after.

2 We left Homeland Security -- they left and police
3 stay there until 11:00 o'clock. And they clean
4 everything, the office, everything. Everything. Even the
5 napkins they took. They left only box of pizza, empty.

6 Q What did they tell your business customers?

7 A We are under investigation for laundering money
8 and supporting terrorist.

9 Q Where were you born and raised?

10 A Kuwait.

11 Q Have you ever been a member or affiliated with
12 any organization like that?

13 A No.

14 Q When did you get your records back?

15 ADMINISTRATIVE LAW JUDGE DANG: Mr. Mousa, would
16 a brief recess be helpful?

17 MR. MCGINNIS: Yes.

18 ADMINISTRATIVE LAW JUDGE DANG: Let's take five
19 minutes.

20 We're off the record.

21 (There is a pause in the proceedings.)

22 ADMINISTRATIVE LAW JUDGE DANG: Let's go back on
23 the record.

24 BY MR. MCGINNIS:

25 Q We're back on the record. Could you describe the

1 condition of the records when you ultimately recovered
2 them from the cops, which is the police?

3 ADMINISTRATIVE LAW JUDGE DANG: Mr. McGinnis,
4 your last question was, "When you got them back." He
5 never respond. Do you have it? Does he have an answer to
6 that question?

7 THE WITNESS: We have it. The first year they
8 took it we went to court, and the judge request that --
9 because they took everything; the records, the money, the
10 gold from my wife. Everything they took. So the Court
11 request from them to give us the records and my wife's
12 gold and the passports for the kids and her passport.
13 Like our passport, basically, because they took mine.

14 I went there two, three days, I mean, a week. I
15 don't know. Sometime I went there to request to the
16 police station to request our stuff. The policeman, he
17 said to me that he can put me, you know, he said to me, "I
18 can put you back to jail." And he did not give me
19 anything except one thing. He give my kids' passports;
20 not my passport, not my wife, only the kids' passports.
21 Not her gold. Even there is a court order, they didn't do
22 what the order did.

23 We got the records back, I think, in 2017, but
24 before that, even he lied in the court. He said that he
25 told us to make a copy of the record, which is he lie. He

1 never asked us to make a copy of the record, but he lie in
2 the court. He said he request us, or he asked us if we
3 would like to get copy of the record. He has no problem
4 to do it, but we have to pay for the copy and that cost,
5 like, between 6 to \$7,000.

6 Even our CPA and the lawyer called him that we
7 need the record because of the tax reason. He did not
8 obey. And then he gave it to us after that because we
9 went to the court in Pomona and -- okay. This is first
10 start in El Monte police. And keep in mind El Monte has
11 nothing to do with us, because we don't even have business
12 in El Monte. Never. We never had business in the El
13 Monte.

14 Anyway, in El Monte court it was a lady judge.
15 She request them to give us the record, and he did not
16 even listen. The only time he listened, we went to Pomona
17 and the judge asked him why he did not give us the record.
18 Okay. And then he say I told him I can make a copy if
19 they come, and they have to pay for the person. He make
20 big fuss. Any way whatever he asked, which we thought it
21 was going to cost us between 6 to \$8,000. At that time we
22 have no money at all.

23 So we got back the record and the last thing in
24 2017. It was in 2017 we got it from them. And it was
25 like boxes, papers stay on top of each other. Some

1 others. I don't know. It's like mixed in the house
2 papers, napkins, different papers. It feels like dirty.
3 I mean, like thrown papers put in together in different
4 boxes. And you can request a copy because they were
5 taking videos, and they didn't give it to us. They have
6 the video. They only give us the boxes. Just boxes and
7 that's it.

8 ADMINISTRATIVE LAW JUDGE GEARY: Thank you.

9 BY MR. MCGINNIS:

10 Q What ultimately happened to the criminal case
11 against you?

12 A It has been dismissed.

13 Q Okay. In regards to the -- directing your
14 attention to the purchases from Youa Jifh in Taiwan, how
15 did you contact him? And what did you ultimately buy from
16 them?

17 A Finally, we buying from them the machines and
18 some parts for the machines -- of the American machines we
19 have.

20 Q Okay. So we've had -- there's invoices called
21 proforma invoices. What were those?

22 A It's invoices for the same -- every time we do
23 the change of the machines, they make invoice for us.
24 Which is, I mean, I understand. We make invoices for them
25 because we -- every time I need this one, and then we

1 change.

2 For example, the toys can be dropped in the front
3 or in the back. With the first time we make a prototype,
4 the drop will be in the back. We say no. We want the
5 drop in the front, so which is that they have to change
6 it. And the second change we still waiting, we request
7 plastic inside the machine where the claw can reach. This
8 has to do with the law in California.

9 So every time we change, we change, like, three
10 or four times with the machines until we decide. Even
11 that we brought them here, it did not do good any way.

12 Q So what did you ultimately buy from them?

13 A We bought one container. It has machines and
14 parts.

15 Q How much did you pay him?

16 A I can't remember the number but around
17 60-something.

18 Q I would direct your attention to what's marked in
19 the record as 128, 129 -- 128 and 129 and 130.

20 ADMINISTRATIVE LAW JUDGE GEARY. Pages? Those
21 are the page numbers you're referring us to?

22 MR. MCGINNIS: Yes.

23 ADMINISTRATIVE LAW JUDGE GEARY: Okay.

24 BY MR. MCGINNIS:

25 Q Does that correctly state your purchases and

1 payments?

2 A I believe so.

3 Q Did your prepare that, or did your wife prepare
4 that?

5 A I think she did. I don't know.

6 Q Okay. Are you familiar in any way with rules and
7 depreciation? Do you know what depreciation is?

8 A I just find out even, after we talked.

9 Q So what was your understanding of depreciation
10 when your CPA suggested it?

11 A At that time I don't know what he's talking about
12 until I find out.

13 MR. MCGINNIS: Okay. That completes my direct,
14 Your Honor.

15 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

16 Ms. Bergin, do you have any questions for
17 Mr. Mousa?

18 MS. BERGIN: No questions.

19 ADMINISTRATIVE LAW JUDGE DANG: No questions.

20 Turning to my panel members. Judge Gast, do you have any
21 questions?

22 ADMINISTRATIVE LAW JUDGE GAST: No questions.

23 ADMINISTRATIVE LAW JUDGE DANG: Judge Geary?

24 ADMINISTRATIVE LAW JUDGE GEARY: No, thank you.

25 ADMINISTRATIVE LAW JUDGE DANG: Mrs. Mousa, I

1 believe you'll be testifying next?

2 MRS. MOUSA: Yes.

3 ADMINISTRATIVE LAW JUDGE DANG: I'LL need to
4 place you under oath. Do you have any objection to that?

5 MRS. MOUSA: No.

6 ADMINISTRATIVE LAW JUDGE DANG: No. Okay.

7 Please stand and raise your right hand.

8

9 CARMEN MOUSA,

10 produced as a witness by and on behalf of herself, and
11 having been first duly sworn by the Administrative Law
12 Judge, was examined and testified as follows:

13

14 THE WITNESS: I do.

15 ADMINISTRATIVE LAW JUDGE DANG: Okay. You may be
16 seated.

17 THE WITNESS: Thank you.

18

19 DIRECT EXAMINATION

20 BY MR. MCGINNIS:

21 Q What was your position with Treasure Box? What
22 did you do?

23 A I basically manage the day-to-day operations in
24 the office.

25 Q Directing your attention to what we previously

1 read, which is page 128 of the record. Did you prepare
2 those records?

3 A Yes.

4 Q Okay. How did you prepare them? What records
5 did you use to prepare those?

6 A That's from QuickBooks, which is an accounting
7 system.

8 Q What was your understanding of the so-called
9 proforma invoices? What were they?

10 A The proforma invoices, they were basically like a
11 proposal. Every time they discussed anything about the
12 make of the machine or whatever parts he was planning to
13 order, they would issue an invoice -- a proforma invoice.
14 And they would send it to the office and say, you know,
15 this was what was discussed.

16 At the same time, you know, like he may be still
17 negotiating with them. Like sometimes for example, he
18 might tell them, "No, I don't want to accept it," because
19 he preferred, you know, like certain parts, which they did
20 not carry. So then, of course, they have to change it
21 again because now they have to reduce it by the price of
22 what they were going to charge they accept as far as the
23 machine.

24 So there were a lot of changes and negotiations
25 going back and forth. And then the actual invoice, if it

1 would be actually issued, when the merchandise was
2 shipped. But everything else is like proforma invoice,
3 but it doesn't mean that it's the actual invoice. It's
4 the proposed invoice.

5 Q Okay. So what did you end up buying and paying
6 for from Youa Jifh?

7 A All we bought was -- there was one container with
8 cranes. And we made, you know, like some -- you know like
9 part payments. So you know like I would say this \$10,000
10 was for the cranes. And finally when the container is
11 ready to be shipped, I would send them the balance.

12 Q Okay. Did you make a phone call to the phone
13 number of the Board of Equalization?

14 A Yes, I did.

15 Q Could you tell the Court, just to the best of
16 your recollection, what happened in the call? What did
17 you ask him, and what did they tell you?

18 A The accountant at the time when I told him that
19 we are going to, you know, be handling this, you know, the
20 involvement, I guess you call it. He said, "I propose
21 that you call the Board of Equalization and ask for a
22 sellers permit," which I did. And the person, when I
23 called them, they said, "What you need it for?"

24 So I basically told them. We have this
25 involvement, you know, this, this, and that. It has

1 candy, stickers, and capsuled items. Then they told me,
2 "When you purchase, do you pay sales tax?"

3 I said, "Of course, you know. They always charge
4 us sales tax."

5 She said then, "You know, then you don't need a
6 sellers permit."

7 I said okay, you know. So I mentioned that to
8 the accountant at the time. And I said, listen, I called
9 and this is what they told me. He said oh, okay. And
10 that was it until, you know, I find out later that
11 apparently we -- I got the wrong information.

12 Q Did you understand anything about sales and use
13 tax law at the time you had that call?

14 A No, not really. All I know is you buy
15 merchandise, you pay sales tax, and that's it. You're
16 done.

17 Q Do you have any accounting training?

18 A Just basic like a little bit but not accounting,
19 accounting.

20 Q Did you have any training in tax law?

21 A Absolutely not. I wouldn't --

22 Q Do you understand tax law?

23 A No.

24 Q Okay. Were you present at a discussion where
25 your CPA looked at machines and decided to claim

1 depreciation?

2 A At that time I do recall, because every year he
3 would come, and I will give the CPA a copy of QuickBooks
4 on a flash drive. And he would always ask, you know, how
5 we do in the business? You know, the normal thing. And
6 he walks into the warehouse, and he said you have --
7 because we have like a 20,000 square-foot warehouse. It
8 was packed with machines.

9 Like Osama said, we had lost a couple of major
10 accounts and these, you know, corporate accounts had
11 multiple location. And he said that -- all I remember he
12 saying is that, "Well, I need to take this into
13 consideration for depreciation because this is not making
14 you guys any money." It's like, you know, all I know is
15 he mentioned depreciation. Which to me it was, like,
16 okay. He knows what he's talking about.

17 Q Do you understand why that was wrong?

18 A No.

19 Q Okay. What was your understanding of what was
20 usually depreciated by your CPA?

21 A He used to say there's depreciation on equipment,
22 you know, machine equipment, automobiles, and office
23 furniture or something like that.

24 MR. MCGINNIS: Okay. Your Honor, this is
25 submitted. It's technically the information the advice

1 was wrong, but they had no real knowledge to know why it
2 was wrong. And their CPA should have known to never have
3 taken the depreciation.

4 It's contrary to the Internal Revenue Code and
5 the Revenue of Taxation Code because you have to
6 separately list the assets and claim class based upon the
7 different assets. They just didn't know it. That's why I
8 submitted that testimony.

9 BY MR. MCGINNIS:

10 Q Could you advise the Court of the condition of
11 the records when you ultimately got them back?

12 A Basically they were in disarray. Even when we
13 attempted to ask them to make copies and all that, they
14 said that we need to -- you know, first of all, they would
15 not even allow us to even go near them. I even said,
16 "What if I send the CPA, because he knows what documents
17 we will need."

18 And he said, "No. Because everything, you know,
19 we have been going through those boxes left and right, and
20 it's very hard to say this box is what you need. So you
21 need to -- if you need anything, you need to make copies
22 of everything."

23 And we will have to hire somebody from their end
24 to go and make copies, and that's why he estimated it
25 would cost between 6 to \$8,000 because they were boxes and

1 boxes and boxes. It was they took everything that was
2 paper.

3 Q Did you have the money for that?

4 A No. We have we had no money at all. Like I
5 said, they took even whatever cash we had in the house,
6 they took that. They took whatever cash we had in the
7 business. They -- they took everything. There was
8 nothing left.

9 Q Did they return any of the machines?

10 A No. No. They did not return anything. No
11 machines. There were a lot of other things that even part
12 of my jewelry was missing. But it's like your word
13 against theirs. Because initially they did not even make
14 an inventory, you know. We found out that they did not
15 make inventory of what they took.

16 And when I -- when I requested -- because it's
17 really a long story. And even the FBI got involved
18 because they interviewed us. And we found out because the
19 FBI asked me 'cause they came to -- actually, they came to
20 ask us to help them because they were investigating the
21 police department. And they asked me to ask them for my
22 gold because they saw the court order. And we made two
23 attempts to get my gold, and they refused.

24 So we find out that they never even took
25 inventory because when finally -- finally, like the judge

1 gave him a second warning to give me my gold, he told me
2 to bring a witness. And I said, "Why should I bring a
3 witness?"

4 He said, "So later on you don't go and say that
5 there's gold missing."

6 And I said, "You have a police department full of
7 police. They are my witnesses; right?" And besides I
8 said, "You know, you're going to give me a list of what
9 you're giving me, plus all I have to do is compare it to
10 the list of what you took." And once you provide those
11 two list, you know, my lawyer at the time, Roger Diamond,
12 we will request from the court the inventory list. Come
13 to find out they never had one.

14 Q The FBI asked you?

15 A Yeah, because the FBI they want -- and you know,
16 come to find out they never had one. And they got very
17 angry, and they ended up punishing me as he said by
18 arresting more people to put pressure on us. And I
19 still -- and I ended up not getting it until much later.

20 So, you know, everything -- everything was messed
21 up. I got jewelry boxes that were empty, which I know
22 they were full of jewelry, you know, gold. Everything --
23 everything was a mess. Everything was a mess. You
24 couldn't make head or tails. They took -- we had, you
25 know, like our birth certificates and what-have-you. I

1 found them in the middle of all paperwork. Everything was
2 like this.

3 Q Okay. Now, directing your attention to 2009.
4 You filed sales tax returns for the calendar years 2003 to
5 2007. What did you base those numbers on?

6 A From what I recall, I think Edgar at the time was
7 helping me with that. And because we had no records, and
8 he was interfacing with them and he felt like, you know,
9 there was a lot of pressure getting to get this thing
10 done. So we kind of estimated on what we -- what we knew,
11 like, at the time.

12 You know, what we had for 2000 -- between 2007
13 and 2009 something like that. Because at that time, you
14 know, they had the records. But then after that they took
15 everything. So he couldn't continue with any of his, you
16 know --

17 Q So did you have a reasonable basis for believing
18 that the numbers on the returns accurate when you did
19 them?

20 A Okay. I don't understand that question.

21 Q Did you believe that the numbers on the sales tax
22 returns for 2003 to 2007 were accurate?

23 A No. Like we paid more than we know we did.
24 Let's put it like that. We know we paid more, and
25 it's not a problem. You know, just pay it.

1 Q You mentioned an individual by the name of Edgar
2 Kahn. What was his role with you?

3 A He works in the office, and he was kind of, you
4 know, like my assistant helping me, you know, with certain
5 work and handling some of the employees and things like
6 that.

7 Q Were you -- did you participate in any of the
8 negotiations with the Taiwanese, Youa Jifh?

9 A Me personally, no.

10 Q What did you do in the course of preparing the
11 document --

12 A All I did -- all I did was when it comes to the
13 final agreement and they gonna send the merchandise, they
14 will tell me this is the final one. And then I will send
15 them the money, and then that's it.

16 Q So do you believe that's an accurate --

17 A Yeah. That's accurate. Exactly. Yes, exactly
18 what we bought over a period of two years. And then, you
19 know, we didn't buy anymore.

20 MR. MCGINNIS: That completes direct.

21 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

22 Ms. Bergin, do you have any questions for
23 Mrs. Mousa?

24 MS. BERGIN: No questions.

25 ADMINISTRATIVE LAW JUDGE DANG: No questions. I

1 turn to my panelist. Judge Geary, do you have any
2 questions?

3 ADMINISTRATIVE LAW JUDGE GEARY: No. Thank you.

4 ADMINISTRATIVE LAW JUDGE DANG: Judge Gast, any
5 questions?

6 ADMINISTRATIVE LAW JUDGE GAST: No questions.

7 ADMINISTRATIVE LAW JUDGE DANG: I have a few
8 questions for you, Mrs. Mousa. Were you ever able to
9 locate any of the finalized invoices that you scheduled
10 here on page of -- it's 130? You're saying these were the
11 finalized purchases?

12 THE WITNESS: Only what -- no. The whole thing
13 was -- I never saw it back. I never saw it back.

14 ADMINISTRATIVE LAW JUDGE DANG: Okay. Do you
15 have an explanation for why your CPA had chosen to
16 depreciate the proforma invoices which you -- had
17 certainly been voided and not the actual equipment
18 purchases that are listed on 130?

19 THE WITNESS: To be honest with you, Your Honor,
20 I -- he didn't even know about the invoices. He never saw
21 the invoices. He depreciated based on what he saw in the
22 warehouse, and it had nothing do with these specific
23 machines. The warehouse was full of kiddy rides, video
24 games, crane machines. It was -- he never saw those
25 invoices.

1 ADMINISTRATIVE LAW JUDGE DANG: Okay. Turn to
2 the CDTFA for a second. Were you able to point me to
3 where in the record that depreciation schedules that the
4 auditor had reviewed might be located?

5 MS. BERGIN: I'm sorry. It --

6 MR. MCGINNIS: I don't have it. I don't think
7 it's in the record, but if I can offer this -- I know you
8 don't want me to testify, but sometimes I ask accountants
9 for, "Where did you get this number," and they can't
10 explain it. They're plugging in numbers.

11 ADMINISTRATIVE LAW JUDGE DANG: From my
12 understanding of what's in the decision and
13 recommendation, my review is that the auditor had tied
14 actual -- listed out equipment to the purchase invoices
15 from the federal depreciation schedules. Is that not the
16 case?

17 MR. MCGINNIS: I don't think it's the case, and I
18 don't think the clients understand depreciation. I don't
19 think they have any conception of what was involved in
20 this. I know that Osama doesn't know what depreciation is
21 and what it's based on. And I don't think Carmen does
22 either.

23 I think it was an assumption built into the
24 decision and recommendation that somehow there was a plot,
25 and that they had conspired to take deprecation on phony

1 invoices.

2 MS. MOUSA: No. He never saw the invoices. I
3 know for a fact he didn't. Every year he goes into the
4 warehouse and sees what we have, like, what he calls idle.
5 They are machines that are not being used, which means
6 they are not generating income. So all I remember is he
7 used to say that anything that doesn't generate income you
8 can take -- you can take depreciation.

9 And to me it's like I'm listening, and I'm
10 accepting. I'm not asking anything because that's what
11 I'm paying him for. I know nothing about taxes. I have
12 been in this country over 40 years. I never once filed a
13 tax return because I don't know what it entails.

14 ADMINISTRATIVE LAW JUDGE DANG: To the best of
15 your recollection, do you recall what the amount he had
16 depreciated was?

17 MS. MOUSA: No. No. Because like I said, every
18 year he prepares, and I just basically -- what I look at
19 is do we owe anything, what we need to pay, and sign, and
20 that's it.

21 ADMINISTRATIVE LAW JUDGE DANG: Do you recall
22 that there was a detail schedule that was prepared listing
23 out the equipment to be depreciated?

24 MS. MOUSA: I don't remember.

25 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

1 MR. MOUSA: I don't know if that will help or
2 not, but what's happening is that big account we lost was
3 not even a year we bought it, but we lost the whole
4 account. So the whole machines we brought, it was -- I
5 mean, more than 100 machines.

6 At that time some accounts we buy it for each
7 machine, they will charge us like \$7,000 or at least
8 \$5,000 to \$10,000 there. So when we lost, we lost all
9 these like 10 -- sorry -- 100 or 120, 130 machines. It
10 all came back to the warehouse. I didn't know really
11 what's happening, but possible because it's a big loss for
12 us. I don't know. I don't know exactly. But --

13 MS. MOUSA: All I remember is that he looked, he
14 saw all these machines, and he said, "These need to be
15 depreciated because they're not generating income." And
16 that's the only thing that I understood.

17 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

18 MR. MCGINNIS: Can I ask a question, Your Honor?

19 ADMINISTRATIVE LAW JUDGE DANG: Yes. Please, go
20 ahead.

21 MR. MCGINNIS: Have you ever heard of a
22 depreciation method A-C-R-S-M-A-C-R-S or accelerated
23 recovery?

24 MS. MOUSA: No.

25 MR. MCGINNIS: Do you know what those are?

1 MS. MOUSA: No. Absolutely not.

2 MR. MCGINNIS: Okay.

3 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

4 Ms. Bergin.

5 MS. BERGIN: Yes. So the depreciation schedule
6 was referenced in a letter on page 112 that you have, and
7 they are supposed to be enclosed in a detailed report
8 attached, which I don't actually see here. This was a
9 letter sent to Mr. McGinnis, and so the detail report
10 would have been attached to this.

11 I'm trying to find it in my files, and I'm not
12 coming up with it at this moment. I know we also had some
13 notes from the auditor that showed -- I don't know how
14 detailed they were, but there were some notes from the
15 auditor that explained the depreciation schedule. We had
16 that.

17 I'm also trying to put my finger on that in the
18 record. I'm not sure exactly where it is. It should be
19 in the working records, but I will try to find it for you
20 before the end of this hearing.

21 ADMINISTRATIVE LAW JUDGE DANG: Okay.

22 MR. MCGINNIS: I can look through my files and
23 look for the depreciation schedule as referenced. I don't
24 remember, but I don't think it corresponded with the
25 dollar. They mixed and matched to get close to the

1 number.

2 ADMINISTRATIVE LAW JUDGE DANG: There wasn't any
3 detail assets --

4 MR. MCGINNIS: No. There --

5 ADMINISTRATIVE LAW JUDGE DANG: -- scheduled
6 to --

7 MR. MCGINNIS: -- was a schedule, but it doesn't
8 match.

9 ADMINISTRATIVE LAW JUDGE DANG: It doesn't match?

10 MR. MCGINNIS: I will look as long as he -- I can
11 do that by Friday and get them to both the Court and to
12 the State.

13 ADMINISTRATIVE LAW JUDGE DANG: Why don't we do
14 that. Let's hold the record open for 30 days following
15 this hearing at which point we'll allow CDTFA -- we'll
16 send a request for additional briefing for which to
17 provide us depreciation schedules.

18 MR. MCGINNIS: The depreciation schedule that was
19 claimed on the tax return?

20 MRS. MOUSA: Like from which year?

21 MR. MCGINNIS: I looked for it, and I couldn't
22 find it but I have a lot of files. I will look again.

23 ADMINISTRATIVE LAW JUDGE DANG: Mr. McGinnis,
24 you'll possibly allow --

25 MS. MOUSA: Was it for one year, or was it over a

1 period of time?

2 MR. MCGINNIS: I have a stack of files this high,
3 so I'll have to look through them.

4 ADMINISTRATIVE LAW JUDGE DANG: And you will be
5 permitted an opportunity to respond once they've been
6 submitted.

7 By way of general background, Ms. Bergin, is the
8 federal depreciation schedule -- is that usually the
9 trigger for an audit in this case regarding ex-tax
10 purchases or fixed assets?

11 MS. BERGIN: It's one of the ideas -- one of the
12 items you would examine during an audit issued. Look at
13 the income tax returns, and look for attachments with the
14 listing of depreciable assets. If you didn't have the
15 complete return, which you saw depreciation was -- had
16 been take -- they take depreciation claimed, and it
17 increased by year to indication of that -- they purchased
18 assets.

19 If depreciation went down, it's an indication
20 that perhaps they sold an asset. So you would do more
21 investigation; looking in a general ledger or looking for
22 asset folders. It just depends on the business.

23 ADMINISTRATIVE LAW JUDGE DANG: Thank you. I
24 have just one last follow-up question. Was the department
25 able to locate any of the documents to support the

1 schedule submitted by appellants on page 130?

2 MS. BERGIN: I think it's 129.

3 ADMINISTRATIVE LAW JUDGE DANG: I'm sorry 129.

4 MS. BERGIN: And yes, there are -- some of the
5 invoices that are listed here is valid transactions on
6 this schedule we have in our possession.

7 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

8 MR. MCGINNIS: Your Honor, I had two submissions.
9 The first one is what went into the record. The second
10 one was in -- they were in different order. If you hold
11 the record open, I will get you invoices that match what
12 we submitted on 128 and 129.

13 ADMINISTRATIVE LAW JUDGE DANG: Okay. And those
14 are not within the measure of tax, those items?

15 MS. BERGIN: They are.

16 ADMINISTRATIVE LAW JUDGE DANG: They are within
17 the measure of tax?

18 MS. BERGIN: Yes.

19 ADMINISTRATIVE LAW JUDGE DANG: These are
20 duplicates from the proforma invoices but in lesser
21 amount?

22 MS. BERGIN: Some.

23 MR. MCGINNIS: There are some. I think -- I
24 think --

25 ADMINISTRATIVE LAW JUDGE DANG: Some are

1 different and some are duplicates of it?

2 MR. MCGINNIS: Yes. The big ones are not --
3 never happened. That's what I think our point is. The
4 big ones that -- the 220,000, that never happened.

5 ADMINISTRATIVE LAW JUDGE DANG: Okay. You show
6 those as voided out on the submissions you --

7 MR. MCGINNIS: Right.

8 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.
9 Mr. McGinnis, you have 10 minutes to make your closing
10 presentation.

11

12

CLOSING STATEMENT

13 MR. MCGINNIS: The taxpayers in this case went
14 through what I consider a perfect storm of calamities and
15 other happenings which most taxpayers don't encounter.
16 They got bad advice. They got -- they prepared returns
17 that they didn't know were wrong. They didn't keep
18 records because their CPA never told them.

19 And they tried to conscientiously abide by the
20 laws with the federal government, Internal Revenue
21 Service, and the State of California. When they found
22 they were wrong, they attempted to rectify it. But their
23 records were taken in 2011, and they were kept for six
24 years. And they were trashed when they were returned to
25 them. All their computers were corrupted. They couldn't

1 be booted up.

2 They tried to buy these machines. And I think
3 they tried to testify truthfully to the Court to the best
4 of their ability. And the taxpayers here are not
5 sophisticated in the tax. Osama was born in Jordan, and
6 Carmen was born in Malta.

7 MR. MOUSA: Kuwait.

8 MR. MCGINNIS: Kuwait. And English is not their
9 first language. I'm not trying to advance that as a
10 reason. I agree that they -- but English is a second
11 language for them. And they did not have any tax or
12 accounting expertise. If anybody deserves a break, they
13 do.

14 I don't have backups of mine. I have copies of
15 all my backup, but I don't backup. I don't keep backups
16 of my files. I have them ready for audit. If somebody
17 wants to audit me, I'm ready to go. But if somebody took
18 them, I'd be dead in the water. And if they didn't return
19 them, I would be dead twice because I couldn't -- I
20 couldn't reconstruct them very easily.

21 They were in the same position. They were in a
22 position with no money. All their records were taken.
23 They tried to testify truthful that what they bought was
24 \$65,000. And to the extent there was a depreciation
25 claim, they don't know what it is.

1 And they couldn't have requested amnesty because
2 they had no money. They had no records, and they couldn't
3 get access to them. They existed on small amounts of
4 money they made during the years.

5 That completes my closing statement.

6 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

7 Ms. Bergin, you have 10 minutes for your closing
8 presentation.

9 MS. BERGIN: Thank you.

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CLOSING STATEMENT

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MS. BERGIN: As you've stated, at issue today of
the purchases that department contends was subject to use
tax, appellant's contention that it was given erroneous
advice by department staff, and the amnesty in this
penalty. I would like to address these issues in that
order.

Our evidence in this case consist of invoices
that appellant provided to the department totaling over
\$400,000 in purchases that appellant made from a company
in Taiwan. These invoices are in department's Exhibit A.
These are page 2 through 11. Some of these invoices are
labeled as proforma, some are not.

Appellant argues that anything labeled as a
proforma invoice was simply a proposal or a quote by the

1 vendor, and that it shouldn't be considered as a purchase
2 invoice. We disagree. The invoices show the buyer and
3 seller information, the item description, the quantity,
4 and the price. The invoices specify shipping terms and
5 dates. The invoices show bank account numbers, payment
6 terms, and deposit amounts that were paid.

7 And most importantly, appellant's own evidence
8 shows that it made payments to the vendor based on these
9 proforma invoices. For example, I would like to draw your
10 attention to our Exhibit A, pages 5 and 6. This is one of
11 the purchases that appellant agrees is valid, and agrees
12 that it owes tax on this purchase. It's reflected on that
13 page 129, the schedule appellant has provided.

14 As you can see, this proforma invoice is from
15 February 22, 2006, and it shows a purchase amount of
16 \$3,002.15. Now, if you go to Exhibit E, pages 136 and
17 137, you'll see the exact same invoice, but it has the
18 words, "Paid 32606," handwritten on the invoice on page
19 136.

20 This document was submitted by appellant to the
21 department back in 2016 as part of the exhibits for the
22 board hearing that was scheduled for the Board of
23 Equalization at the time. So appellant's notes on this
24 invoice show that it made a payment for the full amount
25 due, based on this proforma invoice.

1 Now, if you go to appellant's exhibit on page
2 129, you will see the schedule that appellant has prepared
3 listing what transactions the appellant agrees are valid.
4 This proforma invoice is listed as the second valid
5 transaction on that schedule. And you'll see it's dated
6 February 22, 2006, and it's for \$3,002.15. And the
7 related payment is listed near the bottom of this
8 schedule. And it's dated March 26, 2006, and it's for
9 \$3,002.15.

10 So clearly appellant considered this proforma
11 invoice to be a valid purchase invoice, because appellant
12 made a payment for the entire amount of the invoice and
13 included this proforma invoice what it considers a valid
14 transaction on the schedule that it provided to us.

15 Another example is Exhibit A, page 8, which is a
16 proforma invoice from April 11, 2006. It's for \$207.07.
17 Again, on appellant schedule on page 129, you'll see this
18 proforma invoice acknowledged as a valid purchase invoice
19 from which appellant made a payment to the vendor.

20 Another example is Exhibit 8, page 3.

21 ADMINISTRATIVE LAW JUDGE DANG: If could stop you
22 for just one second.

23 MS. BERGIN: Yes.

24 ADMINISTRATIVE LAW JUDGE DANG: Could you -- I'm
25 on page 129. I'm looking for the \$207.

1 MS. BERGIN: Let me find it. It might be 130.

2 MS. RENATI: Kim, it might be on 130.

3 MS. BERGIN: Let me go to the right page. I'm
4 sorry about that. It's 130.

5 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

6 MS. BERGIN: Sorry. Yes. 130.

7 ADMINISTRATIVE LAW JUDGE DANG: Yes. Thank you.
8 I see it now.

9 MS. BERGIN: Sorry about that.

10 So then another example I have is on page 3. I
11 think the version that I submitted to you in my exhibits
12 is probably more difficult to read. There's a cleaner
13 version of this on page 318. Sorry to have you shuffle
14 around. But I think if you turn to that, I think you can
15 see a better version.

16 So this was also included as an exhibit with
17 appellant's additional brief, which was signed
18 January 7, 2019. So this is a proforma invoice dated
19 September 17, 2005, and the invoice is for \$46,643. The
20 invoice shows the deposits of \$10,000 and \$4,643.
21 Appellant schedule on page 130 -- is that right -- shows
22 two payments made on September 19, 2005, one for \$10,000
23 and one for \$4,643.

24 On page 320, you'll see the exact same deposit
25 amounts that appellant wired to the vendor. And in the

1 memo section you'll see it states, quote, "Deposit
2 Proforma Invoice." And if you look back again at the
3 invoice on page 318, you'll see the handwritten note near
4 the top that states, "Ship Done October 2005." And you
5 can see the buyer's and seller's signatures.

6 So this proforma invoice shows that product for
7 \$46,643 was shipped to appellant in October 2005. So
8 appellant made a payment from this proforma invoice, and
9 the invoice notes that the items were shipped to
10 appellant.

11 What's interesting about this invoice is that in
12 briefing during this appeal, appellant also claims that
13 this proforma invoice was included on the customs report,
14 and that appellant has already paid tax on this invoice.
15 However, as our Exhibit B, page 13, shows, that's the
16 customs report. This invoice is not included on the
17 customs report. There's nothing on the customs report
18 with that date or that amount that matched the information
19 on this invoice.

20 And more importantly, if this invoice was simply
21 a proposal or quote and there was no purchase, why would
22 appellant ever claim it as a purchase with customs and
23 agree to pay tax on it. On the one hand appellant is
24 asking me to consider this invoice as a proposal and not a
25 purchase invoice. And on the other hand, appellant is

1 asking me to consider this invoice as a purchase that was
2 already claimed to customs and the tax was already paid on
3 it.

4 Asking that you consider this invoice as one that
5 was included on the customs report is totally inconsistent
6 with appellant's arguments that all proforma invoices were
7 simply proposals from the vendor.

8 Appellant also makes this argument on an invoice
9 in Exhibit A, page 2, which is dated November 22nd, 2004,
10 and it's for \$38,180. You'll see this is a proforma
11 invoice, and it has the words "Revised" in parenthesis
12 next to it. Appellant argues this proforma invoice was
13 included on the customs report. However, again, on the
14 customs report on page 13, you'll see that this invoice is
15 not included on the report. There's nothing on that
16 report with this statement or amount that match the
17 information on this invoice.

18 And again, if this invoice was just truly a
19 proposal and there was no purchase, why would appellant
20 ever claim it as a purchase with customs and agree that it
21 owed tax on it. That just doesn't make any sense.
22 Clearly, appellant has considered these proforma invoices
23 as valid purchase voices, and that's why it made purchases
24 to the vendor off these invoices.

25 There were no other purchase invoices that were

1 tied to these proforma voices. In fact, we were unable to
2 find even one transaction that included a proforma invoice
3 with a purchase invoice that relate to the proforma. If
4 the proforma invoices were truly just proposals, we would
5 expect to find a true, quote end quote, "true purchase
6 invoice," attached to at least one of the proforma
7 invoices to show that the quote or proposal ultimately
8 resulted in a purchase, and we were unable to find that in
9 the records that were provided to us.

10 So it's our position that there is no difference
11 between any of these invoices proforma or otherwise, that
12 they all reflect purchases that were made by appellant.
13 And again, these are invoices that were provided to us by
14 the appellant. They're their only records. We did not
15 obtain them from anyone else.

16 Now, as to appellant's contention that it was
17 given erroneous advice by the department staff, Revenue
18 and Taxation Code section 6596 provides that if the
19 department finds that a person's failure to pay tax due to
20 reasonable reliance on the written advice, the person may
21 be relieved of any sales or use tax that were imposed.

22 In this case, the appellant did not receive any
23 advice in writing from department staff. That's
24 undisputed. There's no provision in the law that allows
25 for relief based on oral advice given from department

1 staff. And finally with regards to the amnesty interest
2 penalty, the department does not object to the request
3 that was submitted to us yesterday and the signed copy
4 that we receive today.

5 I would just like to point out for the record
6 that Revenue and Taxation Code Section 7074, mandates that
7 the penalty be added because appellant failed to apply for
8 amnesty or pay the amnesty eligible tax and interest as
9 required by the amnesty program.

10 Revenue and Taxation Code Section 6592 does
11 provide that appellant may be relieved of the amnesty
12 penalties if appellant shows that failure to report an
13 amnesty understatement or apply for amnesty or timely pay
14 the amnesty eligible tax and interest was due to
15 reasonable cause and circumstances beyond appellant's
16 control, and occurred notwithstanding the exercise of
17 ordinary care, and in the absence willful neglect.

18 I just ask that the panel keep that in mind when
19 reviewing appellant's request for relief. Based on the
20 information and evidence we provided here today, we
21 request that this appeal be denied. Thank you.

22 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

23 MR. MCGINNIS: Can I make a comment?

24 ADMINISTRATIVE LAW JUDGE DANG: Yes.

25 MR. MCGINNIS: I think that they're misreading a

1 schedule on 130. There's a line in there called "Invalid
2 Amount," and those were prepared from QuickBooks of what
3 was actually paid. Carmen Mousa prepared that. There's
4 three columns.

5 MS. MOUSA: Your Honor, I give you an example.
6 The first one, the \$38,182 she referred to, it was -- it
7 was referenced as Magic Box. That was the initial or when
8 they tried to offer him to do business. Magic Box is
9 their machine that they were building, you know, in
10 general.

11 ADMINISTRATIVE LAW JUDGE DANG: I'm sorry. I'm
12 on page 130. Which line are you referring to?

13 MR. MCGINNIS: Here is 130.

14 ADMINISTRATIVE LAW JUDGE DANG: I'm sorry. 131.

15 MS. MOUSA: Okay. The first one that says --

16 ADMINISTRATIVE LAW JUDGE DANG: Magic Box?

17 MS. MOUSA: Magic Box, yes.

18 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

19 MS. MOUSA: That was in 2004 when initially they
20 were all, you know, getting him interested in buying their
21 machines. And their machines were called Magic Box.
22 That's when he started, you know, trying to develop the
23 crane that we wanted for California. And eventually they
24 sent another one for \$46,643. Okay but from that only
25 \$4,000 happened because they only send the parts.

1 When they send proforma invoice, it was going to
2 be what they're planning to send us and the cost of the
3 parts. We -- he put a hold on the cranes because they
4 were not to our satisfaction and -- but they did send us
5 the parts, which we pay them for, the \$4,643. And again,
6 I don't have all the invoices because the whole file is
7 missing. So but it doesn't mean that \$46,000 and \$38,000
8 were actually sent to us.

9 Same thing like on February, the \$2,947, that was
10 a proforma invoice, but we added something to it. So
11 eventually they -- it was \$3,215. They were two
12 shipments. The parts were ordered twice. That's why we
13 made two payments. And yeah, they did not -- one of them
14 they did not have that. But because I know we paid it, I
15 listed it.

16 And same thing with the 2005 with when we paid,
17 you know, for locks. So the \$220 that was initially when
18 they were finalizing the -- what they call it? They were
19 finalizing the machine. Okay. He told him we will make
20 an agreement that if you approve this, we will agree for
21 two -- you know, I don't know how many machines it was --
22 but \$220,000 worth of machines, and it would be like we
23 have fixed price.

24 He said fine, but it never materialized. Okay.
25 Only part of it was materialized because they were sending

1 it in shipments. And after they send the first shipment
2 we said, you know, this is not going to work, because we
3 had put them out in the field. They were failing. They
4 were not meeting certain standards.

5 MR. MOUSA: We had other machines in the
6 warehouse.

7 MRS. MOUSA: Yeah. He did not, you know, but
8 that was why they had all these, you know, proforma
9 invoices. Every time something was discussed and they
10 agree whether they were going to add something or take
11 away something, they create -- they create a proforma
12 invoice, and they send me a copy. They Fax me a copy.
13 They give me copy saying this is the agreement you have,
14 but it doesn't mean they were materialized.

15 ADMINISTRATIVE LAW JUDGE DANG: Is there still a
16 dispute as to the double tax issue with the items on the
17 customs list? It's my understanding that those were not
18 at issue anymore.

19 MR. MCGINNIS: It's not at issue anymore.

20 ADMINISTRATIVE LAW JUDGE DANG: Okay. Okay.
21 With the respect to the transactions that have just been
22 identified by CDTFA -- I'm sorry. I was trying to follow
23 you. There's a large number of transactions that you were
24 jumping back and forth between the schedules. Can you
25 just give me a very simple concise explanation of why

1 these amounts don't mean what CDTFA is saying they mean,
2 because you're using amounts from banks.

3 I believe the checks showing that payment was
4 actually made for these proforma invoices, and that you
5 actually recorded these as valid finalized sales. And
6 you're telling me they were not -- these were not, even
7 though they had been listed here as finalized, they were
8 not finalized.

9 MS. MOUSA: Okay. For example, going to this on
10 page 130. The \$38,000, that was them giving us a proposal
11 what their machines will cost. That one never
12 materialized because we never bought that machine.

13 ADMINISTRATIVE LAW JUDGE DANG: Okay. So
14 Ms. Bergin, is the \$38,000, was that one of the
15 transactions you had mentioned were finalized and included
16 in the measure here?

17 MS. BERGIN: No. That's not one of the ones I
18 mentioned, that it was originally the argument had been
19 that it was part of the customs report that they'd had to
20 pay tax on it. They should come to pay tax on it, and
21 they've already done it. So if that was the argument, one
22 would assume that invoice was legitimate because there was
23 tax paid on that invoice even though it wasn't on the
24 customs report.

25 MR. MCGINNIS: I saw that, and I put that

1 argument in there because I said we, you know, couldn't
2 get answer from CPA. What did the -- they did -- that
3 return was done by their CPA. He couldn't -- we couldn't
4 get -- what did he report? So made the argument, and I
5 probably should not have done that. It's just that this
6 is what reasonable explanation, but I don't have evidence
7 to show that's what it was. It was just -- it was an
8 argument I put in I actually regret doing at this point.

9 ADMINISTRATIVE LAW JUDGE DANG: Okay. So this
10 transaction isn't in the measure?

11 MS. BERGIN: It is in the measure.

12 ADMINISTRATIVE LAW JUDGE DANG: It is in the
13 measure.

14 MS. BERGIN: Yeah, it is.

15 ADMINISTRATIVE LAW JUDGE DANG: Okay.

16 MRS. MOUSA: Are you talking about excise tax?

17 MR. MCGINNIS: You probably -- there was a tax
18 return file. There was -- there was an excise tax return
19 filed.

20 MRS. MOUSA: Yeah. But --

21 ADMINISTRATIVE LAW JUDGE DANG: They were
22 asserting this was in the customs. They had purchased it
23 because it's in the customs.

24 MS. BERGIN: Correct.

25 ADMINISTRATIVE LAW JUDGE DANG: But it was not,

1 in fact, in the customs?

2 MS. BERGIN: Correct.

3 ADMINISTRATIVE LAW JUDGE DANG: Okay.

4 MR. MOUSA: It could have been -- there's one
5 machine only came as prototype to America besides the
6 shipments. There's one --

7 MRS. MOUSA: I don't believe --

8 ADMINISTRATIVE LAW JUDGE DANG: Mr. McGinnis,
9 you're saying that you didn't have the customs list at the
10 time you, and so you were just asserting --

11 MR. MCGINNIS: Basically.

12 ADMINISTRATIVE LAW JUDGE DANG: But you didn't
13 know, and now that you've seen it --

14 MR. MCGINNIS: At the time I didn't know.

15 ADMINISTRATIVE LAW JUDGE DANG: -- withdrawing
16 that argument?

17 MR. MCGINNIS: I do that with tax court all the
18 time.

19 ADMINISTRATIVE LAW JUDGE DANG: Okay. Yeah.

20 MR. MCGINNIS: I throw something back at the
21 government to -- in certain types of cases. But
22 Mrs. Mousa will testify -- I think testified that that
23 those -- her analysis was done by getting QuickBooks to
24 show what they purchased -- what they actually paid. She
25 didn't get backups.

1 ADMINISTRATIVE LAW JUDGE DANG: Regarding the
2 transactions that CDTFA is asserting appeared to have been
3 paid, do you have an explanation for those?

4 MRS. MOUSA: I have a breakdown of how --
5 initially in 2004 we send them \$10,000. That's a deposit
6 to start working on the prototype machine. Because when
7 they send us that we said no. You know, your Magic Box is
8 not cut it in California. So we send them \$10,000 so they
9 can start with the prototype. And then, like, again we
10 send them another \$10,000 in 2005, almost a year later.
11 Okay. Because it took time going back and forth, and back
12 and forth.

13 And then, you know, like also in September we
14 send another \$4,643. When he was there in Taiwan at that
15 point in time, he paid them \$2,000 cash. I listed here
16 that it was cash money that he paid. And all these others
17 is money that went out. So all I know is that they have a
18 lot of -- you know, maybe my mistake was every time they
19 send a proforma invoice, I kept it on file.

20 And the reason I did is because, you know, I'm
21 always looking and comparing to see what they agree that
22 was the change, but it doesn't mean that's exactly what
23 happened. I don't know how else I can explain it but --
24 but they did. It did not.

25 MR. MOUSA: Your Honor, they claim that we had

1 more than that one container. Okay. I have no problem,
2 but where are they? I mean, we received one container
3 with the parts and the machines. We did not receive
4 anymore. I mean, you know, we didn't have it.

5 I mean, our machine -- our -- the only things we
6 have in the warehouse is the American machines we were
7 supplied from here. Okay. Locally we lost that
8 locations. We put it. And when we got the first
9 container, we try all of it. We try some of them, and
10 they were failure, big failure. They were not doing good.
11 It went down.

12 So I strongly reason to not get anymore. Yes, we
13 were planning to buy more, but it never happened. I mean,
14 they are government. They can go to the port, and they
15 can checkup in the file and they can find out. Why did
16 they not do that? Where they get this information from?
17 I don't even know if they got it from that.

18 One thing I know that when we had the raid, the
19 police were giving papers to all the -- I mean, we got hit
20 by the labor people, the tax, everybody in every agency we
21 been hit with, even Homeland Security. So if they got --
22 received papers from him, let him go back and if he hiding
23 some papers to give it to them.

24 But what they're saying doesn't make any sense.
25 I mean, they have papers. Okay. Fair enough. Where are

1 the machines? Machines is big. I mean, you cannot
2 miss it. You can hide papers. Where you can hide the
3 machines? We don't have it.

4 ADMINISTRATIVE LAW JUDGE DANG: Mr. Mousa, when
5 you made the payments pursuant to the proforma invoices
6 that were deposits as you are asserting, they were
7 ultimately -- I'm assuming they were refunded to you, if
8 you're saying the transactions were never finalized. Do
9 you have any documentation of that?

10 MRS. MOUSA: But they were -- okay. They -- he
11 never send the \$220,000. There was -- how can I explain
12 it?

13 MR. MOUSA: I mean, they can go to the bank and
14 get the papers.

15 MRS. MOUSA: Hold on a second. Let me explain it
16 to answer this. The deposits that he made is towards, you
17 know, like for example, the container was 40-something
18 thousand. The \$10,000, part of it was applied against the
19 prototype, whatever. Then they wanted another 10 so they
20 can start working on -- you know. And then finally we
21 send them balance, which was over \$20,000. Okay. So we
22 pay them for what they send.

23 ADMINISTRATIVE LAW JUDGE DANG: Okay.

24 MRS. MOUSA: Okay. Now, the actual invoice
25 usually comes when, you know, when the merchandise is

1 received. But I don't have all of those because I don't
2 have the file anymore.

3 ADMINISTRATIVE LAW JUDGE DANG: Even in this
4 case, certain of these transactions, the amounts that you
5 gave matched the proforma invoices --

6 MRS. MOUSA: No. No.

7 ADMINISTRATIVE LAW JUDGE DANG: -- but you are
8 claiming no longer --

9 MRS. MOUSA: No. Some. Some.

10 ADMINISTRATIVE LAW JUDGE DANG: Were some. Yes.

11 MRS. MOUSA: When it came to like the parts, yeah
12 they did because we order the specific parts. They send
13 me the proforma invoice, and in fact, yes, that one was
14 exactly what we paid. But when it came to the big
15 amounts, which were the 30 that pertain to the cranes and
16 such, no.

17 ADMINISTRATIVE LAW JUDGE DANG: Okay.

18 MRS. MOUSA: Because things kept changing on
19 them. So every time they change, you know, they either
20 increase. If you add something, they increase the price.
21 And some of them you can see. Like some of them they are
22 charging \$1,100. Some -- then we'll accept it they reduce
23 it to \$1,000. So every time things change, they issue a
24 new proforma invoice.

25 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

1 MRS. MOUSA: That's the best way I can explain.

2 ADMINISTRATIVE LAW JUDGE DANG: I understand what
3 you are saying. Thank you.

4 MRS. MOUSA: Thank you.

5 ADMINISTRATIVE LAW JUDGE GEARY: May I ask a
6 question?

7 ADMINISTRATIVE LAW JUDGE DANG: Yes.

8 ADMINISTRATIVE LAW JUDGE GEARY: For the
9 department, the customs report schedule, which is on my
10 page 13. It may not be the same page that other people
11 are using, but I'm sure you can get to that report. Do
12 you actually have a copy of the customs report --

13 MS. BERGIN: Yes.

14 ADMINISTRATIVE LAW JUDGE GEARY: -- in the file?
15 Is it in our file?

16 MS. BERGIN: It is.

17 ADMINISTRATIVE LAW JUDGE GEARY: What page?

18 MS. BERGIN: You can see it on page 107. That's
19 what we used to make the schedule that I referenced on
20 page 13 because it was just cleaner.

21 ADMINISTRATIVE LAW JUDGE GEARY: Just to make
22 sure, because I'm not sure my numbers agree with yours.
23 Does it have entry detail?

24 MS. BERGIN: Yes.

25 ADMINISTRATIVE LAW JUDGE GEARY: Okay.

1 MS. BERGIN: That's the --

2 ADMINISTRATIVE LAW JUDGE GEARY: So that's the
3 right one?

4 MS. BERGIN: Yes.

5 ADMINISTRATIVE LAW JUDGE GEARY: And is it -- do
6 these entries reflect a single container or more than one
7 container, if you know?

8 MS. WILSON: You can tell by the dates of entry.

9 ADMINISTRATIVE LAW JUDGE GEARY: Well, then so --

10 MS. BERGIN: There are several --

11 ADMINISTRATIVE LAW JUDGE GEARY: -- dates of entry
12 would be different?

13 MS. BERGIN: Right. So you can see, like, let's
14 say the relevant entries are the third line 6/8/2005. You
15 could see that was one date. And then one shipment, if
16 you go a little further down, you see 11/23/2005. You see
17 there's two of those.

18 ADMINISTRATIVE LAW JUDGE GEARY: Okay.

19 MS. BERGIN: And then 11/30 right below, there's
20 two of those. So that would have been two.

21 MS. WILSON: Right. And the other distinguishing
22 factor is that the country of export is TW for Taiwan.

23 MS. BERGIN: Right. So there's only five TW,
24 country of origin. Those are the five transactions that
25 we pulled for this.

1 ADMINISTRATIVE LAW JUDGE GEARY: Okay. But am I
2 correct that the measure for this disputed item is
3 something in excess of the numbers reflected in those five
4 entries?

5 MS. BERGIN: Right. So these numbers actually
6 aren't included in what we're assessing here.

7 ADMINISTRATIVE LAW JUDGE GEARY: Okay.

8 MS. BERGIN: These we're assuming were already
9 paid as use tax.

10 ADMINISTRATIVE LAW JUDGE GEARY: Okay. And so
11 the factual basis for the inclusion of the equipment that
12 is part of the measure are the proforma invoices?

13 MS. BERGIN: That's -- it's all the invoices.
14 Some were proforma, and some were not.

15 ADMINISTRATIVE LAW JUDGE GEARY: Okay. Thank
16 you.

17 ADMINISTRATIVE LAW JUDGE DANG: I have another
18 question for CDTFA regarding the amnesty interest penalty.
19 Can you please clarify your position on this? Are you
20 taking no position on that --

21 MS. BERGIN: I -- we're --

22 ADMINISTRATIVE LAW JUDGE DANG: -- with respect
23 to reasonable cause?

24 MS. BERGIN: Sure. I think you have to decide
25 reasonable cause.

1 ADMINISTRATIVE LAW JUDGE DANG: Okay.

2 MS. BERGIN: It's not my job. I can't do that.
3 I just wanted -- I just wanted to state for the record
4 exactly what the law required that is it is mandated, but
5 that is there is reasonable cause, that you can delete the
6 penalty. So I just -- that's the only thing and the --
7 sorry -- the penalty interest.

8 ADMINISTRATIVE LAW JUDGE DANG: And the position
9 taken is --

10 MS. BERGIN: We don't object to this. It's fine.

11 ADMINISTRATIVE LAW JUDGE DANG: Okay. And the
12 position taken in decision and recommendation, that's
13 fine?

14 MS. BERGIN: Yes. I think --

15 MR. MCGINNIS: It was my understanding that --

16 MS. BERGIN: The decision and recommendation just
17 said that there hadn't been a form signed. And when there
18 was a form signed, that the department would address it.
19 And I don't think that was actually ever addressed because
20 the form had never been signed and presented to us, to the
21 appeals bureau. So they would have made that decision if
22 they had the form, I believe.

23 ADMINISTRATIVE LAW JUDGE DANG: Okay. I'd like
24 to just take a quick look at the decision and
25 recommendation.

1 MS. BERGIN: Sure. I think if you look at
2 page 2. I have it in our exhibits.

3 ADMINISTRATIVE LAW JUDGE GEARY: While you're
4 looking for that, Ms. Bergin, it sounds to me as if the
5 department has not acted because it did not have a
6 declaration and then now has a declaration. What is --
7 there really is no action by the department with respect
8 to amnesty interest penalty. So I'm not sure what -- how
9 that issue is even before us. If there hasn't been a
10 denial, how can we either sustain or overrule an action by
11 the department?

12 MS. BERGIN: Well, I believe it was originally
13 denied.

14 ADMINISTRATIVE LAW JUDGE GEARY: Oh, it was.
15 Okay.

16 MS. BERGIN: It was denied, but there was a
17 statement that it was denied because there was never a
18 form signed.

19 ADMINISTRATIVE LAW JUDGE GEARY: Okay.

20 MS. BERGIN: And so I think the appeals
21 conference holder's position, even if there was a form
22 signed, that they would be happy to look at it.

23 ADMINISTRATIVE LAW JUDGE GEARY: So does the DNR
24 indicate that it was denied?

25 ADMINISTRATIVE LAW JUDGE DANG: If I could --

1 MS. BERGIN: That's what I'm trying -- let me
2 find that for you, and I'll tell you.

3 ADMINISTRATIVE LAW JUDGE DANG: If I could draw
4 your attention to page 720. I believe it's -- it's a very
5 small screen. I believe it's in the middle paragraph
6 beginning with, "We find that."

7 MS. BERGIN: Okay. Sorry. I don't have that in
8 front of me. Okay. Oh, okay. So they did find that
9 appellant had sufficient reason for not filing. So again,
10 like I said, we don't object to it. It's -- it's your
11 finding to make. But I think it would have been addressed
12 in a supplemental, which wasn't because it hadn't been
13 provided in time. So I guess it had to be officially
14 addressed in your decision is what I'm saying.

15 ADMINISTRATIVE LAW JUDGE DANG: Okay.

16 MS. BERGIN: We're not opposed to deleting that
17 interest.

18 ADMINISTRATIVE LAW JUDGE DANG: Okay.
19 Judge Gast, do you have any questions for either parties?

20 ADMINISTRATIVE LAW JUDGE GAST: No. No further
21 questions.

22 ADMINISTRATIVE LAW JUDGE DANG: Judge Geary?

23 ADMINISTRATIVE LAW JUDGE GEARY: No. Thank you.

24 ADMINISTRATIVE LAW JUDGE DANG: Thank you,
25 everyone, for your presentations today. As we mentioned

1 earlier, we're just going to hold the record open for our
2 additional briefing requests. We'll direct that towards
3 CDTFA first, and then you'll have, obviously, a chance to
4 respond to that. Thank you so much.

5 Again, this concludes the hearing and thank you.

6 (Proceedings adjourned at 2:32 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 16th day of May, 2019.

ERNALYN M. ALONZO
HEARING REPORTER