

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

JEFF ANGEJA, HEARING JUDGE

In the Matter of the Appeal of: )  
MOHAMMAD LAVAF, ) OTA No. 18043000  
Appellant. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, March 19, 2019

Reported by:

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TRANSCRIPT OF PROCEEDINGS, taken at  
PBC - Wells Fargo Center, 355 South Grand Avenue,  
Suite 2450, Los Angeles, California,  
commencing at 1:00 p.m. on Tuesday,  
March 19, 2019, heard before JEFF ANGEJA,  
Hearing Judge, reported by Lisa V. Berryhill,  
CSR No. 7926, a Certified Shorthand Reporter  
in and for the State of California.

1 APPEARANCES :

2 PANEL LEAD : JEFF ANGEJA

3 PANEL MEMBERS : LINDA CHENG  
4 ALBERTO ROSAS

5 For the APPELLANT : MOHAMMAD LAVAF  
6 (In Pro Per)

7 For the RESPONDENT : STATE OF CALIFORNIA  
8 DEPARTMENT OF TAX AND FEE  
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1 Los Angeles, California; Tuesday, March 19, 2019

2 1:00 p.m.

3  
4  
5 JUDGE ANGEJA: We're now on the record for the  
6 Office of Tax Appeals formal hearing for the appeal of  
7 Mohammad Lavaf, Case No. 18043000. It is March 19,  
8 1:00 -- not 18. My name is Jeff Angeja and I'm the lead  
9 administrative law judge. My co-panelists today are Linda  
10 Cheng and Alberto Rosas.

11 After today's hearing we'll waive the evidence  
12 and issue a written decision within 100 days of the close  
13 of the evidence. And Mr. Lavaf, you've introduced  
14 yourself for the record but for the stenographer's  
15 benefit, can I get you to state your full name again.

16 MR. LAVAF: My name is Mohammad Lavaf. They  
17 know me as Mike.

18 JUDGE ANGEJA: And for CDTFA -- I'll call you  
19 guys the Department -- can I get you guys to introduce  
20 yourselves.

21 MR. LAMBERT: Scott Lambert.

22 MS. RENATI: Lisa Renati.

23 MS. BERGIN: Pamela Bergin.

24 JUDGE ANGEJA: As we agreed at that pre-hearing  
25 conference in this matter, this appeal involves two

1 issues, which are first whether Appellant has established  
2 reductions are warranted to the measure of unreported  
3 taxable sales established in the audit; and second,  
4 whether Appellant should be relieved of the tax based on  
5 allegedly erroneous advice received from the Department.

6 And during our pre-hearing conference Appellant  
7 indicated that he has 8 exhibits -- CDTFA said that it had  
8 13 -- all of which have been previously provided by the  
9 parties to each other and to the Office of Tax Appeals.  
10 We've marked Appellant's Exhibits 1 through 8 and CDTFA's  
11 Exhibits A through M, and we've electronically provided  
12 them to those parties. At the pre-hearing conference  
13 neither party had an objection to those exhibits. I  
14 assume that's still the case?

15 MR. LAMBERT: Correct.

16 JUDGE ANGEJA: Hearing no objections, I admit  
17 those exhibits into evidence.

18 (Appellant's Exhibits 1 through 8 and  
19 Respondent's A through M received into  
20 evidence.)

21 JUDGE ANGEJA: And at our pre-hearing  
22 conference -- it's based on our pre-hearing conference.  
23 My understanding is we've got two witnesses today.  
24 Mr. Lavaf will testify on his own behalf and Ms. Renati  
25 for the Department. So not at this moment but in a few

1 minutes, I'll swear each party in before they make their  
2 testimony so that your testimony will be under oath.

3 And then we've covered it at the pre-hearing  
4 conference but I quickly want to explain how this hearing  
5 will proceed. We had agreed Mr. Lavaf's testimony may not  
6 exceed 20 minutes and the Department would then be allowed  
7 to ask questions, if they have any, as would the panel.  
8 And then the Department will present its testimony, also  
9 not to exceed 20 minutes. Co-panelists can ask questions  
10 and Mr. Lavaf, you can ask questions of them as well. And  
11 then we'll allow you 5 minutes to make a rebuttal or to  
12 respond to anything you raise if they wish to.

13 With that, if neither party has any procedural  
14 questions, I will swear you in and then we'll get started.

15 MR. LAVAF: I have a question.

16 JUDGE ANGEJA: Sure.

17 MR. LAVAF: Because I've never met these  
18 people -- I met the member of B.O.E. I don't know these  
19 people. But -- and I'm not an attorney.

20 JUDGE ANGEJA: That's okay.

21 MR. LAVAF: My case is based on a false  
22 accusation. They put a lot of stuff -- and these are the  
23 papers that the B.O.E. gave me and they have it probably.  
24 And I read line by line -- most of the lines is false  
25 accusation. So with that case, I'm a little bit nervous

1 because of the three judges. I just wanted to say that  
2 because of the false accusation -- and I searched it  
3 online -- we throw the case out because of the false  
4 accusation that they have. If it's okay with you guys, I  
5 would go into it more.

6 JUDGE ANGEJA: Well, it sounds like you want to  
7 try to make your case; so let me let your clock begin in a  
8 second. I'll swear you in as a witness and then you'll  
9 tell us your side of the story.

10 MR. LAVAF: I understand. I thought maybe this  
11 one is before I proceed because I have some papers that I  
12 mailed -- I emailed it to Ms. Lopez --

13 JUDGE ANGEJA: Sure.

14 MR. LAVAF: -- and they have it. I asked the  
15 question online how I could throw the case out because of  
16 the false accusation. I could go into my case line by  
17 line and tell them that they lied but this is very  
18 important for me, that in their file B.O.E. had false  
19 accusation of what I have -- lots of them.

20 So the main thing is they said I had beer or  
21 wine. I never sell any beer or wine in that shop.

22 JUDGE ANGEJA: Let me stop you because even if I  
23 we were to agree with you, I can't throw this case out  
24 today.

25 MR. LAVAF: That's fine.



1 JUDGE ANGEJA: We'll consider the evidence and  
2 the arguments from both sides and then we write a written  
3 decision that gets mailed to both parties in less than 100  
4 days from today's date. So we want to hear your story.  
5 With that, let me swear you in.

6 Would you please stand and raise your right  
7 hand.

8 Do you swear or affirm to tell the truth?

9 MR. LAVAF: Absolutely.

10 JUDGE ANGEJA: So be seated and you can begin  
11 when you're ready. Tell us your side of the story.

12  
13 OPENING STATEMENT

14 MR. LAVAF: I hope I have the time. I have a  
15 little shop in Santa Monica, 1715 Pico Boulevard. It's a  
16 little shop. It's a falafel house, not the Greek  
17 restaurant, not the Mediterranean. It is a falafel shop,  
18 600 to 650 square foot. My main food was a falafel and I  
19 had a menu that they have but I had a menu. Most of my  
20 customers, they knew me as falafel because it was the name  
21 of the falafel house -- Falafel Family Deals.

22 I had cold food and hot food. I had one little  
23 grill, one little machine for the shawarma and one that --  
24 oil maker for the falafels and hummus. Small place. It  
25 was a counter size, about 600 square footage, owned and

1 controlled by me only. I bought it in '84 for \$80,000.

2 In their report, when I'm reading it -- I'm just  
3 going to get into it a little bit. Because I sold it for  
4 125, they estimated my sale or tax or whatever they're  
5 trying to get from me -- from the sale that -- I bought it  
6 for \$80,000 in '84. I sold it on August 31, '15. That  
7 was my last day. I sold it for 125. I was there by  
8 myself. I made the food; I cleaned the place; I closed  
9 the place; I opened the place. I did everything. So it's  
10 my fault if I did something.

11 But based on that -- just wanted to say the  
12 location of my place is between 17 and 18 on Pico  
13 Boulevard, which is the worst area of Santa Monica. It's  
14 a gang member. So if they have some witness that is going  
15 to come later on and tell me something about the Greek  
16 restaurant, for example, in Westwood, that doesn't make  
17 any sense because my location isn't usual. It was a  
18 little place.

19 It was in front of the Santa Monica City College  
20 but the college had four semesters. Because of the bad  
21 budget in L.A., they didn't have a winter session. They  
22 shut down the summer classes. So they didn't have any  
23 classes in the summertime. Maybe they open like maybe  
24 9:00 to 2:00 or 2:30. But they didn't have any class in  
25 the winter session. So I only had one or two semesters.

1 I'm not going to argue how much I sold but  
2 everything that the B.O.E. told me to do, I did it  
3 exactly. I have two important files; one is the File E,  
4 which is like nine pages -- they have it and I sent it to  
5 the judges -- and I sent it to the judges. And also, the  
6 letter that I got from Mr. Satel (phonetic) -- which is  
7 very important, this letter -- on September 19, 2012 --  
8 because I was doing -- the B.O.E. never had the e-file  
9 before 2012.

10 We go and do the taxes every four -- it was four  
11 quarters. Every three months I had to do the taxes and  
12 send it to the B.O.E. and send them a check. Then they  
13 change it to the e-filing. On September 19, 2012, I got a  
14 letter from the B.O.E. that I had a state Board of  
15 Equalization that said I have to give them 2,145.24, by  
16 Mr. Michael Satel. I called them. I had a phone number  
17 in there. I called them. He had an assistant named  
18 Rebecca. I had few conversations with her. She told me  
19 that I have to -- because of this amount -- we don't know  
20 what kind of food do you have. So she told me to itemize  
21 the cold food and the hot food. So what I did, I send the  
22 letter on 9-26-12 with my handwriting, which is not good  
23 but I did it.

24 JUDGE ANGEJA: Let me quickly interrupt.

25 MR. LAVAF: Yes.

1 JUDGE ANGEJA: That is, for those of you  
2 following, that's Exhibit 6, page 204, as I understand it,  
3 will be marked. That's your handwritten letter, dated --

4 MR. LAVAF: That's a handwritten letter that I  
5 send with all the information that I have to the state  
6 Board of Equalization.

7 JUDGE ANGEJA: Go ahead.

8 MR. LAVAF: Dear Mr. Satel -- I can't pronounce  
9 it. And I wrote it down. For the response of that  
10 letter, what should I do? So Mr. Satel introduced me to  
11 Rebecca and when I was talking to her, she told me to  
12 itemize it. So I did itemize it and I put the drinks and  
13 the cold food and the hot food, wrote it down on the page,  
14 and after, when I had a conversation with Rebecca,  
15 everything was okay.

16 They took that 2000 -- whatever amount it was --  
17 2,145.24 -- they made it to zero. They never -- B.O.E.  
18 never sent me a letter after that. They say that what --  
19 they should send the letter but I did most of my stuff by  
20 writing a letter and talked to the members on the B.O.E.  
21 At one of the meetings that I had after, on 2016, when I  
22 talked to the B.O.E., they were telling me about the  
23 letter that they didn't have. They didn't have this  
24 letter. I gave them the letter because they couldn't find  
25 it; the B.O.E. could not find this letter. I gave them

1 all the information that I have.

2 JUDGE ANGEJA: The one you have in your right  
3 hand -- what's that date --

4 MR. LAVAF: That's the letter -- Exhibit F, from  
5 Mr. Satel, from B.O.E. They could not find this letter.

6 JUDGE ANGEJA: Dated September 19?

7 MR. LAVAF: September 19, 2004.

8 JUDGE ANGEJA: Exhibit 6, page 1.

9 MR. LAVAF: They could not find this letter.  
10 They couldn't find the response from me. I gave them  
11 these things. So whatever they made, they made it out of  
12 these letters. And in 2016 it was the middle of the --  
13 talking to some people in Board of Equalization, I find  
14 this letter and I called Mr. Satel myself; I told him --  
15 because he was telling me, he promised me that everything  
16 is okay and because the B.O.E. didn't send me a letter I  
17 thought everything was okay.

18 So I separated my cold food; I separated my hot  
19 food. I put a tax on the hot food. If I had, let's say,  
20 a falafel plate, I had a small plate, I put the hot food  
21 on the side, my plate was all cold -- I didn't charge a  
22 customer a penny for the tax. I only charge a customer if  
23 there was hot food in there. And I had a piece of paper,  
24 you could see I just write down if it was falafel  
25 sandwich, it was a cold pita bread. I cut the top, I put

1 salad and lettuce and tomato, and it comes with three  
2 falafel bowls. With falafel bowls, I make it, I put it in  
3 the little plate. I put it on the side.

4 The taxes on that is -- at the time, if it was  
5 12 or 13 or 14, it would be 10 percent or 9 percent or  
6 whatever it was -- I put 50 cents each; so if there's  
7 three falafel bowls, I put the tax on it, it's 15 cents  
8 tax, for the three falafel bowl. So I had a piece of  
9 paper by my cash register. I wasn't busy; so I just write  
10 it on a piece of paper. That's my tax on the hot food.

11 For me to recognize -- because every three  
12 months I had to do this and then I figured out for the  
13 whole year for the IRS. B.O.E. asked me to do the five  
14 every -- four quarters, every three months. So I had this  
15 until 2015. I tax on the hot food; my hot food and cold  
16 food were totally separated and I had the price. A bunch  
17 of my stuff was cold food. In the report that I have, the  
18 "E," which is nine pages, that's the big important -- this  
19 is dirt, the B.O.E.

20 JUDGE ANGEJA: That's the D & R. Go ahead.

21 MR. LAVAF: That's nine pages. And they write  
22 down -- they made it bigger. Every line that I could go  
23 into it, they say that it was a restaurant. They said  
24 that I sold beer and wine. They said that I had a table  
25 with a tablecloth. They said that I had dishes.

1           That's what -- from the beginning I thought they  
2 should throw the case because it's all false accusation.  
3 If there was something that I did, they should have sent  
4 me a letter. B.O.E. should have sent me a letter. From  
5 2012, I never received a letter from them -- not a bill,  
6 not a letter, nothing. Every time -- every year, every  
7 three months I did my tax based on the cold food and hot  
8 food that I gave them and they cashed it.

9           On one time I had a paper and I -- I sent it  
10 email because the B.O.E. had mishandled the taxpayer money  
11 and at the time I didn't know what it was but they sent a  
12 bill and they said I have to pay them \$703 because I  
13 didn't pay them -- one of the quarter. I didn't know  
14 what's going on but I called them; they told me "You  
15 didn't pay that." So I went to the bank -- the B.O.E.  
16 cashed that check two days before even they send me that  
17 letter.

18           I called the B.O.E. It took me a month or so  
19 because they had to research it. Finally they told me on  
20 the phone "Okay; we're going to make it a zero," and they  
21 send me a letter; they grant it to zero. And they even  
22 charged me for the penalty, for \$70.35, that I -- I  
23 mention it to them but then -- but then the letter that  
24 I -- the email that I sent to them was very important  
25 because then it come to me that because the B.O.E. was

1 mishandling the taxpayer money, I'm just -- I'm not saying  
2 anything.

3 I don't know what's going on because they were  
4 following this, the Court was, but in the L.A. Times was  
5 that they mishandled the money and then they charge the  
6 taxpayer, they send them the bill. So if someone is  
7 sending the money, they would cash it, but because I  
8 caught them, they checked it off their month and say  
9 everything is okay. So they made it to zero. They waived  
10 the penalty. They never sent me a letter back on it.  
11 They never sent me a letter that I did something wrong.

12 Now, if you don't mind, I could go to the "E"  
13 and line by line I'd tell you why they're lying.

14 JUDGE ANGEJA: Well, let me -- if I could get  
15 you to focus on -- as we explained in the pre-hearing  
16 conference, they've got the burden of establishing their  
17 determination is reasonable and based on the best  
18 available evidence. Your burden is to establish a more  
19 accurate determination. If you think going line by line  
20 through the D & R would help you, I don't want to stop  
21 you. What we need to hear is your evidence related to the  
22 amount of taxes due or that's not due, if you think  
23 they've assessed too much.

24 MR. LAVAF: They assess too much. I'm just  
25 saying that from the beginning I've said my location, it



1 was in the gang member, 17 and 18 on Pico, worst area of  
2 Santa Monica. I wasn't in Wilshire Boulevard; I wasn't on  
3 Santa Monica. I was in 17 and 18, the African American  
4 gang, the Latino gang. And in their report that you have,  
5 at one point they say it's 80/80 road. At one point they  
6 have the 40/60 road. At one point they have 30/70 road.

7 I don't know which one is wrong or which one  
8 is correct. My point is I don't have any papers to prove  
9 it because when I saw the place -- I was lucky I had a  
10 stroke in 2014; I was very happy to get rid this place --  
11 I throw everything out. I find some of the papers but  
12 they're blaming -- they're estimating this on different  
13 locations.

14 If they're right, they could have come to the  
15 Hungry Pocket when I was operating, or even when I sold  
16 that place, they could have come to that place and ordered  
17 the food and see what kind of food we had and if it was  
18 crowded or not, if we have beer or we have wine. They  
19 could check it. They didn't check it.

20 They went to some other place. They put the  
21 Greek restaurant in there. They compare me with Wendy's  
22 and Subway and they false accusation of me selling beer  
23 and wine. I never sold the beer and wine. I never had a  
24 license. The B.O.E. could have checked the place if I had  
25 license to sell beer and wine. And that's on page 8, line

1 11 to 23, on the "E" that they had the accusation.

2 At one point Ms. Karen Hit, for the appeal  
3 center, which is one on October 19, 2017 -- she copied  
4 everything that is on 5G, which is few months -- is  
5 June 25, 2018. The date doesn't make any sense. One is  
6 June 25, 2018. Her report is October 19, 2017. The  
7 B.O.E. had a lot of problems. I have no evidence to  
8 say -- I'm just saying that I'm okay.

9 If they want to tell me actual -- maybe I made a  
10 mistake on the carry card. I separated the tips for the  
11 B.O.E. for the IRS, maybe I didn't separate it. They told  
12 me -- not then but they told me that I paid more to the  
13 IRS than the B.O.E. I did all of this myself. I'm ready  
14 to pay for actual, actual payment if there's a mistake on  
15 that.

16 I paid my taxes. If it's actual -- but don't  
17 compare me to the other locations. Don't compare me to  
18 the Subway or any other places that you want. I told them  
19 exactly what I did. I told them exactly what I did. I  
20 charge them the taxes. They even said it in the report.  
21 They never audited me. It is my person -- I always paid  
22 it on time. I always pay my taxes. I don't know what  
23 else I can do.

24 If they charge me -- they said it's like 30-,  
25 \$40,000. I can't afford it. I sold the place. Now I'm a

1 Lyft driver to pay my expense. I don't know what they  
2 want from me. So I have no difference. You know, it's  
3 just that's what it is.

4 JUDGE ANGEJA: Okay.

5 MR. LAVAF: A bunch of false accusations.

6 JUDGE ANGEJA: Okay. Does that conclude your  
7 main presentation?

8 MR. LAVAF: I'm happy to answer --

9 JUDGE ANGEJA: Sure.

10 MR. LAVAF: -- it but I'm just saying, if you'd  
11 allow me, I could go into 5E and tell them line by line  
12 and which line they lied and I can could tell you, but the  
13 problem I had -- I think it was you when we had the phone  
14 conversation -- you asked me to send everything that you  
15 have so I can read it and understand it.

16 So my understanding -- I'm not an attorney. I  
17 don't know the details. But I email it to Mrs. Lopez.

18 JUDGE ANGEJA: Yes.

19 MR. LAVAF: And from my understanding, they mail  
20 all my disks, all my papers they send to them. So they  
21 have everything I have.

22 JUDGE ANGEJA: Sure.

23 MR. LAVAF: I never add anything to it. The  
24 only thing I have extra is I find in the L.A. Times  
25 yesterday that that goes for the false accusation -- and I

1 know you're not making the rules but the two important  
2 case that I remember -- this is one yesterday -- that one  
3 person was accused them of killing some people and it says  
4 in the paper that the city forced him, forced him to say  
5 something different and now the attorney for this  
6 gentleman is trying to find out and says that he was  
7 somewhere else. That's one case.

8 The other case that everybody knows is the OJ  
9 Simpson, that -- if you'll allow me, I could say it. Just  
10 one second. OJ Simpson case -- everybody know about it --  
11 the gloves didn't fit. The blood, they put it in  
12 different cars. They did so many different things to make  
13 this case up and then the jurors, they read it, they find  
14 out, even though everybody thought that maybe this man is  
15 guilty but they didn't charge him as a guilty person.

16 I'm just saying that maybe I made the mistake  
17 here but do the exact. Please do the -- be fair and do  
18 the actual amount that I owed B.O.E. I'll give it to  
19 them. Don't estimate, don't compare me with the other  
20 places.

21 JUDGE ANGEJA: All right. So let me turn it  
22 over to the Department because we'd like to hear how they  
23 came up with the numbers they came up with.

24 Ms. Renati, would you please stand and take your  
25 oath?

1 Do you solemnly swear to tell the truth?

2 MS. RENATI: I do.

3 JUDGE ANGEJA: At the pre-hearing conference,  
4 you said it was going to be by narrative; so I'll leave it  
5 to you guys to make the case.

6 MS. RENATI: So my name is Lisa Renati. My  
7 current job title is supervising tax auditor 3. I've been  
8 employed by B.O.E. for over 31 years. Half that time I  
9 was an auditor, performing sales and use tax audits,  
10 including audits of small mom and pop shops such as the  
11 Appellant's. I was a supervising tax auditor with a team  
12 of auditors for about seven years and for over five years  
13 I was the principal tax auditor of a department with eight  
14 supervisors and 90 plus auditors.

15 In that time I've reviewed thousands of audits.  
16 So bringing that experience, I know that when they're --  
17 an audit is performed and there's no records provided, we  
18 must use audit procedures that are approved and one of  
19 those is the cash to credit method, including estimating a  
20 percentage of credit card sales.

21 In this case the percentage I believe is  
22 reasonable. The percentage I believe was 80 percent. And  
23 in -- looking back, I went and looked at -- prepared  
24 material, did different audits, found that of similar  
25 types of businesses in similar areas, the percentages

1 varied from 60 percent to 80 percent, the majority of  
2 about 70 percent. So use of 80 --

3 JUDGE ANGEJA: You guys, I don't mean to  
4 interrupt you but our records show it was 70 percent.

5 MR. LAMBERT: Well, 80 percent was the taxable  
6 ratio and 70 percent was the credit card ratio. So  
7 there's two separate ratios then we're discussing.

8 MS. RENATI: So in looking at other audits, I  
9 found that using the credit card ratio of 70 percent was  
10 reasonable and of a reasonable estimate of how many people  
11 use credit cards versus cash. Also, in addition, in  
12 preparing for the hearing, I was able to pull 1099-K  
13 information and found that for 2014, the amount of credit  
14 cards exceeded the amount of purported sales for 2014, in  
15 just total sales.

16 So in using that information, I believe the  
17 amounts are reasonable.

18 MR. LAMBERT: I don't know if you want to ask  
19 questions. I have a presentation.

20 JUDGE ANGEJA: This is still all part of your  
21 case.

22 MR. LAMBERT: All right. So initially, when we  
23 started the audit, the appellant provided two years of  
24 income tax returns. It was 2012 and 2013. Apparently  
25 2012 and 2013 were the income tax returns that were

1 provided. There were no other records that were provided.

2 We had contacted the Appellant just a couple  
3 months after he had sold the business. Based on a  
4 comparison of the figures on the income tax returns to  
5 what was reported on the sales and new tax returns, there  
6 were differences. So that is -- and as Exhibit B, page  
7 12, is our analysis of the income tax returns as you can  
8 see in column D, it's the year 2012 and column E, it's the  
9 year 2013. So there were differences there.

10 The next thing that we went to go look at was  
11 the audit menu, the menu that was available during the  
12 audit, and that's Exhibit E, page 10. So if you go ahead  
13 and take a look at that menu, what you'll see on the  
14 left-hand side, it will have falafel, fish, gyro, kabobs,  
15 different types of kabobs. The majority of the items on  
16 the left-hand side of this menu are subject to tax.

17 So the fact that you could have cold food that  
18 is sold with hot food when it's sold for a single price,  
19 the entire combination plate would be subject to tax.  
20 So what appeared here is that the vast majority of the  
21 items -- the menu items would be subject to tax because  
22 they are hot food or either carbonated beverages. In  
23 addition, if any food was eaten on the premises, all of  
24 that food would be subject to tax too. So even if you got  
25 a non-taxable drink, on its face, non-carbonated drink, if

1 you drank it there, it would be subject to tax and that's  
2 under our regulation 1602.

3 So where we went next is we took a look at the  
4 amounts that were reported on the sales and use tax  
5 return, which is Exhibit B, page 8. And what you'll see  
6 there is 71 percent of the sales that were reported were  
7 claimed as non-taxable transactions. Only 28 -- almost 29  
8 percent were reported as taxable. When you do the  
9 calculation out, if you came down to a per day taxable  
10 amount, it comes out to about \$100 a day that's been  
11 reported as taxable sales.

12 Taxpayer was open somewhere between 10 and 11  
13 hours a day. It didn't appear reasonable that you would  
14 only have \$100 of taxable sales for the day. So the fact  
15 that there were no records that were provided, there was  
16 no bank statements or sales journal, no cash register  
17 tapes -- unfortunately, the way we needed or had to audit  
18 this is using estimates. And as Ms. Renati had said, we  
19 use estimates that we would consider for a similar type of  
20 business. You can call it, the business, whatever name  
21 that you want, whatever type of restaurant you want, but  
22 ultimately it comes down to the menu and what's on the  
23 menu and that's what's important here is the menu items  
24 and the taxable items.

25 Now, it appears that the Appellant may have



1 considered items taxable and non-taxable that wasn't  
2 correct. In other words, if you're selling a falafel  
3 plate and it's for one price, the entire price would be  
4 subject to tax. So the fact that you might have reported  
5 15 cents in tax when in fact you should have reported tax  
6 on the entire amount and that might explain some of the  
7 problem that we have here in that this is a falafel house;  
8 falafels for the most part are subject to tax.

9 So we did a calculation, which is on Exhibit B,  
10 page 9. And what we did is we considered the amounts that  
11 were reported on total sales on the return -- on the sales  
12 and use tax returns to just be credit card amounts. And  
13 we then estimated that 70 percent of your sales are by  
14 credit card, 30 percent is cash. So we divided that  
15 amount by 70 percent, get your total sales and then we  
16 considered 80 percent of that to be subject to tax. So  
17 that's how we did the calculation.

18 Now, during the appeals conference, the  
19 conference holder asked us to take a look at the credit  
20 card receipts and that's on form -- federal form 1099-K  
21 and so we obtain that information, used those same  
22 parameters, essentially. There was some adjustments there  
23 for tips and whatnot, but we did the calculation and based  
24 on the 1099 information, the taxpayer would have owed more  
25 money than the method that we used. So ultimately what we

1 decided was what we had come up with was a reasonable  
2 amount, even though it was lower than what the 1099  
3 information had shown and we went with our original  
4 calculation.

5           So in regards to the letter that was sent to the  
6 Appellant in 2012 -- where that letter came from was our  
7 return analysis section. So when a taxpayer files a  
8 return, we have people that go through it and see, you  
9 know, do the numbers -- do they add up properly, the  
10 deductions? Does it make sense, what's being reported?

11           So this business, the Appellant's business, was  
12 coded as a restaurant and it appeared that a 70 percent  
13 deduction for non-taxable food was a high deduction. So a  
14 letter was sent out, asking the Appellant to provide  
15 information as to what type items that he sells that would  
16 be non-taxable.

17           So that's where you see his response, which he  
18 referred to his Exhibit 6, page 2, where -- 2 of 4, where  
19 he replied to that and what you'll see is you'll see  
20 non-taxable items. Nowhere on there does it say that I'm  
21 taxing falafel -- just the falafel part of it and on a  
22 combination plate, but not the rest of it. So if you just  
23 take a look at the letter and you see the explanation is  
24 like why do you have 70 percent non-taxable sales?  
25 Because I sell -- a large percentage of my food is cold

1 food, to go.

2           Given that explanation and the fact that this  
3 was not an audit -- it was just an inquiry -- the fact  
4 that the appellant responded back and the way he did was  
5 sufficient for them -- for the return analysis section to  
6 say it appears reasonable what you're claiming as  
7 non-taxable food.

8           The second part of it I would get into is our  
9 regulation 1705, which is relief from liability, and in  
10 regards to -- to actually receive relief from not owing  
11 the tax, you would have to receive a written response from  
12 what was then the Board of Equalization -- or the  
13 Department, in regards to a letter specifically asking  
14 which items were subject to tax.

15           That was not done in this case. There was not a  
16 letter from the Appellant asking for a -- an opinion from  
17 us. And there was not in fact an opinion given other than  
18 we removed the liability that we had initially established  
19 for the Appellant based on the return than was filed.

20           So even if you go under the letter of regulation  
21 1705, this doesn't qualify for it. And I guess what I  
22 would say is, you know, when someone would tell you that,  
23 in fact, I sell these non-taxable items, they were not in  
24 a position -- they were not under audit -- they weren't in  
25 a position to verify what was saying was true or not. It

1 was taken at face value, what was told was, and it  
2 appeared that they were non-taxable items, cold food to  
3 go, and that's why that was accepted.

4 In regards to the 80/80 rule -- just discussing  
5 that for a minute -- under the 80/80 rule, if 80 percent  
6 of the items that you sell are food and 80 percent of  
7 those are taxable, all your sales can be subject to tax.  
8 And in this particular case, the Department allowed 20  
9 percent of the items to be non-taxable food, with no  
10 evidence that in fact that was the case.

11 So if you had a situation where you fell under  
12 the 80/80 rule, you could still take a deduction for cold  
13 food but you'd have to provide the information to show  
14 that in fact the non-taxable cold food was made and  
15 you'd be allowed a deduction there. So the Department  
16 allowed what we consider to be a reasonable conservative  
17 20 percent for non-taxable foods in this particular case.

18 So based on that, that concludes my  
19 presentation.

20 JUDGE ANGEJA: All right. Do you have questions  
21 of the Department?

22 MR. LAVAF: Yes.

23 MR. LAVAF: This letter that Mr. Satel sent  
24 me -- it doesn't indicate that -- whatever this gentleman  
25 was talking about. My understanding was to itemize the

1 item cold food and non-food, I talked to the assistant of  
2 the person that sent me the letter -- I didn't know his  
3 title. It says "Board of Equalization." So I obeyed  
4 whatever this gentleman and the person under him told me.

5 Nobody from the Board of Equalization came to me  
6 at that time in the restaurant and says because you have  
7 this menu, you got to charge this combination plate, the  
8 whole thing, as a tax. Nobody came to me, nobody sent me  
9 a letter. I called Mr. Satel, I talked to Rebecca -- who  
10 was assistant to this person -- told me that as long as  
11 you itemize the cold food and hot food, you're okay.

12 As I said, on 3-5-16 I called him back and he  
13 didn't recognize me. I had to FAX this letter, the  
14 response that I have, to Mr. Satel, send it back to him,  
15 and I have the form and they have it -- it's M -- which  
16 has the FAX on the top and the letter on the bottom -- and  
17 then I called them back.

18 I called them back and said "Now, do you  
19 remember when we had this conversation in 2012 that you  
20 send me the letter?" This is 2016, four years after that.  
21 He didn't know. So I sent it back to him another time. I  
22 talk to him. At that time Ms. Rebecca was gone. So I  
23 couldn't find the lady.

24 This person told me on the phone -- most of the  
25 conversation he's talking about the books that he has, all

1 the systems, the written laws that they have, but when I  
2 talked to him, he told me as long as you separate the  
3 food -- the hot food and the cold food -- you're okay. I  
4 explained to him what I do. I charge -- he's right. I  
5 have a falafel plate but I never put the falafel bowls on  
6 the falafel plate. I didn't know that I have to charge  
7 the customer taxes on the whole falafel plate.

8           The falafel plate has three falafel bowls. The  
9 basis on that falafel plate has lettuce and tomato,  
10 hummus, eggplant and tabouli and a piece of tomato and a  
11 cold pita bread on the side. They told me that "You  
12 should not charge taxes on the cold food." So I didn't  
13 charge it. The three falafel bowls I sold on the side. I  
14 never put it on top.

15           It's amazing he's telling about this menu. When  
16 you open a place, a shop, you have to have a menu. This  
17 is not my main menu. This is a menu, yes. I did this.  
18 But even on the left side, he's talking about I have a  
19 tuna sandwich. What part of tuna sandwich is taxable?  
20 The tuna is cold. The pita is cold, the lettuce -- they  
21 don't know anything about the restaurant or the falafel.  
22 The only thing is compare me to the Greek restaurant, tell  
23 me that I have beer or wine and make it meaty so everybody  
24 understands, they make it bigger than what it is now.

25           I told him exactly what I did. I told

1 Mr. Satel. I went and based on the letter that I got from  
2 this gentleman from B.O.E., I did exactly what he was  
3 telling me and the assistant named Rebecca. I don't know  
4 these guys. I had a menu on that little place that I  
5 have. I had a little menu on the wall. I had salads.  
6 Most of my food was cold. I had salad.

7 I go to Smart & Final, I go to Restaurant Depot,  
8 I go to Woodlands Market and I buy my produce, which is  
9 bagged. The only thing I made in that place was falafel.  
10 I buy the falafel mix somewhere else, pay the taxes, put  
11 it in there, cook it, put it on the side, give it to my  
12 customer. The credit card, whatever they have, if they  
13 have the actual credit report and I made a mistake, I pay  
14 for it.

15 As I'm saying again, don't estimate. Don't  
16 compare me with other places. I was in a gang zone. It  
17 was at 17 and 18. Everyone knows about the place.

18 JUDGE ANGEJA: And you haven't asked a question,  
19 which is fine. But you've effectively given a rebuttal.

20 MR. LAVAF: Well, I do because when he said left  
21 side is all taxable -- it's not taxable. I ask him a  
22 question -- it's a tuna sandwich. What kind of tuna  
23 sandwich is taxable?

24 MR. LAMBERT: If you had the pita bread and it  
25 was toasted --

1           MR. LAVAF: It's not toasted. It's cold. I get  
2 the bag. I never heat the pita bread.

3           JUDGE ANGEJA: You guys, this isn't supposed to  
4 be back and forth --

5           MR. LAMBERT: I'm sorry.

6           MR. LAVAF: Not my fault.

7           JUDGE ANGEJA: It's okay. I don't want to have  
8 an argument between you guys. We'll have a look at that  
9 menu. We've got it in evidence. We've got it in the  
10 records. So --

11           MR. LAVAF: You have the menu. And this part of  
12 the menu -- I never had fish in there. The menu is in  
13 there. Every time they asked me about fish, I didn't have  
14 the fish. It's a falafel place. They come for the  
15 falafel. And this business was so bad, the owner that  
16 bought the place, they change it to the hamburger place.

17           I have picture that I sent to you guys. I have  
18 the picture of the restaurant. It's not a big place.  
19 It's a little 600 square foot with -- they say in the file  
20 that I have 20 people sitting. I had two tables and two  
21 chairs, each side, total of ten people. I never fill up  
22 that place.

23           JUDGE ANGEJA: Panelists, do you have any  
24 questions?

25           JUDGE CHENG: The Department based its estimates



1 on the credit card receipts, the 1099-Ks, and they  
2 estimated 70 percent was credit card sales. So if you  
3 don't believe that's reasonable and you don't have any  
4 record to prove your case, what would you think would be  
5 a reasonable estimate based on just the credit card  
6 receipts?

7 MR. LAVAF: Ma'am, I don't know. Whatever they  
8 have, the actual report of the tax, if I made a mistake, I  
9 pay the extra. I reported everything that I got from the  
10 credit card, I report to the B.O.E. And I reported to the  
11 IRS. If they have that actual one -- if I made a mistake,  
12 I pay for it. I never said that I don't pay for it.

13 The only thing I'm not agreeing with is the  
14 estimation of that. I don't want them to compare me with  
15 other locations. They could have gone after me. They  
16 could have gone to that place, to 1715 Pico, and ordered  
17 the plates and see how they're serving it. If it's 80  
18 percent, if it's 90 percent, whatever the actual price is  
19 on that thing, I pay for it. If I made a mistake, it's  
20 okay. I swear to God and I tell the truth.

21 I don't know these guys. I never met them. I  
22 met different people in the Board of Equalization.  
23 Everything I knew I told them had. They bring in the  
24 book. They tell me -- if it's 70 percent -- if it's  
25 correctly 70 percent and I made a mistake, I pay for it.

1 JUDGE CHENG: Thank you.

2 JUDGE ANGEJA: Quick question. The business was  
3 closed before the audit started?

4 MS. BERGIN: That's correct.

5 MR. LAVAF: May I add another thing?

6 JUDGE ANGEJA: Sure. Go ahead.

7 MR. LAVAF: On the report they say that on July  
8 2012 to December of 2012, they estimated because -- they  
9 said they couldn't find the record of the credit cards.  
10 They didn't have the record of the credit cards and they  
11 didn't have the amount of the cash that I had because  
12 they never asked me that but, Your Honor, on July of 2012  
13 to December of 2012, I close the place. The place -- I  
14 had to change the hood, I had to repaint the wall. I had  
15 to -- I was sick. I was by myself. I just didn't open  
16 it. So that's why they didn't have the account.

17 What they did was they went and estimated. They  
18 estimated that six months the amount of the cash and the  
19 credit card machines. So as I'm just going back and  
20 repeating myself -- I'm so sorry. But if it's actual --  
21 actual rate that they got from whatever they find out, I  
22 paid for it if I made a mistake.

23 JUDGE ANGEJA: Questions, Mr. Rosas?

24 JUDGE ROSAS: Yes. Thank you, Mr. Angeja.

25 Mr. Lavaf, I know you were talking about

1 comparison and you were talking about that you feel your  
2 business is being unfairly compared to I believe you said  
3 Subway and you mentioned another --

4 MR. LAVAF: Wendy's and -- yes.

5 JUDGE ROSAS: So my question is actually to the  
6 Department -- when discussing the comparison and the range  
7 that was reasonable between 60 and 80 percent, what other  
8 types of businesses are we talking about here?

9 MR. LAMBERT: Well, we thought for this type of  
10 place, you could have a range for -- are you talking about  
11 credit card percentage? Is that --

12 MS. BERGIN: He's asking what type of business.

13 MR. LAMBERT: Oh, what type of business?

14 JUDGE ROSAS: Correct. I'm hoping that by  
15 talking about the range, you can address Mr. Lavaf's  
16 question if his business was unfairly compared to some  
17 franchise businesses in the area.

18 MS. RENATI: I was specifically looking at  
19 restaurants that were small mom and pops, quick dining  
20 that sold falafel, gyro, kabobs, similar items to this  
21 menu.

22 MR. LAVAF: Where?

23 MS. RENATI: Throughout the state, anyone that  
24 had been audited --

25 MR. LAVAF: What's the location?

1 JUDGE CHENG: We can't give information about  
2 individual taxpayers --

3 MR. LAVAF: Well, see, that's what my question  
4 is, Your Honor, because they go comparing it -- if you go  
5 to the falafel place in Westwood, it's different than the  
6 falafel place I have on Pico Boulevard. It's totally  
7 different. That's why I'm asking and I think it's fair --

8 JUDGE ANGEJA: Two things -- direct questions to  
9 us --

10 MR. LAVAF: I'm sorry. If you ask them the  
11 location, so I know, I could tell you if they go to  
12 Westwood, there is a falafel place in Westwood.

13 JUDGE ANGEJA: And the constraint they've got is  
14 they're not allowed to tell information on taxpayers any  
15 more than they can tell someone on the street --

16 MR. LAVAF: They can say which location.

17 JUDGE ANGEJA: But you can keep it anonymous and  
18 list similarity and the nature -- in other words, you're  
19 not comparing it to -- I know this isn't even relevant --  
20 to a Home Depot or to a sit-down restaurant that's four  
21 star, five star, high end.

22 MS. RENATI: Just credit card percentage, how  
23 many people are using credit cards at these type of  
24 restaurants. And it's based on the amount, how much each  
25 sale is, the dollar value and what they're selling. And I

1 found from all the way down to 50 percent cash, 50 percent  
2 credit, up to, you know, I found one at 80. But most of  
3 them were right in that 70 to 75 range. So 70 percent is  
4 reasonable, especially since it is located in an area  
5 where more people are going to college, where you use more  
6 cash than credit.

7 JUDGE ROSAS: So just to follow up on  
8 Ms. Renati, a sample, if you will -- for lack of a better  
9 term -- where you focused on small mom and pop shops  
10 located near Santa Monica College?

11 MS. RENATI: I can't say that they were right  
12 near -- they're looking for similar food items; so I had  
13 to expand further than just near Santa Monica City  
14 College. And also I had to look for people that had been  
15 audited. We don't audit every single business. So I had  
16 to open up the pool.

17 JUDGE ROSAS: And in terms of opening up the  
18 pool, did you look outside the city of Santa Monica?

19 MS. RENATI: Yes.

20 JUDGE ROSAS: No more questions.

21 JUDGE ANGEJA: I have one quick question.

22 Ms. Renati said you looked at the 1099 numbers  
23 for 2014 and that was -- the actual 1099s were less  
24 than -- and my notes didn't say the rest of it. And my  
25 question is -- I only know that my records -- let's say

1 the evidence is 2012 and '13. So it was new to me; my  
2 ears perked up at '14 -- do you have specifics and do you  
3 have any documentation?

4 MS. RENATI: The information was available to  
5 look at. I don't know if we turned it in but it was  
6 available at this time. It wasn't available during the  
7 audit. We can get that later on through our agreements.

8 Did you want the amounts?

9 JUDGE ANGEJA: Let me stop you there. I just  
10 wanted to make sure I wasn't missing something in what  
11 I've got. I hadn't seen that; so I wanted to clarify  
12 that.

13 But I also know that it goes to the reasons you  
14 questioned what was reported and it's not what the  
15 assessment was based on. So I don't know that I need the  
16 rest of the answer to the question. So I'll stop.

17 Other questions?

18 Mr. Lavaf, you look like you've got a question.

19 MR. LAVAF: I'm sorry. Based on the  
20 conversation that you had with them about if they check  
21 the other places. Of course the lady went and checked  
22 maybe online with other places but when they had the File  
23 E on the page 8, on line 11, they said that I sold beer  
24 and wine. So absolutely they go to the places that they  
25 have credit cards and they have beer and wine. They never

1 checked the falafel place in the area that has only  
2 falafel.

3 JUDGE ANGEJA: So I know we're getting out of  
4 time. I want to make sure we're looking at the right  
5 exhibit for that. That's D & R --

6 MR. LAVAF: Exhibit is nine pages, page 8, line  
7 11, and then I have line 23. That says that I had a table  
8 cloth, I had glasses, I had waiters and waitresses.

9 JUDGE ANGEJA: Give me a second.

10 JUDGE CHENG: It's Exhibit 5.

11 MR. LAVAF: Page 8, line 11.

12 JUDGE ANGEJA: So we can definitely take that  
13 into account as well.

14 MR. LAVAF: That's -- from the beginning, Your  
15 Honor, that's the false accusation because they could have  
16 checked it -- the lady went and checked it online. She  
17 could have gone to the Hungry Pocket after I sold the  
18 place, if she wants to compare it. There was a different  
19 owner. She could have gone to the hungry pocket and  
20 ordered or see the place and then from that location she  
21 could have come here and tell us and tell you what she  
22 did.

23 JUDGE ANGEJA: Okay.

24 MR. LAVAF: But she never put a step in that  
25 Hungry Pocket, if you ask her. I don't know if any of

1     them even went there.

2             JUDGE ANGEJA:   They explained that the business  
3     was already closed by the time they --

4             MR. LAVAF:    No.   It was open, Your Honor.   I  
5     sold it on August 31 but the business was open --

6             JUDGE ANGEJA:   The audit -- okay.

7             MR. LAVAF:    Same food as I said.   They could  
8     have gone there but because the business was so bad and on  
9     the window he changed the falafel to now it says  
10    "Hamburger."

11            JUDGE ANGEJA:   I understand.

12            MR. LAVAF:    You have all the pictures, all the  
13    size of the place.   That's how big this place was.

14            JUDGE ANGEJA:   Okay.   So my co-panelist has one  
15    more question.

16            JUDGE ROSAS:   I do.   This is to the Department.

17            I'm hoping you can address Mr. Lavaf's concern.  
18    He mentioned that there are a few errors in the decision.  
19    If you can just focus on the statement and decision that  
20    talks about business selling beer and wine.   We have  
21    testimony that it did not sell beer and wine.   Could you  
22    address that please.

23            MR. LAMBERT:   Sure.   It does say that in the  
24    D & R that it does sell beer and wine.   The auditors that  
25    were auditing knew that he did not sell beer and wine.   In



1 fact, if you look at the reported discussion -- and I  
2 don't have it marked in here but it is marked --

3 MS. BERGIN: It's Department's Exhibit H.

4 MR. LAMBERT: If you look at that, what it will  
5 say is that he did not -- and this is kind of in a  
6 different context but it proves the point because they  
7 were trying to do an analysis of the sale of the business  
8 to support the figures that we came up with, and basically  
9 the rule that they went by was generally, if you sell a  
10 business, it's about half of what your annual sales are  
11 and what they explain in there is that he did not have a  
12 beer and liquor license and so there's nothing in the  
13 audit that says he sells beer and wine.

14 It was a mistake by the appeals conference  
15 holder that said that he did and that is inaccurate. But  
16 that was not taken into consideration in coming up with  
17 the percentages that we did.

18 JUDGE ROSAS: I know Mr. Lavaf had other  
19 concerns regarding statements made in the decision. Other  
20 than the statement about the beer and wine, were there any  
21 other mistakes that were made?

22 MR. LAMBERT: Well, it depends -- mistakes --  
23 I'll explain further as far as the business. We described  
24 it as a Greek or a Mediterranean type business and he says  
25 "No; it's a Middle Eastern type business." I think it's a

1 matter of semantics. We based our information based on  
2 the menu because that's what we had to go on and we  
3 described it in the way that we did and so I believe it's  
4 more a matter of semantics as to what you would call  
5 something.

6 JUDGE ANGEJA: I think we've covered  
7 everybody's -- without repeating -- I'll give you one more  
8 minute.

9 MR. LAVAF: I hate to repeat but the way he's  
10 describing it, if you place -- you ask the right question,  
11 if any paper that they give to me and gave it to you that  
12 it says that I don't sell beer and wine, I accept it.  
13 This is the main file that I have. Not just that.  
14 There's nine pages. Every line is false accusation. It's  
15 not the only one.

16 They're telling me that I sell beer and wine.  
17 They tell me that I have a tablecloth. They telling me  
18 that I have glasses. It says I have waiters and  
19 waitresses. It's all wrong. It's unbelievable. All  
20 false accusation. So that's the continuation of whatever  
21 Your Honor was asking. That's what I'm saying. I don't  
22 have any other thing to add but that's -- it's their file.  
23 I didn't add anything.

24 JUDGE ANGEJA: We've got that evidence in the  
25 record; so we will weigh that and give it the appropriate

1 consideration.

2 Not hearing anything new at this point, I will  
3 close the record and conclude the hearing. I'd like to  
4 thank each party for coming in today and as I said  
5 earlier, following this hearing my co-panelists and I will  
6 discuss the evidence and the argument and issue a written  
7 opinion within 100 days and with that, this hearing is  
8 closed. Thank you all for coming.

9 (Proceedings concluded at 1:57 p.m.)

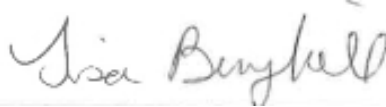
1 STATE OF CALIFORNIA )  
2 ) ss.  
3 COUNTY OF LOS ANGELES )

4 I, Lisa V. Berryhill, C.S.R. No. 7926, in and for the  
5 State of California, do hereby certify:

6 That the foregoing 43-page hearing was taken down by  
7 me in shorthand at the time and place therein named, and  
8 thereafter reduced to typewriting under my direction, and  
9 the same is a true, correct and complete transcript of  
10 said proceedings;

11 I further certify that I am not interested in  
12 the event of the action.

13 Witness my hand this \_\_\_\_\_ day of  
14 \_\_\_\_\_, 2019.

15  
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17 \_\_\_\_\_

18 LISA V. BERRYHILL, CSR NO. 7926  
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