BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
GREGORIOS SHAKOLAS,) OTA NO. 18083527
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APPELLANT.)
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TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Wednesday, July 24, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at 355 South Grand Avenue, South Tower, 23rd Floor, Los Angeles, California, 91401, commencing at 10:09 a.m. and concluding at 10:42 a.m. on Wednesday, July 24, 2019, reported by Ernalyn M. Alonzo, Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead:	Hon. DANIEL CHO
Panel Members:	Hon. KENNY GAST Hon. NGUYEN DANG
For the Appellant:	GREGORIOS SHAKOLAS JUAN GUZMAN
For the Respondent:	STATE OF CALIFORNIA TAX AND FEE ADMINISTRATION By: PAMELA BERGIN SCOTT LAMBERT LISA RENATI
	TAX COUNSEL Legal Division P.O. Box 1720 Rancho Cordova, CA 95741 916-845-2498

I N D E X

OPENING STATEMENT

E X H I B I T S

(Appellant's Exhibits were received at page 6.)

(Franchise Tax Board's Exhibits were received at 6.)

CLOSING STATEMENT

Los Angeles, California; Wednesday, July 24, 2019
10:09 a.m.

ADMINISTRATIVE LAW JUDGE CHO: Let's go on the record.

This is at appeal of Gregorios Shakolas, OTA Case Number 18083527. Today is July 24th, 2019, and the time is approximately 10:09 a.m. We're holding this hearing in Los Angeles, California. My name is Daniel Cho. I will be the lead Administrative Law Judge for this appeal. With me are Administrative Law Judges, Nguyen Dang and Kenny Gast.

Can the parties please introduce and identify yourself for the record beginning with appellant.

MR. GUZMAN: My name is Juan Guzman, CPA.

ADMINISTRATIVE LAW JUDGE CHO: Thank you, Mr. Guzman.

Department?

MR. LAMBERT: Scott Lambert. To my left is Lisa Renati. And to Lisa Renati's left is Pam Bergin, representing the department.

ADMINISTRATIVE LAW JUDGE CHO: Thank you very much.

The issue in this appeal is whether adjustments are warranted to the determined measure of tax. With respect to evidentiary record, the department has provided Exhibits A through C, and appellant did not object to these exhibits. Therefore, these exhibits are entered into the record.

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

ADMINISTRATIVE LAW JUDGE CHO: Appellant has submitted Exhibits 1 through 16, Department has not objected. Therefore, these exhibits are also admitted into the record.

(Appellant's Exhibits 1-16 were received
in evidence by the Administrative Law Judge.)

ADMINISTRATIVE LAW JUDGE CHO: As a reminder to both parties, just because we've admitted all these exhibits into the record, it doesn't mean that each exhibit will be given the same amount of weight. We'll examine each exhibit, and give each exhibit its independent value at the time.

All right. So as we had agreed, Mr. Guzman, you will have 20 minutes to do your presentation arguments. Whenever you are ready, please begin.

MR. GUZMAN: I am ready.

OPENING STATEMENT

MR. GUZMAN: We're going to start off -- my understanding is the entire audit is based on -- an estimate based on credit card ratio. So the thing is that there's three pillars that are sustaining or maintaining this audit. This is the sales tax audit -- at least the copy that I have -- 15 pages worth of audit work.

I'm going to take care of this because it doesn't mean anything. It doesn't mean anything. I'm talking to the substantial amount of pages that were used to calculate this liability and do the audit. We're talking about 10 pages. These 10 pages represent the taxpayer being assessed tax on these 10 pages.

ADMINISTRATIVE LAW JUDGE CHO: I'm sorry, Mr. Guzman. I don't mean to interrupt you.

MR. GUZMAN: And these are -- this is exhibit -- let me see. This is the audit report itself. I think everybody should have a copy of this.

ADMINISTRATIVE LAW JUDGE CHO: Mr. Guzman, if you don't mind, can you talk into the microphone --

MR. GUZMAN: Okay. I'm sorry.

ADMINISTRATIVE LAW JUDGE CHO: -- so everyone can hear. We're having a hard time hearing. That's all.

MR. GUZMAN: Okay. So if we refer to the audit, the -- that schedule 12, page 6. Oh, if you have the pages, page 6 and 15. Those are the ones that really is sustaining the liability. We got these pages to say, based on this body of work, we feel the taxpayer has underreported as sales. And if we look at the report itself, we look at Schedule 12A, page 17 of 15, where they have an error rate of -- let's see -- in 2014 is 30.3 percent, and 2013, 48 percent, and in 2012 is 57.03.

The audit was actually -- the test was in 2015. So if anything at all, if they're going to use a percentage of error, use the 30.34 percent across the board, if any tax is going at all, because the test was done in 2015. We're projecting back to 2012. There is -- people are getting out of the recession. Every -- credit amount -- there are a lot of issues that -- that -- what you saw in 2015, not similar to what you saw in 2012.

So as we go on with the other report, this whole audit is based on page 10 of 15. What does this consist of? This was this page. Your Honor, it took the auditors this page at least 30-some hours to produce. And if you look at the page, specifically, the date that two auditors were doing this test, it's a -- it's blank. So this is holding up the liability.

So that just gives you a little snapshot picture of what I'm talking about as far as the audit is concerned. I'm going to go through and just explain to you this is a mom and pop burger stand. They cannot compete with McDonalds. They cannot compete with Denny's. But yet, their financial, once we look at their data, are very similar.

So what I'm saying is the net income, that was totally disregarded. Why would the financial statement show that income? If I was a buyer of a business, wouldn't I want to know about that income? Certainly. I don't really care about the markup. I care about that income. I'm going to through each of the exhibits and some points.

Just to give you an idea, looking at the 10-K from McDonald's rate of return, it was 20, 28 percent. Denny's restaurants -- I just looked it up on Google just a few minutes ago -- rate of return, 13.4 and 17, 9.3 and 16, 13.5. I will show what the taxpayer is actually showing as the -- the rate of return.

Let's go into Exhibit Number 1, Adequacy and Completeness of Records. Okay. Let's see. These are the records that were provided to the auditor, monthly statements or envelopes. What do these contain? On top of each envelope, other -- it's not a profit and loss. It's called cash receipts and disbursements. Same thing. It's a profit and loss.

The general ledger, what does that show? It's stapled together. It shows the venders, all venders, income. They were attached, Your Honor, to these envelopes. So if we have these pillars are sustaining, what they are they sustaining? Lack of records, low markup, and the department's reasonableness; those are the three pillars that are sustaining this liability.

So let's go on to Exhibit 1. These reports are not done by taxpayers. They are done by a professional accounting firm. And then we saw -- well, we see on my exhibit, which is Number 1, Special Procedures. Prudent tax auditing requires that the auditor observe and evaluate factors outside the appellant records in the audit work papers. There's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 procedures. At least the audit work papers that I see does not numerate a single one of them. Does that make this tax auditing imprudent? That's from page -- or section -- it's in the Audit Manual 08/01/15.

The point I want to make, there was a reason years ago the Board of Equalization invested a lot of money, a lot of talent to come up with an audit manual, which is Chapter 8, dedicated to the restaurant and dining industry. So why not follow this? So that's what I'm looking at here, is audit manual. We look at the adequacy and completeness of records 1, 2 -- I'm sorry -- 1, 2, 3, 4, 5, 6, 7, 8. There are about 11 items.

The only thing the taxpayer is lacking -- I'll show you -- are the cash register tapes. How many of those do you think they generate on a daily basis? 1,000? A three-years basis? 250,000? 125,000? It's impossible to maintain those. So the next thing I want to do is the department makes a big thing about the cash register tape. The manual doesn't make it a big thing. It says the cash register tapes may be used to support price changes. Now, they may be important. That's Section 0801.20.

I'm going to hop onto Exhibit 2, Profit and Loss Statements. That's where monthly profit and loss statements are provided at the time of the audit. Not because I'm saying it, but in the auditor's log book it actually indicates that these -- it doesn't say profit and loss statements, but he checked Report -- Reported Sales. The only way you can check reported sales is to have profit and loss statements.

The audit manual says, "If the net profit and return on investment is high, it is likely that reported sales are understated." This comes directly from the audit manual. I don't think that was considered in the audit at all. And let's see what we have. And that was Exhibit 2.

I'm going to hop onto Exhibit 3, Establishing Audit Total, Taxable Sales, Audit Manual 0810.35. If the tax deficiency is established, the return method must be used. It doesn't say shall be used, may be used. It says must. And years ago maybe -- the FAM in 2002, these letters were italicized. Basically, anything in the audit manual, they had this italicized. It's a directive. You cannot deviate from that.

ADMINISTRATIVE LAW JUDGE CHO: Just a reminder, Mr. Guzman.

MR. GUZMAN: Yes, sir.

ADMINISTRATIVE LAW JUDGE CHO: Try to talk a little bit slower, if you don't mind.

MR. GUZMAN: Okay.

ADMINISTRATIVE LAW JUDGE CHO: Thank you.

MR. GUZMAN: Certainly.

Exhibit No. 4, Department's Method Use Current Sales Test Data to Project Primary Year. Well, that was data in 2015 based on the cash registry tapes of the analysis that they made for 14 days they extrapolated, and they use a daily average to come up to something that seemed reasonable.

I really think that the audit manual indicates that a second method, alternative method, should be used. And I don't think back in 2002 -- because that's the page that it was done as far as the FAM is concerned. But I think the intention was that if you came up with additional sales based on markup and you do a credit card analysis and they're pretty close, I'm pretty solid. I'm pretty solid in that knowledge. I feel really comfortable.

In this case we just have a credit card test just hanging up there that was done outside of the audit period. In fact, the Section 080315, under Reasonableness it says, "The preferred method." It doesn't talk about markup. "The preferred method for the reasonableness evaluation is analysis of the taxpayer's net income." Right there. Right down in the audit manual. And it makes an analysis on how to use the purported or the additional tax sales, at the end of the day just makes sense.

Exhibit 5, this is the CDTFA Field Decision. There are some contradictions here. If we look at the California Department Tax and Fee Administrative appeals decision, specifically on page 2, there's two items. Lines 14 through 17 keep on saying that there were no invoices. And what's critical here is the one I have under B. Lines 22 through 25 says, "The department expected 250 to 300 percent markup."

The only place I've seen those has been a sit down -- I mean, steak houses, restaurants selling beer and wine, beer bars. This is a mom and pop restaurant. It sells hamburgers, a lot of them. And, again, on page 6, lines 4 through 7, again, because we didn't have the purchase invoices we couldn't do a shelf test. It's just impossible.

Exhibit 6, Memorandum dated March 7, 2018, and this basically comes from the department. And on page -- let me see -- page 2, again, I emphasis they couldn't do a shelf test because there was no purchase invoices. And on page -- let's see what page. This is the second page. We note that positive net income does not necessarily prove that gross receipts are reported correctly, but it's an indication. There's a reason why the FAM, Field Audit Manual, has it.

Then we go into Exhibit 7. This is the auditor's assignment record. I always ask to see what is it that the auditor did during all this time. And section -- there's -- there's a section on Audit Manual 80305, and I'll refer to that in a quick second. It says something like this, "The comments should never indicate that the records were adequate when it was necessary to compute sales by markup."

Back then in 2002 there was no credit card analysis but the same concept. Such a common -- it's inconsistent with a use of a markup method. In this case it's consistent with the use of credit card method because it's still next to it. So we all look at the tax returns and reporting method, which is the exhibit -- and if we look under Books and Records, what does it say? Account books and records are adequate. Well, if they're adequate shouldn't they be acceptable. Right there in the audit. It says right there, the Reconcile Report and Recorded Sales. These are coming directly from the auditor.

Consumable supplies, that's where you look at the purchase invoices. That's where the purchase invoice are inside this packet. All purchase invoices, all bills of any kind are inside this packet. Did you see these? He says here, "Examined separately from other purchases."

Well, that's kind of odd to believe. If you open this up and see invoices for utilities or other thing, you must have the purchase invoices. So this is coming directly from the auditor. Then when we go to flip to report of audit findings, this was dated July 10, 2018, a couple of years or so after the auditor. I don't how this was prepared during that date, but here again, books and records adequate, the auditor is sayings. He's the empire out in the field. He's calling strikes and balls. He's calling this a certain way that it needed the umpire.

And if he says adequate, why didn't we impeach the records of the taxpayer. And the invoices, they're not available, but, yet, he saw invoices that says test supplies. Where did those come from? And then we're going to Established Time Log. These are in Exhibit Number 8.

And we go to the date of 4/29/15, Set Up an Appointment. He asks for the bank statements, purchase statements, purchase invoices, federal income tax returns. And what did he get? He got federal income tax returns, purchase invoices, bank statements. So he got the purchase invoices. Why didn't he do a shelf test? And why do they keep on saying that there are no purchases? The auditor saw them. I have to assume he saw them right there.

And then he did the credit card test. It took two people to do a credit card test that consisted of one sheet of paper but no support of any other kind. Then -- this was back in August of 18, '15. And the audit was actually completed and presented to the taxpayer. The act of discussion was about eight months after that. What's the point? I want to make two points.

One point is that if audited right in the establishment, if he had the sign right front of you showing the sale and prices, you have the menu right in front of you, why don't you ask the taxpayer for those purchase invoices that coincide with those things? You can very easily do a shelf test, a short test, and support your findings. It never was done. It could have been done. Unfortunately it was not.

So it took eight months to wrap up the audit and present it to the taxpayer. There was no communication. Taxpayer Bill of Rights indicates that the taxpayer at all times should have communications during the audit. There was no communication, just a bombshell. At least what I can see from the assignment record of the auditor himself, no indication. Here you go. You owe so much.

I'm going onto Exhibit Number 9, Financial Statements 12, 13, and 14. I made copies of those and provided those as exhibits. The amounts should tie into the income returns. The point I want to make, again, the general ledger was attached to the profit and loss statement. If in two years we have, actually, the purchase journal attached too, very easy to have been reviewed. Very easy to check purchases, but it was not done.

The taxpayer paid good money for the accountant to be doing his payroll, doing his sales tax, doing his accounting, doing his income taxes. So the taxpayer did not prepare the sales tax. The taxpayer did not prepare the income tax. The taxpayer did not prepare the PNL statements. What I have here in Exhibit 10 is basically what I showed you a moment ago about the package.

These are records that were presented to the auditor. As you can see on Exhibit 1, page 1, there's a stack of folders such as these and the cash receipts and cash disbursement report on top.

We go to Exhibit 11, and this is the key too. Here we are, the federal income tax return. This is the first step. You go in there the very first day of your audit, and you requested this. What are you going to do about a federal income tax return? I'll tell you one thing. Back in 1990, '92 the IRS had something called the Economic Reality, which really consisted of the program of the IRS and the Board of Equalization to analyze federal income tax returns to idiots on the inside as to what to look at before you start projecting. If the Board at the time didn't see that it's being warranted, why invest money in something like that?

So what happens on federal income tax return? It gives you a wealth of information. I have a copy of 2014 as part of that. It gives you a wealth of information. From there, you obviously have a net income. The markup, the problem with markup is there could be extraneous items that should not be there. We don't know. There was never a segregation test. And also it gives you the rate of return.

On Exhibit 12 I have a schedule. And that schedule shows rates of return. I have a rate of return based on the taxpayer's records. I have a rate of return based on adding the additional sales of the department that it proposes to assess. If we look the -- Harry's Place, based on reported sales, the overall rate of return is 28 percent. Like I said, McDonald's is 28 percent. Denny's is, like, 13 percent. It's within range. And this is not a McDonald's, and this is not a Denny's.

They don't have -- they do not buy in volume. It's just a mom and pop restaurant. Then if we add those sales -- additional sales, you can see the rate of return. Exorbitant. The other thing you can do with the federal income tax returns is you can do a cost of living. Just look at a Schedule A. What are the expenses? There's no Schedule A. The house is paid for. No, it's not. He owes, like, $200,000. 3,000 bucks a month, that's what he pays. There's a net profit that covers that.

ADMINISTRATIVE LAW JUDGE CHO: You have about two minutes left. It's just a reminder to you.

MR. GUZMAN: Okay.

ADMINISTRATIVE LAW JUDGE CHO: Otherwise there's less time.

MR. GUZMAN: I just wanted to refer to you that -- Exhibit 14. Look at the prices. You can see they are very low. And Exhibit 16 is important because I use a markup that the department proposes that or indicates that sustains or supports this audit. And if we use our figures -- look at rib-eye steak and shrimp, $3.64 would be the cost. $3.17 would be the cost if the markup was 300 percent. There's no way or high you can buy a steak for $3.00.

And the point I want to make is that all the indicators are there. That may be that 100 percent was was not reported, but I think it was accurate what was reported. Net income is something that should be taken into consideration. The procedures that they take for auditing should be done in such a way that it's -- it's favorable not only to the State, because you save money by not spending too much time on the audit; the same thing with the taxpayer.

If the taxpayer owes the money, obviously, I would not be here today if I saw a profit of $25,000, $50,000, $70,000. On the reports and the articles that I have here, the profit expand. I'm telling you, McDonald's restaurants, 150. Look at those tax returns and see what the profit this gentleman is showing. And they're not doing McDonald's.

Thank you.

ADMINISTRATIVE LAW JUDGE CHO: Thank you very much, Mr. Guzman.

Panel members, do you guys have any questions?

Judge Dang?

ADMINISTRATIVE LAW JUDGE DANG: Thank you. I have no questions.

ADMINISTRATIVE LAW JUDGE CHO: Judge Gast?

ADMINISTRATIVE LAW JUDGE GAST: No questions.

ADMINISTRATIVE LAW JUDGE CHO: All right. I don't have any questions either at this time. With that, then we will go to the department. So you will have 20 minutes as well for your presentation and arguments.

MR. LAMBERT: Thank you.

OPENING STATEMENT

MR. LAMBERT: This particular audit covered a three-year period. It was essentially the years 2012, 2013 and 2014. The taxpayer reported on a quarterly basis. As the appellant mentioned, this is a fast-food restaurant. The department normally finds that there is a lower credit card percentage at fast-food restaurants than there are at the fine-dining establishments.

So generally the more expensive the restaurant, it's generally the higher the credit card percentage. But initially, the taxpayer provided income returns for two years, 2012 and 2013. They provided bank statements, 1099-K merchant information, which is essentially the credit card receipts that -- that they received.

There was no detail summary information. There were no Z tapes. There were no cash register tapes. There was no accounting for the sales, other than the summary records that were provided. The markup -- the reflective markup from the income tax return for 2012 was 115 percent. The markup for 2013 was 160 percent, and that's shown in our exhibit, page 46 of the markups.

So what that shows is an unusual markup between the two. Which you'll find in this type of industry is the markup stay fairly constant, and they're generally higher than this. So that in of itself was a red flag for us, the fact that we did not have the detailed information. There was an issue with the markup of record. And then if you look at Bates -- oh, I'm sorry -- page 45 of our exhibit. What that is is the bank deposits.

And what you'll find is very little cash going into the bank. Basically 98 percent of the deposits are credit card, and 2 percent is cash. And we are unable to account for the cash, or I should say the appellant is unable to account for that particular cash. Also, the reported credit card percentage, if you look at page 42, what it will show is that there was -- and it's in Column G -- there was a 66 percent credit card percentage is what we consider to be very high for this type of industry.

So based on that, the department decided to conduct observation tests. And actually -- and this is quite common. We ask the appellant to maintain two week's worth of sales information. Now, during that two-week period, our auditors were also out on two of the days to kind of supervise or review what exactly was going on just to make sure all the sales are being rung up.

And the auditors were satisfied that the information from that two-week period was representative of the taxpayer's business. What was found during that two-week period was a credit card percentage of 45.88 percent, which is substantially below what the reported credit card percentage was.

I should also point out the two-week period that we tested was August 10th, 2015, through August 24th of 2015. So it was outside of the audit period, but it was the first time that the department had the ability to look at the taxpayer's detailed records. In other words, the taxpayer didn't keep their earlier information regarding their detailed sales. So we were unable to analyze that information.

So essentially the four areas that I brought up earlier and reasons why we would impeach the records is why we went to use the credit card method. So what we would do is take the credit card receipts from the 1099-K. We take out the sales tax that's included in there. We did not note there were any tips that appeared to be in the credit card receipts.

And then we basically divided that by the credit card percentage, 45.88 percent, to get our audited taxable sales, subtract it out with what was reported, and then came up with the difference. Now, we did that for each particular year, and that's why you see a different percentage of error in each year.

So we calculated it based on the specific information that was provided. In other words, the 1099-K information, that's how we came up with what the audited taxable sales were and, hence, the percentage of error. So when you take a look at a reasonableness of -- we'll also take a look at an alternative method. And if you look at page 41, we came up with an estimate using the average daily sales and compared that to what our figures were.

And essentially by using the average daily sales from the two-week test, it comes up higher than the figures that we established for the audit period. Therefore, we considered the amounts that we arrived at to be representative, if not, conservative. It should be pointed out that during the test, that there were cash sales of $19,437 in cash sales.

During the audit period, the taxpayer -- and that works out to $9,718 in cash sales a week. The taxpayer reported cash sales of $3,789. There's a substantial difference between those two figures, and that's where we believe the underreporting took place was in the cash sales. They did not go into the bank account, and we believe that they were not reported to the State of California.

I believe that concludes my presentation.

ADMINISTRATIVE LAW JUDGE CHO: Thank you very much.

Panel members, do you have any questions for the department? Judge Dang?

ADMINISTRATIVE LAW JUDGE DANG: Thank you. No questions.

ADMINISTRATIVE LAW JUDGE CHO: Judge Gast?

ADMINISTRATIVE LAW JUDGE GAST: No questions. Thank you.

ADMINISTRATIVE LAW JUDGE CHO: I just have a quick question that I want to confirm. You did use 1099-K information for all three years; correct?

MR. LAMBERT: That's correct.

ADMINISTRATIVE LAW JUDGE CHO: All right. Thank you. That's all I have.

With that, Mr. Guzman, you will be given your five minutes on rebuttal.

CLOSING STATEMENT

MR. GUZMAN: I basically want to make a few points. And the first one on the credit card ratio, the book shows 66 percent. I represent a lot of similar restaurants. And pretty much it's in the range of 66 percent. I haven't seen anything other than that, I guess. Usually 66 is the norm.

The markup, what I've seen out in the field for 45 years now, a markup between 140, 160 and 180. Because if you look at the selling prices, it's very low. Nothing more than $8.00.

The other issue I want to make is that, I think one of the things we do, even not only for sales tax purposes, but for federal and state income purposes, there's nothing illegal about not depositing cash into the bank account. You can pay your bills with the cash, as long as it's being reported. What I'm saying is that the test that was made, was made in such a way.

If you look at that very, very -- I mean, pertinent schedule of those 14 days tested, there's one schedule that's totally blank. And there's two auditors working on that. When usually there's an observation -- I just finished doing an observation test with another auditor. We sat there. The auditor was collecting data every hour, and recording the data and presenting a lot more schedules than we're seeing here today.

So I -- there's another -- there's a credibility gap, because I have no idea where those figures came from. Auditors from other districts provide a listing of exact detail, hour per hour. Remember this restaurant does not have a drive through. Nothing has been said about the SECA package. It's really critical to know the SECA package. It's 64. So based on the figures the State has, my gosh, that place has to be full all day long.

But the point being in a cash, it is not a problem with cash as long as it's being reported. And here again I press hard, and I want to indicate that the department really hasn't touched this. The reasonable -- the reasonable test was using the same 14 days. I don't think the FAM really -- the people, the actual authors of this book intended that to happen.

They wanted another test to support this test. And then that piece of paper with no data -- at least I don't have it. And if you notice, the auditor's work papers are all done on April 26 of 20 -- I don't recall what date. The audit manual says that, "Any time we're going to schedule you with that date, we're working on that schedule."

So if we look at the audit report, look at those dates, April 26 -- I want to say '15 or '16. Those are the dates. That cannot make sense. How could you be doing a test on August '18 where the auditor report -- or he put something they are depending on to assess tax that's dated a year, two years later?

So I really rest my case in point saying that here's the taxpayer, rate income, the percentage tied in to McDonald's -- McDonald's sells low priced items -- volume. Taxpayer sells -- I think he sells better food and larger portion. And I don't think he volume discounts at the end of that. McDonald's, it's all in the 10-K. All the information at Denny's. Go look at Denny's.

Those ratios are there. The only problem here is that I don't have the markup, or that the auditor looked at without looking at any test of any kind. Oh, this is low. But it never was communicated to the taxpayer or the representative. I did not take this case until it was already in appeals.

So there was no communications, the way to defend this. Now, it's three or four years after. With the point I want to make too is that because if you have two or three auditor working on an audit, why not do a shelf test and support your findings. Well, at least if you have a schedule, then you're supporting your findings. Why don't you have back up to it? I want to know what the auditor did for 30 hours. I don't think just prepare that schedule.

Another point I want to make is the three pillars the department is standing on, supported. Lack of records. We have the records. Reasonable test. A test made with the same data, whereas the shelf test, in fact, I didn't get a chance to look at -- present you with my exhibit. I prepared a short test. I did that in one hour. They could have done that at the restaurant. They never did. In my short test, it supports this right here. So the reasonable test would have been done with another procedure. It could have been done very easily.

And I thank you, Your Honor.

ADMINISTRATIVE LAW JUDGE CHO: All right. Thank you very much.

Thank you for both sides.

This will conclude the hearing. The panel will meet and will discuss the case. We will issue a written decision within 100 days of today. The case is submitted, and the record is now closed.

(Proceedings adjourned at 10:42 A.M.)

HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 14th day of August, 2018.

ERNALYN M. ALONZO
HEARING REPORTER