

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
KATZIR'S FLOOR & HOME DESIGN, INC, ) OTA NO. 18083591  
 )  
 APPELLANT. )  
 )  
 )

## TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Wednesday, August 21, 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 12:10 p.m. and concluding  
at 12:57 p.m. on Wednesday, August 21, 2019,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

1 APPEARANCES:  
2  
3 Panel Lead: Hon. JEFF ANGEJA  
4  
5 Panel Members: Hon. ANDREW KWEE  
6 Hon. TERESA STANLEY  
7  
8 For the Appellant: OMER KATZIR  
9 JEANNETTE KATZIR  
10  
11 For the Respondent: DEPARTMENT OF TAX AND  
12 FEE ADMINISTRATION  
13 By: SCOTT LAMBERT  
14 LISA RENATI  
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1           Los Angeles, California; Wednesday, August 21, 2019

2                               12:10 p.m.

3

4           ADMINISTRATIVE LAW JUDGE ANGEJA: Let's go on the  
5 record.

6           Good morning, everybody. We're now on the record  
7 in the Office of Tax Appeals oral hearing for the appeal  
8 of Katzir's Floor & Home Design, Inc., Case ID 18083591.  
9 I know it was just said, but I want to get it on the  
10 record. We're in Los Angeles, California, and the date is  
11 Wednesday, August 21st, and it is approximately 12:10.

12           I am Jeff Angeja. I'm the lead Administrative  
13 Law Judge for this hearing. My fellow co-panelists today  
14 are Teresa Stanley and Andrew Kwee.

15           Appellants, could you please introduce yourselves  
16 for the record?

17           MRS. KATZIR: I'm Jeannette Katzir.

18           MR. KATZIR: I'm Omer Katzir.

19           ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. Thank  
20 you.

21           And for CDTFA?

22           MR. LAMBERT: My name is Scott Lambert. To my  
23 left is Lisa Renati, and to Ms. Renati's left is Steve  
24 Smith.

25           ADMINISTRATIVE LAW JUDGE ANGEJA: All right.

1 Thank you.

2 This appeal involves two issues, which are  
3 whether any reduction is warranted to the measure of  
4 understated taxable sales; and whether additional relief  
5 of interest is warranted.

6 And during our prehearing conference, the parties  
7 agreed to the admission into evidence of Appellants'  
8 Exhibits 1 through 3. CDTFA had submitted Exhibits A  
9 through J. Appellants objected to A and C through F. I  
10 overruled those in my prehearing conference minutes and  
11 orders. Appellants' had no objection to the remaining  
12 exhibits. I hereby admit all the exhibits into evidence.

13 (Appellant's Exhibits 1-3 were  
14 received in evidence by the  
15 Administrative Law Judge.)

16 (Department's Exhibits A-J were  
17 received in evidence by the  
18 Administrative Law Judge.)

19 ADMINISTRATIVE LAW JUDGE ANGEJA: As I explained  
20 in the order, we'll weigh the weight of the evidence, but  
21 it's relevant. So it comes in. Based on our prehearing  
22 conference, it's my understanding that both Mr. and  
23 Mrs. Katzir will testify as witnesses today. So in a  
24 couple of minutes I'll swear you in.

25 And CDTFA has no witnesses?

1 MR. LAMBERT: Correct.

2 ADMINISTRATIVE LAW JUDGE ANGEJA: And we're going  
3 to try to keep this hearing under an hour. I know we  
4 could be a little bit flexible if we need to, but we don't  
5 need cumulative or repetitive testimony. We've got up  
6 to -- let's see. Hopefully, we can get it done in  
7 30 minutes. You guys had said 15. We could be flexible  
8 if we need to.

9 You'll have a rebuttal. So you'll get the first  
10 word and the last word. I know you've also seen a couple  
11 of hearings today. So you know how the format works by  
12 this point.

13 Okay. Let's get started. Are you both going to  
14 testify? So I'll swear you both in.

15 MR. KATZIR: Yes.

16 MRS. KATZIR: Yes.

17 ADMINISTRATIVE LAW JUDGE ANGEJA: Please stand  
18 and raise your right hands.

19

20 JEANNETTE KATZIR,

21 produced as a witness, and having been first duly sworn by  
22 the Administrative Law Judge, was examined and testified  
23 as follows:

24 ///

25 ///

1                                   OMER KATZIR,  
2       produced as a witness, and having been first duly sworn by  
3       the Administrative Law Judge, was examined and testified  
4       as follows:

5  
6                   ADMINISTRATIVE LAW JUDGE ANGEJA: All right.  
7       Thank you.

8                   You've got both of those on the record?

9                   THE COURT REPORTER: Yes, Your Honor.

10                  ADMINISTRATIVE LAW JUDGE ANGEJA: All right. So  
11       with that, I'll turn it over to the Appellants. Go ahead  
12       and make your presentation.

13                  MRS. KATZIR: I have three questions I wanted to  
14       ask, first of all.

15                  ADMINISTRATIVE LAW JUDGE ANGEJA: All right.

16                  MRS. KATZIR: This is an issue that started in  
17       2001. I wanted to know, what is the statute of  
18       limitations for this, and what is the code that covers --  
19       the statute code?

20                  ADMINISTRATIVE LAW JUDGE ANGEJA: The statute of  
21       limitations, they timely issued the Notice of  
22       Determination in 6451 or 2.

23                  MRS. KATZIR: So are we within the statute of  
24       limitations?

25                  ADMINISTRATIVE LAW JUDGE ANGEJA: Yes. And we



1 haven't raised that as an issue yet. But you timely  
2 petitioned their notice, which was also timely. And I  
3 know the decision and recommendation, which is part of the  
4 briefing that went out, addresses that.

5 MRS. KATZIR: Okay. The second question I have  
6 is when we do our discussion, are we allowed to ask the  
7 State Board questions, or we have to direct them -- I  
8 mean --

9 ADMINISTRATIVE LAW JUDGE ANGEJA: You can ask  
10 them, but I'm going to keep people from getting hot under  
11 the color.

12 MR. KATZIR: Yeah.

13 ADMINISTRATIVE LAW JUDGE ANGEJA: And I would  
14 like to keep it focused on what we need to hear to help  
15 decide the cases. As long as productive it's productive,  
16 I'll give it some latitude.

17 MRS. KATZIR: Okay. Excellent.

18

19 OPENING STATEMENT

20 MRS. KATZIR: Okay. We were first audited -- I  
21 can't remember what year, a long time ago -- and there  
22 were many differences and errors found. They came back to  
23 us with a number, and we said that can't possibly be  
24 right. Please go back and re-audit. They re-audited and  
25 came up with a brand new different amount, which I find --

1 I can't understand that. If it's an audit, they should be  
2 the same, not different. Since the audit amounts never  
3 matched, we requested a detailed examination be done, as  
4 is our right under the law.

5 Months later we were told -- many, many months  
6 later. It could be years. We were told that the case was  
7 sent to settlement. And then we were also told that the  
8 settlement department was not going to look at the many,  
9 many catalogs containing evidence that showed that there  
10 was a lack of proper deductions being made, and they were  
11 going to work mainly off of statistics.

12 Statistics based on incorrect numbers is an  
13 incorrect at its core. We're not a cash and carry. We're  
14 not a noodle company. We're a home-design center where  
15 items are purchased and take many months to exchange hands  
16 and complete the sales. An error assessment, that it's  
17 based on an error rate for -- I think our thing was for  
18 three months -- and then projected over three years should  
19 not be applicable in a case such as ours when you're  
20 talking about a home-design center and not a noodle  
21 company.

22 We requested, that since our business was not  
23 cash and carry, that simple statistics should not be used  
24 and a detailed audit be conducted. We have a computer at  
25 the time that had many limitations. We're not

1 extraordinary. We do not have extraordinary computer  
2 skills to override these shortcomings. So we needed to  
3 correct these errors by hand. They do not show under an  
4 audit unless they are highlighted by the -- to the  
5 auditor, which we tried to do more than once.

6 The total sales the computer came up with -- and  
7 this is important -- less the resale and less the errors,  
8 that are listed under 4 through 23 of the poster that  
9 we're going to give you, that the State Board has in  
10 letters, in breakdowns per month. We'll show a more  
11 accurate rendition of what the taxes should be. In the  
12 notebooks that were provided, all the supporting documents  
13 prove our contention and substantiate the fact that we did  
14 not only pay, but we overpaid because the deductions were  
15 not realized.

16 One need only look at the errors 4 through 23 and  
17 deduct them from the total sales to prove that the  
18 percentage is wrong, and actually overpaid. Omer is going  
19 to hand out, if you permit, copies so you can see the  
20 poster and read the deductions and see that we overpaid  
21 not once, but each month.

22 ADMINISTRATIVE LAW JUDGE ANGEJA: All right.

23 MRS. KATZIR: I'll turn it over to Omer.

24 ADMINISTRATIVE LAW JUDGE ANGEJA: Do we have  
25 copies for everybody?

1 MRS. KATZIR: Yes.

2 MR. KATZIR: Yes. I will give it to you in one  
3 second. These copies are --

4 ADMINISTRATIVE LAW JUDGE ANGEJA: Talk into the  
5 microphone, please, so we can hear you.

6 MR. KATZIR: Oh, okay. Sorry about it.

7 These copies reflected one of the pages. I think  
8 the catalog in the binder. We have three binder for each  
9 month, but I'm going to give you an example for one month,  
10 otherwise it would take too long.

11 So what I did, I try to understand by talking to  
12 someone to try to explain to him how simple it is in all  
13 my case and all the deductions. Okay. So please, can I  
14 present?

15 MRS. KATZIR: Yeah.

16 ADMINISTRATIVE LAW JUDGE ANGEJA: And I'm  
17 assuming this is not a new exhibit. It's illustrative of  
18 what's already in there?

19 MR. KATZIR: It is. This is one of the exact  
20 pages that you see.

21 ADMINISTRATIVE LAW JUDGE ANGEJA: All right.  
22 We'll have it as an illustration of an actual exhibit.  
23 Okay. I'm sorry. Go ahead you can look at that because I  
24 won't be able to read that from here anyway, but I have  
25 what you gave to me.

1 MRS. KATZIR: I tried to make it very simple.

2 ADMINISTRATIVE LAW JUDGE ANGEJA: I appreciate  
3 that. We have a copy here.

4 MR. KATZIR: Okay. We start on the top, A, B, C,  
5 D, 2001 July. The computer generate report. So A is the  
6 total sale, exactly what it show in the book, so \$604,000  
7 and some change. The resale, \$63,540, and the total  
8 taxable sale is \$540,869.00. The D represent the actual  
9 tax that show in the computer. Again, a little store.  
10 You go and buy. Thank you. Goodbye. Market you go buy.  
11 Thank you. Goodbye.

12 We have 23 subjects to this particular one. If  
13 the auditor took her time and read it, today would not be  
14 happening. I spent hundreds of hours on this particular  
15 one. Give you an example, No. 4, special order, \$204,000.  
16 I'm not going to go to the little detail to make it  
17 quickly. We exchange hand \$191,000. This mean \$13,640 --  
18 \$13,694 should not be tax on this particular one.

19 The D present our manual D. So if you look at  
20 the D, it's \$43,000. This is the deduction direct. On  
21 the right side of it, it say Column Z. The Column Z is  
22 the actual tax. Bad checks. We received \$18,000 bad  
23 check, \$10,483 of collected out each month. This should  
24 not be taxed on as \$725,618.00 at worth of bad,  
25 non-sufficient fund \$193.00.

1           What is the X mean? The X one -- and I will  
2 point to everybody, this is the X column. They have X, Y,  
3 Z. The X, Y, Z, these columns should be deducted from the  
4 total -- from the total taxable tax because  
5 non-sufficient. We write non-sufficient as a charge to  
6 the customer but should never be taxed. The next thing is  
7 late fee. Late fee should not be taxed. Then we have  
8 8090 cold fee. We charge the person cold fee. It should  
9 not be taxed.

10           Then delivery, the other, like, UPS or Federal  
11 Express should not be taxed. Employee pay back, zero.  
12 Out of state, zero. I'll go really quickly. Let's go to  
13 bad debt uncollectible. This our computer could not give  
14 the way to post it in the computer. So, obviously, we  
15 kept immaculate -- immaculate detail that show in the  
16 book. In each book they have a category to show. So if  
17 you could look at page number -- sorry -- 83,000 you go to  
18 14. You go to No. 14 and you have a detail documented  
19 exactly one by one by one how those bad tax is deducted  
20 from the total.

21           So if someone took five minutes of his time and  
22 see -- and to see we call the judgment. We could not  
23 collect the money. So obviously, we have \$83,000 bad  
24 debt, \$6,667.00 all taxable that we had to deduct the  
25 total. Refund to the customer, nothing. So okay.

1           This one is important. The computer, again,  
2   limit me very much. Okay. A customer return X amount of  
3   material. So what we did, we return them the check  
4   exactly the refund that we owe him. The only problem is  
5   it should run to the computer to show. Let's say it's a  
6   \$500 tax -- minus the tax because we refund the money. So  
7   have to get refunds on the tax. So we had no way to do it  
8   except manually. So we can't mechanically do it.

9           Anybody -- anybody if he took five minutes of his  
10   time and saw how beautiful and accurate by detail, one by  
11   one by one, you can see who we give the money to, how the  
12   check return, and, obviously, I could not do through  
13   computer. Okay. Let's go next.

14           Simple \$187.16, obviously, is not taxable. A  
15   credit card fee we charge \$302.40, not taxable. The sales  
16   tax returned to customer. \$30,000 -- \$30,842.00 which  
17   allow me to deduct \$2,468.17. Labor \$800.00 not taxable.  
18   Out of state sales, \$31,203.13, not taxable. And  
19   miscellaneous -- we have almost miscellaneous accumulative  
20   to 8. But also just to remember, whatever I said so is  
21   documented and detailed, per the invoice, that show the  
22   invoice number and show the amount. It show because we  
23   had to keep it manually to keep our record accurate.

24           So whatever the lady -- I believe, her name is  
25   Paula. She looked through the computer. I gave her

1 access to computer. I gave her my code. She looked at it  
2 and she took the notation and she left. Then she come  
3 back again. She ask me question. I give her answer.

4 And I told her, listen, you're not looking at the  
5 proper way because we are not a liquor store. Liquor it's  
6 the last time you see him after he bought a box of  
7 cigarette. Goodbye. You never see him. He doesn't have  
8 bad check. He doesn't have anything. We have 23 notation  
9 regarding to it. Let me go to the bottom of it.

10 The bottom number 24, we present the amount shown  
11 in the computer, \$43,269.52. The adjustment Column X into  
12 Column Z show \$2,888.05 plus \$5,424.57. Total deducted  
13 manually, it's \$15,000, 15,312. So we're supposed to pay  
14 \$27,956.90. If you look at the amount that we're supposed  
15 to pay minus what we paid, we pay \$33,695. And you have a  
16 document on it. Actually, owe \$27,956, you guys owe me  
17 \$5,738.10.

18 Again, all detailed document. If you have any  
19 problem or someone wants to review it with me, I can  
20 explain everything because copy of the check, copy of bad  
21 check, copy of the judgment, copy of each and every  
22 invoice right here. Very thorough. But what more disturb  
23 me, when we sent it to a settlement, instead to tell me in  
24 10 minutes we're average it, to spend 9 months back and  
25 forth, back and forth, and waste quite of time. And



1 obviously, you guys charge interest on it.

2 Other thing, it's like this is resemble -- by the  
3 way, illustration of those three months, basically, some  
4 of them retire, some of them is loyal, but a total of all,  
5 it's more than \$15,000 owed or money owed. \$12 to \$15,000  
6 of the money you guys owe me.

7 What I've done is, when I talk to Paula, she  
8 suggest to start to pay some money because I may owe  
9 money. So we put additional every month with our own  
10 money, \$1,000 in advance. So not enough an error about 12  
11 to \$15,000 that you owe me, you owe me this \$40,000 that I  
12 paid just to be safe, not to be sorry.

13 Nobody keep document like mine. Nobody. I'm  
14 very precise, very honest, very straight. Keep the  
15 record, not record like noddle company five minutes ago.  
16 And I apologize to you. This is not right because it's  
17 been dragging almost 15 years, this audit. I'm exhausted  
18 of it.

19 I have four boxes of judgment and court cases and  
20 checks to prove every one of every issue. I have zero,  
21 zero, zero not documented. So this is my case for now.  
22 Go ahead.

23 ADMINISTRATIVE LAW JUDGE ANGEJA: All right.  
24 That concludes your -- did you want to address the  
25 interest now, or was that a part of it?

1           MR. KATZIR: Yeah, yeah. The interest is very  
2 simple. The interest should not be at all because if --

3           ADMINISTRATIVE LAW JUDGE ANGEJA: Well, let me  
4 help you focus, right? They've got it in their brief,  
5 which is the 4th supplemental DNR in this case. They went  
6 through a timeline. The law allows relief of interest for  
7 an unreasonable error or delay. So you would need to  
8 establish an unreasonable error or delay. So you would  
9 want to gear your arguments towards that.

10          MR. KATZIR: Yes. Very simple.

11          ADMINISTRATIVE LAW JUDGE ANGEJA: Otherwise we  
12 can't do anything, unless you can show that standard.

13          MR. KATZIR: Okay. Very, very simple. Those  
14 books was ready in day one. Instead to go on the book  
15 here, they went straight to the computer. The computer  
16 show a basic what we do. But how can I do something that  
17 the computer not allow me? You talk about 19 -- when we  
18 bought the computer is 1995 or '96. We bought the  
19 computer. The limitation was so small.

20               Today we gave like this. In one second  
21 everything. It document special order, under order.  
22 Everything is very beautiful because, obviously, the  
23 technology change. But at that time I was absolutely  
24 limited, and that's what I kept, a manual book.

25          MRS. KATZIR: We would like to be relieved of the

1 interest because we tried in tremendous good faith to  
2 provide them with anything they wanted as quickly as  
3 possible. It's not our fault that they seemingly dragged  
4 their feet, wouldn't get back to us in a timely manner.  
5 We had to e-mail, which we provided copies of numerous --  
6 and I mean numerous times.

7 I am one of these who will e-mail 10 times a day  
8 until I get an answer, and I didn't get answers. And then  
9 they promised, "We'll get back to you in 6 weeks." It was  
10 8 months -- 6 months. That's on our fault. So we would  
11 like to be relieved of the interest because we -- we did  
12 do our part.

13 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

14 MR. KATZIR: And the last thing, why she not took  
15 the time to look at it? I had to send it to Sacramento.  
16 Why the auditor did not take time to look at it? She  
17 reject it. Then when I spoke to someone, I said, "Please  
18 send me the books." I send three binder -- copy of those  
19 binder. The detail -- I mean, the detail 100 percent.  
20 Why not look at it in 2000 when that -- couple of months  
21 after the audit? Why?

22 Now, time is money. Interest is money, but it's  
23 our money. Beside it, I want to know if it's possible to  
24 get interest on my money.

25 ADMINISTRATIVE LAW JUDGE ANGEJA: I'll let CDTFA

1     answer that one when it's their turn to talk. Have you  
2     concluded your presentation, or you still got --

3             MR. KATZIR: For now.

4             ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

5             ADMINISTRATIVE LAW JUDGE KWEE: I did have one  
6     question about this July 2001 spreadsheet that was just  
7     handed out today. It looks to me like this was  
8     substantially our -- it was like the same as the previous  
9     submission that you had provided to the then Board of  
10    Equalization. It's also dated 2001. But then, I guess,  
11    it looks like you provided that back in June 3rd, 2010.

12            And, I guess, my question are that a lot of the  
13    numbers on the sheets are the same, but then some of them  
14    are different. For example, in this sheet on Item 5,  
15    you're claiming a deduction on 7,725.31, but then back in  
16    2010, you had been claiming a deduction of 7,153.07. For  
17    example, of the bad checks on this document, you're  
18    claiming a deduction of 6,667, but back then you were  
19    claiming 6,223.32. And in summary, the total back in 2010  
20    you were claiming a deduction of 155,654, but then today  
21    in this document, it's claiming a deduction of 177,489.

22            And I'm just wondering what has changed from the  
23    time that you submitted this document to the Board in 2010  
24    to today to support the change in numbers.

25            MR. KATZIR: Very, very, very simple. I let my

1     secretary type. Did -- and if you just did a basic  
2     calculation, error in the calculation. I don't know  
3     what -- why she made a mistake in the calculation, but  
4     it's totally honest mistake. All these documents right  
5     here to show it. The last four weeks I went myself  
6     because I said I don't trust anybody. I want to make sure  
7     the error is zero.

8             I went one by one by one, pulled up each and  
9     every invoice, looked at it again, and calculated and  
10    multiplied by 8 percent at that time, and I find out the  
11    error. The error is just typo because miscalculate  
12    probably. But whatever you see in your hand is very  
13    accurate because I went through it one by one.

14            So if you look at it, it basically do have back  
15    up. It's just that whoever edit it, my secretary, because  
16    I could not spend my time to do all of it. It's just  
17    some. So just basic and honest typo.

18            ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

19            ADMINISTRATIVE LAW JUDGE ANGEJA: All right.

20    CDTFA, I have one quick question before you start. You've  
21    received this exhibit that they're referring to. You've  
22    had it before today?

23            MR. LAMBERT: Similar.

24            ADMINISTRATIVE LAW JUDGE ANGEJA: And I don't  
25    recall in the briefs -- it's probably there -- but I don't

1 have them all memorized. But I'm assuming there's going  
2 to be a response to each of these line items, or that it's  
3 in the record somewhere. I don't want to change how you  
4 make your presentation. So please make your presentation  
5 as to the two issues, but then I'd like to hear  
6 response -- CDTFA's response to what he's got here.

7 MR. LAMBERT: Sure. Well, I'll start with that  
8 first just to address it. If you look at our exhibit I,  
9 it was a property from our field office dated  
10 December 30th of 2013. There's a couple of pages to it.  
11 But, basically, there's a report that's given for December  
12 30th of '13. And if you look at the second page, there's  
13 kind of an analysis, which is similar to this, although,  
14 it has all three months instead of July of 2001.

15 So we have taken a look at the information that's  
16 been provided. And I think it may be easier for me to go  
17 through the presentation and then address it during that  
18 presentation.

19 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

20

21 OPENING STATEMENT

22 MR. LAMBERT: In this particular case, the  
23 Appellant was audited for three years. It was the years  
24 1999, 2000 and 2001. And so when we conducted the audit,  
25 what we found is that the taxpayer or Appellant did not

1     have a sales journal. They had an invoice register. And  
2     the difference between that is some -- sometime, most of  
3     the time, they will have contracts. And so they'll enter  
4     into a contract and it maybe 30 days. It could be longer  
5     before that contract is fulfilled.

6             In other words, they've delivered the material to  
7     their customer, and the customer takes possession of it.  
8     And the way the sales and use tax law is, at that  
9     particular time is when the tax would be due. The issue  
10    here -- and this is really what it comes down to is the  
11    Appellant was reporting on the cash basis. They were not  
12    reporting on the accrual basis, which they're required to  
13    do for sales and use tax purposes.

14            So they had been audited before. They'd been  
15    audited subsequently, and they're not -- taxpayers in  
16    general are generally required to report on the accrual  
17    method. So therefore, when we conducted the audit, that  
18    needed to be taken into account. And so because there  
19    wasn't a sales journal, we did a couple of things.

20            One thing is we reconciled the bank account.  
21    There was a sizable difference in the bank account that  
22    supports the liability that we come up with. But,  
23    nevertheless, our test of the third quarter of 1999 -- I'm  
24    sorry -- 2001, the third quarter of 2001 is what the  
25    liability is supported by.

1           And so what we did is we went through each one of  
2     the -- I'll call them invoices -- but each one of the  
3     documents that were prepared, and we used the sales tax on  
4     the invoices in order to establish the taxable measure.  
5     So we don't disagree with a lot of the arguments in  
6     regards to nontaxable items. The items that are listed in  
7     Column X, for the most part, would be not subject to tax.  
8     Only if you charge tax on it, which would be excess tax  
9     reimbursement, would you be responsible for either  
10    remitting that tax back to your customer. Or if you  
11    didn't do that, you would have to remit it to the State of  
12    California.

13           So the audit was established by using the sales  
14    tax on the invoices for the third quarter of 2001.  
15    Adjustments were made for contracts that weren't  
16    fulfilled. In other words, the customer did not receive  
17    the item. That would not be a taxable sale. The  
18    nontaxable sales -- there was just a small amount of  
19    nontaxable sales that were disallowed that are not at  
20    issue here, less than \$2,000.

21           And so other adjustments were also made if it was  
22    found that an invoice was billed twice, that would have  
23    sales tax on it. Obviously, sales tax could only be on  
24    one transaction. It can't be on multiple transactions.  
25    And so that figure was arrived at using the sales tax



1 collected base, and adjustments were made. It is shown in  
2 Department's Exhibit F for the 4th quarter -- I'm sorry --  
3 the fourth re-audit.

4 The issue that comes in is the Appellant wants  
5 adjustments for bad debts. And the way that we conducted  
6 the audit for the bad debts, was that we included every  
7 transaction. That was where the merchandise -- there was  
8 a transfer of title. Customer took possession. We  
9 included those sales in the taxable sales of our test.  
10 And what we did is we audited bad debts on an actual  
11 basis.

12 So we took a look at the income tax returns, and  
13 they are on a fiscal year basis. But, nevertheless, we  
14 took a look at the income tax returns that were filed.  
15 And only on one of the income tax returns did the  
16 Appellant claim a bad debt deduction. And I believe it  
17 was, I want to say, \$177,000. We gave them an adjustment  
18 of \$163,255. So as in terms of bad debts, that is the  
19 only adjustment that has been allowed in this audit, and  
20 it's based --

21 We're following regulation 1642 on bad debts,  
22 which says, "If the taxpayer is required to file income  
23 returns, and they report on accrual basis, in which  
24 they're required to, at that point the -- at the point  
25 they claim those bad debt on the income tax returns is

1       when they would be entitled to bad debt deduction."

2               So that's what happens here. In the Appellant's  
3       example, he has a large deduction for bad debts. And we  
4       didn't make any adjustment in the third quarter of '01 for  
5       bad debts, other than the \$163,000 adjustment we made in  
6       the year 2001.

7               And now, another difference is sales -- the  
8       timing of sales. The Appellant is responsible for sales  
9       tax at the time that the material transfers possession.  
10      The problem in this case is we couldn't determine the  
11      sales that took place in prior periods that -- that was  
12      consummated during the third quart of 2001. So the  
13      assumption was made that, essentially, the accounts  
14      receivable at the beginning of the third quarter of 2001  
15      was the same as the accounts receivable at the end of  
16      2001.

17              Now, the Appellant did provide some information  
18      towards the end of the appeals process. Based on that  
19      review, we didn't believe that an adjustment should be  
20      made for those. And it appeared that if there wasn't an  
21      adjustment, it would be not be in the Appellant's favor.  
22      And so we have stuck with the assumption that accounts  
23      receivable has stayed constant.

24              I would point out, we do not know how the -- what  
25      amounts were reported on the third quarter 2001 returns.

1       There were no worksheets. We're not able to get back to  
2       that number. So that in itself makes it difficult to  
3       conduct the audit.

4               In regards to request for relief of interest,  
5       this case has gone on for a substantial amount of time.  
6       There was a -- the appeals division may -- it was a  
7       decision to relieve two years of interest. And that two  
8       years was from June of 2014, through May of 2016, during  
9       that time period. There was apparently a delay in the  
10      appeals in writing up a supplemental decision and  
11      recommendation.

12             But what I would say is that information has been  
13      going back and forth for, essentially, the time of this --  
14      of this audit. There has been an audit. There's been  
15      four re-audits. There's been a supplemental -- I'm  
16      sorry -- a decision and recommendation. There's been four  
17      supplemental decision and recommendations.

18             The Appellant has filed for settlement on three  
19      separate occasions, the latest being at the fourth -- when  
20      the fourth subsequent -- I'm sorry --the fourth  
21      supplemental decision and recommendation was issued. The  
22      Appellant asked for settlement. At that point, the case  
23      went into settlement, and it didn't come out until 2018,  
24      and then it went into the Office of Tax Appeals appeals  
25      process.

1           So that's what happened in the interim between  
2     the last supplemental decision and recommendation, which  
3     you have been provided with and where we are right now.  
4     So the fourth supplemental decision and recommendation  
5     discusses in detail the progression of the audit, and how  
6     we've gotten here, which admittedly is a substantial  
7     period of time. And it could be looked at different ways.  
8     And one is the Appellant did have the ability to go to a  
9     board hearing a number of years ago, declined to do that,  
10    went into settlement, which is their right.

11           But given that they've exercised their rights --  
12    and their entitled to do that -- but there shouldn't be an  
13    interest relief because of that. In terms of interest on  
14    their money, they've made payments toward the liability.  
15    If it is determined that -- well, they filed a claim for  
16    refund, the last I know, for at least \$1,000. They would  
17    be entitled to interest on that money.

18           ADMINISTRATIVE LAW JUDGE ANGEJA: Let me  
19    interrupt you on that point. We have only the petition in  
20    front of us. The claims for refund has to pay -- the  
21    claim for refund has to be of a fully amount of tax paid.  
22    I know I'm not saying that correctly. It's not ripe until  
23    the full amount of tax has been paid. And until it is  
24    ripe, we lack jurisdiction to address it.

25           So the claim for refund, because you've got

1       claims that you've made, but they're not for the full  
2       amount of tax that was owed. It sits in abeyance with  
3       CDTFA to -- if you prevail, you just archived it.

4               You can take it up with them for the claim for  
5       refund. We do not have no jurisdiction over it until it  
6       is fully paid, and then it would come here, assuming they  
7       deny it. You basically get a second bite at the apple.

8               MR. KATZIR: I must go to the meter to put some  
9       change. It would take me about five minutes.

10              MRS. KATZIR: I could continue.

11              ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

12              MRS. KATZIR: Go ahead and go.

13              ADMINISTRATIVE LAW JUDGE ANGEJA: So I just want  
14       to clarify. We do not have claims for refund in front of  
15       us today.

16              MR. KATZIR: So can I go?

17              ADMINISTRATIVE LAW JUDGE ANGEJA: Yeah.

18              MR. KATZIR: She'll continue.

19              ADMINISTRATIVE LAW JUDGE ANGEJA: Yes. Okay. I  
20       want to clarify so that we're not wasting time talking  
21       about a claim for refund that's not in front of us that we  
22       have no jurisdiction for.

23              Does that conclude the Department's --

24              MR. LAMBERT: That --

25              ADMINISTRATIVE LAW JUDGE ANGEJA: Sure.

1           MR. LAMBERT: That concludes our presentation.

2           ADMINISTRATIVE LAW JUDGE ANGEJA: All right.

3           MRS. KATZIR: I did -- I did have a few issues.

4           ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

5

6                           CLOSING STATEMENT

7           MR. KATZIR: First of all, we've been audited,  
8   you state, a number of times. If I remember correctly, we  
9   came out clean as a whistle all those times. Nobody  
10  mentioned to us that we're not handling the sales journal.  
11  Nobody mentioned that. Also, the contracts or sales do  
12  last 30 days or more. And that could have been easily  
13  understood if you took the time to follow up on  
14  paid-in-full invoices, if someone took the time.

15           As for exchanging hands, that's the same thing.  
16  It's determined when money is paid, or they take control  
17  of the inventory -- of the material, which is evidenced by  
18  the signed invoices. Reporting, okay, use tax on  
19  invoices -- use tax on invoices except they were wrongly  
20  taxed. You're talking about -- you follow this up on the  
21  third quarter, and you looked at the invoices, and you  
22  took a look at the taxes. As we explained to you, the  
23  taxes had to be backed out manually because the  
24  computer -- we didn't know how to fix it, so we backed  
25  out.

1           So if your basing everything on the third quarter  
2   on invoice -- taxes that you found on invoices, the taxes  
3   were backed out because we don't know how to do it the  
4   other.

5           You mentioned the bad debt that you did not take  
6   for \$83,000 in a single month, and you gave us \$110,000,  
7   \$112,000 for the year. That's low. And we can prove bad  
8   debt or lack of being able to get our payment with  
9   invoices and copies of small claims court that we took;  
10   lots of people trying to collect our money. So we didn't  
11   get any adjustment.

12           If you would just take merely the bad debt from  
13   the \$540,000, that would bring that number substantially  
14   down. But you didn't see fit to give us any bad debt  
15   relief, even though we can prove it. You said that it was  
16   difficult to perform an audit on us. So what you, from  
17   what I'm gathering, you're saying you kind of  
18   guesstimated. Guesstimated. This is a large amount of  
19   money, and I don't believe that I should suffer a  
20   guesstimated amount.

21           Relief, I do believe that we are entitled to  
22   relief. You admitted that you dragged your feet with that  
23   final supplemental, and so you're giving us a relief of  
24   two whole years. I don't think that's adequate. And then  
25   the many, many re-audits audit settlement, but never once

1     did you mention you did a concise detailed audit invoice  
2     by invoice with Omer or myself.  Never once.

3             And we would appreciate the opportunity.  That's  
4     why we keep -- we keep requesting to be heard.  This is  
5     wrong.  This is wrong.  July of 2001, we are entitled to a  
6     refund of \$5,738.10.  There should be no interest.  There  
7     should be no penalty.  There should be no amount taken.  
8     We should be refunded everything we are owed.

9             That's all.

10            ADMINISTRATIVE LAW JUDGE ANGEJA:  Just for  
11     clarity, my understanding is we don't have any penalties  
12     at issue.  It's only the tax and the interest.

13            MR. LAMBERT:  That is correct.

14            MR. KATZIR:  Oh, I meant the amount due.  To me  
15     that's penalty.

16            ADMINISTRATIVE LAW JUDGE ANGEJA:  Yeah.  I  
17     understand that.  I just wanted to clarify the record.

18            MRS. KATZIR:  All right.

19            ADMINISTRATIVE LAW JUDGE ANGEJA:  I did not have  
20     another issue that we don't have briefed in the request.  
21     So questions from my co-panel?

22            ADMINISTRATIVE LAW JUDGE STANLEY:  I just have  
23     the one.

24            ADMINISTRATIVE LAW JUDGE ANGEJA:  Okay.

25            ADMINISTRATIVE LAW JUDGE STANLEY:  And it's a



1 question for the -- I just had a question for CDTFA. In  
2 the, I think it was the fourth SDNR. It talks about a  
3 particular delay from June 28th, 2010, when the second  
4 settlement proposal was received, until March 12, 2013,  
5 when it was rejected. That's almost a three-year period.  
6 And the only explanation that I saw in the DNR was  
7 caseload. Is that normal to have a nearly three-year  
8 delay with a case that's due to caseload?

9 MR. LAMBERT: I believe you're referring to June  
10 of 2010, and through March of 2013. Is that --

11 ADMINISTRATIVE LAW JUDGE STANLEY: Correct.

12 MR. LAMBERT: Yeah. During that time period, the  
13 taxpayer filed a second supplemental proposal or -- I'm  
14 sorry -- settlement proposal, and it was over in our  
15 settlement unit during that time period. And it's not  
16 unusual for them to be over there for years.  
17 Unfortunately, the law is we're not -- the Department is  
18 not entitled to know what goes on between the settlement  
19 arrangements between the Appellant and the settlement  
20 unit.

21 So although, I'm not aware of exactly what took  
22 place during that time period, what I could say is that  
23 the person that refer -- that they asked from the  
24 settlement unit, indicated that that time period was not  
25 unusual to have a settlement offer being reviewed during

1     that.  So that's all I can say in terms of that time  
2     period, other than our own personal observation of when  
3     sometimes cases go over to settlement, and when they come  
4     back.

5             Occasionally, they will come back in a few  
6     months.  That's the exception.  Most of the time, it'll be  
7     a year or years before it comes back.  And I don't know  
8     exactly why that is, whether they couldn't reach an  
9     agreement during that time period or what the discussion  
10    was.  So that's all I can say in terms of that time  
11    period.

12            ADMINISTRATIVE LAW JUDGE KWEE:  Just a quick  
13    question.  There seems to be an amnesty -- what would be  
14    an amnesty eligible period.  Is there an issue with  
15    amnesty, or did they file for amnesty during that  
16    applicable time period?

17            MR. LAMBERT:  They did.  This is during that  
18    amnesty period.  So there would be an extra 50 percent  
19    extra interest penalty.  They filed their appropriate  
20    forms and, therefore, that's not an issue in this  
21    particular case.  So in terms of amnesty, it does not  
22    affect this particular case.

23            ADMINISTRATIVE LAW JUDGE KWEE:  Okay.  Thank you.

24            ADMINISTRATIVE LAW JUDGE ANGEJA:  Okay.  I have  
25    no more questions.  Do either party have questions?  No.

1       Okay.  So that will conclude the hearing, and I will close  
2       the record.

3               I want to thank the parties for coming in today.  
4       And following this hearing, my co-panelist and I will  
5       discuss the evidence and argument, and we will issue a  
6       written opinion within 100 days from today's date.  And I  
7       think that will do it.

8               Thank you, everybody, for their time.

9               (Proceedings adjourned at 12:57 p.m.)

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

I have hereunto subscribed my name this 19th day  
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