

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
)  
GURDEEP SINGH BRAR and GURMAKH ) OTA NO. 18012053  
SINGH SRAN, )  
)  
APPELLANT. )  
)  
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TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Thursday, August 29, 2019

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
855 M. Street, Suite 960, Los Angeles,  
California, 91401, commencing at  
1:00 p.m. and concluding at 1:34 p.m.  
on Thursday, August 29, 2019,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: Hon. JEFF ANGEJA

Panel Members: Hon. NEIL ROBINSON  
Hon. ANDREW KWEE

For the Appellant: GURDEEP SINGH BRAR  
GURMAKH SINGH SRAN

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND FEE  
DEPARTMENT ADMINISTRATION  
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(Appellant's Exhibits were received at page 6.)  
(Franchise Tax Board's Exhibits were received at 6.)

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1 Los Angeles, California; Thursday, August 29, 2019

2 1:00 p.m.

3

4 ADMINISTRATIVE LAW JUDGE ANGEJA: So we'll go on  
5 the record.

6 We're now on the record in the Office of Tax  
7 Appeals oral hearing for the appeal of -- forgive me if I  
8 get it wrong -- Gurdeep Singh Brar and Gurmakh Singh Sran.  
9 I hope I got that right. The Case ID is 18012053. We are  
10 in Fresno, California, and the date is Thursday,  
11 August 29th, and it's 1:00 o'clock.

12 My name is Jeff Angeja. I'm the lead  
13 Administrative Law Judge for this hearing. My fellow  
14 panelists today are Andrew Kwee and Neil Robinson.

15 And for the Appellants, can I get you to identify  
16 yourselves for the record?

17 MR. BRAR: Gurdeep Brar.

18 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

19 MR. SRAN: Gurmakh Sing Sran.

20 MR. SING: Amandeep Singh.

21 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. And for  
22 CDTFA?

23 MR. LAMBERT: My name is Scott Lambert. To my  
24 left is Lisa Renati, and to Ms. Renati's left is Chris  
25 Brooks.

1 ADMINISTRATIVE LAW JUDGE ANGEJA: All right.

2 Thank you. Okay.

3 And this appeal, as we discussed in our  
4 prehearing conference, this appeal involves one issue:  
5 Which is whether reductions are warranted to the measure  
6 of unreported taxable sales.

7 And during our prehearing conference, the parties  
8 agreed to the admission of evidence of Appellant's  
9 Exhibit 1 and CDTFA's Exhibits A through E. Neither party  
10 had any objection to the admission of those exhibits. Is  
11 that still correct?

12 MR. BRAR: Correct.

13 MR. SRAN: Correct.

14 MR. LAMBERT: Correct.

15 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. And I  
16 hereby admit those exhibits into evidences.

17 (Appellant's Exhibit A was received  
18 in evidence by the administrative Law Judge.)\*\*\*

19 (Department's Exhibits A-E were received in  
20 evidence by the Administrative Law Judge.) \*\*\*

21 ADMINISTRATIVE LAW JUDGE ANGEJA: And based on  
22 our prehearing conference, it's my understanding that both  
23 Appellants will testify today as witnesses?

24 MR. SINGH: No, they will not.

25 ADMINISTRATIVE LAW JUDGE ANGEJA: Oh, okay. So

1 then I won't be swearing anybody in. And we had discussed  
2 the difference between the two, so you're comfortable with  
3 that go in?

4 And CDTFA has no witnesses, as I recall.

5 MR. LAMBERT: That's correct.

6 ADMINISTRATIVE LAW JUDGE ANGEJA: All right. And  
7 as we agreed during our prehearing conference, we will  
8 begin with Appellants' testimony -- not testimony --  
9 Appellants' argument. You had indicated you needed  
10 15 minutes or so?

11 MR. SINGH: Yes.

12 ADMINISTRATIVE LAW JUDGE ANGEJA: And same thing  
13 for CDTFA, 15 minutes. After either side's presentations,  
14 the judges may ask questions. You'll have a five-minute  
15 rebuttal. So you will have the first word and the last  
16 word. The judges can still ask questions if they need to.  
17 And if there are no questions, we would then close the  
18 hearing and would be issuing a decision within 100 days of  
19 today's date.

20 If nobody has any procedural question, we can go  
21 ahead and start with you.

22

23 OPENING STATEMENT\*\*\*

24 MR. SINGH: Okay. Basically, taxpayers'  
25 contention is that this audit was not total audit.

1 Auditor used methodologies which is referred and  
2 percentage of beer versus taxable sales. And auditor is  
3 heavily relying on this -- this methodology and this  
4 methodology is not working for the audit. Then she's  
5 replacing the findings of that analysis along with her own  
6 guesstimates.

7           There are two locations in question. On one  
8 location, she applied that methodology. And she came up  
9 with a credit of differences, which means that taxpayer  
10 over reported taxable amount. And she did not allow those  
11 credit differences. She declared that she will accept  
12 reported sales as accurate.

13           On the second location, she did the same  
14 analysis, and she found that beer percentage ratio versus  
15 the taxable ratio is not reasonable. She believes the  
16 purchase aggregation that she's doing on two months  
17 purchases may not be correct. Therefore, she's going to  
18 replace the -- the findings of her analysis with her own  
19 guesstimate.

20           So give and take, this whole beer percentage  
21 analysis is not working for her. She's just replacing her  
22 own -- she's replacing those numbers with her own  
23 guesstimates. And moving on to other areas, there was  
24 taxable measure she determined based on rebates, cigarette  
25 rebates.



1 Taxpayer contends that they receive these rebates  
2 only for, like, one year in the beginning of the audit  
3 period. After that they were not in any rebate program.  
4 So, therefore, all estimates she is coming up with are not  
5 reasonable.

6 And the third issue was the hot food sales. That  
7 particular location was in the farming area. And the  
8 business of hot food sales were only open during the  
9 harvest season. Business was not year round. They would  
10 operate only for about six months, and during the winter  
11 times they were closed. And on one occasion, they were  
12 even closed during the summer months because they had some  
13 health county violations.

14 So taxpayers believe that amount of hot food  
15 sales should also be adjusted to reflect that business was  
16 not year round. It was only for six months. And on the  
17 other observation we had was, it was a one-seller permit  
18 that was used for both locations. I believe there's more  
19 than -- there were three locations for -- and auditor did  
20 not combine the purchases of all the locations to do her  
21 analysis.

22 She's doing it by location, and she's relying on  
23 vendor reports from the beer distributors. And we don't  
24 know if those distributor reports were reliable in the  
25 sense that they were properly segregated based on location

1 or not. We did not find anything in there that tells us  
2 that those purchase reports properly segregated for both  
3 locations.

4 We believe that she should have combined the  
5 purchases from both locations since that was within her  
6 one permit to do her analysis. So this analysis is just  
7 pure -- this audit report is purely based on guesstimates  
8 and intuitions. And the tax liability that she's coming  
9 up with is highly doubtful.

10 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. Does  
11 that conclude your presentation?

12 MR. SINGH: I have a couple of schedules that I'd  
13 like to get attention to. It's schedule 12R.

14 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

15 MR. SINGH: Schedule 12J. And I'd like to bring  
16 your attention to the comments that she's making at the  
17 bottom of those schedules.

18 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. Go ahead  
19 when you're ready.

20 MR. SINGH: And then for hot food rebates is  
21 schedule 12B and schedule 12I. Okay.

22 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. So you  
23 want us to read those comments.

24 MR. SINGH: The comments are -- I mean, the  
25 comments are, like, on the 12R, she is stating, "The

1 results showed a higher amount reported. Therefore,  
2 reported taxable sales were accepted and further analysis  
3 or audit time was not warranted."

4 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

5 MR. SINGH: So we believe that -- I mean, it  
6 should be investigated further. I mean, if there's a  
7 credit differences that's owed to the taxpayer, auditor  
8 should be equally concerned about that too. They should  
9 not just deny it saying, now we're not going to allow  
10 this. But if the same analysis is used in another  
11 location, then we'll include it. So we believe these  
12 credit differences that she's coming up with, that should  
13 have been accounted for.

14 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

15 MR. SINGH: Same thing is on Schedule 12J. She is  
16 doing a purchase segregation. And based on that purchase  
17 segregation, she's coming up with 73 percent off of beer  
18 sales, and she believes that that's not a reasonable  
19 number. She will not use that number. Instead based on  
20 her observation, based on her intuition, she will just use  
21 50 percent. And then further, she said that she had seen  
22 35 percent ratio also. But on the second location, the  
23 ratio was 33 percent, but she did not allow the credits.

24 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

25 MR. SINGH: So in conclusion, we believe this

1 audit was not done in a thorough way. It seems like that  
2 it was rushed, like, it was rush audit. Sample sizes were  
3 too small. She did not expand the sample size if she was  
4 not coming up with a reasonable number. She only used two  
5 months, August and September, to reflect the whole entire  
6 audit period. That's a very small sampling that she did.

7 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.

8 MR. SINGH: That's -- that basically concludes  
9 our presentation.

10 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. I have a  
11 couple of quick questions just for my clarification. One  
12 is I thought this was five locations. You only referenced  
13 two.

14 MR. SINGH: Yes, the only two were -- the rest of  
15 five only two locations had --

16 ADMINISTRATIVE LAW JUDGE ANGEJA: The two. Okay.  
17 The briefing had indicated the rebates, cigarette rebates  
18 were not disputed, but you said that they did. They  
19 needed to broaden the audit to one year to allow for more.  
20 So it's a new argument to the panel. I thought it was --  
21 I guess we'll find out if it was done on an actual basis.  
22 It still goes to the measure.

23 So it's part of the issue that we discussed. I'm  
24 calling out that it's new to me coming in today. I didn't  
25 think that the rebates were at issue. So we need to pay

1 attention to the remainder of the presentation.

2 Okay. CDTFA you ready?

3 Oh, I'm sorry. Judge Kwee.

4 ADMINISTRATIVE LAW JUDGE KWEE: I have one quick  
5 clarification. Are you saying that the goods from the  
6 Royal Market were transferred to -- the purchases were  
7 transferred to other locations?

8 MR. SINGH: That could have been the situation.  
9 Also, the deliveries, they were getting these deliveries  
10 just from one vendor. And the reports that the auditor is  
11 getting are not segregated by location. We don't know. I  
12 have not seen the reports. But there could be a confusion  
13 there that those reports were not properly allocated from  
14 the two locations.

15 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Now, I'm  
16 just hearing about -- so do you know how far apart these  
17 locations are? I'm not really familiar with area.

18 MR. SRAN: They're about 30 miles.

19 MR. SINGH: 30 miles difference.

20 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

21 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. Any more  
22 questions?

23 Okay. CDTFA, go ahead.

24 MR. LAMBERT: Thank you.

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OPENING STATEMENT\*\*\*

MR. LAMBERT: In this particular case, the audit covered a three-year period of 2009 through 2011. It did include five locations. Two of the locations sold fuel and also had a mini-mart. There was a liquor store. There was a market that sold hot food, and there was a 98 Cents and Gift store.

So the issue in this particular audit was that the records were not in the condition that -- that follows the regulation. There were missing records. Elthere were missing purchases. There were no detail sales information. There were income statements that were federal income tax returns, but there was -- they were lacking documents in order to verify that what was recorded in their books was actually the sales that took place.

So that meant that the Department had to take all alternative measures or methods in order to determine if the reported taxable sales were correct. So -- and I'll go in order of the two gas stations that were accepted. We, essentially, marked up their purchases and -- which included their fuel and the mini-mart. And the amount that we came up with was within 99 percent of what was reported.

So they had reported 13 million -- \$13 million in

1 taxable sales for those two locations, and we came up  
2 with -- it was about \$125,000 credit for those two  
3 figures. And that, when you're talking about that much  
4 volume, it can be easy to be off by a small amount as far  
5 as our estimation. We were, basically, trying to estimate  
6 what their sales were. What we determined -- ultimately,  
7 determined is what was recorded in their books for those  
8 two locations were accurate.

9 We did the same thing with the liquor store. We  
10 did a markup on that location. And based on our findings,  
11 it showed about \$26,000 were underreported. Again, we  
12 felt that was within reason of an error factor of our  
13 estimation. And so, therefore, we accepted what was  
14 reported for the liquor store.

15 Now, when it came to the Royal Market, the markup  
16 of the records showed -- the taxable markup for their  
17 records showed 31-and-a-half percent, which is within the  
18 realms of possibilities for a market. Upon further  
19 investigation, what we found is that not all beer  
20 purchases were recorded. We went and contacted their  
21 vendor and actually obtained their beer purchases for the  
22 three-year period.

23 Now, the venders keep track of where they deliver  
24 the product to. So they know each location that they  
25 deliver to. And we asked for the purchases for the Royal

1 Market in particular, and we received the response back  
2 for the three years, of \$141,580 in purchases of just  
3 beer.

4 We did a purchase segregation for two months,  
5 which is using August and October of 2011 purchase  
6 invoices. And what we found was that the beer constituted  
7 73.51 percent of those purchases. And based on our  
8 observation of the store and the fact that the beer  
9 purchases had been understated, that we felt that other  
10 taxable purchases had not been recorded in their books.

11 And so, therefore, the auditor made the decision  
12 to use a 50 percent estimate that taxable sales will be  
13 50 percent beer. So effectively, what they did was took  
14 the known beer purchases, divided it by 50 percent to get  
15 what the taxable purchases would be for that audit period.  
16 We did a shelf test and used to the Appellants' advantage,  
17 we used the purchase segregation test and shelf test to  
18 establish a weighted markup.

19 So, essentially, the reason why it's in their  
20 favor is that we used 73 percent of purchases of being  
21 beer. And what we found is that the beer had the lowest  
22 markup. So even though we came out with a 40 percent  
23 markup of taxable, which -- also falls within our  
24 acceptable range of what taxable sales could be. And the  
25 reason for that is what you'll generally find is that



1 stores that are located further away from other stores,  
2 generally, have a higher markup that's associated with  
3 that, just from the fact of convenience and the fact that  
4 they don't make -- they don't make as many sales out  
5 there. So that's why they have a higher markup.

6 So we took the audited taxable purchases, marked  
7 it up by -- we allowed an adjustment for pilferage of  
8 2 percent, marked that amount up by 140 percent and then  
9 compared that to what was reported to come up with a  
10 difference of \$252,000. And that includes the hot food,  
11 which I'll get to.

12 The appellant also had hot food sales, and we had  
13 to add those. Those were not included in our calculation  
14 of taxable merchandise because the tortillas and tortas,  
15 that we used to establish the hot taxable food, is  
16 generally considered a food product until the point that  
17 it's heated and served to the customer, and at that time  
18 it becomes a taxable product.

19 So what we did is we took the tortillas and torta  
20 purchases for October of 2011, which was 1,537 different  
21 items. We allowed a spoilage and self-consumption factor  
22 of 10 percent. And then we took those tortillas and  
23 tortas and we -- based on the size of them, we knew what  
24 the selling prices were. And so we were able to establish  
25 what the taxable sales for -- for the hot food was during

1     October of 2011. We came up with a percentage and then --  
2     of taxable sales and then applied that to the other  
3     periods and basically came up with audited taxable hot  
4     food of \$91,932.

5             In regards to the 98 Cents and Gift location, we  
6     accepted the total sales that were recorded in the  
7     Appellants' book for that period. Their overall markup  
8     was 64 percent for 6 months. So we accepted that. The  
9     issue was the Appellants claimed a 10 percent deduction  
10    for nontaxable items. And they did that just based on an  
11    estimate of what their nontaxable sales would be. We did  
12    a purchase segregation test for the period July 15, 2011,  
13    through December 22nd of 2011, and we came out with  
14    3.58 percent of their purchases during that period were  
15    nontaxable item.

16            So, essentially, what we did is we took that  
17    amount, we multiplied that amount by their total cost of  
18    goods sold to get their nontaxable sales and subtracted  
19    that from the total sales in their books to get their  
20    taxable -- audit taxable. And we compared that to what  
21    they reported to come up with a difference.

22            So there's a couple of issues on the 98 Cents.  
23    They claim that the store was closed for a period of time.  
24    And they did provide documentation from the county health  
25    inspector, and it did appear that there was an issue with

1 the store at one point. We did allow one month for the  
2 business being closed. There was no documentation  
3 provided as to when the store reopened. It's quite  
4 possible that they got it resolved that day, and they  
5 opened the next day. We don't know. We just assumed, or  
6 we just gave them the benefit of the doubt and just  
7 accepted the store was closed for a one-month period.

8 As far as other things for -- to when the store  
9 was closed, as I mentioned, there was no reinspection  
10 report provided. And then there was no information  
11 provided such as guest checks or cash register tapes in  
12 order to determine when the business started up.

13 So the last issue would be the rebates, which has  
14 not been contested until now. I do show that we  
15 obtained -- there was no estimate. It was the actual  
16 figures. It's contained on schedule 12B, and that is --  
17 hold on one second. That is Exhibit B, page 7 of 73. The  
18 only issue that was whether there was an assumption was  
19 made in 2011.

20 There was a figure on the income tax returns that  
21 showed additional income, and the auditor made the  
22 assumption that that was related to rebates. Otherwise we  
23 did contact Phillip Morris, and we do have, also, sales of  
24 R.J. Reynolds, and we were able to get the actual figures.  
25 As I mentioned, that issue was not contested earlier.

1           So with that I need -- well, just one thing.  
2       With the test that we did, we tried to obtain purchase  
3       cycles for the different areas that we test for purchase  
4       segregations, and we'll take a look at the business and  
5       determine what's a reasonable purchase cycle. And a lot  
6       of times it is a month or so. And that's what we'll use  
7       to do our testing.

8           So with that, the Department rests.

9           ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. Any  
10       questions?

11          ADMINISTRATIVE LAW JUDGE KWEE: I have a question  
12       for the Department. That is the taxpayer made the  
13       argument that their sales food products were seasonal  
14       based, I guess, on needs of the farming community in the  
15       area. I am wondering if the Department did any  
16       verifications to see if the purchases remained  
17       consistently throughout the taxable year versus purchases  
18       made maybe during another time of year? Which would be  
19       interesting, the taxpayers' argument, that their sales  
20       were only, like, during the summer or fall months. Do you  
21       understand?

22          MR. LAMBERT: Yes, I do understand. Not that I'm  
23       aware of. What I would point out is that if you do take a  
24       look at their reported taxable sales for that location,  
25       you will see that the reported taxable sales for the

1 second and third quarter are substantially higher than the  
2 1st and 4th quarter. The period that we used for the  
3 torta and tortilla purchases was from October, which is  
4 from the 4th quarter. So although we didn't take a look  
5 at the other purchases from the other periods -- that I'm  
6 aware of any way -- we did use a purchase that was outside  
7 of their high-sales period.

8 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

9 ADMINISTRATIVE LAW JUDGE ANGEJA: Anymore  
10 questions?

11 ADMINISTRATIVE LAW JUDGE ROBINSON: No questions.

12 ADMINISTRATIVE LAW JUDGE ANGEJA: All right. You  
13 have five-minute rebuttal.

14

15 CLOSING STATEMENT\*\*\*

16 MR. SINGH: Just briefly. Sample used by the  
17 auditor was only for two months, August and October.  
18 These are the months when the beer sales are kind of lower  
19 compared to summer months. So, basically, what we're  
20 trying to say is the sample was not reflective of the  
21 entire audit period.

22 And other issue was that auditor was heavily  
23 relying on this beer percentage methodology. She's trying  
24 hard to make it work, and that did not work. She did not  
25 expand the sample. She did not pick any summer months or

1 anything. She just replaced those numbers with her own  
2 guesstimate. And we believe that's why these tax  
3 liabilities come up because the methodology was not  
4 working. The sample size was too small. That's it.

5 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay.  
6 Questions? So I have a few questions. One, August is a  
7 summer month; right? I mean this is August.

8 MR. SINGH: Yeah.

9 ADMINISTRATIVE LAW JUDGE ANGEJA: And it's hot.  
10 So it's a summer month. I get that October is not. Okay.  
11 And then the amount in the cigarette rebates that had to  
12 be estimated or assumed that it was cigarette rebate  
13 income from the income tax return. How much was that?

14 MR. LAMBERT: I believe it was -- I'm going to  
15 say off the top of my head it was --

16 ADMINISTRATIVE LAW JUDGE ANGEJA: I know. I can  
17 look, but I just don't have it in front of me.

18 MR. LAMBERT: It's \$2,154, and that figure came  
19 from the income tax returns.

20 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. And the  
21 cigarette rebates in total, how much for the audit period  
22 that we assessed?

23 MR. LAMBERT: Let me get the schedule. It was  
24 24,474.

25 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. And you

1 had said that -- and I'm not going to be able to say it as  
2 articulately as you did in the audit method that they've  
3 used, but you said that they used the beer estimate of  
4 50 percent. I get that. The audit of the beer purchases  
5 were 50 percent of the total purchases.

6 MR. LAMBERT: Of taxable. Total taxable.

7 ADMINISTRATIVE LAW JUDGE ANGEJA: Yeah. Total  
8 taxable. What's the basis for that 50-50 estimate?

9 MR. LAMBERT: It was based on the fact that on  
10 our observation of the -- or review of the purchase  
11 invoices, not all beer purchases were recorded. We were  
12 able to obtain the beer purchases from their supplier, and  
13 that the assumption was made that we did not have all the  
14 purchases for the other taxable items. And the reason for  
15 that is, based on observation of the business inventory,  
16 that the auditor believed that the beer made up  
17 30-something percent of the shelf space.

18 But just because you have a certain shelf space  
19 for a product doesn't mean that you sell it in the same  
20 amount. And so you can have an item that sells more.  
21 It's going to go out the door more. And so they allowed  
22 the 50 percent instead of the 35 percent just on the fact  
23 that the auditor believed that was a reasonable amount to  
24 estimate.

25 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. And I

1 can't do the math quickly enough in my head. If that  
2 number were higher, the audited liability would be lower?

3 MR. LAMBERT: That's correct because you have  
4 less other items.

5 ADMINISTRATIVE LAW JUDGE ANGEJA: To account for?

6 MR. LAMBERT: Yes.

7 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. I don't  
8 have any other questions. Do you have any responses you  
9 want to make, Mr. Singh?

10 MR. SINGH: Yes, just briefly. The reports that  
11 were obtained from the beer distributors, they were not  
12 complete. They were also estimated. It's schedule 12L.  
13 There's the comment section there at the bottom.

14 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. Good.  
15 Okay. So we can review that.

16 MR. SINGH: Yes.

17 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. I did  
18 have one last question. I'm not trying to belabor the  
19 point. He had the argument that for the -- I know for the  
20 two gas stations -- I don't know if it were for three  
21 locations were except -- the gas stations had reported  
22 sales higher than the audited sales. The others re  
23 slightly less.

24 But there's a -- I'll put it in quotes. There's  
25 a credit that they're not getting credits for the over



1 reporting. Can you explain why you don't generally allow  
2 over reporting as a credit?

3 MR. LAMBERT: Right.

4 ADMINISTRATIVE LAW JUDGE ANGEJA: Not why you  
5 generally don't. Why you didn't in this case? Does that  
6 generally mean what they reported was more than you  
7 audited for a given period?

8 MR. LAMBERT: Right. When you're trying to  
9 estimate -- and taxable sales, whether it's higher or  
10 lower, if we get within a reasonable amount of -- let's  
11 say, I'll use an error, but that's really not maybe the  
12 right term. If you get it within a reasonable amount we  
13 will accept it one way or the other.

14 When you take a look at \$100,000 difference that  
15 we came up with compared to sales of \$13 million, that's  
16 relatively a small amount. In other words, that's less  
17 than a one percent of error. There was no information  
18 that has been provided that they've transferred inventory  
19 between locations. Therefore, these amounts that they  
20 reported were recorded in their records. And at least for  
21 those three locations, they appeared to be accurate.

22 And the other locations, other than the market  
23 where we did use the markup on the 98 Cent store, there  
24 was no markup for that location. That was strictly  
25 based -- we accepted their total sales. It was based on

1 the purchase segregation test to allow the nontaxable  
2 sales.

3 But to hopefully answer your question, there was  
4 no evidence that the credit was -- that they actually over  
5 reported sales for those two locations. It's a -- if  
6 you're off by a penny or so with the gas, it can easily  
7 make up for that amount or within a penny.

8 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. I don't  
9 have any other questions. Do my co-panelist have any?

10 ADMINISTRATIVE LAW JUDGE KWEE: No.

11 ADMINISTRATIVE LAW JUDGE ROBINSON: No questions.

12 ADMINISTRATIVE LAW JUDGE ANGEJA: Okay. If  
13 neither party has anything else to add, I think that will  
14 conclude the hearing, and I will close the record.

15 And I want to thank everybody for coming in  
16 today. And following this hearing, we will be issuing a  
17 decision. We're obligated to get it out 100 days. I try  
18 to be faster than that. And that will do it. So thank  
19 you, everybody.

20 The hearing is closed.

21 (Proceedings adjourned at 1:34)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 24th day of September, 2019.

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ERNALYN M. ALONZO  
HEARING REPORTER