

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
JOO EUN, INC.,) OTA NO. 18022357
)
)
) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, September 17, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead: Hon. NGUYEN DANG

Panel Members: Hon. DANIEL CHO
Hon. RICHARD TAY

For the Appellant: SHIN KANG

Interpreter: SUNHEE YU

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION
By: SCOTT LAMBERT
LISA RENATI
DANA FLANAGAN-MCBETH

TAX COUNSEL
Legal Division
P.O. Box 1720
Rancho Cordova, CA 95741
916-845-2498

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I N D E X

OPENING STATEMENT

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E X H I B I T S

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CLOSING STATEMENT

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1 Los Angeles, California; Tuesday, September 17, 2019

2 11:45 a.m.

3

4 ADMINISTRATIVE LAW JUDGE DANG: We are opening
5 the record in the appeal of Joo Eun, Inc., before the
6 Office of Tax Appeals. The Case Number is 18022357. This
7 hearing is being convened in Los Angeles on
8 September 17th, 2019, at 11:45 a.m.

9 Today's case is being heard by a panel of three
10 judges. My name is Nguyen Dang, and I'm the lead judge
11 for purposes of conducting this hearing today. Also on
12 the panel with me is Judge Daniel Cho to my left and Judge
13 Richard Tay to my right.

14 Beginning with the Appellant, could you please
15 state your appearance for the record?

16 THE INTERPRETER: I will be helping the client
17 today. My name is Sunhee Yu. I'm the translator.

18 MR. KANG: My name is Joo Eun, Inc. My Korean
19 name is Shin Kang.

20 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

21 CDTFA?

22 MR. LAMBERT: My name is Scott Lambert. To my
23 left is Dana Flanagan-McBeth, and to her left is Lisa
24 Renati. We're representing California Department of Tax
25 and Fee Administration.

1 ADMINISTRATIVE LAW JUDGE DANG: Thank you and
2 welcome.

3 The issue I have today is whether adjustments are
4 warranted to the measure for unreported taxable sales. Is
5 that correct Appellant?

6 MR. KANG: Yes.

7 ADMINISTRATIVE LAW JUDGE DANG: And CDTFA?

8 MR. LAMBERT: Correct.

9 ADMINISTRATIVE LAW JUDGE DANG: Thank you. CDTFA
10 has offered Exhibits A through F as evidence in this
11 matter. Is there any objections to having CDTFA's
12 exhibits entered into evidence, Mr. Kang?

13 MR. KANG: No.

14 ADMINISTRATIVE LAW JUDGE DANG: Okay.

15 CDTFA, your Exhibits A through F are now admitted
16 into evidence.

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

19 ADMINISTRATIVE LAW JUDGE DANG: Appellant has not
20 admitted any exhibits for our consideration or any
21 evidence in this matter?

22 MR. KANG: Yes.

23 ADMINISTRATIVE LAW JUDGE DANG: Before I begin, I
24 would need to swear in both Mr. Kang and yourself.
25 Ms. Yu, I'll be swearing you in first. If you could

1 please stand and raise your right hand.

2

3

SUNHEE YU,

4 produced as an interpreter, and having been first duly
5 sworn by the Administrative Law Judge, translated from
6 Korean to English and English to Korean:

7

8

INTERPRETER: Yes.

9

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

11

Mr. Kang rise and raise your right hand.

12

13

SHIN KANG,

14 produced as a witness, and having been first duly sworn by
15 the Administrative Law Judge, was examined and testified
16 as follows:

17

18

MR. KANG: Yes, I do.

19

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

21

22

If you're ready, Mr. Kang, you have 15 minutes
for your presentation.

23

24

OPENING STATEMENT

25

MR. KANG: In 2006 in September -- no -- in

1 August I started my sushi business in Riverside called Joo
2 Eun. So after I opened my store, there was an economic
3 crisis and the mall wasn't doing very well. Stores like
4 Albertsons, Target, and 7-Eleven slowly closed in the
5 mall. So the small mall was empty and the only stores
6 left was, like, nail shops and a laundry and only a few
7 shops left in the mall.

8 So after that, I was struggling to maintain the
9 store, and in 2009 my wife and I decided to the run the
10 store by ourselves. I started to loan money from family
11 in Korea, \$2,000 and \$3,000 when I could. So there was --
12 there were few sushi places three miles within our store,
13 and the small stores changed their menus to all you can
14 eat. And we were struggling at that time. So we couldn't
15 sell the store, and we were -- we tried to sell -- I mean,
16 we tried to sell the store for a long time.

17 So our income from the store was around \$5,000 to
18 \$6,000. And the reason why I borrowed some money from my
19 family was that I paid back the money with interest. So I
20 was -- my status was E2 -- was on E2 visa. And in order
21 to maintain the status and continue, I had to deposit more
22 money. So that's why I did that every two years.

23 So in 2012 and 2013 people from IRS came, and
24 they were trying to check if my status was okay. So they
25 would come around the lunch time and stay around for 30

1 minutes or so. So in 2014 March, somebody called Steve,
2 who I wasn't acquainted with, he offered that he would
3 take over the store and make it profitable again.

4 So from 2014 May 1st, on, I handed over the store
5 to Steve who was a pastor in the neighborhood. So I
6 trusted him, and I didn't tell the renter, and --
7 regardless. And he -- I trusted him that he would take
8 over the store and manage it well. But three months on,
9 he stopped paying the rent, gas, and the fees for the
10 alarm system. Then the renter started to go into process
11 of eviction, and Edison started their collection process.

12 So I went to the landlord and I pled and begged.
13 And so he told me as long as he gets the rent and fees,
14 the rest you two resolve it. So I went to the police and
15 got a restriction order, but they refused and told me that
16 you two just resolve the issue. I hired a lawyer. He
17 told me the fee is \$35,000. I didn't have the money, so I
18 couldn't do that either.

19 So in 2014 August, he made a contract with the
20 landlord. He paid all the fees and he opened -- reopened
21 the store named TJ sushi, and I didn't know anything about
22 it. So I lost the store. And then I was fined a tax fee
23 saying that cash and credit cards are different. So I
24 appealed and in 2017 March, I had the first meeting for
25 the appeals.

1 So I lost my store, but regardless, I had the
2 responsibility for Joo Eun, Inc. So I paid the sales tax
3 in 2013 and the tax for the 4th quarter in 2014 and then
4 the store tax in 2015 January 31st. So I got a statement
5 from BOE giving the estimate rate of use of cash and
6 credit card based on the neighboring stores. And 2017
7 March, I got a reduction for \$6,550. So I am thankful for
8 their consideration in lowering the debt at the
9 conference. Still I have a lot of debt. And the tax
10 amount, \$6,000 sum, is still a large amount for me.

11 So what I'm charged from BOE is the tax from 2012
12 to 2014. Although, it was my mistake, I assumed that this
13 is reflected when Steve took over the store in 2014, and
14 he changed the menu to all you can eat, and he gained
15 20,000 for income. So I think it's based on this. So
16 that's how I came to consider the tax appeal, and I feel
17 it's unfair that I am charged -- charged so far.

18 So to tell you the truth, I did my best in
19 getting money from family and putting that money into the
20 company and into the store and deposited and getting taxed
21 on all this seems very, very frustrated. So after I lost
22 the store, my wife and son is living together and -- but
23 after five years, I've come to terms with this.

24 So I'm trying to live a good life and get back
25 with my family. I would pay the tax, but it's not that

1 I'm trying to not pay the tax, but I don't have the
2 sufficient funds to pay it. So if you could consider this
3 appeal, I would -- it would be appreciated.

4 So when I gave him -- when he took over the
5 store, I told him that when you get cash, you need to
6 deposit it. And I have proof that I tried that. So if
7 you consider all the circumstances, I would be very
8 appreciative. So once again I apologize, and I would like
9 to resolve this issue as soon as possible.

10 Thank you very much.

11 ADMINISTRATIVE LAW JUDGE DANG: Thank you for
12 your presentation, Mr. Kang.

13 CDTFA do you have any questions for Mr. Kang?

14 MR. LAMBERT: No, we don't.

15 ADMINISTRATIVE LAW JUDGE DANG: Okay. If you're
16 ready, you have 15 minutes to begin your presentation.

17

18 OPENING STATEMENT

19 MR. LAMBERT: Okay. In this particular case, the
20 Appellant operated a restaurant that was audited for the
21 period of April 2012, until they closed out the business
22 or closed out the permit in December of 2014. Upon audit,
23 the Appellant did not provide profit and loss statements,
24 sales journals, cash register tapes, guest checks,
25 purchase journals, purchase invoices, or sales tax work

1 sheets.

2 There was a difference in 2013 between the sales
3 reported on the income tax returns and the sales and use
4 tax returns of \$36,000. The markup of record for 2013 was
5 371 percent, and the markup for 2014 was 237 percent. We
6 consider the amounts to be high and inconsistent. The
7 amounts received by credit card were higher than the total
8 sales reported on the sales and use tax returns.
9 Therefore, the Department decided to use an alternative
10 method to establish the audit liability.

11 Since the business was closed out and there was a
12 dispute between the person managing the business and the
13 Appellant, we were unable to conduct an observation test.
14 Therefore, initially we used the credit card percentage
15 from two similar businesses in the area, which was just
16 over 44 percent to establish the audit liability.
17 Subsequent to that, the Department arbitrarily used an
18 80 percent credit card percentage to establish the
19 liability which reduced the amount of taxable sale
20 substantially.

21 Due to the lack of records and the business being
22 closed, it was determined that the credit card percentage
23 was the best method to use to establish the audit
24 liability. I would point out that profitability of the
25 business or capitol put into the business has no

1 relationship to the -- necessarily doesn't have a
2 relationship with the amount of sales that are being made.
3 With that, the Department concludes our presentation.

4 ADMINISTRATIVE LAW JUDGE DANG: Thank you for
5 your presentation, Mr. Lambert.

6 At this time I'd like to ask my panel members if
7 they have questions for either of the parties.

8 Judge Cho?

9 ADMINISTRATIVE LAW JUDGE CHO: I have a couple of
10 questions for the Department. According to the decision,
11 it said the business transferred sometime in June of 2014;
12 is that correct?

13 MR. LAMBERT: I believe at that point that the
14 person that the Appellant was talking about started
15 operating the business. The Department was not notified
16 until December of 2014 that the Appellant was no longer
17 operating the business. So the Appellant was aware that
18 this other person was filing the returns under his permit.
19 Therefore, the Appellant would be responsible for returns
20 for that period of time. Because when we first knew about
21 it, it was in December of 2014.

22 ADMINISTRATIVE LAW JUDGE CHO: So I just wanted
23 to confirm that the Department is using the credit card
24 ratio of 80 percent based off of credit card deposits for
25 the entire audit period; is that correct?

1 MR. LAMBERT: That's correct.

2 ADMINISTRATIVE LAW JUDGE CHO: Okay. So with
3 respect to the 3rd quarter of 2014 and 4th quarter of
4 2014, those credit card deposits, do you know where that
5 information came from? Because if he transferred the
6 business to somebody else, would those credit card
7 deposits still be going to him, or is that the new
8 business?

9 MR. LAMBERT: Well, I believe they showed up
10 under his account. That's where we obtained the
11 information.

12 ADMINISTRATIVE LAW JUDGE CHO: Okay. So the
13 credit card deposits for the 3rd quarter of 2014 and the
14 4th quarter of 2014 were actually credit card deposits to
15 Mr. Kang's account?

16 MR. LAMBERT: That's correct.

17 ADMINISTRATIVE LAW JUDGE CHO: Okay. Thank you.

18 ADMINISTRATIVE LAW JUDGE TAY: Just a follow up
19 question. Is that based on bank statements that you
20 received for those credit cards?

21 MR. LAMBERT: No. The 1099K information.

22 ADMINISTRATIVE LAW JUDGE TAY: Those 1099Ks were
23 issued to Mr. Kang?

24 MR. LAMBERT: That's correct. We maintain a
25 database of that. So the Department maintains a database,

1 and so that's where we obtain that information from.

2 ADMINISTRATIVE LAW JUDGE TAY: With respect to
3 the predecessor liability or just the fact that Mr. Kang
4 is responsible for tax payments even when -- after he
5 supposedly transferred the business, one of the
6 requirements to that was he aware that the new owner is
7 using his sellers permit. How do you know? How do you
8 come to that conclusion that he knew?

9 MR. LAMBERT: That's a good question, and I'm
10 going to need -- it's in the exhibits, and there's a
11 comment in that regard. And I'm going to -- in his -- the
12 Appellant acknowledged that he was aware that the taxpayer
13 was filing the returns under his permit. He stated that
14 to us verbally. It's in the exhibits, but I would have to
15 go through here to find out where it is in the exhibits.

16 ADMINISTRATIVE LAW JUDGE TAY: Maybe a question
17 for the Appellant. Were you aware that this person,
18 Steve, was using your sellers permit and filing sales tax
19 returns based on Joo Eun, Inc.?

20 Sorry. Just to clarify. This is after the
21 business was reportedly sold in June of 2014.

22 MR. KANG: So I didn't actually sell the store.
23 I -- Steve proposed that he would run the store for me,
24 and he would -- he would, you know -- so during that time,
25 he -- so Steve has no contract with the landlord. He

1 was -- he was running the business under Joo Eun, Inc.,
2 and he took the money that he earned. The first three
3 months went okay. But after the three months, he didn't
4 pay the rent and the utilities. So I got the eviction
5 note under the Joo Eun, Inc., name from the landlord.

6 ADMINISTRATIVE LAW JUDGE TAY: Sorry. Do you
7 mind if I interrupt just really quickly? What time frame
8 was that?

9 MR. KANG: From 2014 May 1st.

10 ADMINISTRATIVE LAW JUDGE TAY: Okay. Thank you.
11 I don't have anything else.

12 ADMINISTRATIVE LAW JUDGE DANG: I'm sorry. Were
13 you finished with the translation? I wasn't clear.

14 MR. KANG: So Mr. Kang said that he didn't sell
15 the store to Steve. He asked him to run it for him. And
16 so Steve hadn't, like, a direct contract with the landlord
17 himself. So he was -- he was just running the store on
18 behalf of him, and he didn't sell the store to Steve.

19 ADMINISTRATIVE LAW JUDGE TAY: At what point
20 did -- was it your understanding that Steve had taken over
21 the business and was cutting him out, that he was no
22 longer in the picture? Or when he had -- Steve had
23 basically fully taken the business as his own?

24 MR. KANG: So all this started from May 1st on.
25 2014 May 1st on. Everything after that date.

1 ADMINISTRATIVE LAW JUDGE TAY: And the point in
2 time when Steve made the deal with the landlord, paid all
3 the fees, and started operating as the other sushi
4 restaurant -- TJ Sushi, I think -- when was that?

5 MR. KANG: I don't remember exactly, but it would
6 be around September, August, September 2014.

7 ADMINISTRATIVE LAW JUDGE TAY: Okay. Thank you.

8 ADMINISTRATIVE LAW JUDGE DANG: I just have one
9 question for Mr. Kang. If you could please explain to me
10 what you believe your percentage of credit card sales was
11 from the 2012 to 2014 period.

12 MR. KANG: So 2012 to 2014 the sales, 99 percent
13 was for credit cards, and it's around \$5,000 to \$6,000.
14 And I also gave \$2,000 -- \$1,500 to \$2,000 to my CPA. And
15 he deposited that money because of my E2 status. And then
16 after a while I needed that money. I took it out, and I
17 used it. And then I deposit it -- and then I deposited it
18 again. And that's -- that would be the answer why there
19 is discrepancy from the office.

20 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

21 Panel members, did you have any further
22 questions?

23 ADMINISTRATIVE LAW JUDGE TAY: No, thanks.

24 ADMINISTRATIVE LAW JUDGE CHO: No further
25 questions here.

1 ADMINISTRATIVE LAW JUDGE DANG: Okay. Mr. Kang,
2 you have five minutes on rebuttal.

3

4 CLOSING STATEMENT

5 MR. KANG: Thank you very much for listening. I
6 fully understand this issue, and I truly want to pay tax
7 and get pensions later on. It's not that I don't want to
8 pay the tax, I still working hard to get back to my
9 family. And if you could adjust the tax amount, then I
10 would work hard and pay what I can coming in the future.

11 THE COURT: Thank you.

12 CDTFA, do you have anything further you would
13 want to add.

14

15 CLOSING STATEMENT

16 MR. LAMBERT: The only thing I would point you to
17 in the question in regard to when they started, or he knew
18 that -- the Appellant knew that the taxpayer -- that the
19 person operating the business started May 2014 was in
20 their petition, and it's page 59.

21 And it states, "Due to some complication" -- this
22 is the Appellant's writing. "Due to some complications at
23 that time, TJ Sushi used Joo Eun's seller's permit and
24 promised to file the tax returns and pay the related sales
25 tax for income earned from May 1st, 2014, until they

1 obtained their own sellers permit." It says, "Joo Eun
2 completely trusted TJ Sushi to carry out its promise."

3 So the one thing I would point out is when TJ
4 Sushi came in to obtain their own permit, at that time in
5 December of 2014 is when this permit was closed out, and
6 the new permit was issued to TJ Sushi.

7 That's the only thing I have to add.

8 ADMINISTRATIVE LAW JUDGE DANG: Thank you,
9 everyone, for coming today and making your presentations.
10 The record in this matter is now closed and this appeal is
11 submitted for decision. The panel of judges will meet and
12 deliberate. And we intend to issue a written decision
13 within 100 days. Thank you.

14 This hearing is now adjourned.

15 (Proceedings adjourned at 12:30 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 7th day of October, 2019.

ERNALYN M. ALONZO
HEARING REPORTER