

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
PRISCILLA'S GOURMET COFFEE, INC.,) OTA NO. 18073393
)
APPELLANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Wednesday, September 18, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
355 S. Grand Ave. 23rd Floor, Los Angeles,
California, 91401, commencing at 10:02 a.m.
and concluding at 10:41 a.m. on Wednesday,
September 18, 2019, reported by
Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: Hon. ANDREW KWEE

Panel Members: Hon. MICHAEL GEARY
Hon. RICHARD TAY

For the Appellant: MARK HARTMAN
SHANNON HARTMAN

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION
By: SUNNY PALEY
MONICA SILVA
LISA RENATI

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

	<u>PAGE</u>
Mr. and Mrs. Hartman	8
Ms. Paley	20

E X H I B I T S

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

CLOSING STATEMENT

	<u>PAGE</u>
Mr. and Mrs. Hartman	29
Ms. Paley	35

1 Los Angeles, California; Wednesday, September 18, 2019

2 9:00 a.m.

3

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

6 We're opening the record in the appeal of
7 Priscilla's Gourmet Coffee, Inc., before the Office of Tax
8 Appeals. The OTA Case Number is 18073393, and today's
9 date is Wednesday, September 18th, 2019. The time is
10 approximately 10:02 a.m., and the hearing is being
11 convened in Los Angeles, California.

12 For the record, will the parties at the table
13 please state their names and who they representative,
14 starting with representatives for the taxpayer, Pricilla's
15 Gourmet Coffee.

16 MRS. HARTMAN: I'm Shannon Hartman. I'm from
17 Pricilla's Coffee.

18 MR. HARTMAN: And Mark Hartman, Priscilla's
19 Coffee.

20 MS. PALEY: Sunny Paley for CDTFA.

21 MS. SILVA: Monica Silva for CDTFA.

22 MS. RENATI: And Lisa Renati for CDTFA.

23 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Great. So
24 today's hearing is being heard by a panel of three
25 administrative law judges. My name is Andrew Kwee, and I

1 am the lead judge. Judge Michael Geary to my left and
2 Judge Richard Tay to my right are the other members of
3 this Tax Appeals panel. All three of us will meet after
4 the hearing and produce a written decision as equal
5 participants. Although, the lead judge, myself, will
6 conduct the hearing, any judge on this panel may ask
7 questions or otherwise participate to ensure that we have
8 all the information needed to decide this appeal.

9 The documentary evidence marked for
10 identification in this appeal includes Exhibits A
11 through H for CDTFA, and no exhibits for the taxpayer.
12 There are no objections to admitting any of this
13 evidence -- any of these exhibits into evidence.

14 Will the parties confirm for the record that the
15 summary I have just provided is correct, and that they
16 have no objections to admitting these exhibits into
17 evidence; starting with the taxpayer.

18 MRS. HARTMAN: Yes.

19 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

20 MS. PALEY: Yes, correct.

21 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

22 (CDTFA's Exhibits A-H were received in
23 evidence by the Administrative Law Judge.)

24 ADMINISTRATIVE LAW JUDGE KWEE: So at that point,
25 there's going to be one issue that we'll be deciding in

1 this appeal. And the issue is: Whether the Appellant
2 correctly reported its sales and use tax liability during
3 the audit period.

4 And at this point, I believe we're ready to
5 proceed with the taxpayer's opening presentation. Before
6 you start, if you would raise your right hands so I can
7 swear you in.

8

9

SHANNON HARTMAN,

10 produced as a witness, and having been first duly sworn by
11 the Administrative Law Judge, was examined and testified
12 as follows:

13

14

MARK HARTMAN,

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

18

19 MRS. HARTMAN: Yes.

20 MR. HARTMAN: Yes.

21 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.
22 You may proceed.

23 MR. HARTMAN: Well, the only thing I'm not sure
24 about is how much of the case you guys already know. Do I
25 need to go through the whole case from the start?

1 ADMINISTRATIVE LAW JUDGE KWEE: We're familiar
2 with the documentation, the briefing, that was provided to
3 us but, you're free to allocate your time and testimony
4 however you wish.

5

6

OPENING STATEMENT

7 MR. HARTMAN: All right great. Well, we've been
8 in business for 32 years now. We're a mom-and-pop
9 coffeehouse. We started it with our own money just out of
10 college. We only had the one location. We have one
11 child, and we own our house. We're not multimillionaires.
12 We're not spending the weekends in Vegas. We're not
13 hiding money. We've been audited by the IRS with no
14 issues. We've done nothing but try to be pillars of our
15 community. We follow the rules and the laws of our state
16 and our country.

17 In retrospect and going back over everything
18 that's happened in this case, there's not a single thing
19 we could have or would have done differently than what we
20 had done at the time and up to this moment. All we've
21 ever done is try to comply and follow the rules and the
22 laws as it's been stated to us.

23 I'd also like to note that we were in business
24 for 20 years with no issue before this original -- the
25 beginning, which I guess they're apparently calling not an

1 audit, which happened in 2011. We were approached and
2 told that we were not charging sales tax correctly in
3 2011. We were charged -- fined \$5,000, which was levied
4 out of our bank account with no warning.

5 Consequently, we managed to get a meeting with
6 Jerome Horton who was, at the time, the head of the entire
7 department, which has now changed names. And we conducted
8 a meeting with him because we wanted to do everything
9 exactly in the correct way. In the entire meeting with
10 us, with Jerome Horton and his entourage, and it also
11 concluded Betty Jo Toccoli who was a representative of the
12 Small Business Association.

13 In the entire time in this meeting, what was very
14 clear to everybody was it is not a cut and dry law,
15 especially, when it came to a coffeehouse which was a
16 newer business. We did get to experience it all along.
17 We were pioneers in our industry, beginning with the
18 Health Department then having to discover and create new
19 areas that would address our business and the type of
20 business we had.

21 So at the time in our meeting with Jerome, the
22 entire purpose of that meeting was to figure out how to do
23 and charge sales tax correctly. At the end of the
24 meeting, they -- we were told that they would get back to
25 us. Consequently, in the subsequent days, my wife had

1 conversations with members of Jerome Horton's staff in
2 which we were given advice on how to proceed with
3 selling -- charging sales tax. Pardon me.

4 By the way, at the time of this meeting, which is
5 what we're being required to do and complying currently,
6 Jerome Horton said to us, the last thing he wanted us to
7 do is have to ask every single customer "for here or to
8 go." Which is what we are doing now because that's the
9 law, and we are complying with the law. But that was
10 coming from the head of the department.

11 His thought was, and our contention as well,
12 there are other major corporations, including Starbucks,
13 that do not ask for sales tax on "for here or to go"
14 because they have created a deal where they are allowed to
15 charge a percentage of sales. In discussing that with
16 Jerome, he felt that was probably the best way for us, and
17 he would facilitate and work out a way for us to do that.

18 MRS. HARTMAN: Can I add one thing? And one of
19 the problems that we have is for the "here or to go."
20 What we always did is when we said, "for here," it was in
21 a mug on a plate, and "to go" meant a paper cup. They
22 were taking it to go.

23 So when we said that's how we always did it, so
24 it became -- when we explained it to Jerome, it was one of
25 those things where when he hand them a paper cup we're

1 saying, well, do we have to say "for here or to go" and
2 then take a paper cup? It's like, okay, we have that
3 paper cup. Are you leaving?

4 You know, it was, like, kind of it was -- because
5 we weren't like a Starbucks. They're all paper, and we
6 were -- ours was, you know, for here always meant you were
7 sitting down with, you know, a plate and fork and a knife
8 and all that. So that's what even added more to it.
9 Like, it was confusing, and it was just -- so that's how
10 we -- how we understood it is. And that's how we always
11 went by with you had to go, is that you were taking it
12 away, you know.

13 MR. HARTMAN: So the thing is that's a little bit
14 frustrating for me as a business owner and trying to do
15 the correct thing. And now fast forward to 2016 and being
16 audited again and being told that from that period in
17 2016 -- from the time we met with Jerome Horton until
18 2016, we were once again in violation despite our repeated
19 attempts. And honestly, there's nothing else we could
20 have done to do it any different.

21 We went straight to the head of the department
22 and had a meeting with him for nearly two hours to figure
23 out how to charge the correct tax. It's not a cut and dry
24 law. However, in -- in the subsequent audit, or whatever
25 this is now called, because you guys have your

1 determinations -- personally, I felt we were audited when
2 you have a government agency look at your business, look
3 at your records, fine you for something. To me, that's an
4 audit.

5 You can call it scope, or you can call it
6 whatever you want, but to me in my experience, that's an
7 audit.

8 MRS. HARTMAN: The original one.

9 MR. HARTMAN: It says here in this documentation.
10 It states that we received -- it's page 3 of the exhibits
11 that we received. It says, "The taxpayer must establish,
12 by documentation or other evidence and circumstances, what
13 it asserts are more than likely to be correct."

14 And what the contention here continues to be is
15 that we do not have anything in writing. Because
16 petitioner has not been previously audited, which is what
17 the contention that 2011 thing was not -- was not an
18 audit. Petitioner did not request or receive any tax
19 advice from this agency in writing. And that's the
20 contention that I have now and, I guess, is the apparent
21 problem is if we had gotten something in writing on that
22 day, we wouldn't be here today.

23 And there is -- there's also a -- the new law is
24 that for you -- for us to sign and have a -- I'm sorry.
25 I'm not finding it right here. The -- for us to sign and

1 pay a percentage, there are certain requirements,
2 including a minimum of five stores and assigning them a
3 certificate.

4 I don't know why in 2011 we weren't told that.
5 If it was a law then, and we're meeting with the head of
6 the entire Board of Equalization, I don't understand why
7 we're not being told or given these avenues; or told you
8 don't have five locations, you can't do this. We were
9 being told and complying directly from the advice of -- of
10 people who we're trying to comply with.

11 I don't understand why the statute says you have
12 to have five or more stores. I don't understand what the
13 difference is between whether having 5 stores, 4 stores, 2
14 stores, 1 store, 30 stores, whether or not that would
15 justify you being allowed to pay a percentage and not have
16 to constantly harass --

17 We have 80 percent return sales to our store.
18 And everybody -- we ask the same person every day, for
19 here or to go? For here or to go? For here or to go?
20 Every day they come in. It doesn't make sense to me, and
21 -- but that's the law. And we're complying because that's
22 all we ever tried to do, and that's all we were trying to
23 do in -- during this period in question.

24 We've -- there's nothing we could have done that
25 would have been anything different. There's no way we

1 could have taken any other avenue. We thought we were in
2 compliance. We did everything we could to be in
3 compliance. So I'm not really sure what else we could
4 have done.

5 We to this day, now that we're apparently in
6 compliance, still have nothing in writing saying we're in
7 compliance to today. So five years from now I don't know
8 that I'll be right back in front of you gentlemen again --
9 hopefully I won't be -- and doing the same thing, and
10 they're telling me I don't have anything in writing. I
11 have nothing in writing telling me I'm in compliance as of
12 this moment.

13 A final note. We were told that in 2007 this was
14 a scope evaluation not an audit. We received the second
15 scope evaluation just recently, completely different.
16 Completely different. It had a checklist. They went
17 through our stuff. They saw what we were doing. They
18 said, yes, you're in compliance. They signed off on us.
19 They gave us a card. We have a contact person. None of
20 that happened in 2011.

21 The only thing that happened in 2011 was they
22 looked over our stuff and took the money directly. We
23 woke up the next morning, and our bank account was empty.
24 It was -- it was taken out. And then from that moment on,
25 we were fighting and trying to figure out -- tried to get

1 the money back, which we never did. We ended up paying
2 the fine.

3 But we met with the head of the board, and once,
4 again, I keep saying this. I don't know what we could
5 have done differently. I don't know how we could have
6 conducted differently, business. We don't know what we --
7 it's not like we weren't trying to do the right thing
8 here. It was not like we were sticking our head in the
9 sand and not trying to understand what the laws were.

10 We went to the head of the department and got the
11 advice directly from them. And the only thing in here
12 that tells that I didn't do anything right, is I didn't
13 get it in writing. And I have a certain expectation that
14 when I'm dealing with a government agency, that when I'm
15 getting the advice from them, it is the law. And I didn't
16 understand, or I didn't realize that I would have to have
17 in writing from a government agency informing me how to
18 conform to their laws -- that agency's laws.

19 I'd have to have it in writing as if it was
20 something that's -- we didn't even realize that we were
21 being treated special or trying for a special situation.
22 We thought we were just complying with the law as it was.

23 MRS. HARTMAN: And can I add one more thing?
24 It's because he's an elected official. I mean, we assume
25 that this was public record because he was elected. And

1 so even with a meeting, I would think that when they were
2 saying, well, how we -- we were asked by our auditor.
3 Well, how do we know that you met with him?

4 I'm, like, why would I make up meeting with
5 somebody who is the head of the Board of Equalization, who
6 was elected with a staff, and we have, you know, Betty Jo
7 Taccoli who was the head of the California Small Business
8 Association. They were all there. So why would we make
9 this up?

10 And I said -- I told her. I said it's got to be
11 a part of his record, but we -- we can't -- we don't have
12 the ability, and we don't have attorneys. And, you know,
13 we don't have the money to do it to go -- what? We're
14 going to subpoena a record -- an elected official's
15 record, you know. We just -- so that's our -- our
16 contention.

17 And the thing is that we feel with this whole
18 thing is, we acted in good faith this whole time. And we
19 felt, seriously, when we were with Jerome Horton, he was
20 pretty amazing. I felt like they acted in good faith too.
21 We came together, and it felt like we're doing the right
22 thing.

23 And so I think where we're coming from is there
24 is nothing that we didn't feel that we were doing that
25 wasn't right. And -- and so any ways --

1 MR. HARTMAN: And a final note is this -- sheer
2 numbers. If you look at the fine, and if you look on
3 page 46 of the evidence that was turned in, just look at
4 our net income and look at the money we -- that we've
5 collected. This fine is exorbitant. It's beyond anything
6 we can afford. It's going to be a crusher, financially,
7 for us.

8 I mean, all you got to do is look at the numbers.
9 We're a small business. We -- we get along. We get by.
10 We work hard. We're both full-time employees in this
11 business, including our son. We love what we do, but
12 we're not getting rich. And we're not trying to get over
13 on the State. We never should have -- we've complied in
14 every way, shape, and form for the 32 years that we've
15 been in business.

16 Thank you.

17 MRS. HARTMAN: Thank you.

18 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

19 At this point, I'd like to ask if CDTFA has any
20 questions for the witnesses?

21 MS. PALEY: No. Thank you.

22 ADMINISTRATIVE LAW JUDGE KWEE: Okay. I did have
23 one question. Sorry. This doesn't seem to be working.
24 It's fading in and out.

25 MR. HARTMAN: I can hear you fine.

1 ADMINISTRATIVE LAW JUDGE KWEE: Okay. So I did
2 have one question. So when you were reporting the flat
3 percentage, the 3 percent, were you collecting sales tax
4 from the customers or are you not --

5 MR. HARTMAN: No.

6 MRS. HARTMAN: No. It was --

7 MR. HARTMAN: It was -- it was incorporated in
8 the price.

9 ADMINISTRATIVE LAW JUDGE KWEE: Okay.

10 MR. HARTMAN: So they were being taxed for
11 everything.

12 MRS. HARTMAN: Or kind of -- not really taxed for
13 everything, but it was just like -- it was a percentage of
14 the price. The way we -- they were -- explained that
15 Starbucks does it as far as --

16 MR. HARTMAN: We didn't come up with this plan.
17 This wasn't our idea. This was the advice given to us.

18 ADMINISTRATIVE LAW JUDGE KWEE: Okay. But did
19 you disclose anything to the customers that tax was
20 included in the selling price, or it was just something
21 that you calculated when you --

22 MR. HARTMAN: If people -- if people asked us, we
23 would tell them that's how we calculated sales tax.

24 MRS. HARTMAN: Yeah. Once in a while you have
25 someone that ask. And then -- and another thing is when

1 we came up with -- even the percentage is going through
2 that original audit back -- was it 2010 or 2011? 2011 is
3 when we met Jerome Horton, actually, right before the
4 previous year. It was kind of -- we met with this -- when
5 they audit us, and so we said we had to go back and find
6 out what the percentage would be at, like, at -- with
7 Starbucks. They said it was standard for the -- industry
8 standard.

9 MR. HARTMAN: Industry standard.

10 MRS. HARTMAN: So we went back. And then she
11 said for us to come up -- I kid you not -- for us to come
12 up with -- what do you think the percentage is? So I
13 said, well, 2 percent. I mean, 2 percent of our clientele
14 that would be sitting down, you know, and she said -- she
15 said no. That's too low. So we said 5 percent, and she
16 said that's too high. And we said 3 -- uh, 3.05? I mean,
17 we throughout numbers. I'm like 3 point -- she said that
18 sounds good. And that's how they came up with it.

19 So -- and it wasn't in writing. It was just
20 this -- it was so weird, but we just -- not -- and I think
21 what we felt along the way -- and I feel like this tax
22 organization has changed. We've been doing this for 32
23 years. The way it is now, like, every month now I get an
24 e-mail saying there's a class, like, in Glendale to help
25 you with taxes.

1 There's a lot -- there's a lot more opportunity
2 to get information now, and it seems like it's going in
3 the right direction. But for all these years we've been
4 doing it, it was just this very arbitrary number and we --
5 we -- even with the percentage, we didn't -- there was
6 nothing in writing.

7 So we just had to take people's word for it, but
8 it -- and it was just -- I mean, we couldn't force to have
9 anybody write us some -- anything, you know. And so it
10 was just that's how it went, if that makes sense.

11 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

12 Does anyone on the panel have questions before I
13 move on to CDTFA's presentation?

14 ADMINISTRATIVE LAW JUDGE GEARY: No questions.

15 ADMINISTRATIVE LAW JUDGE KWEE: Okay. So at this
16 point, CDTFA may proceed with their opening presentation.

17 MS. PALEY: Thank you.

18

19 OPENING STATEMENT

20 MS. PALEY: Appellant, a California corporation,
21 has operated a coffee and gift shop located in Burbank,
22 California, since July of 2001. Appellant acknowledges
23 using a blanket 3 percent taxable ratio of its sales to
24 report its gross receipts.

25 The reporting method used did not taken into

1 considering the proper application of tax with the respect
2 to different types of food items sold. The application of
3 tax to the sale of food turns on the nature of the
4 transaction. For example, whether food was sold hot or
5 cold, for consumption on the premises or on the to go
6 basis.

7 To determine an accurate taxable ration for food
8 sales, the Department examined the daily sales records
9 accounting of dine-in sales and to go sales for the period
10 of April 1st, 2016, through May 20th, 2016, 49 days,
11 resulting in a taxable ratio of 15.43 percent. There
12 also, was an observation test conducted on Friday,
13 May 20th, 2016, which yielded a 28.87 ratio.

14 The Department used the 15.43 percent ratio,
15 which it applied to Appellant's reported total sales of
16 nearly 2.5 million for the audit period and determined
17 audited taxable sales of just over \$379,000. The audit
18 found a deficiency measure of about \$287,000 for
19 unreported taxable sales, resulting in the notice of
20 determination for approximately \$25,000 in tax, plus
21 interest due.

22 Audit methodology and deficiency measure is not
23 in dispute. Instead, Appellant contends they should be
24 relieved of liability because they relied on alleged oral
25 advice given on February 14th, 2011, by then BOE board

1 member, Horton and his staff, to use the 3 percent figure.
2 They also claim hardship if required to pay the deficiency
3 because they did not collect tax reimbursement.

4 California imposes sales tax on a retailer for
5 its retailed sales of tangible personal property measured
6 by gross receipts, unless the sale is specifically exempt
7 or excluded from taxation by statute. Section 6596
8 provides specified instances for relief of taxes or
9 interest for erroneous written advice.

10 There's no lawful basis, however, for relieving
11 tax or interest due to oral advice reportedly made by the
12 agency or board staff. Likewise, the law does not provide
13 equitable relief in this case for hardship. Based on the
14 law and evidence, this appeal should be denied.

15 Thank you.

16 ADMINISTRATIVE LAW JUDGE KWEE: Did either member
17 of the panel have any questions at this point?

18 ADMINISTRATIVE LAW JUDGE GEARY: No.

19 ADMINISTRATIVE LAW JUDGE TAY: I have a couple of
20 questions. The Appellant mentioned that they used, kind
21 of, a blanket percentage to figure out their taxable
22 sales. They mentioned that this was what they referred to
23 as industry standard. Does the CDTEFA accept this
24 methodology for taxpayer in this industry?

25 MS. SILVA: There is a provision in the audit

1 manual for alternative reporting methods for taxable food
2 sales for certain retailers, but there's not a standard
3 for across the board for any retail seller of food.

4 ADMINISTRATIVE LAW JUDGE TAY: Yeah. I didn't
5 ask if there was a blanket standard. But is this one of
6 the methodologies that CDTFA accepts for taxpayer sin this
7 industry?

8 MS. SILVA: Meaning the 3 percent --

9 ADMINISTRATIVE LAW JUDGE TAY: Has it ever been?

10 MS. SILVA: -- or --

11 ADMINISTRATIVE LAW JUDGE KWEE: Yeah, the
12 percent.

13 MS. SILVA: -- that are having -- there -- there
14 are retailers that are on alternative reporting methods,
15 where different percentages may be approved as a plan for
16 reporting. But I don't -- I'm not sure I understand your
17 question.

18 ADMINISTRATIVE LAW JUDGE TAY: I think that
19 answers the question. In other words, there is -- CDTFA
20 does accept alternative methods similar to this one --
21 similar to the one that Appellants used here. And what's
22 the -- what's the standard or the method for accepting
23 that kind of alternative methodology?

24 MS. RENATI: Taxpayer would have to apply for it
25 and test a representative number of stores and test based

1 on type. If your store was close to a -- say a -- within
2 a mall or it was by a college campus or was off by itself,
3 you would have various tests performed during weekends,
4 days, nights; a representative period of time to make sure
5 you got a sample that was reasonable.

6 Those results would then be analyzed by a member
7 of the Department, and then that would be approved, and
8 then for a period of time. Taxpayer would then be told
9 they need to do further testing keep using it past that
10 time. If there was a disagreement, they would do more
11 testing between the two of them, the Department and the
12 taxpayer.

13 ADMINISTRATIVE LAW JUDGE TAY: Okay. Thank you.

14 MR. HARTMAN: I apologize about the mic. I can
15 hear everything you say.

16 MS. RENATI: I have a lot of voice, yes.

17 MS. SILVA: And Ms. Renati did mention locations.
18 These types of written agreements that we come to with
19 taxpayers require that you have more than one location,
20 multiple locations.

21 ADMINISTRATIVE LAW JUDGE TAY: I'm sorry. I
22 didn't mean to interrupt. This procedure was in place
23 during the audit period?

24 MS. RENATI: Yes.

25 ADMINISTRATIVE LAW JUDGE TAY: Okay. Does the

1 Department dispute the fact that this meeting with -- this
2 alleged meeting with Mr. Jerome Horton occurred?

3 MS. PALEY: We have no information other than the
4 information we were provided by the taxpayer.

5 ADMINISTRATIVE LAW JUDGE TAY: Okay. So it is
6 disputed then?

7 MS. PALEY: Well, we do not have Mr. Horton here
8 to indicate what he conveyed or his staff.

9 MR. HARTMAN: Call him up. Bring him in.

10 ADMINISTRATIVE LAW JUDGE TAY: Maybe a -- maybe a
11 question for the Appellant on this?

12 MR. HARTMAN: Sure.

13 ADMINISTRATIVE LAW JUDGE TAY: Were there any
14 other Board of Equalization employees besides --

15 MR. HARTMAN: Absolutely. He had his entire
16 entourage there. In fact, he had somebody taking notes.

17 MRS. HARTMAN: John Pierce was there. And they
18 had somebody taking notes. We didn't have the name. It
19 was John Pierce, Jerome Horton, and then Betty Jo Toccoli.
20 And she's still on the California Small Business
21 Association. She's still on their board.

22 MR. HARTMAN: I don't have that much courage to
23 come up in front of you three gentlemen and tell you that
24 I had a meeting with Jerome Horton, the head of the Board
25 of Equalization, and flat out lie to you about it. I

1 don't have those kind of cajones (sic). I just don't.
2 It's a little insulting right now.

3 I mean, all we've ever done is try and do the
4 right thing, and it's a little insulting the
5 implication -- even the implication that we would be lying
6 about that.

7 ADMINISTRATIVE LAW JUDGE TAY: I appreciate your
8 honesty.

9 Question for the Department on a separate topic.
10 The Department raised notion of equity in their brief.
11 What's your position on whether or not this panel can take
12 into consideration notions of equity?

13 MS. PALEY: There's no provisions under the law
14 for equity in this case, really.

15 ADMINISTRATIVE LAW JUDGE KWEE: If you don't
16 mind, I do have -- I'm sorry. I don't --

17 ADMINISTRATIVE LAW JUDGE TAY: Go ahead.

18 ADMINISTRATIVE LAW JUDGE KWEE: Just on that
19 issue in 6593.5 Revenue and Taxation Code, it provides
20 discretionary authority to relieve all or part of the
21 interest imposed by a person under the sales and use tax
22 law, when the failure to pay taxes in whole or in part due
23 to an unreasonable error or delay by an employee of the
24 Board acting in his or her official capacity.

25 What is CDTFA's position on if this panel finds

1 that meeting did occur and that advice was give, whether
2 or not we would have authority to relieve interest under
3 that basis?

4 MS. PALEY: But it would need to have been
5 written.

6 ADMINISTRATIVE LAW JUDGE KWEE: That's 6595.
7 6596 requires written advice. 6593.5 did not require
8 written advice.

9 MS. SILVA: But -- that's true. And that is a
10 statutory ability for the panel to make that decision with
11 respect to relief and interest.

12 ADMINISTRATIVE LAW JUDGE KWEE: So CDTFA
13 doesn't -- so if this panel does find this meeting
14 occurred, CDTFA's position would be that we do have
15 statutory authority to relieve interest on that basis?

16 MS. PALEY: If we may have one moment, please.

17 ADMINISTRATIVE LAW JUDGE KWEE: Okay.

18 MS. SILVA: We do agree that there are provisions
19 in the statute for relief of interest if you find that a
20 Board employee made an error. So I mean, that's -- that
21 is -- that is a basis for relief.

22 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.
23 I'm sorry. Did you have further questions? I didn't mean
24 to cut you off.

25 ADMINISTRATIVE LAW JUDGE TAY: No. That's okay.

1 I'm just going to follow up on that. Do you think that
2 applies in this case?

3 MS. SILVA: I'm not sure from the evidence that
4 we know exactly what was said or not said. But I guess
5 that would be for the panel to make a decision as to what
6 employee may have made an error.

7 ADMINISTRATIVE LAW JUDGE TAY: Okay. Going back
8 to notions of equity. There is provision in the
9 California Code of Evidence about equity and, you know,
10 being able to bring an argument based -- that contravenes
11 prior advice or action. So do you have any position on
12 whether equity applies in this case, the equitable
13 estoppel?

14 MS. PALEY: Are you referring to hardship?

15 ADMINISTRATIVE LAW JUDGE TAY: No. Taxpayer's
16 reliance on a meeting or advice given if such advice -- if
17 we find that such advice was actually given.

18 MS. SILVA: Our position is that we look to the
19 sales and use tax law, Revenue and Taxation Code, with
20 respect to what type of equity may be statutorily present.
21 I don't know that the Evidence Code, with respect to some
22 type of equity, would relieve a taxpayer of tax due.

23 Maybe it has something to do with evidence, but
24 with respect on whether or not tax is due, we -- our
25 position is that the statutes and the regulations are what

1 is required to be followed with respect to any type of
2 equity. There are a few places in the statutes for the
3 Revenue and Taxation Code that provide, but apart from
4 that, there are -- our position is there are no equitable
5 powers.

6 ADMINISTRATIVE LAW JUDGE TAY: Based on what
7 authority?

8 MS. SILVA: There's a case out, Standard Oil,
9 that talks about the lack of equitable powers.

10 ADMINISTRATIVE LAW JUDGE TAY: Standard Oil
11 doesn't reference equitable estoppel. It talks about
12 issuing a writ.

13 MS. SILVA: Well, that is an equitable power, and
14 without equitable powers -- without statutory powers,
15 there's not that equitable power. So I wouldn't say it's
16 a similar argument.

17 ADMINISTRATIVE LAW JUDGE TAY: Okay. Thank you.
18 No further questions.

19 ADMINISTRATIVE LAW JUDGE GEARY: Nothing.

20 ADMINISTRATIVE LAW JUDGE KWEE: Okay. At this
21 time, we'll go onto closing arguments and remarks if the
22 parties would like to say anything at this time.

23 We'll start with the Appellant.

24 MRS. HARTMAN: Can I make a correction on
25 something?

1 ADMINISTRATIVE LAW JUDGE KWEE: Yes.

2

3 CLOSING STATEMENT

4 MRS. HARTMAN: Okay. By the percentage that we
5 were taking was the 3 percent that we agreed on, and then
6 I had said 3.5 percent. And I just want to make sure, so
7 you know, the difference was I actually raised it to
8 3.5 percent of what we were paying on the -- for the sales
9 tax.

10 I did it on my own because I just felt, like,
11 just to give a little padding. So we were doing
12 3 percent, but then we added -- we add it -- I added it to
13 3.5 percent. So I just said it incorrectly.

14 ADMINISTRATIVE LAW JUDGE KWEE: And just a quick
15 clarification on that, I'm not sure. Is the -- are you
16 disputing the 15.43 percent that the Department came up
17 with?

18 MRS. HARTMAN: No. That was just originally. I
19 just said -- I just want to make sure that we were saying
20 3 percent, and I said 3.54.

21 MR. HARTMAN: We're not disputing the math. The
22 math is brilliant. These ladies, obviously, do a great
23 job. They know what they're doing. They're doing their
24 job well. However, I mean, it's very arbitrary. I could
25 do the whole thing and come up with a completely different

1 number. It's a guess.

2 MRS. HARTMAN: And we didn't collect it.

3 MR. HARTMAN: It's -- it's an estimate, a guess
4 as to what should have, might have, or could have
5 happened. The four-hour observation, 10:00 a.m. to 2:00
6 p.m., if you think about that yourself in common sense,
7 right, for a coffeehouse. When are people going to come
8 and go and not sit down? Before 10:00 a.m. when they are
9 going to work, and after 2:00 p.m. when they're leaving
10 and going.

11 She couldn't have picked a time worse for it to
12 be a "for here" type of service. It's not even close or
13 indicative to what the accurate, true estimate is. And
14 here's a final thing, and I mentioned this earlier. We're
15 80, 75, 80 percent repeat. I mean, people walk in. They
16 don't even order. We already know what their drink is.

17 They know the law. They know the law better than
18 anybody now. They will say to go and go and sit down
19 because they know they pay less when they say to go. And
20 so even now, what the numbers they're coming up with right
21 now, I couldn't get those numbers out of the people that
22 come into my store right now if I tried. It's impossible.

23 The only thing I can do is if they went to sit
24 down, was then to charge the tax when they're sitting down
25 at the table because they know the law better than we do

1 now.

2 MRS. HARTMAN: That -- that's more of a future
3 thing, but as far as dealing with what's happened in the
4 past is --

5 MR. HARTMAN: Just take exception to that 20 --
6 20 percent on her four-hour observation and -- because
7 that's a ridiculous number. It's -- it's not even close.
8 And they use it to justify their 15 percent, which -- like
9 I said, I mean, I just took a statistics class. I'm sure
10 you gentlemen did too.

11 You can make numbers say whatever you want.
12 That's why I don't dispute anything they wrote there, but
13 I can come up with my own set of numbers.

14 MRS. HARTMAN: Well, I think what -- what we want
15 to say is -- here on out is that we're aware of how --
16 we've moved forward the last several years. We're doing
17 things the way that we've been asked. Since this time, we
18 had the person from the scope audit come through. We're
19 doing everything in good faith. We're asking every person
20 now, for here or to go. We repeat -- like Mark said, we
21 repeat.

22 So we've moved forward from the original time we
23 met with Jerome and everything that has occurred. So I
24 don't think from here on out there's going to be an issue
25 but --

1 MR. HARTMAN: We don't know though, because
2 that's how we felt the last time. And like I said, we
3 have nothing today. I couldn't present you gentlemen with
4 anything today in writing of what -- that we're in
5 compliance right now.

6 MRS. HARTMAN: We believe we are. You know, I --

7 MR. HARTMAN: I haven't received anything in
8 writing.

9 MRS. HARTMAN: Yeah.

10 MR. HARTMAN: And that continually is the one
11 sticking point that they continue to bring up, is in
12 writing. We have nothing in writing.

13 MRS. HARTMAN: And the whole way, we presented
14 everything that we've done throughout everything is to
15 gain all the information we can get and doing it the way
16 we were told. And so any ways, I think that's -- we're
17 here in good faith, and we're going to continue to do
18 business in good faith. And we hope to continue doing
19 business in good faith.

20 MR. HARTMAN: We're just hoping for a reasonable
21 outcome to this. That's all we're asking for --

22 MRS. HARTMAN: Yes.

23 MR. HARTMAN: -- is a reasonable outcome. A
24 fair, reasonable outcome.

25 ADMINISTRATIVE LAW JUDGE KWEE: Just a quick

1 question for CDTFA. Do you offer anything for the
2 taxpayer or taxpayers where you provide written advice to
3 taxpayers? Is there a mechanism that you allow for that?

4 MS. RENATI: Yes. It's called a "Get it in
5 writing program," where if you write in via e-mail or in a
6 letter and ask for written advice, it will be given back
7 to you in writing. And you can rely on it, based on 6596.

8 MR. HARTMAN: I promise you, we'll be doing that.
9 But you got to understand. We've been in business for 20
10 years with no issues. Then we were not audited, whatever
11 they call it was or whatever, fine. We had no idea. This
12 was our first experience. We had no idea we would even
13 have to ask for it to be in writing. We were -- we were
14 dealing with the head of the department. We had a
15 meeting.

16 Once, again, I just don't know what we would do
17 differently. I don't -- I don't know how any reasonable
18 person could have expected us, in that time, to ask for a
19 letter in writing. I just -- I wouldn't have done. I
20 just -- apparently, we're not that smart. I don't know.
21 I don't know that anybody would have, though.

22 MRS. HARTMAN: And one last thing. I do have a
23 correction. We have been in business since 1988. And
24 then in 2001, that is when we became a corporation, but we
25 were sole proprietor in 1988. So it's been 32 years. Did

1 I get that right? It's be 32 years in January. So we've
2 been doing this a long time and, you know, it's nothing
3 new. It's just we've been doing everything that we have
4 learned along the way and -- and --

5 MR. HARTMAN: We've made mistakes, and we've paid
6 for them. Look, I got no problem paying for my mistakes.
7 This is not a mistake. We did not make a mistake here.
8 There's nothing we would have done differently or could
9 have done differently.

10 MRS. HARTMAN: So thank you.

11 ADMINISTRATIVE LAW JUDGE KWEE: All right. Thank
12 you.

13 ADMINISTRATIVE LAW JUDGE TAY: Can I just ask?

14 ADMINISTRATIVE LAW JUDGE KWEE: Okay.

15 ADMINISTRATIVE LAW JUDGE TAY: Was the "Get It in
16 Writing Program" available during the audit period or
17 before?

18 MS. RENATI: Yes, for at least 30 years.

19 MRS. HARTMAN: And that's the first we've ever
20 heard of it.

21 MR. HARTMAN: Yeah. Right now.

22 MRS. HARTMAN: Yeah.

23 ADMINISTRATIVE LAW JUDGE TAY: Thank you.

24 ADMINISTRATIVE LAW JUDGE KWEE: Okay. At this
25 point I believe it's CDTFA's opportunity to present

1 closing arguments. If you like, you may proceed.

2 MS. PALEY: Thank you.

3

4 CLOSING STATEMENT

5 MS. PALEY: We would just reiterate that the
6 deficiency is not in dispute. There were not issues with
7 the audit, and we submit that there are no basis for
8 relief in this case.

9 ADMINISTRATIVE LAW JUDGE KWEE: Okay.

10 MS. PALEY: And I apologize for my voice and
11 congesture (sic). I apologize.

12 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

13 Is there any other questions from this panel
14 before we conclude this hearing?

15 ADMINISTRATIVE LAW JUDGE TAY: No.

16 ADMINISTRATIVE LAW JUDGE GEARY: No questions.

17 ADMINISTRATIVE LAW JUDGE KWEE: Okay. So this
18 case is submitted on September 18th, 2019, and the record
19 is now closed. Thank you, everyone, for coming in today.
20 We'll generally try and get an opinion out -- written
21 decision out within 100 days from today's date.

22 MRS. HARTMAN: Thank you.

23 MR. HARTMAN: Thank you for your time.

24 ADMINISTRATIVE LAW JUDGE KWEE: This hearing is
25 now adjourned.

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(Proceedings adjourned at 10:41 a.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 10th day of October, 2019.

ERNALYN M. ALONZO
HEARING REPORTER