

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)	
)	
RAMCO JEWELRY CORP.,)	OTA CASE NO. 18011902
)	
APPELLANT.)	
)	
_____)	

TRANSCRIPT OF PROCEEDINGS

Van Nuys, California

Monday, October 28, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE OF,)
RAMCO JEWELRY CORP.,) OTA CASE NO. 18011902
APPELLANT.)
_____)

Transcript of Proceedings, taken at
6150 Van Nuys Blvd., Van Nuys, California, 91401,
commencing at 1:42 p.m. and concluding
at 3:27 p.m. on Monday, October 28, 2019,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Panel Lead: Hon. MICHAEL GEARY

Panel Members: Hon. KENNY GAST
Hon. DANIEL CHO

For the Appellant: PATRICK MCGINNIS

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX and
FEE ADMINISTRATION
By: SCOTT LAMBERT
LISA RENATI
PAMELA BERGIN

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

DEPARTMENT'S
WITNESSES:

DIRECT CROSS REDIRECT RECROSS

(None offered)

APPELLANT'S
WITNESSES:

DIRECT CROSS REDIRECT RECROSS

Hakop Yermagyan 14

Ramin Cohan 29

E X H I B I T S

(Appellant's Exhibits were received at page 7 and 66.)

(Department's Exhibits were received at page 10.)

CLOSING STATEMENT

PAGE

Mr. McGinnis 51

Mr. Lambert 55

FINAL CLOSING STATEMENT

PAGE

Mr. McGinnis 67

1 Van Nuys, California; Monday, October 28, 2019

2 9:00 a.m.

3

4 JUDGE GEARY: Good morning, ladies and gentlemen.
5 My name is Michael Geary. I am the Administrative Law
6 Judge for the Office of Tax Appeals. And I am joined
7 today on the dais by my colleagues, Kenny Gast and Daniel
8 Cho. While I'm lead judge for purposes of this hearing,
9 we are equal participants, and we will be equal
10 participants in the deliberations that will take place in
11 this matter.

12 We have a court stenographer who is taking down
13 everything that is being said. And to help her do a good
14 job and to help all of us make a clear and easily read and
15 understand record, I'm going to ask you to speak slowly
16 and speak clearly. Do not speak when someone else is
17 speaking. You'll have the urge to interrupt but don't do
18 that, because then we'll have a confused record.

19 And it would be best not to assume that if you
20 are engaged in a conversation, perhaps with your
21 representative at the table, don't assume that it won't be
22 heard and picked up by the court reporter. It's best to
23 go off the record if you wish to have a discussion like
24 that, or go outside the room to have that discussion.

25 Who is here to represent the Appellant?

1 MR. MCGINNIS: Patrick McGinnis.

2 JUDGE GEARY: Good afternoon, Mr. McGinnis. And
3 who is with you today?

4 MR. MCGINNIS: Mr. Jack Yermagyan who is the
5 operator of the company, Yerma Jewelry, and the client
6 Ramin Cohan.

7 JUDGE GEARY: Good afternoon, gentlemen.

8 And who is here to represent the Department
9 today?

10 MR. LAMBERT: My name is Scott Lambert, and to my
11 right -- I'm sorry -- to my left is Lisa Renati. Then to
12 her left is Pam Bergin representing the California
13 Department of Tax and Fee Administration.

14 JUDGE GEARY: Good afternoon. I should have been
15 using this mic from the beginning. I'm assuming the court
16 reporter heard. I usually project okay, but I've been
17 cautioned to make sure that the people at the tables who
18 are speaking and my co-panelist who don't have the benefit
19 of microphones in front of them, that they speak up loud
20 enough for the court reporter to hear -- the stenographer
21 to hear and take down accurately what is said.

22 We have -- I prepared a package of evidence and
23 asked my staff to provide copies to the parties. It is a
24 digital folder that contains all of the evidence and the
25 indexes. And there should be functioning bookmarks on

1 that too, so that you can jump right to the evidence if
2 someone is making reference to the evidence. And I hope
3 that you all have that.

4 We've got -- the Appellant has offered nine
5 exhibits so far. They are marked 1 through 9, 54 pages
6 total. I had not received any objections from the
7 Department. I'm assuming the Department has no objections
8 to those nine exhibits?

9 MR. LAMBERT: No objection.

10 JUDGE GEARY: All right. I'm going to admit
11 those exhibits.

12 (Appellant's Exhibits 1-9 were received
13 in evidence by the administrative Law Judge.)

14 JUDGE GEARY: I understand that Mr. McGinnis came
15 today with some additional documents that have been copied
16 and provided to the Department and to my co-panelists. I
17 have marked that document Exhibit 10 for identification
18 only.

19 And Mr. McGinnis, do you want to briefly tell me
20 what this is and why we are just hearing about it today?

21 MR. MCGINNIS: I visited and interviewed the
22 principal witness, Jack Yermagyan, who I asked him to
23 search the records, even though the records of Yermagyan
24 were disposed of by the accountant. He found those, I
25 think, in his house. There were some other documents, but

1 they didn't relate to this. They are receipts for checks.
2 And they are from the year '05, and they total \$230,000.

3 The reason I brought them is they lend
4 credibility to this testimony, which you will hear, which
5 is Yerma Jewelry was a major manufacturer in the
6 Los Angeles area and had a lot of employees. And the
7 Acapulco was a supplier of raw materials to them. This
8 lends credibility to the testimony to that effect.

9 JUDGE GEARY: When you use the term "Acapulco,"
10 who are you referring to?

11 MR. MCGINNIS: Ramco, the Appellant.

12 JUDGE GEARY: All right. And Mr. -- is it
13 Yermagyan?

14 MR. YERMAGYAN: Yes, sir.

15 JUDGE GEARY: Mr. Yermagyan is going to be
16 testifying?

17 MR. MCGINNIS: Yes.

18 JUDGE GEARY: And you will be able to lay a
19 foundation to these documents?

20 MR. MCGINNIS: Yes.

21 JUDGE GEARY: Department, any objection to the
22 admission of the evidence?

23 MS. RENATI: Yes, Judge. We certainly do object.
24 The deadline to submit evidence has long passed. So we
25 certainly object to Appellant walking in at the last

1 minute adhering with never-before-seen records. Further,
2 these records are dated outside of the test period that
3 was used for this case, so they're irrelevant. So we
4 object based on untimely -- that the fact that they are
5 untimely, and also, they're not relevant to this appeal.

6 JUDGE GEARY: Mr. McGinnis, a quick response if
7 any.

8 MR. MCGINNIS: These records can be received as
9 evidence point -- as corroborative evidence supporting the
10 testimony of the witness, Mr. Yermagyan and Yerma Jewelry,
11 versus large amounts of raw materials from the Appellant.
12 The Appellant was in the business of supplying gold,
13 silver, diamonds, precious stone, and other items to
14 Mr. Yermagyan's company, Yerma Jewelry.

15 This shows that this is not a figment of their
16 imagination. And I mean, I did not know about the check
17 records. I assure the Court that I did not know about
18 these. I met Mr. Yermagyan this weekend, and he produced
19 them.

20 JUDGE GEARY: All right. I'm going to defer a
21 ruling on the admission of the exhibit marked 10 until
22 after Mr. Yermagyan's testimony. Okay?

23 The Department submitted nine exhibits. They
24 have been marked A through I for identification,
25 3,074 pages. I received no written objections from the

1 Appellant to the admission of the Department's evidence.

2 MR. MCGINNIS: We have no objection.

3 JUDGE GEARY: No objection. Those exhibits, A
4 through I, are admitted.

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

7 JUDGE GEARY: Does the Department have any
8 additional document or any evidence they wish to be
9 considered?

10 MR. LAMBERT: No.

11 JUDGE GEARY: I should mention that OTA is an
12 independent agency completely separate and apart from the
13 tax agencies that appear before it, including the
14 California Department of Tax and Fee Administration. So
15 arguments made to that Department and evidence filed with
16 the Department are not necessarily before us.

17 I think Mr. McGinnis understands the evidence
18 that is the part of the record of this hearing is the
19 evidence that I had digitally produced and that you have a
20 copy of. Do you understand that, Mr. McGinnis?

21 MR. MCGINNIS: Yes, Your Honor.

22 JUDGE GEARY: Mr. Lambert, you understand that?

23 MR. LAMBERT: Yes.

24 JUDGE GEARY: Okay. This is an appeal from an
25 August 30th, 2011, Notice of Determination issued to Ramco

1 Jewelry Corporation doing business as Acapulco Jewelry
2 Plaza for \$1,235,321.68 in tax, plus interest, and a
3 negligence penalty of \$123,532.17. The California
4 Department of Tax and Fee Administration, which I will
5 refer to as the Department, determine that liability by
6 audit.

7 It initially disallowed Appellant's claim
8 nontaxable sales measure of \$14,973,590 -- 973,595 and
9 later reduce that measure to \$14,275,351, which is the
10 current measure at issue. The Appellant contends that all
11 sales for resale were accurately reported, that no taxes
12 are due, and that it was not negligent; is that right,
13 Mr. McGinnis?

14 MR. MCGINNIS: That's the position I'm asserting,
15 yes.

16 JUDGE GEARY: Okay. The parties agreed in a
17 prior prehearing conference that the issues to be
18 addressed today and by the judges of the future as we
19 consider the issues are: One, whether Appellant is
20 entitled to a reduction of the measure of disallowed
21 claimed nontaxable sales for resale; and two, whether the
22 negligence penalty should be deleted or whether the
23 Appellant was negligent.

24 You are going to -- Mr. McGinnis, you are going
25 to call both your client and Mr. Yermagyan; correct?

1 MR. MCGINNIS: Yes, Your Honor.

2 JUDGE GEARY: And in what order?

3 MR. MCGINNIS: I will be calling Mr. Yermagyan
4 first.

5 JUDGE GEARY: Okay. And Mr. Lambert, do you have
6 any live witnesses today?

7 MR. LAMBERT: We do not.

8 JUDGE GEARY: All right. Frequently, when a
9 party is calling a live witness, I will allow an
10 opportunity for the parties to give opening statements,
11 but those opening statements are generally limited to a
12 summary of what the evidence is going -- what the
13 testimony is going to be. And given our time constraints
14 today, I'm going to dispense with that. I can assure you
15 that the three of us on the dais do not need those opening
16 statements.

17 We're going to go directly to the testimony.
18 Following the testimony, we will have arguments. When a
19 witness testifies, of course, the Department has an
20 opportunity to ask questions. My co-panelists and I have
21 an opportunity to ask questions. We'll go through both
22 your witnesses that way.

23 Mr. McGinnis, you'll have 15 minutes for your
24 argument at the end of -- at the conclusion of the
25 testimony. The Department will have 15 minutes for its

1 argument. If you need more time, tell me before we begin
2 so that I can keep track of the time.

3 MR. MCGINNIS: Okay. That will be enough.

4 JUDGE GEARY: And then you will have a
5 five-minute rebuttal if you choose it. After the
6 Department gives its arguments, I'll come back to you and
7 give you five minutes for a rebuttal, and that will
8 conclude the hearing. I will close the record and explain
9 to you what's going to happen next, and we'll be done with
10 the hearing. Understood?

11 MR. LAMBERT: Yes.

12 JUDGE GEARY: All right. If it's all right, I'll
13 administer the oath of affirmation to both of your
14 witnesses at the same time just to save time.

15 Would you both stand and raise your right hands,
16 please.

17

18 RAMIN COHAN,

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

22 HAKOP JACK YERMAGYAN,

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

1 JUDGE GEARY: Thank you. You may sit.

2 And you said you wanted to examine -- is it
3 Yermagyan?

4 MR. YERMAGYAN: Yermagyan.

5 JUDGE GEARY: Yermagyan. Okay. You do have the
6 microphone in front of you, however, Mr. McGinnis does not
7 have a microphone. I wonder if you two would sit next to
8 each other and just put the microphone sort of in between
9 you. And then try to lean forward and speak into it when
10 you speak.

11 You can proceed when you're ready, Mr. McGinnis.

12

13 DIRECT EXAMINATION

14 BY MR. MCGINNIS:

15 Q Could you identify your name and address?

16 A Hakop Yermagyan, 1048 Trafalgar Drive, Glendale,
17 California, 91207

18 JUDGE GEARY: Spell your first and last names,
19 please.

20 THE WITNESS: H-a-k-o-p. And last name is
21 Y-e-r-m-a-g-y-a-n.

22 JUDGE GEARY: Thank you. Okay.

23 THE WITNESS: Thank you.

24 BY MR. MCGINNIS:

25 Q During years 2005 to 2010, where were you

1 employed?

2 A What do you mean employed?

3 Q Where did you work?

4 A In Glendale, 671 West Broadway, Yerma Jewelry
5 Manufacturing premises.

6 Q What did Yerma Jewelry do?

7 A Manufacture jewelry.

8 Q How many people worked for you during the years
9 '05 to '08?

10 A I cannot recall, mostly, because after 2000 we
11 had moved production overseas because of the circumstance
12 given to us, the pricing, a lot of stuff. So we had to
13 just relocate. I mean, I had to work to compete with
14 China and India. So basically, a lot less than we usually
15 had, like, before. A lot less than we usually had before,
16 but probably, like, maybe 10, 6 -- 10. I'm not really
17 sure. I don't want to give a number because I feel
18 obligated. I don't lie ever in my life, so I don't want
19 to be a liar. If you want to guess, I can guess.

20 Q What type of jewelry did you manufacture?

21 A All types which I could sell: Tennis bracelets,
22 rings, earrings, pendants, chains, link chains, finished
23 jewelry, mountings -- mountings for jewelry which is not
24 100 finished. You sell it to other wholesaler. We will
25 then reproduce it or finish it up. Basically, putting

1 some stones on the mountings and make it finished jewelry,
2 and give to retail stores to sell or sell it themselves.

3 Q What did you buy? What did Yerma Jewelry buy
4 from the Appellant, Mr. --

5 A Not only him but we used to buy from a lot of
6 suppliers gold, diamonds, colored stones, stones for your
7 production. After using them in production, we try to
8 sell it to wholesale companies. And if there were retail
9 companies that want to buy from us, we could sell them.
10 We try to sell to them.

11 Q Was this wholesale or was this retail?

12 A Which one?

13 Q Your place?

14 A I never done retail business. My business only
15 wholesale, ever. It's -- I mean, if you take my
16 license -- it's not here, but it says, "Wholesale Jewelry
17 Manufacturer." We couldn't deal with the people. We had
18 to, like, produce let's say, like, thousands of rings in a
19 week or bracelets, you know. And then I couldn't sell to
20 the people. They couldn't come. It's like a closed
21 place. We had to secure the place in order not to have
22 robberies, you know. We had a lot of security issues.

23 There's a lot of people send you gold or diamond
24 to finish up for them. And what happen, you're
25 responsible for that thing when the company trust you,

1 cosign you to that, let's say. And we didn't want to deal
2 with anybody except doing what we did the best, produce
3 jewelry. That's it.

4 Q Did you make a search of your home and other
5 facilities for any records that you might still have
6 regarding Yerma Jewelry?

7 A What can I say? I mean, I did my best. But I
8 just got these stubs or whatever you call it on the
9 checks, which basically my company wrote and I signed.
10 Which you don't see there, I'm sure. There is only the
11 portion of the check, which is stub. That's what you call
12 it? I don't know what you call it.

13 So it shows that I wrote the check, actually,
14 Yerma Jewelry Manufacturing wrote the check to Acapulco
15 Jewelry for certain amounts, what is there. I cannot
16 guarantee it was cashed, deposited, whatever happened.
17 And I'm sure if I wrote it, it went to the bank. And it
18 should say on the -- reflection is on the -- what it is --
19 the blank statements for that one particularly.

20 Q What was the typical transaction for '05, '06,
21 '07? What were you doing for --

22 A It was too small to even remember, I'll be honest
23 with you, for me. For my size of the business, it was too
24 small because we used to buy, like, 2, 5, 10 kilos a day
25 in order to produce merchandise.

1 Q How much is 10 kilos?

2 A It's daily price today is like -- ten kilo gold
3 is, like, \$480,000. Yeah, more than 400,000 today.

4 Q When did you first meet Ramin Cohan?

5 A 1980 -- I would say after '87 -- '88, somewhere
6 there. We used to sell them jewelry. They was in Europe.
7 They were different name. They were Ramin and Mike (sic),
8 I believe the name was. Then they moved to California and
9 production continued here. We worked for each other,
10 business-wise making money. That's what we did.

11 Q So where does trust work into the equation of how
12 you do business here?

13 A It's very difficult. It's not a grocery store.
14 We don't sell \$5. It's not a grocery store and you sell
15 \$5 for bottle or \$15. Whatever you sell is a large
16 amount, a lot of profit, and margin and all that. My
17 whole business is two -- two-and-a-half percent gross
18 whatever we did, because the gross profit on gross sales.

19 So it's very, very intense, and it has to be
20 guaranteed. We have to know these people upside down.
21 Somebody has to recommend when basically they coming in to
22 my properties. That's how I know. The guy become
23 responsible for the guy he recommended. So, basically,
24 when somebody come to me and says, "It's okay for him to
25 get some kind of credit from you or time to pay you," if

1 the guy somehow couldn't pay in our business, which is
2 most important thing, you finish in my business, if you
3 lie or cheat or you don't pay. The guy had to come up
4 with the help for me to collect or payment. So,
5 basically, it's about the word.

6 And then any other tools we can get, you know,
7 credit agencies, the size of business, or who wear those
8 jewelry, did he ever do -- you know, simple things which
9 people do on the good sense, you know. You get good
10 feeling when you shake hands, you know. Sometimes you
11 know the guy. This how it happens.

12 Sometimes it doesn't mean we didn't lose money
13 or -- that's how we do business.

14 JUDGE GEARY: Mr. Yermagyan, let me put you on
15 hold.

16 Are you getting this okay?

17 THE HEARING REPORTER: Yes. However, I need him
18 to be a little louder.

19 JUDGE GEARY: Louder?

20 THE HEARING REPORTER: Yes, please.

21 THE WITNESS: I'm very sorry. I'm not used to
22 this.

23 JUDGE GEARY: Speak more slowly. I might suggest
24 you also listen carefully to the question and just answer
25 the question so we can move along.

1 THE WITNESS: Okay. Sorry.

2 JUDGE GEARY: Okay. Go ahead.

3 BY MR. MCGINNIS:

4 Q Who was the boss at Yerma Jewelry?

5 A Me and I brother. Unfortunately he died. At the
6 time I was, and my brother was.

7 Q What role did you perform in preparation of state
8 sales tax returns?

9 A CPA. He did all the paperwork for me. We
10 used -- we had inhouse computers and stuff, computer
11 drives. The old ways was checks, plus, kind of, memos,
12 consignment papers. All that stuff I put together with
13 reports I had give to CPA, and CPA conduct his part of the
14 business; taxes, all the payroll payments for employees,
15 all that stuff.

16 Hey calculate it. They give it to us. We
17 separate account for the payroll. We had separate account
18 for the business. We try to separate everything so we
19 have, kind of, clear idea and clear way to answering all
20 the questions that could come to us from anywhere.

21 Q What was -- how does -- is your description is
22 how you operate with some other venders at the jewelry
23 district?

24 A When I was doing after '95, no. A lot of people
25 don't because I was -- I hired enough to employ correct

1 people, hire the right people, make enough profit to pay
2 all the other stuff I do. But before when you start, you
3 know, it's very difficult and most of the people try to do
4 themselves, you know, do everything what you can. Save
5 the money to make the business work.

6 You start and you try to bring everything, you
7 know, borrow money, sometimes. You do this. You do that,
8 you know, to kind of go. For the time when we're talking
9 about it, it was actually the part when we were doing the
10 audit just because of the kind of business that is forcing
11 us to live and compete. You never believe you could --

12 JUDGE GEARY: Don't let your voice trail off.

13 THE WITNESS: We couldn't compete within our
14 system.

15 BY MR. MCGINNIS:

16 Q Can you estimate the amount of an annual business
17 between Yerma and Acapulco?

18 A I hate to give any numbers because I would be
19 lying. So I don't know estimate. What is estimate? I
20 don't know. But judging that paper I found, I mean, it
21 shows like -- what it is? Like, two or three months of
22 transaction. And so it's less than \$23,000 on the -- you
23 know, it could be double that. You know, next year it
24 could be triple that. You know, I can't say. I have to
25 have a hard proof to tell you this is what I did, which,

1 unfortunately, I don't have it.

2 In our business, because of the value of the
3 diamonds and gold, what you purchase, some people can get
4 a lot of money, but it's not our money. It's material.
5 Somebody buys the flour for \$5 a pound and sells bread
6 for, let's say, \$10. But this is you buy gold for, let's
7 say, \$12,000 a kilo, right. And then you make, let's say,
8 \$3,000 on it. It's the cost. Then you have to pay all
9 the expenses. What is left to you?

10 Especially, because in manufacturing business, my
11 businesspeople, people lose gold. They tax the watch,
12 they steal, whatever they do. You know, every time
13 everybody loses more grams. It's like 20 grams -- it's
14 like 20 grams of gold today is ounces, \$1,500, \$2,000.

15 It's difficult to say. It's a hard business.
16 It's very -- it's not normal business like people do.
17 It's not transaction like, you know, you have item you
18 itemize, and you put it. You try to do all that stuff to
19 be able to control the loss, manufacturing loss, the
20 normal loss, but you each have then stealing items.

21 It changes very rapidly because it's a passion.
22 You put it in something today, and then, you know, after a
23 month it sits in your safe. Nobody wants to buy it. You
24 scrub it out, take the money out. Money always scarce. I
25 mean, you spend \$100,000 a day, but in the end, you don't

1 have money to pay your bills because the material sits
2 there. I mean, it doesn't make enough sales, or didn't
3 make profits. It's a difficult business. That's all I
4 can talk.

5 Q Describe a typical transaction when you needed
6 gold or whatever. How did you arrange the sale and what
7 happened?

8 A From Acapulco?

9 Q With Acapulco?

10 A We had a lot of different gold dealers who supply
11 us with gold with different prices, premiums. Okay. It
12 ranges from, like, \$0.75 an ounce to \$5, \$6, \$8 an ounce.
13 It depends on who is buying, how much is buying, what type
14 of business, how powerful the guy is in the business, how
15 much business you give to that particular supplier.

16 So there was a time I bought from different
17 places because I didn't have the money. Let's say I
18 called somebody, P&P Gold, which is in downtown. And I
19 say, "You know, Mr. Geary, I need gold, but I'm going to
20 pay you not tomorrow -- I'm going to pay tomorrow's fixed
21 loan, the second loan. I'm going to pay you after
22 tomorrow. It's okay with you if I pay a day later?"

23 "Yes, I take it."

24 I give him the money. I cover with the check.
25 So next day I give him money. So according to that,

1 you -- I guess your business how you buy the gold from
2 where to buy the gold or diamond, so you be able to cover
3 your check. Because you miss one time, that's about it.
4 Nobody will trust you. They say you bring me cashier's
5 check or, you know, come here and pay me. I don't want to
6 give to you because your check bounce.

7 So I did buy the gold from different people,
8 including Ramin. As I needed, I could -- the
9 circumstances made me to do it, to go to him to acquire
10 it. If I have enough money, I go buy from UPM, United
11 Precious Metals. It was other company, powerful company.
12 They sell the gold on a daily chart. They charge me \$0.50
13 an ounce, which is, you know, it's a good deal. It's \$15
14 or \$12 to \$14 instead of paying, like, \$100 for a kilo,
15 \$33 dollars for ounce to pay.

16 So you know what I mean? It's always different.
17 I did -- if I bought from him, let's say, I'll break it
18 down, 2 for kilo or 2 kilo gold. Sometimes it's already
19 in that day's gold prices. I believe gold was somewhere
20 \$450 an ounce, so the transaction \$13, \$14,000. If I buy
21 once, 2 kilo gold a month it's like already a \$6, \$7,000
22 business. You know what I'm trying to say? I don't know.
23 I cannot say.

24 Q When did the paperwork get done on that
25 transaction? How did the paperwork get done?

1 A Give me gold. We fix the price on the day we
2 want to pay on it. Nobody wants to gamble on the gold
3 price. Right? So we fix it. Say I buy the gold today
4 from him. We decide it's going to be go to second payment
5 for Tuesday morning. So that will determine the price of
6 the gold plus his commission or premium, what he wants to
7 put on it.

8 And then I give him check. Usually, if he
9 deposit that day or I told him wait one day, whatever. I
10 don't know, maybe a couple of days he went to bank and the
11 bank cashed it. The transaction is done. I got the gold.
12 He got the check. That's it. That's all I know.

13 Q When did you get the invoice, the details of
14 transaction?

15 A I try to get it all the time, but he's no good at
16 it. But I got it. I took, you know, when I was in
17 office. I said, "Write it down. Give me the receipt, the
18 invoice so I can put it with it."

19 I don't know why it's not there. That's what
20 bugs me. With that checks that I found, the -- usually it
21 should be -- in my practice as much as I do, it should
22 have been, like, stapled, you know, the invoice copies or
23 something. But I see staples but there's no copies of his
24 invoice to me.

25 Q Who is doing the invoice? Is Ramin doing it or

1 are you doing the invoice?

2 A He sells, why should I do invoice?

3 Q Did you get -- you got them late. Did you
4 usually get them late?

5 A I'm telling you he's not good at that stuff.
6 He's not good at the paperwork. He never been. He tries
7 to do everything alone. He's not good at that.

8 Q When did you ever use cash, currency, greenbacks?

9 A Never. Never. I never have a cash business. I
10 never deal with anybody who give me cash, all jewelry
11 companies, most of them very big ones. Like, we help a
12 lot of huge diamond houses. Or we supply jewelry to,
13 let's say, Sears, Zales, you know, that kind of account.
14 Nobody pays cash at that business. Everything was like
15 should be.

16 Q When did you ever settle accounts? Did you ever
17 settle accounts? Did you ever dispute amounts owed?

18 A To whom?

19 Q With Mr. Cohan?

20 A I always have. He fights for every penny. He
21 wants to get his money. He spends three hours fighting
22 you for 10 bucks instead of saving that time. That's just
23 him.

24 Q Did you look -- search through all your records
25 when I asked you to search your records?

1 A As far as I know I did my best.

2 Q What happened to the records?

3 A Well, mostly it's -- it's, you know, you have a
4 lot of boxes in the end of the year. You have a lot of
5 boxes. You don't store that stuff. Everybody says to me,
6 including you as a lawyer, "You should keep it not more
7 than seven years." What I going to do with it? Where I
8 put it? I don't have a business. Business is closed.
9 Everything is done.

10 In the building -- I'm not sure when was it,
11 which year, but I had a roof kind of collapse. The water
12 went through and my computer system and everything went
13 bad, the paperwork too. So then when I -- when we moved,
14 the place was list for other businesses. So it had to be
15 cleared, you know, from this storage to the other storage
16 and becomes headache, you know. And I don't have to keep
17 it, so I just throw it way.

18 Q When were the records closed?

19 A I used to go -- like, basically, I never had
20 anything since 2015, '16. I didn't have reason to have
21 it.

22 Q Did you maintain inventory? You maintained
23 inventory?

24 A Of course you do.

25 Q Where did you keep it?

1 A Safe.

2 Q This was on Broadway?

3 A Yeah. Vault. Actually, bank vault. Put inside,
4 lock it, you know, the alarm system everything.

5 Q Where were you born?

6 A Armenia.

7 Q When did you come to United States?

8 A 1979.

9 Q Were you a citizen?

10 A Yes, I am.

11 MR. MCGINNIS: I think that completes it.

12 JUDGE GEARY: Does the Department have any
13 questions for this witness?

14 MR. LAMBERT: We do not.

15 JUDGE GEARY: Colleagues?

16 JUDGE CHO: I have no questions.

17 JUDGE GAST: No questions.

18 JUDGE GEARY: All right. I have no questions.

19 Would you like to examine your client?

20 MR. MCGINNIS: Yes.

21 JUDGE GEARY: Okay. And if you wouldn't mind,
22 Mr. McGinnis, move the microphone over so you don't have
23 to move.

24 Mr. Lambert, watch out, but if that will stretch
25 over there, that's an excellent idea. There you go.

1 Based upon what I've observed this morning, you
2 need to be close to the mic. Get your mouth right up to
3 it, two inches away from it when you're talking in order
4 for your voice to carry.

5 Mr. McGinnis, you should use a mic also.

6

7

DIRECT EXAMINATION

8 BY MR. MCGINNIS:

9 Q Would you state your name and address for the
10 record?

11 JUDGE GEARY: Mr. McGinnis, please pull the mic
12 close to you.

13 BY MR. MCGINNIS:

14 Q Would you state your name and address for the
15 record?

16 A Ramin Cohan, 706 South Broadway Street,
17 Los Angeles, California 90014, Ramco Jewelry.

18 Q Can you describe the nature of your business
19 during the years '05 to '10?

20 A I had a wholesale and retail jewelry business.

21 Q Are you familiar with Yerma Jewelry and Hakop
22 Yermagyan?

23 A Yes. Yes.

24 Q What was the nature of your transactions between
25 the petitioner of the Corporation Acapulco and Yerma

1 Jewelry? What were you doing?

2 A I was selling them gold, diamonds, precious
3 stones, and sometimes, like, finished goods, like,
4 finished diamond merchandise.

5 Q Okay. Where were you born?

6 A I was born in Terran, Iran.

7 Q And where did you get your education?

8 A In Iran.

9 Q So what's your principal language?

10 A It is Farsi.

11 Q Okay. During the years at issue, before the
12 Court, who did your tax returns and did your accounting?

13 A It was Mr. Vahab Aghai.

14 Q Did you ever have any discussions with him about
15 the adequacy of your records and whether you were keeping
16 the type of records necessary to verify the accuracy of
17 your tax returns?

18 A Before -- you know, until the day that I was
19 audited, I was -- he was doing my taxes since 1992 or
20 1993, I believe. And during those years, I was giving him
21 all my paperwork, and he was -- he was doing my taxes.
22 And until that day, I was under -- I was taking, like, he
23 was doing everything right and everything is okay, until
24 the day I was audited.

25 Q Was this your first audit by the State of

1 California?

2 A Yes.

3 Q Did you receive advice from your newer reps that
4 was contrary to the advice that Mr. Aghai gave you? Did
5 you get different advice?

6 A I don't understand the question.

7 Q Okay. Do you do business the same way now that
8 you did during the audit period?

9 A Oh, no. Like, after the audit, you know, because
10 of a lot of discrepancy that they have in the paperwork
11 due to either not having enough time to do it, or not
12 giving enough paperwork to my accountant, or also, the
13 negligence of him -- or not telling me what to do exactly.
14 So now that -- we are doing it differently now.

15 Q How did you do your sales tax returns? What
16 happened? Did you take your receipts there and he just
17 run a tape or what? What did he do?

18 A You know, I was giving all the receipts and all
19 the paperwork and the bank account, and I was telling him,
20 like, this was the retails, and this was the wholesales.
21 And he was going through them and making assessment on how
22 much sales tax and how much wholesale tax.

23 Q Did you ever have an accounting prepared under
24 any conventional accounting software, like, QuickBooks or
25 anything like that?

1 A No, I never did.

2 Q When was the first time someone advised you to
3 get -- to use QuickBooks?

4 A Like, a few years ago, couple of years ago.

5 Q Who was this from?

6 A It was you. Yeah.

7 Q Did he ever advise you that one of the most
8 important documents ever prepared by a preparer was
9 reconciling the gross receipts for income tax purposes
10 with the sales reported for sales tax purposes? That was
11 an absolutely critical document to have in any case, in
12 any return file. When was the first time you heard this?

13 A I mean, this is a -- I mean, this is common
14 sense. I mean, they have to always match. And I told my
15 accountant he is doing a good job for me.

16 Q So when was the first time you were actually
17 doing that, that you know they did that?

18 A Sorry. Can you repeat?

19 Q Okay. When was the first time that your
20 accountant actually did a reconciliation for sales for
21 sales tax purposes on an income for tax purposes?

22 A I was under the influence that he was doing it
23 all the time.

24 Q When did you find out he wasn't?

25 A I mean, right after the audit. I realize that he

1 wasn't doing that.

2 Q There's -- how much, if you had to give an
3 accurate -- good estimate of the amount of goods, I mean
4 gold silver, diamonds, precious stones, platinum. How
5 much did you sell to Yerma Jewelry for each of the years,
6 roughly?

7 A I mean, I would say probably about 7 or \$800,000
8 a year, give or take. Maybe a little bit more. I don't
9 know. I don't talk about it.

10 Q Did you ever -- what was the typical transaction
11 that -- how was the size of the purchase, and what was the
12 sale? And did you get an invoice? Did you get a bill of
13 lading? How did you -- what was the paperwork during the
14 years '05 to '08? What was your typical paperwork?

15 A A lot of times, like, I used to study the
16 merchandise what we really needed. And sometimes I used
17 to give right away or sometimes a couple of days later,
18 the invoices.

19 Q You also had other --

20 JUDGE GEARY: Mr. Cohan?

21 THE WITNESS: Yes.

22 JUDGE GEARY: When you answer, keep looking at
23 the microphone, okay? Because you're losing your voice.

24 THE WITNESS: Okay. Sorry about that.

25 BY MR. MCGINNIS:

1 Q Were there other firms you did business with
2 during these years?

3 A Yes.

4 Q Okay. Could you tell the court which they were,
5 particularly, the ones who did business with you in cash,
6 meaning greenbacks, paper dollars?

7 A I worked with Creative Diamonds. And also AMH, a
8 company that they were making -- manufacturing. Also with
9 sometimes Millennium Diamonds.

10 Q So now, what was your typical transaction with
11 them, and how did they pay you?

12 A They would pay me -- they would pay me sometimes
13 cash, and sometimes they would give me check that I had to
14 cash it before I give them the merchandise.

15 Q Why did you do that? Why didn't you just take --

16 A Because I didn't trust them 100 percent.

17 Q Was one of the companies -- who owned Millennium
18 Diamonds?

19 A I believe Mr. Vipul Shah.

20 Q How did he pay you?

21 A He would pay me -- he would pay me cash most of
22 the time.

23 Q What was the typical transaction?

24 A \$10,000, \$15,000, \$8,000.

25 Q So did you --

1 A Sometimes he would -- I would give him the
2 merchandise in parts, like, don't give everything at the
3 same time --

4 Q Okay. Was there another --

5 A -- until I get paid from him.

6 Q So was that an indication of lack of trust?

7 A Yeah. In this business, I mean, if you lose --
8 if you lose like a parcel or one deal, it's going to take
9 whole year profit from you. So you have to be very
10 carefully.

11 Q Who owned AMH?

12 A I believe Mr. Alex, but I believe he passed away.
13 We tried to find him, but the family told me that he
14 passed away. He was -- he was sick.

15 Q Was one of the companies owned by an individual
16 who emigrated back to India?

17 A Yeah. It was Creative Diamonds.

18 Q How much did you sell them?

19 A I sold a lot to them, actually. I would say
20 about million a year, 7 to \$800,000 to a million a year.

21 Q Now, how did you know he was doing this? Did he
22 give you a resale certificate?

23 A Yes, he did, Yes, he was a diamond company. He
24 was a diamond dealer, buying and selling diamonds.

25 Q So was there ever an occasion where you entered

1 transactions, essentially, to cover checks you have
2 already written?

3 A Yeah. It happened sometimes that I wrote checks
4 for people, and it happens quite a few times that I didn't
5 have enough money to cover it. So I had to borrow money
6 from other people and make a deposit and then pay them
7 back later at a later time.

8 Q Was it by check or was it by cash?

9 A Some by cash, some by checks.

10 Q So was that the source of some of the deposits?

11 A Some of it, yes.

12 Q How much -- who advised you on the paperwork for
13 doing wholesale transactions? What were you advised of?
14 What were you told you had to do in these years?

15 A I thought I just had to get the resale numbers
16 and --

17 Q That was it?

18 A That's about it. Resale numbers and where their
19 place of business is, and a few references from other
20 people.

21 Q What about invoices? Did they talk about
22 invoices?

23 A Yes.

24 Q Did you actually get the resale certificate?
25 Were you told -- did you say something?

1 A For the people that, yeah, that I worked along
2 with. I got them. Maybe I didn't get for every single
3 one of them, but then I realized at a later time that I
4 need to have for everybody.

5 Q What percentage of your business was legitimately
6 wholesale, and what percentage was sales to retail?

7 A I could say 85 to 90 percent wholesale.

8 Q And so how did you determine -- how did your
9 accountant determine what was a retail sale, a sale in
10 interstate commerce, and wholesale? How did they -- how
11 were you distinguishing those when you talked to him?

12 A I would -- I would just -- some of them I would
13 tell him. And some of them he would just see from my bank
14 deposits, and I would tell him what it was for, and he
15 would do the assessment for the taxes.

16 Q Did you both review --

17 A And I would give him also, like, the invoices and
18 the retail invoices that I have.

19 Q So one of the things mentioned in the decision
20 and recommendation is that you actually produced invoices
21 for wholesale sales that exceeded the amount that was
22 reported on your sales tax return. Do you know how that
23 happened?

24 A I honestly, I cannot tell. Maybe some of them we
25 wrote it like a couple of times invoices instead of once.

1 That could be like a duplicate invoices. Or sometimes
2 it's because -- because I did it at a later time. Some of
3 the invoices that they sent for the customers maybe I -- I
4 made a mistake.

5 Q Did you maintain inventory during the years '05
6 to 2010?

7 A I had some inventory, yes.

8 Q How did you keep it safe?

9 A I would put it in a safe. We have safe in the
10 shop. I would put it in the safe.

11 Q Did you actually make a physical inventory? Were
12 you ever advised to do a physical inventory at the end of
13 the year?

14 A You know, I've been in business many years but
15 not really done it, like, thoroughly.

16 Q Were you ever asked to do a physical inventory?

17 A By whom?

18 Q By your accountant?

19 A No, he didn't.

20 Q Who did you buy the gold -- let's talk about a
21 typical transaction. Yerma decides they want gold, you
22 know, 5 kilos in gold and diamonds. You have to buy it
23 from somebody. Describe the transaction? What happened?
24 Who did you buy it from, and how did you resell that?

25 A I bought from some direct importers. I used to

1 buy them. Sometimes I used to get terms from them, and
2 then sell it to --

3 Q How much money would you make on these
4 transactions?

5 A On the gold really is nothing. Because gold when
6 we buy it, like, I buy one kilo gold and we sell it. It
7 probably makes for the large transaction of \$15,000, maybe
8 we would probably make 50 buck or 100 bucks. But on the
9 diamonds we make more profit. On the diamonds if we sell,
10 we make probably about between 5 to 8 percent, maybe.
11 Sometimes.

12 Q So you had two sets of invoices. You got an
13 invoice between your supplier. And you have an invoice
14 between you and Yerma, for example; right?

15 A Yes.

16 Q When did you review these and organize these for
17 tax purposes?

18 A Like, after the audit. It's something like that.

19 Q Was it ever done prior to doing the tax returns?

20 A For the -- for my accountant?

21 Q Yeah.

22 A I used to just give them to my accountant and
23 explain him when I was, like, depending on him to do the
24 accounting and to do my tax return.

25 Q Did you ever have any accounting or bookkeeping

1 training when you were in school in Iran?

2 A No, I never did.

3 Q How far did you go?

4 A Like 12th grade.

5 Q Now, we originally -- I'm just trying to clear
6 the record. Why did Mr. Vipul Shah not come?

7 A Today was their New Year's, and he was the keeper
8 of the temple. He had to care of people in the temple.
9 So he apologizes, and he didn't show up. We try to have
10 it for a later day, but we couldn't change the date. So
11 he just didn't come.

12 Q Now, after the billing or audit was completed,
13 did you try to get the bank statement so you can recreate
14 your account?

15 A Yes, I did, but I wasn't able to get it from the
16 bank. They wouldn't be able to give it to me. I thought
17 whatever accounting that I had I thought my accountant had
18 it. And that's all the request that I have with my
19 accountant.

20 Q So you hired two CPAs to try to re-audit and
21 recreate the records. Who are they, and what happened?

22 A It was Mr. Chebishian and also Mr. Neil Harmon.

23 Q Where was Mr. Chebishian?

24 A I really didn't work with him. I work with
25 Mr. Harmon mostly. He was on the -- in his office.

1 JUDGE GEARY: Could you give me a spelling for
2 them?

3 THE WITNESS: Yes, N-e-i-l, Harmon, H-a-r-m-o-n,
4 if I'm not mistaken.

5 JUDGE GEARY: And the other name?

6 MR. MCGINNIS: It's Art, A-r-t, last name
7 C-h-e-b-i-s-h-i-a-n.

8 JUDGE GEARY: Thank you.

9 MR. MCGINNIS: I don't want to testify. I've
10 known Mr. Chebishian for a long time. He was formerly
11 IRS.

12 BY MR. MCGINNIS:

13 Q What did they tell you?

14 A Mr. Harmon did that to a certain amount. And
15 then after that he said, "Because you are missing a lot of
16 bank statements," they couldn't finish the whole -- the
17 whole thing.

18 Q Okay. Now, you had retail a business here, and
19 there were items which are -- how did you get to the point
20 where you misreported your retail sales during the audit?
21 What happened?

22 A As I said, I would just get the receipts of my
23 sales, and I would just give it to my accountant. And I
24 would -- excuse me. And I would tell him which one is
25 retail and which one wholesale, and he would go through

1 them and make the calculations.

2 Q How long did you use him?

3 A Unfortunately, I used him for -- since 1992
4 until, I believe, 2012, '13.

5 Q When was the first time you realized that there
6 was a problem with what he was doing for you?

7 A I mean, I didn't know anything until after the
8 audit. I thought everything is fine. I thought he is
9 doing a good job. And after that, I realize that it's a
10 lot of -- a lot of things that is not 100 percent, you
11 know, done right.

12 Q Who is your CPA now?

13 A My CPA now is Mr. Boudai.

14 Q Where is he?

15 A He's on Ventura Boulevard.

16 JUDGE GEARY: Could you spell his name too,
17 please.

18 THE WITNESS: B-o-u-d-a-i, I believe.

19 JUDGE GEARY: Thank you.

20 THE WITNESS: Sure.

21 BY MR. MCGINNIS:

22 Q Describe a typical transaction you have with
23 Yerma Jewelry. What happens? Who calls who? And how did
24 you get -- did you have the stuff in inventory, or did you
25 have to scramble for -- what had happened? What happens

1 here?

2 A Some of the diamonds are like color stones I had
3 in the stock. And like if he needed diamonds or if he
4 needed, like, color stones for making jewelry, he would
5 ask me. He would come to my shop, and I would -- you
6 know, he would take whatever that he needed. And in case
7 of gold, I didn't keep gold because it's very expensive.
8 So sometimes when he needed it, I was getting it from gold
9 dealers and give to him. So that was the way we did it.

10 Q So where was it kept in your office?

11 A In my safe.

12 Q Okay. How big was the safe?

13 A Probably half of the white board over there.

14 Q Who paid you largely in cash, and were these
15 wholesale transactions? Who was paying you in cash?

16 A As I said, I was getting cash from Creative
17 Diamonds, sometimes Millennium, and sometimes from AMH.

18 Q How do you know that those were all wholesale?
19 Did you have discussion with them, before the order went
20 through, that it was wholesale?

21 A Yeah, because they do manufacturing. And also,
22 they were, like, diamond dealers. Their office was in the
23 buildings. They didn't even have a store or a storefront.
24 So they were selling diamonds to other jewelry stores. So
25 that's how I knew, like, they were doing wholesale.

1 Q Okay. And so --

2 A Also I got the resale number from them, and they
3 told me it was for resale.

4 Q Occasionally or did they tell you that on every
5 transaction?

6 A Well, I didn't ask him every single time. But
7 they were doing it -- they were doing wholesale. So I
8 assume like they were using this for wholesale jewelry.

9 Q So what was the typical transaction?

10 A They sit down and tell me. They look at the
11 diamonds or they tell me what kind of diamonds they need,
12 what size or how many millimeters for making goods for
13 their customers. And he used to come and get it from me
14 and give it to them.

15 Q And would they bring the cash with them?

16 A They would bring the cash, or they bring the
17 check. Yes.

18 Q So who produced the invoice? When was the
19 invoice produced?

20 A A lot of times when they come, I was busy because
21 I was shorthanded. I was doing -- I try to do everything
22 myself in my business most of the time. So I didn't have
23 like a bookkeeper -- inhouse bookkeeper to do all my
24 bookkeeping. And I try to do it the best I can.
25 Sometimes I do it a few days later. Or sometimes I used

1 to send them the invoices at a later time. But I was the
2 person who was doing that.

3 Q So is it fair to say you could have forgotten to
4 do the invoice?

5 A Yes.

6 Q Did you ever sell product on consignment to a
7 retail outlet? Did you have consignment sales?

8 A No, not really. They have to pay for it.

9 Q How did you decide -- what did you typically have
10 for sale in your office? Where was it? Where was your
11 office?

12 A At 706 South Broadway Street.

13 Q What did you have to for sale? What was it? Did
14 you have a cat -- counter?

15 A Yeah.

16 Q What is it?

17 A I have a store. I have a store, and I was -- I
18 had different type of stuff. I had rings. I had
19 bracelets, necklaces, chains.

20 Q How much did you have for sale, and how often did
21 you make a retail sale?

22 A I mean, it's a store. Whoever comes in and -- it
23 was a storefront. They come to my shop. They look at the
24 stuff. If they like it, I sell it to them, to the public.
25 But mostly I put my time and effort on the wholesale

1 because there were, like, a lot of jewelry stores next to
2 each other, and it was very hard to make a sale with
3 profit.

4 So most of the time the customers come, either I
5 didn't pay too much attention to them, or I just spend
6 time with them a little bit. And if they buy, they buy
7 it, or they don't buy it. I really didn't care.

8 Q So you've signed the sales tax returns. Did you
9 believe that the amount that was claimed on the sale tax
10 returns for wholesale sales is accurate or close to it?

11 A The one that I -- I think it's very close to it.
12 I'm not saying it's 100 percent accurate. I admit that my
13 paperwork was not complete and wasn't accurate at
14 100 percent at all times. And I learn my lesson, like,
15 after the audit, and I realize that my accountant was not
16 doing a good job. And I wasn't doing a good job at the
17 same time. And hopefully in the future I'm going to be a
18 better keeper of records and doing better with my
19 accountant and with my tax returns.

20 Q How did you sell -- let me describe the
21 transactions. These are classified by the government as
22 sales of interstate commerce. How did that happen?

23 A I had some merchandise that I used to ship for
24 customers to another state and -- like, out-of-state
25 sales. And they used to come to my shop. They look at my

1 shop. They used to go to their city and order from me
2 over the phone, and I used to ship it to them.

3 Q Would your testimony be that the amounts claimed
4 as wholesale sales on your tax returns was accurate but
5 for the fact that your recordkeeping was lousy? Is
6 that --

7 A That's correct. To my knowledge, it was accurate
8 at that time.

9 Q How much discussion did you have with your
10 preparer when you did these returns? Did you actually
11 look at the numbers?

12 A Sometimes like very briefly, like, maybe half an
13 hour, 20 minutes, half an hour. I used to go to his
14 office to finalize everything.

15 Q When was the first time someone stated that you
16 had to match resale certificates with the invoices to and
17 from. When did you first hear this?

18 A I mean, I knew that. I knew that I have to match
19 it, and I have to get people's resale number. And I took
20 it, you know, as much as I could.

21 Q So did you bring these records to your accountant
22 even though you didn't have that done? In other words,
23 you were doing that; is that right?

24 A Yes.

25 Q You brought those to the accountant?

1 A Yes.

2 Q Did he say anything?

3 A He didn't say anything to me.

4 Q Okay. Mr. Yermagyan produced some receipts which
5 has been marked as Petitioners 10. Do you recognize any
6 of those transactions?

7 A I did a lot of transactions with Mr. Yermagyan.
8 I'm sure of that. And we did a lot of business together.
9 But since I don't have the records and the checks I
10 deposited into my accounts, I'm sure those are the checks
11 I deposited into my accounts. But I don't have anything
12 to show the Court that the -- to collaborate that.

13 That's the reason I asked Mr. Yermagyan to bring
14 whatever proof that he has or whatever he can find for me.
15 I needed the favor of looking into his stuff, and he found
16 those for me in order to bring for the Court.

17 Q Did you ever cash a check from Yerma Jewelry?

18 A What do you mean cash?

19 Q Cash it. Convert it into currency?

20 A You mean like go to the bank and get money?

21 Q Yes.

22 A Never. I never done that.

23 Q So --

24 A There's no reason for me to do that.

25 Q Was the source of the cash deposits largely

1 Millennium and AMH?

2 A AMH, Creative Diamonds, Millennium sometimes.

3 Q So is it your testimony that those were largely
4 wholesale transactions?

5 A Yes, they were.

6 Q What was the typical transaction with those
7 companies?

8 A There were different -- different amounts.
9 Sometimes like \$10,000, \$8,000, \$15,000, \$12,000.
10 Sometimes even more, sometimes less, depending on what
11 they buy from me.

12 Q Does the issue of trust that was described by
13 Mr. Yermagyan hold true with you and Mr. Yermagyan?

14 A I mean, yes. But -- would be with Mr. Yermagyan?

15 Q Yeah.

16 A I never had an issue with him because I knew him
17 for a long time.

18 Q Did you do business with people you didn't trust?

19 A I try not to, no, until I was 100 percent sure
20 that I get paid for it before I release the merchandise.

21 Q Were you ever stiffed?

22 A Yes.

23 Q Large amounts?

24 A Some, yeah.

25 Q Can you estimate each year -- the average year of

1 the amount of wholesale transactions? Start with
2 Millennium and then with Creative Diamonds.

3 A Off the top of my head, I would say maybe close
4 to what I did with Mr. -- with Yerma Jewelry, maybe 6 or
5 \$7,000 each one. Maybe more or less.

6 Q Okay.

7 A Maybe more even, because jewelry is very
8 expensive. Like, one transaction \$15,000, \$10,000. You
9 do 4 or 5 of them a month or 1 or 2 every week, you know,
10 it's going to be a lot of transactions.

11 MR. MCGINNIS: I think that completes my side of
12 this.

13 JUDGE GEARY: Does the Department have any
14 questions for the witness?

15 MR. LAMBERT: No.

16 JUDGE GEARY: Judge Cho, any questions?

17 JUDGE CHO: Not at this point.

18 JUDGE GEARY: Judge Gast?

19 JUDGE GAST: No questions.

20 JUDGE GEARY: I have a question about original
21 resale certificates. Did you bring them?

22 MR. MCGINNIS: What is it?

23 JUDGE GEARY: Original resale certificates.

24 Remember it was in the order that any resale certificates
25 that the Appellant intended to rely upon, the original

1 should be produced at the hearing. Did you bring any?

2 MR. MCGINNIS: No, Your Honor. We didn't.

3 JUDGE GEARY: Is the Department prepared to
4 give -- actually, you should give your argument if you're
5 ready.

6 MR. MCGINNIS: We obtained copies of a resale
7 certificate on --

8 JUDGE GEARY: No. I'm not interested in it.
9 It's time to give -- you did not bring original resale
10 certificates with you; is that correct?

11 MR. MCGINNIS: No, I didn't.

12 JUDGE GEARY: Okay. The discussion is over about
13 resale certificates.

14 Are you ready to give your closing argument, your
15 initial closing argument?

16 MR. MCGINNIS: Yes.

17 JUDGE GEARY: You may begin.

18

19 CLOSING STATEMENT

20 MR. MCGINNIS: The transaction question here
21 relates to the portion of the code which states that if a
22 taxpayer doesn't get a resale certificate at the time of
23 the sale, he has to prove that there was no injury being
24 used or that the purchaser did not use it, consume in his
25 own business.

1 At least with respect to Yerma Jewelry, we think
2 we proved with the testimony of Mr. Yermagyan that
3 anything that was sold by Yerma Jewelry -- by the
4 petitioner to Yerma was consumed almost immediately in
5 production and preparation of jewelry. There was no
6 intervening use. There was no personal uses. It was --
7 and that any tax that was generated was already paid to a
8 different source, to the State of California. That some
9 of this, particularly, beyond Yerma Jewelry really relates
10 to the credibility of the taxpayer, whether you see him as
11 credible.

12 Now, my -- I would like to analogize. There are
13 several items in the federal tax code which require
14 contemporaneous evidence and the most important of which
15 is Section 274. If you don't produce a contemporaneous
16 document on a travel expense, a meals expense, the code
17 says you don't get the deduction.

18 But U.S. Tax Court has held for 25 years that if
19 the trier of fact believes that the taxpayer has
20 substantiated the purpose of those four or five elements
21 through a combination of testimony and records, that a
22 trier of fact can give him a deduction in the face of the
23 fact that he didn't have contemporaneous diary or
24 document.

25 There's many cases on that point. I believe that

1 the Court should use the same rationale here. We have a
2 busy taxpayer who has a business. He's trying to wear
3 seven or eight different hats. He doesn't get the
4 invoices done, and he's not an accountant. So things get
5 put off, and they're not done. But that doesn't change
6 the fact that he tried to put faith to operate.

7 There is a doctrine that has been used by the
8 State for years. If it's his first audit, you give him a
9 break because he didn't know. He's not from this country.
10 He's from Iran. And this isn't something he would know
11 offhand. He has no booking or accounting training. And
12 given the amounts here, I don't think that 94 percent
13 disallowance is really fair, which is what's happened
14 here.

15 You got the total wholesale sales were multiplied
16 times 94 percent and that was arrived at because auditor
17 found checks for \$34,850 in the first quarter of '07. I
18 think a lot fairer resolution would be a significantly
19 higher percentage of those. Bearing in mind you would
20 find tax court cases saying, bear in mind against the
21 taxpayer that the imprecision was of his own creation to
22 some extent.

23 I think a lot fairer result here would be that to
24 split the difference. Give him half. Because some of
25 this stuff -- I mean, I think Mr. Yermagyan is a

1 completely credible witness. He was buying a lot of
2 merchandise, and he found those stubs which bear out and
3 corroborated his own testimony. Did the taxpayer screw
4 up? Of course he did. I'm not trying to excuse it.

5 But I found with foreigners, particularly
6 foreigners from the Middle East, they don't necessarily
7 expect the same things because the country they came from
8 isn't the United States. It's a totality -- Iran is a
9 totalitarian government. So this isn't something he would
10 know offhand. He would rely upon his accountant.

11 As far as the negligence penalty is concerned, he
12 has no accounting training. This was his first audit.
13 When advised he tried to reconstruct the records. He
14 hired a different accountant, and he's fixed the problems
15 that have been identified here.

16 Remedial efforts to cure a problem as recognized
17 and pointed out is evidence that you were -- your failure
18 to live up to the code was not in bad faith. You didn't
19 say on bad faith I'm not going to comply with the code.
20 You just -- it's evidenced you didn't know.

21 And that completes my summation.

22 JUDGE GEARY: Thank you. You have an opportunity
23 to rebut after the Department's argument.

24 Mr. Lambert, will you be giving the argument?

25 MR. LAMBERT: I will.

1 JUDGE GEARY: You may proceed.

2 MR. LAMBERT: Thank you.

3

4 CLOSING STATEMENT

5 MR. LAMBERT: In this particular case, as has
6 been described, the taxpayer operated a retail jewelry
7 store located in the Jewelry District of Los Angeles. The
8 Appellant reported total sales on their sales and use tax
9 returns of just under \$17 million. Of that amount, they
10 claimed \$16,500,000 as both either interstate commerce or
11 resales. That left reported taxable sales of \$443,000.

12 So upon audit, the Appellant provided income tax
13 returns for 2005, 2006, and 2007. They had some bank
14 statements, and that was, essentially, their records. And
15 that's what we had to use in order to conduct the audit.
16 Ultimately, what we found out was that the amounts that
17 were deposited into the bank account matched both the
18 income tax returns and the sales and use tax returns.

19 So we use that information in order to establish
20 the tax liability. We were able to confirm that there
21 were interstate commerce sales that they had made sales to
22 people and had it delivered outside the State of
23 California, which would not be subject to tax. They had
24 one shipper. It was G4S International Logics, and we were
25 able to go through and obtain all the shipping documents

1 from them. And we were able to determine that
2 \$1.572 million was, in fact, shipped out of the state, and
3 we allowed that as not being subject to tax. The
4 remainder we considered everything subject to tax.

5 The accountant had told us that the Appellant
6 either charged tax or they had a tax included price that
7 they sold to their customers, which it is not always
8 common, but it's not uncommon. It happens sometimes. And
9 so you would sell something to somebody for \$1,000 and you
10 would just say it's a tax-included amount. So it wouldn't
11 list the sales tax separately. It would just be a one
12 lump-sum figure, which you're allowed to do.

13 After the audit was completed, the Appellant came
14 back and provided us with some resale certificates. There
15 were a number of those. And they also provided us with
16 sales invoices. So we were able to go through those and
17 add all of that up. And in addition to that, we were able
18 to get their bank deposits, and we were able to determine
19 that there were some customers that were sales for resale,
20 and we could identify them. And that was, I believe,
21 about \$35,000.

22 We also sent out what's called -- we call them
23 XYZ letters. Basically what it is, is the Appellant would
24 send out a letter to their customers asking for
25 information in regards to whether the sale has -- whether

1 the customer resold the items. And from that, we were
2 able to determine that there was one transaction of about
3 \$27,000 that was also a resale. So combined, we accepted
4 resales of \$62,000, and then the interstate commerce of
5 1.572.

6 So what's important here is that on the return
7 itself, total sales were reported of \$1.5 million.
8 Resales were \$1.478 and they reported taxable sales of
9 \$37,000. But on the invoices that they provided to us,
10 they had total sales of \$2.53 million and resales of
11 \$2.3 million, which left taxable sales of \$232,000. So
12 the sales invoices that they provided us were over a
13 million dollars higher than what they had reported on
14 their returns.

15 And so we were able to go through and look at the
16 bank statements and reconcile those to the taxable sales
17 that were reported, and they matched. So, essentially,
18 what you have here is an extra million dollars in sales
19 that we can't account for. So, ultimately, our decision
20 was we could not rely upon the sales invoices that were
21 provided.

22 One, there were no invoices on the sales. There
23 were no numbers on the sales invoices. We were unable to
24 contact other than one customer on the resale certificates
25 to obtain verification that, in fact, there were sales for

1 resale. And I would point out the one testimony here --
2 and I know there hasn't been a ruling yet on the
3 admissibility of the documents for Yerma Jewelry.

4 But I'll just make a comment that we went through
5 the first quarter of 2007, which was the test period, and
6 there were no deposits into the bank account from Yerma
7 Jewelry because we had the deposit slips. And I'm not
8 saying that -- the information that's provided here is for
9 2005. It's not for the first quarter of 2007. And that's
10 why our argument was this is irrelevant to the liability
11 here because the liability wasn't established from this
12 period.

13 But I would point out from the testimony is that
14 the witness stated that they pay all purchases from
15 Acapulco with a check. And what I can say is there were
16 no checks in the bank accounts that we had that were from
17 Yerma Jewelry. So if there were any sales during that
18 time period of the first quarter of 2007, they were
19 deposited some -- in another bank account.

20 And that's really the issue that comes down here
21 is that we -- it's not so much that we're not accepting
22 these resale certificates. It's the fact that we can't
23 verify the sales that are being made, or which one of
24 those sales have been reported on the sale and use tax
25 returns.

1 We have no idea what sales, other than we know
2 that the amounts from the bank statements tie out to the
3 returns, but the majority of the information that we're
4 missing is the cash sales, and we don't know where that
5 cash goes to. So which one of those transactions or quite
6 frankly, what other sales there were that cash came from
7 that could be -- that are subject to tax that aren't
8 showing up as invoices, and that's the problem that we
9 have here.

10 So the Department found the sales invoices to be
11 unreliable and should not be used to verify the claimed
12 resales. Also, we did not consider the resale
13 certificates in and of themselves because we could not
14 verify the sales invoices that were provided to us. We
15 allowed what information that we had that we would verify
16 in the deposits were, in fact, resales.

17 And I'll just go into resales just a little bit.
18 But, essentially, if you have a true sale for resale, it
19 doesn't matter whether you obtain a timely resale
20 certificate or not. We will allow that sale for resale if
21 it can be proved that it was made to that person, and
22 they, in fact, resold it.

23 So when it comes down to a problem is, if you
24 didn't obtain a resale certificate and it turns out to be
25 a taxable transaction, the seller is going to be the one

1 that's responsible for the tax. The issue that we have
2 here isn't so much the resale itself, it is the fact that
3 we can't tie any particular sales into the bank deposits,
4 which were used to report the sales or appear to have
5 reported the sales.

6 I'd also point out for -- I don't want to give
7 you the -- I'll give you some combinations of two
8 customers. One is Creative Diamond and the other AMH
9 Wholesale for 2007. The invoices that were provided to us
10 was a little over two-and-a-half million dollars. Those
11 two customers for the year 2007 only reported
12 \$1.5 million.

13 So the invoices that -- the sales invoices that
14 we have for 2007 that the Appellant has provided to us is
15 over a million dollars higher than what those customers
16 reported to us on their sales and use tax returns as
17 sales.

18 So that's the facts, and so I'll leave it as
19 that.

20 JUDGE GEARY: Excuse me. Before you move on, you
21 said that the sales for both in 2007 totaled a little over
22 2.5 million, but they reported what?

23 MR. LAMBERT: It was just -- 2 I'm sorry --
24 1.55 million.

25 JUDGE GEARY: Combined?

1 MR. LAMBERT: Yes.

2 JUDGE GEARY: Okay. Thank you.

3 MR. LAMBERT: Right 1.55. The sales invoices
4 added up to about 2.55, somewhere in that area.

5 So the location that the Appellant had was on the
6 ground floor in the largest Jewelry District in the U.S.
7 On the Appellant's website, it states -- and they've been
8 in business since 1994 -- and this is a quote, "Preferred
9 retailer in Downtown Los Angeles specializing in diamonds
10 and genuine gemstones, 14 and 18 karat quality, top of the
11 line white and yellow gold, even platinum." There's no
12 indication that the taxpayer was in the business of making
13 resales.

14 In regard to the negligence penalty, a 10 percent
15 negligence penalty was applied in this audit. The
16 Appellant did not have a prior audit. There are -- the
17 fact that the taxpayer did not have a prior audit, we do
18 take that into account. And if it turns out that there
19 was in fact negligence, we will put the 10 percent
20 penalty. That's what we did in this case. The amount of
21 the liability is significant. We disallowed over \$14
22 million in claimed resales.

23 The lack of records that were available and then
24 when the records were provided for just one quarter, they
25 had reported -- or they had on the invoices \$233,000, and

1 they had only reported \$37,000. That's a significant
2 difference just in and of itself.

3 The fact that you would use an accountant to
4 prepare the returns, you're still responsible for that
5 accountant. If that accountant was negligent in preparing
6 the returns, that negligence falls upon you. There was a
7 subsequent audit of the taxpayer as they had mentioned,
8 and there continues to be issues with the records.

9 I believe that concludes my presentation.

10 JUDGE GEARY: Do my colleagues have any
11 questions?

12 JUDGE CHO: Hopefully just a quick one. For the
13 test period, was there any invoices for Yerma Jewelry that
14 you're aware of?

15 MR. LAMBERT: Not that I'm aware of, no. But we
16 do have in the -- and going from my memory, but I remember
17 this. In the working papers, there is a list of all -- I
18 believe there are several different -- maybe three
19 different customers, and it list all of those
20 transactions, and I think that's a majority of them. So
21 off the top of my head I would say I don't recall any, but
22 I would refer to the audit schedules for -- that they
23 would be more complete.

24 JUDGE CHO: And so the reason why the Department
25 is not accepting the sales invoices for Creative and AMH

1 is just because they were the only ones to verify whether
2 these invoices are, in fact, the true invoices for that
3 audit period? Is that what you're saying?

4 MR. LAMBERT: Well, there's two reasons. That's
5 one of the reasons. And the second one is even if it was
6 possible, we can't tell if it was either the sale was
7 either reported on the sales tax return or the money was
8 deposited into the bank.

9 MR. MCGINNIS: Can we be heard on this?

10 JUDGE GEARY: You have a rebuttal, remember.

11 MR. LAMBERT: We can't determine that from the
12 information that's been provided to us.

13 JUDGE CHO: Okay. The reason I'm asking you is
14 just the audit manual states where when we're talking
15 about a resale, in fact, you determine that, you know,
16 there are certain sales made to certain customers, that is
17 claims of nontaxable sales should be allowed, but in this
18 case the Department is unable to verify the sales invoices
19 are accurate; correct?

20 MR. LAMBERT: That's correct. That's basically
21 correct. I mean, there are some examples where, let's
22 say, the businesses was closed out in 2004. And so we
23 wouldn't allow, you know, sales after that point. But the
24 majority of, at least on those resale certificates, the
25 customers appear to be in the business of the jewelry

1 business. Which would be -- if they're buying, you know,
2 either jewelry or the parts to it, it would be a sale for
3 resale. They wouldn't be using that themselves.

4 And so, really, it comes down to, you know, what
5 we've said is that if we were able to confirm that the
6 sale took place and it was deposited into the bank
7 account, you know, that would be a different issue.

8 JUDGE CHO: Okay. Thank you. And then if you
9 don't mind, Appellants, I think you briefly touched on it
10 during your testimony. But can you explain again why you
11 have sales invoices that are much higher than the reported
12 amounts?

13 MR. MCGINNIS: I think Mr. Cohan testified that
14 he relied on his accountant to prepare the returns. He
15 didn't do the summary himself. He was bringing them over
16 to be recorded, and he would have the returns prepared.
17 He's not by training the bookkeeper at home. So he
18 wouldn't know that.

19 But I'd like to respond to one of the questions
20 you raised. The two people we're talking about here with
21 those invoices, one of them is dead and the other one is
22 in India. He cannot be located. We tried to find both of
23 them. One of them is deceased, and the other is in India.
24 So those were legitimate transactions.

25 JUDGE CHO: Can I just ask you a quick question?

1 Where did those invoices come from?

2 MR. MCGINNIS: I think -- I asked Mr. Cohan to
3 produce all the invoices that we were asked to produce
4 them. I brought them, and I delivered them to, I think it
5 was a Hearing Officer in Norwalk. I had two boxes of
6 them. It was just empty out the entire -- whatever
7 organization you had, produce the invoices because the
8 government asked for them. So pursuant to the request to
9 produce, I looked through them and they were not
10 organized.

11 JUDGE CHO: Okay.

12 MR. MCGINNIS: I mean, I don't -- I'd like to get
13 to the point where we don't see dragons here when there's
14 no dragons. I mean, he's a lousy bookkeeper. He's not
15 trained to be a bookkeeper.

16 JUDGE CHO: Okay. Thank you.

17 JUDGE GEARY: Did you want to take a minute to
18 talk Mr. Yermagyan who is apparently desperate to talk to
19 you before you give your final closing?

20 MR. MCGINNIS: Can I take a couple of minutes?

21 JUDGE GEARY: Sure.

22 MR. MCGINNIS: Mr. Yermagyan is telling me that
23 there were possibilities that when they would have a sale
24 and --

25 JUDGE GEARY: Wait a minute. Wait a minute.

1 Testimony is over.

2 MR. MCGINNIS: Okay.

3 JUDGE GEARY: Are you ready -- before you give
4 your final closing, I'm going to admit your Exhibit 10.
5 You were here earlier for the prior hearings. Strict
6 rules of evidence do not apply to the admission of
7 evidence in our proceedings. I'm going to admit it, and
8 the judges will decide how much weight to give to it.
9 Okay. Exhibit 10 is admitted.

10 (Appellant's Exhibits 10 was received
11 in evidence by the administrative Law Judge.)

12 JUDGE GEARY: Are you ready to give final
13 closing?

14 MR. MCGINNIS: Yes, sir.

15 JUDGE GEARY: If you are, I just want to ask you
16 a question. It sounded to me like you were making an
17 argument earlier based on the case that said that if it
18 appears from the evidence that a taxpayer is entitled to
19 relief but is unable to prove the exact amount of relief
20 that the taxpayer is entitled to, a judge or judges can
21 grant some relief weighing against the taxpayer, the fact
22 that it's the taxpayer that has failed to prove the
23 specific amount that they are entitled to. Is that the
24 argument you were making earlier?

25 MR. MCGINNIS: Yes, sir.

1 JUDGE GEARY: Okay. With that, you've got your
2 five minutes. You may begin when you're ready.

3

4 FINAL CLOSING STATEMENT

5 MR. MCGINNIS: The Board of Equalization's
6 position here ends up with a 94 percent disallowance
7 because they scheduled the first quarter of '07, and they
8 had \$34,000 in checks, and they knockout 94 percent of the
9 wholesale sales, even though they have invoices from one
10 of them to have a million. I say that I contend that as a
11 representative, that's patently unreasonable.

12 That's not a friendly auditor. That's
13 somebody -- that's an auditor trying to screw a taxpayer.
14 This taxpayer is not an accountant. He was trying to run
15 a business. And did he make mistakes? Of course he did,
16 but I can assure you he's tried -- he has tried his best.

17 I hear some things in the closing statement from
18 the opposition which we object to. Number one, the
19 references to the later audit, we've talked about the
20 audit. It's not relevant. Particularly, he was
21 testifying about records in the later audit, which is
22 whatever. There was no testimony on that.

23 And the two people they are talking about he
24 couldn't find. One of them is dead, and the other is in
25 India. And we can't find him. So that was the reason why

1 they couldn't verify anything because he was gone. And
2 you're -- the Court is the trier of fact. They're the
3 judges of whether someone is telling the truth or not.
4 And when I was in the IRS Chief Counsel, look, our goal
5 was we make them pay to right tax, nothing more, nothing
6 less. Bear in mind, sometimes the client -- the taxpayer
7 deserves a break. And that's how we operated when I was
8 in the IRS Chief Counsel.

9 And I submit that this Court should use the same
10 standard. It's clear that there were wholesale sales
11 which have not been given credit. You as the trier of
12 fact should give him a break and find that those should be
13 wholesale sales. 94 percent flies in the face of what I
14 think is credible testimony by Mr. Yermagyan and the
15 taxpayer. I believe Mr. Yermagyan is incredible. He was
16 a businessman. He was not connected to Ramin Cohan or
17 Acapulco, and these were commercial transactions.

18 And with that we conclude.

19 JUDGE GEARY: Before you conclude, you have a
20 number that you are suggesting to three of us?

21 MR. MCGINNIS: Split the difference. Give him
22 half.

23 JUDGE GEARY: What authority are you thinking of
24 for the judges to be able to estimate? The Cohan Rule?

25 MR. MCGINNIS: I can get you a brief within a

1 week of hundreds of cases in the tax court. You're
2 allowed as the trier of fact to estimate based on credible
3 testimony. Hundreds of them.

4 JUDGE GEARY: Is it Cohan Rule?

5 MR. MCGINNIS: Yeah. It's the Cohan Rule. In
6 other words, you, as the trier of fact, find a person
7 credible. You have the right to do justice. That's why
8 we came to the Court for justice, and that's really your
9 function. I mean, did the guy make a mistake? Of course
10 he did. He screwed up, and I've made no bones about that.
11 I know he screwed up.

12 He was -- a lot of stuff was never done. Should
13 he pay for it? We know he's going to pay for it, but he
14 shouldn't pay 94 percent. That's not fair.

15 JUDGE GEARY: Okay. Thank you.

16 This concludes the evidentiary phase. We have
17 received all the evidence, written and testimony, and the
18 record is closed now. My colleagues and I will deliberate
19 the issues, and within 100 days of today's date we will
20 issue a written opinion. And a copy of the opinion will
21 be sent to the parties. And that concludes today's
22 proceedings.

23 Thank you all for coming, and we can go off the
24 record. Thank you.

25 (Proceedings adjourned at 3:27 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 18th day of November, 2019.

ERNALYN M. ALONZO
HEARING REPORTER