

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
EDIK PARIA,) OTA NO. 18012066
)
 APPELLANT.)
)

)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, December 18, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPELLANT.)
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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Cerritos, California, 91401,
commencing at 1:50 p.m. and concluding
at 2:42 p.m. on Wednesday, December 18, 2019,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ SUZANNE BROWN

Panel Members: ALJ JEFF ANGEJA
ALJ ANDREW KWEE

For the Appellant: Edik Paria
Raman Zoobalan

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION
By: CHAD BACCHUS
STEPHEN SMITH
LISA RENATI

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I N D E X

E X H I B I T S

(Appellant's Exhibits were received at page 8.)
(Department's Exhibits were received at 8.)

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By Mr. Bacchus	29

DEPARTMENT'S WITNESSES:

DIRECT CROSS REDIRECT RECROSS

(None offered)

APPELLANT'S WITNESSES:

DIRECT CROSS REDIRECT RECROSS

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1 Cerritos, California; Wednesday, December 18, 2019

2 1:50 p.m.

3

4 JUDGE BROWN: Good afternoon. We are now on the
5 record in the Office of Tax Appeal's oral hearing for the
6 appeal of Edik Paria. And this is Office of Tax Appeal's
7 Case Number 18012066, and we're in Cerritos, California,
8 on Wednesday December 18th, 2019.

9 My name is Suzanne Brown. I am the lead
10 Administrative Law Judge for this case, and my
11 co-panelists are Jeff Angeja and Andrew Kwee. And first,
12 I will ask the parties to identify themselves for the
13 record.

14 CDTFA, can you please go first.

15 MR. BACCHUS: Chad Bacchus.

16 MS. RENATI: Lisa Renati.

17 MR. SMITH: Stephen Smith.

18 JUDGE BROWN: And Mr. Tavakol?

19 MR. PARIA: Edik Paria.

20 MR. ZOOTALAN: Roman Zoobalan.

21 JUDGE BROWN: Not Mr. Tavakol? I'm sorry. What
22 is your name?

23 MR. ZOOTALAN: Raman, R-A-M-A-N, last name Z as
24 in zebra, double O, B as in boy, A-L-A-N.

25 JUDGE BROWN: And I'm sorry. Can you pronounce

1 it for me again?

2 MR. ZOOBALAN: Zoobalan.

3 JUDGE BROWN: Zoobaman.

4 MR. ZOOBALAN: Zoobalan.

5 JUDGE BROWN: Zoobalan. Okay. And you're
6 representing the Appellant in this matter?

7 MR. ZOOBALAN: Yes.

8 JUDGE BROWN: Okay. Thank you. All right. I'm
9 just going to go over a few things before we begin. We
10 held a pre -- and will remind everyone, when you're
11 speaking during this case, please make sure that you're
12 speaking into the microphone.

13 JUDGE ANGEJA: They may not be working.

14 JUDGE BROWN: Are the microphones not working?

15 JUDGE ANGEJA: No. So just articulate and
16 project.

17 JUDGE BROWN: Okay. So I will say can you please
18 remember to speak up loudly and clearly so that the court
19 reporter can hear everything that you're saying. Okay.
20 Thank you.

21 All right. I will just go over a few things
22 before we begin with the case. We had a prehearing
23 conference in this matter back on November 12th, and I
24 issued a prehearing conference minutes and orders that
25 everyone should have received and that identified what the

1 issue is in this case and who the witness is going to be.

2 I'll just confirm that we're still -- that is
3 still the plan that as we confirmed during the prehearing
4 conference, the issue in this appeal is: Whether
5 adjustments are warranted to the disallowed amount of
6 claimed nontaxable labor for the liability period. And
7 the liability period is July 1st, 2005, through
8 June 30th, 2013. And we discussed also during the
9 prehearing conference that we're going to have one witness
10 today, and that will be Mr. Paria. And CDTFA is not
11 planning on calling any witnesses.

12 MR. BACCHUS: Correct.

13 JUDGE BROWN: Okay. Very good. Let me just
14 briefly go over the documentary exhibits, and then I'll
15 admit the exhibits and then we'll move on to hearing --
16 hearing the parties' presentations. Okay.

17 So my office sent out a hearing binder. That's a
18 courtesy copy to everyone. And that contained Appellant's
19 Exhibits 1 through 4 and contained Respondent's Exhibits A
20 through G. Now, I'll just go over briefly that
21 Appellant's Exhibits 1 through 4 are written declarations
22 sworn -- signed under penalty of perjury.

23 As I discussed during the prehearing conference,
24 these declarations, in order to be admitted as if the
25 witnesses had testified -- is it in order for us to be

1 able to give them the same weight as if the witness had
2 testified in person, they needed to comply with certain
3 regulation of the Government Code that included a special
4 notice. And CDTFA objected at one point saying that they
5 did not include that notice, and that's correct. But I
6 can still admit them as evidence.

7 And I will just confirm, CDTFA, you have no
8 objection to the Exhibits 1 through 4 being admitted as
9 ordinary evidence.

10 MR. BACCHUS: No objection.

11 JUDGE BROWN: Okay. And previously, Appellant
12 had indicated that he had no objection to the exhibits
13 that CDTFA had submitted, Exhibits A through G; correct?

14 MR. ZOOTALAN: Correct.

15 JUDGE BROWN: Okay. So if there's no objection
16 to any of the exhibits being admitted into evidence, I
17 will admit them now. So I'm admitting exhibits --
18 Appellant's Exhibits 1 through 4 and CDTFA's Exhibits A
19 through G.

20 (Appellant's Exhibits 1-4 were received
21 in evidence by the Administrative Law Judge.)

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

24 JUDGE BROWN: Okay. And then I'll just review
25 what our schedule is today, and then we'll go ahead and

1 have presentations from the parties. As we discussed
2 during the prehearing conference, Appellant will have up
3 to 30 minutes to present his argument. And that will
4 include Mr. Paria's testimony.

5 Okay. So what is going to happen is I'm going to
6 swear in Mr. Paria under penalty of perjury. And you, Mr.
7 Paria, you can testify. And then each of the
8 representatives may also make a statement -- an opening
9 statement or argument, but they will not be sworn in as
10 witnesses. And I will just consider that what they're
11 saying is argument but not as evidence itself. Okay.

12 MR. ZOOBALAN: Okay.

13 JUDGE BROWN: Okay. All right. Appellant -- as
14 I said, Appellant will have up to 30 minutes to present
15 his argument and testimony, and then CDTFA or the judges
16 may have questions for Mr. Paria as a witness.

17 And then next CDTFA will have up to 30 minutes to
18 make its argument, and the judges may have questions for
19 CDTFA. And then after that, Appellant will be permitted
20 to make a brief rebuttal, and the judges may ask questions
21 of either party at that time.

22 Does anyone have any questions before we begin?

23 MR. BACCHUS: No.

24 JUDGE BROWN: Okay. Does Appellant wish to make
25 an opening statement before Mr. Paria testifies?

1 MR. ZOOBALAN: Yeah.

2

3 OPENING STATEMENT

4 MR. ZOOBALAN: This case is -- I just reviewed
5 it. It's about untrue statements by auditor and rushing
6 to judgment with no proper evidence. So that's -- that's
7 what the whole case is all about. That's what I want to
8 discuss.

9 JUDGE BROWN: Okay. Then if Mr. Paria is ready,
10 I will swear him in as a witness.

11

12 EDIK PARIA,

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

16

17 JUDGE BROWN: Okay. Thank you. Okay.
18 Mr. Paria, you may begin your testimony. I don't know if
19 your representative wants to question you or if you just
20 want to testify in a narrative format?

21 MR. ZOOBALAN: I'm going to question him.

22 JUDGE BROWN: All right. Go ahead.

23 ///

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. ZOOBALAN:

3 Q Mr. Paria, when did you come to the United
4 States?

5 A I came 2001 -- 2001 with my wife and two
6 children. I'm coming to U.S.A.

7 Q And how did you come here? As what?

8 A As a refugee.

9 Q As a refugee. And then so 2001 you came to
10 United States?

11 A Yes.

12 Q So the fact that it says you've been doing
13 business from 1981 with no resale numbers, it cannot be
14 correct because you came to United States in 2001?

15 A Yeah. It's correct because I came 2001.

16 Q Okay. And then when you came here, what did you
17 do? What -- how did you make money?

18 A First of all, I start with valet parking and then
19 catching with the reception or somebody call me. I go
20 work for the -- keep my family, making money.

21 Q Okay. And then what?

22 A And then in my valet parking and then catching, I
23 meet the photographer in reception when I valet parking.
24 They say if you photographer, I can hire you. Sometime I
25 have a wedding. You can help me for the lighting or

1 something. You can help me. I say okay. I start that
2 job with the Prestige Photography. They pay me check.
3 And then Rafik Studio Zoom Photo Video, the guy they call
4 because I'm honest working hard for them, and then they
5 pay me. I keep my family. That's it.

6 Q So did they ask you to go open a business in
7 order for them to be able to pay you as a subcontractor?

8 A Yes, of course. Because they say you good person
9 for do it. You open your business. I say I don't know
10 because my English is not very well. I can't handle this
11 style. I don't have camera. That's -- that why they say
12 no. You open the business. I put my business name. I
13 love the Golden Picture. I put my business.

14 And then I start with them working. They pay me
15 check, and then I'm working with them. Sometimes --
16 sometimes, honestly, somebody say, oh, you good. Why you
17 come birthday to take a photography. I say okay. No
18 problem. Side job -- I take a side job.

19 Q But the main -- your main earning was working for
20 others as a subcontractor to help them out with the
21 lighting with the sounds with all these things?

22 A Yes. Yes. I --

23 Q And this was until when?

24 A Until 2011 when my job is getting better because
25 photography for the wedding every weekend or monthly, two

1 wedding. Because, you know, nobody get married too much.
2 Because every month one, wedding, two wedding, and then
3 side I go to the valet parking, and then work with the
4 catering. I making money for keep my children for going
5 to school or that -- that's it.

6 Q So the combination of all these income was
7 reported on --

8 A Yes.

9 Q -- your income tax --

10 A Yes.

11 Q -- as schedule B?

12 A Yes. Yes.

13 MR. ZOOBALAN: No more question, Your Honor.

14 JUDGE BROWN: Okay. All right. Do you have any
15 cross-examination of the witness?

16 MR. BACCHUS: No.

17 JUDGE BROWN: Great.

18 JUDGE KWEE: I do.

19 JUDGE BROWN: Go right ahead.

20 JUDGE KWEE: I had one question. So -- or a
21 couple of questions. Was your business Golden Picture and
22 Video?

23 MR. PARIA: Yes.

24 JUDGE KWEE: And that was the 410 South Central
25 Avenue in Glendale?

1 MR. PARIA: Yes.

2 JUDGE KWEE: Okay. So I'm -- I guess I'm just
3 confused because CDTFA had submitted, I guess, a copy of
4 your website for Golden Picture and Video at 410 South
5 Central Avenue, starting with "Established in 1981, Golden
6 Picture has serviced the community for 25 years." Is that
7 not your website?

8 MR. PARIA: That' my web --

9 MR. ZOOBALAN: And I think --

10 MR. PARIA: That's my website, but for the
11 networking or something, everybody -- I don't know. At
12 that time they make website for me. They write around
13 '81. I'm not here in '81. I'm coming here 2001. Why
14 I'm -- you know what I'm saying? Every businessman in
15 website, they put 50 years I'm with this job.

16 JUDGE KWEE: Okay.

17 MR. ZOOBALAN: He was photographer since 1981,
18 but he did not come to United States until 2001.

19 MR. PARIA: Yeah.

20 MR. ZOOBALAN: So on website he said that I have
21 experience since 1981.

22 JUDGE KWEE: Okay.

23 MR. ZOOBALAN: In 1981 that makes him what --
24 19 years old, 20 years old, so just became a photographer.

25 JUDGE KWEE: Yeah. I just wanted to know if that

1 was your website or if you're disputing that was your
2 website because there was that exhibit in the record that
3 CDTFA was -- it was for your website. So I just,
4 basically, wanted to confirm that is, in fact, your
5 website.

6 MR. ZOOBALAN: Yeah. The way it's written that's
7 been in operation since 1981 without sales permit. That's
8 not correct.

9 JUDGE KWEE: Okay. Okay. I got it.

10 MR. ZOOBALAN: Because he did not -- he was not
11 even here until 2001.

12 JUDGE KWEE: Okay. And I did have another
13 question about that website. The reason I was asking is
14 because CDTFA had submitted additional exhibits of
15 customer testimonials. For example, there is a
16 testimonial in June 2013 that, "We recently got back from
17 our honeymoon and Sharman said we can come by in a week to
18 pick up our CD of wedding photos."

19 And I -- I think as you understand, the issue is
20 here, CDTFA saying tax applies because you transferred --
21 the taxpayer transferred tangible personal property, like
22 the CDs, to the customers. And as I understand it, you're
23 saying you didn't do that after 2010, but on the website,
24 there is testimonial saying that TPP on the CDs were
25 transferred to the customers in 2013 and 2014.

1 So I'm just wondering if you could possibly
2 explain your position versus, I guess, the testimonials on
3 your website.

4 MR. PARIA: Okay. At that time, okay. You're
5 correct. Sometimes we give it on the CD, give it to them.
6 But after that, they audit me. And then they say you have
7 to pay \$17,000. They close my account, and then every
8 month they took money from my account \$1,000. I don't
9 have that money. I want to go to bankruptcy. My wife
10 angry with me. Make a big problem with family.

11 I paid off \$2,000 -- \$16,658.88. I paid off.
12 And then after one month same case number. Again, audit
13 me because same case number. The audit finish, and then
14 again open the audit going back to the fall. At that time
15 I don't have any business. I can't keep my family.

16 JUDGE KWEE: Okay. So I -- I guess I'm just
17 trying to understand the issue, your position. So you're
18 saying that -- you agree that there were some taxable
19 sales after 2010 that you're just disputing that all of
20 your transactions were taxable like --

21 MR. PARIA: Yeah, then I paid.

22 MR. ZOOBALAN: That is correct. He did give some
23 CD to customers, but after 2010 or '11. We all live here.
24 How many of you guys have album? How many people you
25 think they want their pictures in an album? How many

1 people they want to print a picture four or five times to
2 give one to in-laws, to give one to this. Nowadays
3 everybody gets their photo electronically.

4 Same thing in my business. I do taxes for 34
5 years. For last 7, 8 years, nobody wants the copy of
6 their tax return. Everybody wants it electronically.
7 Why? Because it's easy for them. If they want to get a
8 mortgage, they forward it to them. Same things with
9 pictures. People they don't want to have a CD because
10 they have to store. People, they don't want to have album
11 because they have to store it.

12 And then if they want to give a copy, what are
13 they going to do? They're going to print, and that -- so
14 since 2010 he might have given a few CDs here and there
15 for people that they -- they're not technology savvy. But
16 99 percent of people, they want them on electronic.

17 JUDGE KWEE: Okay. So I guess I just have one
18 more question related to that because CDTFA had also
19 submitted, it looks like vendor invoices from Express
20 Video Supply and Media Distributors showing, for example,
21 200 DVDs purchased in December '11, and 300 DVDs in
22 December '12, 200 again in January '13, another 200 DVDs
23 in October '13, and another 200 in '14 -- January of '14.

24 It looks like there's a consistent or regular
25 amount of purchases of DVDs in a large volume. I'm just

1 wondering if that -- is that going to the customers? Or
2 is that some other purpose, some other service that you
3 provide or some other sales you provide? Or maybe if you
4 could just clarify why so there is so many DVDs being
5 purchased if 99 percent of the customers were getting
6 entirely electronic transactions?

7 MR. PARIA: Okay. At that time hard drive is
8 very expensive. Very expensive. But the CDs -- the
9 Blu-ray is \$0.25 or something. I buy a lot of. I have
10 all my image back up for sometimes for customer or
11 somebody I work for them. They say oh, I lose this
12 picture. I try to help them. I have a lot of CDs in my
13 home. I can bring all my 2011, '12, '15. I put on the
14 CD. Now, 8 terabyte hard drive is how much? \$100. At
15 that time I buy CD Blu-ray because all images I save it to
16 that.

17 MR. ZOOBALAN: So he say he used those for back
18 up for his own things. But customers --

19 MR. PARIA: Yeah. Sometimes --

20 MR. ZOOBALAN: The wedding pictures, they're not
21 going to fit in one CD or two CD. So most of customers
22 they are bringing -- they're bringing their own flash
23 drive or hard drive and --

24 MR. PARIA: Yes. Hard drive. Own hard drive.

25 THE STENOGRAPHER: I need you both to talk one at

1 a time. Thank you.

2 JUDGE KWEE: So I --

3 MR. ZOOBALAN: So one --

4 JUDGE BROWN: Actually, please go ahead and
5 finish what you're saying. One at a time, whoever wants
6 to speak first. Mr. Paria.

7 MR. PARIA: Okay. I thank you so much for
8 everything. But please, when I come in America, I know
9 this country is very good. I love America. God bless
10 America because I know everything is right here, you know.
11 One of the correct -- because I paid \$17,000, I have a
12 very pressure, very bad pressure. I keep my children
13 going to school. Going -- my daughter getting doctor, you
14 know. I try to be good person for this country. Please,
15 Judges, correct everything because I'm right.

16 JUDGE BROWN: If I can get you each to finish
17 what you were saying about the purchases of the DVDs, the
18 invoices that show that you were purchasing DVDs. I think
19 you both got cut off because you were both talking over
20 each other.

21 MR. ZOOBALAN: The DVDs that were purchased for
22 his backup to back them up and keep them in a business in
23 case people, they want a copy of them. But the customers
24 that were getting their stuff, either on a hard drive that
25 they were providing or a flash drive that they were

1 providing. And one of the things that BTFD -- is it
2 BTFD -- did not question the taxpayer, is from all of
3 these CDs and video and stuff that you purchase. How many
4 of them is left?

5 This is just like people that they were in pager
6 business. A lot of them, they left with a whole bunch of
7 pagers, which at one point in time, they realize that they
8 have no value. Same thing in this business. He did not
9 know that all of these things are going to come to an end,
10 that people they're not going to start wanting a CD or
11 DVD, you know.

12 So he purchased this. They look at the invoice,
13 but because they're only interested on one side to
14 represent the Department rather than being fair to the
15 taxpayer, they never asked them. In this report I don't
16 see that they asked him how many of this is left in your
17 inventory? Maybe he had 200 and he has 190 of them there.
18 Did they ask him? No.

19 They have statements here that somebody called,
20 and they said that he told me to lie, do this, this, and
21 that. He -- he sent in a written statement to say that he
22 did not receive a tangible asset. But then it says that
23 he called, and he said, "Oh, he told me to say this." So
24 if this person is a liar, then he's a liar.

25 If he's not a liar, then he's not. In this

1 statement, it should not be here because the Department --
2 if somebody is calling and making statement like that, I
3 think the Department should take that in writing and have
4 the taxpayer take opportunity to cross-examine that, to
5 find out if that person is there or not.

6 So this statement that's added here, these are
7 all statements that does not really make any sense. It's
8 all one sided. Like here on page 6 of Exhibit 1, after
9 they send a -- they call this XYZ letter when they cannot
10 determine. So they know exactly how many letters they are
11 sending out and they know exactly how many letters are
12 sending out, and they know exactly how many letters they
13 receive back.

14 In the second paragraph here on line 14, it says,
15 "A few of letters was returned to BTFD." What does it
16 mean a few? Is it one? Is it two? Is it two out of a
17 thousand? Is it one out of a million? What -- what is a
18 few?

19 Rather than to say we send in 400 letters and we
20 received only 10 back. A few letters were returned, and
21 it says, "Yes, we received personal property along with
22 services." So this one was not sufficient. They did a
23 second time. The second time it was to the benefit of the
24 taxpayer. So they decided not to include it because it's
25 not to their benefit. And it's written here.

1 If you're sending this letter out, you can't say,
2 well, the first one, because it's to our benefit, we're
3 going to accept them. The second one is not to our
4 benefit. We're not going to accept them.

5 And the whole issue of this is based on the
6 purchases that they make. Because he purchased this, that
7 means he sold them. It's like to say, oh, because today
8 is raining then it's winter. There's no evidence to show
9 that this was sold. On the next page, there's one
10 testimony, line 3, page 17.

11 JUDGE BROWN: I'm sorry. Which exhibit are you
12 looking at?

13 MR. ZOOBALAN: Exhibit A, page 7 --

14 JUDGE BROWN: Exhibit A. Okay. Go ahead.

15 MR. ZOOBALAN: -- line 4.

16 JUDGE BROWN: Sorry.

17 MR. ZOOBALAN: Line 3. "According to one of the
18 testimony of petitioner's website. A user stated that
19 petitioner provided a great package deal with" --- blah,
20 blah, blah.

21 Now, again, one of the testimony of what? Out of
22 100? How many testimony was there that this auditor went
23 in that he said one of the testimony? And we're not
24 disputing. Yes, 1 of 100 people. Not everybody was
25 getting electronically but -- but very few. Very few

1 people.

2 In this room there's like 10 people now. How
3 many of you now get pictures -- actual pictures printed
4 and keep in album? How many? Raise your hand. None.
5 That's the whole issue here.

6 JUDGE BROWN: Do you have any more questions?

7 JUDGE KWEE: No. I said I had one question --
8 one last question. But I did have one additional follow
9 up. I think this will be my last and -- you had -- this
10 doesn't work.

11 You had mentioned that sometimes the customer
12 provided their -- their own media stick or what not. I'm
13 just wondering if you have any idea, roughly, of
14 percentage of transactions where you provided the DVD
15 versus where the customer provided something on their own
16 to -- to copy?

17 MR. ZOOBALAN: No. Because he did not know. See
18 when they give him a business license, nobody told him
19 that he needs to have a resale number. He was operating
20 from 2005 until 2012. The Department went there. His
21 accountant didn't tell him that he needs a resale number.

22 Now, when the Department went there, they find
23 out that all the CDs that he's purchasing, he's paying
24 sales tax on it. Did they give him credit for that? No.
25 Why? Because it's not to their benefit. For all the CDS

1 they got invoices that he bought up 100, 200, all of these
2 sales tax have been paid.

3 I want to know why that sales tax was not given
4 credit to him. Why everything was denied? Because it's
5 easy. In the Department it's easy to get it out of my
6 desk. I'm going to finalize this and send it out. Make
7 it somebody else's problem. This case is basically a case
8 that the auditor did not do their job. And we're going
9 back and forth, back and forth, and back and forth.

10 There are still hundreds of photographers out
11 there that they don't know that they got to pay sales tax.
12 Who educate them? Nobody. If they go get a resale
13 number, are they going to tell him? Are they going to
14 test him? No. The minute that you get that resale
15 number, they assume that you know everything. If you're a
16 mechanic, you go and get a resale number. Nobody will
17 tell you how to tax people. You should know by yourself.

18 This is the same thing. He did not know that he
19 has to get a resale number. Had he known, he would get it
20 and not pay sales tax when he was purchasing all these
21 items. He did not know until the Department came. And
22 then when the Department came, still this accountant told
23 him that no. I'm just taking this is all -- this is all
24 labor. This is all service.

25 JUDGE KWEE: Okay. Thank you.

1 JUDGE BROWN: Okay. Let me pick up with a couple
2 of questions. So I want to make sure I understand
3 correctly. It's the Appellant's position that the
4 customer provided a blank CD or DVD to Mr. Paria, and
5 Mr. Paria downloaded the photographs that he took onto the
6 blank CD or DVD and gave it back to the customer; is that
7 correct?

8 MR. PARIA: Yes, correct.

9 MR. ZOOBALAN: Hard drive. Mainly hard drive.

10 JUDGE BROWN: One at a time, please. Let me hear
11 from Mr. Paria first.

12 MR. PARIA: Sometimes they do hard drive. They
13 bring flash drive. They buy three to give out. They
14 bring to me, and then I put the pictures, all picture over
15 there and then give it to them. Because I don't have --
16 my office is very small. I don't print any picture. I
17 don't do anything. My office is closed. Only with
18 appointment. I'm working onsite. I'm not 24-hour working
19 with the job. Because every month two, three wedding, or
20 one birthday, one Christening. Not to every day. Every
21 day I'm working other way.

22 JUDGE BROWN: So when you say hard drive, you
23 mean a flash drive?

24 MR. PARIA: Yeah, flash drive and --

25 JUDGE BROWN: Not the hard drive on the computer?

1 MR. PARIA: -- then hard drive. Sometimes they
2 have it enlargement picture. They bring too much picture
3 for the -- I put on the hard drive. And then now we send
4 it with the drive -- drive box with the Internet.

5 JUDGE BROWN: Okay. So that --

6 MR. PARIA: Drive box.

7 JUDGE BROWN: Okay. So the customer would bring
8 you a blank, and you would put the photos onto the --

9 MR. PARIA: Yes, yes.

10 JUDGE BROWN: -- blank and give it back to them?

11 MR. PARIA: Yes.

12 JUDGE BROWN: Okay.

13 MR. PARIA: And then they go to the printer shop
14 or they make an album. They go by yourself. They buy.
15 Sometime they don't know. They coming. That's why.

16 JUDGE BROWN: So regarding the testimonials on
17 your website, is it your argument that all of those
18 testimonials were before -- were about transactions that
19 were before 2010?

20 MR. ZOOBALAN: No. His testimonial is that --

21 JUDGE BROWN: No. The test -- the testimonials
22 meaning -- the sentences on your website that are from --
23 appear to be from satisfied customers who say that they --
24 that you provided them with a CD or a digital album.

25 MR. PARIA: I have in my website you see over

1 there. Because box for the -- we take a picture and then
2 put in the box. They can open it in your home, and then
3 save it by yourself.

4 JUDGE BROWN: But on your website -- it's in
5 Exhibit E. I can give you the page. I think it was --
6 hold on. Exhibit E. It's page 209 of Exhibit E, the
7 Golden Picture website. It says, for example, it's a
8 review from someone named Eddie who says, "I was in shock
9 when I saw how beautiful my wedding album and video came
10 out. You get your video and album very quickly."

11 MR. PARIA: Yeah, because we design the picture.
12 They do by yourself. I don't print album. In my office
13 is like this. Printer shop for the album like this big.
14 Big machine, \$200,000, for them to make album. I'm not
15 doing that. They come in my office and see my office.
16 They coming in my office. They see my office. Small
17 office. You can walk there.

18 JUDGE BROWN: Well, then also in Exhibit E there
19 are testimonials from the website harsanik.com where one
20 of the reviews say things like -- the customer said that
21 they would come by and pick up a CD of their wedding
22 photos. And that's again Exhibit E. That's a couple of
23 pages down.

24 MR. ZOOTALAN: There are some clients that they
25 want them on CD but not everyone. That's why here on the

1 testimonial they found only one testimonial that the guy
2 said, "I got this." But out of how many? There's hundred
3 testimonial and there's one person that said, "I went and
4 got a CD."

5 Okay. That's what we're saying. We're saying
6 that 99 percent of these, they are not taxable because
7 they've been electronically transferred. But there are
8 people still that they want on CD, if they fit on the CD.

9 JUDGE BROWN: So you're saying these were the
10 exceptions?

11 MR. ZOOBALAN: I'm saying that. Yes, he does
12 give CD out for people that they want it. But since 2010
13 that he formed his new website, very rarely people they
14 want that. Because this is a headache for people to have
15 an album. What are they going to do with that album?
16 When they have electronic it's easy to share, easy to do,
17 and easy to maintain. Why was he forced to have that
18 website? Because that's how the customer wants it.

19 JUDGE BROWN: Do you have any further questions?

20 JUDGE KWEE: No. But I may have some for CDTEFA.

21 JUDGE BROWN: I'm going to move on to that next.
22 I have not forgotten. Okay. At this time we're going to
23 move on, and I will hear -- we will hear CDTEFA's
24 presentation. And then you'll have a few minutes left for
25 rebuttal at the end.

1 MR. ZOOBALAN: Sure.

2 JUDGE BROWN: Okay. CDTFA, if you are ready, you
3 can go ahead with your argument.

4 MR. BACCHUS: Thank you.

5

6 OPENING STATEMENT

7 MR. BACCHUS: The department's statewide
8 compliance and outreach program contacted Appellant around
9 October 2012 and determined that Appellant was required to
10 hold a seller's permit. During the audit, the Department
11 obtained 51 of Appellant's contracts from 2011 to
12 through 2013.

13 Appellant's contracts found in Exhibit E, pages
14 75 through 110 and 406 through 456, state that no taxes
15 charged on photography and videography services.
16 Appellant shall own the copyright and all images created
17 and will have the exclusive right to make reproductions
18 for studio samples, such as enlargements or a sample of
19 video services. And it also -- they also state all
20 photography images and videography clips will be provided
21 on the client's own DVD and hard drive.

22 Appellant's contracts also include sections
23 titled "Photo Package Information" and "Video Package
24 Information". In both sections there is a space to
25 indicate whether images or videos are to be provided on

1 the customer's DVD or hard drive. 49 of the 51 contracts
2 indicated that images and/or videos would be provided on
3 the customers own DVD or hard drive.

4 The Department received additional information
5 from 7 customers found in Exhibit E, pages 192 to 196, and
6 Exhibit F, pages 530 to 564. And those customers
7 indicated that either Appellant provided images or videos
8 on a DVD or hard drive, or that Appellant provided images
9 or videos on a DVD or hard drive that the customer
10 provided.

11 Based on this information, along with Appellant's
12 purchase invoices, found in Exhibit E, pages 49 to 56, 269
13 through 272, 364, 366, and 395. Those purchase invoices
14 show large quantity purchases of blank DVDs and DVD cases,
15 as well as customer reviews that have already been
16 mentioned, which are found in Exhibit E, pages 241
17 through 267 and 463 through 490. Those customer reviews
18 indicate that Appellant provided tangible personal
19 property to his customers.

20 The Department used all of this information to
21 determine that Appellant sold tangible personal property
22 and owed tax on those sales. On March 15th, 2013,
23 Appellant filed his sales and use tax returns for fiscal
24 years July 1st, 2005, through June 30th, 2011. And on
25 August 20th, 2013, Appellant filed his sale and use tax

1 returns for fiscal years July 1, 2011, through
2 June 30th, 2013.

3 In total, Appellant reported total gross sales of
4 or \$477,000 or \$477,268 and claimed the entire amount is
5 nontaxable labor charge. Giving the Appellant the benefit
6 of the doubt, the Department accepted Appellant's reported
7 gross sales with no supporting documentation, which was an
8 almost \$200,000 reduction from the audited taxable sales.
9 And then based on the Department's findings during the
10 audit, the Department disallowed all of Appellant's
11 claimed nontaxable labor charges.

12 Pursuant to Revenue & Taxation Code Section 6051,
13 California imposes sales tax on a retailer's gross
14 receipts from the retail sale of tangible personal
15 property in this State unless the sale is specifically
16 exempt from taxation by statute.

17 Section 6006(b) states that a sale includes the
18 producing, fabricating, processing, printing, or
19 imprinting of tangible personal property for a
20 consideration for consumers who furnish either directly or
21 indirectly the materials used in the producing,
22 fabricating, processing, printing, or imprinting.

23 Section 6091 provides that all gross receipts are
24 presumed to be subject to tax until the contrary is
25 established and the retailer has the burden of proving

1 otherwise. Finally, Section 6012 states that gross
2 receipts include the total amount of a sale without a
3 deduction for the cost of materials used, labor, or
4 services that are a part of the sale.

5 Because Appellant transferred images and videos
6 to his customers on DVDs or hard drives, Appellant owes
7 tax on his gross receipts and cannot take a deduction for
8 labor or for his services that were part of the sale of
9 the DVDs or hard drives. Moreover, even if Appellant
10 transferred the images and videos on DVDs or hard drives
11 provided by his customers, Appellant would still be liable
12 for the tax as the production or fabrication of tangible
13 personal property for a consideration is a sale when the
14 customer provides the tangible personal property that is
15 produced, fabricated, processed, or imprinted.

16 Accordingly, Appellant owes tax on his gross
17 receipts. Appellant has provided three statements that
18 were signed under penalty of perjury, which are found in
19 Exhibits 1, 2, and 4. And those statements come from --
20 come from photography studios that are indicating that
21 Appellant provided contract photography work for them.
22 Which means, basically, that he was hired to take pictures
23 and then down load onto the studio's computers, or that he
24 provided editing services.

25 While we do not dispute that Appellant would not

1 owe tax in a situation where he was hired by an outside
2 studio to only take photographs or video and then to
3 download those onto a computer or hard drive at the
4 studio, the statements provided are not supported by
5 documentation, establishing that Appellant did, in fact,
6 contract with these businesses to provide photography or
7 editing services.

8 Moreover, these businesses are no longer in
9 operation, which further complicates our ability to
10 corroborate the statements. Appellant has not provided
11 any contracts with these studios. And without a contract
12 or some other documentation, we're unable to make accurate
13 adjustments for any potential services that were not part
14 of the sale of tangible personal property.

15 Basically, in the end, there may be -- there may
16 be some of the disallowed claimed nontaxable labor. There
17 might be some gross receipts that did derive from services
18 only. There just hasn't been any documentation provided
19 to the Department that would allow us to make accurate
20 adjustments to the disallowed claimed nontaxable labor.

21 Moreover, again, the Department accepted
22 Appellant's reported sales without any supporting
23 documentation. So even then we have, for example, in --
24 during the first audit, the Department looked at
25 Appellant's records and found that for fiscal year 2011

1 and 2012 there were \$135,000 of taxable sales for that
2 same period Appellant only reported \$80,000.

3 So there are some -- oh, that was an audited
4 amount. Sorry. Audited taxable sales for \$135,000 for
5 that period. But, again, there are only \$80,000 reported
6 by taxpayer. Again, essentially, there was -- Appellant
7 did receive a benefit from the Department accepting his
8 reported sales that he reported after the fact in 2012 and
9 2013.

10 Based on the foregoing, Appellant's gross
11 receipts are subject to tax, and he has not established
12 that he's entitled to any deductions for nontaxable labor.

13 Thank you.

14 JUDGE BROWN: Thank you.

15 MR. BACCHUS: You're welcome.

16 JUDGE BROWN: I probably just have a couple of
17 questions for CDTFA and -- oh, go ahead.

18 JUDGE KWEE: Oh, I did have one or two questions
19 too. I guess I'm just, first, if you could address the
20 taxpayer's contentions because he did have invoices
21 showing that tax was paid with DVD purchases. And I think
22 they were contending that they're entitled to tax paid
23 purchases resold deduction for the DVD purchase invoices.
24 And I'm just wondering if CDTFA have a position on that?
25 Because I think that's a new issue that they brought up.

1 MR. BACCHUS: To the extent the taxpayer could
2 show that the DVDs that he purchased tax paid were sold to
3 his customers, then, yes, the Department would give a tax
4 paid purchase resold credit.

5 MR. SMITH: I also understood their testimony to
6 be that those purchases weren't for DVDs that they
7 transferred for customers, but rather that they just kept
8 those as back up images. Because I don't -- you know,
9 their testimony is also that they didn't resell it.

10 JUDGE KWEE: Okay. And I guess I did have one
11 other question, just a quick clarification. I know
12 there's been some adjustments made as to the remaining
13 amount at issue that's entirely disallowed.

14 MR. BACCHUS: Correct.

15 JUDGE KWEE: They reported that was disallowed.
16 There' no auditor statement?

17 MR. BACCHUS: No.

18 JUDGE KWEE: Okay. Do you have a question?

19 JUDGE BROWN: Okay. I do. And these are
20 questions that I developed from looking at the materials,
21 so not necessarily based on what I've heard today. So
22 just kind of making sure that I'm following along. Did
23 the audit rely on estimates of Appellant's income?

24 MR. BACCHUS: Right. So what happened was there
25 was an initial audit that did rely on certain figures of

1 how much the -- the -- for example, the contracts were for
2 things like weddings, engagements, birthday. And so the
3 audit -- original audit did rely on the amounts for those
4 contracts. But like I said, the amounts at issue today
5 are completely 100 percent based on what Appellant
6 self-reported on his sales and use tax returns. And
7 whatever he reported, he claimed 100 percent of that
8 amount as nontaxable labor, and all of that was
9 disallowed. So that's what's at issue today.

10 JUDGE BROWN: Okay. So we don't need to -- to be
11 concerned with arguments about the estimates --

12 MR. BACCHUS: Correct.

13 JUDGE BROWN: -- based on Appellant's income were
14 incorrect, because ultimately -- you're saying following
15 the -- I think it's called a re-audit. At some point it
16 was actually a --

17 MR. BACCHUS: A revised -- right.

18 JUDGE BROWN: That the revised audit was not
19 relying on that?

20 MR. BACCHUS: Correct.

21 JUDGE BROWN: Okay. And was there any sampling
22 in the audit -- in the ultimate -- in the revised audit
23 that CDTFA ultimately relied on? Were they -- was there
24 like a sample size? Anything like that?

25 MR. BACCHUS: No. Again, because the reliance

1 ultimately that we're dealing with today was self-reported
2 gross receipts by Appellant. So the audit happened, but
3 it's really no longer at issue because the amounts are --
4 were self-reported by --

5 JUDGE BROWN: So, again, any arguments that a
6 sample size was incorrect, that's not something we need to
7 worry about because ultimately --

8 MR. BACCHUS: Right. Right.

9 JUDGE BROWN: -- we weren't relied -- relying on
10 samples?

11 MR. BACCHUS: I -- I think in some of the initial
12 briefs provided by Appellant, they did talk about that and
13 there wasn't a discussion about the sample. And they were
14 concerned because they only provided a handful of
15 contracts. That's not at issue now because of the
16 self-reported amounts.

17 JUDGE BROWN: Okay. I understand. Do you have
18 any questions?

19 JUDGE ANGEJA: No. I'm okay.

20 JUDGE BROWN: I do not have any further questions
21 right now. Give me just a second. All right. All right.
22 Then if no one has any further questions for CDTF, we
23 will have time for rebuttal from Appellant. You may
24 proceed.

25 ///

REBUTTAL STATEMENT

1
2 MR. ZOOBALAN: Yeah. This income of \$477,268
3 that was reported from 2005 to 2013, like I explained
4 earlier, this is the income that he earned through his
5 photography, through his parking cars, however, he was
6 getting money, it was reported on schedule C, and that
7 totals to \$477,268.

8 Now, if Department did not examine that and they
9 accept it, they should not get credit for it. This is the
10 total income that he had from different sources. However,
11 the Department, they concluded that this is all from
12 photography and all of them was going to be examined
13 because there's one testimonial that people they got CDs
14 and so on and so forth.

15 There's no evidence for the Department to
16 disallow all of these sales. There is some sales that
17 they make on hard drive to clients, but not all of them.

18 MR. BACCHUS: Judge Brown?

19 JUDGE BROWN: Yes.

20 MR. BACCHUS: Can I respond to that just quickly,
21 just to clarify? I think there's a little bit of
22 confusion.

23 JUDGE BROWN: Certainly. Go ahead.

24 MR. BACCHUS: I believe Appellant is referencing
25 his -- the federal income tax returns when he's

1 referencing Schedule C. And we are referencing sale and
2 use tax returns, which presumably shouldn't have -- it
3 shouldn't include any valet -- like, income from valet
4 services.

5 And the amount that was disallowed was disallowed
6 because Appellant claimed 100 percent nontaxable labor
7 without any supporting documentation. And Appellant --
8 again, referencing back to the statutes -- Appellant bears
9 the burden of establishing that gross receipts are not
10 subject to tax. And so because of the lack of
11 documentation, the Department disallowed those claimed
12 nontaxable sales.

13 JUDGE BROWN: Okay. Thank you for the
14 clarification.

15 MR. BACCHUS: You're welcome.

16 JUDGE BROWN: And Appellant may proceed with his
17 rebuttal.

18 MR. ZOOBALAN: Nothing further.

19 JUDGE BROWN: Nothing further. Okay. Anything
20 further from CDTFA?

21 MR. BACCHUS: No.

22 JUDGE BROWN: Okay. Give me a minute to make
23 sure I've asked all my questions. All right. I've heard
24 all the arguments from the parties, and I have admitted
25 the exhibits. And I believe everyone said that they have

1 made all of their arguments and concluded. Everyone has
2 asked their questions. So at this point I can conclude
3 the hearing and close the record.

4 I would like to thank everyone for coming in
5 today. Following this hearing, my co-panelists and I will
6 discuss the evidence and the arguments. And then we will
7 issue a written opinion within 100 days of today's
8 hearing.

9 Okay. If there's nothing further, this hearing
10 is now closed. Thank you all very much.

11 (Proceedings adjourned at 2:42 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 21st day of January, 2020.

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HEARING REPORTER