

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
RUDOLPH PAUL CARMONA,) OTA NO. 18063322
)
APPELLANT.)
)
_____)

IN THE MATTER OF THE APPEAL OF,)
)
CARMONA'S COLLISION REPAIR, INC.,) OTA NO. 18063323
)
APPELLANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Friday, January 24, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead: ALJ ANDREW KWEE

Panel Members: ALJ JEFF ANGEJA
ALJ SUZANNE BROWN

For the Appellant: RUDOLPH P. CARMONA
SHAHID IQBAL

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION
By: CHRISTOPHER BROOKS
LISA RENATI
JASON PARKER

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I N D E X

E X H I B I T S

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1 Cerritos, California; Friday, January 24, 2020

2 10:16 a.m.

3

4 JUDGE KWEE: Thank you. So we're opening the
5 record in the appeal of Rudolph Paul Carmona and Carmona's
6 Collision Repair, Inc., before the Office of Tax Appeals.
7 This hearing is being convened in Cerritos, California.
8 The OTA Case Numbers 18063322 and 18063323. Today's date
9 is Friday, January 24th, 2020.

10 This hearing is being heard by a panel of three
11 Administrative Law Judges. My name is Andrew Kwee, and
12 I'll be the lead judge. To my left is Suzanne Brown and,
13 to my right is Jeff Angeja. And they are the other
14 members of this tax appeals panel. All three judges will
15 meet after today's hearing and produce a written decision
16 as equal participants. Although the lead judge, myself,
17 will conduct the hearing, any member of this panel may
18 participate or otherwise ask questions to ensure that we
19 have a complete record on appeal.

20 For the record, will the parties at the table
21 please state their names and who they represent, starting
22 with the representatives for the taxpayer.

23 MR. CARMONA: Rudolph Paul Carmona, representing
24 Carmona's Collision Repair.

25 MR. IQBAL: Shahid Iqbal, CPA, representing our

1 client.

2 JUDGE KWEE: Would you please spell your name?

3 MR. IQBAL: Shahid Iqbal. First name?

4 JUDGE KWEE: First and last name, please.

5 MR. IQBAL: Okay. S as in Sam, h-a-g-i-d, and
6 I-q-b-a-l. Q as in queen.

7 JUDGE KWEE: Okay. Thank you.

8 And for CDTFA?

9 MS. RENATI: I am Lisa Renati. To my left is
10 Jason Parker, and to his left is Christopher Brooks.

11 JUDGE KWEE: Okay. Great. So I understand that
12 there's just going to be one witness today, and that's
13 Mr. Carmona. Is that still the case, or does any party
14 have additional witnesses they intend to call?

15 MR. CARMONA: No. That would be it.

16 JUDGE KWEE: Okay. And does CDTFA have any
17 objection to hearing testimony from Mr. Carmona today?

18 MS. RENATI: No.

19 JUDGE KWEE: Great. So onto the exhibits. I
20 believe we -- okay. So last week on the 17th I received
21 four exhibits from the taxpayer. The first being
22 individual income tax returns for 2008 to 2012. The
23 second exhibit that I or that we received are corporate
24 income tax returns for the corporation for tax years 2012
25 and 2013.

1 The third exhibit -- and these -- I'm just going
2 by e-mails. There are four e-mails. I'm just numbering
3 them sequentially. Exhibit 3 is repair orders and
4 estimates for selective transactions. And just to pause
5 for a moment, I believe these were also contained in
6 CDTFA's exhibits, the repair orders.

7 Have you had an opportunity to look at that? Are
8 these the same as your exhibits?

9 MS. RENATI: The repair order information is
10 included in our exhibits, yes.

11 JUDGE KWEE: Okay. Great.

12 And then the fourth exhibit that I received is a
13 one-page profit and loss statement. Does that accurately
14 reflect the exhibits that were submitted on previous --
15 prior to today's hearing?

16 MR. IQBAL: Yes, Your Honor. Yes. It is a
17 combined P&L. So you don't have to go through the 5 years
18 of tax returns. I have consolidated everything on one
19 page, the combined profit and loss statement.

20 JUDGE KWEE: Okay. Thank you.

21 And has CDTFA had an opportunity to review, and
22 have they received all these exhibits?

23 MR. BROOKS: Yes, Your Honor. Could you restate
24 what the first one was, though?

25 JUDGE KWEE: The first exhibit was the e-mail

1 with the individual income tax returns for Mr. Carmona for
2 2008 to 2012.

3 MR. BROOKS: Thank you.

4 JUDGE KWEE: Sure. And we'll start with those
5 four exhibits. Does CDTFA have any objections to
6 admitting any of those four exhibits into the record?

7 MR. BROOKS: Yes, Your Honor. We object to all
8 of them. They were untimely.

9 JUDGE KWEE: Okay. And so with these four
10 exhibits, yeah, generally we do have the 15-day rule that
11 the exhibits have to be submitted 15 days prior to the
12 hearing. I did mention that at the conference. But the
13 taxpayer did mention that they were going to be submitting
14 these exhibits. And it looks like some of them -- CDTFA
15 already has a copy of them.

16 MR. BROOKS: Yes, Your Honor. Your Honor, you
17 had also required that they provide us with the exhibit
18 list in advance because they should have known what their
19 exhibits were. So we told them, even if they did not have
20 the exhibits produced, they should provide the exhibit
21 list so we would at least know what was being provided.
22 And yet today we still received additional documents.

23 JUDGE KWEE: Right. I understand that. With
24 these first four exhibits, I -- I -- they do seem like the
25 tax returns and the repair orders, so -- and they are all

1 duplicated to some extent in CDTFA's exhibits. So --

2 MR. BROOKS: Your Honor, just -- I don't mean to
3 interrupt you, but certainly Exhibit 2 has not been
4 provided before.

5 JUDGE KWEE: Right. Right. I understand. So my
6 thinking was to allow these first four exhibits, but to
7 also allow CDTFA 15 days after the hearing to raise any
8 concerns that they have with anything that might be
9 contained within the first four exhibits. Does that
10 sound -- does any party have objection to that?

11 MR. BROOKS: Your Honor, the Department doesn't
12 necessarily agree that being allowed 15 days afterwards
13 necessarily protects our interest, but we would -- beyond
14 that, we would, I guess, comply with that if that's what
15 you deem appropriate.

16 JUDGE KWEE: Okay. Okay. Thank you.

17 MR. CARMONA: Your Honor, three of the exhibits
18 are already in their paperwork. It's like a duplicate.
19 And I did it for the purpose of being at the top of the
20 pile. So when I reference it, they don't have to go
21 through 3,000 pages to find what I'm look -- what I'm
22 talking about.

23 So the ROs, the P&L based on the tax returns, the
24 tax returns, it's all part of their 3,000 pages of
25 evidence that they have acquired over the past six years.

1 JUDGE KWEE: Oh, yes, I understand that. And I'm
2 allowing your exhibits. I'm just giving CDTFA an
3 opportunity after the hearing to raise any concerns that
4 they have with the return because as I understand it, they
5 weren't previously submitted. So you're -- so I'll be
6 allowing these first four exhibits.

7 I'd like to go over onto the next documents. I
8 believe I received seven-ish pages today. And does CDTFA
9 have any objection to the exhibits that were handed out
10 this morning?

11 MR. BROOKS: Yes, Your Honor. Obviously, they're
12 late in being provided today without any prior e-mail or
13 any request for additional time to do that. Also, we have
14 no indication of what these documents -- what their
15 sources are or when they were created.

16 JUDGE KWEE: Okay.

17 MR. BROOKS: There seems to be some information
18 about intentions to cross-examine the Department. We
19 would obviously object to that. It's inappropriate.

20 JUDGE KWEE: Okay. And may I ask the taxpayer, I
21 did mention the 15-day deadline, and I don't think these
22 documents were referenced during our prehearing
23 conference. Do you have an explanation for why these were
24 submitted so late in the process?

25 MR. CARMONA: Yes, I do. I'm going to start with

1 the e-mail to the auditor, which has a date and timestamp.
2 It's a copy of the e-mail to the auditor, and it's kind of
3 my opening statement and a brief.

4 From the beginning of the audit, you know. We
5 made clear where we stood on this. And me and the
6 auditor, Malawagla, had several e-mail exchanges back and
7 forth. And so I'm bringing it not knowing if she would be
8 here. I'm bringing to the attention of the prosecution to
9 show them that what we've been talking about throughout
10 the process.

11 JUDGE KWEE: Okay. And these other documents
12 they appear be just -- so I have How to Write it Up Guide,
13 Cross-Examining Guide, the BOE audit history, the
14 ensure.com Explanations for Car Insurance Claims -- the
15 document you just referred to -- and the repair order
16 4025. And I believe the only difference from the one
17 that's in the record is this one has handwritten notes
18 explaining the concern that you have with it?

19 MR. CARMONA: Yes.

20 JUDGE KWEE: Okay. So with these documents,
21 these are all in the nature of argument, and some of them
22 aren't really relevant to us. For example, the
23 Cross-Examining Guide, the Write It Up, and keeping that
24 in mind and with our 15-day deadline, I am going to
25 exclude these documents that were submitted today.

1 However, you have the opportunity to provide
2 testimony, and that's when you can make your statements
3 like your open argument that's summarized here. So that
4 would be the opportunity to say what you want to say about
5 this. We don't really need these documents. So I'm going
6 to exclude these ones that aren't served timely, that were
7 submitted today.

8 MR. CARMONA: Can I speak to the documents?

9 JUDGE KWEE: Okay. Certainly.

10 MR. CARMONA: The Write It Up from the Bureau of
11 Automotive Repair. And throughout the process, we are
12 governed by that Bureau of Automotive Repair. And
13 basically, it's just citing the laws of the Bureau of
14 Automotive Repair, how we operate. I don't believe the
15 auditor knows enough about our business and how it
16 operates to accurately come up with the figures. So I'm
17 stating, basically, the laws on the books that govern us
18 and how and why we do what we do, and why our paperwork is
19 the way that it is.

20 JUDGE KWEE: Okay. So with the law summaries,
21 that's not something we would admit as evidence. You
22 submitted it, and we have a copy of it, and we can review
23 it. You know, we can do our own research of the law.
24 It's not something that you admit as an exhibit, but we
25 will consider what the applicable law is.

1 So that's why I'm not taking this as an exhibit,
2 but I will consider the applicable law is as summarized.
3 This is basically more on the nature of a brief than an
4 exhibit. Right now, we're just doing the exhibits.

5 MR. CARMONA: Okay.

6 JUDGE KWEE: So with that said, I admitted
7 Exhibits 1 through 4 for the taxpayer as just summarized,
8 subject to CDTFA having 15 days following today's hearing
9 to raise any concerns that they have with the information
10 contained in Exhibits 1 through 4.

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

13 JUDGE KWEE: The documents that were submitted
14 today at 10:00 o'clock a.m. are not being admitted as
15 evidence -- as exhibits, but they are noted, and we will
16 be able to take into consideration the applicable law for
17 the insurance repair as provided in the Write It Up
18 Report.

19 With that said, I'll move on to CDTFA's exhibits.
20 I have received Exhibits A through F from CDTFA consisting
21 of 113 pages -- 1,315 for Exhibits A through C. And 940
22 for Exhibits D through F. And those are basically the
23 documents that are described in our minutes and orders
24 that was sent out. Does the CDTFA have any new exhibits
25 to add today?

1 MS. RENATI: No. But can you tell me how many
2 pages are in the first exhibit?

3 JUDGE KWEE: Oh, I'm sorry. 1,315.

4 MS. RENATI: Yes. Thank you. Yes. That's
5 correct.

6 JUDGE KWEE: Yeah. Okay. So does the taxpayer
7 have any concerns or objections to CDTFA's exhibits?

8 MR. CARMONA: No, Your Honor.

9 JUDGE KWEE: Okay. So CDTFA's Exhibits A through
10 F are admitted into the record.

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

13 JUDGE KWEE: And I did have one procedural
14 clarification. I noticed CDTFA submitted a copy of the
15 notices of determination and the decisions that are being
16 appealed previously to OTA, but I don't believe either
17 party has offered that as an exhibit; is that correct?

18 MS. RENATI: That's correct.

19 JUDGE KWEE: Okay. And I don't believe you've
20 offered it as an exhibit either, the decision that you're
21 appealing from CDTFA?

22 MR. CARMONA: We did not.

23 JUDGE KWEE: Okay. So just as a procedural
24 matter, OTA would need to refer to the decision or the
25 Notice of Determination in any decision that we issue. So

1 OTA intends to take official notice of those documents,
2 the NOD, the Notice of Determination and the decision,
3 just for the limited purposes, basically, notifying --
4 noticing the procedural history of this appeal.
5 Basically, a decision was issued, and what the amounts
6 were on the dates that it was issued and the liabilities
7 asserted by CDTFA. That's the only purpose that we're
8 taking official notice of those decisions.

9 Does either party have an objection to that?

10 MS. RENATI: We have no objection.

11 JUDGE KWEE: Okay. Great. So there's no further
12 action required by either party because this is a part of
13 documents that have been submitted by CDTFA. I just have
14 to make that procedural clarification. So with that said,
15 I believe we are ready. Does any party have any questions
16 before we start going into the opening presentations?

17 MR. CARMONA: I have a question.

18 JUDGE KWEE: Okay.

19 MR. CARMONA: Do I -- it might sound really off
20 the wall, but do I have to prove I'm innocent, or they --
21 do they have to prove I'm guilty?

22 JUDGE KWEE: Oh, so in these cases, generally,
23 CDTFA just has an initial burden to show that there's a
24 liability. After that, the burden is on the taxpayer to
25 prove that an adjustment is warranted. The taxpayer's

1 presentation will be first. Because in this case, the
2 taxpayer generally has the burden of showing that an
3 adjustment is warranted as to the liability as certified
4 by CDTFA. And that's why we're going to have the opening
5 presentation starting with the taxpayer first.

6 MR. CARMONA: Do I get an opportunity to ask
7 questions?

8 JUDGE KWEE: So CDTFA has not provided any
9 witnesses that will be testifying under oath. If there
10 were witnesses testifying under oath, you would have an
11 opportunity to ask questions. Like for example, they call
12 an auditor as a witness. They haven't done so. So we
13 only have one witness today. That was Mr. Carmona. So
14 CDTFA will be allowed to ask you questions, but then there
15 is no one for you to ask questions of CDTFA.

16 MR. CARMONA: Okay.

17 JUDGE KWEE: Okay. So with that said, I believe
18 we're about ready to go into opening presentations.
19 Basically, what will happen is -- I understand that the
20 taxpayer will start with a 15-minute opening presentation.
21 CDTFA will have 30 minutes for their opening presentation.

22 And then after that, we'll call Mr. Carmona as a
23 witness for his testimony followed by questions by either
24 CDTFA, and also the panel may ask questions at this point,
25 before we go into closing arguments.

1 comment.

2 And the second thing is the person who was
3 preparing the sales tax return, preparing the corporate
4 tax return, and Mr. Carmona was a Schedule C back then. I
5 think he incorporated somewhere in '12 or end of
6 December 2011. So, basically, the 2012 was the first
7 full-blown year and then the audit stopped at the first
8 quarter of 2013.

9 So I believe those preparers were not the CPAs.
10 They were just the bookkeeper. And, you know, there is a
11 very different scope of work, like, you have a surgeon,
12 medical doctor, then the nurse physician assistant, and
13 nurse practitioner. So I concluded, based on my review of
14 all of these reports, that the preparer -- like, we do his
15 accounting now. We do his tax return now. We prepare his
16 sales tax return. We prepare his corporate tax return.

17 Everything has a check and balance. If we see
18 the deposit doesn't reconcile, so we always ask him. So
19 in the past he was maintaining the books once a year, and
20 that's pretty much it. So his operation was not as big,
21 maybe not organized. So I told him that, look, if I would
22 like to take over you as a new client, so we need to
23 dissolve it.

24 So he went ahead and dissolved the old
25 corporation, and then we are -- so we would like to start

1 fresh, so I know what I'm doing. And I will be taking the
2 full responsibility once the new LLC was born. I believe
3 it was 2015.

4 So he went ahead and dissolved that old
5 corporation, and we start fresh. And you look at it,
6 thank God everything is exactly to the penny. No problem
7 with CDTFA and -- because we do have a different
8 education, different level of education, different level
9 of analyzing the numbers, and I want to make sure the full
10 quarter of his sales tax returns are equal to the
11 corporate tax return.

12 So there's a different way of, like, I want to
13 make sure my cost of goods sold based on sales tax return
14 or my P&L matches with his autos. These kinds of things,
15 you know, we are continuously working with his in-house
16 bookkeeper. If we have any question, we ask him. So --
17 and plus we are doing his books on a monthly basis. So
18 it's much easier. I can control the number on a monthly
19 basis and then file quarterly sales tax return instead of
20 doing -- lumping everything in one sales tax return, or
21 all the quarterly sales return by one profit and loss
22 statement, Schedule C or a corporation.

23 Honestly, since I came on board, we have taken
24 care of his books. Very fresh, brand new LLC, no problem
25 whatsoever. You can see that CDTFA is extremely happy and

1 know all the numbers are back and forth reconciled. All
2 the cost of the goods sold has been reconciled with the
3 autos and then back to the P&L.

4 So this I agree, I have a very limited knowledge
5 since I was not involved in the audit examination or field
6 audit. So it was all the way after me. So he came to
7 know me with another friend of his that he was looking for
8 a CPA. So he came to me and he wanted me to, Your Honor,
9 takeover this case where the field examination was
10 finished and then move on.

11 So that was my very brief summary of my
12 presentation of today's hearing.

13 JUDGE KWEE: Okay. So are you finished with your
14 opening presentation?

15 MR. IQBAL: Yes, Your Honor.

16 JUDGE KWEE: Okay. Thank you.

17 CDTFA, you now have about 30 minutes to do your
18 opening presentation.

19 MS. RENATI: Thank you.

20

21 OPENING STATEMENT

22 MS. RENATI: The Appellant's owned and operated a
23 car and repair body shop in Fullerton, California, as a
24 sole proprietor from 1995 through 2011. In 2012 the
25 business was incorporated as Carmona's Collision Repair,

1 Inc. The Department conducted concurrent audits of the
2 account as both the sole proprietor and the corporation.

3 The audit period for the sole proprietor was for
4 the period of October 1st, 2008, through
5 December 31st, 2011. And the audit period of the
6 corporation was January 1st, 2012, through March 31st,
7 2013. During the audit examinations, the Appellant
8 provided limited records to support reported amounts.

9 The only records provided during the audit period
10 and appeal were federal income tax returns for years 2008
11 through 2011, bank statements for October 1st, 2008
12 through December 31st, 2011, job folders for third quarter
13 '11 and fourth quarter 2012, purchase invoices which were
14 purported to cover the periods of third quarter '11 and
15 fourth quarter '12.

16 No sales journals, purchase journals, sales tax
17 return worksheets, or other books and records were made
18 available. A review of the reported sales for Appellant's
19 sales and use tax returns on Exhibit A, page 35, and
20 Exhibit D, page 23 -- I should mention when I numbered the
21 exhibits, they were originally separate, so then went --
22 the new Exhibits D through F will start with one again.
23 So I think you mentioned that, but I want to make sure
24 that it's clear.

25 So the Sales and use Tax Returns are Exhibit A,

1 35, and D, page 23. So review of those returns reveals
2 that reported taxable sales appear to be estimates as the
3 amounts are round to whole numbers such as 16,000, 10,000,
4 12,000 and the like. An analysis of federal income tax
5 returns provided for the sole proprietorship show the
6 purchases for federal income tax returns were
7 approximately twice the amount of reported sales. And
8 that's on Exhibit A, page 74.

9 A markup of cost analysis using reported taxable
10 sales and purchases for federal income tax returns shows a
11 negative markup of cost of negative 46.52 percent for the
12 three-year period. And that's on Exhibit A page 72. A
13 negative markup of cost means the taxable sales reported
14 to the Department are significantly less than the
15 Appellant's cost of parts used to repair vehicle. Based
16 on the initial analysis, the Department determined that
17 parts sales were understated.

18 Additionally, during last Friday we received the
19 tax returns for 2012 and 2013 for the corporation, and we
20 note that the markup for those two periods is a negative
21 23.82 percent. In order to calculate audited taxable
22 measure, the Department performed a block sample of third
23 quarter 2011 transactions for the audit of the sole
24 proprietor. And that's on Exhibit A, page 42 to 46.

25 Originally the test results were to be used for

1 both audits, but at the request of the Appellant, a
2 separate test of transactions for the period of fourth
3 quarter 2012 was used for the corporation. And that's on
4 Exhibit D, page 937 to 938. Oh, that number is probably
5 wrong. It's my old numbering. On Exhibit D, it is
6 Schedule 12-3A.

7 The Appellant's maintained job folders for each
8 repair transaction. The job folders contained estimates,
9 repair orders, purchase invoices for parts, sublet bills,
10 and/or copies of checks and credit card payments from
11 customers and insurance companies. And since the
12 Appellant did not provide us with a sales journal or a
13 purchase journal or other summary records, the Department
14 was unable to tell if all job folders for the test periods
15 were included or all purchases were included.

16 The Department reviewed and scanned all
17 documentation contained in the job folders and has
18 included all scanned documents with the Department's
19 Exhibits B and D. During a review of the job folders, we
20 found that many of the job folders were incomplete and did
21 not contain a repair order or purchase invoice for all
22 items sold. Or if there was a repair order, there was no
23 detailed listing of the individual parts sold.

24 Oftentimes, instead of a separate repair order,
25 there was simply a handwritten notation on the estimate

1 with new totals for parts and labor. And the Department
2 noted multiple instances where the total amount per
3 estimate matched or similar to the total amount due for
4 the repair orders. But the allocation of parts versus
5 labor had changed so that the majority of amounts were now
6 allocated to labor instead of taxable parts.

7 Since the repair estimates were the only
8 consistent source of information with detailed parts,
9 labor, and tax amounts listed, the Department transcribed
10 these amounts to calculate the taxable parts percentage
11 versus the labor percentage for all repair jobs. Since
12 the Department noted that the total monies received were
13 sometimes less than the total amount for the estimate or
14 repair order, the Department used the total consideration
15 received from customers for each test period as gross
16 receipts.

17 The audited taxable percentage of parts was then
18 applied to total consideration to arrive at audited
19 taxable sales for each test period. A comparison of
20 audited taxable sales to reported taxable sales revealed
21 material differences and a percentage of error was
22 developed to project the errors. During the audit
23 examination, the Appellant said the reason there was a
24 difference between the total parts reported and the amount
25 per estimates was due to approved changes to the repair

1 jobs.

2 The Appellant provided an explanation of the
3 changes and provided adjusted amounts to the allocation
4 charges to parts versus labor for the third quarter 2011
5 test. And you can see that on Exhibit A, page 48 to 58.
6 The Department performed further analysis of the test
7 periods and made adjustments as warranted. Specifically,
8 for the 100 transactions for third quarter 2011, 24 of the
9 repair orders were accepted. Meaning, the Appellant
10 provided substantive documentation, which the Department
11 accepted for the amounts noted for the Department and
12 Appellant's analysis were the same.

13 Seven of the orders included sublet charges
14 claimed as exempt labor. But a review of the purchase
15 invoices shows the amounts included parts subject to tax.
16 These can be found in Exhibit A as repair order 3060,
17 repair order 3570, repair order 3611, repair order 8160,
18 repair order 8177, repair order 8185, and repair order
19 8244. 38 of the 100 invoices included repairs paid by
20 insurance companies.

21 While the number of jobs paid for by insurance
22 companies are less than half of all repair orders during
23 the test period, the amount of money received from
24 insurance companies represent 72 percent of the all
25 numbers received. That is \$92,921 were paid by insurance

1 companies, versus the \$128,459 total consideration
2 received.

3 The Appellant's claimed amounts for estimates
4 provided to the insurance companies were renegotiated and
5 the taxable sales of parts were reduced. However, the
6 total amount due from the insurance companies per the
7 Appellant's written estimates were the same amounts used
8 by the insurance companies to make payment. The amount
9 due is based on total charges for parts, labor, and sales
10 tax less the amount of the deductible owed by the vehicle
11 owner and customer.

12 No documentation has been presented to support
13 written approval by the insurance companies of any
14 modification to the amounts as required by Regulation
15 1546(b) (5). The only detail listing of parts sold for the
16 third quarter '11 test period was on the estimate.
17 California Business and Professions Code 9884.8 and
18 California Code of Regulations 3356(c) (2) require detailed
19 listings of all parts sold.

20 Therefore, for all sales paid by insurance
21 companies, the taxable percentage of parts and sublet
22 labor -- with parts in the sublet labor for the approved
23 estimate was used. Regarding the 31 remaining repair
24 orders, the Department found that Appellant may have
25 allowed their customers a discount, but the reduction was

1 only applied to the charges for parts without a
2 corresponding reduction of labor charges.

3 For instance, repair order 3080, which can be
4 found on Exhibit A, page 109 through 113, the repair order
5 indicates a discount was provided. But most of the
6 discount was applied to the taxable portion without any
7 proof less taxable items were sold. Another example is
8 repair order 8123, Exhibit A, page 126 through 1132. Here
9 the total amount due for the original estimate remain the
10 same at \$114, but the charges for the parts decreased and
11 the labor charges increased.

12 The Department also noted instances where the
13 Appellant adjusted the repair so that the amount for parts
14 was equal or less than cost of the parts. Those can be
15 found on repair order 3561, repair order 3563, and repair
16 order 3576. For those we noted that those had parts equal
17 or less than cost. The Department also found sublet
18 charges claimed as exempt, but a review of the invoices
19 shows that the parts were included on the sublet charges.
20 And I think I mentioned those in the past. There were
21 seven of them.

22 For fourth quarter 2002, the results of the
23 testing were very similar to that of third quarter 2011 --
24 2011 with sales to insurance companies, failure to include
25 all taxable parts and repair orders. Parts were claimed

1 at cost and claim reductions were applied inequitably to
2 parts rather than both parts and labor.

3 Of the 83 transactions tested, 13 transactions
4 were accepted. Either the allocation was correct, or the
5 taxpayer was able to provide documentation to make the
6 adjustments. 10 of the jobs included sublet charges
7 claimed as exempt. The taxable parts were included for a
8 total of \$870 in parts. Those were repair order 4003,
9 4023, 4031, 4033, 4311, 42120, 42140, 43090, 43260, and
10 43560.

11 63 percent of the total revenue received for the
12 test period was from insurance companies. The Appellant
13 did not provide any proof for these transactions that
14 insurance companies approved the reallocation of charges
15 from parts to labor, or any decision to refurbish or
16 replace the damaged parts. For 73 percent of the jobs,
17 the total amount received from customers and insurance
18 companies was substantially the same amount as the
19 estimate. But the allocation for parts was less, and the
20 labor charges were greater on the repair orders.

21 There were also repair orders which included the
22 parts charged at cost or less than cost, such as repair
23 order 4003 where the core deposit of \$200 was not
24 included, and repair order 41970 where the part was
25 charged to cost only without a markup. Or there were

1 parts invoices in the job folder, but they were not listed
2 on the repair order at all. Such as repair order 3994,
3 where on page 156, taxpayer purchased rims but those
4 weren't included or sold on the repair order.

5 The Appellant's federal income tax returns do not
6 include beginning or ending inventory amounts. If you
7 look at Exhibit A, page 74, you'll see that. The fact is
8 not unexpected as it is common for body shops to buy the
9 specific parts needed to repair vehicles for each job.
10 But based on the negative markup of cost, the Department
11 has already established the taxable sale of parts for
12 Appellant's Sales and Use Tax Returns are understated.
13 And without summary books and records, the Department is
14 unable to determine if all parts sold were even included
15 in the test or have been accounted for.

16 An analysis of the audited taxable sale and parts
17 established an audit findings and purchases for federal
18 income tax returns for the period of 2009 through 2011
19 reveals an overall taxable markup of cost of only 6.41
20 percent for the three-year period. An audit markup of
21 6.41 percent is far less than markups achieved in other
22 audits of similar businesses and is less than the
23 20 percent markup claimed by the corporation, which
24 demonstrates reasonableness of the Department's audit
25 findings.

1 Further, using total gross receipts -- total
2 gross sales, rather, from the federal income tax returns
3 for the sole proprietor and the audited parts percentage
4 for third quarter '11, estimated a total taxable measure
5 for years 2009 to 2011, would be around \$666,500. But the
6 audited taxable measure for the same period is only
7 \$442,764 for a difference of almost \$224,000 in the
8 Appellant's favor.

9 Similar results were noted using gross sales and
10 a taxable percentage for the corporation, which shows the
11 audit findings were less than what would be calculated
12 using IRS information. This demonstrates our findings are
13 reasonable and is likely the Appellant has additional
14 taxable revenue, which was reported to the IRS, was not
15 included in our test results.

16 Another analysis, which is telling, is a simple
17 analysis of Department's transcription of taxable parts
18 fabrication labor for third quarter 2011. And that's on
19 Exhibit A, page 41. The total amount of parts sales per
20 estimates was about \$63,000. This amount, once reduced to
21 cost using the Appellant's purported 20 percent markup,
22 would extrapolate to an estimate of a yearly parts
23 purchase amount of about \$210,000. This is close to
24 Appellant's reported federal income tax return purchases
25 for the year 2011 of \$215,152.

1 In comparison, the Appellant's summary of taxable
2 sales for third quarter '11 test period was only \$27,500.
3 That's on Exhibit A, page 47. If this amount was reduced
4 to cost using the same 20 percent purported markup, an
5 extrapolation amount for a yearly estimate would be less
6 than half the amount claimed for federal income tax
7 returns at \$92,000.

8 The law requires that auto repair shops must
9 segregate the fair retail selling price of parts and
10 materials.

11 JUDGE KWEE: I'm sorry. If you could just slow
12 down a little, I think our reporter is having a hard time
13 keeping up. Just a little bit, thank you. Sorry for the
14 interruption.

15 MS. RENATI: Okay. I will. I won't go super
16 slow, though.

17 The law requires that auto repair shops must
18 segregate the fair retail selling price of parts and
19 materials from their charges for exempt labor on the
20 invoices provided to customers and in their records. The
21 Appellant has provided detailed estimates, including parts
22 and labor amounts to all customers. However, no such
23 detail is included on the majority of the documentation
24 presented to support adjustment to the taxable measure
25 noted in Department testing.

1 When a repair estimate is accepted in writing,
2 such as those made with insurance companies, the
3 subsequent modification to the bid agreement must also be
4 in writing, per California Regulation 1546(b)(5).
5 Approximately 72 percent of revenue for the third quarter
6 '11 test period and 63 percent of the revenue for the
7 fourth quarter 2012 transactions, involve amounts paid by
8 insurance companies based on the estimates provided.

9 Without summary books and records, we are unable
10 to discern the exact amounts paid by customers on every
11 repair order. The Department provided the Appellant with
12 the benefit of the use of the total amount of
13 consideration received for handwritten notations, check
14 copies, or credit card invoices in the calculation of
15 audited taxable measure. Use of the total amount received
16 allows for the possibility that adjustments were made to
17 the original estimate.

18 However, the Appellant has not provided proof
19 that the ration of taxable parts to nontaxable labor
20 charges were substantially altered. Therefore, the ratio
21 of taxable to nontaxable charges, per the original
22 calculations, are fair to be used to calculate audited
23 taxable measure. As regards to the six jobs the Appellant
24 recently submitted, repair order 3985, that's included on
25 Exhibit D, and we have pages 73 to 80.

1 The Appellant provided a discount in the original
2 estimate of negative 8254. In short, the deal went from
3 owing a -- the estimate said the complete job would cost
4 \$1,182.54, and it was renegotiated to an even \$1,100. A
5 review of the accounting for the discount was to reduce
6 the parts charges by a negative \$212.12, increase labor by
7 \$145.63, and reduction of tax of \$14.95. The same number
8 of parts were replaced per the estimate repair order and
9 purchase invoices. So the Appellant's reallocation is
10 unsubstantiated.

11 This traction further supports the Department's
12 case that the Appellant has failed to properly report
13 their sales tax liability. Repair order 3987 would be
14 found on Exhibit D, page 89 to 117. This is a transaction
15 where the estimate and supplement total \$5,266.96. The
16 customer was responsible for a \$1,000 deductible. The
17 insurance company paid \$4,266.90. The customer paid
18 \$1,100 in cash because the Appellant claims he
19 renegotiated with the customer to adjust the repairs and
20 include additional repairs.

21 First, the amounts paid by the insurance company
22 for parts and sales tax are due to the State. There's no
23 evidence the insurance company agreed to using lesser
24 parts or refurbished parts for a lower sales price.

25 Second, a simple tracing of parts purchases per

1 invoices to parts listed on the repair order shows the
2 Appellant failed to include a part purchased for \$116.90
3 on page 106. This part is not listed on the repair order
4 for the items listed on the supplemental estimate on page
5 96, line 19. This transaction also supports the
6 Department's case that the Appellant has failed to
7 properly report their sales tax liability and has not
8 accounted for all the cost of parts.

9 Repair order 3994 could be found on Exhibit D,
10 page 149 to 159. This is a transaction involving an
11 insurance company, an estimate for total parts and labor
12 of \$1,958.79 with customer responsible for a \$500
13 deductible. The insurance company paid their portion for
14 the written insurance estimate in the amount of \$1,500 --
15 of \$458.79, which includes parts, labor, and tax.

16 The Appellant claims they renegotiated with the
17 customer so that they would only have to pay \$250 of the
18 deductible. But there's no evidence the insurance company
19 agreed to the adjustments of parts or labor.
20 Additionally, a tracing of parts purchased invoices to the
21 parts list on the repair order, finds that the rims
22 purchased for \$120 are not included. And those rims can
23 be found on page 156.

24 This transaction supports Department's case that
25 the retail selling price of all parts and supplies sold to

1 customers have not been reported. Repair order 4007 is
2 Exhibit D, page 306 to 330. This is another transaction
3 involving an insurance company. This transaction also has
4 missing parts, which were sold to a customer, and claimed
5 a sublet with a cost of \$60. That can be found on 322.

6 Repair order 4011, Exhibit D, page 337 to 404, is
7 also a sale through insurance company with similar
8 payments based on the written estimate. And repair order,
9 4025 Exhibit D, page 538. The Appellant claims this
10 vehicle was a total loss. But there were substantial
11 purchases of parts and no documentary evidence all parts
12 were returned to vendors and were not instead included in
13 the reimbursement of cost from the insurance company. And
14 it should be noted this type of transaction was an
15 abnormality in the testing. It's the only instance of a
16 totaled car in either test period.

17 While there are many jobs listed as labor only,
18 storage, towing, or other similar charges where the
19 Department included the transactions with amounts
20 allocated only to exempt labor to ensure the percentage of
21 parts was accurate. There were no other jobs where the
22 Appellant purchased parts in anticipation of completing a
23 job and then later abandoning the repair.

24 In summary, the Department's evidence shows the
25 records of Appellant and even their exhibits support the

1 Department's audit findings. And lastly in the minutes
2 and orders for this case, we request the Department
3 provide additional information. Specifically, whether
4 estimates were used in lieu of actual figures in the
5 calculation of the liability.

6 The Department's calculations include an audited
7 taxable percentage of parts sold and the actual total
8 consideration received by the Appellant. The audited
9 percentage of taxable parts versus exempt repair labor was
10 computed using the most reliable information available,
11 which was most often the original estimate provided to
12 customers and the insurance companies.

13 And for 72 percent of the third quarter 2011
14 revenue and 63 percent of fourth quarter 2012 revenue, the
15 written repair estimate was a document used by the
16 insurance companies to make payments to the Appellant.
17 The second question you asked is whether the actual
18 figures are readily available to calculate the liability.
19 In short, the is no.

20 For many sales, there was no repair order, only
21 the estimate with handwritten notations. For job folders
22 that included a repair order, most did not include a
23 detailed listing of parts sold as required. There were
24 multiple instances where repair orders indicated that
25 parts were sold at cost or less than cost when taxes due

1 at the fair retail selling price.

2 Sublet amounts for repair orders were always
3 claimed as exempt labor when the Department noted multiple
4 instances of parts included in the charges. And when the
5 Appellant provided a discount, the discount was almost
6 always applied to the sale of parts rather than the entire
7 job, which undermines the tax legally due to the State on
8 the fair retail selling price of the parts.

9 The third question you asked was whether it was
10 reasonable to use information from the repair estimates in
11 lieu of other information, such as information contained
12 in the repair orders. Repair orders are simply not
13 available for all transactions. For the third quarter
14 2011 test period of a sole proprietor, 39 percent of all
15 job orders had no repair orders in them. The remaining 61
16 percent had repair orders but no detailed parts listing
17 and sublet parts were claimed as exempt.

18 For the Fourth quarter 2012 test period of the
19 corporation, 43 percent of all job folders had no repair
20 order. For the remaining 57 percent, the Department found
21 transactions with no detail of parts listed on the repair
22 order. Parts purchased per invoices, which were not
23 included in the repair order and sublet parts claimed as
24 exempt.

25 The Department's use of repair estimates is

1 accurate for all sales paid by the insurance companies as
2 there's no evidence that the insurance companies agreed to
3 just the repairs. And it should be noted again that
4 insurance company paid based on the stated amount for
5 parts, labor, and tax. Also, the Appellant claimed the
6 repair order detail was used to report their taxable
7 sales.

8 However, the Department found that the overall
9 markup of cost was negative, which demonstrates all parts
10 were not being reported. The repair estimates included a
11 list of all parts, corresponding labor charges, and sales
12 tax. It's reasonable to presume the percentage of taxable
13 versus exempt charges would remain relatively constant
14 over the test periods. And a comparison of the audit
15 taxable measure and purchases per Appellant's federal
16 income tax returns for 2009 through 2011 reveal a very low
17 6.41 markup percentage of cost.

18 The demonstrates reasonableness of the findings.
19 Additionally, with the submission last week of Appellant's
20 tax returns for 2012 and 2013, a computed markup for both
21 periods is 15.6 percent, which is less than the 20 percent
22 claimed markup and prove that our results are reasonable.
23 Based on the evidence presented, the Department concludes
24 that audited taxable measure is reasonable, fair, and
25 accounts for all parts sold.

1 Therefore, the Appellant's appeal should be
2 denied. This concludes my presentation.

3 JUDGE KWEE: Okay. Thank you. That was a lot of
4 information, and I was wondering if I could just ask a
5 couple of clarifications on your presentation?

6 MS. RENATI: Sure.

7 JUDGE KWEE: So when you were talking about the
8 repair orders that were submitted as an exhibit by the
9 taxpayer last week on the 17th, specifically, on the
10 4025 --

11 MS. RENATI: Yes.

12 JUDGE KWEE: And also on the earlier ones, I
13 believe you had mentioned that there were parts purchased
14 or missing parts not included on the repair orders. So,
15 for example on 4025, it has "total loss" written. Where
16 are you getting the missing parts from? Is that from the
17 estimate or is that from other information in the file?

18 MS. RENATI: The Department scanned the entire
19 job folder. So within each, when you look in the -- in
20 our exhibits under D, it has a repair order, the entire
21 job folder is included, and that would include the
22 purchase invoices. So I would trace -- I traced the
23 purchase invoices that were within the job folder, and
24 then to the estimate, and then to the repair order.

25 JUDGE KWEE: So the Department is saying that

1 there -- in addition to the repair order and the estimate,
2 there's also purchase invoices from their suppliers of
3 parts?

4 MS. RENATI: Correct. That's within the
5 exhibits.

6 JUDGE KWEE: Okay. I believe the taxpayer wants
7 to say something, and I will right after we finish with
8 CDTFA's presentation. I'll let you respond to anything
9 that is raised here. I just have a couple of questions
10 that I wanted to get from them, and then I'll turn it over
11 to you. So if you could just wait patiently for a minute,
12 I think we're almost done with CDTFA's turn if that's
13 okay.

14 MR. CARMONA: Sure.

15 JUDGE KWEE: Thanks.

16 Okay. So and in addition, I believe you were
17 mentioning that there was computed negative markup and the
18 fact that the Department's position is the taxpayer was
19 selling their parts for less than cost. But then as I
20 understand it, the federal income returns were not
21 provided until just last week. So how are you computing
22 the negative markup? Was that just on an individual basis
23 for job folders, or is there some other --

24 MS. RENATI: The tax returns for sole
25 proprietorship were provided during the audit period.

1 JUDGE KWEE: Oh, okay.

2 MS. RENATI: And so we had the negative markup
3 for the sole proprietor. And that -- those were
4 provided -- the only records that were provided were the
5 income tax returns for 2008 through 2011, bank statements,
6 job folders, and the purchase invoices within the job
7 folders.

8 JUDGE KWEE: Oh, okay. So just --

9 MS. RENATI: And we calculated the markup using
10 federal income tax returns purchases, not cost of sales
11 because we realize there was labor charges within their
12 cost of sales calculation.

13 JUDGE KWEE: Okay. So I wasn't aware of that.
14 So your position is Exhibit 1 was actually already
15 provided prior to -- it's not an exhibit from the
16 aspect for you -- from you, but it was provided during the
17 time of the audit?

18 MS. RENATI: Yes, and you can find that at
19 Exhibit A, page 74, tax return transcription. Well, we
20 had a transcription of the returns with the file. I
21 didn't have an actual copy of the returns.

22 JUDGE KWEE: Okay. Thank you. And I'm just
23 wandering if CDTFA has a position on whether or not the
24 taxpayer reported all the tax that they collected from the
25 customers going off what was listed on the repair orders,

1 or is that not something that the CDTFA examined in the
2 audit?

3 MS. RENATI: I don't believe -- if you could give
4 me one second, please?

5 JUDGE KWEE: Okay.

6 MS. RENATI: For the fourth quarter 2011 test
7 period, the recorded tax per -- that we transcribed as
8 \$4,128.53, and the reported tax for the same period was
9 \$2,179 -- I'm sorry -- \$2,177. And for the sole
10 proprietorship the -- one second. It's a large file. The
11 sales tax for third quarter 2011 was \$4,856.63, and the
12 reported for the same period was \$2,132.00.

13 JUDGE KWEE: Okay. And just to clarify, this is
14 going off the -- what was recorded in the repair orders?

15 MS. RENATI: Repair estimates, yes.

16 JUDGE KWEE: Oh, estimates. Oh, okay.

17 MS. RENATI: What the Department -- what they
18 agreed upon amounts of whether -- some of them were agreed
19 upon by the Appellant. Because as I mentioned in my
20 presentation, there are many transactions where there was
21 no difference between the Appellant and the Department.

22 JUDGE KWEE: Okay.

23 MS. RENATI: And I -- I would hazard to guess
24 that the -- the reported tax was not accurate. So it was
25 the -- when you look at the sales tax returns, they are

1 all round numbers. So if you're -- you're reporting
2 10,000, 12,000, and the taxpayer's jobs are not even
3 numbers, and it doesn't appear that the amounts are even
4 after. So I would say the sales tax was understated, but
5 I can't make that -- I can't provide you with those exact
6 numbers.

7 JUDGE KWEE: Okay. I understand. Thank you, and
8 if I'm just understanding your position with the audit,
9 there's basically two different aspects. One is you
10 looked at the repair orders. CDTFA looked at the repair
11 orders, and for the audited total sales, they added up the
12 total amount the State has received by the taxpayer on
13 their own report order, so they are using their own
14 records to come up with total sales. But then when you --
15 on the second aspect when you're determining what ratio
16 that total sales are taxable, you looked at the estimates,
17 not the repair orders in order to calculate the taxable
18 ratio. Is that --

19 MS. RENATI: Well, many that -- most of the -- in
20 the sole proprietor, none of the -- most of the sales
21 didn't have a repair order. Or if they did have a repair
22 order, there was no detail listing of parts.

23 JUDGE KWEE: I understand that --

24 MS. RENATI: So there was no way of determining
25 that. And in the corporation a similar issue happened

1 where there was no detail listing or just a handwritten
2 notation. So the Department calculated the taxable
3 percentage based on the test period, which includes
4 estimates.

5 And you're right. The total consideration
6 received, it was not always based on what was on the
7 repair order. There are copies of checks, copies of
8 credit card receipts. They used that information for
9 total monies received for gross receipts.

10 JUDGE KWEE: Okay. And so with the new tax
11 returns -- I'm not sure how much time CDTFA has had to
12 look at it -- but you did mention a markup of, I think,
13 15 percent was the --

14 MS. RENATI: No. A markup of 15 percent is our
15 audited amount using purchases for 2012 and '13 with using
16 a portion of 2013's purchases. There's a negative markup
17 of -- for using those returns of 23.82 percent.

18 JUDGE KWEE: Okay. And on the total sales
19 amount, have you looked at that to see whether or not the
20 gross receipts on the tax return tracked, at least the
21 audited total sales from the period, or is it -- I realize
22 this is a new -- at least for the corporation, a new --

23 MS. RENATI: And that would be found on --

24 MR. CARMONA: I -- I don't understand the
25 question.

1 MS. RENATI: Well, the gross receipt -- no,
2 I -- actually, it's very simple. The gross receipts for
3 the three-year period reported to the -- for --

4 MR. PARKER: You're asking for the three-year
5 period from '09 through '11?

6 JUDGE KWEE: Right.

7 MR. PARKER: Or in the newer returns for '12 and
8 '13?

9 JUDGE KWEE: Oh, I -- I didn't -- I guess either
10 one. I was just curious if CDTFA had looked at that to
11 get to --

12 MS. RENATI: I would say the simple comparison,
13 if you look at the 414AM, which is a transcript of the
14 returns filed, it's much less than the amounts reported to
15 the IRS.

16 JUDGE KWEE: Okay.

17 MS. RENATI: So even the gross receipts are even
18 much less. For the period -- \$453,000 roughly for the
19 audit period for the sole proprietor, and the same period
20 we have, I think, \$1.9 million reported to the IRS for
21 2008, '09, '10, and '12. And I don't remember if '08
22 has -- we only have one quarter of '08, and there was a
23 full quarter -- a full year reported to the IRS. It's
24 \$1.9 million. So it's substantially different.

25 JUDGE KWEE: Okay. And I -- I think the taxpayer

1 had asked -- he didn't understand my question, or he
2 didn't hear my question. I was just asking if the CDTFA
3 had looked at the amounts reported on the federal income
4 tax returns to see if it was at least correlated to what
5 they picked up as audited total sales during -- for the
6 sales and use tax purposes, to see if there was some
7 relation. That's what they were just responding to.

8 MR. CARMONA: I mean, I still don't understand is
9 the \$1.9 million gross sales for the three years and
10 1 quarter?

11 MS. RENATI: For four years of -- may I answer?

12 JUDGE KWEE: Oh, yeah. Please, go ahead.

13 MS. RENATI: For 2008 through 2011 on your income
14 tax returns, you reported gross sales of about
15 \$1.9 million.

16 MR. CARMONA: Okay.

17 MS. RENATI: And then for Sales and use Tax
18 Returns was considerably less. It was -- I'm looking --
19 \$223,000 to combine those numbers for about \$440,000. On
20 the corporate sales tax returns reported about \$140,000 to
21 us. And you can look at the returns.

22 JUDGE KWEE: Right. And as far as how that
23 corresponded to the audited total sales, was that -- was
24 the audited total sales below, above, or in line with
25 that?

1 MS. RENATI: Below. It would be below. Because
2 yeah, in my presentation -- I can repeat it again. I was
3 speaking very fast at the time. We did an analysis. If
4 we take the taxable parts that we noted per our estimates,
5 and we applied it to federal income tax returns gross
6 receipts, the actual amounts would be much greater than
7 they would owe.

8 JUDGE KWEE: Okay. Thank you. Are there further
9 questions? Okay. So at this point we'll turn it over to
10 the taxpayer. I believe you are calling Mr. Carmona as a
11 witness. But before you do so, I'd like to swear you in.
12 If you would raise your right hand?

13

14

RUDOLPH PAUL CARMONA,

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

18

19 JUDGE KWEE: Okay. Thank you. You may proceed
20 with your testimony.

21

22

WITNESS TESTIMONY

23 MR. CARMONA: Per things that they were saying,
24 can I address that?

25

JUDGE KWEE: You can use this time as you wish to

1 speak to any matter within this case that you --

2 MR. CARMONA: Okay. Then I'm going to first
3 address the last two things that I was -- that they
4 brought up, which is RO 4025.

5 JUDGE KWEE: Okay.

6 MR. CARMONA: And saying that they had copies of
7 the entire file. Here's the entire file and copies. So
8 when they made those copies, they also got the job notes
9 of all the people we spoke to, all the parts were ordered,
10 all the phone calls of the customers that said the car got
11 totaled and all the parts were returned.

12 So that -- the invoices were copies of parts that
13 we bought thinking we were going to do the job. The car
14 was totaled. We sent all the parts back, and we charge
15 storage and labor on the ones I gave you. On the second
16 page is a short audit of what we charge of \$1,886 with no
17 parts, sales tax whatsoever.

18 And in her audit -- in her audit work papers, on
19 the RO they have \$238 of sales tax owed on a job that we
20 didn't do and parts we didn't buy. And this is a constant
21 error on their behalf that they're charging me on
22 estimates not actual repair order or invoice. In her
23 audit paperwork, she even calls the estimate an invoice.
24 The estimate is not an invoice.

25 And per the bar and the laws and the rules that

1 govern us on how we do our work, we have to -- an estimate
2 is only an estimate. And on the estimate, it says on bold
3 print: This is only an estimate, and actual changes to
4 the repair may take place upon the actual repair of the
5 vehicle.

6 So they've taken all of the estimates and all the
7 parts and tax listed on the estimates, which are not how
8 we repair the car, and apply the tax to the audit on parts
9 that I never bought. And here it's the crux of the whole
10 matter. And this is glaring example of \$238 of sales tax
11 on parts -- parts returned and a job never done. And this
12 is one example of five years of errors they're trying to
13 apply to our business. They don't know how the business
14 runs or operates. And this is only one example.

15 But I'm going to move on to my opening statement.
16 And I'm going to go to the e-mail because I have a -- this
17 is a shorter, more condensed version, and I'd like to save
18 time. So an e-mail I wrote to Mala on September 21st,
19 2013. And to what -- hearing what was said by the
20 prosecution is, I really don't understand half of what
21 they're saying. And I say that again in the e-mail.

22 It says, "My staff and I have gone over and over
23 the paperwork, and I don't quite understand most of your
24 notes on the spreadsheet. When my customers signs a
25 repair order for me to do the repairs on their vehicles, I

1 am entering a verbal and written agreement with them, not
2 the insurance company. Vehicle owner is my customer, not
3 the insurance company. Customers have the right to tell
4 me what they want done to their vehicle and what they
5 don't want done.

6 "The customers pay for insurance, and when
7 they're paid on their claims, they are in the driver's
8 seat and dictate to me what they want done to their
9 vehicle. Many customers are paid direct and do one of two
10 things: Pocket the money and never fix the vehicle or
11 pocket the money and then shop for the cheapest repair
12 they can find.

13 "How do you recover sales tax in those
14 circumstances when parts were never bought? This is the
15 exact same thing that happens when customers are asking to
16 help them with their deductible or ask for extra work that
17 wasn't on the original estimate. If we agree to help
18 them, we get the job. If not, they will go somewhere
19 else.

20 "I am not paying sales tax on all the parts I am
21 not buying. And I am not paying sales tax on the parts I
22 am not buying. The burden and pressure the State is
23 putting on our company is unreasonable and not necessary.
24 The State is chasing pennies from a tax-paying legitimate
25 company while they are letting dollars get away from them

1 from many illegitimate operations right on my street, 728,
2 740, 741, 748, 749, 806, 812 Williamson.

3 "I've told your agency and many others multiple
4 times, if you'd enforce the rules on everybody and level
5 the playing field, it would be a lot easier to compete and
6 stay afloat. The competition right in my neighborhood has
7 no license, no permits, no spray booths, don't pay sales
8 tax, don't pay sales tax, don't pay income tax, and can
9 do -- and can charge half the price I do, and I'm supposed
10 to survive.

11 "The city squeezed nearly \$10,000 out of us in a
12 five-year code enforcement ordeal. And OSHA is holing
13 144-K in citations over us for ridiculous, frivolous
14 violations. And your first audit is \$33,000 for penalties
15 on parts I didn't buy with a second audit to come. How
16 are we supposed to stay in business? Should I let you put
17 me out of business and resurface like a cockroach, like
18 the neighbors do and really cheat the system?

19 "Do you see the irony? I get penalized for
20 playing by the rules, and every other agency turns their
21 head acting like what I'm seeing isn't happening. Problem
22 is though, I work here and see everything. The agencies
23 come by once or twice a year and say I don't see their
24 address on my paperwork. I'm here to see you. What a sad
25 state of realty.

1 "Many people say my only way out of this is to
2 hire an attorney I can't afford. I'm not sure exactly
3 what to do, but I do know God sees what's going on and He
4 is the ultimate judge."

5 Okay. And I'm going to speak to the time that
6 this is going on, and this was written in 2013. Excuse
7 me.

8 Since the beginning of this audit to this very
9 day, I told the State auditor, Mak Wadwa, that we paid all
10 the sales tax we owed and don't owe a penny more. I
11 explained to her that during the recession where over
12 200,000 small businesses closed according to the Small
13 Business Census published July 26th, 2012, that we were
14 repairing parts rather than buying them to save ourselves
15 and the customers' money.

16 Saving parts is a term used in our industry, and
17 it's converting parts to labor. And they -- they don't
18 understand that. I know they don't understand that. So
19 if I have a \$500 hood that I don't buy, I'm going to
20 convert that to labor. And that's -- there's the crux of
21 it, you know, part of the issue. Because we've got to
22 spend time and material on fixing the part and not buying
23 it.

24 During the recession, most people were not
25 repairing their cars. It was groceries or car repairs.

1 Pay the rent or car repairs. Keep the lights on or car
2 repairs. Obviously, people chose basic survival over car
3 repairs, and we were hit early and hard during the
4 recession. Things were so bad for us that at this time we
5 cut our salaries and laid off employees to survive.

6 In survival mode we changed our way of repairing
7 cars. We saved parts. Meaning, we repaired most parts
8 instead of replacing them. This became a way of doing
9 business on a regular basis just to compete and capture
10 jobs. You see our location is on a street where about
11 80 percent of the body shops in our city are located in
12 one area. Customers would go from shop to shop to find
13 the best deal they could get.

14 And I would literally watch potential customers
15 take our estimate right across the street and leave their
16 car with someone that had no license or permit or business
17 in the city or for any city for that matter. They're
18 illegal operations. Before the recession, these
19 hole-in-the-wall chop shops didn't matter to us since we
20 were going in -- after different clientele. We had a
21 different clientele at work.

22 Once the recession hit, they became fierce
23 competition that we had to compete with on a daily basis.
24 And we would literally watch our estimates and potential
25 jobs go to our unfair illegal competition. I once asked

1 and complained to the Bureau of Automotive Repair when
2 they were inspecting my shop. How come you don't go shut
3 these illegal operations on our street down, as I pointed
4 to them across the street?

5 To my amazement, he said, "If we give them a
6 citation, they just pick up and move to another location.
7 So we don't waste our time with them."

8 I was completely and totally shocked. Through
9 the years of complaining to the local and county agencies
10 that govern us, I've been given about the same answer from
11 all of them. So there is no real way of making the
12 playing field even. Once again, during the recession, we
13 repaired parts instead of replacing them to capture jobs,
14 survive, and to stay in business.

15 Then I wrote a subtitle. When -- "The When".
16 When vehicle damage is appraised by an insurance company,
17 one of three things can happen. The insurer, claimant, is
18 steered to a contracted direct repair shop, also known as
19 a DRP, and the vehicle and payment go directly to the DRP
20 shop. The insurance company tells the client they can
21 choose a shop of their choice and payment for the car can
22 be made directly to the client or to the client and the
23 shop, or directly to the shop.

24 Three, a claimant third party, meaning their
25 damage was caused by another party, can many times get

1 paid directly by the at-fault insurance company to the --
2 the car owner. So the payments just being made to the
3 person that owns the car, and then they go shop for
4 whatever they want to do with the car or pocket the money,
5 which happens a lot.

6 The how, the insurance -- the insured party most
7 of the time wants to save their deductible and then shops
8 around for the company that will give them the best deal.
9 The claimant many times gets paid directly by the
10 insurance company and is shopping for the best deal also.
11 Even though they are a claimant, they often bring their
12 insurance estimate in as a starting point and negotiate
13 how much they can save off the original estimate.

14 Either way, we are not a DRP shop directly
15 contracted or under contract with any insurance company.
16 We are a small independent shop. And once a customer
17 signs an RO for repairs, we are entering into a contract
18 with that customer, not the insurance company. We
19 currently have over 505-star reviews online because we
20 give the customers what they ask for.

21 If the customer wants to save money, which is
22 most of them do, we tell them we repair parts instead of
23 buying them to save the money. They usually agree, and
24 we'll get the job. By repairing parts and not buying
25 them, we use much more consumable materials, which are

1 pre-taxed and not sold to the customer, which also lowers
2 our sales tax liability.

3 I told Mala, which is the auditor, repeatedly,
4 "You can't charge me tax for parts I didn't buy. It's
5 actually illegal to charge me tax on parts I did not buy."

6 And then the crux of the matter. So here's what
7 we've been arguing about for six years.

8 Mala is trying to charge a sales tax on parts we
9 did not buy based on estimates that say -- the estimates
10 say this, "This is a preliminary estimate. Additional
11 changes to the estimate may be required for the actual
12 repair." This is written in bold underline on repair
13 estimates by every software company that makes them. The
14 changes we make on the estimate are recorded on the repair
15 orders, ROs.

16 The customers are in full agreement on the way we
17 are repairing the cars for the discount. During the
18 recession, this was about the only way we could capture a
19 job. Deviate from the estimates, save parts, save money,
20 and capture the job. Again, like I said, we don't have to
21 pay tax on parts we did not buy. And we can't be charged
22 tax based off of estimates we did not follow.

23 The vehicle owner is our customer, not the
24 insurance company. This is absolutely -- there is
25 absolutely no proof that we owe sales tax we didn't pay.

1 Where are the invoices of hundreds and thousands of
2 dollars of parts I bought, sold, and didn't pay tax on?
3 All Mala is -- all Mala has is averages and formulas based
4 on the industry as a whole. We are not your average shop.
5 And what we had to do to survive the recession, and that
6 was repair parts at a discount and not buy them to get the
7 work and stay afloat.

8 Last I checked in this country, you are innocent
9 until proven guilty. It seems here I have the burden of
10 proving my innocence, guilt by accusation. That's all it
11 is an accusation until you produce proof. Where is the
12 smoking gun? Where are all the parts invoices on all the
13 parts I bought and sold without paying sales tax? Well,
14 there aren't any.

15 And if I stood before 12 of my peers in a jury, I
16 believe I'd be acquitted, or at the very least, have a
17 hung jury. So, Your Honor, all we are here -- all we are
18 is a hard-working family from a long line of entrepreneur
19 immigrants trying to make it in a competitive industry,
20 doing our best to live the American dream.

21 Upon doing much research in my defense and going
22 to the Bureau of Automotive Repair's website, knowing the
23 rules that govern us -- I can't find it. On the Bureau of
24 Automotive website -- Bureau of Automotive Repair
25 website -- I'll try to submit it to you. In the third

1 bullet point down on the top sheet, Performing Owing the
2 Repairs Authorized by the Customer. Okay.

3 So again, I'm entering a contract with the
4 customer when they sign an RO. I'm obligated to do to
5 their car what they tell me to do, and I can't do other.
6 If I'm a DRP, and I'm a direct repair contract shop, then
7 I'm obligated and under contract to the insurance company
8 to follow their rules and their estimates, do what they
9 say, and notify them if there are changes. I am not a
10 direct repair shop. I'm a small independent contractor
11 that our customers are our customers, not the insurance
12 companies. Okay.

13 So on the second page of that, down at Number 4,
14 "Is Sales Tax Included in the Estimate?" No. Sales tax
15 is only included in the invoice. This is from the Bureau
16 of Automotive Repair. Because they know so many changes
17 are made in the process of a repair, whether the number
18 goes up or down, which as I supplement. A supplement
19 could go up and down in price that an RO repair order is
20 an invoice.

21 So they're taking estimates and all the sales tax
22 off of the estimates and saying I'm 114 percent in error
23 on tax I owe by parts I didn't buy. Everything is
24 transferred to the ROs, and all the parts are transferred
25 to the ROs, like the copies that I showed you guys. Add

1 that with the markup and the sales tax that's owed per the
2 repair order, the invoice, not the estimate. The estimate
3 is only an estimate, and it's not the invoice and it's not
4 where sales tax is collected by the Bureau of Automotive
5 Repair. Okay.

6 On the next page in the footnotes it says, "An
7 estimate provided by an insurance company may be attached
8 to and referenced in an automotive repair dealer's
9 estimate if it meets all applicable estimate requirements
10 specified by the Bureau of Automotive Repair." Okay.

11 So the estimates are questionable if they're
12 going to be attached to the -- if they meet all
13 requirements. Going through all this paperwork, I found a
14 State Farm estimate where they excluded the "this is only
15 an estimate actual changes to the estimate is may be
16 required upon the actual repair." That actual estimate is
17 not legal because they deleted that phrase off of the
18 estimate.

19 Because under the Bureau of Automotive Repair,
20 the customer has to be notified of that in writing that it
21 is only estimate, and it could change. So in that one
22 file I would throw that State Farm estimate out because it
23 doesn't meet the Bureau of Automotive Repair requirement.
24 And these are things they don't know about our business
25 but trying to hold us to the fire on tax -- on parts we

1 didn't buy. Okay.

2 On the next Page, No. 2, "What is Required in a
3 Work Order? A work order must contain the authorized
4 estimate for a specific job, the repairs requested by the
5 customer and the vehicle's odometer." Okay.

6 So again, the estimate is questionable, but the
7 repair order, which is signed and authorizes a repair
8 and -- and the repairs are requested by the customer. So
9 again, the customer is my boss. Not State Farm. Not Auto
10 Club. Not Mercury. They're not knocking on my door
11 saying how did the repair go. I'm not a direct repair
12 shop, you know. I answer to the customer, and I do to the
13 car what they want done to the car.

14 Can the method of repair -- Number 3 on the same
15 page, "Can the Method of Repair of Parts Listed in the
16 Work Order Be Changed? Yes. If the customer authorizes a
17 change in the method of repair or parts apply," per Bureau
18 of Automotive Repair.

19 This change can happen and does happen all the
20 time. And like I said in my statement, we're in survival
21 mode. The recession almost put us out of business, and we
22 are doing everything we could to stay afloat. We laid off
23 employees. We cut hours. We cut salaries. We cut
24 salaries on guys that are still with us today that got
25 their pay reduced and toughed it out through all those

1 hard times and then waited for it to get good again.
2 We're a family -- a small family business, and we did what
3 it took to survive.

4 On the next, Page Number 1, "When is the Invoice
5 Provided to the Customer?" The invoice -- okay. This is
6 very important. "The invoice is to arrive to the customer
7 upon the completion on all repairs for a specific job."
8 It's not the estimate. It even says that's not where they
9 get the sales tax from. The Bureau of Automotive Repair
10 says we do not get the sales tax from the estimate because
11 the RO transfers everything that's actually done to the
12 invoice that they get at the end of the job that shows
13 everything that was put on the car. It's subject to sales
14 tax and then charged, and that's how we pay.

15 That's how we did our sales tax returns. And
16 that's how we came up with monies we owed to the State of
17 California based following rules of the Bureau of
18 Automotive Repair. So what I hear being said is so much
19 conjecture based on formulas and averages of what the
20 industry should be like.

21 Well, the time of the recession was not normal
22 for the industry. I'm one example of 200,000 small
23 businesses that closed during the recession years of that
24 '08 to '12. You know, we're -- people pat us on the back
25 that we survived that 'cause a lot of people we knew went

1 out of business at that time.

2 And then the last thing is ensure.com, stuff I've
3 given you. And the main thing is third-party claims.
4 Okay, which is on the second package. If someone smashes
5 into your car and his or her insurance company is paying
6 for the repairs, you are a third-party claimant. This is
7 technically less of a hassle than a first-party claim
8 because you have no obligation to that insurance company.

9 The insurer cannot dictate to whom it pays the
10 money because it doesn't have policy contract with you.
11 In most third-party claims, insurers pay the claimant
12 directly. If your vehicle has been totaled in third-party
13 claim situation, that -- that's irrelevant. And then it
14 says, "knowing the claims process can help you expedite
15 your repair."

16 So the majority of our customers are third party
17 claimants. We are not a direct repair shop. A direct
18 repair shop has insurance piped directly to the shop. The
19 shop is under contract with that insurance company to
20 follow all those rules and regulations that the insurance
21 company puts out, per their estimate, discounts they want,
22 what they want done with the cars, and how they want it
23 all done. Okay.

24 When we take in majority of third-party
25 claimants, we are in a contract with the customer. And we

1 are doing exactly what the customer wants and only what
2 the customer wants. And based on that and my ROs -- which
3 I've attached -- only the attached parts I bought for the
4 jobs, I have proof that I have paid everything I owe, and
5 I don't owe a penny more because I cannot pay tax on parts
6 I did not buy.

7 JUDGE KWEE: Okay. Thank you. I do have
8 questions for you. I believe there will be questions for
9 you, but I just want to take a quick pause since it's
10 getting close to lunch. And I believe we have
11 representatives for Salton Sea and Sully Green in the
12 room. Does the court reporter -- we're off the record for
13 a moment.

14 (There is a pause in the proceedings.)

15 JUDGE KWEE: We'll go back on the record. Thank
16 you.

17 I do have questions for Mr. Carmona. So as I
18 understand CDTFA's argument, what they're saying is that
19 even if we threw out the estimates, that they don't have a
20 basis because -- they don't have repair orders for every
21 transactions. So that they don't have a basis basically
22 to determine the taxable ratio for the transactions in the
23 test period because there aren't repair orders for all the
24 transactions for the test period. I believe their
25 presentation was that 40 percent of transactions were

1 missing repair orders.

2 MR. CARMONA: So to speak to that. When a job
3 is -- and this is an error on our part -- like, less than
4 \$500. Okay. We call it burn RO. We don't even burn an
5 RO, you know. It's such a small amount that we would use
6 an estimate. And those are usually -- a lot of those are
7 six-digit ROs, like on a worksheet. An RO is usually a
8 four-digit number for us. This is our internal way of
9 doing it.

10 When a six-digit number comes up, we've usually
11 used an estimate on a small dollar-amount repair. But
12 according to the Bureau of Automotive Repair, I'm still
13 supposed to prepare or burn an RO, use a repair order.
14 But in our -- maybe not doing it to the "T" on the very
15 small ones. We use estimates. We go by our estimates.

16 And those are all our written internal estimates,
17 which our customers have nothing to do with insurance
18 companies. They're just seeking us out, paying cash out
19 of pocket, and coming to an agreement with us, just me and
20 them. It has nothing to do with insurance companies.

21 JUDGE KWEE: Okay. So I believe CDTFA has also
22 asserted that if you just look at the total amount that
23 the customers and the insurance companies paid you during
24 the periods that they looked at, that was -- that amount
25 was significantly higher than the total reported

1 transactions that were reported on the Sales and Use Tax
2 Returns.

3 So my understanding what -- what they are trying
4 to do is they're trying to get a percentage of what amount
5 is taxable and what is nontaxable. So they had to
6 calculate or what they determined that they were going to
7 calculate the total amount that you received during that
8 test period, and then they multiplied the taxable ratio by
9 that to determine how much tax owed.

10 And they -- my understanding is they used the
11 estimates because they didn't have sufficient
12 documentation in the repair orders. Some of them missing.
13 And I guess I was just wondering if you got
14 documentation -- full documentation for that or if you got
15 it some ways? I guess they are concerned of how they're
16 going to determine a taxable ratio if there's repair
17 orders missing or if there's repair orders that -- I think
18 they also said that some of the repair orders didn't
19 include a sufficient detail in the tax.

20 MR. CARMONA: Yeah. So going through -- it's a
21 lot of paperwork. And Mala did work with us, you know.
22 It wasn't -- she wasn't -- I don't agree with her,
23 obviously, but she wasn't unreasonable. Okay. So some of
24 the repair orders had not been filled in. And so she
25 said, "Okay. Get all your paperwork in order."

1 Okay. So we did fill in. We did take our -- let
2 me find it. We did take our job notes. That's what does
3 a customer want? We write down what they want. And then
4 how did we fix the car? And we did transfer everything
5 over to the ROs according to how we bought -- how we
6 agreed to repair the car, and what did we buy. So the
7 invoices were stapled to here, even if though the RO
8 wasn't filled out.

9 JUDGE KWEE: Well, just when you are saying
10 invoices, I thought before you were saying invoices, you
11 were referring to the repair order. Is there some other
12 documents you --

13 MR. CARMONA: No. Parts invoices.

14 JUDGE KWEE: Oh, purchases of parts invoices.

15 MR. CARMONA: Yes.

16 JUDGE KWEE: Okay. I get it.

17 MR. CARMONA: So all the parts, even if the
18 repair order wasn't fully filled out, the invoices for the
19 parts bought for the car were still attached. And they
20 took copies of everything. They copied everything. So
21 she let me -- 'cause we went back and forth. I said,
22 "Wait a minute. You're trying to charge me for parts I
23 didn't buy."

24 She said, "Well, straighten out your paperwork,"
25 you know. So we went back and filled in everything

1 according to how we repaired the car.

2 JUDGE KWEE: Okay. So for example, if I look at
3 3985, it's the first repair order that you submitted to us
4 in exhibit -- if you have that in front of you. I'm just
5 trying to understand how the repair order works. I'll
6 give you a minute to find it.

7 MR. CARMONA: 3985?

8 JUDGE KWEE: Yes. It's the very first repair
9 order that you submitted last week as an exhibit.

10 MR. CARMONA: Okay. 3985.

11 JUDGE KWEE: Okay. So I'm trying to understand.
12 So on the left -- the top-left column you have four OEM
13 parts listed. The prices listed there, is that -- was
14 that transcribed from your purchase invoice or is that
15 what -- like, what are these prices?

16 MR. CARMONA: From the -- yeah, from the purchase
17 invoice.

18 JUDGE KWEE: Okay. And underneath that you have
19 a "Plus 20 Percent" and that's a markup that --

20 MR. CARMONA: Yeah, markup on parts.

21 JUDGE KWEE: Okay. And this is information that
22 you added during the audit then?

23 MR. CARMONA: Yeah. She -- she -- not every one.
24 Some of the ROs were completely filled out. Some of the
25 small-ticket items were estimates only without an RO. And

1 some of the ROs, we started to fill them out but didn't
2 finish them. And she said, "Hey, finish your paperwork.
3 Get it ordered."

4 JUDGE KWEE: Okay. So I believe one contention
5 that CDTFA had raised was that, if you look for example,
6 the very first part here on the repair order is listed as
7 5571. But then if you look at the estimate, that same
8 part is listed at \$79.58. And the second one is listed as
9 \$74 here. And then in the original estimate it is listed
10 as \$106.31, and that's going off the part numbers.

11 So I'm just wondering if you could briefly
12 explain the change in parts. Is it -- how you got
13 different prices? How the part -- how the price changed
14 for that same part?

15 MR. CARMONA: You mean price change from the
16 estimate?

17 JUDGE KWEE: Right. So on the estimate, I think
18 CDTFA had mentioned that. So for example, if you look at
19 the first one. It is, you know, 16020 and 5571 is listed.
20 And then if you flip over to the next page, it's the same
21 part. 16020 is listed as \$79.58.

22 MR. CARMONA: Because that -- that's the
23 difference between the wholesale and the markup.

24 JUDGE KWEE: Okay.

25 MR. CARMONA: Okay. So on the estimate, it shows

1 the markup.

2 JUDGE KWEE: Okay.

3 MR. CARMONA: And on the repairs we did for the
4 customer we discounted the part.

5 JUDGE KWEE: Okay so.

6 MR. CARMONA: And on the one we did for the
7 customer, we discounted the part.

8 JUDGE KWEE: Okay. So this is --

9 MR. CARMONA: We bought it for \$55, marked it up
10 20 percent, and that affects the whole number and the
11 discount that we passed onto the customer.

12 JUDGE KWEE: Okay. Okay. I get it. And I think
13 one other concern that they had raised was that I think
14 they said overall, you were selling parts below what your
15 cost was. I'm wondering if you could briefly address
16 that?

17 MR. CARMONA: No. I think that -- there's so
18 many numbers and formulas and I have their worksheets,
19 piles of them that they've configured, that I really don't
20 know how they come up with their numbers.

21 JUDGE KWEE: Okay.

22 MR. CARMONA: I really don't know. But what I do
23 know is I bought a part for this price. I marked it up
24 for this percent, and I paid the sales tax on what I
25 actually did to the car. Everything outside of this, when

1 you go to the estimate is only an estimate. And I don't
2 know how I could be charged sales tax on an estimate.
3 It's not an invoice.

4 JUDGE KWEE: Oh, no. I understand what you're
5 saying. I just want to make sure you are able to address
6 the concerns that are raised by the other party. But
7 speaking of that, I believe you had mentioned -- the
8 taxpayer had mentioned that, at least on 4025, that was a
9 total loss. And then I believe CDTFA's position had been
10 that they had purchased the parts any way. But if the
11 taxpayer had come back on their -- on their turn and said
12 that it shows that they were reimbursed for their parts, I
13 think all the file had said, "11512 got check for
14 reimbursed parts 865. I'm just wondering if CDTFA has
15 it -- a position on that specific invoice, the 4025, or
16 get that?

17 MS. RENATI: Well, on that invoice we didn't
18 have -- we don't have proof the check was received because
19 we don't have -- you know, we don't have a copy of sales
20 journals or any type of journals to prove the amounts.
21 And also, it's merely a test. So we're just trying to get
22 to taxable versus nontaxable. Taking it, you know, this
23 is one transaction in a test trying to come up with a
24 number.

25 We used -- a consideration received was used on

1 the taxable numbers. But, again, if you go through --
2 also, like I also mentioned, that' was an aberration.
3 There were no other jobs like that. All the rest -- we
4 did have multiple jobs that were towing and storage only
5 that were included completely at labor. On this one, we
6 didn't have proof that those parts were returned. And so
7 that's why we left it in.

8 JUDGE KWEE: Okay. I should turn it over to my
9 co-panelists.

10 MR. CARMONA: I just want to say just to that
11 one, 4025, the one they're talking about. It's an
12 oversight by the auditor. The auditor had copied
13 everything. That's why you're reading it. The notes that
14 say, "Hey, the parts were returned. The car was totaled."
15 And an invoice was generated that's in the file of what we
16 charged for.

17 But again, she's so fixated on every estimate,
18 and this is a tax on the estimate, and this is where you
19 owed. That's where me and her butted heads, and we did
20 not see eye-to-eye that she's charging me for tax on parts
21 that I did not buy.

22 JUDGE KWEE: Okay. I'm just -- do you still have
23 records from this time period or is everything that is
24 available what was submitted today. Or just out of --

25 MR. CARMONA: I have what I have here.

1 JUDGE KWEE: Okay. Okay. I think -- Judge
2 Brown?

3 JUDGE BROWN: I -- I guess -- I'll try and be
4 brief. When you were talking about the packet where you
5 included -- of the job folder where you included the --
6 the invoice for parts that you returned, does the packet
7 also include some -- like, a receipt or something showing
8 that you returned them?

9 MR. CARMONA: Yeah. So in this RO I don't have
10 it. But I would have to go back to the dealership, which
11 is -- I mean, now how many years ago. But we don't want
12 to keep parts. We want our money, you know. We don't
13 want to keep parts. The car is towed away to the wrecking
14 yard. We're taking a -- we're sending those parts back.
15 We're not keeping those parts.

16 JUDGE BROWN: So how does someone know from
17 looking at your paperwork that you returned the parts that
18 you have an invoice for?

19 MR. CARMONA: Because we have an -- okay. We
20 have an invoice stating what we got. Let me look at
21 the -- we have an invoice stating what we charged and why
22 did we charge it. It says, "A tow. Zero tow bill. Tear
23 down on the vehicle. All labor. Storage for the vehicle
24 and a total."

25 This total matches the RO for the amount that we

1 charged the insurance company on this total loss. They
2 paid us \$1,886 even. So the -- in the notes -- why I
3 refer to the notes. It says we're making phone calls now
4 to the parts people saying, "Hey, we don't need these
5 parts anymore." That's -- that's it.

6 We don't -- these invoices of the parts I
7 ordered, I don't need to keep those. I don't want to keep
8 those parts. I want my money back. I got paid. They
9 took the car. The customer went and probably bought
10 another car. And we're being charged in the audit for
11 sales tax on an estimate when I have my proof. It's
12 all -- it's all right here.

13 JUDGE BROWN: That's my only question.

14 JUDGE KWEE: Okay. Thank you. I believe we're
15 ready to go on to closing arguments at this point.

16 CDTFA, would you like to do your closing
17 presentation?

18 MR. BROOKS: Your Honor, I just wanted to bring a
19 point to your attention. I know Mr. Carmona was relying
20 upon documents that we had excluded. But in particular,
21 the information from the Write It Right document -- again,
22 and we don't know what year this came from. We know it's
23 not from 2008 or 2012 or 2013 because it references a new
24 regulation that was written in 2018. So the information
25 he's relying upon, we can't necessarily rely upon. I --

1 I --

2 JUDGE KWEE: Okay. Thank you. Noted. With that
3 said, I believe CDTFA it's your turn for closing
4 presentation.

5 MS. RENATI: Okay. It's going to be very short.

6 JUDGE KWEE: Okay.

7

8 CLOSING STATEMENT

9 MS. RENATI: So the total purchases per income
10 tax returns for all periods are greater than the amounts
11 reported to the State. If you compare our audited results
12 of trying to achieve the taxable parts sales and compare
13 that to reported purchases for federal income tax returns,
14 the overall markup for the three-year -- well, for both
15 periods, is 15.15 percent, which is very reasonable.

16 The markup for the three-year period of the sole
17 proprietor is only 6.41 percent, which is extremely
18 reasonable. Our results are merely trying to get at what
19 taxable parts were sold. And the only record we have of
20 all parts purchased is the income tax returns. So those
21 amounts we are looking at. If you look at that simple
22 analysis, it shows that our amounts are very reasonable.

23 Additionally, you know, the insurance
24 companies -- there are copies of checks from every
25 insurance company payment in the folders and in our

1 exhibits. And those include checks made directly to the
2 taxpayers. And those checks were written and based off
3 the written estimates the insurance companies received,
4 which included parts, labor, and sales tax.

5 And those amounts are due because the insurance
6 companies did not provide written estimates -- written
7 changes or written agreements that they were okay with the
8 fact that the taxpayer was later instead of using new
9 parts refurbishing or repairing those parts. The
10 insurance company paid for brand new parts.

11 And that's, you know, as an aside with your
12 insurance company when they pay for repair, they are
13 paying for it to continue your collision coverage because
14 you're replacing the parts. So, therefore, later on
15 they'll continue to cover your car for collision.

16 So to say now that later on we changed the part,
17 I don't think it's something that would be fair nor is it,
18 per the regulation, allowable. And that concludes.

19 Do you have anything you would like to add? No.
20 And that concludes.

21 JUDGE KWEE: Okay. Thank you.

22 For the taxpayer, Mr. Carmona, would you like to
23 make any final closing arguments before I conclude today?

24 MR. IQBAL: Your Honor, can I speak?

25 JUDGE KWEE: Yes.

1 MR. IQBAL: Two things when I have examined the
2 sole proprietorship sample auditor has taken. And
3 honestly, I have testified. I have tested every sales tax
4 amount over \$100. Your Honor, believe it or not, we went
5 over. He brought the boxes and boxes in my office. Every
6 single one, which is like an audit. You know, like, I
7 used to be an auditor, financial statement audit.

8 So I have tested his ROs. Any sales tax amount
9 over \$100, believe it or not, Your Honor, every ROs, every
10 test the auditor picked up is on estimates. And he is my
11 witness. I have the supporting document to make my
12 statement that I said this is not the same amount showing
13 on the ROs. So I said okay. I'm going to test everything
14 over \$100 for sales tax. So that's one.

15 Number two, when I used to be the auditor,
16 whenever the sample testing is come out okay, my partner's
17 CPA firm, were saying things are expanding. What this
18 auditor did, she tested 2011, quarter three, and 2012,
19 quarter four. Your Honor, the average rate is 116 percent
20 and blindly applied all of the 13 quarter without
21 expanding her test.

22 And on the corporation side, average rate was 75
23 percent. You have all of those records. She blindly
24 applied for five quarters. Your Honor, you know as an
25 auditor I was a financial statement auditor in a CPA firm.

1 And always our partner asked us, if you feel that the
2 numbers are not coming in line, expand your testing. Go
3 test two or three more quarters and see that how --

4 Your Honor, you tell me. Out of that
5 13 quarters, 116 percent rate. Field examiner has blindly
6 applied all of the 13 quarters. And then on the
7 corporation side, five quarters, and then she blindly
8 applied 75 percent. That's why this sales tax audit
9 amount became so huge because of that 116 percent. My
10 question to the panel, why auditor did not expand her
11 testing when she knew the numbers are so outrageous.

12 Number two, Your Honor, the panel did not
13 understand how does accounting work. Cost of sale -- I
14 have proof and you have copy -- they never reported. How
15 can he survive in business with a negative gross profit,
16 even though what they're saying based on the sales tax
17 number? Sales tax number is between the taxable sale,
18 nontaxable. Very simple formula. The financial
19 statement, you have the copies too showing an average of
20 63 percent.

21 Number three, there are certain materials that
22 goes through the body shop, like, for example, sandpaper
23 tape. You cover the plastic. All of that is, basically,
24 the customer does not take it. Your Honor, if I take my
25 car to him, he's not going to give me the sandpaper.

1 So my cost of goods sold will vary with those
2 items, which he will not recoup. Mr. Carmona, you would
3 agree with that? Like the tape, plastic, the booster pump
4 and all that stuff, the chemicals and the masks and all
5 that stuff, which is associated with taking the job and
6 all that?

7 MR. CARMONA: They're called consumables, and we
8 pay tax on them when we buy them.

9 JUDGE KWEE: Okay. Thank you.

10 With that said, are the panel members ready to
11 conclude this hearing?

12 MR. CARMONA: I -- I didn't get to finish.

13 JUDGE KWEE: Oh, I'm sorry. Yeah, if you -- let
14 me know when you're -- yeah.

15

16 CLOSING STATEMENT

17 MR. CARMONA: Okay. So based on consumable, so
18 the two major software companies are Mitchell and CCC.
19 There are many others, though. And so what they do is
20 they create a formula. They say on these many paint hours
21 times \$32; you're going to get your paint material. And
22 then on the estimate -- and this is why the bar doesn't
23 use estimates for calculating sales tax.

24 It lumps all the material into one figure,
25 taxable. Okay. So what they don't -- what the software

1 company doesn't do, is they don't filter out consumables.
2 Because on my paint invoices -- and some of my paint
3 invoices are in those 3,000 documents because I had to
4 show the auditor, hey, I'm paying tax on materials when I
5 buy them. I'm not selling them to the customers. They're
6 consumables. So on the income tax statement that they're
7 saying don't match, the sales tax reports, consumables are
8 in that.

9 MR. IQBAL: Financial statement.

10 MR. CARMONA: In the financial statement,
11 30 percent of the paint material that says I owe tax on, I
12 pay tax when I buy it. I use it up in my shop as waste,
13 and it never gets sold to the customer. So we know when
14 we transfer it to an RO, we don't -- we don't transfer
15 that sales tax that we prepaid on consumables: Tape,
16 plastic sandpaper, breathing masks.

17 I mean we have a huge list of consumable
18 materials that the software writers are putting in as
19 sales tax that we're not selling to the customer. So the
20 Bureau of Automotive Repair said in Write It, the
21 estimates are not used to compute sales tax. And the
22 auditor used only the estimates to compute the sales tax
23 and come up with the error percentages of all this money
24 I'm supposed to owe when it's not accurate or true or
25 correct.

1 So what I told Mala, we're splitting hairs.
2 We're splitting hairs here on a legitimate business. I'm
3 doing all I can to make it, and they are letting our
4 unfair illegal competition get away with murder. I just
5 can't believe I'm even here, six years of this. And I
6 have sleepless nights. I have acne. I have all these
7 things like a teenager because this is, like, destroying
8 my life, you know. I want my life back. I want this to
9 be over with.

10 And we paid what we owed. And however they mix
11 that pot over there, they can come up with any kind of
12 stew they want to put out on the table, but I know what we
13 did in our shop day to day, week to week, month to month,
14 year to year to come up with how fixed the cars. How did
15 we survive? What did we buy? What did we resell? What
16 do we owe sales tax on, and what do we not?

17 And I've refused with Mala, the auditor, to -- we
18 were just over at the table arm wrestling, and we both
19 refuse to give, you know. She's saying, "You owe it."
20 And I say, "I don't." I'm not going to pay sales tax on
21 parts I did not buy. Here's my proof. Here's all the
22 invoices attached to the RO that has the sales tax and the
23 markup and everything I did to the car.

24 So I don't know what else to say but to say that
25 it'll be great day when -- when all this for me, when all

1 of this is over. Really. This has been -- I've been
2 dragging a boat anchor around for six years. That's all I
3 got.

4 JUDGE KWEE: Okay. Is everyone ready to conclude
5 this hearing today? Okay. With that said, I thank
6 everyone for coming in.

7 This case is submitted. Oh, I'm sorry.
8 Actually, the record is going to be held open for 15 days
9 so that CDTFA will have an opportunity to file any
10 concerns that they have with the new exhibits that were
11 submitted after the deadline. After that you'll expect to
12 see a decision within 100 days.

13 I'm sorry.

14 MS. RENATI: The Department doesn't need to keep
15 the record open.

16 JUDGE KWEE: Oh, okay. Great. So this case is
17 submitted today on 1/24/2020. The parties should expect
18 to receive a decision within 100 days. Thank you everyone
19 for coming in. The judges will meet after and decide your
20 case later on, and we will send a written decision to you.

21 So with that said we're ready to adjourn.

22 (Proceedings adjourned at 12:04 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 20th day of February, 2020.

ERNALYN M. ALONZO
HEARING REPORTER