

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,           )  
   )  
MEHRRA JEWELLERS, INC.,                      ) OTA NO. 18073423  
   )  
                        APPELLANT.                )  
   )  
   )

## TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, January 29, 2020

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE OF, )  
MEHRRA JEWELLERS, INC., ) OTA NO. 18073423  
APPELLANT. )  
\_\_\_\_\_ )

Transcript of Proceedings, taken at  
400 R Street, Sacramento, California, 95811,  
commencing at 11:07 a.m. and concluding  
at 12:17 p.m. on Wednesday, January 29, 2020,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

1 APPEARANCES:  
2  
3 Panel Lead: ALJ MICHAEL GEARY  
4  
5 Panel Members: ALJ TERESA STANLEY  
6 ALJ JEFF ANGEJA  
7  
8 For the Appellant: JACK IYRE  
9  
10 For the Respondent: STATE OF CALIFORNIA  
11 DEPARTMENT OF TAX AND  
12 FEE ADMINISTRATION  
13 By: LISA RENATI  
14 JASON PARKER  
15 DANA MCBETH-FLANNIGAN  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

I N D E X

E X H I B I T S

(Appellant's Exhibits were received at pages 22 and 23.)  
(Department's Exhibits were received at page 24.)

P R E S E N T A T I O N

	<u>PAGE</u>
By Mr. Iyre	25
By Ms. Renati	43

R E B U T T A L   S T A T E M E N T

	<u>PAGE</u>
By Mr. Iyre	47

1           Sacramento, California; Wednesday, January 29, 2020

2                               11:07 a.m.

3

4                       JUDGE GEARY: Good morning, ladies and gentlemen.

5       My name is Michael Geary. I am an Administrative Law

6       Judge with the Office of Tax Appeals, and we are here

7       today to take evidence and hear argument in the appeal of

8       Mehrra Jewellers, Inc., OTA Case Number 18073423.

9               I am joined on the dais by my colleagues, Judges

10      Angeja and Stanley. And while I, as lead, will be

11      primarily in charge of today's proceeding, we three

12      deliberate and decide all of the issues presented. And

13      each of us will have an equal vote in those deliberations.

14              Our stenographer, Ms. Alonzo, is using her

15      equipment to take down everything that is said on the

16      record. And to help us make a clear record that can be

17      easily understood when read after she prepares the

18      transcript, please speak clearly and slowly. And please

19      speak into a microphone. You need to get pretty close to

20      these microphones.

21              I see that the Department's side only has two.

22      Just do your best to speak into a microphone when you are

23      speaking. Do not speak when someone else is speaking.

24      It's difficult for Ms. Alonzo to accurately report when

25      two people are speaking at once. And do not engage in

1 casual conversation at the table loud enough that she  
2 might -- Ms. Alonzo might pick it up. Because if she  
3 hears it, you can assume she will report it.

4 Let's find out who is here to represent the  
5 Appellant. Would you state your name please, sir?

6 MR. IYRE: My name is Jack Iyre, J-a-c-k, last  
7 name, I-y-r-e.

8 JUDGE GEARY: And Mr. Iyre, when you identify you  
9 for the record in a prepared script, do you wish for me to  
10 acknowledge any certification or licenses that you might  
11 hold?

12 MR. IYRE: I have a CPA from Illinois.

13 JUDGE GEARY: All right. So we'll identify you  
14 as a CPA.

15 And who is here to represent the California  
16 Department of Tax and Fee Administration?

17 MS. RENATI: My name is Lisa Renati. To my left  
18 is Jason Parker, and to his left is Dana Flannigan-McBeth.

19 JUDGE GEARY: Okay. And how should we identify  
20 you in the written record?

21 MS. RENATI: I'm a hearing representative.

22 JUDGE GEARY: And how should we identify the  
23 others at the table?

24 MS. RENATI: Jason Parker is Chief of the  
25 Headquarters Operations Bureau, and Dana Flannigan-McBeth

1 is tax counsel.

2 JUDGE GEARY: Thank you.

3 Just some general comments and admonitions before  
4 we discuss the evidence. I want the parties to understand  
5 that OTA is an independent agency completely separate from  
6 the taxing agencies that appear before us.

7 The evidence that the judges in this matter will  
8 consider is that which will be admitted soon in this  
9 proceeding. If a document, for example, has been  
10 submitted by an Appellant to the taxing agency or in the  
11 briefing process before OTA, that document will not  
12 necessarily be before us as evidence unless it is also  
13 admitted by me in this hearing.

14 We have not had the benefit of a prehearing  
15 conference at which we would have discussed and identified  
16 the issues presented and the evidence that the parties  
17 intend to rely upon to support their respective positions.  
18 We attempted to have two such conferences, and Mr. Iyre  
19 did not timely call in to either of those conferences.

20 I'm going to state my understanding regarding the  
21 matters that bring us here today. And will ask the  
22 parties eventually to either acknowledge the accuracy of  
23 my statement or to point wherein I err.

24 This is an appeal from a decision issued by the  
25 Appeals Bureau of Respondent, California Department of Tax

1 and Fee Administration. And I may refer to that  
2 Department as simply the "Department" or the "Respondent"  
3 in my later comments. Denying in part Appellant's  
4 petition for redetermination of the Notice of  
5 Determination that was issued on September 8, 2014.

6 The Notice of Determination assess the tax  
7 liability of \$128,839.86 plus interest and a negligence  
8 penalty of \$12,884.02 for the period May 2nd, 2010,  
9 through September 30th, 2013, which I will probably refer  
10 to simply as the liability period in my comments.

11 There are two audit items that remain at issue  
12 from my understanding. The first is the disallowed claim  
13 nontaxable sales based on a markup analysis and measured  
14 by \$720,983. And the second is disallowed claim  
15 deductions for sales tax reimbursement allegedly concluded  
16 and reported total sales in the amount of \$156,025.

17 Three audit items are no longer in dispute.  
18 Appellant does not dispute Audit Item 2 that was  
19 disallowed claim exempt sales in interstate commerce or  
20 Audit Item 3 that was disallowed claim exempt repair  
21 labor. And the Department has agreed to delete Audit  
22 Item 5, which was disallowed claim nontaxable merchandise  
23 returns.

24 Mr. Iyre, have I fairly and accurately identified  
25 the issues as you understand them?



1                   MR. IYRE: Yes, sir.

2                   JUDGE GEARY: And Department?

3                   MS. RENATI: Yes. Except for the measure of tax

4 for the first issue is now \$680,796, 4-3 audit was to make

5 and adjustment for calculation errors made. And that's

6 Exhibit A of the Department.

7                   JUDGE GEARY: 680 --

8                   MS. RENATI: 796.

9                   JUDGE GEARY: 796. Great. Thank you. Otherwise

10 it's correct?

11                  MS. RENATI: Yes.

12                  JUDGE GEARY: All right. It's my understanding,

13 Mr. Iyre -- and you'll have plenty of opportunity to argue

14 otherwise. But it's my understanding that your client

15 contends that the audit does not take into account damaged

16 jewelry that was sold to a vendor in exchange for bullion

17 with a bullion dealer, and that this should impact the

18 cost of goods sold and the ratios relied upon by the

19 Department. Is that, essentially, your argument?

20                  MR. IYRE: Yes, sir.

21                  JUDGE GEARY: All right. Now, let's talk about

22 evidence. Again, we did not have the benefit of evidence

23 of -- a discussion of evidence at our prehearing

24 conference. But in the briefing process, I believe the

25 Appellant submitted approximately 35 pages of invoice

1 copies. Appellant also submitted a brief, what amounts to  
2 it, an argument and an explanation as to why Mr. Iyre  
3 believes that adjustments are appropriate.

4 And I believe that is all we had prior to today.  
5 And that was all we included in the digital hearing binder  
6 that was either provided to the parties or the parties  
7 were provided access to it online and could download it  
8 there. Today Mr. Iyre brought in some additional  
9 documents which we've been reviewed or attempting to  
10 review before going on the record. The pages appear to be  
11 numbered. I'm assuming that there are 57 pages in this  
12 package.

13 And before we were on the record, Mr. Iyre, you  
14 indicated that most of these are duplicates of what's  
15 already included in the evidence binder, but some are new;  
16 is that correct?

17 MR. IYRE: The page number 2 has a conclusion  
18 which was not in the original briefing binder. And that  
19 is only because I had originally written this brief hoping  
20 to get a conference with the district office in San Jose.  
21 So I just updated that page, but other pages have been  
22 previously provided to the district office. So I was  
23 under the impression that it would be with the Office of  
24 Tax Appeals as well as the Department.

25 JUDGE GEARY: Speak louder and close to the

1 microphone and slowly, please.

2 MR. IYRE: The second page is the only one I  
3 updated. The remaining pages have been in one form or the  
4 other provided to the Department over the course of --  
5 since 2015. We have provided these documents prior too.  
6 So I was under the impression they would already be part  
7 of the record, unless I'm mistaken about that.

8 JUDGE GEARY: Well, you heard my comments a  
9 moment ago that the evidence that we will consider is the  
10 evidence that I admit today. And, again, had you  
11 participated in the prehearing conferences we would have  
12 discussed that.

13 MR. IYRE: I want to apologize for that. Because  
14 my wife had a fall, and that's why I couldn't call  
15 immediately.

16 JUDGE GEARY: There appears to be a number of  
17 invoices in this package you brought today. Can you  
18 represent to me that these are the same invoices that are  
19 included in the evidence binder that was provided to the  
20 parties?

21 MR. IYRE: Yes, sir.

22 JUDGE GEARY: The first two pages of your  
23 documents, I don't recall seeing before. Has this been  
24 provided to my Department, OTA, in the course of this  
25 appeal?

1           MR. IYRE: If I can explain. The first two pages  
2 have been provided. The only addition was Item C and D.  
3 That was not there before because I had not drawn the  
4 conclusion. But until B, everything was provided before.

5           JUDGE GEARY: Okay. So you're saying that other  
6 than C and D, which appears on page 2, that this document  
7 is the same as the document that you provided to the  
8 Office of Tax Appeals with your briefing?

9           MR. IYRE: Yes.

10          JUDGE GEARY: What about pages 3 and 4? Have  
11 those been provided to the Office of Tax Appeals in the  
12 course of this appeal?

13          MR. IYRE: 3 and 4 I'm not sure. But they are  
14 basically a summary of all the invoices, the 35 invoices  
15 that are, you know, copied with it, these pages 7  
16 through 41. So they are basically listing all those  
17 invoices and the amounts.

18          JUDGE GEARY: All right. So --

19          MR. IYRE: But I'm not sure if I provided these  
20 page 3 and page 4 before.

21          JUDGE GEARY: All right. But 3 and 4, you're  
22 representing to me all of the information contained in  
23 Exhibits 3 and 4 are summaries of information also  
24 contained in the 35 pages of invoices that are attached?

25          MR. IYRE: Yes.

1 JUDGE GEARY: Page 5 -- page 6 appears to be some  
2 of the audit work papers. And can you represent to  
3 me that -- or 5 and 6 appear to be audit work papers --  
4 pages? I take it that these are from the audit at issue?

5 MR. IYRE: Yes. And the only addition I made  
6 there was the amount of jewelry that was converted to  
7 coins online number 2. It was not on the original audit.

8 JUDGE GEARY: The next -- I'm assuming the next  
9 roughly 35 pages, because that's how many pages of  
10 invoices I had in my original package. Those are the same  
11 invoices, I'm assuming; is that right?

12 MR. IYRE: Yes, sir.

13 JUDGE GEARY: And there are what appears to be  
14 more pages from the audit work papers. At least pages 42  
15 and 43 appears to be from the audit work papers. Is that  
16 what those are?

17 MR. IYRE: Pages 40 -- page 43 is from the audit  
18 work papers. And page 42 is basically an adjustment based  
19 on what I had provided before as to what the exact amount  
20 of sales tax that was actually collected. There was a  
21 formula error in the spreadsheet that the client used.

22 This was their first time. This was a new  
23 business, and this was the first time they were conducting  
24 business in the U.S. And so they had an error in the  
25 spreadsheet, which I corrected. And this was provided

1 earlier to the Department back in 2015.

2 And I basically reproduced those. And I have  
3 copied the -- the amount collected is the only column that  
4 changed, which is Column B, on page 42. And that's  
5 comparable to page 43. That is the only change that has  
6 been made.

7 JUDGE GEARY: So 43 -- page 43, which is  
8 identified as Schedule 12D dated 7/25/13, are you saying  
9 that that is an accurate copy of the audit work paper and  
10 that page 42 is something that you created to show your  
11 adjustments?

12 MR. IYRE: Right. What it should have been  
13 actually.

14 JUDGE GEARY: All right. What is page 44, 45,  
15 46, as a matter of fact, through -- it looks like through  
16 the end of the package -- through 57. What are those  
17 pages?

18 MR. IYRE: They're all individual quarters sales  
19 tax returns, without the formal letter, that existed in  
20 the claims, original papers.

21 JUDGE GEARY: So just to make sure I understand,  
22 are you saying that pages 44 through 57 are -- reflect the  
23 same numbers that appear on the Sales and use Tax Returns  
24 filed for Mehrra Jewellers, Inc., for those periods?

25 MR. IYRE: Except for the formula error for the

1 amount of sales tax collected. So on each of those pages,  
2 on the quarterly total tax, I have indicated what was  
3 actually paid according to the Department's work papers on  
4 page 43. And so, for example, on page 44 I have total tax  
5 calculated without the formula error as \$20,259, and the  
6 taxpayer paid \$20,222.

7 JUDGE GEARY: Show me where on page 44 you're  
8 reading those numbers or tell me where.

9 MR. IYRE: To the right most on the line that  
10 says, "Total State County and District Tax".

11 JUDGE GEARY: Okay.

12 MR. IYRE: And on the total first quarter amount  
13 I have \$20,259, which is the amount that is reflected on  
14 page 42, line 3 from the bottom.

15 JUDGE GEARY: When did you create these  
16 documents, pages 44 through the end of this package 57?

17 MR. IYRE: That was provided, I believe, in 2015.

18 JUDGE GEARY: You created them in 2015?

19 MR. IYRE: Right. And this was provided to the  
20 San Jose district office.

21 JUDGE GEARY: And you created them to demonstrate  
22 to the district office what your client's position was?

23 MR. IYRE: Correct.

24 JUDGE GEARY: All right. Department, if you  
25 would like to tell me what -- how you feel about admission

1 of these documents, please.

2 MS. Flannigan-McBeth: Your Honor, your order  
3 specifically said that the documents were due 15 days  
4 prior to the hearing date. Now we're at the hearing date  
5 after having attempted two prehearing conferences  
6 unsuccessfully, and we're presented with 50-plus pages,  
7 one copy that have multiple changes. Some documents are  
8 new.

9 As you pointed out, pages 44 through 57 have new  
10 formulas. There are new amounts as to over-claimed  
11 deductions of sales tax being reduced from \$13,457 down to  
12 \$2,482. These are significant changes in these documents  
13 for us to digest in less than five minutes with one copy  
14 for three people.

15 There're foundational issues. There's no source  
16 documentation to support these recalculations. So based  
17 on all of that, we would object to these -- this stack of  
18 documents being admitted today.

19 JUDGE GEARY: Okay. My prehearing conference  
20 order did say that documents were to be submitted 15 days  
21 prior to the hearing. Why didn't you do that?

22 MR. IYRE: I had a couple of issues. My wife had  
23 a fall. She had an abrasion on the back of her head. My  
24 wife had a fall, and she hurt the back of her head and  
25 there was a laceration. She had staples. And so for the



1 last couple of weeks I've been taking care of home and  
2 office and also dropping the kids off.

3 And so as much as I wanted to, you know, send an  
4 e-mail of these documents prior to, I was just not able to  
5 get to it. So I was barely trying to keep home and office  
6 going. I'm sorry. You know, it was -- it was my issue  
7 that prevented me from doing it.

8 But I don't think the taxpayer needs to suffer  
9 for that. I actually called and asked if we need to even  
10 reschedule this once I send those documents. And I'm  
11 still open to coming back in two weeks after they have had  
12 a chance to review it. Because my objective is to get the  
13 right amount of determination of liability.

14 And if that needs to be done at a later date and  
15 we have to come back, I have no problems coming back. But  
16 my failure should not affect the taxpayer in this  
17 instance. And that's my only request.

18 JUDGE GEARY: My fellow judges are even having a  
19 hard time hearing you. So these microphones will bend  
20 towards you. Be sure to get it as close as possible.  
21 Thank you.

22 Reviewing these documents, it looks to me like  
23 the first two pages are essentially a summary of your  
24 argument. You can read this document in the course of  
25 your argument if you wish to. It won't be admitted into

1 evidence.

2           The 2 pages, 3 and 4, which purport to be  
3 summaries of information contained on the 35 pages of  
4 invoices that were part of the binder, you can use these  
5 to -- in your argument to indicate the amounts that you  
6 have gleaned from those invoices. But I won't be  
7 admitting those pages.

8           Page 5 and 6 appear to be portions of the audit  
9 work papers. I don't think you indicated you made any  
10 changes to those. I'll admit pages 5 and 6 because  
11 they're part of the Department's audit work papers. The  
12 35 pages of exhibits -- of invoices, I mean, that are  
13 currently part of the hearing binder, though they may not  
14 be in the exact same order you have them here, those will  
15 be admitted but not from your package. They will be  
16 admitted as part of the hearing binder as it currently  
17 exists.

18           The page 42 is the document that you created to  
19 show adjustments to page 43, Department's 12D, page 42,  
20 will not be admitted. But you can use the information  
21 contained in that document in your argument to explain to  
22 us what adjustments you think were appropriate or would be  
23 appropriate in this case.

24           Page 43, which you indicated as an accurate copy  
25 of a page from the Department's work papers, Schedule 12D

1 will be admitted. It may be part of the Department's  
2 exhibits and should, since I think the Department admitted  
3 most of the audit work papers. But I'll admit your  
4 page 43.

5 And the remainder of the pages, which we haven't  
6 seen, the Department haven't seen at least. It could be  
7 that the district office has seen them, but we have not  
8 seen them on the dais. They haven't been previously  
9 offered to OTA. I'm not going to admit them in this  
10 hearing.

11 However, I'm not going to prevent you from using  
12 any of the information contained in those documents in  
13 your argument to demonstrate what adjustments you think  
14 your client is entitled to.

15 Do you understand my rulings?

16 MR. IYRE: Yes.

17 JUDGE GEARY: Okay.

18 MR. IYRE: And if I may, since I was not heard  
19 clearly. The reason I could not submit it before was my  
20 wife had a fall, and she had a laceration on the back of  
21 her head. And we had to go to the ER and get staples  
22 done. And she's been having some issues. And so I have  
23 been dropping off the kids, working at the office, and  
24 also taking care of the home. So that's why I could not  
25 send it before the two weeks.

1           Since that is my issue personally, I would not  
2   want my taxpayer to be affected by it. I'm open to  
3   rescheduling this hearing until they have had a chance to  
4   look at it. Whether it's a week, two weeks, I'm prepared  
5   to come back. And since all of the documents are up here  
6   and -- once they have had a chance to look at it, we can  
7   regroup. If that is okay with you.

8           JUDGE GEARY: I am not open to rescheduling this  
9   hearing. I don't see reasonable cause to reschedule the  
10   hearing. We'll proceed today. If the Department has  
11   concerns about my -- about what documents I'm going to  
12   admit, I'll give them an opportunity to state their  
13   objections.

14           Does the Department have questions or concerns  
15   about the documents that I intend to admit?

16           MS. RENATI: I have a question. On page 5 it's  
17   being admitted, but that document is not an original copy  
18   from the audit work papers. It has an addition. I don't  
19   know if you would have that.

20           JUDGE GEARY: I did not know that. Then page 5  
21   is not going to be admitted.

22           MS. RENATI: Oh, it's not admitted. Okay. Thank  
23   you.

24           JUDGE GEARY: I did say that it was going to be  
25   admitted because my understanding is it was an accurate.

1 MS. RENATI: If you look between --  
2 JUDGE GEARY: Is 6 also different?  
3 MR. IYRE: Yes.  
4 JUDGE GEARY: You're saying it is different?  
5 MR. IYRE: Yes.  
6 JUDGE GEARY: Okay.  
7 MR. IYRE: The only addition is the jewelry to  
8 coin conversion.  
9 JUDGE GEARY: Okay. So 6 will also not be  
10 admitted. If it's been changed, I'm not going to admit  
11 it, but you can use it in your argument.  
12 MR. IYRE: For the record, all that information  
13 was with the Department before. The coins -- the total  
14 jewelry to coin conversions, all of them had been before.  
15 The only thing we have done is summarize those because I  
16 was hoping that we could get a conference with the  
17 district to get this done before.  
18 JUDGE GEARY: I understand. But we are not the  
19 Department. We're a different agency, and we have to make  
20 our decisions based upon evidence that we admit in our  
21 hearings. Were there any other questions or concerns  
22 about the evidence from the Department?  
23 MS. RENATI: No, Your Honor.  
24 JUDGE GEARY: Give me a minute while I light my  
25 computer up again.

1 (There is a pause in the proceedings.)

2 JUDGE GEARY: All right. Back on the record.

3 I want to pull up my binder to make sure we get  
4 all those admitted.

5 I should ask you, Mr. Iyre. You have no  
6 witnesses -- live witnesses today? It's just you making  
7 your argument; correct?

8 MR. IYRE: Yes.

9 JUDGE GEARY: All right. And the documents that  
10 we included in the binder were the 35 pages of invoices.  
11 And those documents, those 35 pages of invoices, does the  
12 Department have an objection to the admission of those?

13 MS. RENATI: No.

14 JUDGE GEARY: Those 35 pages of invoices will be  
15 admitted.

16 (Appellant's Exhibit of 35 Pages of Invoices  
17 is received in evidence by the Administrative  
18 Law Judge.)

19 JUDGE GEARY: In addition -- actually, there may  
20 be no additions. Was there one page -- 43 was the one  
21 page. Is 43 an accurate representation of what's in the  
22 audit work papers?

23 MR. IYRE: Yes.

24 JUDGE GEARY: It is.

25 MR. IYRE: 43 is.

1 JUDGE GEARY: All right. Based on your  
2 representation and the judges can verify that, that page  
3 43 is admitted.

4 (Appellant's Exhibit Page 43 is received  
5 in evidence by the administrative Law Judge.)

6 JUDGE GEARY: I've already admitted all of your  
7 invoices, and those are all the documents that you  
8 submitted that we are admitting today. The Department has  
9 submitted revised audit work papers that I had being three  
10 pages and have been marked for identification as  
11 Exhibit A, 74 pages of audit work papers marked for  
12 identification as Exhibit B, and Notices of Determination.

13 I think there are two marked -- four pages marked  
14 as Exhibit C. And the decision or decision and  
15 recommendation issued by the Appeals Division of the  
16 Department, which has been marked Exhibit D, and that's 15  
17 pages.

18 Are there any additional documents that the  
19 Department wishes to offer?

20 MS. RENATI: No.

21 JUDGE GEARY: All right. Mr. Iyre, do you have  
22 any objection to the admission of the Department's  
23 proposed exhibits?

24 MR. IYRE: No.

25 JUDGE GEARY: Did you say that out loud?

1           MR. IYRE: No.

2           JUDGE GEARY: Okay. Thank you. All right. The  
3 Department's exhibits are admitted.

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

6           JUDGE GEARY: By the way back to Mr. Iyre's  
7 exhibits. We have page 1 as the invoices. The other page  
8 that I have admitted, we'll mark for identification, and  
9 as evidence as page -- as your Exhibit 2.

10          MR. IYRE: Okay.

11          JUDGE GEARY: All right.

12          MR. IYRE: Sure.

13          JUDGE GEARY: Typically, what we do when there  
14 are no witnesses is, we allow the Department 15 minutes --  
15 excuse me. We allow the taxpayer 15 minutes to give their  
16 presentation, and then allow a rebuttal after the  
17 Department gives its presentation.

18          Will 15 minutes be adequate for you, Mr. Iyre, or  
19 would you like to request more time?

20          MR. IYRE: I believe that should be fine.

21          JUDGE GEARY: All right. And typically as I  
22 indicated, we give the Department its only opportunity to  
23 argue and typically allow 15 minutes. Will that be a  
24 sufficient period of time for you?

25          MS. RENATI: Yes.



1 JUDGE GEARY: All right. And then if you choose,  
2 Mr. Iyre, when the Department is done, you'll have about  
3 five minutes for rebuttal to address the Department's  
4 closing comments if you want to. Okay?

5 MR. IYRE: Okay.

6 JUDGE GEARY: All right. So the written  
7 documents have been admitted. Let me just check one thing  
8 before we proceed. No. We're ready.

9 So, Mr. Iyre, if you're ready to give your  
10 argument, your first argument, you may proceed when you  
11 are ready. And be sure while you're giving your  
12 presentation to stay right up close and speak up loud into  
13 that microphone, please.

14 MR. IYRE: Okay.

15

16 PRESENTATION

17 MR. IYRE: So the first issue I want to address  
18 is the excess claimed sales tax. This was a new business  
19 for the taxpayer. It started in 2010, and they had an  
20 audit almost immediately after that. Being a new  
21 business, they tried to do the best they could, and they  
22 were filing the taxes on their own with no other help.

23 And so there were some errors in the formulas  
24 that they set up. And so we had this assessment of  
25 \$156,000 of measure for excess -- excess claimed sales tax

1 and deductions. So on page 43, Department has a total  
2 sales tax claim deduction as \$288,140 against which the  
3 sales tax reported was \$274,683 with an over claimed  
4 deduction of sales tax of \$13,457.

5 I went back and recalculated the spreadsheet.  
6 After removing the errors, their total sales had not  
7 changed. The total gross sales reported for each of those  
8 quarters I have not changed that. That has not been  
9 changed. It will match exactly what the Department has.  
10 I changed the formula that they had incorrectly put into  
11 the spreadsheet, and I came up with each of the quarter's  
12 total sales tax.

13 So for example, for the first quarter of 2013,  
14 they had \$20,259 of sales tax collected, and they had paid  
15 \$20,222. So summarizing all of that in page 42, the total  
16 sales tax claimed deduction, if they had the right formula  
17 in the spreadsheets, it would have been \$277,165 against  
18 which they had reported and paid \$274,683. That leaves an  
19 over-claimed deduction of sales tax for \$2,482.

20 It translates to a sales tax measure of \$29,406,  
21 as I have reflected on page 2. The reason for that is  
22 that -- this was also, by the way, provided to the  
23 Department in San Jose in 2015. And we were repeatedly  
24 requesting them to correct it. And so the actual sales  
25 tax collected was \$277,165, not \$288,140; which is based

1 on an incorrect formula.

2 And so I believe that because of the error in the  
3 formula, the taxpayer should not have -- should not be  
4 deemed to have collected more than they actually did since  
5 the purpose is to make sure that the liability is  
6 correctly determined. And that's why we came up with the  
7 difference of \$2,482 and a measure of \$29,406.

8 So that's one issue at hand that we were  
9 disputing. And each of those spreadsheets for each of  
10 those quarters has the correct formula. And on the --  
11 against the total sales tax, total state, county, and  
12 local tax, under the quarters to the right of it I have  
13 indicated the amount of tax that was actually reported.

14 And on page 42, I have also used the sales tax  
15 reported by -- from the Department's work paper to come up  
16 with the \$274,683. That exactly matches what they have on  
17 page 43. The only thing that has changed is the actual  
18 sales tax claimed deduction, which reflects what actually  
19 was collect by the taxpayer as sales tax from customers.  
20 The amount is \$277,165 not \$288,140.

21 Moving onto the other issue at hand.

22 JUDGE GEARY: Before you move onto the other  
23 issue, and I stopped your time so -- because this is our  
24 time we're using for clarification.

25 MR. IYRE: Sure.

1 JUDGE GEARY: So I'm looking at pages 42 and 43,  
2 and I see that sales tax reported are the same numbers  
3 that are used on the Department's schedule, the ones that  
4 you use on your calculation. But your numbers for sales  
5 tax claimed deduction is different. What did you look at  
6 to determine what your clients claimed?

7 MR. IYRE: Oh, I looked at the spreadsheets that  
8 they used for preparing the sales tax returns.

9 JUDGE GEARY: Did you look at the returns?

10 MR. IYRE: Yes. And the returns reflect  
11 exactly -- I'm not changing the return numbers, and that's  
12 why I've indicated what they actually reported. So I did  
13 not change that. They should have -- the way they should  
14 have represented the information on the return is  
15 different.

16 They still owe money. They still owe the \$2,482.  
17 That has not been disputed. We know that there was an  
18 error. The magnitude of the error is what we are  
19 questioning and disputing.

20 JUDGE GEARY: Well, am I correct that in your  
21 calculation the tax -- the over-claimed sales tax is  
22 \$2,482 and then the Department's calculation it was --

23 MR. IYRE: \$13,457.

24 JUDGE GEARY: -- \$13,457.

25 MR. IYRE: Yes.

1 JUDGE GEARY: Okay. And are you saying that the  
2 Department used the wrong formula to determine their  
3 amount that was over reported?

4 MR. IYRE: Effectively, yes. Because the client  
5 used the wrong formula, and the Department took that to be  
6 the number to use. So the way it worked was, we had the  
7 total sales number. For example, let's look at page 44  
8 for a second. So for January both of us agree that the  
9 total sales were \$218,232. Nontaxable coins were a 119 --  
10 \$112,910. And the returned merchandise were \$2,624, but  
11 the tax collect was \$8,154.

12 And because of a wrong formula, that number was  
13 higher. And that is why for the quarter I have \$20,259.  
14 Whereas, using the taxpayer's incorrect formula, the  
15 Department has 20 -- one second. The Department has  
16 \$20,668 on page 43 against first quarter of 2013. And I  
17 have \$20,259.

18 JUDGE GEARY: All right. You can move on to your  
19 next issue.

20 MR. IYRE: For the next issue, which is the  
21 disallowed other bulk coins, we had -- this is a jewelry  
22 store. It's a retail store. So they import jewelry. And  
23 these are already prepared. Sometimes in the course of  
24 either transit or after having been here for a while, they  
25 get -- some -- they could get damaged sometimes.

1           And the cost of having them repaired is higher  
2   than the cost of, you know -- actually, getting them  
3   repaired and selling them would not be worth it  
4   economically.

5           And so what they do is they will take -- they  
6   collect all this and once in a while they will take it to  
7   their bullion dealer and give it to him in exchange for  
8   coins. And if there is a difference, they will either pay  
9   a check, or they will get a check from him. So in other  
10   words, if they give him jewelry whose gold was, you know,  
11   weighing about 120 grams. If they got three coins, which  
12   would be about roughly 93.6 grams, they will get a check  
13   from him for the difference. If it was 100-- you know, 4  
14   coins, in which case it would be 132-plus grams, they will  
15   pay him a difference.

16           And so those 35 pages of invoices represent  
17   those. And these were also sent back in '16 or '17 by  
18   e-mail to the district. And since I could not see the  
19   work papers where they were adjusted for, the pages 3 and  
20   4 are tabulations of all the invoices that were provided  
21   earlier by year. So for 2010, I have \$58,337. For 2011,  
22   I have a total of \$231,804, and that's on page 4. And for  
23   2012, I have \$143,507.

24           So using the Department's method, I used  
25   \$58,337.35. I marked it up by the 1.41 percent, which is

1 the markup on the bullion coins. And I came up with the  
2 sale value of \$59,159. The originally-audited bullion  
3 sales, which is on page 3, was \$1,619,981. Adding this  
4 \$59,159 to that, I came up with the adjusted-audited  
5 bullion sale of \$1,679,140. But that still had a  
6 difference of \$36,466.

7 And so the error percentage now has become  
8 \$36,466 divided by \$1,679,140, for an error percentage  
9 rate of 2.17. Multiplying that by the Department's  
10 figure of \$12,214,169, I have a total disallowed claimed  
11 exempt bullion sale of \$265,255.

12 So based on the paperwork that was provided, I  
13 use the Department's method of calculation, adjusted for  
14 these purchases, which were not included in there, and  
15 applying the same markup percentage to those bullion  
16 coins. I came up with a 2.17 percentage error, which  
17 applied to the total sales claimed was \$265,255.

18 We're not disputing, as you mentioned earlier,  
19 the interstate commerce labor or the disallowed  
20 merchandise. And so my total for all this was a measure  
21 of \$470,499.

22 JUDGE GEARY: Can you walk us through, by  
23 reference to a particular invoice, walk us through a  
24 sample adjustment.

25 MR. IYRE: Sure. If you look at page 16, on the

1 right-hand side is an invoice for \$14,350, which is on  
2 8/20/11.

3 JUDGE GEARY: Tell me that amount again.

4 MR. IYRE: \$14,350.

5 JUDGE GEARY: I'm asking because we have a really  
6 hard time copying these.

7 MR. IYRE: Oh, I'm sorry. \$14,350.

8 JUDGE GEARY: Department does that comport with a  
9 number that you see in your exhibit?

10 MR. IYRE: It's on page --

11 MS. RENATI: I'm going to have to look at the  
12 exhibits because I can't read the copy in front of me.  
13 Just a second.

14 JUDGE GEARY: All right.

15 MS. RENATI: What year is this from?

16 MR. IYRE: 8/20/2011.

17 MS. RENATI: Okay.

18 JUDGE ANGEJA: I think that's page 10 of the  
19 exhibit binder.

20 JUDGE GEARY: It's much more legible in the  
21 binder. Do you have it?

22 MS. RENATI: Yes.

23 JUDGE GEARY: All right. Go ahead.

24 MR. IYRE: So if you look at the invoice, it's a  
25 purchase invoice from the bullion dealer. So he has taken



1 back a gold lot worth \$14,350. And it was applied to the  
2 purchase of 13 maple coins in the amount of \$56,880. So  
3 that \$14,350 was included in jewelry purchases, but it was  
4 actually exchanged for bullion. So I took that into  
5 page 3 under second line, Item 2.

6 JUDGE GEARY: Line Item 2 under 2011?

7 MR. IYRE: Yes.

8 JUDGE GEARY: Okay.

9 MR. IYRE: On the same page, on the left-hand  
10 side, there's an invoice for \$95,046 from the same bullion  
11 dealer. And he took a lot of gold worth \$95,046 in  
12 exchange for four bars. Again, it's a bullion coin.

13 JUDGE GEARY: So let me ask you. Are you saying  
14 that you exchanged -- your client exchanged \$95,046 worth  
15 of damaged jewelry --

16 MR. IYRE: Yes.

17 JUDGE GEARY: -- for --

18 MR. IYRE: Bullion coins.

19 JUDGE GEARY: -- bullion coins. It says bars on  
20 the left.

21 MR. IYRE: Four bars. Four bars. So the --  
22 forgive me if I'm not very familiar with the business.  
23 The coins are different weights. The normal coin that we,  
24 you know, all recognize is the 31.2-ounce silver maple  
25 coin. Some people buy bars. And the bars I think are

1 close to 40 -- 40 ounces each.

2 JUDGE GEARY: The words on the invoice actually  
3 say, "Exchange for gold bars and coin," and refers to an  
4 invoice number 44744; right?

5 MR. IYRE: Right.

6 JUDGE GEARY: And is there an invoice 44744 in  
7 your evidence?

8 MR. IYRE: I could not find it anywhere in the  
9 audit work papers either.

10 JUDGE GEARY: All right.

11 MR. IYRE: And so I'm not sure if this reflects a  
12 sales invoice from the bullion dealer. I'm pretty sure it  
13 does because I see a lot of invoices with the 43 CDs. And  
14 so he basically exchanges this lot of gold for some  
15 bullion coins and bars. And so I took that into the 2011  
16 exchange of jewelry for bullion coins.

17 JUDGE GEARY: Okay.

18 MR. IYRE: And I did the same thing for 2010  
19 invoices, and that's how I came up with \$58,337, since the  
20 Department used only the 2010 purchases for this test. And  
21 based on that, I applied the same percentage of margin,  
22 which was 1.41 percent on bullion coins. And so applying  
23 1.41 to \$58,337, it gives me a sale value of \$59,159.

24 I added that \$59,159 to the audited sales that  
25 they had of \$1,619,981 and came up with \$1,679,140. That

1 reduced my total dollar error to \$36,466. And then  
2 divided that by the \$1,679,140 is how I got the error  
3 percentage of 2.17.

4 I applied that to the total sales -- exempt sales  
5 claimed according to the Department, which was  
6 \$12,214,000. And that's how I came up with the disallowed  
7 other bulk coins, should be \$265,255 instead of 720 or  
8 corrected to the 680. And so my total is \$47,499 for the  
9 measure.

10 So we do recognize that, you know, the taxpayer  
11 owes money. It's the error percentage that we are  
12 disputing.

13 JUDGE GEARY: Okay. Thank you. I think some of  
14 my fellow judges may have some questions.

15 Judge Angeja?

16 JUDGE ANGEJA: Just one. The first one on  
17 page 16 -- or our page 10 of this binder -- that you  
18 referred to that the \$14,350 that was turned in was to  
19 offset the other invoice of \$45,704. I can't find that  
20 invoice 45704 in these 35 pages. Is there any transaction  
21 where you can show the other side of the transaction where  
22 the jeweler offset it?

23 I mean, I understand the argument. I just don't  
24 see the second half where, in fact, we would see 45704,  
25 the mirror image of this.

1           MR. IYRE: For the first one, the 44744, you  
2     mean?

3           JUDGE ANGEJA: The words that are written here  
4     say, "Applied to offset purchase" --

5           MR. IYRE: Oh, the 45704.

6           JUDGE ANGEJA: -- "of invoice 45704." I would  
7     like to see the invoice 45704 or any other transaction.

8           MR. IYRE: I can --

9           JUDGE JEFF: In other words, you're saying --

10          MR. IYRE: I didn't have it on me.

11          JUDGE GEARY: One at a time.

12          JUDGE ANGEJA: You're saying they exchanged  
13     damaged jewelry in exchange for bullion. And I'm just  
14     wanting to look for the other half of that transaction.  
15     In this case it would be 45704. I didn't see it in my  
16     quick review of these 35 pages.

17                 I couldn't find the one that's referred to this  
18     invoice, which was the other one that Judge Geary went  
19     through, 44154. That was taken in exchange for that  
20     \$95,000 purchase on invoice 44744. I can't find it. I  
21     know I'm throwing a lot of numbers around.

22          MR. IYRE: So I would answer it with a couple of  
23     observations. One is that I don't have those two invoices  
24     on me right now. However, the only thing they purchased  
25     from Austin and Company is bullion. They do not buy any

1 jewelry from them because Austin is a dealer in bullions  
2 only. They only deal in bullions.

3 JUDGE ANGEJA: Okay.

4 MR. IYRE: Does -- does that help?

5 JUDGE ANGEJA: That answers my question. Thank  
6 you.

7 JUDGE STANLEY: So I'm not sure if this is on.  
8 I'm having trouble. The invoices that you pointed out  
9 refer to other invoices where jewelry was purchased. Most  
10 of the invoices that you submitted do not do that. How  
11 can you tell or how are we to tell whether or not these  
12 were actually exchanges for purchased jewelry that  
13 shouldn't be counted in the measure of tax?

14 MR. IYRE: So okay. So Austin company is a  
15 company that only deals in bullion. They only deal in  
16 bullion coins. They do not deal in jewelry. The client,  
17 my taxpayer, basically buys jewelry from overseas, and  
18 they import it here. And when they get damaged, instead  
19 of sending it back for repair because it's more expensive  
20 to do, that they exchange it for bullion coin.

21 In the process they absolve the loss of the labor  
22 that they had paid for in making the jewelry. But most --  
23 99 percent of the jewelry purchases is overseas. They  
24 import it from overseas. In the process they also pay  
25 customs duties. But when you see the reference to invoice

1 numbers here on any of these invoices, it is Austin and  
2 Company invoices. And so they're always referring to  
3 purchases of bullion coins only.

4 JUDGE STANLEY: I understand that but what  
5 we're -- I'm getting lost a little bit is how do we know  
6 what jewelry, if any, was exchanged for these coins? In  
7 many of these transactions, it doesn't say. It just says,  
8 you know, 3.622 karat for \$325. It just says things like  
9 that. It doesn't refer to any jewelry exchange.

10 MR. IYRE: Okay. So are you saying there's no  
11 reference from here to a particular jewelry invoice?

12 JUDGE STANLEY: On most of the invoices I don't  
13 see one.

14 MR. IYRE: Correct. The reason is they don't  
15 exchange each time something breaks. They accumulate it,  
16 and that's why you see lots where 90,000, 58,000, you  
17 know. So it's basically lots of jewelry that are damaged.  
18 And they do this exchange once in, like, two months or  
19 3 months or more often if there's more damaged. But there  
20 is not -- I mean, I don't have anything here that traces  
21 this particular exchange to a particular jewelry invoice  
22 if that's what you're hinting at. Is that what you're  
23 asking?

24 JUDGE STANLEY: Yes. I'm asking how you knew  
25 that these were exchanges of jewelry and what the value of

1 the jewelry was that you need to exclude.

2 MR. IYRE: Okay.

3 JUDGE STANLEY: We can't necessarily tell that  
4 from what you've submitted.

5 MR. IYRE: Right. So I can -- I can make two  
6 observations on that. One, is when they do the exchange,  
7 it's usually at the value of gold on that day. So if I go  
8 today it might be \$1,550 an ounce. And based on the  
9 weight, that's what they will pay. If I go tomorrow if it  
10 is \$1,520, that is what they will pay.

11 And so that -- that is why you see weight in  
12 terms of how much gold is being given to them in the form  
13 of jewelry because then they go ahead and melt it. And  
14 then I think they also take out some wastage for it.  
15 That's the part regarding the gold weight.

16 Can you please repeat the second part of your  
17 question? I -- I missed it.

18 JUDGE STANLEY: I think your trying to answer my  
19 question. But I just -- from the documents that we have  
20 in evidence, I cannot tell what jewelry you are wanting to  
21 exclude in place of the purchase of the coins. So it's my  
22 understanding that you've excluded some cost of goods  
23 sold, or you want to exclude cost of goods sold.

24 And you want to exclude some of the jewelry from  
25 the value that's been marked up as jewelry sold. But we

1 can't tell what that value is from a lot of these  
2 invoices. We can't tie it together.

3 MR. IYRE: The value of the jewelry is determined  
4 based on the gold price on that day of exchange. And the  
5 Department moved away from the cost of gold sold approach,  
6 and they went into the markup approach on the bullion  
7 coins and back into the jewelry sales.

8 So I followed the same method. And when I did  
9 that, I just took the exchanges of bullion coins for 2010,  
10 which was \$58,337. And those exchanges happened on those  
11 respective dates based on the gold value on that date.  
12 Austin and Company, by the way, is a bullion dealer. So  
13 when the taxpayer sells bullion coins -- like, if I were  
14 to go and buy a gold coin from him today, I will pay him  
15 today, but I would pick it up only tomorrow or day after.

16 Because once I get the confirmed order, that's  
17 when he goes and picks up the bullion coin from Austin and  
18 Company. Austin and Company will not take back bullion  
19 coins in return. They will only take jewelry and give you  
20 gold coins, but they will not take back the gold coins in  
21 return, if that answers your question. I don't know if  
22 that's --

23 JUDGE GEARY: I have other questions. Excuse me.  
24 I'm looking at my notes about the methodology used by the  
25 Department, and I expect we will hear from the Department



1       soon. It appears that it compared the sales of monetize  
2       and non-monetize bullion to determine the mark up and the  
3       error percentage. And I'm not sure how your invoices and  
4       calculations would have an impact on the Department's  
5       methodology. Can you explain that?

6               MR. IYRE: The Department's methodology when they  
7       calculated the gold bullion purchases did not include  
8       these invoices that have been provided. And for 2010 that  
9       amounted to \$58,337. So we are admitting, yes, there was  
10      still an error in the reporting of the bullion coin sales.

11             But if you include these purchases with the  
12      appropriate markup, which is the 1.41 percent that they  
13      have used, then the total sales are not \$1,616,000,  
14      it's -- oh, I'm sorry. It is not \$1,619,981. It is  
15      actually \$1,679,140. And so there was a -- there was  
16      these purchases that were missed, and so the corresponding  
17      sale was missed.

18             And so, therefore, the error percentage was also  
19      greater than what it should have been. If once we include  
20      these purchases and the corresponding sales, the total  
21      sales go up for the bullion sales, even though the amount  
22      claimed was still higher by the new -- the calculated  
23      error percentage of 2.17.

24             Does this make sense? Or should I --

25             JUDGE GEARY: Ms. Renati, are you going to give

1 the Department's closing?

2 MS. RENATI: Yes.

3 JUDGE GEARY: The argument?

4 MS. RENATI: Yes.

5 JUDGE GEARY: Will you be addressing these points  
6 made by the taxpayer?

7 MS. RENATI: Yes.

8 JUDGE GEARY: All right. I have no more  
9 questions. Thank you, Mr. Iyre.

10 MR. IYRE: Thank you.

11 JUDGE ANGEJA: I have one question. My  
12 understanding and I get the argument. What -- let's look  
13 at this \$14,350, which is paid in a sense or transferred  
14 in exchange for the bullion, right?

15 MR. IYRE: Yes.

16 JUDGE GEARY: That's the weight -- the dollar  
17 value of the weight of the gold conceivably when they  
18 purchased it. I'm putting words in your mouth. My  
19 understanding is when they purchased it, they didn't just  
20 buy the jewelry, this damaged jewelry. But when they  
21 bought it, it was at a wholesale or a resale value. It  
22 wasn't just for the weight of the gold, right? It's got  
23 craftsmanship. It's got art. So this as a practice --

24 MR. IYRE: Yes.

25 JUDGE ANGEJA: -- cost them?

1           MR. IYRE: Yes, it does. But the problem is the  
2 cost of sending it back for repairs is much higher.  
3 Because you got shipping back and forth and the  
4 craftsmanship, again.

5           JUDGE ANGEJA: Okay. I just wanted to point that  
6 out. So, okay.

7           MR. IYRE: Yes.

8           JUDGE ANGEJA: Okay.

9           JUDGE GEARY: All right. Thank you. Mr. Iyre.

10          MR. IYRE: Thank you.

11          JUDGE GEARY: Department, you may proceed with  
12 your argument.

13

14                                   PRESENTATION

15          MS. RENATI: The Appellant has operated a jewelry  
16 store in Sunnyvale, California, since May 2010, selling  
17 bulk transactions of bullion and coins, retail sales of  
18 jewelry, and offers jewelry repair services.

19          The jewelry is primarily purchased from a  
20 manufacturing business the Appellant owns in India. For  
21 the period of May 2010 through September 2010 -- 2013, the  
22 Appellant claimed the deduction from taxable measure for  
23 the bulk sale of bullion and coins of over \$12.2 million.  
24 Reported taxable transactions for the same period was  
25 almost \$3.2 million. And that can be found on Exhibit B,

1 pages 6 and 7.

2 The Department's calculation of audited exempt  
3 bulk sales of monetized bullion and non-monetized gold and  
4 silver bullion and numismatic coins was computed using a  
5 markup of cost audit methodology. The Department  
6 transcribed all available purchase information regarding  
7 the purchase of coin and bullion from both customers and  
8 vendors for the period of May 2010 through December 2010.  
9 And that's on Exhibit B, page 41 through 49.

10 A summary of the total purchases can be found on  
11 Exhibit A, page 10. Next the Department performed a shelf  
12 test for at bullion and coins for the period of May 2010  
13 through December 2010. Sales invoices and corresponding  
14 purchase invoices were compared to compute an audited  
15 markup of cost of 1.4 percent. The audited markup of cost  
16 was applied to audited purchases of bullion and coins to  
17 arrive at audited exempt sales of \$1,619,891.

18 A comparison of audited sales and claimed sales  
19 reveal a difference of \$95,625, which represents  
20 disallowed claimed exempt sales for the period of May 2010  
21 to December 2010. A percentage of error was then  
22 developed to project the error over the remaining periods.

23 The Appellant claims adjustments are warranted to  
24 account for additional purchases of coins and bullion.  
25 Recently the Appellant provided additional documentation,

1     which is Exhibit 1. And the Department reviewed the  
2     information and notes the invoices cover periods in years  
3     2010, '11, and '12. The Department's test of exempt sales  
4     cover periods of operation in 2010.

5             And the Department is unsure if the Appellant is  
6     asking us to do an actual basis exam or if they just erred  
7     in giving us the other information. The Department  
8     reviewed the 17 invoices within the 2010 test period, and  
9     the description of items appear to be of jewelry and scrap  
10    rather than coins and bullion.

11            The Department also notes that every invoice  
12    includes a notation that payment for the goods was made by  
13    either cash or check but no evidence for trade or coin or  
14    bullion. During the audit examination, the purchase  
15    invoices provided for coins and bullion include a  
16    description such as "1-ounce maple leaf coin" or "10-ounce  
17    silver bar," or "1-ounce Swiss gold bar."

18            Additionally, the price per 1-ounce of gold coin  
19    was above \$1,000, as you can see on Exhibit B, page 41  
20    through 52. The purchases for the additional invoices  
21    provided by the Appellant include a price per unit  
22    notations of \$32 to \$38, which are similar to the jewelry  
23    purchases noted on Exhibit B, page 40, for jewelry.

24            Therefore, the documentation presented does not  
25    support an increase to the amount of audited purchases of

1 coin and bullion. As regard to disallowed claim sales tax  
2 deduction noted on Department's Exhibit B, page 56, the  
3 Appellant paid sales tax reimbursement of \$274,689 with  
4 their Sales and use Tax Returns.

5 Yet, the Appellant claimed the deduction for  
6 sales tax included in gross sales of \$288,140 for a  
7 difference of \$13,451. The Appellant claims a calculation  
8 used to prepare the returns included an incorrect formula  
9 to explain this difference. However, it should be noted  
10 the Appellant has not provided sales summaries, complete  
11 sales invoices, cash register tapes, and the like to  
12 support the amount of actual sales tax charged and  
13 collected. Additionally, the Appellant has included a  
14 proposed refund of \$1,323 without -- with their argument  
15 with no documentation.

16 As such the Department rejects the Appellant's  
17 claims. Based on the evidence presented supporting the  
18 Department's audit finding, the Department ask that the  
19 appeal be denied.

20 This concludes my presentation.

21 JUDGE GEARY: Thank you. Questions?

22 Mr. Iyre, you have an opportunity to give  
23 rebuttal to the Department's argument if you like. I can  
24 allow up to five minutes if you would like to use that  
25 time.

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

REBUTTAL STATEMENT

MR. IYRE: Very briefly all I want to say, at the risk of repeating myself, the 1.619 did not include the purchases that stem from exchange of jewelry for gold coins. For 2010 that amount is \$58,337.50, and the sale value is \$59,159. And that's the only adjustment the taxpayer is seeking to adjust the audited bullion sales to \$1,679,140 instead of \$1,619,981.

And that reduces the error dollar amount to \$36,466 and error percentage to 2.17 percent, bringing the total disallowed claimed exempt bullion sales to \$265,255. And that's based on the documentation that is included in the invoices, which have been admitted into evidence.

JUDGE GEARY: Thank you.

MR. IYRE: Thank you.

JUDGE GEARY: If there's nothing further from the parties, this concludes the hearing in this matter. All of the documents have been admitted. I am closing the record now. And my colleague and I over the next weeks will deliberate and decide the issues. And then within 100 days of today's date, we will issue a written decision and send it to the parties.

(Proceedings adjourned at 12:17)

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

HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 26th day  
of February, 2020.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER