

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,           )  
   )  
SALTON SEA VENTURES, INC.,                 ) OTA NO. 18053175  
   )  
                    APPELLANT.                 )  
   )  
   )

## TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Friday, January 24, 2020

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
12900 Park Plaza Dr., Cerritos, California, 90703,  
commencing at 12:16 p.m. and concluding  
at 12:50 p.m. on Friday, January 24, 2020,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

1 APPEARANCES:  
2  
3 Panel Lead: ALJ SUZANNE BROWN  
4  
5 Panel Members: ALJ ANDREW KWEE  
6 ALJ JEFF ANGEJA  
7  
8 For the Appellant: CARMEN HERNANDEZ  
9  
10 For the Respondent: STATE OF CALIFORNIA  
11 DEPARTMENT OF TAX AND  
12 FEE ADMINISTRATION  
13 By: LISA RENATI  
14 CHRISTOPHER BROOKS  
15 JASON PARKER  
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I N D E X

E X H I B I T S

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

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1 Cerritos, California; Friday, January 24, 2020

2 12:16 p.m.

3

4 JUDGE BROWN: And we are now on the record for  
5 the Office of Tax Appeals oral appearing for the appeal of  
6 Salton Sea Ventures, Inc. This is OTA Case Number  
7 18053175. We're in Cerritos, California on Friday  
8 January 24th, 2020. The time is approximately 12:16 p.m.

9 My name is Susanne Brown, and I am the lead  
10 Administrative Law Judge for the hearing. And my fellow  
11 co-panelists are Andrew Kwee and Jeff Angeja. First, I  
12 will ask the parties to identify themselves for the  
13 record, and we'll start with the taxpayer.

14 Ms. Hernandez, you can go ahead. Just state your  
15 first and last names and what your role here as  
16 representative.

17 MS. HERNANDEZ: Carmen Hernandez -- is this on --  
18 representing Salton Sea Ventures.

19 JUDGE BROWN: And for CDTFA, please.

20 MS. RENATI: My name is Lisa Renati. To my left  
21 is Jason Parker, and to his left is Christopher Brooks.

22 JUDGE BROWN: Thank you, everybody.

23 And is your client going to be joining you at the  
24 table?

25 MR. RIEGER: I'm here, but I wasn't going to

1 speak.

2 JUDGE BROWN: Okay. That is up to you. All  
3 right. I will just briefly revisit that we held a  
4 prehearing conference in this matter. And everyone should  
5 have received my prehearing conference minutes and orders  
6 that just briefly summarized what we discussed and  
7 confirmed, that the issue in this appeal is whether  
8 Appellant has shown that further adjustments are warranted  
9 to the audited understatements of reported taxable sales.

10 We discussed during the prehearing conference  
11 that neither party intends to call any witnesses. And we  
12 also discussed the exhibits -- the documentary exhibits,  
13 and everyone has submitted their exhibit list. And my  
14 office has prepared and sent you a courtesy copy of our  
15 exhibit binder that contains all of your documentary  
16 exhibits. And everyone should have received that. Okay.

17 And we have marked Appellant's Exhibits 1 through  
18 8. And we have marked CDTFA's Exhibits A through H. And  
19 it was my understanding during the prehearing conference  
20 that it didn't sound like anyone anticipated having any  
21 objection to admission of those documents at the hearing,  
22 so first I will just confirm.

23 Ms. Hernandez, do you have objection to admission  
24 of CDTFA's exhibits?

25 MS. HERNANDEZ: No.

1 JUDGE BROWN: And CDTFA, do you have any  
2 objection to admission of Appellant's exhibits?

3 MS. RENATI: No, we do not.

4 JUDGE BROWN: Okay. Then I will say that I will  
5 admit Appellant's Exhibits 1 through 8 and CDTFA's  
6 Exhibits A through H. Those are admitted into evidence.

7 (Appellant's Exhibits 1-8 were received  
8 in evidence by the Administrative Law Judge.)

9 (Department's Exhibits A-H were received in  
10 evidence by the Administrative Law Judge.)

11 JUDGE BROWN: All right. And I'll just briefly  
12 go over our schedule for our hearing today. And then we  
13 will proceed, and I'll hear your arguments. We agreed  
14 that Appellant will have up to 20 minutes to present its  
15 case, and the judges may ask questions. And then CDTFA  
16 will have up to 15 minutes to present its case, and the  
17 judges may also ask questions.

18 And then Appellant will have the opportunity to  
19 make a rebuttal argument. I believe I said that would  
20 also be up to 15 minutes. And then the judges may ask  
21 questions of either party. Does anyone have any questions  
22 about the timeline or the process of how this is going to  
23 proceed today?

24 MS. HERNANDEZ: No.

25 MS. RENATI: No.

1 JUDGE BROWN: Okay. Thank you. All right. Then  
2 if no one has questions and everyone is ready, then I will  
3 say that taxpayer may proceed with its presentation.

4 Ms. Hernandez, you have 20 minutes -- or up to 20  
5 minutes.

6

7

PRESENTATION

8 MS. HERNANDEZ: I originally started working on  
9 this audit in May of 2013, which Mr. Daniel Ibarra had  
10 started the audit before that. He was with CDTFA. We  
11 were going back and forth for a while since he didn't  
12 understand -- he didn't fully understand the audit or the  
13 sales tax returns. He also mentioned he was still in  
14 training. So his part of the audit still -- it took a  
15 while.

16 After that, it was re-audited again. I want to  
17 say about -- I think it was in October of 2015 because we  
18 kept on not agreeing with any audit findings because they  
19 weren't taking Schedule G into consideration in the  
20 SR Return. So the Schedule G consisted of all the prepaid  
21 sales tax on the gas dumped at the station which Salton  
22 Sea Ventures should be able to claim that. And they did  
23 so in the original tax returns, but they were erroneously  
24 done.

25 And that was my concern with the auditors that,

1     you know, those returns weren't correct, and the  
2     Schedule G had to be amended and the returns  
3     reconstructed. He didn't -- Mr. Daniel Ibarra didn't have  
4     any knowledge of that. So he said, "You would have to go  
5     back and ask and see if anyone else can help him with the  
6     portion."

7             Now, forwarding to 2015 on the first re-audit  
8     Schedule G still wasn't taken into consideration. So  
9     Salton Sea Ventures hired Mr. Patrick Leon, and we  
10    scheduled -- he scheduled a meeting with a couple of  
11    people from BOE -- I'm sorry not BOE -- well, formally BOE  
12    or CDTFA, to go over the Schedule G and understand the  
13    sales for themselves, and that was with Mr. Daniel, Casey,  
14    Stephen, and Anh of CDTFA.

15            They asked him to reconstruct the returns with  
16    the full back up from Soco, which is the gas distributor.  
17    So we did. But everything is in Excel because there's  
18    huge amounts of receipts and invoices and taxers and all  
19    that good stuff. After it was reconstructed, we submitted  
20    everything. And we had a board hearing or board meeting  
21    again, with Ms. Anh, Stephen and Casey. Daniel wasn't  
22    there.

23            And they decided not to take the reconstruction  
24    into reconsideration, even though the Schedule G was done  
25    erroneously from the beginning. And I told the auditor

1 back in 2013 that, you know, the credits weren't applied  
2 correctly because they weren't done correctly to begin  
3 with.

4 Fast forward to 2017 or '16. I believe it was  
5 Ms. Anh Do who concluded the second re-audit. So now it's  
6 the third time they're auditing. And this is due to them  
7 finding errors on their side -- on CDTFA's side, not on  
8 our side. We have complied with everything. They asked  
9 us to make payments -- monthly payments, signed forms left  
10 and right. We've done everything just to stay on track  
11 with everything they've asked for and -- to be in  
12 compliance.

13 So in 2016 Ms. Anh Do went through the re-audit  
14 again, and she did see the credits. She did state that  
15 she saw the credits, but the SG will not be taken into  
16 reconsideration because of statute of limitations. So  
17 what I'm asking is that -- I understand that the statute  
18 of limitations won't take Schedule G, but it was stretched  
19 out this far because of CDTFA not because of Salton Sea  
20 Ventures.

21 JUDGE BROWN: Does that conclude your  
22 presentation at this time?

23 MS. HERNANDEZ: Yes.

24 JUDGE BROWN: Okay. Now, CDTFA may make its  
25 presentation. Oh, actually, I guess I should stop for

1 questions first.

2 JUDGE ANGEJA: Not yet.

3 JUDGE BROWN: Not yet?

4 JUDGE KWEE: I'll wait until after CDTFA.

5 JUDGE BROWN: Okay. That sounds good.

6 Go ahead.

7 MS. RENATI: Okay. Thank you.

8

9 PRESENTATION

10 MS. RENATI: The Appellant operates a gas station  
11 with a mini-mart in Thermal, California, under Sellers  
12 Permit Number 101189123. At the same business address the  
13 Appellant also operates a cardlock fuel station as a  
14 distributor of fuel, including wholesale sales to other  
15 vendors. The Appellant was issued SG Account Number  
16 78020920, for the collection of the prepayment of tax from  
17 other vendors and a claim of credit for prepaid tax paid  
18 to their suppliers.

19 The department performed a sales and use tax  
20 audit of the retail sales account for the period of  
21 February 26th, 2009, through December 31st, 2011. The  
22 Department's audit findings were determined on  
23 March 6th, 2014. The Department also audited Appellant's  
24 separate SG account for the period of January 1st, 2010,  
25 through December 31st, 2011.

1           The audit of the SG account resulted in a credit.  
2           The audit of the SG account did not include periods in  
3           year 2009 because the Department did not obtain a timely  
4           waiver of statute of limitations. For that reason, the  
5           Department did not issue a Notice of Determination for  
6           Appellant's SG account for 2009.

7           Further, the Appellant did not timely file a  
8           claim for refund for the SG account for 2009. The time  
9           for filing a claim for refund for 2009 for Appellant's SG  
10          account has long expired. Pursuant to Revenue and  
11          Taxation Code Section 6902(a), a claim for refund must be  
12          filed within three years from the last day of the month  
13          following the close of the quarterly period for which the  
14          overpayment was made; within six months from the date the  
15          determination becomes final or within six months from the  
16          date of overpayment, whichever period expires the later.

17          In this case the period at issue is year 2009  
18          which is clearly outside of the deadlines provided by  
19          Section 6902, and for which no determination was ever  
20          issued. Therefore, there's no credit due to the Appellant  
21          on its SG account for 2009. And there is no refund  
22          available to the Appellant that would offset Appellant's  
23          sales and use tax liability in this appeal.

24          Appellant's Exhibits 5, 6, and 7 represent  
25          unverified reconstructed sales and use tax returns.

1 Source documentation has not been provided to verify the  
2 accuracy of these returns. In preparation for this  
3 hearing, the Department summarized the Appellant's  
4 reconstructive returns and compared the Appellant's  
5 proposed taxable measure and proposed total Schedule G  
6 credits with the original tax returns files, on Exhibit E,  
7 page 9 and 10.

8 The total taxable measure for the reconstructed  
9 returns is far greater than the amounts originally  
10 reported and are greater than the total audited taxable  
11 measure for the current audit findings. Specifically, the  
12 reported taxable measure for original returns, on  
13 Exhibit E, page 9, is \$25,491,000 -- \$400,941. The  
14 audited taxable measure for the audit findings on Exhibit  
15 E, page 17, \$27,715,297. But the total taxable measure  
16 for the reconstructive returns on line 11, if you add up  
17 all the line 12s, is \$31,649,239. This is a difference of  
18 about -- over \$3.9 million, which more than the audited  
19 taxable measure subject to this appeal.

20 Regarding the Schedule G credits for the  
21 reconstructive returns, the audited prepaid credits  
22 allowed in the audit were \$1,000,372 in tax on Exhibit E,  
23 page 52, Column F plus Column C. The prepaid tax credits  
24 requested for the reconstructive Schedule Gs, which is  
25 line 20, is \$1,332,167. The Department's audit findings

1 provide a greater Schedule G offset in the reconstructive  
2 returns by \$39,834.

3 The Department's audit findings are based on a  
4 reconciliation of the Appellant's profit and loss  
5 statements, transcribed on Exhibit E, page 41 to 44,  
6 supported by sale records transcribed on Exhibit E, page  
7 46 to 48. The Department's audit results are not only  
8 reasonable, but they are lower than the amount which would  
9 be due using Appellant's reconstructed returns.

10 Accordingly, the Department request the  
11 Appellant's appeal be denied. This concludes my  
12 presentation. I'm available to answer any questions.

13 JUDGE BROWN: Okay. Any questions?

14 JUDGE KWEE: Yes, just one. I'm sorry. Hello.  
15 Hi. I just want to make sure I understand your position.  
16 So the appeal before us is the sales and use tax account,  
17 and then there's an audited deficiency there. But then  
18 with your SG permit where there would be fuel sales, you  
19 have amended returns -- reconstructed returns which show a  
20 net claimed overpayment, and you want to offset that  
21 overpayment for the underpayment on your seller's permit;  
22 is that correct?

23 MS. HERNANDEZ: It's -- it boils down to that,  
24 but the Schedule G is part of the SR Return.

25 JUDGE KWEE: Right. The Schedule G for the

1 retail transactions and then the wholesale transactions  
2 are in there that -- the SG permit.

3 MS. HERNANDEZ: Well, it's all -- it's not just  
4 the wholesale on the Schedule G. That's not correct.  
5 It's -- it's all the fuel that was purchased. When they  
6 purchase fuel off that invoice, they pay a pre -- it's a  
7 prepayment that they pay, whether it's for wholesale or  
8 retail.

9 JUDGE KWEE: Okay. And -- but I'm just trying to  
10 understand the overpayment, the prepaid fuel tax credits  
11 that you're claiming, those -- is it -- are you alleging  
12 that it should have been under your sales and use tax  
13 account --

14 MS. HERNANDEZ: Yes.

15 JUDGE KWEE: -- or do you concede that -- so you  
16 believe that you're entitled to a credit for prepaid fuel  
17 tax under Schedule G of your sales and use tax account?

18 MS. HERNANDEZ: Yes, that's correct.

19 JUDGE KWEE: So let's say you're not -- so you're  
20 saying that the statute of limitations is not an issue  
21 because you should be allowed credit under your seller's  
22 permit?

23 MS. HERNANDEZ: I understand the statute of  
24 limitations, but what I'm saying is this audit was  
25 stretched out for so long, not by us not complying, not by

1 Salton Sea not complying, but by CDTFA re-auditing and  
2 re-auditing and -- and, you know, due to -- I don't want  
3 to say errors because it sounds bad -- but that's, you  
4 know, there are e-mails saying they found different  
5 things. They accidentally claimed tax twice.

6 And I'm not even fighting the total sales because  
7 we did go off their financials. I went off every single  
8 thing, which took forever, and I saw how they just  
9 estimated it. If you look at their Exhibit 4, page 1 of  
10 1, it's just broken down as estimates. That's fine. I  
11 don't have a problem with that.

12 My only concern is to be able to use the credits  
13 on Schedule G. It -- I don't feel it's Salton Sea's fault  
14 that the statute of limitations time passed when the audit  
15 kept on going for so many years, not because we asked for  
16 it to go for so many, but because CDTFA kept on, you know,  
17 finding --

18 JUDGE KWEE: Okay. So I'm just trying to see if  
19 you guys are both on the same page. And are you saying  
20 that you want to be allowed to claim these credits on  
21 Schedule G, but you -- normally, you understand that it  
22 would be claimed on the SG permit? Or are you saying that  
23 you should actually be entitled to claim it under SG under  
24 normal circumstances?

25 MS. HERNANDEZ: It should be claimed on the SR

1 return.

2 JUDGE KWEE: Okay. And -- because it's my  
3 understanding is CDTFA is saying that these credits should  
4 be claimed on the SG return, not Schedule G of the sales  
5 and use tax return. Am I clarify -- are we talking about  
6 the same thing?

7 MS. RENATI: Well, there are two things. One is  
8 the Schedule G on the SR permit. It's only for the  
9 prepaid sales tax on fuel that was sold at retail. And  
10 then the Schedule G for the SG permit would be where they  
11 would claim the prepaid tax on those that they sold at  
12 wholesale. So I think that we are talking both returns.

13 JUDGE KWEE: Okay.

14 MS. HERNANDEZ: If you look at Exhibit 5, page 5  
15 of 11, just for an example, if you look at the sales tax  
16 prepaid fuel where it says Schedule G, line 20?

17 JUDGE KWEE: I'm sorry. I'm still scrolling  
18 done.

19 MS. HERNANDEZ: It's okay. I know it's a lot.

20 JUDGE BROWN: Okay. Line 20.

21 JUDGE KWEE: Oh, what page is this on?

22 MS. HERNANDEZ: Page 5 of 11.

23 JUDGE KWEE: Oh, 5 of 11. Sorry.

24 JUDGE BROWN: It's page 12 of the PDF, if that  
25 helps.

1 JUDGE KWEE: Okay. Right. And so you're  
2 requesting -- if I understand correctly, you're requesting  
3 to claim -- let's see -- an amount on -- a deduction on  
4 line 20. And CDTFA is saying that the amounts that you  
5 claim are for sales or for wholesale transactions that  
6 should be claimed on the schedule to the SG permit not on  
7 the SR permit. Is that --

8 MS. HERNANDEZ: That is -- that does come from  
9 the Schedule G.

10 JUDGE KWEE: Right. Okay.

11 MS. RENATI: And if I can clarify, if you look at  
12 the instructions for preparing Schedule G -- I know those  
13 aren't included, but you can look them up -- it says,  
14 "Note. Only prepayments made on fuel sold at retail  
15 should be claimed on this schedule."

16 JUDGE KWEE: Okay.

17 MS. HERNANDEZ: Okay. So you'll see the  
18 schedule -- Schedule G, which is page 11 of 11 of  
19 Exhibit 5.

20 JUDGE KWEE: Okay.

21 MS. HERNANDEZ: Now, I know it's a little  
22 confusing, and this is what we went back and forth with --  
23 starting with Mr. Daniel Ibarra as well as all the other  
24 auditors -- is that it's -- CFN is wholesale. But the way  
25 it's conducted, it's really not wholesale. They

1       distribute the -- let's just say for an invoice, which is  
2       all the fuel that they dumped at the gas station, and  
3       Salton Sea Ventures still has to pay that invoice.

4               They don't pay it at a wholesale price without  
5       prepaid taxes. They pay the prepaid sales tax on those  
6       fuel -- on that fuel that was dumped. Then it's sold at,  
7       you know, when truck drivers have a CFN card or whatnot,  
8       the amount that's sold, it's still at retail. It's not at  
9       wholesale.

10              JUDGE KWEE: Okay. I understand the issue now.  
11       Thank you. And just to clarify it, since CDTFA is  
12       asserting that the claim for refund would be barred, did  
13       your client do anything prior to expiration of the fee up  
14       here that could be considered as filing a claim for  
15       refund, like filing an amended return, filing a form but  
16       not necessarily a claim for refund form. Have you done  
17       anything that you think could potentially be considered  
18       within the time period as filing a claim for refund for  
19       this amount?

20              MS. HERNANDEZ: We -- we did talk to Mr. Ibarra  
21       back then. Again, he had to get help because he was still  
22       in training for this. It was not something he fully  
23       understood. We did -- where was it? He just asked for  
24       more time. We did submit amendments. I don't think they  
25       were taken into consideration because everything is still

1 the same. Then after that it was just really just hanging  
2 on to whatever CDTFA would guide us on.

3 JUDGE KWEE: Okay. And in addition to this, are  
4 there any other issues or is the only issue amounts  
5 claimed on -- that you're requesting to claim on Schedule  
6 G of the SR permit?

7 MS. HERNANDEZ: Yeah. That's all it is.

8 JUDGE KWEE: Okay. Thank you. I understand.

9 MR. RIEGER: May I explain one thing, or am I  
10 allowed to testify?

11 JUDGE BROWN: Well, I guess he can appear as a  
12 representative of his own.

13 MR. RIEGER: All right. I'm 100 percent the  
14 owner, but I --

15 JUDGE BROWN: Right. Why don't you come up to  
16 the table, please.

17 MR. RIEGER: Okay. Will you swear me in?

18 JUDGE BROWN: If I can please have you state --  
19 into the microphone, state your name, your first and last  
20 name.

21 MR. RIEGER: Dennis Rieger, R-i-e-g-e-r. I'm the  
22 president of Salton Sea Venture. And --

23 JUDGE BROWN: Let me stop you for just a second.  
24 We had not identified any witness. Witnesses are supposed  
25 to be identified 15 days beforehand. So my inclination is

1       that I'm not going to have Mr. Rieger testify. I will  
2       just -- you're making arguments.

3               Okay. If you want to amend and say that you  
4       would like to have him testify as a witness, I can  
5       consider that, and I can let CDTFA respond.

6               MR. RIEGER: Well, I was going to explain the --

7               JUDGE BROWN: All right. Let me stop you for  
8       just a second. Are you asking that he testify or just  
9       make arguments?

10              MR. RIEGER: Just -- go ahead.

11              MS. HERNANDEZ: Yes, that he testifies is fine.

12              JUDGE BROWN: All right. Let me ask CDTFA. This  
13       is a late addition to call this witness. Do you have an  
14       objection?

15              MR. BROOKS: Can we take a brief break, Your  
16       Honor?

17              JUDGE BROWN: Yes. We can go off the record  
18       briefly.

19              (There is a pause in the proceedings.)

20              JUDGE BROWN: If we're ready, we can go back on  
21       the record?

22              MR. BROOKS: Yes, Your Honor.

23              JUDGE BROWN: Yes. Go ahead. Do you object to  
24       Mr. Rieger testifying as a witness?

25              MR. BROOKS: No, Your Honor.

1 JUDGE BROWN: Okay. If there's no objection, I  
2 will swear in Mr. Rieger as a witness. And I'm going to  
3 make the distinction that I was going to allow Mr. Rieger  
4 to make an argument as a representative as the owner of  
5 the company, but it would not be under oath just like the  
6 representatives here who are making arguments but not  
7 testifying under oath.

8 However, Mr. Rieger, if you are going to testify  
9 as a witness, I'll swear you in and your statements will  
10 be under oath. If you could stand, please.

11

12 DENNIS RIEGER,

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

16

17 JUDGE BROWN: Okay. Thank you. Go ahead. You  
18 may testify.

19

20 WITNESS TESTIMONY

21 MR. RIEGER: I have zero accounting background,  
22 and that's why I wasn't going to speak today. This is all  
23 very confusing to me as it was to the three different  
24 auditors that we went through to try to explain and try to  
25 get an understanding. CFN is a wholesale gas group. We

1     make a nickel a gallon for putting it through our pumps.  
2     They claim the sales and everything. And so that's where  
3     the whole argument on this whole audit is.

4             Daniel Ibarra didn't understand it, and the other  
5     two auditors didn't understand it. So, I mean, we went  
6     around and around, and I don't understand it as an owner.  
7     So, I mean, it was hard for all of us. So, I mean, that's  
8     why the audit took so long. And then they say, "Well,  
9     yeah. You paid that money in, but you can't take credit  
10    for it because the statute of limitations expired."

11            Well, it didn't expire as far as I'm concerned  
12    because from day number one, we were trying to get this  
13    solved and it was the BOE that kept postponing it,  
14    bringing in a different auditor to see if they can figure  
15    it out. We went through major audits and three different  
16    people. And then they just said, "Well, you're too late."

17            So -- but they did at one of our meetings say,  
18    "Yeah, go ahead and resubmit it," and all that, "and we'll  
19    take it under advisement." We resubmitted it, and they  
20    just still turned it down.

21            So -- and the reason they got our money is they  
22    took it out of our bank account. And I kept screaming,  
23    "You're taking more money than I'm even making a month."  
24    And finally, they stopped. But it -- it's -- as a layman  
25    and very naive, it was a tough struggle. That's basically

1 all I have to say.

2 JUDGE BROWN: Okay. I will -- if that concludes  
3 Mr. Rieger's testimony, I will now allow any  
4 cross-examination of the witness by CDTFA.

5 MS. RENATI: We have no questions.

6 JUDGE BROWN: Okay. Then I may have some  
7 questions. I guess I first want to make sure I understand  
8 taxpayer's argument. We kind of have gone over the  
9 statute of limitations. And Ms. Hernandez, I understand  
10 you're explaining you understand the statute of  
11 limitations. Is there some authority that you can point  
12 me to that would allow me to say that the statute of  
13 limitations -- the three-year statute of limitations here  
14 doesn't apply or was told or, you know, is there something  
15 that you want us to consider that has not been raised?

16 MS. HERNANDEZ: Yes, I would like for you guys to  
17 consider the time that it took the auditors to understand  
18 the audit first of all, before they even submitted their  
19 findings. After the first finding, they re-audited and  
20 submitted more findings on their side. Again, not errors  
21 from Salton Sea, but findings they found that they were  
22 duplicating taxes and sales and all that. So I  
23 shouldn't -- I don't think the statute of limitations  
24 should stand.

25 JUDGE BROWN: All right. And then I guess I want

1 to pick up on something that I heard CDTFA was arguing  
2 that -- well, actually, let me turn to CDTFA.

3 I understand you're arguing that, essentially,  
4 the taxpayer would be owing a greater amount if we  
5 considered their reconstructive returns?

6 MS. RENATI: That's correct.

7 JUDGE BROWN: Okay. Then, Ms. Hernandez, can you  
8 address why do -- I assume you disagree with that?

9 MS. HERNANDEZ: Yes, I do.

10 JUDGE BROWN: Can you just give me a synopsis of  
11 why that's incorrect?

12 MS. HERNANDEZ: Because I have not -- in the  
13 reconstructions our sales match. There's nothing that  
14 doesn't match. The only thing that doesn't match is the  
15 Schedule G. So there's no reason for the sales to be even  
16 more based on the reconstruction, unless they're not  
17 taking the resale into consideration, which is the CFN.  
18 That's the only thing I can think of. But it's on the  
19 reconstruction, and there's no reason for Salton Sea to  
20 owe more.

21 JUDGE BROWN: Co-panelists, do you have  
22 questions?

23 JUDGE ANGEJA: So at the risk of looking stupid,  
24 I will ask my question. And I can either try to ask the  
25 background facts to figure out if I have a valid question,

1 or I'll start the question and you can tell me why I'm  
2 crazy for thinking it.

3 For instance, I would want to know what's the  
4 time period of the liability that got -- of the deficiency  
5 that got assessed and didn't include this quarter?  
6 Because my question ultimately gets to, why not allow a  
7 time-barred offset? I'm sure there's a good reason  
8 because nobody seems to have mentioned it in my review of  
9 the file.

10 MS. RENATI: The audit of the SR permit included  
11 2000. It started -- it was -- let's see -- it was  
12 February 26, 2009, through December 31st, 2011 --

13 JUDGE ANGEJA: Okay.

14 MS. RENATI: -- which the Department got a timely  
15 waiver. The SG permit audit started later. And that one  
16 was for January 1st, 2010, through December 31st, 2011.

17 JUDGE ANGEJA: Okay. So the --

18 MS. RENATI: The Department didn't have a waiver  
19 for the 2009 waiver, so they couldn't include that. But a  
20 separate SG account requires a separate waiver of  
21 limitation.

22 JUDGE ANGEJA: The liability period that they  
23 want to offset the SG overpayment -- and I realize you  
24 challenged the measure of that as well. Let's just assume  
25 for our purposes of my question it's all related to retail

1 sales. And I know CFN is complicated to track that.  
2 Let's just assume it is. So it's otherwise available.  
3 Statute of limitations bars it. Would it apply to the  
4 2009 period? You can have an offset. You don't get a  
5 refund, but you can at least offset against an asserted  
6 liability. I think the Owens -- I forget the name of the  
7 case.

8 MS. RENATI: Well, and if you look at the audit  
9 work papers, the audit -- so when you do the Schedule G  
10 reconciliation, you're supposed to use schedule -- you're  
11 supposed to use what they report on their returns. And  
12 you're supposed to compare it to their gallons sold.

13 JUDGE ANGEJA: Right.

14 MS. RENATI: In this case, the Department used  
15 the ad hoc report. And the ad hoc report is our internal  
16 report that includes all purchases. So the Department has  
17 used -- for the lack of a better word -- the wrong report.  
18 They used a report that includes more sales than they are  
19 allowed to have on their SG credit for. So the Department  
20 has already given them that credit in 2009.

21 JUDGE ANGEJA: Okay. To the extent there is an  
22 offset possible, your position is that it's been allowed  
23 already.

24 MS. RENATI: It's already been allowed.

25 JUDGE ANGEJA: So okay. I don't have any more

1 questions.

2 JUDGE BROWN: Any questions? I think I would --  
3 technically, we are at the point of taxpayer's rebuttal.

4 Ms. Hernandez, do you have anything further that  
5 you would like to argue as a rebuttal, or have you covered  
6 everything?

7

8 REBUTTAL STATEMENT

9 MS. HERNANDEZ: Yes. She stated that 2009 -- the  
10 audit for 2009, again, she stated that they didn't use the  
11 SG. My argument is how are you going to complete an  
12 SR Return without the SG when that's the way to complete  
13 an SR Return, at least for gas stations. And also, the  
14 credits that were given, based on their audit -- based on  
15 CDTFA's audit, they're lower than the reconstructive. So  
16 the credits were not given -- not the correct credits, I  
17 should say, for 2009.

18 JUDGE BROWN: Okay. And that concludes your  
19 rebuttal?

20 MS. HERNANDEZ: Yes.

21 JUDGE BROWN: Okay. And anything further from  
22 CDTFA?

23 MS. RENATI: No.

24 JUDGE BROWN: Okay. All right. Then if I've  
25 heard all of the arguments, I will -- and everyone has

1 concluded their presentations, then I will say that this  
2 hearing is concluded. And as you all know we will now  
3 take the matter -- the panel will now take the matter  
4 under advisement, and we will issue a written decision  
5 within 100 days of today. Okay. So this matter is  
6 concluded, and I'm now going to call a short break of half  
7 an hour.

8 We're off the record in this matter.

9 (Proceedings adjourned at 12:50 p.m.)

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I, Ernalyne M. Alonzo, Hearing Reporter in and for  
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I have hereunto subscribed my name this 12th day  
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