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HEARING
OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Franchise
Income Tax Appeals Hearing of:

MARCO ANGULO SANCHEZ and
MARTHA CISNEROS ANGULO,

OTA Case No. 18093742

Appellants.

_____ /

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, FEBRUARY 27, 2020
11:50 A.M.

OFFICE OF TAX APPEALS
855 M STREET, SUITE 960
FRESNO, CALIFORNIA 93721

Reported by JANA A. GUNTER, CSR No. 7589

1 APPEARANCES

2
3 Panel Lead:

4 TERESA STANLEY, ADMINISTRATIVE LAW JUDGE
5 STATE OF CALIFORNIA
6 OFFICE OF TAX APPEALS
855 M STREET, SUITE 960
FRESNO, CALIFORNIA 93721

7 Panel Members:

8 SUZANNE BROWN, ADMINISTRATIVE LAW JUDGE
9 JOSHUA ALDRICH, ADMINISTRATIVE LAW JUDGE

10 For Appellants:

11 MARCO ANGULO SANCHEZ, MARTHA CISNEROS ANGULO,
MARVIN ANGULO

12 For the Department of Tax and Fee Administration:

13 MARIFLOR JIMENEZ, HEARING REPRESENTATIVE
14 JASON PARKER, HEARING REPRESENTATIVE
15 CHRISTOPHER BROOKS, TAX COUNSEL
400 R Street
West Sacramento, California 95798

16 Also Present:

17 DANA HOLMES, OMBUDSWOMAN
18 OFFICE OF TAX APPEALS

19 ROMINA ZARAGOZO, SPANISH INTERPRETER
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THURSDAY, FEBRUARY 27, 2020 - 11:50 A.M.

OMBUDSWOMAN HOLMES: Calling the case for -- the second case for Marco Angulo Sanchez and Martha Cisneros Angulo; 18093742. It's 11:50.

ALJ STANLEY: Thank you. I do things a little bit differently from Judge Kwee. I need to clear up a few things before we go on the record.

THE INTERPRETER: (Interprets to Witness.)
(Discussion off the record.)

ALJ STANLEY: We'll go on record in this matter. And since we have an interpreter, I will ask you to please state your name for the record.

THE INTERPRETER: My name is Romina Zaragozo.

ALJ STANLEY: Thank you. And please raise your right hand.

ROMINA ZARAGOZO,
English-Spanish Interpreter,
placed under oath by the Administrative Law Judge,
acted as Spanish interpreter for
MARCO ANGULO SANCHEZ.

ALJ STANLEY: We're hearing the appeal of Marvin Angulo Sanchez and Martha Cisneros Angulo, Case Number

1 18093742. The date is February 27th, 2020. We're in
2 Fresno, California, and it is 11:57 a.m.

3 I'm Teresa Stanley. I'll be the lead on this
4 case, but all the judges here are going to be full
5 participants in deciding this matter. I have Judge Josh
6 Aldrich and Suzanne Brown.

7 I'm going to ask the appellants to please identify
8 themselves for the record.

9 THE INTERPRETER: (Interprets to Witness.)

10 MR. MARCO ANGULO: Marco Angulo. I represent
11 Marquis Auto Sales.

12 MS. ANGULO: Martha Cisneros Angulo.

13 MR. MARVIN ANGULO: Marvin Angulo.

14 ALJ STANLEY: Thank you.

15 And for CDTFA?

16 MS. JIMENEZ: Good morning, Lead Judge and Panel
17 Members. My name is Mariflor Jimenez. To my left is Jason
18 Parker and to his left is Christopher Brooks. We are all
19 representing the CDTFA.

20 ALJ STANLEY: Thank you.

21 Without objection we're admitting Appellants'
22 Exhibits 1 through 33 into the record.

23 And CDTFA Exhibits A through L are admitted into
24 evidence without objection as well.

25 (Appellants' Exhibits 1-33 admitted into evidence.)

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(CDTFA's Exhibits A-L admitted into evidence.)

THE INTERPRETER: (Interprets to Witness.)

ALJ STANLEY: The issue that we have before us today is whether Appellants have shown that any adjustments are warranted to the audited understatement of reported taxable sales for Marquis Auto Sales.

And just to be clear, this audit period that we're dealing with today is January 1st, 2009, through December 31st, 2011.

You agree that's the issue?

MS. ANGULO: Yes.

ALJ STANLEY: And CDTFA?

MS. JIMENEZ: We agree.

MR. MARVIN ANGULO: Excuse me.

ALJ STANLEY: Yes.

THE INTERPRETER: (Interprets to Witness.)

MR. MARVIN ANGULO: On opening statements, you said "Marvin," but it was actually "Marco."

ALJ STANLEY: On the opening statement. Oh, on my Minutes and Orders, you mean?

MR. MARVIN ANGULO: Yes, yes.

ALJ STANLEY: You're Marvin; he's Marco. Right?

MR. MARVIN ANGULO: (Nods head.)

ALJ STANLEY: Okay. Yeah, I think I noted that both of you were present for the hearing minutes.

1 MR. MARVIN ANGULO: Okay. No problem. No
2 problem. Thank you.

3 THE INTERPRETER: (Interprets to Witness.)

4 ALJ STANLEY: So, I think we determined we didn't
5 need to have opening statements in this case.

6 In the event -- because all three of you may
7 speak, I'm going to ask that you all three be sworn in.
8 And instead of doing it one at a time like in the other
9 case, we'll just do it all at once, okay?

10

11 MARCO ANGULO SANCHEZ,

12 MARTHA CISNEROS ANGULO,

13 and MARVIN ANGULO,

14 placed under oath by the Administrative Law Judge,

15 were examined and testified as follows:

16

17 ALJ STANLEY: All right. At the prehearing
18 conference Mr. Marvin Angulo was representing the parties.

19 I don't know if you wanted to start, or if you
20 want the senior Mr. Angulo to begin?

21 MR. MARVIN ANGULO: Senior.

22 ALJ STANLEY: Okay. You may proceed.

23 (Discussion in Spanish between Interpreter and Taxpayer.)

24 THE INTERPRETER: "So, since they started doing
25 the audit, I said for somebody to speak Spanish because I

1 didn't communicate well.

2 "So, during those years there was a big recession.
3 So, I sold 15 to 20 cars a month. And they went down to
4 two to nothing, like no sales. And for that reason, I was
5 obligated to ask for money, ask for money from my friends
6 and family, and also credit cards. And then, also, my
7 parents lent me money from a house that they sold in
8 Mexico, and they let me borrow all of the savings that they
9 had.

10 "And other times, I had asked my friends and
11 family members to let me borrow money, and I would pay them
12 back, because they was stressed, and they would keep
13 lending me money.

14 "Okay. So, I had two accounts for the business,
15 and that's where -- that's the biggest mistake. Because I
16 would deposit it at the Chase account, and then my money, I
17 would deposit it at the Wells Fargo account. And that
18 money, they counted that money twice.

19 "And I wanted to explain to them, when they were
20 doing the audit, but they did not understand me. That's
21 why I had asked for a Spanish-speaking person. And I
22 continued to tell them that I needed somebody that spoke
23 Spanish, and he would say okay, but he never brought
24 anyone.

25 "And during that time, I would deposit checks from

1 finance companies, Thrift and Lobel Financial, money that
2 they would -- that they owed from old accounts.

3 "And then, also, my parents and my brothers
4 refinanced a house, and they let me borrow some money. My
5 son refinanced a car, and he let me borrow some money. I
6 had the hopes that it was going to be better and that I was
7 going to be able to pay everybody. So, as time went by, it
8 did not get fixed, but it got worse, and I kept getting
9 more and more in debt.

10 "When they did the audit, it was wrong because
11 they did it according to the deposits, not according to the
12 cars that I had. Most of that money that I would deposit
13 was borrowed money from one bank to another.

14 "So, I was under a lot of stress during that time,
15 and I had to go see the doctor because I had a lot of
16 depression, and I -- afterwards, I was not able to keep on.
17 And that's when I had to close the business, and that's
18 when I went bankrupt.

19 "And I want to clarify, the person that did the
20 audit, I gave him a lot of papers, and he did not return
21 them. Some he returned and others he didn't.

22 "When we would do the taxes of the cars that we
23 sold, so, we would pay the taxes on the quantity that we
24 would make, but we didn't receive all of it.

25 "So, we did the taxes, like, by hand because we

1 didn't have a program.

2 "And that's all."

3 ALJ STANLEY: Do either of the other witnesses
4 want to add to that?

5 MS. ANGULO: Yes. I want to say that it is true
6 that all this money that we borrowed, we couldn't pay back.
7 And then they came and did the audit, and they were, like,
8 counting the money that we deposited instead of -- instead
9 of the cars that we sold.

10 And, yeah, they should have sent somebody to speak
11 Spanish so they can understand my husband to see what was
12 going on so they can understand each other. But they never
13 did. And, I don't know, it was just too stressful. Here
14 we are now with this. I don't know.

15 MR. MARVIN ANGULO: And one of the things, that
16 they did used to sell, you know, 15, 20 cars a month, and
17 then it went down to two, three, or none, you know. And
18 they're charging us. They could clearly see we didn't
19 really have too many sales back then.

20 ALJ STANLEY: From the documentation that's
21 submitted to us, is there a place where we can see that
22 there were not sales occurring?

23 (Discussion in Spanish between Interpreter and Taxpayer.)

24 THE INTERPRETER: "So, when we would send the
25 quarters, there was the difference there."

1 (Sotto voce discussion amongst Appellants.)

2 THE REPORTER: Are we on the record?

3 ALJ STANLEY: Yes, this needs to be on the record.

4 MS. ANGULO: Okay. Like, we usually pay taxes
5 every quarter. And they can see the difference, like, from
6 a hundred thousand, that we only send, in 3 months, 30,000
7 or 20,000, a little bit.

8 (Discussion in Spanish between Interpreter and Taxpayer.)

9 THE INTERPRETER: "So, the person that did the
10 audit, he asked for a reason, and I told him because the
11 sales went down."

12 ALJ STANLEY: Well, I'm just looking for a little
13 more clarification on what evidence we have of what you're
14 saying.

15 In the other case that we had earlier this
16 morning, we had all the DMV sales listed, and that kind of
17 a list would have showed that you didn't have as many sales
18 in certain months during this time period. But I don't
19 know that we have anything similar in the file in this
20 case.

21 MR. MARVIN ANGULO: Yeah, yeah. There was nothing
22 turned in like that, but they were saying that, from the
23 quarterly taxes, there would be proof, but it was not
24 something we got and turned it in.

25 But the person who did do the audit did have those

1 papers, but it wasn't an exhibit.

2 ALJ STANLEY: And unfortunately, the Office of Tax
3 Appeals only has what's been submitted to us in the appeal
4 process.

5 THE INTERPRETER: (Interprets to Witness.)

6 ALJ STANLEY: But to ask a couple more follow-up
7 questions, you do have a Chase bank account and a Wells
8 Fargo account, and we have those statements.

9 When you testified that there were transfers from
10 one bank to the other, did you make direct transfers? Or
11 did you withdraw money and then deposit it into the other
12 account?

13 (Discussion in Spanish between Interpreter and Taxpayer.)

14 THE INTERPRETER: "So, I would take out from
15 the -- withdraw from the bank account, and then I would
16 deposit it to Wells Fargo. And I would do that as needed."

17 ALJ STANLEY: And would that have been a withdraw
18 from one and a deposit into the other on the same day or
19 pretty close to it?

20 (Discussion in Spanish between Interpreter and Taxpayer.)

21 THE INTERPRETER: "So, most of the times I would
22 make -- I would have -- I would write out a check from
23 Chase, and then I would deposit it to Wells Fargo account.

24 "And that's why I wanted to -- I was trying to
25 explain that to the person who did the audit, but he didn't

1 understand."

2 ALJ STANLEY: Okay. And you also testified to
3 several loans from friends and family members and
4 refinances of houses and cars. We have some promissory
5 notes in our file.

6 Do you have documentation of any of those other
7 transfers or loans?

8 MR. MARVIN ANGULO: Would that be, like, bank
9 account statements or something?

10 ALJ STANLEY: Something that would show us that
11 that was from loans instead of from sales.

12 (Discussion in Spanish between Interpreter and Taxpayer.)

13 THE INTERPRETER: "We have something called
14 Ezekuiel Nuno note."

15 THE REPORTER: I'm sorry. Who?

16 THE INTERPRETER: "Ezekuiel."

17 MR. MARVIN ANGULO: "Nuno."

18 (Discussion in Spanish between Interpreter and Taxpayer.)

19 THE INTERPRETER: "And then we have Efrain Rojas.
20 So, we have Ezekuiel, and then we have all that proof
21 there.

22 "And then Jose Luis Ramirez, he let me borrow
23 \$20,000."

24 ALJ STANLEY: Okay. Let me stop you for a minute,
25 because you did submit the ones that have promissory notes

1 attached or loan documents.

2 But when you talked about family members,
3 borrowing money, or Mr. Marvin Angulo refinancing his car
4 and loaning you money, those sorts of loans, we don't see
5 it in the documents that we have so that we can match them
6 up with the bank deposits.

7 MR. MARVIN ANGULO: And, also, you did ask about
8 the paperwork to show that the car sales went down.

9 I know that we're here now, but is that stuff we
10 could turn in at a later time? Or was all the exhibits due
11 by today?

12 ALJ STANLEY: We have the opportunity, if we
13 believe that it's necessary, to leave the record open for a
14 certain period of time. But let's wait until we're done
15 here, and we can discuss whether there are other documents
16 that you think you can provide that weren't provided today.

17 Do you need a minute? Do you need to go off the
18 record for a minute?

19 MR. MARVIN ANGULO: Yeah, just for a second.

20 THE INTERPRETER: (Interprets to Witness.)

21 (Discussion off the record.)

22 ALJ STANLEY: We'll go back on the record.

23 After your discussion, did you have anything that
24 you want to add that you want us to know?

25 MR. MARVIN ANGULO: We do have a few extra papers

1 that we would be able to have, showing that we got the
2 loans from people. From parents and a couple of people we
3 got loans, there might be a couple papers we can get,
4 showing that they gave us the loan.

5 ALJ STANLEY: And the dates.

6 MR. MARVIN ANGULO: Uh-huh.

7 ALJ STANLEY: What about documentation of the
8 drop-off in sales?

9 MR. MARVIN ANGULO: Yes. We could get -- yeah, we
10 could get documentation showing that the sales dropped off.

11 ALJ STANLEY: Okay. Let me hold off on that for a
12 moment and see if there are other questions that we can
13 have addressed here, and then let you present your closing
14 statement.

15 THE INTERPRETER: (Interprets to Witness.)

16 ALJ STANLEY: Judge Brown, do you have any
17 questions?

18 ALJ BROWN: I'll hold off.

19 ALJ STANLEY: Judge Aldrich?

20 ALJ ALDRICH: Hi. Thank you for coming today. I
21 just had a couple questions, trying to get a clear idea of
22 what was going on.

23 So, you were a used-car dealer, correct?

24 MS. ANGULO: (Nods head.)

25 ALJ ALDRICH: And you didn't sell any new cars at

1 all?

2 MS. ANGULO: No.

3 ALJ ALDRICH: So, when you started the business,
4 what kind of license or permits did you have to take out?
5 Do you recall?

6 MS. ANGULO: Yes. Like, for the state board and
7 that city license, the DMV, the dealer license.

8 THE REPORTER: What was the last one, the DMV --

9 MS. ANGULO: That would be the dealer license.

10 THE REPORTER: "Dealer." Thank you.

11 THE INTERPRETER: (Interprets to Witness.)

12 ALJ ALDRICH: I was just wondering if you can
13 describe a typical sales process. So, a customer comes in,
14 you guys come up with, like, a price on something, on a
15 car.

16 What happens next? What documentation do you
17 keep? How does it get negotiated, I guess.

18 (Discussion in Spanish between Interpreter and Taxpayer.)

19 THE INTERPRETER: "So, we would buy the cars, and
20 then we would check the cars, and then we would sell them."

21 ALJ ALDRICH: And repair them?

22 (Discussion in Spanish between Interpreter and Taxpayer.)

23 THE INTERPRETER: "We would check them to make
24 sure that they were fine."

25 ALJ ALDRICH: Okay. And I mean --

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Yeah. Go ahead.

MS. ANGULO: Yeah. Like, that's why we had that little shop to fix the cars before they take them; like, to check them to see if -- we changed the oil, the brakes and whatever it needs.

And if the customer -- when they buy it, they will bring it back and say, "Oh, my light is on; can you fix it." That's how we are doing the shop.

ALJ ALDRICH: Okay. But, so, maybe I'm not being specific enough.

MR. MARVIN ANGULO: I understand.

ALJ ALDRICH: Okay.

THE INTERPRETER: (Interprets to Witness.)

MR. MARVIN ANGULO: So, they'd come in. We find the car. We agree on the price. And then we write up the contract, you know, how much the monthly payment was or if they paid it all off in cash. Or sometimes we finance them. And then usually just a sales contract: How much was owed; how much was agreed on.

And then, you know, warranty papers, whatever the official papers are required by law to sell the car, you know, all of the California papers. There's like eight or ten of them. Get all the signatures. Just the regular sales process of an automobile.

ALJ ALDRICH: So, you know, when you sold 15 cars

1 a month during that time period, like, you would have,
2 like, 15 different files or dealer jackets --

3 MR. MARVIN ANGULO: Yes.

4 ALJ ALDRICH: -- in your shop for those cars?

5 MR. MARVIN ANGULO: Uh-huh.

6 THE INTERPRETER: (Interprets to Witness.)

7 ALJ ALDRICH: And then when you sold two or three,
8 it would drop down to those dealer jackets, right?

9 MR. MARVIN ANGULO: Yes.

10 ALJ ALDRICH: And, I guess, what happened to those
11 dealer jackets?

12 (Discussion in Spanish between Interpreter and Witness.)

13 THE INTERPRETER: "So, some of them we have, and
14 other ones we threw away."

15 ALJ ALDRICH: Okay. So, you had discussed --
16 Yes.

17 MS. ANGULO: We do have -- like, we still have
18 from, like, 10 years.

19 ALJ ALDRICH: So, 10 years back, you have.

20 MS. ANGULO: Yes, back.

21 ALJ ALDRICH: So, to 2010?

22 MS. ANGULO: Yeah, I think so. Right there in the
23 jacket it will say the price that we sold the car, how much
24 we charged for the smog, the DMV, and how much it will be
25 for us to sell the car.

1 THE INTERPRETER: (Interprets to Witness.)

2 ALJ ALDRICH: Okay. And you had talked a little
3 bit about some of the confusion you claim that the auditor
4 had with your case, was dealing with the two different bank
5 accounts and the transferring.

6 What was the business purpose of moving money from
7 Wells Fargo and Bank of America? Why was that happening?
8 Was one charging higher fees?

9 (Discussion in Spanish between Interpreter and Taxpayer.)

10 THE INTERPRETER: "Because we would deposit it in
11 Chase, and as needed, as the payments were needed, we would
12 transfer to Wells Fargo.

13 "But we gave all the copies and the bank
14 statements, we gave those to the person who did the audit."

15 ALJ ALDRICH: So, the Wells Fargo is kind of your
16 running account that you pay utilities and lease and, you
17 know, interest payments?

18 And the other one was serving a different purpose?
19 (Discussion in Spanish between Interpreter and Taxpayer.)

20 THE INTERPRETER: "Just so I have -- I had both of
21 them so that way I can have more of a clear -- a clear way
22 of, like, how my accounts were."

23 ALJ ALDRICH: Okay. So, then, I saw Exhibit 33.
24 It appears to be a filing of a Chapter 7 bankruptcy.

25 MS. ANGULO: Yes.

1 ALJ ALDRICH: What was the purpose of including
2 that as an exhibit?

3 MR. MARVIN ANGULO: It was just showing that the
4 accumulation of all of the loans and all the bad filing --
5 because this one -- you know, all the bad filing, it all
6 accumulated to a bankruptcy from the audits and the loans
7 and then the dropped car sales.

8 You know, everyone else -- a lot of car sales
9 closed at that time, but we were able to stay afloat. Even
10 General Motors got bailed out. We were able to stay afloat
11 from all the loans. And then all that just -- we were able
12 to keep going, and then eventually it fell, and we had to
13 file bankruptcy.

14 So, that was just included to show that that was
15 the end result.

16 THE INTERPRETER: (Interprets to Witness.)

17 ALJ ALDRICH: Okay. And I guess, so, in your
18 opening brief, there was a letter attached, from
19 January 15, 2009. It begins, "Marco Angulo," something
20 like that. I can pull it up.

21 Yeah, January 15, 2009. It involved a Lorenzo
22 Bovarillo."

23 (Discussion in Spanish between Interpreter and Taxpayer.)

24 THE INTERPRETER: "Yes, he was a friend of mine,
25 and he would let me borrow money."

1 ALJ ALDRICH: Okay. So, I guess I'm just trying
2 to understand what's happening in that transaction.

3 You're saying that's a promissory note?
4 (Discussion in Spanish between Interpreter and Taxpayer.)

5 THE INTERPRETER: "Yes."

6 ALJ ALDRICH: Okay. But it's also describing a
7 2004 Chevy, so....

8 (Discussion in Spanish between Interpreter and Taxpayer.)

9 THE INTERPRETER: "So, it was a truck that he gave
10 -- or that he bought, so that way I could sell. And he
11 wrote it down right there."

12 ALJ ALDRICH: Okay. So, you gave him some of the
13 cash for the truck and then later sold it, or tried to sell
14 it?

15 (Discussion in Spanish between Interpreter and Taxpayer.)

16 THE INTERPRETER: "Yes. We did sell it."

17 ALJ ALDRICH: Okay. All right. Thank you. I
18 think that's it.

19 ALJ STANLEY: I do have a follow-up to Judge
20 Aldrich's question, though.

21 With your Chase and Wells Fargo accounts, are you
22 saying that you deposited all of your auto sales into the
23 Chase account? Or did some of them get deposited into the
24 Wells Fargo account?

25 (Discussion in Spanish between Interpreter and Taxpayer.)

1 THE INTERPRETER: "So, only some of them, not all
2 of them."

3 ALJ STANLEY: Judge Brown?

4 ALJ BROWN: I'll wait until I've heard the whole
5 case.

6 ALJ STANLEY: All right.

7 Do you have anything that you would want to add to
8 your presentation of your case at this point?

9 (Discussion in Spanish between Interpreter and Taxpayer.)

10 THE INTERPRETER: "That I tried to keep on with
11 everything that I owed, and I was, like, struggling like
12 that for 5 years, 5, 6 years. And then after that, I gave
13 up because I was getting sick due to my stress."

14 ALJ STANLEY: If there's nothing else you want to
15 add at this time, I'll ask the Department to make their
16 presentation, and then I will give you an opportunity to
17 have the final response then.

18 You may proceed.

19 MS. JIMENEZ: The appellants were husband-and-wife
20 co-owners that operated a used-car dealership in Tulare,
21 California, with a start date of October 1st, 2008. This
22 audit is from January 1st, 2009, through December 31st,
23 2011.

24 There was no prior audit for this account.
25 However, the same business, the same exact location, also

1 operated as a sole proprietor under Mr. Marco Angulo
2 Sanchez from February 1993 through September 30th, 2008.

3 The sole proprietor account was audited twice.
4 The first one was January 1st, 1994, to December 31, 1996,
5 while the second audit was from April 1st, 1997, through
6 December 31st, 1999.

7 THE INTERPRETER: (Interprets to Witness.)

8 MS. JIMENEZ: For this case, the appellants
9 provided limited documents to support reported amounts.
10 The only records offered during the audit period were
11 federal income tax returns for years 2009 through 2011,
12 bank statements, sales contracts, and DMV report of sales.

13 The appellants did not provide a sales journal,
14 sales-tax worksheet, or summary records of sales.
15 Appellant stated that any such records were discarded after
16 preparation of the sales-and-use tax return, so we are
17 unable to verify the method of reporting.

18 I do want to point out that during the two prior
19 audits of the sole proprietorship, the appellants provided
20 sales-tax worksheets and sales journal.

21 So, based on the gross receipts and cost of goods
22 sold reported on the federal income tax return, the
23 achieved markups computed on this audit were 63.30 percent
24 for 2009, negative 7.31 percent for 2010, and negative
25 9.23 percent for 2011. And that would be your Exhibit F,

1 page 56. The negative markups happen when cost is higher
2 than sales.

3 THE INTERPRETER: (Interprets to Witness.)

4 MS. JIMENEZ: In addition, the federal income tax
5 return disclosed the appellant had a net loss of \$452 for
6 2009, another net loss of \$330,262 for 2010, and more net
7 loss of \$332,933 for 2011, for the business. So, analysis
8 of bank statements showed that the appellants' bank
9 statements consisted of a deposit of \$3.9 million \$1,453
10 {sic} and nonsales deposit of \$1,542,940.

11 The nonsales deposit are IRS refund, reversal of
12 overdraft fees, check reversal fees, and insufficient funds
13 fee fund. This category also includes loans from
14 individuals, commercial lender, and the brother's business.

15 If you look at Schedule R112-A, which is Exhibit
16 E, page 22, you will see that we subtracted the nonsales
17 deposit from the total deposit, then we netted out the
18 sales reported to the CDTFA. And if you look at column E,
19 we also deducted the reported sales tax amount to arrive at
20 the excess deposit. We then applied the 81.33 percent
21 taxable sales ratio -- I'll explain that later when we talk
22 about the bad debts -- to come up with an excess bank
23 deposit of \$982,416.

24 THE INTERPRETER: (Interprets to Witness.)

25 MS. JIMENEZ: Revenue Taxation Code Section 6481,

1 "Deficiency Determination," in relevant part provides that,
2 "If the Board is not satisfied with the returns or returns
3 of the tax or the amount of tax or other amount required to
4 be paid to the State by any person, it may compute and
5 determine the amount required to be paid upon the basis of
6 the facts contained in the return or upon the basis of any
7 information within its possession or that may come into its
8 possession."

9 I now would like to address the appellants'
10 Exhibits 1 through 24.

11 The David Lopez promissory note, that was adjusted
12 on Exhibit F, page 24, line 6.

13 Exhibit 2 was also adjusted on Exhibit F, page 24,
14 line 5.

15 Exhibit 3, there's a notation on Exhibit F, page
16 24 at line 27, that there's no proof that this was
17 deposited.

18 Exhibit 4, check from Jose Luis Ramirez, that's on
19 Exhibit F, page 24, line 1.

20 Exhibit 5, there was no proof that this was
21 deposited.

22 Exhibit 6, 2/14, the Ezekuiel Nuno note, there's a
23 comment on your Exhibit D, page 2, line 13 to 24.

24 Basically, appellants claim that the taxable excess deposit
25 included this nonsales deposit from Mr. Nuno. Appellants

1 claim that these were cash loans and provided copies of
2 loan agreements as support. However, appellants had no
3 documentation to indicate any repayment of the loans.

4 THE INTERPRETER: (Interprets to Witness.)

5 MS. JIMENEZ: Also, when we contacted Mr. Nuno, he
6 stated that the loan was actually approximately between 10-
7 to 15,000, and he did not sign any of these documents. And
8 Mr. Nuno was unable to provide any proof of loans, such as
9 cancelled checks.

10 Exhibit 15, there's no proof that this was
11 deposited.

12 Exhibit 16, there was a 10,000 adjustment.

13 And skip through....

14 The Gibbings loan. For the Gibbings loan,
15 Exhibits 21 through 23, those were considered as
16 nontaxable deposit, and you'll see that on your Exhibit F,
17 page 52.

18 Exhibit 24, adjustment was made on that, on
19 Exhibit F, page 55, for 39,000, and that's on page 38.

20 Appellant did not claim any bad-debt deduction in
21 its sales-and-use tax return, as well as their income tax
22 return. Appellant appeared to be reporting on a cash basis
23 for federal income tax purposes and, as such, no bad debts
24 were written off on the income tax return.

25 THE INTERPRETER: (Interprets to Witness.)

1 MS. JIMENEZ: Petitioner provided sales contracts
2 for 2009, 2010, and 2011, which showed that vehicles had
3 been repossessed and a loss sustained. We actually
4 scheduled these contracts on an actual basis and used the
5 pro rata method pursuant to Regulation 1642, which is the
6 "Bad Debt," to calculate any repossession loss.

7 First, to compute the net contract balance, we
8 subtracted contract payments for each vehicle from the
9 total contract balance recorded in the sales contract. We
10 removed the repossession value of the date of repossession
11 to calculate the allowable bad debts.

12 So, we allowed \$4266 for 2009 -- that's \$4,266,
13 and \$34,185 for 2010, and \$62,806 for 2011. Therefore, the
14 auditors allowed an unclaimed bad debt total of \$101,259
15 for the audit period.

16 The sales contract, which appellant provided to
17 support credits for the unclaimed bad debts disclosed a
18 total of \$240,482, taxable sales of \$195,583, nontaxable
19 sales of \$44,899. So, that \$44,899 includes sales tax
20 collected, license fee, and other miscellaneous exempt
21 sales for the 3 years combined. We used these numbers to
22 establish a taxable ratio of 81.33 percent.

23 THE INTERPRETER: (Interprets to Witness.)

24 MS. JIMENEZ: As I mentioned earlier, the taxable
25 ratio of 81.33 percent was applied to the excess deposits

1 to establish the taxable excess deposits of \$982,416 for
2 the audit period.

3 As far as bad debts, subdivision A of Regulation
4 1642, "Bad Debts," explained that, in general, "A retailer
5 is relieved from liability for sales tax or from liability
6 to collect use tax insofar as the measure of the tax is
7 represented by accounts found worthless and charged off for
8 income tax purposes, or if the retailer is not required to
9 file income tax returns, and the retailer's income is not
10 reported in another person's return, charge-off in
11 accordance with generally accepted accounting principle. A
12 retailer may claim a bad-debt deduction provided that the
13 sales tax or amount of use tax was actually paid to the
14 State."

15 Subdivision E of Regulation 1642 explains that,
16 "In support of deductions or claims for credit for bad
17 debts, a retailer must maintain adequate and complete
18 records showing, one, the date of the original sale; the
19 name and address of the purchaser; the amount that the
20 purchaser contracted to pay; four, the amount at which the
21 retailer paid tax; five, the jurisdiction for the local tax
22 and district taxes were allocated; six, all payments or
23 other credits applied to the account of the purchaser;
24 seven, evidence that the uncollectible portion of gross
25 receipts on which tax was paid was actually being legally

1 charged off as bad debts in accordance with Regulation
2 1642; eight, the taxable percentage of amount charged off
3 as a bad debt properly allocated to the amount on which the
4 retailer reported and paid tax."

5 THE INTERPRETER: (Interprets to Witness.)

6 MS. JIMENEZ: Based on the evidence presented, the
7 Department concludes the excess bank deposit of the amount
8 of \$982,416 is reasonable, fair, and accounts for all
9 vehicles sold. We also allowed a bad-debt credit for a
10 \$101,257. Therefore, the appellants' appeal should be
11 denied.

12 This concludes my presentation. I'm available to
13 answer any questions.

14 ALJ STANLEY: I've got one before I ask my panel
15 members.

16 The Department addressed bad debts and the
17 regulation relating to bad debts. In this case, however,
18 for the 2009 through 2011, you're not -- you don't appear
19 to be arguing that they didn't consider all of the bad
20 debts.

21 Am I correct?

22 THE INTERPRETER: (Interprets to Witness.)

23 MR. MARVIN ANGULO: Yeah. One of the bigger
24 things is they're counting both of our bank accounts as our
25 income, when the money was being transferred in. So, it's,

1 you know, it's really inflated, that number.

2 ALJ STANLEY: So, what you're arguing in this
3 particular case, not the other one that we heard earlier,
4 is that the bank deposits themselves include amounts --

5 MR. MARVIN ANGULO: Like double, double counted.

6 ALJ STANLEY: Okay. Just a clarification. Thank
7 you.

8 ALJ BROWN: So, I'll jump in and just clarify.

9 Does that mean that you are not -- does that mean
10 that, for this case, you are not arguing that there are
11 additional bad debts to be written off?

12 THE INTERPRETER: (Interprets to Witness.)

13 MR. MARVIN ANGULO: Yeah, there are additional bad
14 debts on this, and just overall deductions that should have
15 been taken that were not taken, just because of not knowing
16 how to do it, not knowing how to file taxes properly.

17 So, there are bad debts that should be accounted
18 for that, too.

19 ALJ STANLEY: I didn't see anywhere in your
20 briefing of documents, though, that you were disputing the
21 credit and allowances that they gave you for bad debts
22 already. They gave you \$101,257 during the audit period
23 for bad debts that you had proved at the time.

24 So, I didn't see anything in what you've presented
25 in this case that you were disputing that amount. Just the

1 bank deposits, correct?

2 MS. ANGULO: Yeah. We're really concerned about
3 the way they did the audit. Like, instead of the sales,
4 they did it, like, from the deposits, and they want us to
5 pay taxes on the deposit, not on the cars that we sold.

6 THE INTERPRETER: (Interprets to Witness.)

7 ALJ STANLEY: All right. I think I understand.
8 Go ahead, Ms. Brown.

9 ALJ BROWN: So, we understand that argument, and
10 we are just trying to figure out, were there any bad debts
11 that you were saying weren't accounted for in this case,
12 for this audit period?

13 And, if so, can you point us to any of your
14 exhibits that support that.

15 MR. MARVIN ANGULO: That would be, like, a repo or
16 something like that, right? Something like that?

17 ALJ BROWN: Uh-huh.

18 MR. MARVIN ANGULO: Yeah. Just in this one
19 Ezekuiel Nuno gentleman, he has originally invested over,
20 like, 150,000 or so, in just one person.

21 THE INTERPRETER: (Interprets to Witness.)

22 ALJ STANLEY: Okay. I don't think we need to
23 belabor that. I think we do understand that your case for
24 2009 through 2011 relates only to the bank deposits and
25 your allegation that they were double counting, in some

1 respects, and were not taxable sales.

2 MR. MARVIN ANGULO: Okay.

3 ALJ STANLEY: Okay. Thank you.

4 Any other questions?

5 ALJ BROWN: I do.

6 I guess I wanted to ask about -- I'll ask the
7 appellants about, for example, some of the loan documents
8 that don't have the signatures of both the creditor and the
9 debtor.

10 Let me see if I can point to one.

11 (Discussion in Spanish between Interpreter and Taxpayer.)

12 THE INTERPRETER: "For which person?"

13 ALJ BROWN: There are some documents that are
14 signed by one person but not the other person.

15 THE INTERPRETER: "Because I had put all the loans
16 together."

17 (Sotto voce discussion amongst Appellants.)

18 MS. ANGULO: He said that maybe the page that he
19 signed -- because there were two pages; they tell you to
20 keep one, and he give him another one maybe.

21 But a loaner said his name....

22 MR. MARVIN ANGULO: Yeah. It was just something
23 like that, that they might have kept one of them, and he
24 kept the other one. We got the originals. I'm not sure
25 why they didn't sign it.

1 THE INTERPRETER: (Interprets to Witness.)

2 ALJ BROWN: Do you know why Mr. Nuno would have
3 told the auditor that he didn't loan as much money as the
4 documents indicate?

5 (Discussion in Spanish between Interpreter and Taxpayer.)

6 THE INTERPRETER: "I don't know why, but he let me
7 borrow that amount."

8 MR. MARVIN ANGULO: "A lot of it was in cash and
9 not checks."

10 THE REPORTER: Thank you.

11 ALJ BROWN: I guess --

12 MR. MARVIN ANGULO: And he might have been just
13 trying to hide stuff because he was getting interest on his
14 loans. So, I'm not sure if he might have been trying to
15 hide his end of the bargain.

16 ALJ STANLEY: Judge Aldrich?

17 ALJ ALDRICH: This question is for the Department.
18 And, so, in addressing Exhibits 1 through 24, could I bring
19 your attention to Exhibit 3?

20 And you mentioned that this wasn't accounted for?
21 Can you go into that a little bit?

22 THE INTERPRETER: (Interprets to Witness.)

23 MS. JIMENEZ: Yes. We actually looked at the bank
24 statements, and we did not find any proof that this
25 particular transaction was deposited.

1 ALJ ALDRICH: Okay. Because that exhibit, it
2 looks like he paid money -- that was the one I had asked
3 him about previously.

4 But it sounds like what happened -- and I don't
5 know -- that he was giving money to Lorenzo Bovarillo in
6 exchange for the right to sell his truck, and Bovarillo was
7 floating a loan on it. Right? I mean, I don't know.

8 So, would we be looking for a withdrawal or
9 deposit or the corresponding deposit of, like, after the
10 sale? He indicated that he had sold it.

11 I'm just concerned -- to clarify, I'm just
12 concerned that maybe, instead of addressing it as a
13 deposit, it was actually a withdraw, because it sounds like
14 he used that \$8,000 to acquire some sort of rights to a
15 truck.

16 Would that have shown up in the bank records
17 or....

18 MS. JIMENEZ: It will show up on the bank records
19 as a withdrawal, like you said, but we're looking more at
20 the deposit.

21 ALJ ALDRICH: Okay.

22 THE INTERPRETER: (Interprets to Witness.)

23 MS. JIMENEZ: And we're estimating the taxable
24 sales.

25 ALJ ALDRICH: All right.

1 (Discussion in Spanish between Interpreter and Taxpayer.)

2 THE INTERPRETER: "So, most of the money that I
3 would receive, I would not deposit right away. I would
4 deposit as needed."

5 ALJ ALDRICH: Okay.

6 ALJ STANLEY: Judge Brown, do you have any more
7 questions?

8 ALJ BROWN: No, I don't.

9 ALJ STANLEY: Okay. There are no more questions
10 from the panel.

11 Does the Department have any questions for the
12 appellants?

13 MS. JIMENEZ: No, we don't. Thank you.

14 ALJ STANLEY: Okay. So, I'm going to give you
15 time to summarize your case and have the final word.

16 MR. MARVIN ANGULO: A lot of this comes down to
17 that bad accounting, not keeping -- a lot of it was just
18 off word, handshakes, that the money transaction was
19 happening. A lot of that stuff is where we don't have the
20 proof of that, just because it was a lot of word and
21 handshakes just because it's been going on for so many
22 years.

23 THE INTERPRETER: (Interprets to Witness.)

24 MR. MARVIN ANGULO: And a lot of the deposits that
25 they count in the bank would be moved from place to place

1 just so that, like, a check don't bounce or something. So,
2 it's looking like we're making more money than we actually
3 are.

4 And there were also deductions for the personal
5 taxes, when they were sole proprietors, that they didn't
6 claim just because they weren't, you know, tax people.

7 It comes down to a lot of bad accounting, not
8 keeping accurate records, and a lot of cash that -- just
9 transferred by cash, not necessarily checks or things like
10 that.

11 ALJ STANLEY: Okay. At this point are you asking
12 that we keep the record open, you believe you have further
13 documents that would be relevant to this 2009 through 2011
14 audit period?

15 THE INTERPRETER: (Interprets to Witness.)

16 (Sotto voce discussion amongst Appellants.)

17 MR. MARVIN ANGULO: We could come up with a couple
18 more paperwork showing that we weren't selling all those
19 cars. We would come up with paperwork like that. There
20 would be a couple.

21 And maybe we might be able to get something
22 proving that we weren't selling cars, and maybe a few more
23 hard copies of -- showing that we got loans from people.

24 ALJ STANLEY: Okay. So, you would ask that we
25 hold the record open?

1 MR. MARVIN ANGULO: Yes, please.

2 ALJ STANLEY: For how long? How long do think it
3 would take you to get that?

4 MR. MARVIN ANGULO: A month?

5 ALJ STANLEY: Okay.

6 MR. MARVIN ANGULO: Or 2 weeks. Whatever is --

7 ALJ STANLEY: I'll hold it open for 30 days.

8 MR. MARVIN ANGULO: Okay.

9 ALJ STANLEY: And in the event that additional
10 documents are submitted to the Office of Tax Appeals, we
11 need to allow the CDTFA to respond to them and say whether
12 or not they're relevant to the appeal and have any effect
13 on it.

14 How many days -- would you be able to do that
15 within 30 days after the documents are received?

16 MS. JIMENEZ: 30 days should work.

17 THE INTERPRETER: (Interprets to Witness.)

18 ALJ STANLEY: So, I'll issue an order that allows
19 you 30 days to submit the additional documents and allows
20 the Department 30 days after that to respond.

21 At that point, the record will be closed, and we
22 will make a decision that is based on what we have
23 submitted in our own files.

24 MR. MARVIN ANGULO: And then, so, for the bank
25 statements, I know we don't have all the bank statements

1 here.

2 Would that be pretty good, too? Like indication
3 showing that, more or less, around the same times movements
4 are going on?

5 ALJ STANLEY: What I have in Exhibit 17 shows that
6 there are partial Chase statements. I don't see any for
7 2009. We have all of 2011, and we have some of 2010.

8 So, I don't know if you think that would be
9 helpful.

10 MR. MARVIN ANGULO: Okay. So, whatever is most
11 helpful, we could turn in still.

12 ALJ STANLEY: It looks like we have all of the
13 Wells Fargo bank statements for this audit period.

14 MR. MARVIN ANGULO: Okay.

15 THE INTERPRETER: (Interprets to Witness.)

16 ALJ STANLEY: Okay. After CDTFA has had its
17 30 days to respond, like I said, we will close the record,
18 and then the panel will deliberate on the matter and issue
19 a written opinion within a hundred days of that date.

20 MS. ANGULO: Excuse me. Where are we going to
21 send the papers?

22 ALJ STANLEY: Pardon?

23 MS. ANGULO: Where are we going to send the copies
24 to?

25 ALJ STANLEY: The Office of Tax Appeals, the same

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place that you've been sending them.

MR. MARVIN ANGULO: The e-mail address is good?

ALJ STANLEY: Yes.

MR. MARVIN ANGULO: Okay.

ALJ STANLEY: Are there any other issues or questions from the appellants?

MS. ANGULO: The only thing is they want us to pay taxes on the deposit and not on the sales. So, we're going to send you those forms of taxes.

ALJ STANLEY: Do you have any other issues or questions for the Department?

MS. JIMENEZ: No issues.

ALJ STANLEY: Okay. I thank everyone for coming here and participating today.

MR. MARVIN ANGULO: Thank you for your time, very much so appreciated.

THE INTERPRETER: (Interprets to Witness.)

(Whereupon, the proceedings concluded at 12:55 p.m.)

1 REPORTER'S CERTIFICATE

2
3 I, Jana A. Gunter, a Certified Shorthand Reporter
4 in and for the State of California, duly appointed and
5 commissioned to administer oaths, do hereby certify:

6 That I am a disinterested person herein; that the
7 foregoing hearing was reported in shorthand by me,
8 Jana A. Gunter, a duly qualified Certified Shorthand
9 Reporter of the State of California, and thereafter
10 transcribed into typewritten form by means of
11 computer-aided transcription.

12 I further certify that I am not of counsel or
13 attorney for any of the parties to said hearing or in any
14 way interested in the outcome of said hearing.

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 27th day of March, 2020.

17
18
19 _____
20 JANA A. GUNTER
21 Certified Shorthand Reporter
22 License No. 7589
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25