

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
HAILAH S. ERAGA,) OTA NO. 18124074
)
)
) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, April 21, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead: ALJ JOSHUA ALDRICH
Panel Members: ALJ ANDREW WONG
ALJ SHERIENE RIDENOUR

For the Appellant: HASSEN MOHSEN

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

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I N D E X

E X H I B I T S

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1 Cerritos, California; Tuesday, April 21, 2020

2 1:08 p.m.

3

4 JUDGE ALDRICH: Hi. This is Judge Josh Aldrich.

5 Can everyone hear me all right now?

6 MS. RENATI: Yes.

7 MR. MOHSEN: This is Mr. Mohsen, yes.

8 JUDGE ALDRICH: Okay. So I believe everyone was
9 here. And if we're ready to proceed -- I will state my
10 name each time that I speak, and I ask you to identify
11 yourself each time you speak. Because of ongoing concerns
12 pertaining to coronavirus COVID-19 and consistent with the
13 Governor's executive order in 2520, the Office of Tax
14 Appeals has decided that it is in the public's best
15 interest to move the Office of Tax Appeals' April calendar
16 to telephonic hearings.

17 We're holding these hearings telephonically with
18 agreement of both the taxpayer and the agency's
19 representatives, and this change will not impact the fair
20 and objective hearings of the tax appeals. This hearing
21 is being conducted entirely electronically. All
22 participants, including the Administrative Law Judges, are
23 dialing into this hearing. The audio will be live
24 streamed to the public, and a stenographer will transcribe
25 the audio of the hearing.

1 I apologize for the delay. There was a technical
2 issue at the beginning where there was too much reverb.
3 But hopefully now everyone can hear me just fine.

4 Our stenographer, Ms. Alonzo, is using her
5 equipment to take down everything that's being said on the
6 record. To help us make a clear record that can be easily
7 understood when read, I ask the following:

8 Begin any statement by stating your name. Speak
9 slowly and clearly into the microphone. Please do not
10 interrupt when someone is speaking. It's common courtesy,
11 and it's easier for Ms. Alonzo to perform her work. And
12 please do not engage in casual conversation. If a comment
13 can be heard through the microphone, Ms. Alonzo will
14 report it. If Ms. Alonzo cannot hear, understand, or
15 identify someone, she has permission to interrupt at any
16 time.

17 As a quick point of clarification, we are the
18 Office of Tax Appeals. We're a separate agency from the
19 other Department charged with administering the tax
20 programs. I'm the lead Administrative Law Judge for
21 purposes of conducting the hearing. I am joined by Judges
22 Andrew Wong and Sheriene Ridenour.

23 While I'm the lead for purposes of conducting
24 this hearing, we three will deliberate and decide all the
25 issues presented. Each of us will have an equal vote in

1 those deliberations.

2 We are opening the record in the appeal of
3 H. Eraga doing business as Ideal Market before the Office
4 of Tax Appeals, Case Number 18124074. This hearing is
5 being convened telephonically on April 21st, 2020, at
6 1:00 p.m. [sic]. The hearing location is Cerritos,
7 California.

8 Should you experience connectivity issues, please
9 try to connect as soon as possible. As a preliminary
10 matter, the Notice of Hearing that went out identified a
11 different hearing date and time. We ask the parties'
12 agreement to move the hearing from April 23rd to
13 April 21st because of a scheduling conflict. My
14 understanding is that both parties consented to this
15 calendar change.

16 Appellant's representative, is that correct?

17 MR. MOHSEN: That's correct, Mr. Mohsen.

18 JUDGE ALDRICH: Okay. And representative for the
19 Department, is that correct?

20 MS. RENATI: Yes, it is correct.

21 JUDGE ALDRICH: So for the Appellant, could you
22 please state your appearance. Could you give us your
23 name, Mr. Mohsen, and who you are representing.

24 MR. MOHSEN: Oh, yes. Yes. I apologize. Yes.
25 My name is Hassen E. Mohsen. I'm the representative for

1 Hailah Eraga, DBA Ideal Market.

2 JUDGE ALDRICH: Thank you. And for the
3 Department, may I have your appearances.

4 MS. RENATI: This is Lisa Renati with California
5 Department of Tax and Fee Administration.

6 MR. PARKER: And Jason Parker with the Department
7 of Tax and Fee Administration.

8 MR. BROOKS: And Christopher L. Brooks, counsel
9 for Respondent.

10 JUDGE ALDRICH: This is Judge Josh Aldrich again.
11 Thank you. Just to make sure we're all on the same page,
12 the issue before us is whether Appellant has shown that
13 adjustments are warranted to the understatement of
14 reported taxable sales; is that correct?

15 Appellant? Mr. Mohsen?

16 MR. MOHSEN: Yes, that's correct.

17 JUDGE ALDRICH: And Department, is that correct?

18 MS. RENATI: Yes.

19 JUDGE ALDRICH: Thank you.

20 So we previously marked proposed Exhibits A
21 through C for the Respondent, CDTFA, on the
22 April 3rd, 2020, minutes and orders, and Appellant has not
23 identified any exhibits.

24 Are there any objections to the admission of the
25 proposed exhibits from Department, Mr. Mohsen.

1 MR. MOHSEN: No. Can you indicate what those --
2 what those items were again?

3 JUDGE ALDRICH: Yeah. So the exhibit index
4 indicates there's a -- three Exhibits A, B, and C. And I
5 believe there is -- one second. So Notice of
6 Determination is pages 1 through 4. The audit work
7 pages -- audit work papers are pages 5 through 156, and
8 the Decision and Recommendation is pages 157 through 165.

9 MR. MOHSEN: Okay. And then you're asking that
10 whether or not we agree with -- with that documentation
11 or --

12 JUDGE ALDRICH: It's not that you -- whether or
13 not you agree -- sorry, this is Judge Aldrich again -- but
14 it's whether or not you object to their being admitted
15 into the evidence.

16 MR. MOHSEN: Oh, no. They're not objected from
17 being admitted to -- as evidence. No.

18 JUDGE ALDRICH: Okay. No objections were raised,
19 therefore, Exhibits A through C are admitted as evidence
20 into the record.

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

23 JUDGE ALDRICH: And no additional exhibits have
24 been presented today; is that correct, Mr. Mohsen?

25 MR. MOHSEN: Well, there are no additional

1 exhibits brought forth, but there are discussion items
2 that we've tried to discuss with the Department of Tax and
3 Fee Administration, and we haven't received a response.
4 So I'm not sure whether or not we should bring that forth
5 to this conference, or if that information is actually
6 still in their hands.

7 JUDGE ALDRICH: Well, as we're a separate agency,
8 we may not have received what you're referring to. Can
9 you identify that a little bit more? Are you referring to
10 the video that was submitted in the response to the
11 additional briefing letter?

12 MR. MOHSEN: Exactly. Exactly.

13 JUDGE ALDRICH: And so what are you asking? Are
14 you asking that be included as an exhibit or --

15 MR. MOHSEN: If it hasn't been so, then yes, that
16 would be something that is necessary to be included as an
17 exhibit.

18 JUDGE ALDRICH: This is Judge Aldrich again. To
19 the Department do you have any objection to the admission
20 of the video that was submitted in response to the
21 additional briefing letter?

22 MS. RENATI: No. No objection.

23 JUDGE ALDRICH: Having --

24 MS. RENATI: Wait just a second. Hold on a
25 second.

1 JUDGE ALDRICH: Yeah.

2 MS. RENATI: I'm going to rescind what I -- this
3 is Lisa Renati. I'm going to rescind what I just said,
4 and we're going to object on the grounds that they did not
5 timely submit the exhibit as requested in the prehearing
6 orders. And so we're going to object to the inclusion of
7 the video at this time.

8 JUDGE ALDRICH: Okay. Mr. Mohsen, do you have a
9 response for Department's objection?

10 MR. MOHSEN: Yes. I -- we -- we submitted the
11 documentation. I'm looking at proof that this was
12 submitted. I actually have a U.S. postal tracking number.
13 And it seems like the CDTFA responded stating that they
14 would like to have that information resubmitted, and that
15 was done so. They asked that that be resubmitted before
16 August 20th of 2018.

17 This was a letter dated August 3rd by Karen
18 Heads, Appeals Conference Auditor, and that was
19 resubmitted. So the information was provided. And for
20 some reason, the Department actually stated that there was
21 an issue with opening the file, and they wanted it to be
22 resubmitted via USB drive.

23 JUDGE ALDRICH: Okay. So did you -- Mr. Mohsen,
24 did you receive a copy of the prehearing conference notice
25 and also the minutes and orders of the prehearing

1 conference.

2 MR. MOHSEN: I have the procedures here of the
3 conference. There's just a Notice of Hearing and -- is
4 that -- is that a document that was dated on March 26th of
5 2019 that also arrived with a CD?

6 JUDGE ALDRICH: The prehearing orders were dated
7 March 13th, 2020, and the minutes and orders prehearing
8 conference, that's dated April 3rd, 2020. Will you
9 please --

10 MR. MOHSEN: I'm going through my records.

11 JUDGE ALDRICH: -- e-mail address for me,
12 Mr. Mohsen? Sorry.

13 MR. MOHSEN: Yes. My e-mail address is my whole
14 name, so h-a-s-s-e-n-e-m-o-h-s-e-n at gmail.com.

15 JUDGE ALDRICH: And you're saying you didn't
16 receive those?

17 MR. MOHSEN: I'm going through my file here, and
18 I have a document dated April 15th from the Office of Tax
19 Appeals. And it just looks like procedures of how to go
20 through the conference. These minutes that you're
21 referring to, I don't see anything dated, anything in 2020
22 other than these documents.

23 So I'm not sure if they were sent to the taxpayer
24 or sent to our office. I apologize I don't -- I don't see
25 any other documents dated in 2020. I have documents in

1 2019.

2 JUDGE ALDRICH: Could you hold for just a moment?

3 MR. MOHSEN: Oh, yes.

4 JUDGE RIDENOUR: Hello. This is Judge Ridenour.

5 I would like to request a five-minute break, if that's
6 okay, so we can go over the situation together with the
7 panel?

8 MR. MOHSEN: That's fine with me.

9 MS. RENATI: This is Lisa Renati, that's no
10 objection.

11 JUDGE RIDENOUR: Okay. Thank you.

12 (There is a pause in the proceedings.)

13 JUDGE ALDRICH: This is Judge Aldrich again.
14 Make sure everybody is back on the line after the
15 five-minute recess.

16 Mr. Mohsen, are you present?

17 MR. MOHSEN: Yes.

18 JUDGE ALDRICH: And Ms. Renati, Mr. Parker, and
19 Mr. Brooks, are you present?

20 MS. RENATI: Yes.

21 MR. PARKER: Yes.

22 MR. BROOKS: Yes, Your Honor.

23 JUDGE ALDRICH: Okay. So this is
24 Judge Josh Aldrich. I'm going back on the record.

25 So we have an objection to the admission of a

1 video of the Pitco video that was admitted in response to
2 the additional briefing request. I'm going to overrule
3 the objection based on the fact that it's relevant. The
4 party -- or the Department had an opportunity to review
5 the video. And in addition to that, there was an OTA
6 legal notice 2020-01 that was issued March 18th, 2020, on
7 our website.

8 And I think it was -- but anyhow, it grants a
9 60-day extension to deadlines, and it was our response to
10 the Executive Order in 2520. So I'll admit that video as
11 Appellant's Exhibit 1.

12 (Appellant's Exhibits 1 was received
13 in evidence by the Administrative Law Judge.)

14 JUDGE ALDRICH: Let's see. And Mr. Mohsen, does
15 that -- do you have anything else that you would like as
16 an exhibit before we move on?

17 MR. MOHSEN: That's the only exhibit that we
18 would like to include into this case at this time.

19 JUDGE ALDRICH: Okay. So on the April 3rd, 2020,
20 minutes and orders, I indicated time estimates for the
21 hearing. And just so that you guys are aware and can
22 predict, I planned for the hearing to proceed as follows:

23 Appellant, you will present your opening
24 statement, which I estimated at 15 minutes. And CDTFA
25 will present a combined opening presentation and closing

1 remarks for an estimated 20 minutes. Appellant will then
2 have approximately 5 minutes to close or rebut. But
3 please keep in mind that these are just time estimates.
4 I'm not going to be timing your presentations.

5 Mr. Mohsen, are you ready to begin your opening
6 statement?

7 MR. MOHSEN: Yes, Your Honor.

8 JUDGE ALDRICH: Please proceed when you're ready.

9 MR. MOHSEN: Thank you, Your Honor.

10

11

PRESENTATION

12 MR. MOHSEN: My name is Hassen Mohsen. I'm the
13 tax preparer and representative of the Ideal Market, which
14 is owned as a sole proprietorship by Hailah Eraga.

15 The exam that was performed by CDTFA was a
16 routine audit exam. It was prepared by a tax auditor by
17 the name of Felipe Duenas. He proceeded his examination
18 and went through documents that we had at our office.

19 After reviewing the documentation, he felt it was
20 warranted to also do a vendor survey, which is something
21 that the CDTFA chooses to do. I'm not sure why they do
22 that with some clients, and for others they don't.

23 But they proceeded with the vendor survey
24 simultaneously while reviewing the books and records. And
25 the tax auditor then presented to us, so we can present to

1 the client, that there was an understatement of purchases.
2 The auditor agreed with the purchase markup that has been
3 calculated for the business. However, because of the
4 vendor survey that actually had to -- an increase and the
5 sales that the Department had calculated versus the sales
6 that the taxpayer had on their books and records.

7 There were numerous issues with the exam. A lot
8 of things were assumed, and I'm not sure why they were
9 assumed. If we review some of the records that the
10 auditor had prepared in his documentation, it -- he stated
11 that Ideal Market is a market located in Oakland,
12 California that sells liquor, beer, wine, and soft drinks,
13 cigarettes, and miscellaneous tax products. We had
14 discussed with the auditor that the business does not hold
15 a liquor license. It's only a beer and wine facility.

16 They do not have the authority through the
17 Department of Alcohol and Beverage Control to even sell
18 liquor. So I'm not sure why the auditor would assume that
19 they would sell liquor. And this was brought to his
20 attention on more than one occasion. Another issue that
21 we had discussed with the auditor was that he had stated
22 that they sell lottery. The taxpayer does not have
23 lottery.

24 On a few occasions when we had discussed these
25 errors, the auditor became upset. And there were certain

1 circumstances where he would say derogatory things such
2 as, "Well, this business you can find them on YouTube.
3 There are some video footage of an altercation outside of
4 the business. This is a bad business." So I'm not sure
5 what his intention was when he would bring these to -- to
6 the examination. He was supposed to examine the books and
7 records. There's no need to say derogatory things about a
8 certain business. He should stay as professional as
9 possible.

10 The issue that we have with the exam is because
11 so much of this information is weighted on a vendor named
12 Pitco Wholesale. We had discussed that with the taxpayer
13 that the auditor pulled records from the wholesaler. And
14 when we presented that to the taxpayer, the taxpayer came
15 back with their own evidence. And I'm not sure how they
16 obtained this document or this video footage, but they had
17 discussed to us that with the lax business practices of
18 Pitco Wholesale, that anyone can go into the business or
19 the wholesaler and purchase under any business with very,
20 very minor information.

21 So if -- presumably, if you have the name of the
22 business, the address, you can walk into the wholesaler
23 and actually make a purchase under an account, falsely.
24 So, obviously, that would be fraud of some sort. But
25 the -- the point of that is, is that the exam was done in

1 such a way that any information that was put into the
2 formula would obviously skew the information in the -- on
3 the exam.

4 So having more purchases, obviously, would have a
5 higher sales amount that would be calculated based on that
6 markup. So the taxpayer's stance has always been that
7 they reported all the information to us, the accountants,
8 and that there are no additional purchases from this Pitco
9 Wholesale that they had purchased. If somebody else were
10 to enter the business and purchase under their account,
11 that's something out of their control.

12 And definitely their position is that any
13 information that they have in their hands and records is
14 true and correct. Anything that Pitco is -- is producing
15 on their own cannot be relied on. Because if somebody can
16 use their account, then how can they verify who is making
17 the purchase of that product. And that is the position of
18 the taxpayer.

19 That is all, Your Honor.

20 JUDGE ALDRICH: Does that conclude your opening
21 statement, Mr. Mohsen?

22 MR. MOHSEN: Yes. Yes.

23 JUDGE ALDRICH: Okay. And consistent with the
24 minutes and orders issued April 3rd, 2020, I want to
25 confirm that you won't be presenting any witnesses.

1 MR. MOHSEN: No.

2 JUDGE ALDRICH: Okay. At this time do my panel
3 members have any questions for Mr. Mohsen?

4 JUDGE WONG: This is Judge Andrew Wong. I have a
5 question.

6 JUDGE ALDRICH: Yes, Andrew. Please proceed.

7 JUDGE WONG: This is a question -- this is
8 Judge Andrew Wong. This is a question for Appellant or
9 Appellant's representative. Your client's position is
10 that someone could make unauthorized purchases from this
11 wholesaler. Do you have any -- does your client have any
12 proof or evidence of that?

13 It's kind of different -- one thing to say it's
14 possible, but it's another thing to say this probably
15 happened. Is there any documentation or evidence that
16 your client could provide to show that it likely happened.

17 MR. MOHSEN: Well, there's two different things
18 that we presented to the CDTF and, namely, to the
19 examiner. The first of which was a document that is
20 actually produced by Pitco Wholesale that states that,
21 "The account is on hold only for the taxpayer to present
22 identification."

23 So that's the first thing that is evidence. That
24 was presented to the examiner. And somehow -- I'm not
25 sure why he would just brush that off. He relied on the

1 data that was coming from the wholesaler themselves. They
2 weren't -- he wasn't relying on that document.

3 When I brought that back to the taxpayer, the
4 taxpayer then had a little bit of time to try to produce
5 something because I had to produce this evidence to the
6 CDTFA exactly the same -- you know, I had the same
7 position you had. How do I know that -- you know, it's
8 one thing to say something. It's another thing to
9 actually see, you know, some evidence.

10 So then the taxpayer came back to my office and
11 brought video footage of an individual that entered into
12 the wholesale, the Pitco Wholesale, and this is all
13 captured on video. They asked to make a purchase and said
14 that this was, you know, for Ideal Market. They didn't
15 provide any identification. They didn't provide any form
16 of proof or seller's permit or some sort of documentation
17 to establish that they were the actual holders of that
18 permit -- seller's permit or account holder, and then
19 proceeded to mistake a purchase.

20 That information was provided to the -- the
21 auditor. The auditor was very upset. I -- I want to --
22 you know, he didn't get aggressive, but as he was watching
23 this footage in my office, he had to -- he had to defend
24 his -- his -- his work. So he started making claims. I
25 don't know what, you know, what he was trying to claim.

1 But, basically, you know, he didn't want to believe that
2 this information was real. But it's real. It's right in
3 front of him. It's video footage.

4 And we discussed that with the auditor. The
5 auditor said they will discuss that with their supervisor.
6 There was no information that was relayed back to us that
7 whether or not they accepted or denied. We brought this
8 before the supervisor, his -- you know, the lead auditor
9 or the supervisor of that -- of his supervisor. Again, no
10 discussion. No -- nothing was discussed regarding that
11 video.

12 And we keep stressing that, you know, this is
13 clear and proof -- you know, clear evidence that
14 establishes that anyone could go into that wholesaler and
15 make a purchase. And if that is the case, then the
16 information, obviously, in that computer system at Pitco
17 Wholesale could not be relied upon if a person is making a
18 purchase under somebody else's account falsely. And
19 that's -- that's the -- the -- the elephant in the room
20 that no one is discussing.

21 Now, has Pitco Wholesale changed their policies?
22 I'm not sure. But this is, obviously, for the tax period
23 of April 2012 through December of 2014. They might have
24 changed their business practices, but, you know, this is
25 something that was an issue. And if it was an issue, then

1 the Department has to realize that and recognize that as a
2 problem if they're going to rely on the documentation that
3 comes from this wholesaler.

4 JUDGE ALDRICH: Thank you, Mr. Mohsen.

5 MR. MOHSEN: Thank you. I hope that answers the
6 question.

7 JUDGE WONG: This is Judge Andrew Wong. Thank
8 you. No further questions.

9 MR. MOHSEN: Thank you, Mr. Wong.

10 JUDGE ALDRICH: Okay.

11 JUDGE RIDENOUR: This is Judge Ridenour. No
12 questions.

13 JUDGE ALDRICH: Thank you.

14 This is Judge Aldrich. So Department, are you
15 ready to begin your combined opening closing statement?

16 MS. RENATI: This is Lisa Renati. I'm ready.

17 JUDGE ALDRICH: Please proceed when you're ready.

18

19

PRESENTATION

20 MS. RENATI: The Appellant of sole proprietor
21 operated a convenience store in Oakland, California, with
22 sales of beer, wine, cigarettes, carbonated beverages,
23 sundry items, and nontaxable foods, Exhibit B, page 17 and
24 18.

25 The Department performed an audit examination for

1 the period of April 1st, 2012, through December 31, 2014.
2 The books and records provided by the Appellant were
3 fragmented and incomplete. The Appellant provided a copy
4 of their year 2012 federal income taxes. No income tax
5 returns were provided for years 2013 and 2014. A review
6 of the 2012 Federal Income Tax Return, Exhibit B, page 34,
7 showed no claimed employee wages and very little net
8 income.

9 The overall markup of cost computed was 32
10 percent. At first glance its markup of cost may seem
11 reasonable. But using a simple allocation of 80 percent
12 of the claimed purchases for the income tax return to
13 estimate taxable purchases and the reported taxable
14 amounts for Appellant's sales and use tax returns, the
15 resulting taxable markup of cost would only be 11 percent.
16 An 11 percent taxable markup of cost is very low.

17 And it's also much lower than those noted in
18 audits of similar businesses in the area. Based on
19 analysis performed, the Department determined that the
20 amounts reported on the Appellant's sales and use tax
21 return were likely understated.

22 The Department reviewed the Appellant's profit
23 and loss statements for year 2014, Exhibit B, page 32. A
24 review of the profit and loss categories for purchases
25 show that cigarette and taxable sundry items were included

1 in the category of "Other". The total amount of purchases
2 for year 2014, noted as Other, was only \$6,143. And for
3 five of the months, the Appellant had no recorded
4 purchases in this category. This equates to about \$22 per
5 day in estimated sales of cigarettes and sundry items,
6 which appears low, Exhibit B, page 32, column J.

7 The Appellant provided all available purchase
8 invoices for the period of January 2014 through
9 March 2014, Exhibit B, page 23 to 27. Only four invoices
10 were provided for purchases of cigarettes from the
11 Appellant's vendor, Pitco Foods. Three invoices were
12 dated from January 2014, one invoice from February 2014,
13 and no purchases were noted for the month of March 2014.

14 A review of the Appellant's purchases for the
15 four Pitco invoices provided showed only 49 cartons of
16 cigarettes were purchased for the three-month period,
17 which represents only 2.83 percent of all purchases for
18 the quarter. The number of cartons purchased and the
19 segregation percentage was deemed to be extremely low
20 compared to the visual inspection by the Department, which
21 showed tens and thousands of dollars of cigarette
22 inventory on hand, Exhibit B, page 32 and 37.

23 The Department made a request of the Appellant's
24 known vendor for cigarettes, Pitco Foods, to provide the
25 Appellant's purchase information for the audit period.

1 Subsequently, the Department received a customer sales
2 history report for years 2012, 2013, and 2014. That's
3 Exhibit B, page 39 to 153.

4 The report included purchases of a variety of
5 products, including cigarettes. Credits for returned
6 merchandise, including cigarettes, were also included in
7 the report. The Department transcribes all purchases from
8 Pitco Foods for the first quarter of 2014. The Department
9 was able to trace the four Pitco invoices presented to the
10 Department by the Appellant into the listing. An
11 additional 28 invoices with undisclosed purchases totaling
12 over \$27,000 was noted. The additional amounts included
13 purchases of soda, sundry items, food and cigarettes. The
14 majority of additional purchases, over \$23,000 worth, were
15 for cigarettes and tobacco products.

16 Once the additional purchases were included with
17 the three-month transcription, the Department recomputed
18 segregation percentages, which were found to be more in
19 line with those noted in audits of other convenience
20 stores in the area. Specifically, 39 percent of purchases
21 were of beer and wine, 31 percent for cigarettes,
22 26 percent for food, and the remaining 4 percent for other
23 items.

24 Based on the inventory observed at the store and
25 the type and location of the business, the Appellant's

1 first quarter 2014 recorded cigarette purchases for a
2 profit and loss statement are not reasonable.
3 Accordingly, the Department's audited taxable purchases
4 for first quarter 2014 include the additional amounts for
5 third-party verification. The Department also adjusted
6 audited taxable purchases by a 2 percent pilferage
7 allowance.

8 Next the Department attempted to perform a shelf
9 test to compute the audited taxable markup percentage.
10 But the Appellant refused the Department's request,
11 Exhibit B, page 22 and 36. Therefore, the Department
12 establishes the audited taxable markup of cost using the
13 gross markup of cost noted in Appellant's profit and loss
14 statements for year 2014 of 32 percent. The audited
15 taxable markup was then applied to audited taxable
16 purchases for the first quarter 2014 to compute audited
17 taxable sale.

18 Comparison of the audited amounts for first
19 quarter 2014 and reported amounts for the same period
20 showed an unexplained difference of over \$31,000,
21 Exhibit B, page 22. A percentage of error was calculated
22 and projected to compute the understated taxable measure
23 for the audit period.

24 The Appellant alleges someone else made the
25 additional cigarette purchases from Pitco Foods without

1 their consent. However, the Appellant has not provided
2 any information as to how someone would obtain their Pitco
3 account information, or the identity of the person who is
4 supposedly using their account number to purchase large
5 quantities of cigarettes. Why someone else would use the
6 Appellant's account when they could use their own account,
7 the time period the other person was purportedly making
8 purchases using their account? Why the Appellant's
9 business had a large quantity of cigarette in inventory,
10 yet, relatively few cigarette purchases? Why the
11 percentage of cigarette purchase was so low at 2.83
12 percent for the quarter in comparison to the inventory at
13 hand?

14 And lastly, the Appellant has not provided any
15 documentation to support why the reported taxable markup
16 of cost for 2012 would be at a low 11 percent. The
17 Department's audit calculations are reasonable as they
18 utilize first quarter 2014 amounts. The vendor survey
19 shows the Appellant's total Pitco purchases for the
20 three-year period of 2012 through 2014 show average
21 purchases of cigarettes and tobacco products for about
22 \$50,000 a quarter.

23 For first quarter of 2014, the Pitco cigarette
24 and tobacco purchases were only about \$25,000, which is
25 half of the average noted for the audit period. A review

1 of the purchases for the quarters before and after the
2 first quarter 2014 test period do not indicate higher than
3 normal purchasing to account for the lower first quarter
4 2014 amounts. For fourth quarter 2013, the Pitco purchase
5 amounts were about \$59,000. And for second quarter 2014,
6 the amount was about \$41,000.

7 This means the first quarter 2014 test period
8 benefits the Appellant and results in a much lower
9 understatement than have the Department use a total
10 purchase amounts for the audit period, or even the total
11 amounts for a single year. The records provided by the
12 Appellant were not complete for any single year. The
13 Appellant has not provided any substantive documentation
14 to refute the evidence presented.

15 Accordingly, the Department request that the
16 Appellant's appeal be denied. This concludes my
17 presentation. I'm available to answer any questions.

18 JUDGE ALDRICH: Thank you. This is Judge
19 Aldrich. Do my panel members have any questions for the
20 Department?

21 JUDGE RIDENOUR: This is Judge Ridenour. I do
22 not. Thank you very much.

23 JUDGE WONG: This is Judge Andrew Wong. I have
24 no questions. Thank you.

25 JUDGE ALDRICH: Mr. Mohsen, would you like to

1 make a final statement or a rebuttal to the Department or
2 further address any of the questions we had?

3 MR. MOHSEN: Yes. I mean, if I'm allowed, I
4 would just like to rebut a few items.

5 JUDGE ALDRICH: Okay.

6

7

REBUTTAL STATEMENT

8 MR. MOHSEN: This is Mr. Mohsen again. A couple
9 claims were made. You know, this -- the auditor,
10 Mr. Duenas, had expressed the same -- same thing. He said
11 there were tens of thousands of dollars of cigarettes in
12 stock. He -- he had never produced any evidence of that.
13 He said that it's sitting behind the counter, tens of
14 thousands of dollars. And I asked him if he can produce
15 some sort of proof of that. Because if I go into the
16 business, there's absolutely no way there's tens of
17 thousands of cigarettes in that location at any time.

18 And he shrugged his shoulders saying, "Well, you
19 know what I mean." I -- I don't know what he means. So
20 this is the -- the attitude that he had throughout the
21 exam is that he makes a claim, and then he doesn't own up
22 to it with any evidence. It's just a claim sitting out
23 there. And I'm not sure why he -- he makes these claims.

24 Obviously, if -- if a client is purchasing based
25 on the Department's information that they stated they had

1 purchases of \$40,000, how can they make those purchases
2 and have tens of thousands of dollars of product sitting
3 on the shelf. So that's the first issue.

4 The other thing that I want to bring to the
5 forefront here is that there are stores that are not beer
6 and wine stores, such as my client. The reason why a lot
7 of small businesses don't carry cigarettes like they used
8 to is that there's been this phenomenon of smoke shops and
9 smoke locations where people are now selling exclusively
10 just tobacco items and cigarettes and the like. And there
11 are a number of smoke shops in the neighborhoods within
12 this area that have absorbed all those clientele.

13 So just because somebody offers tobacco sales of
14 products doesn't mean that they're going to have tens of
15 thousands of dollars of sales of that product. With
16 respect to the percentage, I don't know where the
17 11 percent came from. The examiner actually agreed with
18 the markup. In fact, they stated that the markup was
19 sufficient, and they would use that markup. As a matter
20 of fact, the 32 percent book market does not yield an
21 11 percent profit.

22 And as far as the books and records, we, for this
23 location, we do not prepare the tax returns for the
24 taxpayer. We prepare the bookkeeping. So the income tax
25 returns are not prepared by our office. So, obviously,

1 we're not preparing those documents that they failed to
2 provide that information to us so we can relay it to the
3 Department, I don't think that should fall on our
4 shoulders to state that information is not correct or not
5 provided.

6 And we try our best. I'm speaking on behalf of
7 my office. We try our best to limit the time that is
8 spent of taxpayer's dollars to do these exams. That's why
9 when we discuss the exam with Mr. Duenas, the examiner,
10 the auditor, he had stated that he would like to do a
11 shelf test, and we didn't feel that was warranted. That
12 was just going to be a waste of time.

13 He already agreed with the purchase markup. So
14 there's no need to go into the business and just verify
15 what he's already agreeing with. So it's not that we were
16 not cooperating, or we were trying to do as little as
17 possible. It's that if he agreed with the computed
18 markup, then why would we need to go in there and, you
19 know, verify what we already -- what he agrees with. So
20 those are the things that we wanted to bring to light and
21 share.

22 You know, the Pitco Wholesale the company, you
23 know, they're -- they -- they run their company how they
24 run it. We are not trying to point fingers at people.
25 But in this whole examine, if we're using information data

1 that's coming from a third party like the wholesaler, all
2 we ask is that data is not tainted in any way. Why would
3 somebody want to use somebody else's account? I think
4 it's obvious. I mean, there are bad businesspeople out
5 there.

6 If somebody can walk in and buy merchandise under
7 somebody else's name, then they could get away with
8 purchasing, you know, product without showing that they
9 purchased it. And, I mean, we just have to look at the
10 current situation. I mean, there are bad people buying up
11 medical supplies and toilet papers. Why are they doing
12 this? I mean, there are black markets. There are bad
13 people out there.

14 We shouldn't punish the people that are trying
15 their best to do things correctly like my taxpayer. I
16 mean, she put a hold on the account and, yet, somebody
17 went in there and made a purchase under her name again,
18 even with the hold.

19 So I'll -- I'll stop here, Your Honor.

20 JUDGE ALDRICH: Thank you.

21 Do my panel members have any further questions
22 for the Appellant or the Department?

23 JUDGE RIDENOUR: This is Judge Ridenour. I do
24 not. Thank you very much.

25 JUDGE WONG: This is Judge Andrew Wong. I have

1 no questions. Thank you.

2 JUDGE ALDRICH: Thank you.

3 So, Mr. Mohsen, we have your evidence in the
4 record and your argument. So is there anything else you
5 would like to tell us before I submit the case?

6 MR. MOHSEN: I just appreciate everyone's time
7 and, you know, I -- I speak on behalf of the taxpayer.
8 You know, we're confident that, you know, justice will be
9 done, and we appreciate everyone's time.

10 JUDGE ALDRICH: This is Judge Aldrich again.
11 Thank you both for being flexible with the hearing format.
12 I appreciate your time. We're ready to submit the case.
13 The record is now closed. This concludes the hearing.

14 The Judges will meet and decide the case based on
15 the evidence and the arguments presented today. We will
16 aim to send to both parties our decision no later than 100
17 days from today.

18 The hearing is now in recess in preparation for
19 the next case. Thank you.

20 (Proceedings adjourned at 2:01 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 28th day of April, 2020.

ERNALYN M. ALONZO
HEARING REPORTER