

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
MOHAMED MOHAMED A. QADARI,) OTA NO. 18103912
)
)
 APPELLANT.)
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TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, May 27, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
400 R Street, Sacramento, California, 95811,
commencing at 1:07 p.m. and concluding
at 2:14 p.m. on Wednesday, May 27, 2020,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ ALBERTO ROSAS

Panel Members: ALJ JOSHUA LAMBERT
ALJ KEITH LONG

For the Appellant: HASSEN MOHSEN

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION
By: MARIFLOR JIMENEZ
JASON PARKER
KEVIN SMITH

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-2 were previously received into evidence.)

(Department's Exhibits A-R were previously received into evidence.)

OPENING STATEMENT

	<u>PAGE</u>
By Mr. Mohsen	9
By Ms. Jimenez	22

REBUTTAL STATEMENT

	<u>PAGE</u>
By Mr. Mohsen	34

1 Sacramento, California; Wednesday, May 27, 2020

2 1:07 p.m.

3

4 JUDGE ROSAS: Good afternoon. This is
5 Judge Rosas.

6 We are on the record in the matter of the appeal
7 of Mohamed Mohamed A. Qadari, OTA Case Number 18103912.

8 This is a telephonic hearing. Today is Wednesday
9 May 27th, 2020, and the time is approximately 1:07 p.m.

10 Today's panel of administrative law judges
11 includes Keith long, Joshua Lambert, and me, Alberto
12 Rosas. Although I may be the lead administrative law
13 judge for purposes of conducting this telephonic hearing,
14 please know that the three of us, we are all equal
15 participants and equal decision makers.

16 Now, for appearances, we will start with
17 Appellant's side. May Mr. Qadari's representative please
18 state your name for the record.

19 MR. MOHSEN: This is Mr. Mohsen representative of
20 Mr. Qadari.

21 JUDGE ROSAS: This is Judge Rosas. Thank you,
22 Mr. Mohsen.

23 And now for respondent, may the CDTF
24 representatives please state your full names for the
25 record.

1 MS. JIMENEZ: This is Mariflor Jimenez
2 representing the CDTFA.

3 MR. PARKER: This is Jason Parker representing
4 CDTFA.

5 MR. SMITH: This is Kevin Smith representing
6 CDTFA.

7 JUDGE ROSAS: This is Judge Rosas. Thank you.

8 I'd like to go over a few administrative matters
9 before we begin with argument. We held a telephonic
10 prehearing conference on May 7th, 2020, which resulted in
11 the issuance of four orders.

12 Number One, Appellant's Exhibits 1 and 2 were
13 admitted into evidence without objection; Number Two,
14 Respondent's Exhibit A, Alpha, through R, Romeo, were
15 admitted into evidence without objection; Number Three,
16 for Appellant, Mr. Qadari, to be permitted to testify
17 during today's telephonic hearing. Mr. Mohsen was
18 required to provide written notice on or before May 12th.
19 And four, the parties agreed to comply with specific time
20 and limits for today's telephonic hearing.

21 Mr. Mohsen is that an accurate summary of the
22 prehearing conference orders?

23 MR. MOHSEN: Mr. Mohsen here. Yes, that is
24 accurate and correct.

25 JUDGE ROSAS: This is Judge Rosas. Ms. Jimenez,

1 is that an accurate summary of the prehearing conference
2 orders?

3 MS. JIMENEZ: This is Mariflor Jimenez. It is
4 accurate.

5 JUDGE ROSAS: This is Judge Rosas. Mr. Mohsen,
6 just to be clear, your client, the Appellant Mr. Qadari,
7 will not testify during today's hearing; is that correct?

8 MR. MOHSEN: Mr. Mohsen here. That is correct.

9 JUDGE ROSAS: This is Judge Rosas. It is my
10 understanding that the issue before us is whether any
11 reduction is warranted to the amount of Appellant's
12 unreported taxable sales for the period April 1st, 2013,
13 through March 31st, 2016.

14 Mr. Mohsen, do you agree that this is the issue?

15 MR. MOHSEN: Correct. That is the -- I'm sorry.
16 Mr. Mohsen here. Correct. Yes, that is the issue at
17 hand.

18 JUDGE ROSAS: This is Judge Rosas. Ms. Jimenez,
19 do you agree that this is the issue before us?

20 MS. JIMENEZ: This is Mariflor Jimenez, and I do
21 agree that is the issue before us.

22 JUDGE ROSAS: This is Judge Rosas. As we
23 discussed during the prehearing conference Mr. Mohsen has
24 up to 30 minutes to present his presentation. Any minutes
25 not used during the initial presentation will be reserved

1 for Mr. Mohsen's rebuttal. Following Mr. Mohsen's initial
2 presentation, CDTFA has up to 15 minutes to make its
3 presentation.

4 Mr. Mohsen, when you're making your initial case
5 presentation, I plan to interrupt you at the 15-minute
6 mark and every five minutes after that. And this is meant
7 simply as a friendly reminder about how much time is
8 remaining.

9 Mr. Mohsen, before we begin with case
10 presentations, do you have any questions?

11 MR. MOHSEN: Mr. Mohsen here. No. No questions
12 at this time.

13 JUDGE ROSAS: This is Judge Rosas. Before we
14 begin with case presentations, Ms. Jimenez, do you have
15 any questions?

16 MS. JIMENEZ: This is Mariflor Jimenez. We have
17 no questions.

18 JUDGE ROSAS: This is Judge Rosas. Mr. Mohsen,
19 please take your time and remember to speak slowly and
20 clearly. You may begin your presentation whenever you're
21 ready.

22 MR. MOHSEN: Mr. Mohsen here. Thank you,
23 Judge Rosas. And I appreciate the panel and the
24 opportunity to conduct this hearing via telephonically.
25 Given the circumstances, I hope everyone is well.

1 well. The taxpayer had no idea that there was an issue
2 with the vendor. With all due respect, they purchase
3 their products from the vendor via delivery and pay for
4 the product by check for the products that are delivered
5 to the business.

6 Horizon Beverages deliver alcoholic beverages to
7 the store, and they paid the driver for the product when
8 it's delivered. The issue arose when Katherine received
9 some documentation or some sort of printout from the
10 vendor, which had a major discrepancy and valuations, or
11 the products and the invoices, even some dates of the
12 invoices, which did not match the records that we had on
13 our books. The taxpayer does take issue with some of the
14 audit report that was produced by Ms. Wong.

15 In case in point, referring back to the procedure
16 and how smoothly things went, on page 8 of the working
17 paper -- on page 8 of Exhibit 1, she said that the
18 petitioner found that the use of the markup was reasonable
19 and accepted. However, there is issue to that same page
20 in the beginning on line 6 where she stated, "Petitioner
21 did not provide any purchase invoices or journals or bank
22 statements or financial statements or general ledgers."
23 And this is simply not true.

24 The taxpayer provided us with the documentation.
25 The documentation was available for review in our office.

1 Katherine did frequent our office to review these records.
2 So I'm not sure why she would put that into an exhibit.
3 The -- she did make note that the taxpayer had many
4 issues. And, in fact, she is the one that brought it to
5 our attention, obviously, stating that, "Why are there
6 some discrepancy between the products or the amounts we
7 have on our -- in our packages versus the amounts that
8 Horizon was producing via their reports."

9 She then continued with the procedure and advised
10 her lead auditor of the situation and tried to make sense
11 of it. And we found it pretty much a nightmare, and we're
12 not sure why in her -- in the working papers based on
13 Michael -- Michael Upton [sic], Appeals Conference
14 Auditor, it stated that Horizon acted inappropriately with
15 the reports and identified any missing merchandise, which
16 they did not produce.

17 The issue is that the -- the vendor Horizon
18 Beverage -- it's hard to explain via the telephone, and I
19 do apologize. But I just want to give some examples that
20 would probably shed some light to the situation. There
21 were numerous invoices that just did not match at all.
22 The -- I apologize. I'm just pulling up my records. The
23 report that was sent out from the Office of Tax Appeals,
24 June 6, 2019 -- and this was actually addressed to
25 Ms. Lopez.

1 It had information with respect to the issues at
2 hand and e-mail conversations back and forth between
3 Ms. Wong and Edward Shannon Powell of Anheuser Busch.
4 Incidentally, Anheuser Busch -- the excuse that was given
5 to the taxpayer when there were these discrepancies was
6 that Anheuser Busch purchased Horizon Beverage and,
7 therefore, records were mismatched. There were certain
8 products that they didn't sell anymore that they didn't
9 and, therefore, somehow that information was wiped out of
10 the system.

11 We find that hard to believe given that it is the
12 responsibility and the due diligence of every vendor to
13 keep documentation for tax purposes, whether it be federal
14 or state tax audit and exam. We hold everybody
15 accountable, not just retail establishments. Wholesale
16 establishments should exercise the same due diligence and,
17 especially, in this circumstance where information is
18 either skewed due to the data that it's produced based on
19 the vendor survey of certain vendors like Horizon
20 Beverage.

21 So on that report there's information purchase
22 invoices of beer and wine, and it has the fourth quarter
23 of 2014 where -- I'll give you just a couple of examples.
24 Hopefully, you know, I'll take questions on them. For
25 example, October 6 of 2014, there is an invoice for

1 \$5,500.35, Invoice 307346. Our records show that invoice
2 at \$5,535 -- \$5,500.35, where Horizon Beverage or Anheuser
3 Busch produced some sort of report showing \$2,417.60.
4 That is not the only invoice.

5 I mean, there are numerous invoices where the
6 amounts are either over or under the amounts that the
7 taxpayer has in physical possession, which are in his
8 office as we speak. The invoices that he has are invoices
9 that he signed for. It has a date stamped signature.
10 It's a thermal copy that is produced. It also has a
11 signature of the driver. And the client takes this stuff
12 seriously because, obviously, they're selling alcoholic
13 beverages, and these products are regulated by the
14 Department of Alcohol Beverage Control. So to use the
15 excuse that, "Well, our data doesn't go back beyond a
16 certain date," in his mind -- to be frankly, in anybody's
17 mind, it's similar to an individual stating, "Well, the
18 dog ate my homework. That's why I don't have my
19 homework."

20 We -- I personally have had appeals hearings with
21 the CDTFA, before the OTC was -- or OTA was even created,
22 where if a client did not produce evidence or that
23 evidence was not clear, that evidence was thrown out
24 because it's not a matter of hearsay, it's a matter of
25 factual information. And the factual information is that

1 our client has records. They have checks for the products
2 that they purchased, and those are the products they
3 purchased.

4 If a vendor does not have correct or clear
5 records which, obviously, in Horizon Beverage, you know,
6 situation, it is clear that these are not in good order.
7 Then we cannot rely on a vendor that does not have their
8 stuff together. I've tried my best to address this issue
9 to CDTFA. In fact, you know, I've expressed issues
10 with -- there's a correspondence that Katherine had
11 e-mailed back and forth with a company out of -- ABInBev,
12 an individual by the name of Palepu Sunil. And this
13 individual is out of Bangalore, India.

14 And I'm not sure why we have to reference back to
15 the Global Capacity Center and try to find out the records
16 where we actually have the records in hand with the
17 taxpayer that are actually by the taxpayer, and there is
18 proof in evidence of payment for those products. So it
19 just seems like it's -- we're trying to create some sort
20 of story line, and we need to look at the factual
21 information and the evidence that's at hand.

22 Another issue the taxpayer had problems with was
23 that when the CDTFA did -- when they wanted to use
24 information that was to the benefit of the exam, they
25 actually used information that was produced by Anheuser

1 Busch/Horizon Beverage in the form of missing invoices,
2 which they stated were not part of the exam; meaning, that
3 the taxpayer did not have copies of those invoices.

4 And you can see the dilemma where people might
5 cherry pick information and state, "Well, because the
6 vendor has this information and you don't have it, then we
7 give onus to the vendor that their information is true and
8 correct," when, in fact, they don't have a copy of the
9 invoice. They don't have a signature of the product being
10 purchased. They don't have copy of the payment of the
11 product being paid by the retailer.

12 So it's a double-edge sword here, and he -- you
13 know, this was adding insult to injury where, first of
14 all, the information that was provided by Horizon Beverage
15 is incorrect with the invoices that they had on file. In
16 addition to that, there were invoices that the CDTFA had
17 stated were missing invoices because the vendor said that
18 they had additional invoices. So the taxpayer does not
19 agree with the exam wholeheartedly for the Horizon
20 Beverage.

21 Now, the other issue he takes with the exam was
22 that there were other vendors in which the CDTFA stated
23 that they have prepared vendor surveys, and there were
24 discrepancies with those as well, you know, there -- some
25 of them such as Sunrise Food Distributing, which is all

1 nontaxable. There are few with Pitco Wholesale.

2 JUDGE ROSAS: This is Judge Rosas. Mr. Mohsen,
3 just to let you know, we're at the 15-minute mark.

4 MR. MOHSEN: Okay. I'll -- I'll be done here
5 shortly.

6 But the main thing is that these are not as -- I
7 don't want to say they're not critical. The taxpayer
8 still believes that all of them should be looked at
9 through a microscope. Meaning that if somebody is stating
10 that there's additional purchases, there should be
11 evidence that they bought it, not just a matter of
12 producing some sort of report that says here's what we
13 show on a statement.

14 He would like to get actual invoices with the
15 signature, when that product was purchased, and the way
16 that product was bought. And case in point, if Horizon
17 Beverage has this issue then we're not subject to -- or he
18 stated that he's not -- he's not satisfied that other
19 vendors are going to have the same issue at hand.

20 So this is the stance of Mr. Qadari, and
21 Mr. Qadari has, like I said, has been patiently waiting
22 for appeals because he's felt that, you know, he was not
23 treated fairly with the exam process. Even when I did
24 discuss it with Katherine the auditor, she had stated that
25 it's the first time they've seen this, and she wasn't sure

1 about how to go about the entire exam.

2 But I'd like to you know, end my opening argument
3 with this. The taxpayer has tried to comply with
4 everything that Katherine has requested. But, you know,
5 obviously short of actually going down to Horizon Beverage
6 or Anheuser Busch and demanding records, there's not much
7 else you can do other than rely on the information that he
8 has in his own possession.

9 And I'll leave it with that. I appreciate your
10 time.

11 JUDGE ROSAS: This is Judge Rosas. Thank you,
12 Mr. Mohsen. You have --

13 MR. MOHSEN: Thank you.

14 JUDGE ROSAS: You will have up to 12 minutes
15 reserved for your rebuttal. At this moment I'm going to
16 turn it over to my co-panelist to see if they have any
17 questions for you, Mr. Mohsen.

18 Judge Long, any questions?

19 JUDGE LONG: This is Judge Long. I just want to
20 clarify with respect to the Horizon Beverage purchase
21 records that Anheuser Busch provided, you stated that you
22 find it hard to believe that Anheuser Busch's records were
23 inadequate because it's up to the taxpayer to do its due
24 diligence and keep its records. Are you disputing that
25 the records were inaccurate or the records that were

1 turned over are inaccurate?

2 What I mean is this.

3 MR. MOHSEN: At this --

4 JUDGE LONG: Did Anheuser Busch --

5 MR. MOHSEN: I'm sorry. Go ahead.

6 JUDGE LONG: -- not turn over the accurate
7 records, or are we just -- are we in agreement that the
8 records that were turned over weren't correct?

9 MR. MOHSEN: Mr. Mohsen again. The stance of the
10 taxpayer is that the information that was produced by
11 Horizon Beverage, aka Anheuser Busch, for the audit were
12 inaccurate. Meaning that the records that Mr. Qadari has
13 in his possession are the actual physical records for the
14 products that were purchased. I hope that answers the
15 question.

16 JUDGE LONG: Okay. Thank you.

17 JUDGE ROSAS: This is Judge Rosas. Judge
18 Lambert, any questions?

19 JUDGE LAMBERT: Judge Lambert. Yeah, I had a
20 question about the Horizon invoices. And from what I'm
21 seeing, it looks like the CDTFA and maybe they can clarify
22 they -- when the Horizon invoices were significantly
23 higher than Appellant's invoices, they used Appellant's
24 invoice's numbers instead. Mr. Mohsen, can you comment on
25 the fact that CDTFA may have tried to make adjustments for

1 the invoices that Appellant provided?

2 MR. MOHSEN: Mr. Mohsen here. Thank you,
3 Judge Lambert. The taxpayer -- actually, there are
4 invoices that he has in his possession that are actually
5 higher than the ones produced during the vendor survey.
6 So the issue, again, is not whether or not the invoice
7 amount is higher or lower, it's what is the actual invoice
8 that was purchased? And the taxpayer states that his
9 invoices that he has are the actual purchases.

10 JUDGE LAMBERT: Okay. And also, Horizon Beverage
11 invoices were used for purchases when Appellant was
12 lacking invoices. So can you comment on the fact on
13 whether you think those are incorrect as well? So you
14 believe that certain --

15 MR. MOHSEN: Mr. Mohsen.

16 JUDGE LAMBERT: Yeah. Continue.

17 MR. MOHSEN: Oh, I'm sorry. Go ahead.

18 JUDGE LAMBERT: Yeah. I'm just talking about the
19 Horizon invoices for purchases that Appellant had no
20 record of these purchases. So CDTFA used Horizon's
21 invoices. So you believe or your argument is that those
22 purchases never occurred?

23 MR. MOHSEN: Mr. Mohsen here again. Yes,
24 Judge Lambert. The position of the taxpayer is that the
25 invoices that the taxpayer has in his possession are the

1 only purchases that were made with the Horizon Beverage.
2 And anything that was quote, unquote, "missing" based on
3 the vendor survey obtained after the fact, needs to be
4 thrown out because that wasn't in his possession. He
5 didn't make those purchases.

6 And, again, the taxpayer is stipulating that
7 what's stopping Horizon from stating that they had three
8 invoices that week or four invoices that week if they
9 don't even know the right amount for each invoice.

10 JUDGE LAMBERT: Okay. Thank you.

11 JUDGE ROSAS: This is Judge Rosas. Mr. Mohsen, I
12 just want to clarify. It seems that the bulk of your
13 arguments are focused on the Horizon Beverage purchase
14 invoices; is that correct?

15 MR. MOHSEN: Mr. Mohsen here. Correct.

16 JUDGE ROSAS: This is Judge Rosas. I just want
17 to clarify Mr. Mohsen, because during your initial opening
18 argument, you made a passing remark to other vendors and
19 what sounded like speculation for a lack of a better term,
20 that because the Horizon Beverage invoices may have been
21 incorrect that perhaps the other vendors' invoices were
22 also incorrect. But is there anything in the evidentiary
23 record before us that would show or tend to show that the
24 other vendors' invoices may have been incorrect?

25 MR. MOHSEN: Mr. Mohsen here. The taxpayer has

1 been frustrated with this Horizon Beverage, and I think
2 what he's done is he's -- he's told me straightforward
3 that he doesn't agree with the audit as a whole because of
4 the conduction of the audit. And I've explained how the
5 CDTFA produces their report, and because he sees the
6 issues with this one vendor, he wants to verify everything
7 with this audit.

8 When we expressed this frustrating during the
9 10-day hearing, the 10-day hearing -- I forgot -- I think
10 it's -- Scott Mittan was the individual that we discussed
11 the 10-day hearing with. He said that he would take
12 everything into consideration. And, obviously, you know,
13 when they came back, they came back with, " We agree with
14 our documents as a whole, and there's nothing to discuss."

15 So he's frustrated that there was no further
16 action on the CDTFA's part. And I don't want to take too
17 much time, but, you know, a simple phone call to a vendor
18 and asking them for the actual copy of the invoice, a
19 signed document, and how it was paid, was something that
20 he requested. And CDTFA had failed to produce any of that
21 information for what they stated was missing or
22 inaccurate.

23 JUDGE ROSAS: This is Judge Rosas. Thank you,
24 Mr. Mohsen.

25 At this point we're going to turn it over to

1 CDTFA, which will have up to 15 minutes to make its
2 presentation. Please remember to take your time, speak
3 slowly and clearly. You may begin whenever you're ready.

4

5 OPENING STATEMENT***

6 MS. JIMENEZ: Good afternoon, panel members.

7 This is Mariflor Jimenez.

8 The Appellant owns and operates a grocery store
9 located in Richmond, California. Besides food items, the
10 Appellant also sells beer, wine, soda, and tobacco
11 products. The audit period for this case is
12 April 1st, 2013, through March 31st, 2016. During the
13 audit, the Appellant provided limited records to support
14 reported tax amounts. The only documents offered were
15 federal income returns for years 2013, 2014, and 2015;
16 profit and loss statements for the audit period; purchase
17 invoices for fourth quarter of 2014 and second quarter
18 2015; and bank statements from April 1st, 2015, to
19 July 31st, 2015. There were no cash register z-tapes,
20 sales journals, purchase journals, nor general ledgers
21 provided.

22 Appellant claimed that he reported both total and
23 taxable sales by adding a markup to merchandise purchases
24 recorded in his profit and loss statements. Since there
25 were very limited records to support the gross receipt and

1 the cost of goods sold, the Department was not able to
2 validate the accuracy of reported and claim amount,
3 therefore, we had to find an alternate method to compute
4 Appellant's taxable sale.

5 The purchases paid by checks for second quarter
6 2015 were added up and compared to the purchase amounts
7 recorded on the profit and loss statement. It shows that
8 the reported purchase amount from the profit and loss
9 statement is understated. You'll see that on your
10 Exhibit M, and that's page 118 of our exhibits.

11 Using the merchandise purchase invoices for the
12 fourth quarter 2014 and second quarter 2015, the
13 Department identified 12 main merchandise vendors and sent
14 them survey letters. The Department then compared amounts
15 from the vendor response to the amounts from the available
16 invoices for the same two quarters. With the exception of
17 Horizon Beverage, the survey response is disclosed that
18 the purchase invoices provided by Appellant were
19 incomplete.

20 For these two quarters, the Department added any
21 missing purchases from the vendor survey to the amounts
22 compiled from the purchase invoices to come up with total
23 purchases. Regarding Horizon, the Department noted that
24 the total amount of purchase invoices provided exceeded
25 the purchase shown in the vendor survey response. The

1 Department also noticed for specific Horizon invoices, the
2 total amount purchased on the vendor response was
3 significantly less than the amount shown on the actual
4 invoice.

5 According to Horizon's representative, Horizon
6 was acquired by Anheuser Busch in May of 2016. The
7 company only kept records for the products they are
8 currently selling and not records for products that they
9 no longer sell. Our understanding is that they are unable
10 to look back at what those invoices would have been before
11 the acquisition. On your Exhibit H, that's pages 26
12 through 31, you'll see an e-mail dated February 2017 from
13 Anheuser Busch confirming that the survey amounts are
14 incomplete for periods prior to May 2016.

15 This was due to recordkeeping problems from the
16 acquisition. Since the Department could not rely on the
17 survey information from Horizon, the original purchase
18 invoices provided by Appellant were used instead. If
19 there were missing purchase invoices, we used the survey
20 amount. I do want to point out that Horizon's purchase
21 invoice total that we used in the audit for second quarter
22 2015 is around \$54,000. That's on your Exhibit J,
23 page 35.

24 When we examined the checks written to Horizon
25 for the same period, we have a total of about \$63,000.

1 And that would be on your Exhibit, page 118. That is
2 almost \$9,000 more than the purchase amount from Horizon
3 that we use in the audit. Basically, we used a lower
4 amount than what the Appellant wrote checks for. As I
5 mention dollars earlier the Department compiled
6 merchandise purchases for fourth quarter 2014 and second
7 quarter 2015. Using this information, the Department
8 computed an audited taxable ratio, approximately
9 73 percent.

10 The Department applied this ratio to the audited
11 total purchases to compute the audited taxable purchases.
12 We then compared the audited taxable purchases to the
13 reported taxable sales to compute the book markups. On
14 your Exhibit M, page 70, you will see that the fourth
15 quarter 2014 book markup is negative 16.55 percent. And
16 for second quarter 2015, the book markup is negative
17 26.20 percent.

18 This shows that in both quarters the Appellant's
19 taxable purchases are more than the taxable sales they
20 reported to the CDTFA. Based on our experience with this
21 type of industry and location, we would expect the markup
22 for taxable merchandise sold at this grocery store to be
23 in the range of 25 to about 40 percent. Since the records
24 were incomplete and the book markups were negative, the
25 Department decided to use an indirect audit method.

1 Normally a shelf test would be performed. This
2 is to compare the cost of the most current purchase
3 invoices with the most current prices. However, Appellant
4 failed to provide recent purchase invoices, so the
5 Department was unable to do a shelf test. For this reason
6 we decided to apply a 28 percent markup to taxable
7 merchandise. Based on our experience, 28 percent is in
8 the lower range of markup for similar grocery stores in
9 the area.

10 The audited taxable purchases for the test period
11 were reduced by 3 percent for pilferage and 1 percent for
12 self-consumption. The balance was then multiplied by the
13 markup factor at 1.28, which is the markup of 28 percent
14 plus 100 percent to come up with the audited taxable sales
15 of approximately \$377,000. The audited taxable sales were
16 compared to reported taxable sales of around \$240,000 to
17 establish the understated taxable sales of approximately
18 \$136,000 for these two quarters.

19 The \$136,000 represent an overall percentage of
20 error of around 57 percent. This error rate was then
21 applied to reported taxable sales for most of the audit
22 period. This established an understated taxable sales of
23 approximately \$723,000. All of our retailer's gross
24 receipts are presumed subject to tax unless the retailer
25 can prove otherwise, although gross receipts derived from

1 the sale of food products are generally exempt from the
2 sales tax.

3 When the CDTFA is not satisfied with the accuracy
4 of the tax return file, it may base its determination of
5 the tax due upon the facts contained in the return or upon
6 any information that comes within its possession. That's
7 Revenue and Taxation 6481. It is the taxpayer's
8 responsibility to maintain and make available for
9 examination on request all records necessary to determine
10 the correct tax liability, including sales receipts
11 invoices or other documents of original entry supporting
12 the entries in the books of account.

13 When a taxpayer challenges a determination, CDTFA
14 has the burden to explain the basis of that deficiency.
15 Where CDTFA's explanation appears reasonable, the burden
16 of proof shifts to the taxpayer to explain why the CDTFA's
17 asserted deficiency is not valid. Except as otherwise
18 specifically provided by law, the burden of proof is upon
19 the taxpayer to prove all issues of fact by a
20 preponderance of the evidence. That is, the taxpayer must
21 establish by documentation or other evidence that the
22 circumstances it asserts are more likely than not to be
23 correct.

24 For this particular case, the Appellant has not
25 established that the amount of taxable merchandise

1 purchases from Anheuser Busch or any other vendors is
2 inaccurate. Mr. Mohsen is unable to specify the
3 discrepancy between the Appellant's purchase records and
4 the vendor's survey. The Department used the best and
5 most complete information available to it.

6 The Department acted appropriately and
7 conservatively in deciding to use the actual purchase
8 invoices provided by Appellant from Horizon. Horizon
9 admitted that their vendor's report is incomplete for
10 purchases prior to May 2016. Therefore, the Department
11 only used the vendor's survey for missing purchase
12 invoices.

13 In addition, the checks written to Horizon also
14 support the purchase amount we used for this vendor. As
15 for other vendors besides Horizon, we also acted
16 appropriately by using the vendor's report to identify and
17 add any missing purchases to the purchases provided by
18 Appellant. The Department utilized the best available
19 evidence and followed proper procedures in computing the
20 audited sale.

21 Based on the evidence presented, the Department
22 concludes that the audited taxable measure is reasonable,
23 fair, and accounts for all taxable items sold and
24 consumed. Therefore, the appeal should be denied.

25 This concludes my presentation. I'm available to

1 answer any questions.

2 JUDGE ROSAS: This is Judge Rosas. Thank you,
3 Ms. Jimenez.

4 At this moment I'm going to turn it over to my
5 co-panelist to see if they have any questions.
6 Judge Long, any questions?

7 JUDGE LONG: Judge Long. No questions.

8 JUDGE ROSAS: Judge Rosas. Judge Lambert, any
9 questions?

10 JUDGE LAMBERT: I just have one question -- I
11 think one question. But CDTEFA, if the Horizon invoices
12 are admittedly inaccurate, then why do you think it's
13 reasonable to rely upon the invoices for purchases that
14 Appellant has no invoices for?

15 MS. JIMENEZ: This is Mariflor Jimenez. The
16 information was provided to us by Horizon, and it's also
17 supported by the checks written to Horizon by the
18 Appellant.

19 JUDGE LAMBERT: So there's checks that support
20 these purchases?

21 MS. JIMENEZ: That's correct.

22 JUDGE LAMBERT: And what is -- do you know the
23 difference between the amounts that -- you may have said
24 it already, but what is the difference in amount using
25 Appellant's invoices versus the Horizon invoices?

1 MS. JIMENEZ: Okay. The purchase invoices total
2 that we used, it's around \$54,000. But if you add up the
3 checks that's written to Horizon, it's \$63,000. So we
4 actually used the lesser of the numbers.

5 JUDGE LAMBERT: Okay. Thanks.

6 MS. JIMENEZ: I'm sorry. This is Mariflor
7 Jimenez.

8 JUDGE LONG: Judge Long. I just have one
9 question. Again, regarding the difference between the
10 checks and the invoices, with respect to the invoices,
11 it's segregated between taxable and nontaxable items.
12 Even with respect to, you know, the large difference
13 between the amounts of checks written to Horizon and the
14 purchase invoices, how would you know that that difference
15 isn't, you know, nontaxable purchases?

16 MS. JIMENEZ: Okay. Judge Long, this is Mariflor
17 Jimenez. When we compiled the total merchandise
18 purchases, we applied 73 percent taxable purchase ratio to
19 come up with a taxable purchase amount.

20 JUDGE LONG: Okay. And then -- this is
21 Judge Long again. I also wanted to ask, is there an
22 explanation for Invoice Number 804240, which is line 153
23 of Schedule 12C-1. It's out of sequence with the other
24 Horizon Beverage invoices, and it's on the same date as
25 another Horizon Beverage invoice. Do you have an

1 explanation for that? Can you comment on that?

2 MS. JIMENEZ: Judge Long, this is Mariflor and
3 I'm trying to find that particular exhibit. Do you happen
4 to have the page -- the Bate page number on that?

5 JUDGE LONG: Yes, it's -- this is Judge Long.
6 It's -- page 75 is what it is labeled for the audit work
7 papers.

8 MS. JIMENEZ: Okay.

9 JUDGE LONG: And line 153 specifically.

10 MS. JIMENEZ: Line 153. I'm on -- this is
11 Mariflor Jimenez. I'm looking at schedule -- the
12 Respondent's exhibit page 75, and I'm looking at line 153
13 and see the Invoice Number 804240.

14 JUDGE LONG: Correct.

15 MS. JIMENEZ: Is that -- is that -- okay. I
16 apologize. Are you saying that there's a duplicate?

17 JUDGE LONG: This is Judge Long. What I'm saying
18 is if you look at every other Horizon invoice in the
19 series, they are all close within 2,000 of each other, but
20 they all start with 3, 36, 38, 39. This one starts
21 804240. And if you look immediately above it, there's
22 invoice 398210.

23 MS. JIMENEZ: Right.

24 JUDGE LONG: It appears this one is out of
25 sequence. Can you comment on that? Do you have any

1 information?

2 MS. JIMENEZ: Judge Long, yes. Judge Long, this
3 is Mariflor. It is out of sequence, but there is an 800
4 series. I think there's another one somewhere. And also,
5 it appears looking at this that they purchase once a week,
6 and you will see that that's the same date as the other
7 398210. Let's see. This is Mariflor Jimenez. Let me
8 just -- give me -- I need about a minute to go through my
9 paperwork here.

10 Yes. It's -- we -- on your -- our exhibit
11 page 156, Purchase Invoice Number 804240 was included on
12 the list of purchase invoices, which was obtained from
13 Anheuser Busch for sales made by vendor Horizon Beverage.
14 That indicated that the Appellant was the purchaser. The
15 purchase invoice was appropriately listed as an audited
16 purchase in June 2015 because there were other purchase
17 invoices provided by Horizon that had an invoice number
18 starting that 800 series.

19 And the Appellant regularly made purchases on a
20 weekly purchase cycle. So the previous date of a purchase
21 made by the Appellant from Horizon was June 22nd, 2015,
22 which is one week before the purchase reflected on the
23 Invoice Number 804240.

24 JUDGE LONG: This is Judge Long. So with respect
25 to that, then there's duplicate invoices for that day and

1 an additional invoice issued the next day. Is -- can --
2 if they are issuing purchase invoices on a weekly basis,
3 can you comment on the duplicates as well as the following
4 invoice, the one that happened the very next day?

5 MR. PARKER: Hi, Judge Long. This is Jason
6 Parker with CDTFA. Yeah, the -- we -- one of the things
7 that I did notice also is that as part of the vendor
8 survey in the fourth quarter of 2014, they had another
9 invoice, which is 829195. So these are part of the
10 Horizon Beverage reports. But as to the multiple invoices
11 for the second quarter of '15, the 804240, there could be
12 the occasion where, you know, a delivery gets made and
13 then they have some other special where they make an
14 additional invoice for that same day.

15 So even though it may be the -- you know, outside
16 of the normal weekly routine, they could have had multiple
17 invoices for that day. So I'm not sure the sequencing
18 number that Horizon uses or why they had the 800 series as
19 opposed to the numbers in order. But this was part of the
20 Horizon report and, you know, there were other invoices
21 that had the 800 series as well.

22 JUDGE LONG: Okay. Thank you.

23 JUDGE ROSAS: Judge Rosas. I have no questions
24 for CDTFA at this time.

25 Mr. Mohsen, as mentioned you have up to

1 12 minutes for your rebuttal. Please take your time and
2 remember to speak slowly and clearly. You may begin your
3 rebuttal whenever you're ready.

4 MR. MOHSEN: Thank you, Judge Rosas.

5

6 REBUTTAL STATEMENT***

7 MR. MOHSEN: This is Mr. Mohsen. I think that
8 Judge Lambert and Judge Long asked the questions that I
9 would have asked. I mean, there's obviously a lot of
10 issues with recordkeeping with respect to Horizon
11 Beverage. You know, we can speculate all we want, but
12 speculation is not fact and evidence.

13 It's difficult for me to fathom why an account
14 would buy merchandise the same day, namely, with respect
15 to the vendor survey produced on June 29th. That's
16 \$6,144.05 with the invoice series of 398. And then the
17 same exact day we have another invoice for \$3,738. That's
18 almost \$10,000 worth of product for a business that on
19 average would purchase maybe \$3,000 per delivery per --
20 per delivery.

21 But again I digress. I don't want to say -- you
22 know, we can always say, "Well, they might have had this.
23 They might have had that." The client doesn't want to
24 hear what might have happened. What they want to hear
25 from the CDTFA is that they produce this information in

1 which it will be used to generate their working papers. I
2 think that their minimum was that they would at least do
3 due diligence with respect to producing the actual
4 invoice.

5 You know, these invoices are signed and a copy is
6 kept for the client and a copy is kept for the wholesaler.
7 So, again, the -- the issue at hand is that, you know, I
8 think the burden of proof falls on the vendor to produce
9 the correct and true information so that the CDTFA can
10 actually make clear judgment about what actually happened.
11 And with respect to the argument Ms. Jimenez has stated
12 that they used the lesser of the amounts, I mind you that
13 delivery of product doesn't constitute payment for
14 product. So that's one of the dilemmas is that if we're
15 looking at apples to apples, obviously, if we have a
16 situation where the client asks for a week's worth of
17 credit, and then that credit actually gets paid the
18 following week, then there's a distortion of the actual
19 cash payment or -- or received payments for that period.

20 So, you know, I understand that, you know, she
21 stated that there was \$63,000 worth of checks that they
22 calculated. No such information was produced to our
23 client to verify that. And the invoices, again, they're
24 based on the vendor survey that was provided by the
25 vendor. And, lastly, I think the elephant in the room is

1 that, obviously, when somebody states there's missing
2 invoices, they should state what those invoices consist
3 of.

4 The working papers that I have produced on the
5 schedule August 24th of 2016 from Katherine Wong, it
6 states on the notes, for example, "November 17th, missing
7 invoice \$2,838.58." And on the notes she stated,
8 "Missing. Comment, estimated based on average."

9 So if this is an actual invoice, why would she
10 note that this based on an average? And there are other
11 situations where, you know, outside of the scope of
12 Horizon, if you look at El-Ariani Wholesale, which is a
13 wholesale that sales carbonated tobacco products and the
14 like, there are many that state, "Missing, segregation is
15 estimated."

16 So it's -- again, I leave it to the panel. The
17 taxpayer wants a clear examination. An examination in
18 which, you know, the information that is provided is as
19 accurate as possible and not just estimates based on
20 averages or taking information from any which way we can
21 get it and making it fit to the situation.

22 JUDGE ROSAS: This is Judge Rosas. Mr. Mohsen,
23 does that include your rebuttal?

24 MR. MOHSEN: Yes.

25 JUDGE ROSAS: This is Judge Rosas. Thank you,

1 Mr. Mohsen.

2 MR. MOHSEN: Thank you.

3 JUDGE ROSAS: At this point I'm going to turn it
4 back to my co-panelists to see if they have any additional
5 questions for either side. Judge Long?

6 JUDGE LONG: Judge Long. No question.

7 JUDGE ROSAS: Judge Lambert?

8 JUDGE LAMBERT: Judge Lambert. No questions.

9 JUDGE ROSAS: This is Judge Rosas. I have a
10 question for CDTFA. Ms. Jimenez, during your argument you
11 made a statement that CDTFA only used the vendor survey
12 for missing invoices. Of course, we're talking about
13 Horizon Beverage. You also referenced Exhibit H, hotel,
14 which includes e-mails from an Anheuser Busch employee
15 stating their incomplete records for the period prior to
16 May 2016.

17 Now, my question is, considering we have
18 information in the evidence by third parties stating that
19 the records are incomplete for the period prior to
20 May 2016, please explain how CDTFA's determination based
21 on those missing invoices was reasonable and rational?

22 MS. JIMENEZ: Judge Rosas, this is Mariflor
23 Jimenez. We used the Appellant's purchase invoice in
24 their possession. And also, we have the second quarter
25 2015 checks to support the purchase amount.

1 JUDGE ROSAS: This is Judge Rosas. Thank you,
2 Ms. Jimenez.

3 Mr. Mohsen, I want to give you an opportunity to
4 be heard on this matter as well regarding the Horizon
5 Beverage invoices. Is there anything you would like to
6 add on this point?

7 MR. MOHSEN: This is Mr. Mohsen. I think I've
8 exhausted the discussion on this matter. I mean, it's --
9 it's been discussed I think enough now that everybody
10 understands the situation.

11 JUDGE ROSAS: This is Judge Rosas. Thank you,
12 Mr. Mohsen.

13 MR. MOHSEN: Thank you.

14 JUDGE ROSAS: Mr. Mohsen, I do want to give YOU
15 the last word. So before we wrap up, other than what
16 you've already told us here today and other than what's in
17 the exhibits, is there anything else you think this panel
18 needs to know in order for us to make a well-informed
19 decision?

20 MR. MOHSEN: This is Mr. Mohsen. I think the
21 panel will do due diligence in this situation. The
22 taxpayer, like I said, they requested from the get-go
23 because this is the first time he's ever had an exam to
24 have a fair and transparent exam. And unfortunately, you
25 know, the situation at hand hasn't been addressed to

1 the full extent. That's -- that's the key here.

2 And I don't think there's much -- much else to
3 say. I mean, I don't want to get into the little, you
4 know, the tidbits of, you know, who said what, when, and
5 where. The audit report kind of discusses everything.
6 But, you know, it's common sense. It's -- if information
7 is there and it can be, you know, reviewed, then,
8 obviously, it's information that it is factual
9 information.

10 But if it's speculation or hearsay or clearly,
11 you know, with this one vendor we have doubts and issues.
12 You know, we can't use that as a stepping stool to base,
13 you know, the formulas that the CDTFA has used in this
14 exam. And I appreciate everyone's time today.

15 JUDGE ROSAS: This is Judge Rosas. Thank you,
16 Mr. Mohsen.

17 And as we wrap this up, I want to take a moment
18 to thank both sides. These are unprecedented times we're
19 living in and under the circumstances, each side was
20 helpful and very accommodating in making this hearing run
21 as orderly and efficiently as possible.

22 That includes the hearing in the matter of the
23 appeal of Mohamed Mohamed A. Qadari. The record is now
24 closed, and the matter is submitted as of today
25 May 27, 2020. We will issue a written decision no later

1 than 100 days from today. Thank you very much.

2 Ms. Alonzo, we can now go off the record.

3 (Proceedings adjourned at 2:14 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 5th day of June, 2020.

ERNALYN M. ALONZO
HEARING REPORTER