

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
RUBEN A. PERAZA AND) OTA NO. 19064890
JOSEFINA PERAZA,)
)
)
) APPELLANT.)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, June 16, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead: ALJ ANDREW KWEE

Panel Members: ALJ NATASHA RALSTON
ALJ DANIEL CHO

For the Appellant: RUBEN A. PERAZA
JOSEFINA PERAZA

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

(Department's Exhibits A-G were previously received.)

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1 Cerritos, California; Tuesday, June 16, 2020

2 1:00 p.m.

3

4 JUDGE KWEE: Okay. Let's go on the record.

5 So we're opening the record in the appeal of
6 Ruben Peraza and Josefina Peraza now doing business as
7 Peraza Concrete Transport. This matter is being held
8 before the Office of Tax Appeals. The OTA's Case Number
9 is 19064890. Today's date is Tuesday, June 16th, 2020,
10 and the time is approximately 1:00 o'clock p.m. This
11 hearing was noticed for Cerritos, California and is being
12 conducted electronically.

13 So today's hearing is being heard by a panel of
14 three administrative law judges. My name is Andrew Kwee,
15 and I'll be the lead administrative law judge.
16 Judge Daniel Cho and Judge Natasha Ralston are the other
17 members of this panel. All three of us will meet and
18 discuss this case after the hearing and produce a written
19 decision as equal participants. Although the lead judge,
20 which is myself, will conduct the hearing, any of the
21 judges on this panel may ask questions or otherwise
22 participate to ensure, basically, that we have all the
23 information needed to decide this appeal.

24 Just for the record, I know we did role call but
25 for the record I'd like the parties on the line to please

1 state their names and who they represent, starting with
2 the representatives for CDTFA.

3 CDTFA, would you please identify yourselves for
4 the written record?

5 MR. PARKER: Hi. This is Jason Parker with
6 CDTFA. I think Mariflor is muted.

7 JUDGE KWEE: Okay. Thank you. And did we have
8 another representative for CDTFA?

9 MR. SMITH: This is Kevin Smith with CDTFA.

10 JUDGE KWEE: Okay. Thank you.

11 And for the taxpayer, would the two individuals
12 on the line please identify yourselves for the record.

13 MR. PERAZA: Yes. My name is Ruben Peraza.

14 MRS. PERAZA: And Josefina Peraza.

15 JUDGE KWEE: Okay. Great. Thank you very much.

16 And as just one preliminary matter, we did have a
17 scheduling conflict on the Notice of Panel that went out.
18 It indicated that Judge Joshua Aldrich was going to be
19 hearing this panel today. However, there was a conflict,
20 so Judge Natasha Ralston is going to be substituting in
21 place of Judge Aldrich. Does either party have any
22 objections or conflicts or concerns with the substitution?

23 I'll start with CDTFA.

24 MS. JIMENEZ: This is Mariflor Jimenez. We have
25 no objection.

1 JUDGE KWEE: Okay. And for the taxpayer,
2 Mr. Peraza, do you have any objection or concerns with the
3 substitution?

4 MR. PERAZA: No. This is Ruben Peraza. I have
5 no --

6 JUDGE KWEE: Okay. Great. Thank you.

7 So again for the people who aren't speaking, just
8 a friendly reminder, do mute -- please mute your mics just
9 to prevent the background noises.

10 And with that said, I'll go on to the witnesses.
11 From my understanding CDTFA has no witnesses. Is that
12 correct for CDTFA?

13 MS. JIMENEZ: This is Mariflor Jimenez. That's
14 correct. We have no witnesses.

15 JUDGE KWEE: Okay. Thank you.

16 And for the taxpayer, Mr. Ruben and Josefina
17 Peraza, I understand that the two witnesses are basically
18 the husband and wife partnership. The husband and wife,
19 you and Ms. Peraza are the two witnesses; is that correct?

20 MR. PERAZA: That's correct.

21 JUDGE KWEE: Okay. Great. And does CDTFA have
22 any objections to the two witnesses?

23 MS. JIMENEZ: This is Mariflor Jimenez. We have
24 no objection to the two witnesses.

25 JUDGE KWEE: Great. Thank you.

1 And to go over the exhibits, we previously
2 discussed that CDTFA had Exhibits A through G, and those
3 were described in our minutes and orders that I sent out
4 and discussed during the prehearing conference. Does
5 CDTFA have new exhibits to add at this point?

6 MS. JIMENEZ: This is Mariflor Jimenez. There's
7 no additional exhibits.

8 JUDGE KWEE: Okay. Thank you.

9 And for the taxpayer I -- we discussed at the
10 prehearing conference that there would be a deadline of
11 15 days before the hearing to submit any exhibits if you
12 wanted to. There was no requirement to submit new
13 exhibits. So currently I have no exhibits for the
14 taxpayer. Is that still correct or did I -- are there
15 exhibits that you would like to submit?

16 MR. PERAZA: No, Your Honor. No exhibits.

17 JUDGE KWEE: Okay. Great. Thank you.

18 So -- oh, and Mr. Peraza, did you have any
19 objection to any of the exhibits that were offered by
20 CDTFA, the A through G?

21 MR. PERAZA: We have a --

22 JUDGE KWEE: Oh, I'm sorry. I believe your line
23 cut out, if you would like to please repeat that,
24 Mr. Peraza.

25 MRS. PERAZA: This is Josefina Peraza. We don't

1 have any additional. We only have -- in our 15-minute.

2 JUDGE KWEE: Okay. So I was just asking if you
3 had a concern or objection. For example, the documents
4 submitted by CDTFA might be subject to attorney/client
5 privilege or they're not relevant. Are you okay with
6 admitting CDTFA's exhibits into the record?

7 MRS. PERAZA: We have no objection.

8 JUDGE KWEE: Okay. Great. Thank you.

9 So, basically, I'll go over how this hearing is
10 going to proceed. As we discussed at the prehearing
11 conference, Mr. And Mrs. Peraza will have 15 minutes for
12 their presentation. At that point, CDTFA will then have
13 15 minutes for their presentation. OTA may ask questions
14 of the parties. If a witness testifies, the opposing
15 party, CDTFA, may also ask questions of the witness. That
16 would be Mr. and Mrs. Peraza. And at that point we'll be
17 ready to conclude. Each party will have five minutes to
18 make any final statements before we conclude the hearing.

19 Are there any questions about how the hearing
20 will proceed before we start, or any final questions for
21 me before we start?

22 MRS. PERAZA: No.

23 MR. PERAZA: No questions.

24 JUDGE KWEE: Okay. And for CDTFA did you have
25 any questions before we start?

1 MS. JIMENEZ: This is Mariflor Jimenez. No
2 questions.

3 JUDGE KWEE: Okay. Great. So the issues in this
4 appeal -- there's two issues: The first is whether an
5 adjustment is warranted to the tax liability as determined
6 by CDTFA; and the second issue is whether Appellant
7 established the basis for interest relief. Those are the
8 two issues that we were discussing.

9 In addition, I placed the parties on notice that
10 OTA might ask additional questions of the parties. And
11 with that said, we'll turn it over to the taxpayer.
12 Before I turn it over I'd ask the taxpayer to swear to --

13 Mr. Peraza and Mrs. Peraza, do you mind raising
14 your hand. I'd just like to administer an oath before I
15 allow you to testify.

16 MR. PERAZA: My -- my right hand is up.

17 JUDGE KWEE: Okay. Thank you.

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19

RUBEN A. PERAZA,

20 produced as a witness, and having been first duly sworn by
21 the Administrative Law Judge, was examined and testified
22 as follows:

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JOSEFINA PERAZA,

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

JUDGE KWEE: Okay. Thank you. With that said, I'll turn it over to you, the taxpayer, to make your opening presentation and testimony. You have 15 minutes.

Thank you.

PRESENTATION

MR. PERAZA: Yes. My name is Ruben Peraza. I am the owner of Peraza Concrete Transport. We've been doing business. In '08 we had a recession and were out of work for a while, but that's when we were audited. And all this time we were working, we always used to load from the plant and deliver as -- we would pay the taxes at the plant and then deliver the load. So we would get paid by the load.

We never knew about the taxes, maybe we did and were wrong, but we were never explained how to put the taxes in, you know, double dipping the taxes. We didn't -- we didn't put it on our invoices. But our invoices that were made had tax on there. We didn't know better than to do that.

1 My -- in 2008 when we hit the recession, we had
2 to get rid of a lot of truck -- couple of trucks. And we
3 only -- we were out of work for about a good year. My
4 wife was ill. She had a thyroid disfunction, and her
5 thyroids were removed. She's still living on 22 pills a
6 day to stay alive.

7 In -- 2008 was it when Mr. -- 2015 when we had
8 the audit from Mr. Record, he couldn't figure out how we
9 were doing our bills. He -- he -- there was no way he
10 could figure out how we were paying the taxes and not --
11 and -- and needed a reseller's permit. How we needed a
12 seller's permit. We didn't know. So he advised us to go
13 and get a seller's -- resellers permit.

14 MRS. PERAZA: He actually made us.

15 MR. PERAZA: He actually made us to do that. So
16 when -- when he audited us and he came back and told us
17 how much we owed, we -- we didn't even think we made that
18 much.

19 MRS. PERAZA: Let me.

20 MR. PERAZA: Go ahead.

21 MRS. PERAZA: Let me takeover a little bit. When
22 Mr. Record did the audit in 2015, he couldn't figure out
23 why we needed a reseller's permit. And we were just doing
24 naively charging form \$250 to \$300 per load not knowing
25 that we -- everybody was doing this in our field, the same

1 way. And we don't know we were -- that was the correct
2 way of doing it. So when he explained to Mr. Record, the
3 auditor, he couldn't figure it out again.

4 So he -- we basically scheduled a meeting with --
5 at the office of Board of Equalization --

6 MR. PERAZA: In Riverside.

7 MRS. PERAZA: -- in Riverside where Mr. Potter
8 and -- there's another panel there where we -- they
9 couldn't figure it out so they kept postponing and trying
10 to figure it out even 'till today. Well, we got the
11 reseller's permit, but then we stopped business because we
12 didn't have enough trucks. We didn't have any work. We
13 went only one -- we went rental helping out other people
14 because we needed to fix our situation with the Board of
15 Equalization.

16 After that I went for major surgery. I'm
17 completely disabled. Actually, that is one of my biggest
18 concerns because I'm -- I'm disabled. I just need to take
19 all these pills to survive. But at this point even -- we
20 don't even know how we are supposed to be doing business.
21 We just do it the way the Board of Equalization wants us
22 to do business.

23 MR. PERAZA: Yes. Well, in 2012 we had -- we got
24 hit by the ARB with the exhaust. We had to put exhausts
25 on our trucks. So it's a \$10,000 only for one year. We

1 can't afford that. So right now we're not even running.
2 It's -- it's -- it's been really hitting us hard
3 everywhere, and we're just, you know, with the COVID-19
4 and this it's -- you know, I'm 61 years old. There's
5 nothing else I can do. I'm trying to survive here.

6 I -- I'm really asking you folk to please look
7 over our case and look it over. And, I mean, we're small
8 potatoes of a mom and pop business. We don't live like
9 millionaires. We own 2005 cars. It's just that we did
10 something wrong. I'm sure we did. We understand, but we
11 weren't explained not knowing.

12 MRS. PERAZA: Naively.

13 MR. PERAZA: Naively. Exactly. We paid it. We
14 do our taxes every year, you know. We never miss that,
15 you know. And it just -- we ask you to please have some
16 consideration for us. I know we did wrong. I'm sorry we
17 did, but it wasn't meant. And it's -- it's really hard
18 right now the way the situation is with ARB. You have to
19 have an exhaust to work in California.

20 So it's all these -- all these things are
21 happening, the COVID-19 and with my wife with the 22 pills
22 a day. We have to pay for this stuff. It's not given to
23 us. We don't have insurance. I mean, it's pretty, pretty
24 hard for us right now. And -- and we explained, like I
25 said, we never resold concrete. All we did was haul

1 loads. That's what everybody does.

2 Unfortunately, we were the ones that -- someone
3 called in on us, I guess or something, and that's where we
4 were the ones that were audited. You know, we didn't mean
5 to -- to take advantage of the system or the taxes.
6 That's the last thing we wanted to do. We have had little
7 incidents that we have paid off, you know, with -- with
8 the --

9 MRS. PERAZA: Other agencies.

10 MR. PERAZA: -- other agencies. But other than
11 that, it's we're just trying to stay alive and trying to
12 work and just continue. And --

13 MRS. PERAZA: Also, I would like to add that
14 we're not criminals. We don't have a criminal record. We
15 just wanted to do this the right way. And we just need to
16 do it the right way from now on. It's like we need to
17 survive. We need to eat. We need to pay our bills. And
18 we just want the panel to reconsider our situation. Like
19 I said, we want to do it the right way.

20 MR. PERAZA: Yeah. So we are -- I mean, it's
21 been really hard construction-wise.

22 MRS. PERAZA: We've been the hardest hit.

23 MR. PERAZA: I -- I have nothing else to say.

24 Just please be considerate with us. And I know we
25 probably -- we did something wrong, but it wasn't meant.

1 I mean, we didn't take advantage of the system. We just
2 try to go with it and, you know, we apologize for it. But
3 just consideration would be really, really kind from you
4 folks. That all we ask.

5 MRS. PERAZA: We pay our taxes on every load that
6 we took. We paid everything, so that was it.

7 MR. PERAZA: I'm not saying -- I'm not saying
8 that, you know, blank everything. I'm sure there's going
9 to be something to pay, but just be considerate with us.
10 That's all we ask.

11 MRS. PERAZA: Got no work. No money.

12 MR. PERAZA: Yeah. And that's all we have to
13 explain for you folks today.

14 MRS. PERAZA: Thank you for listening.

15 MR. PERAZA: Thank you for listening, yes. Thank
16 you very much.

17 JUDGE KWEE: Okay. Thank you,
18 Mr. and Mrs. Peraza.

19 At this point, I'd like to ask CDTFA if they have
20 any questions for the witnesses.

21 MS. JIMENEZ: This is Mariflor Jimenez. We have
22 no questions for the witnesses.

23 JUDGE KWEE: Okay. Thank you.

24 Before I turn it over to the Tax Appeals panel
25 for questions, I'm going to allow CDTFA to do their

1 opening presentation. I will ask some questions for the
2 parties, and I'm sure the panel will too. But before I
3 get to that, I would just like the CDTFA to do their
4 opening presentations.

5 I'll turn it over to you, Ms. Jimenez.

6

7

PRESENTATION

8 MS. JIMENEZ: Okay. This is Mariflor Jimenez.
9 The Department discovered that the Appellants were
10 operating without a seller's permit. So they were
11 contacted, and a seller's permit was issued around
12 August 13, 2015. That permit was backdated to a start
13 date of October 1st, 2008. When the Department examined
14 the Appellants' records for the period of
15 October 1st, 2008, through September 30th, 2015, the
16 Department discovered that the Appellant's were retailers
17 of concrete.

18 They sold to customers and contractors for use
19 and improvements to real property. The Appellants
20 delivered the concrete in their own cement trucks but
21 didn't install it to real property. Instead, the concrete
22 was pumped out and placed in the final location by the
23 customer or their contractor.

24 Appellants' records were limited and incomplete,
25 which included some sales invoices and reconstructed sales

1 journals for six months. The Department reviewed the
2 sales invoices and found that the Appellants separately
3 itemized the markup sales price for the concrete and the
4 delivery charges by their own facilities. There was no
5 title transfer information included on those invoices.
6 Sales tax reimbursement was charged on some of the
7 invoices. And also there was no documentation presented
8 to support the exempt status of any of the sales.

9 California imposes sales tax on the retail sales
10 in the State of tangible personal property measured by the
11 retailer's gross receipts, unless the sale is specifically
12 exempt or excluded from taxation by statute. That is
13 Revenue and Taxation Code Section 6051.

14 All of the retailer's gross receipts are presumed
15 subject to tax unless the retailer can prove otherwise.
16 That's Revenue and Taxation Code 6091. According to
17 Regulation 602(b)(2), with respect to transportation
18 charges for delivery via facilities of the retailer, gross
19 receipts do not include separately stated charges for
20 delivery from the retailer's place of business or other
21 point from which shipment is made directly to the
22 purchaser, provided the transportation occurs after the
23 sale of the property is made to the purchaser.

24 When delivery of the property is by facilities of
25 the retailer, title passes and the sale occurs when the

1 property is delivered to the purchaser at the destination,
2 unless there's an explicit written agreement executed
3 prior to the delivery that title is to pass some other
4 time. That's Regulation 1628(b)(3)(d). Therefore, as a
5 retailer of concrete products, the Appellants owe sales
6 tax on the entire sale price of the concrete, including
7 the amount charged for delivery in their own cement
8 trucks.

9 A credit for any tax paid on the purchases of the
10 concrete will be allowable in the same period as the
11 product is resold. As I mentioned earlier, the
12 Appellants' books and records were incomplete. Therefore,
13 the Department used an indirect audit approach to compute
14 the audited taxable measure.

15 First, the Department surveyed the Appellants'
16 three known vendors to obtain the total purchases. Of the
17 three vendors surveyed, only one vendor, Alpha Materials,
18 provided total purchases for the period of
19 January 1st, 2010, to June 30th, 2015. The second vendor,
20 Associated Ready Mix, was not able to provide an exact
21 amount since the Appellant was on the "cash on delivery"
22 only. The other vendor, Robertson's, did not respond.

23 To compute the audited total purchases, the
24 Department requested from Appellant purchases and sales
25 invoices from random months for each year. Based on the

1 sales and purchase invoices provided for January and
2 February 2015, the Department concluded that purchases
3 from Associated Ready Mix and Robertson's were
4 approximately 25 percent of purchases from Alpha
5 Materials. That will be on your Exhibit C, page 54.

6 The Department did note that the purchase amounts
7 included sales tax reimbursement. The purchase
8 information was used to compute the audited average
9 quarterly purchases for years 2010 through 2015. That
10 will be on your Exhibit C, page 46 to 47.

11 Now, for the period of fourth quarter 2008 and
12 year 2009, the audited purchases were computed using the
13 average of total purchases from January 2010 and
14 February 2011 purchase invoices. That will be on your
15 Exhibit C, page 49 to 50.

16 Next to compute the 2011, 2012, 2013 and 2015
17 audited markup of cost, the Department compared
18 Appellants' purchase invoices and sales invoices for
19 February 2011, May 2012, September 2013, and
20 February 2015. That will be on your Exhibit C, page 52 to
21 54. For the other remaining years, which are 2008, 2009,
22 2010, and 2014, the Department estimated the markup of
23 cost using the overall audited markup computed for the
24 four-year period, which was 68.75 percent.

25 The Department then applied the audited markup

1 factor to the audited purchases to compute the audited
2 taxable sales for the audit period. That will be on your
3 Exhibit C, page 45. Since sales tax reimbursement was
4 included with the Appellants' purchases for vendor
5 surveys, a tax abate allowance for all purchase amounts
6 was provided.

7 The net amounts represents the unreported taxable
8 profit for the audit period. That will be on your
9 Exhibit C, page 45. The Department reviewed the
10 documentation provided by the Appellants regarding bad
11 debts on taxable sales. This included mechanic liens,
12 customers' dishonored checks, and Rancho Pacific
13 Telecommunications bankruptcy filing. Based on that
14 information, the Department recommends a bad debt
15 allowance in the amount of approximately \$44,000. That
16 will be your Exhibit C, page 55 to 57.

17 The understated taxable measure for the audit
18 period is around \$1,144,000. In support of that
19 reasonableness of this amount, the Department observes
20 that Appellants' bank deposit minus verified non-sale
21 deposit and transfers for years 2012 through third quarter
22 of 2015 amounts to approximately \$1.3 million. That will
23 be on your Exhibit C, page 63 to 66. The audited taxable
24 findings for the same period are about \$702,000, which is
25 \$336,000 less than the amount of bank deposits.

1 This analysis shows that the audited taxable
2 measure recommended by the Department is more than
3 reasonable. Now, as far as the request for relief of
4 interest, the Department notes that the Appellants did not
5 provide any information or documentation to support
6 unreasonable error or delay by the Department. Despite
7 this fact, the Department performed an independent review
8 of the timeline with the processing of this case.

9 There's no unreasonable errors or delays noted
10 during either the audit or the appeals process. However,
11 there is an unexplained delay of 11 months noted during
12 the settlement process, including a 10-month delay to
13 provide Appellant with the Department's initial offer, and
14 then an additional one month delay to remove the case from
15 settlement. Therefore, the Department recommends relief
16 of interest for the periods of June 3rd, 2016, through
17 April 13, 2017 and then January 30th, 2018, through
18 February 28, 2018.

19 In addition, the Department noted that some of
20 the invoices selling prices concluded separately stated
21 charges for sales tax, however, the majority does not.
22 The selling price and cost are tax included when computing
23 the markup of cost. Since the majority of the sales
24 invoices does not have sales tax separately stated, it
25 would be more precise if the markup ratio is computed

1 using ex-tax selling price. Therefore, for the sales
2 invoices that included a separately stated sales tax, the
3 Department recommends adjusting the selling price to an
4 ex-tax basis when calculating the markup.

5 At this time the Appellants have not provided any
6 documentation or essential information to support any
7 additional adjustments to the audit findings. The
8 Department's audit findings are reasonable and fair,
9 therefore, the Department's request is that Appellants'
10 appeal be denied.

11 This concludes my presentation. I'm available to
12 answer any questions you may have.

13 MR. PERAZA: Yeah. The Rancho Pacific -- this is
14 Ruben Peraza, the taxpayer. The Rancho Pacific was
15 \$85,000. And we -- what else did we -- we didn't receive
16 anything from --

17 MRS. PERAZA: We didn't get paid.

18 MR. PERAZA: Yeah. We never gotten paid from any
19 of that. So it's not \$44,000. It's \$85,000 on the
20 bankruptcy for Rancho Pacific Communications.

21 MRS. PERAZA: And I also did not receive a
22 settlement agreement also.

23 MR. PERAZA: Yeah. We didn't receive any kind of
24 agreement.

25 JUDGE KWEE: Okay. Thank you, Mr. Peraza. This

1 is Judge Kwee. I will get your concerns in one minute,
2 but before that -- before turning it over to you, I'd like
3 to ask a couple of questions of CDTFA. So if you could
4 just hold for one minute.

5 And for CDTFA this is Judge Kwee, and I just
6 wanted to get a couple of clarifications on the
7 Department's recommendations.

8 MS. JIMENEZ: Sure.

9 JUDGE KWEE: First, the \$44,000 bad debts, was
10 that what was already concluded in the audit, or is that a
11 new adjustment that CDTFA is recommending?

12 MS. JIMENEZ: This is Mariflor Jimenez.
13 Judge Kwee, the \$44,000 was already incorporated in the
14 audit.

15 JUDGE KWEE: Okay. And the next one on the
16 interest, is that a new adjustment that's being
17 recommended by CDTFA?

18 MS. JIMENEZ: This is Mariflor Jimenez.
19 Judge Kwee, yes, for that interest relief it is new.

20 JUDGE KWEE: Okay. And on the third adjustment
21 for reducing the markup to exclude the separately stated
22 charges for sales tax, that's also a new adjustment CDTFA
23 is recommending; is that correct?

24 MS. JIMENEZ: This is Mariflor Jimenez.
25 Judge Kwee, that is correct. That is new.

1 JUDGE KWEE: Okay. Thank you. And again this is
2 Judge Kwee. Just so we get everyone on same page, does
3 CDTFA have a dollar amount of the interest adjustment and
4 a dollar amount of the sales tax included adjustment that
5 is being made, or is that something that is going to need
6 to be calculated after the hearing?

7 MS. JIMENEZ: This is Mariflor Jimenez.
8 Judge Kwee, those calculations need to be calculated after
9 the hearing.

10 JUDGE KWEE: Okay. May I ask how much time CDTFA
11 needs to make those calculations?

12 MS. JIMENEZ: This is Mariflor Jimenez. We would
13 need at least 30 days.

14 JUDGE KWEE: 30 days. And -- okay. Now, I'm
15 going to turn it over to the taxpayer. As you only heard
16 that CDTFA is recommending some -- or two new adjustments;
17 one, to interest and two, to the tax liability. Since
18 this is new, I would like to give the taxpayer an
19 opportunity to respond to the adjustments before I close
20 the record. I assume 30 days would be good.

21 And I understand the taxpayer is saying that it
22 should have been 84 not 44. So I understand that he does
23 have some comments to make. Mr. Peraza, would it be okay
24 if we could hold the record open for 30 days for CDTFA to
25 make the adjustments and then another 30 days for you to

1 respond with any additional clarifications that you have
2 on the adjustments made by CDTFA? Does that sound okay to
3 the taxpayer, Mr. Peraza?

4 MR. PERAZA: This is Ruben Peraza. Yes, Your
5 Honor. That will be fine for us. Anything that works for
6 you folks is fine with us.

7 JUDGE KWEE: Okay. Thank you.

8 And for CDTFA I'll just clarify. Do you have any
9 objections to what I proposed, the 30 days for CDTFA and
10 30 days for the taxpayer?

11 MS. JIMENEZ: This is Mariflor Jimenez.
12 Judge Kwee, no objection to those.

13 JUDGE KWEE: Okay. Thank you.

14 So at this point I did have a couple of questions
15 that I would like to ask, and I'm going to start with the
16 taxpayer.

17 Mr. Peraza, I just want to make sure everyone was
18 on the same page. From my understanding CDTFA's position
19 is that you sold ready mix concrete, and you delivered it
20 in your trucks to your customers, but you did not install
21 the concrete yourself. Other people installed it. Is
22 there any dispute about, basically, about that, or do you
23 agree that's how your business operated?

24 MR. PERAZA: That's exactly how our business
25 operated. We loaded up at the plant. The plant gives us

1 an invoice and we go to wherever the delivery is. We get
2 there, we unload, and we leave. We have nothing to do
3 with the concrete once it hits the ground.

4 JUDGE KWEE: Okay. And as far as -- I'm sorry go
5 ahead.

6 MR. PERAZA: Go ahead, sir. I'm done.

7 JUDGE KWEE: Okay. Thank you. This is judge
8 Kwee again.

9 I just had a couple of questions about the
10 documents titled "Work Order Peraza Concrete Transport,"
11 that were in CDTFA's exhibit list. Basically, it looks
12 like a sales invoice or that's what CDTFA has referred to
13 it in their decision. It includes the customer's name and
14 address and separately stated charges for the materials,
15 for the delivery, and for the sales tax. Is that -- are
16 these documents that you provided to the customer? Do you
17 have any background information on what these work orders
18 are?

19 MR. PERAZA: Yes. Those are work orders, sir.

20 JUDGE KWEE: Okay. Is this -- did you provide
21 any additional receipts to the customer, or is this the
22 only documentation that you had for the sales?

23 MR. PERAZA: That's the only documentation that
24 we had.

25 JUDGE KWEE: Okay. As far as the numbers that

1 were listed on these work orders, are these accurate
2 reflections of how much you charged the customer for
3 the -- for their concrete?

4 MRS. PERAZA: We gave them the loading ticket and
5 the work orders.

6 JUDGE KWEE: Okay. I don't believe the loading
7 tickets are in the record. Is that -- I don't know, but
8 I'll quickly ask CDTFA.

9 CDTFA, are the loading tickets in the -- in your
10 exhibits?

11 MS. JIMENEZ: This is Mariflor Jimenez.
12 Judge Kwee, if they're referring to the freight, it's
13 attached to the sales invoices. You would see some
14 shipping documents with it. If you tell me what page
15 you're looking at, then I'll be able to refer you to the,
16 what they call a weight master certificate.

17 JUDGE KWEE: Okay. So how about we start on
18 page 119 of CDTFA's exhibit. That's invoice number 3319
19 Peraza Concrete Transport.

20 MS. JIMENEZ: Oh. Judge Kwee, this is Mariflor.
21 That is what they call the shipping document. That's not
22 their invoice. Their sales invoice would be the page -- I
23 apologize. I'm looking at the wrong item here. So 119 --
24 all right. So 119 is invoice number 3319. So the
25 shipping document they have is 120, page 120.

1 JUDGE KWEE: Mr. Peraza, is that also your
2 understanding; so, you know, the work order and then the
3 shipping invoice for this transaction? And I guess the
4 shipping invoice is what you're referring to as a loading
5 document?

6 MRS. PERAZA: We have the load -- the loading
7 ticket is actually the weight master thing. The weight --

8 MR. PERAZA: The weight master -- yes, weight
9 certificate. And then we have an invoice, which is a work
10 order with a number 6315. It has a four-digit number.

11 JUDGE KWEE: Okay. Great. And so again this is
12 Judge Kwee. My question about that was just the amounts
13 -- the sales total listed on the work orders. Do you
14 agree theres the total amounts you sold the property to
15 the customer for, or is there any dispute about the
16 accuracy of the totals listed on the work orders?

17 MRS. PERAZA: I kind of dispute the accuracy
18 because we did pay the plant taxes on every load that we
19 loaded until we were audited. Because then that's when we
20 got the reseller's permit.

21 JUDGE KWEE: Okay. So I understand that the
22 taxpayer's contention that sales tax was paid at the time
23 of purchase. I'm looking at the order which is the
24 document from Peraza Concrete Transport to its customer,
25 Alpha, and the listed total amount charged. And I was

1 wondering, is the total amount that is listed as being
2 charged to the customer, is that accurate, the amount
3 listed on the work order? Is that what Peraza Concrete
4 Transport actually charged the customer, or is there
5 dispute that the customer paid more or less than what was
6 listed on the work order?

7 MRS. PERAZA: They paid a little different
8 because we -- it was a different amount. So it wasn't on
9 the work order.

10 JUDGE KWEE: Okay. So I guess I'll look at, for
11 example, I'm not sure if you have the -- do you have
12 CDTFA's exhibits in front of you?

13 MR. PERAZA: No. We don't.

14 MRS. PERAZA: No.

15 MR. PERAZA: No. We don't.

16 JUDGE KWEE: Okay. So I'll read, for example,
17 what I'm looking at to make sure I understand, and you
18 understand correctly. So, for example, I'm looking at a
19 work order on page 121 of CDTFA's exhibit list. And that
20 one -- it's called work order number 3322. And that -- it
21 list a total amount of \$411 charged to the customer. And
22 there under special instructions there's a stamp that says
23 "Paid". And it says, "Paid late today". It's handwritten
24 in.

25 And so, Mr. Peraza, are you saying that the \$411

1 total listed on the work order is not what the customer
2 paid to your company?

3 MRS. PERAZA: That is what was paid to us.

4 JUDGE KWEE: Okay.

5 MR. PERAZA: That's what was paid to us,
6 Judge Kwee.

7 JUDGE KWEE: Okay. So as far as the issue with
8 the tax being paid on the purchase, that's what you paid
9 to your own supplier. And that's what you're saying --
10 that's your contention that you paid the taxes with the
11 amount that you paid to your supplier; is that correct?

12 MRS. PERAZA: Yes.

13 JUDGE KWEE: Okay. Great. So my question about
14 that is, there are separate items for sales tax. I'm just
15 wondering then, if you didn't have a permit, what happened
16 with the amount you charged for the sales tax? Is that
17 something that was paid to anyone, or what happened with
18 the sales tax that was collected from the customer?

19 MRS. PERAZA: What we paid -- what we got paid,
20 we basically paid for the material.

21 JUDGE KWEE: Okay.

22 MRS. PERAZA: Like I said, we didn't know how we
23 were supposed to do business, and we did pay taxes to the
24 plant every load that we put in.

25 MR. PERAZA: Yes. We did pay. We had taxes

1 paid. Every time we loaded we paid taxes. So when we
2 delivered it, we would just charge for the concrete, and
3 that was it. We wouldn't charge taxes again because we
4 already had paid. But we didn't know that we were
5 supposed to have a reseller's permit, and the plant never
6 told us this. So that's why we were paying the -- we were
7 paying the plant the taxes. We don't have a, you know,
8 account with the plants.

9 JUDGE KWEE: Okay. I understand. And just so I
10 understand the concerns that you raised. I was wondering
11 as far as the audit methodology applied by CDTFA, are
12 there any specific concerns that you would like the panel
13 to look into that might not have been done correctly --
14 that you feel might have not been done correctly when
15 CDTFA calculated the liability?

16 I know you mentioned the \$44,000 bad debt should
17 be higher amount, and you will have the opportunity to
18 address that in briefing after the hearing today. But I
19 was wondering, other than that, are there any specific
20 concerns that you would like to address the panel -- or
21 have the panel look at and exam when we look at this
22 appeal?

23 MRS. PERAZA: Yes. This is Josefina Peraza.
24 What I'm trying to -- well, we were at the beginning
25 trying to do businesslike everybody else out there. We

1 didn't know. And like I said, everybody at the Board of
2 Equalization had a struggle figuring out how we were
3 supposed to be doing business.

4 Now, the amount -- dollar amount that Rancho
5 Pacific owed to us was not 40-something thousand. It was
6 more, way more. And even one of the -- after filing for
7 bankruptcy, they kept loading. We kept giving them
8 material, which they owed us another \$10,000 with the
9 attorney. I don't know what happened with the attorney,
10 but they just never returned our phone calls, and we never
11 got paid. And that one wasn't sent to you guys.

12 I mean, it's been since 2009. I don't have any
13 record of it. But like I said, we did try to do
14 businesslike we were supposed to, like we thought we were
15 doing business. It was naively and just like I said, we
16 paid -- if we do owe -- I mean, we're not trying to get
17 out of this situation by zeroing it or anything, but we --
18 we did pay our -- every load that we did. We did pay
19 taxes to the plant. And we only load, basically, at Alpha
20 like other companies. They don't sell FOB to any of us.

21 JUDGE KWEE: Okay. Thank you. I just have
22 one -- I'll just pause for one moment.

23 I notice that we did receive a new participant in
24 this hearing. It's identified as "Call In User 3". I'd
25 just like to verify if we got a new participant or someone

1 dropped off and called back in. Do we have a new -- is
2 there anyone who did not identify themselves perviously
3 during role call who is now participating in this hearing?
4 Okay. I apologize. I thought that there was a new person
5 that just joined the hearing. I'll continue.

6 And before I turn it over to the panel to see if
7 they have any additional questions, since you mentioned
8 the bad debt deduction, Mr. Peraza, I would just like to
9 raise one quick question about that. I am looking at the
10 CDTFA's audit working papers. I do see that there were
11 two income tax returns on file, and neither one of those
12 claimed any bad debt deductions -- wrote off any debts for
13 income tax purposes.

14 I'm wondering if you know if your business ever
15 charged off any bad debts, such as the ones that you were
16 mentioning, for income tax purposes?

17 MRS. PERAZA: No.

18 MR. PERAZA: No.

19 JUDGE KWEE: Okay. Thank you.

20 At this point I'd like to find out if either of
21 my panel members have any questions. I guess I'll start
22 with Judge Cho.

23 Judge Cho, do you have any questions for either
24 of the parties?

25 JUDGE CHO: This is Judge Cho. I just wanted to

1 ask the Appellants. You did mention the bad debt
2 deduction from Rancho Pacific. Do you have any further
3 documentation for that showing the higher bad debt amount?

4 MRS. PERAZA: I should be able to, if -- if I can
5 lookup the records. Like I said, I could look it up and
6 see if I can locate it within that 30 days. They took
7 copies of everything even though they should have that
8 with them.

9 MR. PERAZA: Yes. Mr. Record did take copies of
10 all the bankrupt papers and the \$10,000 on concrete that
11 they loaded after bankruptcy was filed.

12 JUDGE CHO: This is Judge Cho. Thank you. So if
13 you don't mind, would you mind just submitting that
14 documentation to the Office of Tax Appeals with your final
15 submission during that 30-day period, according to
16 Judge Kwee's, I guess, post-conference memorandum that
17 he'll send out.

18 MR. PERAZA: Yes, sir. We would do that for you.

19 MRS. PERAZA: I will try to find --

20 MR. PERAZA: Yes.

21 JUDGE CHO: Thank you. This is Judge Cho. Just
22 a quick question for CDTFA. You mentioned that you're
23 going to be doing some calculations regarding the
24 inclusion of sales tax and the adjustment of the markup.
25 I just want to confirm, you're only going to be adjusting

1 those calculation; correct? You won't be adding any new,
2 like, any new audit items, for example, like excess sales
3 tax reimbursement collected debt that was failed to be
4 remitted; is that correct?

5 MS. JIMENEZ: This is Mariflor Jimenez.
6 Judge Cho, that is correct. We're just going to be
7 adjusting the selling price because we included the tax on
8 those. So we're just going to remove the tax when
9 computing the markup of the cost.

10 JUDGE CHO: This is Judge Cho. Thank you very
11 much. Those are all the questions that I had.

12 JUDGE KWEE: Thank you, Judge Cho.

13 This is Andrew Kwee. I'd like to turn it over to
14 Judge Ralston to see if she has any questions of either
15 party at this point.

16 JUDGE RALSTON: This is Judge Ralston. I don't
17 have any questions.

18 JUDGE KWEE: Okay. Thank you Judge Ralston.

19 So with that said, I'll just briefly go over the
20 rest of the hearing briefings. First, it's going to be
21 30 days for CDTFA to make the interest and the tax
22 adjustments at that point. And I'd ask CDTFA to clarify
23 in its submission both the amount of the adjustments and
24 the specific items for the adjustment being made. I
25 understand, for example, for interest you mentioned

1 several periods. If you could please indicate what those
2 specific periods are when you make the adjustment.

3 And then after CDTFA provides additional briefing
4 on the amount and nature of those adjustments, then the
5 taxpayer will have 30 days to respond and provide
6 additional documents, which may include documentation on
7 bad debts. Now, since the bad debts wasn't an item that
8 CDTFA was making an adjustment on, I think it might be
9 prudent or depending on what the taxpayer submits, I might
10 at that point turn it back to CDTFA if there's new
11 documentation, for example, for CDTFA to determine if any
12 additional adjustments are warranted. So that might
13 extend the additional hearing period for another 30 days.

14 I'll ask CDTFA, do you have any concerns with
15 reviewing new documentation submitted which would extend
16 the holding -- the amount of time the record is being held
17 open for an additional, for example, 30 days possibly?

18 CDTFA, do you have any objections about that?

19 MS. JIMENEZ: This is Mariflor Jimenez.

20 Judge Kwee, we have no concerns.

21 JUDGE KWEE: Okay. Thank you.

22 And for the taxpayer just to clarify, you are
23 also okay with the amount of time the hearing is held open
24 as extended for an additional period for CDTFA to review
25 any documentation that you submit; is that correct?

1 MRS. PERAZA: Yes. I have just a question. The
2 taxes that we paid on the loading when we loaded, it's
3 going to be credited you said?

4 JUDGE KWEE: Mrs. Peraza, so my understanding is
5 the adjustment that the taxpayer -- I'm sorry. The
6 adjustments that CDTFA is currently proposing to make are
7 one, to grant interest relief for certain periods, which
8 will be clarified in their post-hearing submission. And
9 two, they will be deleting separately stated charges for
10 sales tax that were made in the work orders that were
11 provided to the customers. Those are the two adjustments
12 that CDTFA has recommended making.

13 MRS. PERAZA: Okay.

14 JUDGE KWEE: Okay.

15 MRS. PERAZA: Thank you.

16 JUDGE KWEE: Certainly.

17 Are there any other questions from the panel
18 members before we turn it over to the parties for a
19 five-minute rebuttal or five-minute closing remarks?

20 Okay. At this point I'd like to turn it over to
21 Mr. and Mrs. Peraza. You have five minutes to provide any
22 closing arguments or remarks that you would like to make
23 before we conclude this hearing.

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CLOSING STATEMENT

MR. PERAZA: Yes. This has been going on for a while. It's been in the back of my mind, and I would really like to get it over with. Please, please have a kind heart for us. God bless you on this decision. I mean, for us it's very important. We're doing really, really miserable right now, and it would really help us if you have a kind heart on that amount.

Thank you very much for today, and thank you very much to the panel, Ms. Jimenez, Mr. Smith, and you, Judge Cho, Kwee. Thank you very much for the day for listening to us.

MRS. PERAZA: And I hope you have a kind heart and give us an opportunity. Like I said, we're not trying to get out of the situation, but we just want to get it fixed and done and over with.

MR. PERAZA: Yes.

MRS. PERAZA: Thank you.

MR. PERAZA: Thank you.

JUDGE KWEE: Okay. Thank you. This is Judge Kwee.

At this point I'll turn it over to CDTFA. Again, you'll have five minutes for any closing remarks that you would like to make before I conclude this hearing.

MS. JIMENEZ: Judge Kwee, we have no closing

1 remarks. We're completed. Thank you.

2 JUDGE KWEE: Okay. This is Judge Kwee. Thank
3 you everyone for coming in today. I believe we're ready
4 to conclude this hearing.

5 So with that said, the case is going to be
6 held open -- or the record is going to be held open for an
7 additional at least 60 days, possibly 90 days. I will
8 submit -- I will send out an orders document summarizing
9 the additional briefing that's required, and it's going to
10 be what we basically discussed in this hearing today.

11 With that said, thank you everyone for calling
12 in. And we will issue a written decision within 100 days
13 after the record is closed, after the briefing period is
14 closed. Today's hearing in the appeal of Ruben and
15 Josefina Peraza is now adjourned.

16 So this also concludes all the hearing matters
17 that was scheduled before OTA for this day. Thank you
18 everyone. Take care.

19 (Proceedings adjourned at 1:52 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 1st day of July, 2020.

ERNALYN M. ALONZO
HEARING REPORTER