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APPEARANCES:

Panel Lead: Hon. Keith Long

Panel Members: Hon. Joshua Aldrich
Hon. Daniel Cho

For the Appellant: A. Amas, Taxpayer

For the Respondent: STATE OF CALIFORNIA
Department of Tax and
Fee Administration
By: Randy Suazo
Jason Parker
Christopher Brooks

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INDEX

EXHIBITS

(Appellant's Exhibits A through E were
referenced at page 7.)

PRESENTATION

	Page
By Mr. Amas	5
By Mr. Suazo	19

1 Cerritos, California; Thursday, October 15, 2020

2 10:00 a.m.

3

4

5 JUDGE LONG: We are now going on the record.

6 This is -- this is the appeal of Amas, OTA

7 Case Number 18083633.

8 It is Wednesday, October 15th, 2020,

9 approximately 10:00 a.m.

10 This appeal was intended to be heard in

11 Cerritos, California. I am lead administrative law

12 Judge Keith Long, and with me today is Judge Josh

13 Aldrich and Judge Daniel Cho. We will be hearing this

14 matter this morning. I am the lead ALJ, meaning I will

15 be conducting the proceedings but my co-panelists and I

16 are equal participants, and we will all be reviewing the

17 evidence, asking questions and reaching a determination

18 in this case.

19 Before we begin, will the parties, please,

20 state and spell your names and who you represent for the

21 record.

22 Mr. Amas, we'll begin with you.

23

24 PRESENTATION

25 MR. AMAS: My name's Abed I. Amas. And -- and what

1 else, sir? I'm sorry.

2 JUDGE LONG: Can you, please, spell your name for
3 the reporter.

4 MR. AMAS: A like apple, B like bravo, E like
5 Edgar, D like dog, middle initial is I, last name is
6 Alpha, Mary, apple, Sam, pronounced Amas.

7 JUDGE LONG: Thank you. And CDTFA.

8 MR. SUAZO: This is Randy Suazo, hearing
9 representative, R-a-n-d-y, S-u-a-z-o.

10 MR. PARKER: This is Jason Parker, hearing
11 representative. J-a-s-o-n, P-a-r-k-e-r.

12 MR. BROOKS: This is Christopher Brooks, tax
13 counsel. Spelling is C-h-r-i-s-t-o-p-h-e-r. Last name
14 Brooks B as in boy, -r-o-o-k-s, as in Sam.

15 JUDGE LONG: Thank you. CDTFA has submitted
16 Exhibits A through E which are admitted into evidence
17 with no objections. There are no new exhibits.

18 Mr. Amass, we will begin with your opening
19 statement. You have up to ten minutes, and you may
20 begin whenever you are ready.

21 MR. AMAS: Okay. Well, I had received a letter
22 from the State Board of Equalization back in November, I
23 believe, at the time where I was not in business. My --
24 my business had suffered smoke slash fire damage, and I
25 was completely unable to move forward with -- with

1 this -- this matter, since I was inundated with two --
2 two crucial matters, this matter of -- of the fire in my
3 restaurant and also the situation with my wife, who came
4 down with breast cancer.

5 I -- I called the CD -- the office -- the
6 State Board Tax -- State -- State Board of Equalization
7 to try to understand what was going on. They presented
8 me with evidence of the tax years that are in question.
9 And, you know, this matter has been going on for the
10 last five years, and I really don't know why it took so
11 long.

12 If I had my business going, I probably would
13 have made some sort of a settlement or an agreement to
14 be able to make payments, but I was not able to do
15 because I had no income, and I wasn't able to be
16 employed until 2018 while the case was going on. I
17 tried to reach some sort of an understanding of how I
18 could move forward with this matter.

19 At some point, I was in a phone conversation
20 with a -- with a -- a State Board representative from, I
21 believe, in Los Angeles where -- and I did not see this
22 on the -- on the records, on the -- in the exhibits
23 between me and the State Board of Equalization where
24 there was a amount that they wanted me to settle with
25 and wanted me to come down with -- with -- to pay --

1 make a payment of \$25,000, and make -- make payments for
2 the rest of the -- of the agreed amount. I believe it
3 was somewhere around 40 or \$45,000 if I remember
4 correctly. And I was not able to come up with this
5 money because I was not working, and I was dealing with
6 issues -- personal issues. And up -- up to this date,
7 I -- I -- I was not able to open a restaurant or go back
8 to a -- to a -- to an income where I could at least make
9 a payment, just you make payments monthly for other
10 matters like rent and other expenses.

11 So this -- this matter dragged on and on, and
12 I feel like I should -- I should have, probably, made
13 some sort of arrangements to remedy this matter. And --
14 and I couldn't -- I could not. So here we are right now
15 at this important day for me to -- to be able to come to
16 a resolution of -- of this -- of these monies, and while
17 it's accruing interest, it has become a -- a big -- a
18 big amount that -- that is, frankly, very difficult
19 to -- to -- to solve. So I am -- I am in -- caught
20 between a rock and a hard place. Basically, still
21 unemployed, working here and there and try to make ends
22 meet. so I am asking the OTA to be able to -- make a --
23 a -- make -- on my behalf to make an appeal to the State
24 Board of Equalization to come up with, sort of a -- a
25 payment plan to -- to make -- to get this burden off my

1 back, and -- and move forward with it.

2 Like I said, had I had, had I had been
3 involved in the restaurant, and I did -- the restaurant
4 did not suffer the distress that it went, you know,
5 the -- the restaurant closed. I wasn't able to go back
6 to it and five years from now, my status hasn't changed.
7 So I'm -- like I said, I'm asking again the Office of
8 Tax Appeals to be able to try to take this matter into
9 consideration and try to come up with -- with a solution
10 for this.

11 And that's all I have to say. I kept saying
12 this for the last four or five years whenever I spoke
13 with the representative or an officer of either the OTA
14 or the State Board of Equalization, but to no avail. So
15 the matter needed to move forward and here we are today.

16 That's all I have to say.

17 Hello?

18 JUDGE LONG: Thank you, Mr. Amas. This is Judge
19 Long again.

20 To confirm, this hearing is for whether --
21 for -- for tax disputes. Did you dispute that the tax
22 was owed?

23 MR. AMAS: No, I did not. The only thing that I --
24 the only thing that I kept mentioning to everybody that
25 I was in contact with that I wasn't able to provide any

1 documents or any -- any receipts because everything
2 was -- was gone in my restaurant, and I did not have
3 any -- any evidence to -- to -- to prove otherwise, and
4 the State Board of Equalization had presented the case,
5 showed all the receipts, and -- and I am in a -- in a
6 situation where I'm not able to provide anything --
7 anything else.

8 JUDGE LONG: This is Judge Long.

9 With respect to the taxes owed, we're not
10 able -- as an agency, the Office of Tax Appeals is not
11 able as an agency to discuss settlement or payment plans
12 with you.

13 However, you -- you are able to contact the
14 CDTFA regarding settlement, if that's what you would
15 like to do.

16 MR. AMAS: Could you repeat that?

17 JUDGE LONG: Yes. This is Judge Long. We, as an
18 an agency, the Office of Tax Appeals is not able to
19 settle or accept a payment plan from you. However, you
20 can contact the CDTFA if that is the route that you
21 would like to pursue.

22 MR. AMAS: And what's -- what's the mechanism of
23 contacting them? In other words, what is the next step?

24 JUDGE LONG: The next steps would be to contact
25 CDTFA. You can find their contact information on their

1 Website, I believe.

2 But CDTFA, can you, please, provide further
3 information to Mr. Amas regarding how he can contact
4 settlement or obtain a payment plan?

5 MR. SUAZO: This is Randy Suazo.

6 I believe he was trying to go into Offers and
7 Compromise.

8 MR. AMAS: Yes, at some point.

9 MR. SUAZO: The decision when they had the appeals
10 hearing, he was given the phone number to contact Offers
11 and Compromise to work out the issue and payment plan.

12 MR. AMAS: And I did, and we haven't -- we haven't
13 moved forward beyond that, beyond the phone call.

14 MR. PARKER: This is Jason Parker.

15 Yeah. As far as Offers and Compromise, it's
16 typically for a final tax liability, which this isn't
17 the final tax liability because there is a Petition for
18 Redetermination, so once this goes final, then the --
19 then the Offers and Compromise can be discussed.

20 And same with the payment plan, that those
21 are for final liabilities that they can enter into a
22 payment plan at that point.

23 To me, it sounded like he attempted to go
24 through settlement before but did not come to a
25 settlement agreement. And those are confidential, so we

1 do not access have to those ourselves. The settlement
2 program itself is confidential.

3 JUDGE LONG: And can CDTFA please provide some
4 contact information now for the taxpayer to call after
5 this proceeding is over.

6 MR. PARKER: Yes. So the taxpayer can contact
7 myself, Jason Parker, and I will get him in contact with
8 Settlement and Offers and Compromise. My phone number
9 is 916-309-5201.

10 JUDGE LONG: Thank you. Now, Mr. Amass, although
11 you've indicated that you'd like to contact CDTFA for a
12 payment plan, I will note that the Office of Tax Appeals
13 will exam the merits of this case, issue our opinion on
14 it after we consider all the evidence. We're not going
15 to interpret your request for settlement as a
16 concession. We're going to take independent view of the
17 disputed tax on the merits and issue an opinion based on
18 the merits.

19 Is that all right with you, Mr. Amas?

20 MR. AMAS: I guess -- yes, your Honor. I -- I
21 understand. It's okay.

22 I also would like to be able to have the
23 right phone numbers and a contact from the State Board
24 of Equalization to be able to contact the gentleman. I
25 haven't -- I haven't written the phone number down. I'm

1 sitting down outside to have a quiet moment here for
2 this matter. So I -- I need this number one more time,
3 and if it can be emailed to me, that's great.

4 JUDGE LONG: Mr. Amas, we'll send that to you after
5 the hearing. Thank you.

6 Before we go forward, I want to turn this
7 proceeding over to my fellow judges for any questions
8 they may have for you, Mr. Amas.

9 We'll start with Judge Cho.

10 Judge Cho, do you have any questions?

11 JUDGE CHO: This is Judge Cho. I have no
12 questions.

13 Thank you.

14 JUDGE LONG: Judge Aldrich, do you have any
15 questions?

16 JUDGE ALDRICH: Yes. I was just wondering what
17 kind of POS system did you have in place during the
18 audit period, Mr. Amas?

19 MR. AMAS: What kind of -- I'm sorry. What's the
20 question again?

21 JUDGE ALDRICH: Point of sale system. So, like, a
22 cash register or like what kind of software, if any.

23 MR. AMAS: Oh, I had a -- I had POS that I was
24 using at the restaurant that was -- that was, the
25 software that I used called Microfocus that I included

1 in my -- in my -- in the restaurant operation, and there
2 was no -- there was no other, you know, other POS
3 systems from -- from out in the market that I used. I
4 used my own POS system. And that POS was -- was -- I
5 mean, the hardware and everything was damaged during the
6 fire.

7 MR. PARKER: And it didn't have any cloud storage
8 or outside storage?

9 THE WITNESS: No. No. Not at all.

10 JUDGE ALDRICH: Okay. And do you have any evidence
11 of -- that there was a fire? I don't know that was
12 disputed that there was a fire, because I saw in the
13 audit work papers, but was there an insurance claim made
14 or --

15 THE WITNESS: The insurance claim, we went
16 through -- we went through it, it took about -- yes,
17 there was a insurance claim. And I was -- I was also
18 trying to appease the situation then by trying to
19 sell -- to sell whatever I could salvage. But the --
20 you know, I was in a dispute what the landlord and, you
21 know, I had only six months left on the -- the second
22 ten-year lease that I had on the restaurant, and I
23 wasn't able to go back and -- and fix the restaurant and
24 go back to it. So it was a done deal.

25 JUDGE ALDRICH: It looked like you had bank records

1 available, but you didn't provide them; is that correct?

2 MR. AMAS: I am not sure that -- I'm not sure it
3 was -- it's -- it was the right way to say that I don't
4 have bank record. I have bank records, I had bank
5 records or bank records, of course, they are online.
6 You know, I get my bank statements monthly, and I was
7 just, basically, in a situation where I lost my
8 business, you know, dealing with my -- my wife's malady.
9 She had breast cancer, and I wasn't able to focus for at
10 least a year or more throughout 2016 and partial of
11 2017.

12 To answer your question, yes, I did get a
13 little bit of money from the insurance, and I had to pay
14 all the outstanding rent expenses, that were
15 accumulating. So I was left with pretty much -- pretty
16 much nothing.

17 JUDGE ALDRICH: I guess I'm not understanding if you
18 had electronic access to these bank statements, why
19 those weren't provided to the auditor, if, in fact, they
20 were not.

21 MR. AMAS: I -- I really -- I really don't know
22 what was the dynamic of not providing those records to
23 the State Board of Equalization. There was no reason.
24 There was no reason for me to -- not to provide them. I
25 really don't know, your Honor, why. I mean, there was

1 no -- direct instructions because all the -- the 1099
2 that was provided with the credit card sales and --
3 and -- was -- was -- was at the hands of the State Board
4 of Equalization. So the records pretty much that they
5 had are the same ones that showed in the 1099, and all
6 the monies that were coming through the 1099, I mean,
7 through the credit card company, were -- were -- were
8 correct, and they were in the -- in the -- as an exhibit
9 in the -- in the -- what's the word that I am trying
10 to --

11 JUDGE ALDRICH: Work papers.

12 MR. AMAS: Yeah, the work papers.

13 They were -- they were with the State Board
14 of Equalization so I really did not know -- I wasn't --
15 I was in a very confusing state of mind then. I tried
16 one time to settle the case. They asked me for a lot of
17 money, money which I didn't have. I wasn't -- I
18 don't -- I don't think I remember even I got any payment
19 from the insurance company until they finished their
20 investigation, you know so -- so --

21 JUDGE ALDRICH: Thank you, Mr. Amas. I'm going to
22 return it back to Judge Long.

23 MR. AMAS: Thank you, sir. Thank you, your Honor.

24 JUDGE LONG: This is Judge Long.

25 Mr. Amas, I do have a few questions for you

1 as well.

2 So to confirm, after the fire, the business
3 never reopened?

4 MR. AMAS: Never reopened after November 4th, 2015,
5 I did not have a single income.

6 JUDGE LONG: And -- this is Judge Long.

7 If you never reopened, can you explain the
8 seller's permit remained open, why you never contacted
9 BOE to close your seller's permit?

10 MR. AMAS: Again, I -- I was under the impression
11 that when they -- when I told the State Board of
12 Equalization, that I -- I don't have a business anymore,
13 I think the ABC license was canceled. I figured that
14 the State Board of Equalization, seller's permit would
15 be cancelled as well.

16 I was not, like I said, Judge Long, your
17 Honor, I was not in a frame of mind to really follow the
18 procedure and do the right thing as far as -- as closing
19 my seller's permit and -- and all that.

20 So I'm sure that it's not -- it was still
21 open because, in my mind, the seller's permit was still
22 quote/unquote valid is because the -- we are -- we were
23 in the process of -- of -- of an audit. That's why I
24 didn't know whether I should close and call and contact
25 them to -- to rescind the -- the seller's permit.

1 JUDGE LONG: Thank you. This is Judge Long.

2 I also have a question regarding the audits.

3 I understand you didn't have any books and
4 records for two of the years, the tax bill measure
5 is based on the difference between what you reported on
6 your California income tax return and what you reported
7 on your sales and use tax returns for those periods for
8 2013 and 2014.

9 Can you explain the difference -- the
10 differences between those two? Was someone else
11 preparing the returns for you? different people at the
12 time?

13 MR. AMAS: That was -- my -- my accountant was --
14 excuse me. Sorry to interrupt you. I'm really sorry.
15 Go ahead.

16 JUDGE LONG: It's okay. I was done. Go ahead.

17 MR. AMAS: I was -- basically had a accountant that
18 was doing my books, you know. We filed our federal
19 and -- and State taxes and -- on a quarterly basis. We
20 were filing our -- our State -- State taxes, and that's
21 what he was sending me, and that was what I was paying.

22 I basically left it up to -- left it up to
23 him. I wasn't too much involved with -- with numbers
24 and stuff. He has been representing me or working with
25 me for -- for many years, and that was the situation.

1 The appellant was a sole proprietorship and
2 operated a sit-down restaurant in San Francisco serving
3 Middle Eastern style food, beverages, and beer and wine.

4 The seller's permit began on November 1st,
5 1996, and was closed out effective December 2017. This
6 is the Appellant's first audit.

7 On November 2015, prior to the audit --

8 JUDGE LONG: Mr. Suazo, I'm sorry to interrupt.
9 I'm getting some feedback that we would like to you
10 speak a little bit louder, please.

11 MR. SUAZO: Okay. Do you want me to start over or
12 where I left off?

13 MR. SUAZO: Okay. Do you want me start over or
14 where I left off?

15 JUDGE LONG: Could the court reporter wave your
16 hand if you want him to start over?

17 THE REPORTER: I'm fine.

18 JUDGE LONG: Okay. Don't start over, just talk
19 louder where you left off.

20 MR. SUAZO: This is the appellant's first audit.
21 In November 2015, prior to the audit, Appellant's
22 business suffered a fire and closed the restaurant. The
23 restaurant never reopened after the fire.

24 The audit period is from January 1st, 2013,
25 through December 31st, 2015. During the audit period,

1 the restaurant was open six days a week from Tuesday
2 through Friday 5:00 p.m. to 10:00 p.m., Saturday from
3 9:30 a.m. to 3:30 p.m., and then again from 5:00 p.m. to
4 10:00 p.m., on Sunday, from 9:30 a.m. to 3:30 p.m., and
5 then again from 5:00 p.m. to 9:00 p.m. The business was
6 closed on Mondays.

7 The appellant stated that all records were
8 lost in the fire. The Department obtained State income
9 tax returns for 2013 and 2014 from the Franchise Tax
10 Board and 1099Ks for the 2013 and 2014 periods.

11 Since the restaurant was closed during the
12 audit, no site test could be conducted because the fire
13 destroyed the the appellant's records so review of
14 checks or cash register tapes could not be performed.
15 No mark up of menu items using purchase invoices could
16 be done either. Review of transcripts of the sale and
17 use tax returns for the audit period showed that the
18 appellant had reported all sales taxable and taken a
19 sales tax included deduction, Exhibit D pages 26 and 27.

20 The State income tax returns were scheduled
21 and compared to reported sales. A difference of
22 \$221,000 for 2013 and \$214,000 for 2014 was disclosed.

23 The State income tax records showed more than twice
24 as much in sales as was reported to the Department as
25 was reported for each year. Exhibit D, page 34.

1 A markup analysis using cost of goods sold
2 for the income tax returns for reported sales disclosed
3 a negative markup of 4.5 percent for both years.
4 Exhibit D page 33.

5 The industry average markup on costs of goods
6 sold for a restaurant of this nature is typically 200
7 percent. Review of 1099K data for 2013 and 2014 was
8 conducted and disclosed X-Tax differences of 165,000 for
9 2013 and 150 -- and over 150,000 for 2014. Exhibit D,
10 page 32.

11 The 1099K analysis did not account for cash
12 sales which would increase the differences. Using the
13 Franchise Tax Board's income tax returns, X-Tax sales
14 amounts for 2013 and 2014 were compared to reported
15 X-Tax sales and percentages of errors were computed.
16 The percentage of error for 2013 was 118 percent,
17 and for 2014, the percent of error was 113 percent. The
18 average percentage of error for both periods was 116
19 percent.

20 The percentage of errors were applied to the
21 reported sales for each applicable period. For 2015
22 average percentage of error was applied. The unreported
23 taxable sales totalled \$622,824. Exhibit D, page --
24 pages 29 and 30.

25 To review for reasonableness, the cost of

1 goods sold mark up was computed based on income tax
2 returns for both 2013 and 2014. The computed mark ups
3 per income tax returns were 107.91 for 2013 and 103.79
4 percent for 2014. The overall markup was 108 -- 105.84
5 percent, which is considered quite low. Exhibit D, page
6 31.

7 Based on this analysis, the assessment
8 developed in the audit is very conservative. The
9 appellant has not provided any documentation to support
10 the reduction of the liability.

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

13 JUDGE LONG: Thank you. This is Judge Long.

14 At this time I'd like to ask if my panel has
15 any questions.

16 Judge Cho, do you have any questions?

17 Judge CHO: This is Judge Cho. I just have
18 one really quick question.

19 With respect to the 1099K information and
20 your Schedule C, I believe, I just wanted to confirm
21 that that's just the amounts reported on the 1099K;
22 right? The Department did not do a credit card to cash
23 sales ratio and then get an updated figure; is that
24 correct?

25 MR. SUAZO: Yes, you Honor. Just the 1099K, so

1 cash would not be included, bank statements were not
2 available.

3 MR. PARKER: This is Jason Parker.

4 I'd like -- I just want to add on real quick,
5 that because of the fire, we were not able to do an
6 observation test to try to calculate the total sales
7 from credit card receipts. So we only have credit card
8 receipts, and those were the differences just from the
9 credit card receipts.

10 JUDGE CHO: This is Judge Cho.

11 Thank you very much. That's the only question
12 I had.

13 JUDGE LONG: Judge Aldrich -- this is Judge Long.
14 Judge Aldrich, do you have any question?

15 JUDGE ALDRICH: This is Judge Aldrich.

16 I don't have any questions. Thank you.

17 JUDGE LONG: This is Judge Long. I just have a few
18 questions.

19 Regarding the fire, which is mentioned in the
20 report of field audit, Exhibit D, page 11, if the
21 business never reopened and the fire occurred on
22 November 5th, was -- why was there no consideration made
23 for this in the audited taxable sales? Can you explain?

24 MR. SUAZO: When they did the percentage of error,
25 they compared it to what he reported for that fourth

1 quarter. So whatever he happened to report for the
2 fourth quarter percentage of error, which was based on
3 2013 and '14, which were combined, were applied to it.
4 So if he had reported a lower -- a lesser amount, it
5 would reflect on there.

6 JUDGE LONG: Okay. Thank you.

7 And then I also -- that's my only question.

8 So we will move on to closing arguments.

9 Mr. Amas, you have five minutes to make a
10 rebuttal. You may begin whenever you are ready.

11 MR. AMAS: Oh, I don't have anything else to say,
12 your Honor.

13 JUDGE LONG: This is Judge Long.

14 Thank you, Mr. Amas.

15 Does the panel have any questions? Judge
16 Cho?

17 JUDGE CHO: This is Judge Cho.

18 I have no questions. Thank you.

19 JUDGE LONG: This is Judge Long.

20 Judge Aldrich, do you have any questions?

21 JUDGE ALDRICH: This is Judge Aldrich.

22 I don't have any questions. Thank you.

23 JUDGE LONG: This is -- this is Judge Long. Thank
24 you.

25 Mr. Amas, we now have the information you

1 provided today. Is there anything else you prepared or
2 anything else you would like to tell us before we
3 conclude the case?

4 THE WITNESS: No, your Honor. Thank you for your
5 time.

6 JUDGE LONG: This concludes the hearing. The
7 judges will meet and decide the case based on the
8 documents and testimony presented and admitted as
9 evidence today. We will send both parties our written
10 decision no later than 100 days from today.

11 Thank you for your participation.

12 The case is now submitted, and the record is
13 closed. This hearing is now adjourned.

14 Thank you.

15 * * * * *

16 (Hearing concluded at 10:41 a.m.)

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REPORTER'S CERTIFICATE

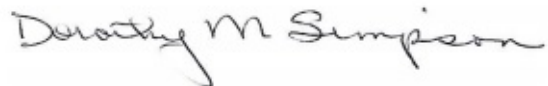
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In witness whereof, I have subscribed my name this date: October 20, 2020.



Dorothy M. Simpson, CSR
Certificate Number 14323