

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
AMY ALICE KENNEY,) OTA NO. 18113998
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, September 22, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Suite 300, Cerritos,
California, 91401, commencing at 10:08 a.m.
and concluding at 10:51 a.m. on Tuesday,
September 22, 2020, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

1 APPEARANCES:

2

3 Panel Lead: ALJ DANIEL CHO

4

5 Panel Members: ALJ SUZANNE BROWN
6 ALJ KENNY GAST

7 For the Appellant: RICHARD BRICKMAN
8 PAUL BECK

9

10 For the Respondent: STATE OF CALIFORNIA
11 DEPARTMENT OF TAX AND
12 FEE ADMINISTRATION

13 RANDY SUAZO
14 JASON PARKER
15 CHRISTOPHER BROOKS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-7 were received at page 6.)
(Department's Exhibits A-D were received at page 6.)

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1 Cerritos, California; Tuesday, September 22, 2020

2 10:08 a.m.

3

4 JUDGE CHO: Okay. Then let's go on the record.

5 This is the appeal of Amy Alice Kenney, OTA

6 Case Number 18113998. Today's date is September 22, 2020,

7 and the time is approximately 10:08 a.m.

8 This hearing was originally scheduled for

9 Cerritos, California. However, due to the ongoing

10 health concern, we are holding this hearing electronically

11 with the agreement of all the parties.

12 My name is Daniel Cho. I will be the lead

13 Administrative Law Judge for this appeal. With me are

14 Administrative Law Judges Suzanne Brown and Kenney Gast.

15 Can the parties please introduce and identify

16 yourselves for the record, beginning with Appellant.

17 MR. BECK: Good morning. Thank you, Judge Cho.

18 My name is Paul Beck. And I'm here today with my

19 colleague, Richard Brickman, who represented the taxpayer

20 at the latter part of the proceedings leading to this

21 appeal. And we are here and ready to proceed this

22 morning.

23 JUDGE CHO: Thank you.

24 Department.

25 MR. SUAZO: Randy Suazo, Hearing Representative.

1 MR. PARKER: Jason Parker, Hearing
2 Representative.

3 MR. BROOKS: Christopher L. Brooks, Staff Tax
4 Counsel.

5 JUDGE CHO: Thank you very much.

6 The issues in this appeal are; whether any
7 adjustment are warranted to the determined measure of tax;
8 and two, whether additional relief of interest is
9 warranted.

10 With respect to the evidentiary record, the
11 Department has provided Exhibits A through D, and
12 Appellant did not object to these exhibits. Therefore,
13 these exhibits are entered into the record.

14 (Department's Exhibits A-D were received in
15 evidence by the Administrative Law Judge.)

16 Appellant has submitted Exhibits 1 through 7.
17 The Department did not object to these exhibits.
18 Therefore, these exhibits are entered into the record.

19 (Appellant's Exhibits 1-7 were received
20 in evidence by the Administrative Law Judge.)

21 There's one concession to be read into the
22 record, which is the Department concedes interest relief
23 for the periods, March 1st, 2012, through October 10,
24 2013, and December 1st, 2015, through August 1st, 2016.

25 All right. As we discussed at our prehearing

1 conference, Appellants you'll be given 25-minute for your
2 opening presentation. Please begin whenever you're ready.
3 Thank you.

4 MR. BECK: Thank you very much, Your Honor. This
5 is Paul Beck, and I'm going to take the lead in presenting
6 this argument this morning.

7

8 PRESENTATION

9 MR. BECK: Thank you for giving us this
10 opportunity to present our position to you in conjunction
11 with this appeal on behalf of Amy Alice Kenney, the
12 taxpayer.

13 As you know, this case has a long and somewhat
14 troubled history. There are undoubtedly many areas of
15 disagreement between the taxpayer and the CDTFA. We had
16 hoped that Ms. Kenney would have been able to attend this
17 hearing today and to offer her own personal testimony
18 about the underlying events; her exchanges with the
19 auditor Mr. David Sangen and his supervisor, Nalan
20 Samarawickrema -- if I pronounce that incorrectly, I'm
21 pretty sure I did not, I apologize -- from the Cerritos
22 office of the CDTFA, would have been able to shed light on
23 what occurred in real time; because the taxpayer's own
24 experience is the basis of this appeal.

25 We acknowledge that as her attorneys we can argue

1 from her position, but our arguments are necessarily
2 distanced from Ms. Kenney's lived experience. As a
3 result, today there are no firsthand witnesses available
4 to testify. But I believe you're aware that from our
5 previous submissions and the record, that Ms. Kenney
6 suffered a terrible accident on January 7, 2019, and that
7 she has been left in a severely -- excuse me -- impaired
8 condition.

9 In the accident, she experienced a traumatic
10 brain injury and has permanent brain damage. As a result,
11 she is not be able to be with us today, even to listen to
12 these proceedings. I should mention in passing that we
13 are prepared to share her medical records and diagnosis
14 with the panel if you deem it helpful to your review and
15 determination of this appeal.

16 We do want to note that there were significant
17 delays as the CDTFA has recognized, and that we had
18 originally requested relief based on the approximately
19 55 months, 4 years and 7 months of delays in processing
20 the determination of liability that was ultimately
21 rendered here. In recognition of the undue and excessive
22 nature of this these delays, CDTFA has agreed to wave some
23 27 month's worth of these delays for approximately
24 50 percent of the overall delays in processing the audit.

25 We appreciate this. And under the circumstances,

1 we're prepared to accept the CDTFA's adjustment as a fair
2 compromise in recognition of the inherent unfairness to
3 the taxpayer of such lengthy delays, although, a portion
4 of the delays could fairly be attributed to unavoidable
5 circumstances or other outside factors outside of the
6 CDTFA's ability to control.

7 So this particular issue will no longer be
8 contested in this appeal. However, the circumstances
9 surrounding these delays and the reasons for them
10 certainly merit further discussion and reflection. This
11 leads us to the remaining and more substantive issues we
12 want to address today.

13 As you know, the taxpayer disagrees with the
14 Notice of Determination in the amount of \$15,039.10 and
15 any additional interest. And, therefore, the taxpayer
16 also disagrees with the decision document dated,
17 October 11, 2018. On page 13 of the decision, Ms. Karen
18 Heads, the appeals conference auditor, wrote that, quote,
19 "The sample results must be compared and analyzed for
20 reasonableness by looking at the taxpayer's business as a
21 whole. This type of analyzes does not necessarily involve
22 preparing a schedule to evaluate the impact, but the
23 auditor must be able to look to indications that the
24 projection of the sample results is possibly unreasonable.
25 If the results appear unreasonable, the auditor must

1 discuss the situation with the taxpayer," close quote.

2 It is our contention that the key factor of
3 reasonableness was not adequately taken into consideration
4 by the Business Tax and Fee Division or BTFD. I'd like to
5 amplify on this briefly. First, the Monterey Park
6 location of the taxpayer, which was the primary location
7 of the audit, was a very small space for a flower shop,
8 and it had extremely limited space for holding inventory.

9 Second, the test period was during the holiday
10 season, November and December, primarily, of 2013 where
11 one reasonably can assume the sales would be higher than
12 those that occurred during those times of the year with no
13 holidays. Third, the second test period was in January of
14 2014, which was still part of a holiday season. And
15 fourth, the auditor's conclusion was that Ms. Kenney's
16 small store would average \$481 daily all year long.

17 Respectfully, we believe this would have been an
18 ambitious goal for Ms. Kenney, and is on its face simply
19 unwarranted and unreasonable. This average would have
20 resulted in an average of \$4,748 in unreported monthly
21 sales over a 26-month period of time. For this tiny
22 florist shop, this is simply an unreasonable assumption as
23 it is a misrepresentation of the facts, and clearly fails
24 the test of reasonableness.

25 Fifth, Ms. Kenney's Monterey Park location was

1 closed shortly after the audit was concluded. Why did
2 this happen? Because it was a marginally profitable
3 business. It simply wasn't worth Ms. Kenney's time and
4 energy to maintain it given how little profit it
5 generated. So the CDTFA's position that this business had
6 a monthly average of unreported sales in the amount of
7 \$4,748 is simply not supported by the facts.

8 On page 13 of the decision, Ms. Heads wrote that,
9 quote, "The auditor and the taxpayer should come to some
10 agreement as to whether or not the results are
11 representative of the business for the time in question,
12 citing to Audit Manuel Section 045.20," close quote.
13 However -- and this is really key here -- it is apparent
14 that there was little to no effort made to convey to
15 Ms. Kenney the results and the reasoning behind the
16 CDTFA's conclusions.

17 Now, we submit that Ms. Kenney as the taxpayer
18 was at a severe disadvantage as she was unrepresented at
19 the time of the audit. She became increasingly confused
20 and agitated by the auditor's, analysis, and her reaction
21 was compounded because English is, at best her, second
22 language. As a result, we believe that the auditor and
23 her manager took advantage of this situation in their
24 dealings with Ms. Kenney. This is not to suggest or even
25 infer that they intended to take advantage of her, but

1 rather that this was the effect of the manner in which the
2 audit process was conducted.

3 Starting at page 31 of the CDTFA's exhibits and
4 continuing through page 35, is the CDTFA's assignment
5 activity history. I'd like to just review a handful of
6 entries from page 31, the first page of the assignment
7 activity history. As you will see -- and I'm describing
8 it in case you don't have access to it. On or about
9 February 25, 2014, the taxpayer met with the auditor,
10 Mr. David Sangen, for the audit exit conference. At that
11 conference, Ms. Kenney was presented with a report showing
12 a liability of \$5,000. But she did not understand this
13 report and, therefore, she was not prepared to accept it.

14 In the first week of March 2014, Nalan
15 Samarawickrema -- again, I apologize for my poor
16 pronunciation of his last name -- reviewed the Board of
17 Equalization report and e-mailed audit control after which
18 on May 30, 2014, more than two months later, Mr. Sangen
19 completed his, quote, "Go back," close quote, adjustments
20 and set an appointment with the taxpayer to discuss his
21 proposed changes. On June 3, 2014, Ms. Kenney disagreed
22 with Mr. Sangen's findings.

23 The next three or four pages of the assignment
24 activity history, the exhibit I call to your attention,
25 reflect a series of exchanges between Mr. Sangen and

1 occasionally Mr. Samarawickrema and Ms. Kenney, and
2 ultimately with my colleague today, Mr. Brickman,
3 rewarding the priority of the agency's determination and
4 the reasonableness of the procedures employed by it.

5 And as you recall, since Ms. Kenney disagreed
6 with the assessment, the supervising tax auditor,
7 Mr. Samarawickrema, was required to review the findings
8 with her. When he arrived, he came not with one but with
9 two reports; one indicating a liability of \$21,591 and
10 other indicating a liability of \$15,145. This is contrast
11 with the initial proposed liability of \$5,000 back in
12 February.

13 In of itself, understandably, this caused
14 considerable confusion to the taxpayer. Why she owed
15 additional taxes, or why there were two separate reports
16 was never adequately explained to the taxpayer, nor as to
17 why she owed additional taxes or, again, why there were
18 two reports at that point. If we can just for a moment,
19 let's put ourselves in the taxpayer's position so we can
20 begin to understand how it was that she was intimidated
21 and confused.

22 It's apparent that during the audit, the BTFD
23 staff provided different sets of audit work papers based
24 on different audit methods, which we took the position was
25 indicative of a lack of professionalism reeking in

1 intimidation casting doubt on the accuracy of the final
2 audit results. The numerous audit reports were filled
3 with what appeared to be arbitrary numbers. We took the
4 position that the presentation of the different sets of
5 audit work papers appeared to be, in effect, an attempt to
6 coerce the taxpayer into agreeing to the lesser amount.

7 A further word about Ms. Kenney is in order.
8 Please recall that she had immigrated to the United States
9 from Vietnam, a country where the government is,
10 unfortunately, well-known for graft and intimidation. So
11 her experience had taught her, and she thought quite
12 naturally, that the auditor was attempting to intimidate
13 her into accepting the report with the lower tax
14 liability. This was function, in other words, of the
15 culture that she had grown up in.

16 At the time of the presentation and the meeting
17 with the auditor, Ms. Kenney clearly did not understand
18 that if she could provide additional documentation, the
19 auditor's findings might be revised. A proper explanation
20 of the reason for the two reports and the reasons for the
21 substantial liability determinations might have helped her
22 to understand the audit process and to convince her to
23 provide more specific documentation to the auditors, which
24 in turn might have significantly reduced her liability.

25 However, at the time she met with the auditors,

1 she was so upset with Mr. Samarawickrema and with
2 Mr. Sangen, that she was simply not able to handle any
3 further interaction with the BTFD, at the time, which, of
4 course, resulted in the issuance of the Notice of
5 Determination and the closure of the audit. As I
6 mentioned, the taxpayer was extremely disturbed by her
7 exchanges with the auditor and his supervisor, and she was
8 not able to proceed further at that point.

9 With the benefit of this background and the
10 understanding of her cultural sensitivity, we would be
11 remiss if we did not mention -- and there are several
12 references to this fact in the record -- that the CDTFA
13 did recognize Ms. Kenney's diligence in gathering accurate
14 records, yet, this seems to not have been taken into
15 consideration by the auditor.

16 One of the reports dated, December 16, 2014,
17 stated, quote, "10 percent negligence penalty not
18 warranted. Taxpayer demonstrated a conscientious effort
19 to properly report taxes," close quote. In fact,
20 referring back to the memorandum presented at the appeals
21 conference on April 5th, 2018, Ms. Kenney -- who was
22 representing herself during the audit process until very
23 late in the process -- has been characterized by the CDTFA
24 staff as a conscientious taxpayer whose books and records
25 were deemed adequate for sale and use tax purposes. I'm

1 referring you to the Business and Tax and Fee Department
2 summary analysis petition for redetermination dated,
3 March 26, 2015.

4 That same summary analysis stated that, quote,
5 "The petitioner made a conscientious effort to correctly
6 report taxable sales. Staff decided against the
7 imposition of a 10 percent for negligence. Ms. Kenney
8 appreciates the fact that the 10 percent penalty was not
9 assessed. But she wonders why this was not incorporated
10 into the reasoning when the assessment itself not
11 completed. We would refer back to Ms. Heads' statement
12 that the, quote, "Sample results must be compared and
13 analyzed for reasonableness by looking at the taxpayer's
14 business as a whole," closed quote.

15 This was the reason why Ms. Kenney believed that
16 the bank statements that were provided to the auditor,
17 Mr. Sangen, and shown on his original audit report, were
18 an accurate measure of her income and should have been
19 accepted as the basis for her sales. This issue and the,
20 manner of how Mr. Sangen interacted with her during the
21 audit process and how the supervising tax auditor,
22 Mr. Samarawickrema interacted with her at the case closing
23 meetings at her business location are the reasons we are
24 prosecuting this appeal.

25 In summary, this case was tagged for audit back

1 in 2011. Here we are in late 2020, some ten years later,
2 just now getting to a hearing and still seeking a final
3 determination. Of course, we recognize that Covid-19 has
4 been a small factor since March of this year, but it is
5 really not material here. The ultimate point is that in
6 this particular case the audit and review process did not
7 work -- or at least, did not work properly here. It was
8 dragged out at such length that it became a tortured
9 process for Ms. Kenney.

10 While this was a very small case for the CDTFA,
11 it was not a small case to Ms. Kenney. Given the
12 relatively small dollar amounts in the audit and appeal,
13 it is obvious to us that this audit and the entire case
14 has taken far too long. The CDTFA's audit process and
15 before the reorganization of the unit, the State Board of
16 Equalization's audit process has been an egregious
17 experience for the taxpayer, and from her perspective,
18 truly punitive.

19 To summarize, the audit methods used by the audit
20 team did not result in reasonable sales projections based
21 on the size of this very small business and its ultimate
22 closure during the late stages of the audit. The business
23 was not anywhere near as profitable as the audit results
24 would seem to indicate. In addition, the audit team did
25 not handle their interaction with the taxpayer in a

1 professional manner. There are many indications that I
2 referred to of intimidation of the taxpayer.

3 Finally, the amount of time devoted to this case
4 is clearly unreasonable, considering the size of the
5 business and the view by the audit team that the taxpayer
6 was honest, cooperative, and should not be subject to any
7 penalties. Over 100 hours were devoted to this case
8 through the early stages of the audit. Our tax system
9 clearly is not supposed to be fundamentally unfair to the
10 taxpayer, but that's exactly what occurred in this
11 instance.

12 As we've detailed already, the State Board of
13 Equalization and then CDTFA have devoted hundreds of hours
14 to this audit here. Far too much for a relatively small
15 amount of money involved here. In view of the totality of
16 the circumstances, while the CDTFA does not have a, quote,
17 unquote, "Hardship exception for taxpayer seeking relief,"
18 if it did, this would be the perfect case to apply it.

19 Therefore, in conclusion we again are asking that
20 the OTA find and conclude that the CDTFA improperly
21 determined the sales tax liability and that the taxpayer's
22 bank statements should have been used and should have been
23 sufficient to determine the correct taxable sales in the
24 periods in question.

25 Thank you for your time and attention and for

1 your consideration.

2 JUDGE CHO: This is Judge Cho. Thank you very,
3 much Mr. Beck.

4 Give me one second. I'm just going to restart my
5 video. I heard that there might be a problem with it.
6 All right. I'm back on.

7 Panel members, do you have any questions for
8 Appellant? Judge Brown?

9 JUDGE BROWN: I will hold off on questions until
10 I've heard both presentations. So no, thank you.

11 JUDGE CHO: Thank you.

12 Judge Gast.

13 JUDGE GAST: I do not have any questions at this
14 time. Thank you.

15 JUDGE CHO: This is Judge Cho. I just want to
16 confirm one thing that you said in your presentation,
17 Mr. Beck. You're not contesting the additional request
18 for relief of interest; is that correct?

19 MR. BECK: That is correct. We appreciate the
20 concession made, and we are abandoning that particular
21 ground of appeal.

22 JUDGE CHO: Thank you very much. I don't have
23 any further questions for Appellant at this point in time,
24 but may have questions after the Department's
25 presentation.

So Department, as we discussed at the prehearing conference, you'll have 25 minutes for your presentation. Please begin whenever you're ready.

PRESENTATION

MR. SUAZO: This is Randy Suazo.

The Department performed an audit examination for the period, October 1st, 2010, through September 30, 2013. During this period, the Appellant operated two flower shops; the first one in Monterey park and the second one in Montebello. The Monterey Park location was open and operating for the entire audit period. The Montebello shop opened on June 7th, 2013.

A review of the Appellant's sales and use tax returns shows an average reported daily sales of \$376 for the three-year period; Exhibit A, page 71. For the period when the Appellant had only one location, the average daily sales was \$347, which rose to \$518 once the second location opened. The Appellant provided federal income tax returns for 2010, '11, and '12, bank statements, some sales summaries, and sales invoices for November 25, 2013, through December 8, 2013, and January 1st, 2014, through January 31st, 2014.

However, the Appellant did not maintain source documents such as Z-tapes and sales invoices for the audit

1 period. Therefore, the Department was unable to verify
2 reported amounts using the direct audit approach. The
3 Department initially compared bank statements, bank
4 deposits, and reported amounts of computed audited taxable
5 sales. The Department noted that bank deposits adjusted
6 for sales tax were greater than the reported amounts. A
7 projection of the differences results in an understatement
8 of almost \$43,000; Exhibit A, pages 86 to 90.

9 The Department continued their analysis and
10 testing by reviewing the sales invoices provided for both
11 locations. The Department noted that sales tax was added
12 to the prices on handwritten credit card sales, but no tax
13 was added to the sales price for cash sales. The
14 Department's examination of the business revealed that
15 there was no tax included signage; Exhibit A page 73. The
16 Department transcribed all sales invoices provided for the
17 period of November 25th, 2013, through December 8th, 2013.

18 The Department found that the average daily sales
19 for sales invoices was greater than the reported average
20 daily sales amount for the Appellant's sales and use tax
21 returns. The Department also noted that the cash sales
22 for the Monterey Park location on Thursday,
23 November 28th, 2013, and Saturday, November 30th, 2013,
24 were higher than the other days.

25 The Department deducted that the Thanksgiving

1 holiday and the first day of Hanukkah, which both occurred
2 on November 28th, 2013, and the first Saturday after these
3 holidays effected the cash sales. Therefore, for these
4 two days, the Department averaged the sales for the
5 remaining 12 days to estimate the expected normal business
6 activity for these two days. The Department then
7 calculated the 14-day period average daily sales. The
8 average daily sales for the 14-day period was \$454 for the
9 Monterey Park location and \$527 for the Montebello
10 location; Exhibit A, page 83.

11 The Department decided to expand the testing to
12 include the month of January 2014. The Appellant provided
13 information for the Monterey Park location but failed to
14 provide records for the Montebello location. The
15 Department combined the January 2014 results with the
16 prior testing and computed a combined average daily sales
17 amount for the Monterey Park location of \$481. The
18 Department computed quarterly audited taxable sales by
19 using the computed average daily sales amount multiplied
20 by an estimated 90 days per quarter.

21 Based on this calculation, the audit findings
22 include an understated taxable measure of \$166,000. The
23 Department performed a secondary test using a cash to
24 credit analysis; Exhibit A, page 78. The Department
25 applied the credit card ratios derived from the

1 transcription of the sales invoices, the credit card
2 deposits, the calculated audited taxable sales. The
3 results of this testing showed understated taxable measure
4 of over \$467,000. The Department, however, abandoned this
5 audit methodology in favor of the more conservative test
6 results using the average daily sales, which benefits the
7 Appellant.

8 But the results of the testing support that the
9 Appellant's reported taxable sales were materially
10 understated. The Appellant claims that the test periods
11 for both Monterey Park and Montebello locations of
12 November 25th, 2013, through December 8th, 2013, and the
13 month of January 2014 for the Monterey Park location,
14 which were used to compute the average daily sales are not
15 representative because they include the holiday seasons.

16 The Appellant claims that the holiday season
17 generates higher sales. But the Appellant's own
18 reporting, Exhibit A, page 71, shows that their first and
19 fourth quarter sales are their lowest sales, averaging
20 about \$33,000 per quarter. Therefore, the Department's
21 test period does not overstate their results and are
22 considered reasonable. Additionally, as mentioned
23 previously, the Department's calculations were adjusted
24 for the November 28th holiday and the Saturday after the
25 holiday.

1 The Appellant also claims that bank statements
2 are an accurate representation of her income and should be
3 accepted as a basis for the calculation of audited taxable
4 sales. In preparation for this hearing, the Department
5 obtained copies of the Appellant's credit card sales
6 reported on Form 1099-K, for the period of
7 January 1st, 2011, through, December 31st, 2014;
8 Exhibit D, pages 121 and 122.

9 The Department notes that the Appellant was not
10 forth coming during the audit examination regarding all
11 sources of business income. For example, in 2011 credit
12 cards sales from PayPal in the amount of over \$77,000 was
13 not disclosed. It should be noted that the PayPal
14 deposits were not deposited into the bank account reviewed
15 and are, therefore, were not included in its bank deposit
16 analysis.

17 The Department also notes that for the year 2011
18 the total credit card sales per 1099-K were over \$153,000.
19 Yet, reported taxable sales for the same period was
20 \$123,000. This means that the Appellant failed to report
21 all the credit card sales of the business for the period
22 and reported none of the cash sales.

23 A simple comparison for the period of January
24 2011 through March 2013 of total credit card sales per
25 1099-K was totaled \$239,676. And cash deposits per bank

1 statements of \$150,000 compared against reported taxable
2 sales for the same period shows a difference of \$103,000.
3 That's an understatement of about 36 percent; Exhibit D,
4 page 136.

5 This difference would be extrapolated to over
6 \$147,000 for the audit period and is about \$18,000 less
7 than the audit findings; Exhibit D, page 125. Since the
8 Department is not satisfied all cash sales were deposited,
9 this computation is likely understated. But Department
10 submit this analysis to support the audit findings.

11 The Appellant has failed to provide any
12 documentation to support change to the audit findings.
13 The Department's evidence and calculations are reasonable
14 and demonstrate the Appellant understated her taxable
15 measure liability. Therefore, the Department request that
16 the Appellant's appeal be denied.

17 This concludes my presentation. I'm available
18 for any questions.

19 JUDGE CHO: This is Judge Cho. Thank you,
20 Mr. Suazo.

21 I'm going to turn to my co-panelists to see if
22 there's any questions. Judge Brown, do you have any
23 questions?

24 JUDGE BROWN: I was going to have some questions
25 for the Appellant's representative. I wanted to ask --

1 oh, yes. Mr. Beck, when you're ready, I wanted to ask how
2 are the January 2014 sales atypical compared to the rest
3 of the year? All you've said is that January is part of
4 the holiday season, but are you saying that people bought
5 more -- buy more flowers in -- during that period of
6 January than during the rest of the year?

7 MR. BRICKMAN: This is Mr. Brickman. Yeah, that
8 is exactly what -- what -- the position that was taken.

9 JUDGE BROWN: Are there -- I don't know. And I
10 guess I also want to clarify, can you address the
11 Department's position about the 1099-K data?

12 MR. BRICKMAN: For the 1099, no I don't have any
13 response to that. I think they referred to 2011 was the
14 only year they discussed.

15 JUDGE BROWN: I'll have to look back at the
16 exhibit. Hold on.

17 MR. BRICKMAN: Yeah.

18 JUDGE BROWN: It --

19 MR. BRICKMAN: One of the problems -- and I don't
20 think it was addressed by the State Board -- is a lot of
21 sales are not taxable. They're out of state. And
22 certainly with the short period, the Montebello period, is
23 a totally different kind of operation. And it's difficult
24 for me to deal with their using Montebello in any kind of
25 averaging since it was such a short period of time, and

1 then we had the closed store.

2 The State has indicated that they got sales
3 information through 2014. Well Montebello was the only
4 operation for the majority of that year. And those sales
5 clearly would have been more, but that wasn't part of the
6 audit period. Montebello was a full-service florist.

7 JUDGE BROWN: This is judge Brown. Thank you. I
8 don't have further questions at this time.

9 JUDGE CHO: This is Judge Cho. Thank you.

10 Judge Gast, do you have any questions for either
11 party at this time?

12 JUDGE GAST: This is judge Gast. I do not have
13 any questions. Thank you.

14 JUDGE CHO: This is Judge Cho. I believe
15 Judge Brown asked my only question that I had at this
16 point in time. So I think we can move forward.

17 Appellant, you'll have your ten minutes for a
18 final presentation rebuttal.

19 MR. BECK: Thank you Judge Cho. I'll be very
20 brief.

21

22 CLOSING STATEMENT

23 MR. BECK: I think that the record, we can go
24 back and forth about how we would interpret the record.
25 But at the end of the day, the real point here is that a

1 process itself really was not reasonable, given what was
2 involved, the amount of time this has taken. As I
3 mentioned earlier it's been 10 years. We recognize that
4 there have been some delays that were a result of the
5 reorganization of the Department and Covid-19 for the last
6 six months.

7 But at the end of the day, I don't believe
8 anybody would disagree with the proposition that an audit
9 process like this should take t10 years or even 5 years.
10 It just seems unreasonable -- extraordinarily unreasonable
11 under the circumstances. The audit process was a
12 challenge for the taxpayer for the reasons that I
13 explained earlier, and she did not respond in the same way
14 as perhaps other taxpayers would have to Mr. Sangen and
15 Mr. Samarawickrema.

16 But as I noted and the record reflects this, she
17 was largely cooperative and responsive and diligent. So
18 the real question is why the State -- why does the State
19 taxing agency devote hundreds of hours, and such a lengthy
20 analytical process, and the auditing and the appeal for a
21 case of this relatively small magnitude. It just seems to
22 be an abuse of the process, unfair to the taxpayer in this
23 particular circumstance.

24 We recognize that the Board of Equalization and
25 the CDTFA spent a great deal of effort here, but given the

1 amount of money involve and the other issues that we've
2 described, the totality of the circumstances, this just
3 does not seem to be a proper, you know, a proper result.
4 Very unfair and unreasonable to the taxpayer. And as I
5 mentioned, we know CDTFA doesn't have a, quote, unquote,
6 "hardship exception". But if it ever did, these
7 circumstances certainly would be the right time and place
8 to apply them.

9 For all of those reasons, we would request that
10 the OTA find and conclude that the CDTFA's ultimate
11 determination of sales tax liability was not determined
12 properly. The taxpayer's bank statements should have been
13 used exclusively to determine the correct taxable sales.
14 And I think with that, we're content to rest.

15 JUDGE CHO: This is Judge Cho. Thank you very
16 much.

17 Any final questions? This is your last chance,
18 panel members. Judge Brown, any final questions?

19 JUDGE BROWN: I guess I have -- since time
20 permits, I'll ask one more question of the Appellant's
21 representatives. I do understand the argument that during
22 the audit the Appellant was intimidated by the process and
23 felt that she was being pressured and, therefore, she
24 didn't feel that she was able to produce additional
25 records during the audit. Hopefully, I have summarized

1 your position correctly.

2 My question is how did that prevent -- are you
3 saying that prevented her from producing records during
4 the appeals process. Because I understand you're
5 explanation about her injury in January of 2019. But
6 prior to that, there was an appeals conference. Didn't
7 she have the opportunity to produce additional records at
8 that time?

9 MR. BRICKMAN: The problem --

10 MR. BECK: You need to identify yourself.

11 MR. BRICKMAN: Oh, this is Mr. Brickman.

12 The problem is she was -- and this is from my
13 interaction with her. She was so frustrated, had so
14 much -- some bad feelings about the entire situation. She
15 would not -- she did not want to deal with the manager,
16 Nalan. Her experience with Sangen was not good for her,
17 and she just absolutely froze. She did not want to do
18 anything. I asked for additional information, and
19 basically, I could not get anything further from her.

20 JUDGE BROWN: Okay. Thank you. I have no
21 further questions.

22 JUDGE CHO: Thank you. This is Judge Cho.
23 Judge Gast, do you have any final questions?

24 JUDGE GAST: I do not have any final questions.
25 Thank you.

1 JUDGE CHO: This is Judge Cho. I don't have any
2 final questions either. I just want to thank everybody
3 for your participation in this hearing and this appeal.
4 This will conclude the hearing. The panel members will
5 meet and decide the case based on documents and the
6 arguments presented today. We will issue our written
7 decision no later than 100 days from today.

8 This case is submitted, and the record is now
9 closed.

10 (Proceedings adjourned at 10:51 a.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
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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 30th day
of September, 2020.

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HEARING REPORTER