

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
M. FAROOQUI, ) OTA NO. 19034564  
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 )  
 ) APPELLANT.  
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, September 23, 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 10:10 a.m.  
and concluding at 10:36 a.m. on Wednesday,  
September 23, 2020, reported by  
Ernaly M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ KEITH LONG

Panel Members: ALJ ANDREW WONG  
ALJ NGUYEN DANG

For the Appellant: JUAN GUZMAN

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

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I N D E X

E X H I B I T S

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1 Cerritos, California; Wednesday, September 23, 2020

2 10:10 a.m.

3

4 JUDGE LONG: We're now going on the record.

5 This is the Appeal of M. Farooqui, OTA Case  
6 Number 19034564. It is Wednesday, September 23rd, 2020,  
7 approximately 10:10 a.m. The appeal was intended to be  
8 heard in Cerritos, California.

9 I'm lead Administrative Law Judge Keith long, and  
10 with me today are Judge Nguyen Dang and Judge Andrew Wong.  
11 We'll be hearing this matter this morning. I am the lead  
12 ALJ, meaning I will be conducting the proceedings, but my  
13 co-panelists and I are equal participants, and we will all  
14 be reviewing the evidence, asking question, and reaching a  
15 determination in this case.

16 Would the parties please state and spell your  
17 names and who you represent for the record.

18 And we will start with Mr. Guzman.

19 MR. GUZMAN: My name is Juan Guzman, CPA. I  
20 represent Morshedul Haq Farooqui, DBA Elite Motors.

21 JUDGE LONG: And CDTFA.

22 MR. SUAZO: Randy Suazo, Hearing Representative.

23 MR. PARKER: Jason Parker, Hearing  
24 Representative, spelled, J-A-S-O-N, last name P-A-R-K-E-R.

25 MR. BROOKS: Christopher Brooks, tax counsel.

1 That's B-R-O-O-K-S.

2 JUDGE LONG: Thank you.

3 And the issues on appeal are twofold. First,  
4 whether appellant is entitled to additional unclaimed bad  
5 debt credits measuring \$62,419 based on the repossession  
6 of 16 vehicles; and whether appellant is entitled to  
7 additional unclaimed bad debt credits for reconditioning  
8 cost of the repossessed vehicles totaling \$121,000.

9 During this appeal -- or prior to this hearing,  
10 Appellant's briefs indicated that the reconditioning cost  
11 totaled \$131,000. I would like Mr. Guzman to confirm that  
12 it is, in fact, \$121,000 at this time.

13 MR. GUZMAN: \$121,000 would be the correct amount.

14 JUDGE LONG: Thank you. CDTFA has submitted  
15 Exhibits A through C, which are admitted into evidence  
16 with no objections.

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

19 We will begin with opening presentation from  
20 Appellant.

21 Mr. Guzman, you have up to 15 minutes, and you  
22 may begin whenever you're ready.

23 MR. GUZMAN: Ready, Your Honor.

24 ///

25 ///



1 Mercedes. These are low income accessibility vehicles.  
2 But it appears to me that the average vehicles or number  
3 of vehicles repossessed during the audit period was, like,  
4 one per week. It's that drastic.

5 But the point here is, okay, the CDTFA has done a  
6 lot of work, and I understand the procedure. I understand  
7 how every item that they have noted, I understand that  
8 completely. I was in the trenches at one time. We used  
9 to do the same calculations. However, look at the last --  
10 well, not the last bullet. It says -- where it say, "The  
11 additional 193 claimed bad debt allowance is calculated by  
12 the Appellant as follows."

13 Well, the Department already allowed a certain  
14 number of these vehicles additional credit. We're missing  
15 16. Why not use the body of work that had been done for  
16 the ones that were allowed and extend it to the 16  
17 vehicles? I don't think that's totally unfair. I don't  
18 think it's totally unreasonable. It just makes a lot of  
19 sense regardless of the method being used. If we just use  
20 the method body of work that the State had done, extend  
21 that to the 16 vehicles. That's point number one.

22 Point number two, as far as the additional \$1,000  
23 and the -- we would all wonder, where is that 1,000 bucks  
24 coming from? I mean, nobody has asked that question.  
25 That's why I was referring to BOE Form-8836A. That was



1 dated back in March 5th, 2015. And the auditor states the  
2 following, "Although Mr. Farooqui agreed with the method  
3 of computing repossessed vehicles, he argues that he spent  
4 an average \$1,000 per vehicle to have them reconditioned  
5 after repossession, and that this amount should be  
6 deducted from the wholesale price."

7 That comes directly from the taxpayer. There's a  
8 comment on that same report, the same page on the bottom.  
9 And it says -- and the so -- and it says the following  
10 from the auditor, "It was not possible for auditor to  
11 determine which parts" -- we're talking about  
12 reconditioned parts -- "for purchase or body work expense  
13 belongs to each vehicle." And that makes sense. It's  
14 very hard from an audit-standpoint to do that.

15 "Such expenses are not only related to the  
16 repossessed cars" -- okay, so there are costs involving  
17 the repossessed cars that were not taken into  
18 consideration, "but two cars bought on auctions and six to  
19 be resold at a higher price." And so the auditor did see  
20 that there was additional cost. However, those were not  
21 accounted for in determining the additional claim against  
22 the bad debts. So that's where the \$1,000 comes from.

23 And, basically, that's only the issues I have.  
24 And I just wanted to expand on that by reiterating what I  
25 had on the letter on June 21st, and also indicating what

1 we have on the BOE Form-836A, dated March 5th, 2015. So  
2 all I'm asking, number one, is to extend the body of work  
3 to the average 6 -- to the 16 vehicles missing, based on  
4 the body of work that the State has performed. And \$1,000  
5 per vehicle claimed by the taxpayer and the auditor  
6 saying, you know, there are additional costs, but we just  
7 couldn't calculate those.

8 That would be my presentation, Your Honor.

9 Anybody there? Hello?

10 JUDGE LONG: This is Judge Long. I'm sorry. My  
11 microphone was muted. I didn't hit the correct button.  
12 Thank you, very much.

13 I will now open the floor to questions from my  
14 panel. Judge Dang do you have any questions for  
15 Appellant?

16 JUDGE DANG: Thank you, Judge Long. I do not  
17 have any questions at this time.

18 JUDGE LONG: Judge Wong, do you have any  
19 questions?

20 JUDGE WONG: This is Judge Wong. I also do not  
21 have any questions at this time. Thank you.

22 JUDGE LONG: Mr. Guzman, my questions pertain to  
23 the calculation of the \$131,000 reconditioning cost, and I  
24 believe that they've been answered at the beginning of  
25 this hearing as well as in your presentation.

1           So I -- we will move onto CDTFA's presentation.  
2           CDTFA, you asked for 20 minutes. You may begin whenever  
3           you're ready.

4

5

PRESENTATION

6           MR. SUAZO: This is Randy Suazo, Your Honor. The  
7           Appellant operates a used car dealership in Victorville,  
8           California. The Department performed a sale and use tax  
9           audit of the business for the period from  
10          January 1st, 2011, through June 30th, 2014. During the  
11          examination the Appellant provided a listing and  
12          calculation of unclaimed repossession losses for vehicles  
13          repossessed by the Appellant during the audit period;  
14          Exhibit A, page 56 to 58.

15          The Department performed a review and analysis of  
16          the repo losses. In using the pro-rata method as  
17          described in Regulation 1642(f)(2), calculated an  
18          allowable amount of taxable bad debts for those  
19          repossessions. The Department examined 137 separate  
20          transactions with connection with the bad debt loss  
21          claims. The Department did not allow 16 of these  
22          transactions because the Appellant did not present  
23          substantive documentation to support the repossession  
24          allowance.

25          And another five transactions did not qualify

1 because the net contract balance of the vehicle, which was  
2 less than the estimated wholesale cost of the vehicle.  
3 This means these transactions would have resulted in a  
4 gain of the Appellant -- for the Appellant, which would  
5 decrease the amount of bad debt loss; Exhibit A, pages 46  
6 through 46, lines 11, 57, 82, 104, 125.

7 For the remaining 116 transactions, which were  
8 allowed, the Department recommends no further adjustments  
9 to the Department's calculations for the repo loss. Net  
10 contract price for the 116 vehicles were based on the  
11 actual data of each vehicle from the Appellant's own  
12 records. For instances where the original sales contract  
13 was not available, the Department presumed the sales price  
14 received from the subsequent buyer of the vehicle was the  
15 net contract price. A computed repossession loss for each  
16 car was calculated using the contract price, less the  
17 wholesale value.

18 For 70 of the 160 vehicles or 60 percent of the  
19 repossessions allowed, the Department computed two  
20 separate wholesale cost and utilized the lower amount.  
21 This benefits the Appellant. One method used, third-party  
22 data from Kelley Blue Book, a known estimation tool for  
23 the car industry. Specific data regarding the estimated  
24 mileage, vehicle options, model, et cetera, were  
25 considered in the calculations.

1           The other method used as a deduction of the sales  
2 price for the Appellant' average markup percentage --  
3 sorry. The other method used as a reduction of the sales  
4 price for the Appellant's average markup percentage, the  
5 average markup of cost was computed using the Appellant's  
6 year 2011 and 2013 federal income tax returns, gross  
7 profit, and cost of sale amounts. The average markup  
8 includes the cost of parts and other cost to repair the  
9 vehicles to a salvage condition; Exhibit A, pages 98, 99.

10           The Department noted that three vehicles -- for  
11 three vehicles, Kelley Blue Book cost resulted in a lower  
12 cost amount. For 67 vehicles, the sales price reduced to  
13 the cost per markup resulted in a lower cost. Regarding  
14 the remaining 46 of 116 vehicles for 40 percent of the  
15 repossessions allowed, the documentation on hand showed  
16 the vehicles were either a total loss, or the vehicle was  
17 abandoned out of state. In these instances, the  
18 Department used the wholesale cost of zero dollars, which  
19 afforded the Appellant of a bad debt loss equal to the  
20 taxable portion of the contract price.

21           Despite the Department's lenient determinations  
22 in this matter, the Appellant continues to seek bad debt  
23 allowances for the 16 transactions, even though he  
24 possesses none of the necessary documentation. The  
25 Department rejects this proposal. Regulation 1642 states

1 that when there's a repossession, a bad debt deduction is  
2 allowable only to the extent that the retailer sustains a  
3 net loss of gross receipts upon which taxes have been  
4 paid.

5 In support of the bad debt, retailers must  
6 maintain adequate and complete records. For the 16  
7 vehicles, the Appellant has not provided any certificates  
8 of repossession or other proof a loss was incurred by the  
9 Appellant. Accordingly, no allowance should be given for  
10 these transactions. The Appellant has also requested an  
11 additional \$1,000 be allowed as bad debt credit per  
12 vehicle to account for the cost of repairing vehicles to  
13 sellable condition after they have been repossessed.

14 As previously stated, the calculation to  
15 determine a wholesale price uses the federal income tax  
16 returns cost of goods sold, which includes cost of parts  
17 and repairs to the vehicle; Exhibit A pages, 98 and 99.  
18 Therefore, with an expense to repair repossessed vehicles  
19 is required that is not specifically included in the  
20 dealer jacket of a repossessed vehicle. Any additional  
21 cost would be embedded in the price calculation and an  
22 arbitrary amount is not applicable.

23 The Appellant has failed to maintain or provide  
24 documentation to support adjustment to the audit findings.  
25 The Appellant has not provided any detailed proof of

1 additional cost to repair the vehicles or other  
2 documentation to support the adjustments of the value --  
3 of the values calculated. The Department amounts are  
4 reasonable and used available information, including third  
5 party data. Therefore, the Department request that the  
6 appeal be denied.

7 This concludes my presentation, and I'm available  
8 to answer any questions you may have.

9 JUDGE LONG: This is Judge Long. Thank you.  
10 I'll open the floor for questions to my panel.  
11 Judge Dang, do you have any questions?

12 JUDGE DANG: This is Judge Dang speaking. I do  
13 have a brief question for CDTFA. I believe, Mr. Suazo,  
14 you had touched on this briefly already. But I'm  
15 wondering in situations where Department is calculating  
16 the wholesale value, say for example, using the Kelley  
17 Blue Book values, would reconditioning cost already be  
18 built into that value? And so if we were to allow further  
19 reconditioning expenses it would almost be as if we gave a  
20 double deduction for that?

21 MR. SUAZO: For Blue Book ones, there's only  
22 three of them that were generated that way. There was 67  
23 that were done on the markup method and 40 other ones that  
24 were -- or 40 percent of the other ones are using a zero  
25 cost. So you're only talking about 3 out of 116 cost.

1 And assuming you're looking at the Blue Book method, it  
2 would already had been discounted for whatever condition  
3 it happen to be in.

4 JUDGE DANG: This is Judge Dang again. Thank  
5 you. Are there any other transactions where the  
6 reconditioning cost would have already been factored in?

7 MR. SUAZO: The reconditioning cost would be  
8 factored in because we're using the cost of goods sold.  
9 That includes both the repair and the parts that were  
10 included when you're comparing -- when you're obtaining  
11 the markup percentage to apply it to.

12 JUDGE DANG: And how many transactions was that  
13 for?

14 MR. SUAZO: 67 -- or I believe it was 67  
15 transactions where the markup is computed in there. So it  
16 already has embedded the cost of repair and parts. On the  
17 other 40, again, those are valued down to zero. So  
18 there's nothing that you can do beyond that. And for the  
19 three with the Kelley Blue Book, the Kelley Blue Book  
20 would already factor in what condition it was already in.

21 MR. PARKER: I would like to -- this is Jason  
22 parker. I would like to add on the Kelley Blue Book, one  
23 of the transactions they did have some documentation on  
24 some repairs of \$2,700. So the Kelley Blue Book was  
25 \$3,150, and the amount we used as the repossessed value



1 was \$450. So one of the three blue book transactions has  
2 already been adjusted.

3 JUDGE DANG: Thank you. This is Judge Dang  
4 again. So would it be fair to say in your opinion that,  
5 essentially, for the transactions remaining that  
6 reconditioning cost have already been factored into all of  
7 these transactions?

8 MR. SUAZO: Yes. That would be fair to say.

9 JUDGE DANG: Okay. Thank you. I have no further  
10 questions.

11 JUDGE LONG: Thank you.

12 Judge Wong, do you have any questions?

13 JUDGE WONG: This is Judge Wong. I have no  
14 questions. Thank you.

15 JUDGE LONG: Thank you. I just want to follow up  
16 on the \$2,700 repair that Mr. Parker brought up. Just to  
17 clarify, there were no other repairs that could be traced  
18 to the other two Kelley Blue Book valued vehicles that  
19 were repossessed; is that correct?

20 MR. PARKER: Yes. From my understanding, they  
21 had some documentation showing an estimate from a body  
22 shop for \$2,700. The other transactions with Kelley Blue  
23 Book did not have any repair parts or body shop estimates  
24 for those two other transactions where Kelley Blue Book  
25 was used.



1 CDTFA I understand completely. It appears to me that more  
2 than half of the vehicles or the vehicles claimed or  
3 tested had panned down the markup percentage in the markup  
4 percentage they obtained from the income tax returns. The  
5 question number one is, what was that markup percentage?  
6 How does it compare to the industry? Number two, okay,  
7 how reliable are the income tax returns? Usually they're  
8 not very reliable.

9 So, again, was there anything in the record that  
10 the cost -- the additional cost were in the cost of goods  
11 sold? I do not see or at least I did not see ever a  
12 breakdown of the repair cost of the cost of goods sold.  
13 Those are the issues. And point being here is that  
14 everything is based on an estimate. And the summary is  
15 that the first point is, why not use the body of work on  
16 the 16 remaining vehicles and come up with an average  
17 that's already used in the audit? I think that would be  
18 fair and reasonable to the taxpayer.

19 As far as the additional cost, I believe those  
20 cost are not broken down in the income tax return. I have  
21 no idea where those cost came from. The taxpayer is the  
22 main person that's going into work every day. These  
23 people don't work just your eight hours; these people work  
24 16. They have to go find cars. They have to pay rent.  
25 They have to take care of all these other things, but he's

1 the one that's actually buying these items.

2 He's the one that's actually reconditioning these  
3 items. He may not have the most perfect tax record only  
4 because he dedicates 99.9 percent to making a living,  
5 trying to survive. He has a family of five. It's tough  
6 out there. And that some rely heavily on the taxpayer.  
7 I'm relying heavily on the fact that we met at the  
8 taxpayer premises, and I saw a lot of wreckage. I saw a  
9 lot of vehicles that are not saleable and required a lot  
10 of cost.

11 So again, my point is that if we're using an  
12 estimate, which is the markup in this case, and those cost  
13 are not broken down in the income tax return, I cannot see  
14 why we can say that they are already included.

15 That's my closing, Your Honor.

16 JUDGE LONG: Thank you.

17 I believe that CDTFA uh, covered many of those  
18 questions in their presentation regarding the wholesale  
19 cost of the vehicle.

20 Does CDTFA have anything to add regarding where  
21 the wholesale cost came from?

22 MR. SUAZO: Basically, it's purchases plus other  
23 cost included in the cost of goods sold. So that would  
24 include repair and parts, Your Honor. It was -- I think  
25 if you looked at the two years, they averaged \$84,000 a

1 year in repair and parts. It's part of the other cost of  
2 goods sold. It's part of the -- it's listed as other cost  
3 and cost of goods sold for 2011, \$75,473 of other cost.  
4 And in 2012 \$91,820. So it averages to \$84,000 a year.

5 And that's included -- those cost are included  
6 with the purchases of the vehicle, plus the inventory to  
7 get the cost of goods sold that's claimed on the federal  
8 income tax returns.

9 JUDGE LONG: Okay. Thank you.

10 And before we conclude, does the panel have any  
11 final questions. Judge Dang?

12 JUDGE DANG: This is Judge Dang. I do not have  
13 any questions. Thank you.

14 JUDGE LONG: And Judge Wong?

15 JUDGE WONG: This is Judge Wong. I had one  
16 question for Mr. Guzman. For the 16 vehicles that CDTFA  
17 did not allow a bad debt loss for, did you have any --  
18 they indicated they didn't do that because of lack of  
19 repossession documents. Does your client have any  
20 repossession documents with regards to the 16 vehicles?

21 MR. GUZMAN: He does not have the best of  
22 records. However, the 137, when you think about 137  
23 vehicles, where does that number come from? I think the  
24 Department came up with that number, and we only were  
25 allowed -- what was it just -- we were disallowed the 16

1 vehicles.

2 JUDGE WONG: So Mr. Guzman, the answer to my  
3 question was your client does not have the best records;  
4 is that correct?

5 MR. GUZMAN: He does not have the best,  
6 unfortunately, Your Honor.

7 JUDGE WONG: Okay. Thank you. Also with regard  
8 the -- you're asking for \$1,000 reconditioning cost per  
9 vehicle. Do you have any documents to support that  
10 figure?

11 MR. GUZMAN: Well, like I mentioned in my opening  
12 statement that Form-836, the auditor said it was not  
13 possible for auditor to determine which parts purchased or  
14 body work expense belongs to each vehicle. Such expenses  
15 are not related to repossessed car, but to other cars. So  
16 I -- and they did the markup method. So that explains to  
17 me that the auditor did not allow those expenses because  
18 he couldn't do it. But now we're talking about a markup.

19 So that's where I came up with -- with the  
20 additional cost and why I came up with the reasoning that  
21 there is no cost that were allowed in the computation,  
22 only because from the auditor's comment that I read here.

23 JUDGE WONG: Thank you, Mr. Guzman. No further  
24 questions.

25 JUDGE LONG: This is Judge Long. Thank you

1 everyone. Mr. Guzman, before we conclude, we have your  
2 evidence and the information you provided today. Is there  
3 anything else that you prepared, or you would like to tell  
4 us before we include the case?

5 MR. GUZMAN: Not at all, Your Honor. Thank you.

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

7 This concludes the hearing. The Judges will meet  
8 and decide the case based on the documents and testimony  
9 presented and admitted as evidence today. We'll send both  
10 parties our written decision no later than 100 days from  
11 today. Thank you for your participation. The case is now  
12 submitted, and the record is closed.

13 The hearing is now adjourned. Thank you.

14 (Proceedings adjourned at 10:36 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 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 October, 2020.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER