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APPEARANCES:

Panel Lead: ALJ JOSHUA ALDRICH

Panel Members: ALJ ANDREA LONG
ALJ SUZANNE BROWN

For the Appellant: THOMAS BRAMBILA

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

RANDY SUAZO
JASON PARKER
CHRISTOPHER BROOKS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were previously received during the prehearing conference.)

(Department's Exhibits A-E were previously received during the prehearing conference.)

P R E S E N T A T I O N

P A G E

By Mr. Brambila	24
By Mr. Sauzo	33

DEPARTMENT'S WITNESSES:

<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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(None offered)

APPELLANT'S WITNESSES:

<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Arlene O'Connor	10
Jason Ghanem	17

1 Sacramento, California; Wednesday, November 18, 2020

2 10:10 a.m.

3

4 JUDGE ALDRICH: This is Judge Aldrich. We're
5 opening the record in the appeal of East L.A. Auto
6 Incorporated before the Office of Tax Appeals, Case Number
7 19054829. This hearing is being convened electronically
8 on November 18th, 2020, at approximately 10:10 a.m. This
9 hearing is noticed for Sacramento, California.

10 As a quick point of clarification, we are the
11 Office of Tax Appeals. We're a separate agency from the
12 California Department of Tax and Fee Administration, the
13 Franchise Tax Board, and the Board of Equalization.

14 Today's hearing is being heard by a panel of
15 three Administrative Law Judges. I'm the lead
16 Administrative Law Judge for purposes of conducting the
17 hearing. I'm joined by Judges Andrea Long, and Suzanne
18 Brown. While I'm the lead for purposes of conducting the
19 hearing, we three will deliberate and decide all the
20 issues presented. Each of us will have an equal vote in
21 those deliberations.

22 Now, I would like to address appearances.
23 Beginning with appellant's representative, please state
24 and spell your name.

25 You're muted.

1 MR. BRAMBILA: Thank you. Thomas Brambila
2 Junior. Brambila is spelled, B as in boy, r-a, m as in
3 Mary, b as in boy again, i-l-a.

4 JUDGE ALDRICH: Great. And would witness
5 O'Conner please state your name and spell it.

6 MS. O'CONNOR: It's Arlene O'Connor, A-r-l-e-n-e,
7 O'Connor, O-c-o-n-n-o-r.

8 JUDGE ALDRICH: Thank you.

9 MS. O'CONNOR: Hm-hm.

10 JUDGE ALDRICH: And Jason Ghanem, could you --

11 MR. GHANEM: Jason, J-a-s-o-n, last name,
12 G-h-a-n-e-m.

13 JUDGE ALDRICH: Thank you. And CDTFA
14 representative, starting with the hearing representative,
15 could you please state your name and spell it.

16 MR. SUAZO: Randy Suazo, R-a-n-d-y, Suazo, S-u-a,
17 z as in zebra, o.

18 JUDGE ALDRICH: Thank you. And the headquarters
19 operations.

20 MR. PARKER: Yeah. Jason Parker, J-a-s-o-n, last
21 name Parker, P-a-r-k-e-r.

22 JUDGE ALDRICH: And the tax counsel for CDTFA.

23 MR. BROOKS: Christopher Brooks, C-H-R-I-S-T-O, p
24 as in Paul, h-e-r. Last name is Brooks, B-r-o-o-k, s as
25 in Sam.

1 JUDGE ALDRICH: Thank you. This is
2 Judge Aldrich. The issue to be decided is whether
3 Appellant has established that additional reductions to
4 the measure of unreported taxable sales is warranted.

5 Appellant's representative is this correct?
6 You're muted again.

7 MR. BRAMBILA: Sorry. Correct.

8 JUDGE ALDRICH: Correct. Okay.

9 And CDTFA is this correct?

10 MR. SUAZO: This is Randy Suazo. That's correct.

11 JUDGE ALDRICH: Okay. So CDTFA submitted an
12 exhibit index identifying Exhibits A through E. Exhibit A
13 is identified as "Relevant Audit Work Papers". Exhibit B
14 is identified as "Notice of Determination". Exhibit C is
15 identified as the "Petition". Exhibit D is identified as
16 the "Appeals Decision Report". Exhibit E is identified as
17 the "Department's Response to Appellant's Opening Brief".

18 Appellant submitted Exhibit Index -- identifying
19 Exhibits 1 through 3, and Exhibit 1 is identified as the
20 "Department of Motor Vehicle April 10, 2015 Letter".
21 Exhibit 2 is identified as the "LAPD Investigative
22 Report". And Exhibit 3 is identified as the DMV address
23 record.

24 During the prehearing conference, the parties had
25 no objections to admitting the exhibits identified in the

1 respective exhibit indexes. Therefore, I admitted the
2 exhibits into the record.

3 Appellant's representative, is that correct?

4 MR. BRAMBILA: Correct.

5 JUDGE ALDRICH: And Department?

6 MR. SUAZO: This is Randy Suazo. That's correct.

7 JUDGE ALDRICH: Great. Thank you.

8 In the October 28th, 2020, minutes and orders we
9 indicated time estimates for the hearing. We planned for
10 the hearing to proceed as follows: Appellant's opening
11 statement, which we estimated at 25 minutes. Then
12 Appellant's witnesses will give testimony for a combined
13 estimate of 20 minutes. Then the Department will present
14 a combined opening and closing for approximately
15 20 minutes, and Appellant will have 10 minutes to close or
16 rebut.

17 Please note, the panel may ask questions of
18 either party, and the panel as well as the opposing party,
19 in this case the Department, may ask questions of the
20 witnesses.

21 Appellant's representative, you may elect to
22 proceed with the witnesses prior to your presentation.
23 I'll leave that decision up to you. I understand. But
24 anyhow, Appellant's representative, shall we proceed with
25 your opening statement or witness testimony? What would

1 you prefer?

2 MR. BRAMBILA: I would prefer to start with the
3 witnesses.

4 JUDGE ALDRICH: Okay. And which witness would
5 you be calling first?

6 MR. BRAMBILA: Inspector O'Connor.

7 JUDGE ALDRICH: Inspector O'Connor, I need to
8 swear you in.

9

10 ARLENE O'CONNOR,

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

14

15 JUDGE ALDRICH: Great. Thank you.

16 MS. O'CONNOR: You're welcome.

17 JUDGE ALDRICH: As I previously indicated during
18 the prehearing conference, the witnesses may testify using
19 call and response, or having the representative ask
20 questions and the witness answer, or they may testify in
21 the narrative.

22 When you're ready, Appellant's representative,
23 please proceed.

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. BRAMBILA:

3 Q Good morning, Inspector O'Connor.

4 A Good morning. I'm having a little bit of a
5 problem hearing you.

6 Q Is this better?

7 A Can -- can you hear me okay?

8 Q Yes. I can.

9 A Okay.

10 Q Can you state your position at the DMV and the
11 number of years you worked?

12 A I am no longer employed there. I retired at the
13 end of 2015, but I was an inspector at the Department for
14 17 years.

15 Q As an inspector what did your job entail?

16 A An inspector is someone that licenses and
17 regulates anyone that holds an occupational license with
18 the DMV.

19 JUDGE ALDRICH: Mr. Brambila, sorry to interject,
20 but could you get little bit closer to the microphone so
21 we --

22 MR. BRAMBILA: Hold on. Is this better?

23 THE WITNESS: Much better. Thank you.

24 MR. BRAMBILA: Sorry about the mic.

25 ///

1 BY MR. BRAMBILA:

2 Q So was -- is -- was East L.A. Auto, Inc., a
3 licensed entity?

4 A Yes. It was. Uh-huh.

5 Q How did you become aware of East L.A. Auto's
6 situation with their canceling of their license?

7 A Okay. I'm going by memory because like I said,
8 we did have this happen quite a few years ago. The owner
9 called me to tell me that there was a break-in at his
10 location. And any time something like that would happen
11 to a dealer or a driving school or anyone that holds a
12 license with DMV, we recommend to the licensee to close
13 the business down and reopen.

14 So he called to tell me that certain things were
15 stolen. I don't remember what it was right now, but we
16 did recommend for him to take that step and close and
17 reopen.

18 Q What items does a dealer normally provide to the
19 DMV when closing the business?

20 A When they're closing the business, the reported
21 sales. If they are wholesale and retail. It would be
22 both wholesale and retail. The licenses are a wall
23 license, and they're also issued dealer plates.
24 Everything that is -- DMV supplies come back to us when
25 they close their business.

1 Q Okay. The information that was dropped off to
2 you, about how many boxes were provided?

3 A It was, you know, again, several of them. I
4 can't tell you an exact number, but I know the person that
5 brought them in had to make two trips. One, you know, to
6 bring it in and then go back and get another, carrying
7 them in. So I would say probably five or six, maybe more.

8 Q Okay. Can you -- did you review the information
9 that was inside those boxes?

10 A Well, unfortunately, at the time he -- this
11 happened, my office in Los Angeles was slated to have
12 seven inspectors. Because of illnesses and reasons --
13 other reasons, we were manning that office with two
14 people, myself and one other inspector. So at the time
15 when the gentleman brought the boxes in, I did not go over
16 them. I couldn't because we were too busy.

17 So I had the gentleman bring them in my office
18 planning to do it later that day or within the next day or
19 so. So I did not go over them when he brought them in. I
20 didn't open the boxes so see what was inside.

21 Q Did you eventually go through the boxes?

22 A No. Because that day we were swamped, and I
23 planned to do that the following day. And that's where
24 our problem came in.

25 Q Yeah. The letter dated April 10th, 2015, signed

1 by you, states that, "The un-used, used, and voided report
2 of sale forms, (wholesale and used) for East L.A. Auto
3 Inc. ledger books, contracts, and paperwork."

4 A Okay.

5 Q Correct. Is that -- how did you ascertain that
6 information was in there?

7 A Because normally when we -- I mean, you could see
8 what's in the box when you would go by it. Some of them
9 did not -- you know, it was just an open box on top.

10 Q Yup.

11 A So when I realized that there was different
12 things in there when I walked by them, I knew I had to
13 have the gentleman come back in. But I just, you know,
14 saw that some of those things he turned in is something
15 we -- we only ask for the unused report of sales, but this
16 dealer when they dropped off everything, dropped off some
17 of them that were used also.

18 Q Okay.

19 A So I could see that on top of the stack.

20 Q Okay. Can you explain what occurred after you
21 received them and how -- with the records?

22 A Well, the gentleman that brought them in, brought
23 them into my office and put them by the door, and then he
24 left. And the boxes were there all day. And as I said, I
25 was going to go by them in the morning and go and take

1 care of the inventory of it, but I could not because
2 they were -- they were gone.

3 Q When you say they were gone, can you clarify
4 that?

5 A Well, they were taken by the shredding company.
6 The night of those boxes being dropped off was one of the
7 nights that our shredding company came by. And,
8 unfortunately, that is where they would come and get the
9 boxes I did want everything shredded in. But,
10 unfortunately, I didn't separate, not knowing that it was
11 that night they were coming, and they took everything in
12 those boxes.

13 Q Can you confirm that the April 10th letter, kind
14 of, details what you told us at this point in time?

15 A Yeah. I don't have that letter but I -- what you
16 just read to me was what -- you know, if that's on my
17 letter, that's what I put down there. I remember it
18 having, you know, the unused report of sales, but then I
19 did see the used report of sales. I don't remember the
20 other thing you said, but I'm sure they were in there if I
21 listed that.

22 MR. BRAMBILA: Okay. Thank you very much,
23 Inspector O'Connor. That's all my questions for now.

24 MS. O'CONNOR: Okay.

25 JUDGE ALDRICH: Before we change witnesses, I

1 wanted to offer the Department an opportunity to ask
2 questions of the witness.

3 Department, do you have any questions for the
4 witness?

5 MR. SUAZO: This is Randy Suazo. No questions,
6 Your Honor.

7 JUDGE ALDRICH: And now I'll refer to my fellow
8 panel members. Do you have any questions, Judge Long?

9 JUDGE LONG: This is Judge Long. I have no
10 questions.

11 JUDGE ALDRICH: And, Judge Brown, do you have any
12 questions for this witness?

13 JUDGE BROWN: I have no questions. Thank you.
14 This is Judge Brown.

15 JUDGE ALDRICH: Thank you.

16 I just had a small clarification. So
17 Inspector O'Connor, when you referred to the boxes, are we
18 talking about a shoe box? A banker's box?

19 MS. O'CONNOR: No, no.

20 JUDGE ALDRICH: I mean, what dimensions are we --

21 MS. O'CONNOR: Well, reported sales -- I don't
22 know if you're familiar with them -- but the size varies
23 between the retail report of sale and a wholesale report
24 of sale. So the box would be bigger than the retail
25 report of sale would be in. It's -- oh, gosh. I'm

1 terrible on size but much bigger than a shoe box. Maybe
2 about three shoe boxes would be that. And then the one --

3 JUDGE ALDRICH: So --

4 MS. O'CONNOR: I'm sorry. Go ahead.

5 JUDGE ALDRICH: No. Would that be approximately,
6 like, the box that paper comes in?

7 MS. O'CONNOR: Hm-hm. Hm-hm.

8 JUDGE ALDRICH: Okay. And then --

9 MS. O'CONNOR: Maybe a little bit bigger than
10 that because there's perforations on it and whatever. So
11 bigger than a nine-by-eleven sheet of paper.

12 JUDGE ALDRICH: Okay.

13 MS. O'CONNOR: A little bit bigger.

14 JUDGE ALDRICH: And you were going to mention
15 something about the difference in size between a wholesale
16 box and a retail box?

17 MS. O'CONNOR: Right. The box that a wholesale
18 report of sale would come in would be a smaller box, maybe
19 the size of a shoe box. It's just a smaller form compared
20 to the retail form.

21 JUDGE ALDRICH: Okay.

22 MS. O'CONNOR: More of the boxes were the larger
23 box. You know, there's a few of them that were smaller,
24 if I can remember, stacked on top.

25 JUDGE ALDRICH: Okay. That's all I had for you.

1 A I was a manager.

2 Q What -- how did -- when did you find out about
3 the break-in of East L.A. Auto, Inc.?

4 A Well, I got a call from the office on --

5 JUDGE ALDRICH: Excuse me. Sorry to interrupt,
6 but just a little administrative matter. I didn't swear
7 this witness in yet. So I want to make sure to go ahead
8 and address that now.

9

10 JASON GHANEM,
11 produced as a witness, and having been first duly sworn by
12 the Administrative Law Judge, was examined and testified
13 as follows:

14

15 JUDGE ALDRICH: All right. Thank you.

16 Please continue, Mr. Brambila.

17 BY MR. BRAMBILA:

18 Q Okay. I'll start. What is your job title and
19 duties at East L.A. Auto, Inc.?

20 A I was the manager.

21 Q Okay. When did you become aware of the break-in
22 at East L.A. Auto?

23 A March 17, 2015, we got a call in the morning they
24 break into the office and LAPD in the scene. And when I
25 got here, the door was stuck. Fatima Novela, the one --

1 she called the police. She was talking to them, and
2 showed them the break-in, and what was missing.

3 Q Can you describe the items that went missing or
4 was stolen, I should say?

5 A I mean, it's like the police have it here. It
6 was a lot of papers, pink slips, customer credit cards. I
7 mean, whatever we use for the dealer. There was a lot of
8 stuff missing. The checkbooks were gone. Pink slips were
9 gone. A lot of miscellaneous papers is listed in the
10 report I provided to you.

11 Q And that report is part of the Los Angeles Police
12 Department investigative report?

13 A Yeah. They did that one, yeah.

14 Q The information that was delivered to the DMV,
15 was that delivered by you?

16 A No, by the -- by a runner. I was in the
17 hospital.

18 Q Okay.

19 A I have my health issue. I was dealing with my
20 accident.

21 Q Okay. Not a problem. What records were included
22 in the boxes provided to the DMV or delivered to the DMV?

23 A You could say everything, you know, sales,
24 buy-back. Lawyers sued for frame damaged. We have to
25 unwind all the money back and like all the stuff -- all

1 the stuff for the dealer. And we're lucky we never got
2 sued. We cannot provide no information. Because if you
3 buy a frame damaged, we have to disclose it. Frame
4 damaged we make -- we have copies of everything, file
5 every transaction for -- we have to keep it for seven
6 years, those copies for everything.

7 Q And all that information, what was not stolen was
8 provided to the DMV?

9 A Yes. Yes. Yes.

10 Q When did you become aware that the information
11 provided to the DMV had been shredded?

12 A I know the inspector called. She said, "You guys
13 brought a lot of boxes. I don't need it. I'm going to go
14 through it and get the stuff I need. You need to take the
15 boxes."

16 When the runner went back to the DMV to pick them
17 up, she said, "I'm sorry. I'm sorry. I can't provide
18 those books. They're gone. The shredder picked them up."
19 And that's how we found out about it. And then we call --
20 we call the supervisor and said, "Sorry the thing
21 happened. I'm going to provide you a letter. In case
22 something happens in the future, you guys are protected."

23 Q Okay. Is there any way to obtain that
24 information?

25 A No way.

1 Q With -- is there any way to recreate or detail
2 out any unwinds, buy backs, dealer buy-back contracts?

3 A No, no, not even. There are some cars even --
4 some cars didn't even make one payment, and the finance
5 company asked for the check back, and the car is still out
6 there. We don't even know about it. We cannot retrieve
7 anything. Everything was gone. Everything was gone.

8 MR. BRAMBILA: Okay. That is all the questions I
9 have.

10 JUDGE ALDRICH: Okay. I have a question. So
11 Jason -- is that okay if I call you Jason?

12 MR. GHANEM: Yeah, yeah. Go ahead.

13 JUDGE ALDRICH: Okay. So if you didn't deliver
14 the boxes, how did you know what was delivered to the DMV?

15 MR. GHANEM: I mean, you know, that time I have
16 health issue. I'm diabetic. I have high blood pressure.
17 I have -- you know, I miss work a lot. I know I'm the
18 general manager. I don't miss work a lot. I was dealing
19 with my AFib when my blood pressure goes up the roof.

20 They had to admit me. They had to put IV to lower my
21 blood pressure thing. So, like, it was not controllable.

22 Like, I mean, I had issues in the hospital and
23 when the employee -- inspector called, I need everything.
24 They don't understand what everything means. So they need
25 everything. They took everything. They took a pick. He

1 took, like, about 12 boxes. Big huge boxes we bought from
2 the Home Depot to stock up all the files in them.
3 Everything was gone. He made two or three trips to DMV
4 without knowing I was in the hospital.

5 JUDGE ALDRICH: Okay. So who instructed the
6 employee to -- I assume it was an employee?

7 MR. GHANEM: And when the inspector left the
8 message she said, "Okay. You guys are closing the dealer,
9 and I need everything to DMV." So the guy thought
10 everything. He load everything to the pickup, and he took
11 them to the Motor Vehicle.

12 JUDGE ALDRICH: Okay.

13 MR. GHANEM: And when the inspector when she --
14 she opened -- when we talked to her she said, "I only see
15 from the top you guys brought everything. I don't need
16 it." So any way the damage was done. I don't know how to
17 deal with it now.

18 JUDGE ALDRICH: Okay. And during that time, did
19 you have any kind of cloud accounting software or --

20 MR. GHANEM: No. Everything manual.

21 JUDGE ALDRICH: Okay. Okay. I'm going to refer
22 to the Department to see if they have questions for you at
23 this time.

24 Mr. Sauzo, do you have any questions for this
25 witness?

1 MR. SUAZO: This is Randy Suazo. No questions,
2 Your Honor.

3 JUDGE ALDRICH: Okay. And, Judge Long, do you
4 have any questions for this witness?

5 JUDGE LONG: This is Judge Long. No questions.

6 JUDGE ALDRICH: And, Judge Brown, do you have any
7 questions?

8 JUDGE BROWN: I think I may have a couple of
9 questions.

10 JUDGE ALDRICH: Okay.

11 JUDGE BROWN: Can I ask the witness, so nothing
12 was -- there were no photocopies? Nothing was entered
13 into the computer? All the records were just originals on
14 paper?

15 MR. GHANEM: Everything on paper. We have it in
16 boxes, everything. Customers have copies. We make
17 copies. Everything, yeah. We make copies, and we file
18 them up. Yeah, everything manual. Yeah. I mean,
19 whatever copies the customers have we have a second copy
20 for our file.

21 JUDGE BROWN: So -- but you have one copy of each
22 ROS report, let's say?

23 MR. GHANEM: Each -- each vehicle is a
24 transaction. We have copies. Yeah, we have a report of
25 sale. We have a contract each stapled to each other, all

1 bill of sale.

2 JUDGE BROWN: But nothing is entered into the
3 computer? There's no documentation other than your one
4 copy?

5 MR. GHANEM: No. You know, we print to the
6 computer, but there's nothing being saved. Just we have
7 to keep it manual.

8 JUDGE BROWN: All right. I have other questions,
9 but I think I will ask the representative. So I don't
10 have any other questions for this witness.

11 JUDGE ALDRICH: Okay. So, Mr. Brambila, I think
12 we're going to switch over to your opening statement at
13 this time. Are you ready to proceed?

14 MR. BRAMBILA: Yes. Yes.

15 JUDGE ALDRICH: Proceed when you're ready.

16

17 OPENING STATEMENT

18 MR. BRAMBILA: All right. East L.A. Auto, Inc.,
19 was doing business and keeping its records. Due to some
20 unfortunate events with regards to the theft and the
21 transfer of those documents to the DMV, East L.A. Auto, is
22 unable to, not only support, but is unable to claim any of
23 the unwinds, dealer buy-backs, or any sort of accounting
24 methodology reports because only the originals or copies
25 of the client's or the purchaser's documents.

1 So we can neither deny nor confirm the amounts
2 that were provided by the DMV, which the CDTFA based its
3 entire report on. During the appeals with the CDTFA,
4 there were a couple -- a couple or quite a few duplicate
5 entries that were on the DMV's reports. So the taxpayer
6 and -- believes, that, if they had the original records by
7 which to confirm, we could -- we could agree that the
8 sales tax -- the sales and the related sales tax that
9 would be reported would be closer to what was filed
10 because of the unwinds, the buy-backs, the cars that --
11 the vehicles that were purchased with only a minimal down
12 payment and no future payments were made.

13 We're kind of left in a position where we can't
14 even support where we're at, at no fault of East L.A. Auto
15 in general. So we're kind of at a spot where we can't
16 even follow due process on our side because we don't have
17 the records. And that was my statement.

18 JUDGE ALDRICH: Okay. So Judge Long, do you have
19 any questions for Appellant? Appellant's representative,
20 excuse me.

21 JUDGE LONG: This is Judge Long. No, I don't
22 have any questions at this time.

23 JUDGE ALDRICH: Thank you.

24 And, Judge Brown, do you have any questions at
25 this time?

1 JUDGE BROWN: I do. Mr. Brambila, I understand
2 everything that's been presented here about what happened
3 to the records. My question for you is what -- and I've
4 read all of your briefs and filings. What are you saying
5 that our office should rely on in terms of information to
6 make the adjustment that you're requesting?

7 MR. BRAMBILA: Our position is that we can't even
8 provide anything to say that it's -- it's not a buy -- we
9 believe that we filed the appropriate sales tax report,
10 paying the proper tax at that point in time and any
11 additions were due to duplications and unwinds. And we
12 shouldn't be subject to those additional taxes -- that
13 sales tax related to that -- to those sales because we
14 can't even prove that they occurred. And it wasn't
15 through no fault of the company with the DMV -- department
16 of -- MD Shredding Company inadvertently shredding those
17 records.

18 JUDGE BROWN: This is Judge Brown. Mr. Brambila,
19 I'm sure you're aware of the regulation in the California
20 Code of Regulations Title 18 Section 1698, that says that
21 the retailer is responsible for maintaining their records.
22 How do we as the Office of Tax appeals get around that to
23 find -- to find for your position?

24 MR. BRAMBILA: The taxpayer did keep all the
25 records, and maintained all the records, had the records

1 until it got into the hands of the DMV, at which point we
2 lost control of those and are unable to protect our
3 position for the unpaid tax. So we're kind of left in a
4 spot. You know, the CDTFA has relied on the DMV's
5 recording of sales to create the liability. And we feel
6 that that liability isn't correct because we don't have
7 the records, which were actually destroyed by the DMV.

8 JUDGE BROWN: I also noticed that in your
9 briefings you argued that there were duplicates. The VINs
10 were duplicates. That there were --

11 MR. BRAMBILA: Yes, ma'am.

12 JUDGE BROWN: Okay. My question is, in the
13 Appeals Decision and Recommendation that ordered a
14 reduction based on the Department's concession, I believe
15 it was that there was six -- they found six duplicate
16 VINs. My question for you is, does that reduction address
17 the duplicates that you are arguing existed? Or are you
18 saying there were more duplicates that were not accounted
19 for?

20 MR. BRAMBILA: No. Those duplicates account for
21 the inconsistency at the time of the reporting to the DMV,
22 let alone the items that -- those were already included.
23 Those six were already included. The records, we believe,
24 with the unwinds where we have to -- we sold the car, the
25 person didn't make the down payment, so we have to undo

1 those. But that information got sent to the DMV records,
2 but we had to unwind them as though they never occurred.

3 As well as the dealer buy-backs were East L.A.
4 Auto, had to buy a contract back because the purchaser
5 never paid the payments, and so we had to repo. So all
6 those trackings were lost. So we weren't unable to reduce
7 the liability or properly report beyond or after the theft
8 date.

9 JUDGE BROWN: So you are saying those aren't --
10 were not included in the reduction in the appeals
11 decision?

12 MR. BRAMBILA: Correct. Those were not in the
13 appeals decision. It's only the duplicates.

14 JUDGE BROWN: All right. I think those are all
15 of my questions at this time. Thank you very much.

16 MR. BRAMBILA: Thank you.

17 JUDGE ALDRICH: Okay. I had a question. So are
18 you asking for us to disregard the Consumer Motor Vehicle
19 Recovery Corporation or CMVRC report? So there's
20 Revenue & Taxation Code Section 6481 provides that CDTFA
21 may base its determination of the tax due upon the facts
22 contained in the returns or upon any information that
23 comes within its possession. In light of this -- in light
24 of Revenue & Taxation Code Section 6481, what authority,
25 if any, is there to disregard the CMVRC report?

1 MR. BRAMBILA: The basic premises is that we
2 can't even confirm what's on there; what sales occurred,
3 that didn't occur, how they occur. You know, just the
4 unwinds where people go put a \$500 deposit on a car, and
5 then take the car and then the car is wrecked, and then we
6 get the car back. So we can't even say, okay, these cars
7 shouldn't, but DMV recording them as sales. And we -- I
8 mean, we're at a spot where we can't even attest anything
9 because the records were destroyed.

10 That, I mean, we're kind of handicapped in a
11 sense because there are no records. None of the contracts
12 are there to show what the status is of that, or we
13 repossessed this, or what are we repossessing? How are we
14 doing this? There's nothing. I mean, we're left at --
15 and, unfortunately, it was done at the hands of the exact
16 same institution that the CDTFA is relying on to create
17 their report.

18 You know, it would be a different situation if --
19 that those records were destroyed by our own hands or
20 destroyed by our own malfeasance or own issues. But we
21 delivered all those records to the DMV, and they were
22 destroyed by DMV. And we kind of -- we're left at a spot
23 where we have nothing by -- where to -- how to proceed and
24 how to recreate. And, you know, the company was closed
25 and shut down, and we're kind of left at a spot where we

1 don't know how to proceed. And, again, nothing was done
2 by East L.A. Auto directly to destroy the records.

3 JUDGE ALDRICH: Thank you. I have a question for
4 the manager or witness.

5 MR. GHANEM: Yeah.

6 JUDGE ALDRICH: Are you still online?

7 MR. GHANEM: Yes, sir. I'm here.

8 JUDGE ALDRICH: Could you tell me who is in
9 charge of filing the returns?

10 MR. GHANEM: Well, filing -- we had an accountant
11 every -- he does it every month. We send all the books to
12 him and then he goes through it, and then he mails the
13 check for sales tax.

14 JUDGE ALDRICH: Okay.

15 MR. GHANEM: And -- and also, Mr. Brambila, we
16 have a lot of cars. The people purchase them on the
17 credit card. And then after a month or two, we get charge
18 back, and we don't even -- we never even got those cars
19 back. They're gone with the wind. Also, I have those.
20 We have them. I mean, like Mr. Brambila said, we left
21 like -- we can't do nothing. We can't fight for anything.
22 I have everything right there. You could lay it on the
23 table. Everything black and white. Everything.
24 Everything right there. Everything is gone.

25 JUDGE ALDRICH: So you said you have an

1 accountant that would prepare your returns. What
2 information was given to the accountant for those returns?

3 MR. GHANEM: Oh, we give him -- we give him every
4 month whatever sales, whatever vehicle we sell. We give
5 him the contracts and then -- we give him the contract,
6 and then he add everything up how much we collected in
7 sales tax, and he mailed the check to State Board.

8 JUDGE ALDRICH: And when you refer to he, the
9 accountant, who is it that you're referring to?

10 MR. GHANEM: Yeah, his name is Jim Donglar.

11 JUDGE ALDRICH: Okay. And you said that you
12 would provide contracts to the accountant?

13 MR. GHANEM: Everything. Everything.

14 JUDGE ALDRICH: Everything?

15 MR. GHANEM: Yeah, every -- of course. You have
16 to. Yeah, everything. He has to get everything.
17 Every -- whatever vehicle we sell every month, I have to
18 take him all the books and go through it. And whatever we
19 collect sales tax from the public we have to pay it.

20 JUDGE ALDRICH: And so after you found out, what
21 was the date that you found out the DMV records were
22 destroyed?

23 MR. GHANEM: We found out March -- when the DMV
24 records were destroyed? Let me find out for you. We
25 found out April 10, 2015.

1 JUDGE ALDRICH: Okay. And did you make any
2 attempt to contact your return preparer to see if they had
3 any of the records?

4 MR. GHANEM: Yeah. No. They don't have
5 anything. We -- we -- I take the books, and then he go
6 through it. And he add up the sales tax, and he tell me
7 take it back. After three or four days, we'll bring it
8 back to the dealer. He doesn't keep anything of his own.

9 JUDGE ALDRICH: Okay. I think those are all the
10 questions that I had. One second. Oh, I believe
11 Judge Long may have a question.

12 JUDGE LONG: This is Judge Long. I just have one
13 quick question. I was a little confused by the dates.
14 This question is for the witness. You mentioned a
15 March 17th, 2015, date. What was that in reference to?

16 MR. GHANEM: Okay. The 20 -- 17. Let me look.
17 In the -- in the -- okay. March 17, 2015, that's when
18 they break into the office.

19 JUDGE LONG: And what about the April 10th, 2015,
20 date?

21 MR. GHANEM: April 10, '15, this is when the
22 record was destroyed at DMV.

23 JUDGE LONG: Okay. Thank you so much. That was
24 just my last question. Thank you.

25 MR. GHANEM: Thank you.

1 JUDGE ALDRICH: Okay. And, Mr. Brambila, just to
2 be clear, you concluded your opening statement. So it's
3 okay if we switch over to CDTFA for their presentation and
4 closing?

5 MR. BRAMBILA: Yes.

6 JUDGE ALDRICH: Okay. CDTFA, are you ready to
7 proceed?

8 MR. SUAZO: Yes, Your Honor.

9 JUDGE ALDRICH: Proceed when you're ready.

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PRESENTATION

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MR. SUAZO: Okay. This is a corporation operating three used car lots, all located in Los Angeles, California. The seller's permit start date is December 1st, 2012. The initial location, which is on East 4th Street in L.A., operated from December 1st, 2012, through June 30th, 2013. The other two locations began on July 1st, 2013. The other two locations, the first one is on East 3rd Street in Los Angeles. The second one is on East Cesar Chavez Avenue in Los Angeles and operated through the end of the audit period.

The audit period is from December 1st, 2012, through March 31st, 2015. The permit closed out on March 31st, 2015, which is the end of the audit period. A new corporation was formed which operated the two

1 remaining locations. This is the Appellant's first audit.
2 The Appellant did not provide any records for the staff to
3 review. Federal income tax returns, general subsidiary
4 ledger, either jackets, sales contracts, purchase
5 invoices, bank statements were not provided.

6 The staff obtained information from the
7 Department of Motor Vehicles and Department's Consumer Use
8 Tax Section Cuts to verify whether taxable measure had
9 been properly reported; Exhibit A, page 3. The Department
10 reviewed Consumer Motor Vehicle Recovery Corporation,
11 CMVRC fee reports, which were obtained from the DMV for
12 all sales made by the Appellant.

13 The CMVRC listing was comprised of individual
14 vehicle sale information, including: Estimated sale date,
15 vehicle registration date, registered owner name and
16 address, legal owner name and address, make, model, year,
17 odometer reading, vehicle identification number, which is
18 the VIN number, and vehicle license fee. The vehicle
19 license fee code for each transaction corresponds to the
20 range of selling prices. The Department used the lowest
21 selling price within the VLF, which is the vehicle license
22 fee code, range to estimate the selling price for each
23 vehicle; Exhibit A, pages 24 and 30.

24 Appellant's taxable sales per DMV reports full of
25 roughly \$4.3 million, but the Appellant only reported

1 taxable sales for the audit period of approximately
2 \$1.9 million. A difference of \$2,431,669 was revealed;
3 Exhibit A, page 22. The assessment is net of unwinds. No
4 adjustments were made for bad debts. Appellant could not
5 show losses on repossessions had occurred. Since no
6 federal income tax returns were provided, it is unknown if
7 bad debts were claimed on the income tax returns;
8 Exhibit A, page 31 and 32.

9 In addition to unreported taxable sales, based on
10 DMV records, the Department also obtained purchase data
11 specific to the Appellant DMV dealer license number and/or
12 name and address from the auction houses for the period of
13 December 1st, 2012, through March 31st, 2014. Vehicles
14 not included in DMV sales information were scheduled
15 separately, and a request was made to the Department's
16 Consumer Used Tax section to obtain the DMV history for
17 each vehicle.

18 Four vehicles sold to California consumers
19 totaling about \$25,000 were identified and scheduled as
20 unreported taxable sales. A roughly 5 percent error
21 rate -- percentage of error was computed. This was the
22 \$25,000 divided by the \$500,000, roughly, of total sales
23 that had occurred from December 1st through
24 March 31st, 2014.

25 Reported taxable sales and projected to taxable

1 sales are roughly \$1.1 million for the audit period from
2 April 1st, 2014, through March 31st, 2015, for which no
3 auto auction purchase information was provided. The
4 resulting assessment from additional unreported taxable
5 sales based on cuts information were purchases not
6 reported on DMV sales reports was \$80,447.

7 The Appellant has not provided any records to
8 support its reported sales amounts and has not presented
9 any documentation or information to refute the audited
10 taxable sales amounts. The Department's calculations
11 include information obtained from the DMV and auction
12 houses, which was associated with Appellant's dealer
13 license number.

14 Audit taxable sales include the lower range of
15 values to estimate the selling prices of vehicles rather
16 than a midrange amount. Use of the lower sale amounts
17 benefits the Appellant. Without evidence to the contrary,
18 the Department recommends no adjustment and request the
19 Appellant's appeal be denied.

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

22 JUDGE ALDRICH: Thank you.

23 Judge Long, do you have any questions for the
24 Department?

25 JUDGE LONG: This is Judge Long. I have no

1 questions.

2 JUDGE ALDRICH: Judge Brown, do you have any
3 questions for the Department?

4 JUDGE BROWN: This is Judge Brown. I may have a
5 question. Mr. Suazo, if you have a dealer that's in the
6 situation that you heard that Appellant was in with the
7 records being destroyed, would you expect them to have
8 some sort of back up records from anywhere?

9 MR. SUAZO: I would expect them to go to
10 third-party source. Normally, a used-car dealer would
11 have certain finance companies that they deal with
12 regularly, and they could go back to them and ask them for
13 the information. They also stated that they had an
14 accountant that was dealing with some of their stuff.
15 They probably also had information available to them.

16 If you look at the -- the way the paperwork is
17 provided, it does look like it was done on a computer.
18 It's sort of hard to, in this day and age, not use a
19 computer for accounting purposes at a dealership. And if
20 you look at the police report, there's no item in there
21 saying a computer was gone. Although, this may be a time
22 where a cloud network was not available, you would still
23 have a computer available.

24 Again, the fact that they provided no bank
25 statements when you could have easily gotten bank

1 statement from your bank. The fact they did not have
2 federal income tax returns provided to us that would have
3 shown possibly bad debts that were not provided to us,
4 they should have had that at least. There's a lot of
5 other things that I can probably provide to you in maybe a
6 day or so, but off the top of my head those would be the
7 things that I would look at.

8 Because, again, finance companies or used-car
9 dealers deal with certain finance companies all the time.
10 And they could just go back to them and ask them for,
11 Hey, how much did we finance this for? What was the
12 amount of down payment provided?", and other thing of that
13 nature. The taxpayer saying that there was a lot of cars
14 missing, or there was a lot of cars that were repoed,
15 realistically, there were 604 cars listed in the exhibits
16 from the DMV. When you do a pivot table on Excel to see
17 if there are any duplicates using the vehicle
18 identification number, what you'll find is you'll find 47
19 doubling up. Okay.

20 And 12 of those were already given credit for to
21 some degree. Because, again, that would be the six cars
22 that were provided in which they were given the -- excuse
23 me for one moment -- the evidence. Then there was the
24 other cars. There were 18 other cars, which they're
25 saying was repoed. And they could have went back to the

1 financing company to get information from that, and they
2 did not do so.

3 In addition, the repoes, it's on them to provide
4 the evidence that the car has been repossessed, as you
5 stated earlier. So that's what I would have tried, if I
6 were them, at the very minimum.

7 JUDGE BROWN: This is Judge Brown. Thank you. I
8 have no further questions at this time.

9 JUDGE ALDRICH: Thank you.

10 Appellant, would you like to make a final
11 statement, a rebuttal to Department, or further address
12 any of the questions the judges had?

13 MR. BRAMBILA: No. I think we provided
14 everything we can.

15 JUDGE ALDRICH: Okay. We have your evidence and
16 argument in the record. Is there anything else you would
17 like to tell us before I submit the case?

18 MR. BRAMBILA: At this point, no.

19 JUDGE ALDRICH: Okay. Thank you both for your
20 time and for being flexible with the hearing format.

21 We're ready to submit the case. The record is
22 now closed. The judges will meet and decide the case bade
23 on evidence and arguments presented today. We will aim to
24 send both parties our written decision no later than 100
25 days from today.

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The hearing calendar is now in recess. We will
resume hearings at approximately 1:00 p.m. Thank you.

(Proceedings adjourned at 11:05 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 3rd day of December, 2020.

ERNALYN M. ALONZO
HEARING REPORTER