

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. ASLAM,) OTA NO. 18011842
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) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Tuesday, December 15, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
400 R Street, Sacramento, California, 91401,
commencing at 10:50 a.m. and concluding
at 11:37 a.m. on Tuesday, December 15, 2020,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ NGUYEN DANG

Panel Members: ALJ SUZANNE BROWN
ALJ ANDREW WONG

For the Appellant: BRUCE NELSON

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

CHAD BACCHUS
RANDY SUAZO
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits were received at page)

(Department's Exhibits were received at page)

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1 Sacramento, California; Tuesday, December 15, 2020

2 10:50 a.m.

3

4 JUDGE DANG: Good morning everyone. We are
5 opening the record in the appeal of Javid Aslam before
6 the Office of Tax Appeals. The Case Number is 18011842.
7 It's presently 10:50 a.m., December 15th, 2020.

8 Consistent with the Governor's Executive Order
9 Number 25-20 to reduce and minimize the spread and risk of
10 Corona virus infection and with the agreement of the
11 parties, this hearing is being conducted via Webex video
12 conferencing.

13 Today's case is being heard by a panel of three
14 judges. My name is Nguyen Dang, and I'm the lead Judge
15 for purposes of conducting this hearing. Also on the
16 panel with me today are Judges Suzanne Brown and Andrew
17 Wong.

18 Would the parties please state their appearances
19 for the record, beginning with the Appellant, please.

20 Mr. Nelson, can you please state your appearance
21 for the record.

22 MR. NELSON: I'm the representative of the
23 taxpayer. My name is Bruce Nelson.

24 JUDGE DANG: Thank you. And CDTFA.

25 MR. SUAZO: Randy Suazo, Hearing Representative.

1 MR. PARKER: Jason Parker, Chief of Headquarters
2 Operations Bureau.

3 MR. BACCHUS: Chad Bacchus with the Legal
4 Division.

5 JUDGE DANG: Thank you.

6 The issue in this appeal is whether adjustments
7 are warranted to the measure for unreported taxable sales.
8 Specifically, Appellant is contesting the taxable purchase
9 ratio for the Mobile store location.

10 Is this correct, Mr. Nelson?

11 MR. NELSON: That's correct. I'm only --

12 JUDGE DANG: Thank you. And --

13 MR. NELSON: Excuse me?

14 JUDGE DANG: I'm sorry. Please finish.

15 MR. NELSON: Yeah. I'm only -- the only issue is
16 the purchase ratio method. That's all. The purchase --
17 taxable purchases. That's all we're -- is our
18 considerations.

19 JUDGE DANG: Great. Thank you.

20 And, CDTFA, is that correct?

21 MR. SAUZO: That's our understanding.

22 JUDGE DANG: Thank you.

23 Prior to the hearing today, the parties were
24 provided with an electronic copy of the exhibit hearing
25 binder for this appeal. This binder contains CDTFA's

1 Exhibits A through H.

2 CDTFA, did the exhibit binder look correct to
3 you? Are there any issues?

4 MR. SUAZO: The binder looked correct.

5 JUDGE DANG: Thank you.

6 And, Mr. Nelson, do you have any objections to
7 admitting these exhibits into evidence?

8 MR. NELSON: Admitting what? You mean the 11
9 invoices or whatever, 7 invoices?

10 JUDGE DANG: These are CDTFA's exhibits. My
11 question is whether you have any objections to admitting
12 CDTFA's exhibits into evidence.

13 MR. NELSON: No, I have no problem. No quest --
14 I have no question.

15 JUDGE DANG: Thank you.

16 As we discussed just prior to going on the
17 record, there's 11 invoices -- purchase invoices that were
18 at issue here that were not received timely. CDTFA --
19 it's my understanding, Mr. Nelson, that you do intend to
20 submit these? You have these documents? You will be
21 submitting them, or you intend to submit these for our
22 consideration?

23 MR. NELSON: I thought I already have --

24 JUDGE DANG: Okay. Thank you.

25 MR. NELSON: -- but there's issues. But that's

1 not the only issue I've got. I've got other things that I
2 want to review. I want to state that for the Judges.
3 These invoices are not critical to me.

4 JUDGE DANG: Why aren't the invoices critical to
5 you?

6 MR. NELSON: Because I've done two separate tests
7 to support what the purchases should be, and I want to
8 present that. That's what I'm looking at. That's my main
9 defense here.

10 JUDGE DANG: Okay. The other -- I believe one of
11 your tests is based on the point of sale records?

12 MR. NELSON: Yes.

13 JUDGE DANG: Okay. We have your schedules that
14 were submitted with your briefing, but we don't actually
15 have the actual point of sale records themselves. That's
16 something you'd like to --

17 MR. NELSON: Yes. I have right here. I got them
18 here, and I can send them to you.

19 JUDGE DANG: Okay. Okay. And the --

20 MR. NELSON: -- by item.

21 JUDGE DANG: Oh, okay. And the other alternative
22 test, I'm assuming, was the comparison with the Panoche
23 Shell location?

24 MR. NELSON: Okay. I -- I did a three-month
25 test. It came out to a lower percentage, which I felt was

1 more accurate. When I did this, the system backdated the
2 cost and supported my exemption. That's basically the
3 reason why my three-month test is better than their
4 two-month test.

5 JUDGE DANG: Okay. Thank you, Mr. Nelson. Let
6 me take a step back for --

7 MR. NELSON: Do you know what --

8 JUDGE DANG: Yes. Thank you, Mr. Nelson. Let me
9 take a step back for a moment and ask you, do have any
10 documents that you'd like to submit to us that you feel
11 are critical to this appeal for us to consider?

12 MR. NELSON: Well, if you don't have the
13 breakdown by month that I took the data from, I -- I can't
14 believe they don't have that because I sent that. Well,
15 that's the breakdown (INDISCERNIBLE) the POA, which
16 indicated the total sales by sales category. And then I
17 backed it down to cost. Now, their contention was, from
18 my understanding, I'm not putting the words in their
19 mouth. They felt that wasn't adequate because they felt I
20 was possibly trying to establish sales with them.

21 I just wanted the mix. The POA system shows a
22 good mix of what taxable and nontaxable are. And -- and
23 to not consider that as a critical support to what my
24 purchases is, pretty much for the past three months crazy
25 as far as I'm concerned. I've been doing this a long

1 time. There's just no reason that you can't support that.
2 I'm not contending what the sales are from the point of
3 the POA.

4 I just wanted the mix to support my test for
5 three months. It's really, really important to understand
6 that because it supports that my percentage, 36 percent --
7 point 9 or whatever it is --

8 JUDGE DANG: Mr. Nelson.

9 MR. NELSON: -- compared to the 43 has more
10 support --

11 JUDGE DANG: Mr. Nelson.

12 MR. NELSON: -- than what they've got. Yes.

13 JUDGE DANG: Let me interrupt you for a moment.

14 MR. NELSON: Sure.

15 JUDGE DANG: At this point I'm just concerned
16 with whether or not you have any documents, other than the
17 schedules you provided us with, which are part of briefing
18 record, do you have any documents you would like to submit
19 to us?

20 MR. NELSON: No. No everything is in the audit.
21 And I can submit schedules for whatever you'd like, but
22 everything is submitted in there. I have nothing further
23 to hand in.

24 JUDGE DANG: Okay. So we're going to consider --
25 I just want you to be clear that we're going to consider

1 the appeal based on those --

2 MR. NELSON: Sure.

3 JUDGE DANG: Okay. -- those documents you
4 submitted during briefing, and that's -- and CDTFA's
5 exhibits. Okay. Thank you.

6 MR. NELSON: Yes -- (INDISCERNIBLE) -- all my
7 contention.

8 JUDGE DANG: Okay. Thank you.

9 CDTFA, did you have any comments or anything you
10 would like to add at this time before we start the
11 presentations?

12 MR. SUAZO: No. No additional comments.

13 JUDGE DANG: Okay. Thank you.

14 Mr. Nelson, if you're ready to begin with your
15 presentations, you have 15 minutes.

16

17 PRESENTATION

18 MR. NELSON: Okay. I'll do it -- I'll try to do
19 it quickly. I'd like (INDISCERNIBLE) and talked about in
20 the past few minutes there, but I'll go over it. Operates
21 two separate locations off Interstate 5. It's a travel
22 (INDISCERNIBLE) San Francisco and Sacramento
23 (INDISCERNIBLE) and that goes from Los Angeles to San
24 Francisco and back and forth. Basically (INDISCERNIBLE)
25 taxable -- store (INDISCERNIBLE) snacks food and things

1 like that.

2 This is all in the report. So taxable ratio is
3 not great two individual Shell station. Purchase ratio
4 was 28 or 29 percent. Okay. Why that is that' is
5 (INDISCERNIBLE) okay. The only (INDISCERNIBLE) sold beer.

6 JUDGE DANG: Mr. Nelson. Mr. Nelson.

7 MR. NELSON: (INDISCERNIBLE) amount is obviously
8 is -- yes.

9 JUDGE DANG: Mr. Nelson, this is Judge Dang
10 speaking. I apologize for interrupting you. You are
11 cutting in and out and our stenographer and our Panelists
12 are not able to hear you.

13 MR. NELSON: Okay.

14 JUDGE DANG: Did you want to -- you can leave
15 your video on, but did you want to connect via telephone
16 just for the audio portion of this appeal?

17 MR. NELSON: As long as I don't get feedback.
18 (INDISCERNIBLE) here and call you on the phone? Would
19 that be better?

20 JUDGE DANG: Correct. So call the -- I think
21 that would be better. If you could call us through the
22 call-in number that was provided on the hearing notice?

23 (There is a pause in the proceedings.)

24 JUDGE DANG: Let's go back on the record.

25 Mr. Nelson, you may begin with your presentation

1 again.

2 MR. NELSON: Okay. I'll just put forth with what
3 I've got. We've got two locations. We got a Shell and a
4 Mobile. They accepted Shell. Did not accept Mobile. The
5 problem with what I've got, what I'm finding is that the
6 purchases are overstated, but I can't justify the
7 purchases. The agency has a right to do that. I can't
8 confirm what the correct purchases are. So we'll have to
9 use that.

10 So the taxpayer is going to pay tax based on
11 that, and that's what the problem is on the Mobile. Now,
12 I think they've got something in there, but I can't figure
13 out what it is. So that's what I got. But I did a -- I
14 did a test for three months. My individual tests came up
15 with 36.96 percent. The Board's test came up with the
16 43.42. So you have to ask yourself why? Is my test
17 right, or is their test right? And they can contend
18 theirs is more accurate than mine. I can contend mine is.

19 So as an extra thing I did, I did the POA system.
20 So I took three months at random. Didn't -- just selected
21 three (INDISCERNIBLE). I got the data and broke down.
22 BOE -- BOA shot them down. The agency can check my
23 records. They didn't choose to do that, but they can do
24 that to verify what I got the taxable and nontaxable items
25 there. Okay. They certainly can do that.

1 But by doing that, I backed down the cost, and I
2 came up with the 36.62 percent, which ties into what I've
3 got on my markup. So I've got another verification of
4 what my test are accurate based on the POA system. Now,
5 you can say the POA is not accurate, what everybody uses:
6 Costco, Home Depot, Lowes, grocery stores. Everybody uses
7 the POA system. They didn't use that to report the sales
8 here.

9 I didn't want to go through that 'cause I know
10 we're using cost, and it wouldn't have made any
11 difference. You guys wouldn't have accepted it because
12 based on the higher cost. You have to understand that.
13 So my thing is that the POA system supports my test of
14 three months. I'm asking the agency how they support
15 their test. Are they just going to say their test is
16 better than mine?

17 I prove to reasonable doubt saying that my
18 three-month test is more accurate than theirs based on the
19 POA system. Now I can sample another three or six months
20 of the sales -- POA sales and it would probably come up
21 the same amount.

22 Are we still online? Guys?

23 JUDGE DANG: This is Judge Dang speaking. Yes,
24 we can hear you.

25 MR. NELSON: Okay. No problem. So okay. Going

1 back, I think the reason we have errors here -- and a
2 large amount -- is because the purchases are overstated.
3 Now, my taxpayer, even with my thing, owes 27 grand.
4 Okay. And I think that's too much, but that's what it
5 came out to be, and that's what we're willing to accept on
6 it. I think the 36.9 or whatever it is, is a fair amount
7 of the thing. That's what the records tells you, not the
8 43. And I think their test is not accurate now.

9 And there's nothing more I can do. And to throw
10 out the POA system simply because they felt it wasn't
11 representative of whatever, but that's how they, the
12 employees at these stations, did it. Okay. Now, the
13 bookkeeper did not report on the POA. He just used the
14 method because he did not have the sales data. He
15 estimated and corrected the next quarter, and he
16 constantly did that. He has errors back and forth, and
17 you wonder what happened. But the whole thing was a
18 disaster.

19 And as a result because of this whole mess, he
20 couldn't verify. He found another accountant and now
21 everything is okay now. But the bookkeeper screwed up the
22 system, and the taxpayer is basically paying more tax than
23 due. But we'll agree to it simply because we have no
24 other defense. But I definitely don't think the purchase
25 ratio is 43 percent. You cannot show me.

1 I've audited for 36 years with the agency. I
2 know things like this. I'm very good very. And I just
3 can't understand why you're hanging your hat on that
4 two-month test and saying my test is not right when I've
5 confirmed that it ties together with the POA system. So
6 and I'll leave it at that. There's not much more I can
7 say. If you don't agree with me that's up to you guys to
8 make that decision. Okay. But I feel very strongly about
9 that.

10 Those -- that separate POA system ties into my
11 thing; three separate months at random, which I didn't
12 choose anything there. I was more than fair, and as an
13 auditor this is an approach that I would use with the
14 agency and -- if I couldn't verify what the purchases are.
15 But you just simply can't take two months and put them in
16 there and call it good.

17 I mean, when they first started this thing a
18 while ago, it was up to 48 or 50 percent because they did
19 not have the net purchases that they were selling. The
20 taxpayer has a nut business that they sold nuts, which is
21 a high food product. And that lowered the taxable amount.
22 So they finally got to 43, but they can't substantiate
23 43 percent. I can substantiate, my 36 percent.

24 Now, if you want to rule in their favor, do what
25 you want to do. I can't stop you. But I can vehemently

1 know -- I've done it enough to know that I -- I've done
2 this thing. I've spent hours and hours on this thing
3 figuring out what was going on. And this is not an easy
4 fix. And for a former auditor I -- I have a good feeling
5 for this, and that's why I feel really strongly about it.

6 Now, what you rule is what you rule. I mean
7 you're judges. You do what you want to do. But I'm
8 pretty -- pretty almost 100 percent guarantee that what
9 I've got is correct. So that's where I'll leave it.
10 There's not much I can say.

11 Thank you.

12 JUDGE DANG: This is Judge Dang speaking. Thank
13 you, Mr. Nelson, for your presentation.

14 Before I turn this over to my co-panelists for
15 questions, I just wanted to clarify with you that CDTFA
16 has, I believe, since expanded the test to a three-month
17 period, and they've reduced the taxable purchase ratio to
18 40 percent something, some change. I just want to confirm
19 that you're aware of that, Mr. Nelson?

20 MR. NELSON: Yeah. They're down to 43. Okay.
21 But I'm contending that's not accurate. The 36.9 or
22 whatever it is, is the accurate figure, and I'm ready to
23 agree to that. I have no problem with that. And I can
24 hang my hat on and legitimately say it. But it call
25 for -- the agency tends to be archaic in their thinking,

1 and they think they only do it one way.

2 You've got to open your eyes and say, hey,
3 there's a different approach here. Now, you have to --
4 you have to contend that the POA system is wrong. Well,
5 prove to me it's wrong. If I've gone the wrong -- review
6 what I've got, and prove it's wrong. Okay. That's what
7 I'm saying. I'm not mad at the agency. They do what they
8 normally do. But they're -- they're kind of -- they're
9 kind of buried in antiquated ways to doing it without
10 confirmation about the sources. And that's what I've
11 encouraged the agency to do that.

12 In the Fresno office -- I'm not going to speak
13 badly of them, but they tend to do that. They tend to go
14 with the normal stuff, and this is what it is. And if it
15 doesn't mimic their little thing, then they move it on.
16 And it's not right. I'm sorry. I've done enough audits
17 to know. I'm -- I'm good at what I do. Okay. I'm really
18 good, and this is hard for me.

19 I had to look at what was going on here. And
20 it's just sad that I can't prove it legitimately through a
21 normal purchase system. But the bookkeeper screwed it up
22 so bad I can't do it, and that's part of my problem. Now,
23 it's not the agency's problem because they've got to deal
24 with what they've got to do. I'm not mad at them. I'm
25 just saying, hey, we've got another way to verify what

1 I've done.

2 Now, do they have another way to verify what
3 they've done? How sure they are of that 43 percent? Ask
4 them that. I'd like to know. How else can they verify
5 that 43 percent is accurate? That's what I'm saying.
6 Anyway --

7 JUDGE DANG: This is Judge Dang speaking again.

8 MR. NELSON: Yeah.

9 JUDGE DANG: Thank you, Mr. Nelson. We do
10 understand your position as you've argued it. My question
11 to you, though, is that it appears the Department has
12 since reduced the taxable ratio to 40 percent, and they've
13 expanded the test to a three-month period. I just want to
14 confirm that you're aware of that fact.

15 MR. NELSON: I didn't hear the amount of the
16 percentage.

17 JUDGE DANG: I believe it's 40.2 percent
18 somewhere.

19 MR. NELSON: I never got aware of that. No one
20 ever sent me that. The last word I got was 43.

21 JUDGE DANG: Let me turn this over to CDTFA.
22 Mr. Suazo, are you able to clarify the Department's
23 current calculations and the purchase ratio here?

24 MR. SUAZO: This is Randy Suazo. The taxable
25 ratio of purchases for Mobile, 40.22 percent. It's a

1 combination of the two months with the Department and the
2 one month with the taxpayer's representative. So they
3 weighted it.

4 MR. NELSON: I have no record of that. If you
5 sent it to me, I don't know. I -- I'm just being honest
6 with you. I -- I -- if they dropped it to 40, it's
7 still -- I'm still contending the 37 is more accurate.
8 But I -- I -- because I've confirmed that. The 40 is
9 better than the 43 so -- but I don't think it's an
10 accurate figure, but I was not aware of that. I'll tell
11 you that.

12 If they sent it to me, I have -- I have no proof
13 of that at all. I have no -- maybe I lost it. I don't
14 know. Maybe it got lost in the mail. I don't know, but I
15 have -- you're telling me something that I'm not aware of.
16 Okay. Now, you can say you sent it to me, but I don't
17 have anything remotely printed to that, the measure of
18 40 percent. So.

19 JUDGE DANG: This is Judge Dang speaking. The
20 calculations were sent as part of the briefing, the
21 briefing that was done prior to this hearing.

22 MR. NELSON: Oh, okay.

23 JUDGE DANG: Mr. Nelson, you may want to -- you
24 may want to just review that at your leisure at some
25 point. But my understanding is that you're still not

1 accepting a 40 percent --

2 MR. NELSON: No.

3 JUDGE DANG: -- taxable ratio. We should just
4 continue.

5 MR. NELSON: I would appreciate the 40 if you're
6 not going to give me the 37, which is more accurate, 36.9.
7 But if you say the prehearing, I missed that date. I
8 scheduled it because I was out of town, and then I looked
9 at paperwork that said it and I -- I'm very forgetful
10 because I'm getting older but -- on that part of it. But
11 I didn't open that up. If that's what was sent in the
12 prehearing, no, I didn't open it up. I'm sorry. That's my
13 fault to do that. I'll take the responsibility.

14 JUDGE DANG: This is Judge Dang speaking again.
15 At this point I'd like to turn it over to my co-Panelists
16 for questions.

17 Judge Brown, did you have any questions for
18 Appellant.

19 JUDGE BROWN: I do not have any questions.

20 JUDGE DANG: Thank you.

21 And, Judge Wong, did you have any questions?

22 JUDGE WONG: This is Judge Wong. I didn't have
23 any questions at this time. Thank you.

24 JUDGE DANG: Thank you. I don't have any
25 questions at this point either. CDTFA, if you are ready

1 to present, you may have 15 minutes for your presentation.

2

3

PRESENTATION

4

MR. SUAZO: This is Randy Suazo.

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The Appellant is a sole proprietorship who operates two mini markets, Panoche Mobile and Panoche Shell, which are adjacent to gas stations. Both mini markets are located off of Interstate 5 in an unincorporated area in the city of Firebaugh in Fresno County.

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Gasoline sales are reported by other retailers are part of this audit. Both main markets sell taxable items, such as cigarettes, tobacco products, sodas, and miscellaneous taxable items. Nontaxable items, such as frozen yogurt, juice, chips, snacks, and phone cards are also sold. The only difference is at Panoche Mobile sells beer, but Panoche Shell does not. This is the Appellant's first audit.

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The Appellant maintains a double-entry accounting system. Upon audit, Appellant provided purchase invoices, store sales summaries, general ledgers, and federal income tax returns for 2011, 2012, and 2013. The Appellant adds sales tax reimbursement to the sales price of taxable items sold. Appellant's bookkeeper computed taxable sales by capitalizing sales tax collected, as recorded in the

1 Appellant's sales summaries at the appropriate tax rate.

2 Exempt food was computed taxable sales from total
3 sales. Computed taxable sales and exempt sales were then
4 recorded in the general ledger. When Appellant's 2011,
5 2012, and 2013 federal income tax returns for both
6 locations were compared with the Appellant's sales and use
7 tax returns for the same periods, the Department noted
8 that the federal income taxes returns total sales were
9 more than \$1.5 million higher than the sales and use tax
10 returns.

11 The Department used a total reported sales of
12 purchases found on Appellant's federal income tax returns
13 filed during the audit period to compute the reported
14 markups of over 45 percent for Mobile and 61 percent for
15 Shell; Exhibit E, page 78.

16 Upon review of Appellant's general ledger, the
17 Department found that the Appellant's sales at both
18 locations during the audit period totaled over
19 \$3.8 million. Which when compared to reported sales for
20 the same period, showed an underreporting of more than
21 \$1.5 million. Upon further review of the general ledger,
22 \$1.4 million of the difference is attributable to recorded
23 food sales being claimed as exempt sales. The general
24 ledger did disclose reported taxable sales were \$84,000
25 greater than in reported taxable sales; Exhibit F,

1 pages 125 to 129.

2 Purchase segregations were conducted for both
3 stores. The Mobile location purchase segregation was
4 conducted by the Department for periods February 2011 and
5 September 2012. Later on the Appellant's representative
6 did their own segregation for June 2013, which was
7 included in the results which show taxable purchases
8 accounted for 40.22 percent of all purchases; Exhibit E,
9 pages 73 to 76.

10 The Department performed a purchase segregation
11 at the Shell location for the periods March and
12 October 2013, which showed the taxable purchases accounted
13 for 28.49 percent of all purchases; Exhibit F, pages 122
14 to 124. The Department also conducted shelf tests. The
15 Mobile location had an 84.5 percent weighted markup on
16 taxable items of beer, tobacco products, carbonated
17 drinks, and miscellaneous taxable items; Exhibit E, page
18 72, along with Exhibit F, pages 100 to 107. The Shell
19 location had a 71.2 percent weighted markup on taxable
20 items of tobacco products, carbonated drinks, and
21 miscellaneous taxable items; Exhibit F pages 115 to 121.

22 To calculate taxable cost of goods sold, the
23 Department applied the taxable ratios obtained from
24 purchase segregation tests for the Appellant's purchases
25 through 2011, 2012, and 2013 as reported on the

1 Appellant's federal income tax returns. The taxable
2 purchases were reduced by self-consumption \$2,400 per
3 month, which was based on the Appellant's estimate of
4 taxable self-consumption of \$200 per month, which is on
5 Exhibit E, page 70. For each location an additional
6 1 percent reduction for shrinkage was allowed.

7 The Department applied the weighted markup factor
8 for each location to the applicable adjusted taxable cost
9 of goods sold to compute \$1.4 million in audit taxable
10 sales for the Mobile location and \$278,000 in audited
11 taxable sales for the Shell location. The audited taxable
12 sales for each location were combined and total audit
13 taxable sales amounted to over \$1.7 million. The
14 Department compared the more than \$1.7 million in combined
15 audited taxable sales to the Appellant's reported taxable
16 sales and found an overall difference of \$378,837,
17 resulting in an overall percentage of error of 28.32
18 percent; Exhibit E page 70.

19 While Appellant argues that the taxable
20 percentage for the Mobile location should be lower because
21 10 or 11 invoices were not correctly segregated by the
22 auditor, Appellant has not provided complete invoices for
23 any other 10 items that he is disputing. Without
24 reviewing the actual invoices, we cannot verify that the
25 adjustment should be made; Exhibit H, pages 186 and 187.

1 The Appellant has not provided substantial
2 documentation to support their contentions. Therefore,
3 the Department requests that the appeal be denied. This
4 concludes my presentation. I'm available to answer any
5 questions you may have.

6 JUDGE DANG: This is Judge Dang speaking. Thank
7 you, Mr. Suazo, for your presentation.

8 At this time I'd like to turn it, again, to my
9 co-Panelists for questions. Judge Brown, did you have any
10 questions for CDTFA?

11 JUDGE BROWN: This is Judge Brown. I do not have
12 any questions at this time.

13 JUDGE DANG: Thank you.

14 Judge Wong, did you have any questions for CDTFA?

15 JUDGE WONG: This is Judge Wong. I didn't have
16 any questions at this time either. Thank you.

17 JUDGE DANG: Thank you.

18 I have no questions either. Mr. Nelson, if
19 you're ready to give your closing presentation, you have
20 about five minutes for your rebuttal.

21 Mr. Nelson, we can't hear you.

22 MR. NELSON: Can you hear me now, Judge?

23 JUDGE DANG: Yes. Yes. Go ahead.

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CLOSING STATEMENT

MR. NELSON: Yeah. I don't know. My final thing is that -- that I feel real, real comfortable with my shelf test. Now, I don't know about the 11 invoices. If I have copies of those, I'll be gladly to give those. I think I do, if they have segregation issues. But I really contend that my purchase test of three months is very accurate, and it's confirmed with the test of the POA system. And that's how he had his employees run the sales through.

So to deny the POA system as accurate is a little bit crazy as far as I'm concerned. It's just not -- it's used all the time. I'm not indicating the sale are correct. I'm indicating the mix is correct. Always keep that in mind. That mix confirms the mix I have on my test. How could it be within three-tenths of a percent if it's wrong? And even though they dropped it to 40, that's better than the 43, obviously, but I still contend my test is better because I confirmed it through a second source.

And until the agency wants to confirm through a second source, I just feel their accuracy is not there. And I'll leave it at that. Thank you.

JUDGE DANG: This is Judge Dang speaking again. Thank you, Mr. Nelson.

Judge Brown, did you have any questions before we

1 conclude, for either parties?

2 JUDGE BROWN: This is Judge Brown. I do not have
3 anything.

4 JUDGE DANG: Thank you.

5 And, Judge Wong, did you have any questions
6 before we conclude?

7 JUDGE WONG: This is Judge Wong. I have no
8 questions thank you.

9 JUDGE DANG: I just have one final questions for
10 you, Mr. Nelson. In your closing remarks you had
11 mentioned that you're unable to ascertain the accuracy of
12 POS amounts, but somehow the ratio of taxable to
13 nontaxable sales were accurate. You believe they're
14 accurate. I'm wondering, how are you able to make that
15 determination if you can't verify the total amounts?

16 MR. NELSON: Okay. I took the percentages based
17 on sales and backed down to cost. I used the shelf test
18 that the agency used for taxable, and I did a shelf test
19 on nontaxable. And that came up to, like, 129 percent on
20 food, which is pretty high. But the agency can check my
21 records, or they can do their own test if they feel that's
22 wrong. But I -- I think my shelf test is pretty accurate.

23 They made a large amount on their food products
24 simply because that's the way they had to make money. And
25 they had a captive audience. Anybody going to there, they

1 had to keep that. So that's basically what I did, and I
2 backed it down to cost. Then I got those percentages and
3 averaged those, and that's how I determined what the cost
4 percentages are. It's a unique approach and not usually
5 used by the agency. But there's nothing wrong with using
6 it, I'll tell you, because that's how they rang their
7 sales up.

8 Whether they rang them all up, I don't know, but
9 that's -- if the employee wanted to run a sale it had to
10 go through the POA system. So that mix between taxable
11 and nontaxable I think is accurate. But, you know, it's
12 your choice to make that decision. That's it. Anything
13 more? I'll answer any questions.

14 JUDGE DANG: This is Judge Dang speaking. Thank
15 you, Mr. Nelson.

16 MR. NELSON: Yeah. What? I didn't hear you.
17 I'm through. Did you hear all my information?

18 JUDGE DANG: Yes, I did.

19 MR. NELSON: Yeah. Okay.

20 JUDGE DANG: Thank you.

21 MR. NELSON: Okay.

22 JUDGE DANG: Okay. Thank you.

23 CDTF, before we conclude, did you have any
24 closing remarks you'd like to make?

25 MR. SUAZO: No closing remarks.

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JUDGE DANG: Thank you.

Thank you again everyone for your presentation. The record is now closed, and this matter is submitted for decision. And we will meet and deliberate on the arguments and evidence that have been presented to us. And we will endeavor to send you our written opinion within 100 days from today.

This hearing is now adjourned. Happy Holidays everyone. Thank you.

(Proceedings adjourned at 11:37 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 13th day of January, 2021.

ERNALYN M. ALONZO
HEARING REPORTER