

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
FINE ART GROUP, LLC,) OTA NO. 19034565
)
 APPELLANT.)
)
)

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 9:13 a.m. and concluding
at 10:28 a.m. on Tuesday, December 15, 2020,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

1 APPEARANCES:
2
3 Panel Lead: ALJ TERESA STANLEY
4
5 Panel Members: ALJ MICHAEL GEARY
ALJ JOSHUA ALDRICH
6 For the Appellant: S. CHRIS COOKE
SIMA KAHALI
7
8 For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
9 FEE ADMINISTRATION
10 RANDY SUAZO
11 JASON PARKER
CHRISTOPHER BROOKS
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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-11 were received at page 7.)
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1 Sacramento, California; Tuesday, December 15, 2020

2 9:13 a.m.

3

4 JUDGE STANLEY: This is the appeal of Fine Art
5 Group, LLC, Case Number 19034565. The date is
6 December 15, 2020, and the time is 9:13 a.m. This hearing
7 was scheduled for Sacramento California but is being
8 conducted remotely due to the Covid-19 pandemic.

9 I am Judge Teresa Stanley, and I have
10 Judge Michael Geary and Judge Josh Aldrich with me. I
11 will conduct the proceedings. And between the three of
12 us, we will deliberate and send you a decision.

13 We're going -- I'm going to ask that you identify
14 yourselves on the record, and I'm going to start with the
15 Appellant's representative.

16 MS. KAHALI: This is Sima Kahali.

17 JUDGE STANLEY: Thank you.

18 And Mr. Cooke, are you representing the Fine Art
19 Group also? You're muted.

20 MR. COOKE: Yes, I am.

21 JUDGE STANLEY: Okay. And for the CDTFA?

22 MR. SUAZO: Randy Suazo, R-a-n-d-y S-u-a-z-o.

23 MR. PARKER: And Jason parker.

24 MR. BROOKS: Christopher Brooks.

25 JUDGE STANLEY: Okay. Thank you.

1 We have -- we have gone over the exhibits at two
2 prehearing conferences, and what I'm going to do is admit
3 Appellant's Exhibits 1 through 11 into evidence.

4 Mr. Suazo is there an objection to any of those
5 exhibits at this time?

6 MR. SUAZO: For the items that were -- the 52
7 Form, I believe there was a question as to whether you're
8 going to take them as is, or we're going to discuss them.

9 JUDGE STANLEY: The declarations?

10 MR. SUAZO: Yes.

11 JUDGE STANLEY: So we had talked about that at
12 the last -- when we had the last start of the hearing that
13 didn't proceed. Declarations, according to our Rules For
14 Tax Appeals Section 30420(c), witness declarations signed
15 under penalty of perjury and filed with the parties' brief
16 are going to be admitted into evidence. If after -- I
17 will reserve your objection to it, Mr. Suazo.

18 I'm going to admit them, and then I will see at
19 the end of the hearing if you have any desire to keep
20 briefing open so that you can ask questions of any of the
21 witnesses in writing as our regulation provides. But when
22 it comes down to it, you may not want to do that. So
23 let's reserve that objection, and those exhibits are
24 admitted.

25 ///

1 (Appellant's Exhibits 1-11 were received
2 in evidence by the Administrative Law Judge.)
3 Respondent's Exhibits A through F will be
4 admitted today.

5 MR. COOKE: Judge Stanley.

6 JUDGE STANLEY: Excuse me. Yes.

7 MR. COOKE: If we -- sorry to interrupt. But
8 before this point passes, if they object to it, will we
9 have the opportunity to hear the objection and then answer
10 the objection?

11 JUDGE STANLEY: Yes, you will.

12 MR. COOKE: Thank you, thank you.

13 JUDGE STANLEY: Absolutely.

14 MR. COOKE: Okay. Sorry about that.

15 JUDGE STANLEY: And that was Mr. Cooke speaking.
16 And then Respondent's Exhibits A through F will also be
17 admitted into evidence.

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

20 There wasn't an objection before Ms. Kahali. I
21 assume that there's no objection to those; is that
22 correct.

23 MS. KAHALI: Correct.

24 JUDGE STANLEY: Okay. So the issue that we're --
25 that we have in this case is, whether any adjustments are

1 warranted to the audited understatement of sales tax for
2 the July 1st, 2011, through the March 31, 2014, audit
3 period; is that correct, Ms. Kahali?

4 MS. KAHALI: Yes, Your Honor.

5 JUDGE STANLEY: And Mr. Suazo?

6 MR. SUAZO: That is correct.

7 JUDGE STANLEY: Okay. At the prehearing
8 conference we talked about doing opening statements, but I
9 understand we have a witness with limited time that' is on
10 the phone.

11 So, Ms. Kahali, would you like to defer your
12 opening statement until after your witness testifies?

13 MS. KAHALI: Yes. That's fine.

14 JUDGE STANLEY: Okay. So why don't you proceed.
15 I don't see a phone caller on my screen. Is Mr. Shneir
16 here? Ms. Kahali, did you have him call in?

17 MS. KAHALI: Mr. Cooke, have him call in.

18 MR. COOKE: I spoke to the -- this is Mr. Cooke.
19 I spoke to him twice; one time last week and one time just
20 a couple of days ago just to remind him to call in at
21 9:00 o'clock. At this point, we're just waiting for him
22 to call in. He may have been held up. I'm not sure, but
23 he had said he was going to call, and he agreed to call
24 in. So we're just waiting for him to call in.

25 JUDGE STANLEY: Okay. So why don't we go ahead

1 and proceed with opening statements. Ms. Kahali, you said
2 you would like 10 minutes to tell the Panel what the
3 evidence and testimony are going to show today. So why
4 don't you proceed when you're ready.

5 MS. KAHALI: This is Ms. Kahali, and I came
6 across this -- I got involved in this audit a year after
7 the audit was opened. After I looked at the audit, I
8 couldn't -- I couldn't understand why they manipulated the
9 data. First of all, they decided to do block test of five
10 quarters, which was fine. And they did look at every
11 single transaction and see which one has a problem. They
12 were looking for shipping document and for the sales
13 taxes, which is normal. I understand that part.

14 But after they did their testing, they changed
15 the course of the test, not according to the -- basically,
16 they deviated from the audit manual. They -- they did not
17 follow the audit manual, and they created a different type
18 of schedule. They basically combined California -- the
19 error is combination of California transaction that was
20 not taxed and the out-of-state transaction that was not
21 supported to be shipped to the out of state. Later on,
22 Mr. Cooke will talk about the process, how the business is
23 conducted there.

24 But I'm uncomfortable with the -- from the
25 beginning I was uncomfortable with the way they did the

1 projection. They come up with a bunch of error, and
2 they've been back and changed the population. The
3 population should be total sales that they -- that went
4 under the test. However, they changed the population to
5 be whatever is the out of state and not charge California
6 tax. Basically, they designed their own -- their own
7 test, their own population.

8 They -- they chose a test. They have chosen the
9 boundary, and they deviated from that boundary. The total
10 error in this audit, I've shown on the Schedule 11, was
11 only maybe 94,000, including non-confirmed error. If they
12 remove the confirmed error, it will be way less. My
13 objection is the population should state five quarter and
14 versus total sales, and I have shown in that schedule how
15 it needs to be handled.

16 According to the audit manual, the total error
17 was 94,000, and the total population for 5 percent was
18 157. If that's the case, the calculated percentage is
19 going to be 9 percent, and 9 percent should be apply to
20 the total sales. It should not be apply to the other
21 status. If they would have gone from the beginning, only
22 pool the invoices that has address -- out of state
23 address, I could be agree with their outcome.

24 But they have tested every single sales, and they
25 schedule every single test is only about 250 or 260 in

1 sales in that business for five quarters, and that's --
2 that should be the basis of the population. Nothing else.
3 This is my opinion. But I leave the Judges to make the
4 decision, on Your Honor Judges, to make the decision on
5 this.

6 I'm done.

7 JUDGE STANLEY: This is Judge Stanley. Thank
8 you, Ms. Kahali.

9 And CDTFA had indicated at the prehearing
10 conference that they did not need to make an opening
11 statement. Is that still true, Mr. Suazo?

12 MR. SUAZO: That's still true.

13 JUDGE STANLEY: Okay. Thank you.

14 Then I don't see the call-in witness yet. So,
15 Ms. Kahali, I'll ask you to have your witness, Mr. Cooke,
16 testify. And you can either do that with a question and
17 answer, or Mr. Cooke can testify in the narrative, just
18 speak to us.

19 But I will first need to swear you in, Mr. Cooke.
20 So can you please raise your right hand.

21

22 S. CHRIS COOKE,

23 produced as a witness, and having been first duly sworn by
24 the Administrative Law Judge, was examined and testified
25 as follows:

1 JUDGE STANLEY: Okay. Okay. Ms. Kahali, you may
2 proceed.

3 MS. KAHALI: Mr. Cooke, do you want to talk about
4 the process of the sales in your business from the
5 beginning to the end?

6

7 WITNESS TESTIMONY

8 MR. COOKE: Sure. So, essentially, what we do is
9 provide art experiences to different venues around
10 California. In most cases these are large hotels, and we
11 do pop-up exhibitions. And, whereby, artwork is brought
12 to those venues people come to see the artwork, and they
13 have the opportunity to purchase the artwork. And I think
14 there's a couple of things that are fundamental to
15 understand here in this process. Because quite frankly, I
16 think that there's been a lot of confusion from the
17 beginning of this audit when the auditors first came to
18 our -- our headquarter location, and we opened everything
19 to them.

20 We opened all our books to them to review. But
21 as the audit proceeded, there seemed to be a total and
22 complete misunderstanding as to the way we do business and
23 how we ship our -- and how product is -- leaves the state
24 and how we, you know, do that process. So anyway going
25 back to it, at the pop-up exhibitions people are able to

1 come to the exhibition, see the artwork, and then
2 purchase. Sometimes the client takes the artwork with
3 them, if they purchase it, and sometimes it's shipped.

4 But there's an issue here, in that in some cases
5 the client will purchase the artwork and tell us that they
6 want to, you know, pick it up and take it with them. And
7 then only to change their mind the next day and say,
8 "Well, no. We decide to ship it instead."

9 And so there's sometimes changes in shipping.
10 Not only that, sometimes the client will tell us -- give
11 us one address on the invoice, and because these clients
12 have multiple homes, they'll change the address and
13 they'll say, you know, "Oh, ship it my other home instead.
14 Ship it to my other address instead."

15 Now this issue becomes important because they're
16 out of state. Several of these locations are out of state
17 in many cases. Sometimes they're not, but sometimes they
18 are. And what I mean by that is, let's say somebody lived
19 in California, but they also live in -- in Texas, right.
20 They have two homes. Or let's say they are in, you know,
21 live mainly in Florida and they're visiting in California
22 and staying at one of those hotels and see our
23 exhibitions, purchase one of those works of art and say,
24 "Ship it to my location in Florida." Okay. So this is
25 important to understand.

1 One of the other things that's important is
2 that -- in the process is that when you look at these
3 paper invoices, sometimes it's written on the invoice,
4 "Released". And I know there was some confusion about
5 this terminology with the original auditors that came to
6 look at our invoices. Because I think in their mind when
7 they saw written it was written "Released" by the
8 salesperson, they always took that to mean that that was
9 released to the customer. And when it is released to the
10 customer, that they took it to mean, okay, it's released
11 in California, right. It changes hand. The product
12 changes hand in California.

13 The issue is that's not always the case. When
14 you look at our invoices "released" just means that it was
15 handed over to somebody. It could have been handed over
16 to a shipper. It could have been released to a -- to the
17 client, of course, is one option. It could be released to
18 a shipper, or it could have been released to one of our
19 framers. Okay. A lot of times -- well, not a lot of
20 times. But sometimes the artwork, you know, the frame is
21 damaged, or it needs to be touched up, and it's handed
22 over to the framer.

23 In some cases the client opts to reframe the
24 piece of part, and then it's handed over to the framer.
25 So the term "Released" on the invoice doesn't necessarily

1 mean released to the customer in California for them to
2 take with them. And that's an important point. I know
3 there was confusion there.

4 Another thing to understand in our process is
5 that there's also sometimes that a client will come to one
6 of our exhibitions, purchase a work of art, and then that
7 work of art is held, right. They may be remodeling a home
8 that they're in, and they want it shipped to Oklahoma in
9 one of their properties, and they're remodeling, and it's
10 not ready yet. So they ask us to hold that work of art.
11 So sometimes we'll hold works for weeks, months, okay,
12 before it's shipped.

13 And I think that the auditors were very confused
14 by that, and that caused some kind of suspicion --
15 unwarranted suspicion on their part when it's just a very
16 normal practice for us. They were saying, you know, well,
17 why is the -- why wasn't it shipped right away? Or why is
18 it held? Why are you holding on to it for so long? Why
19 is the invoice in October and your shipping label isn't
20 until, you know four months later? And -- and there was
21 this sort of suspicion. They were looking at us with --
22 with all kinds of suspicion, and, really, I believe,
23 didn't quite understand that we held it because the client
24 asked us to hold it.

25 You know, I have some works of art that -- that

1 have been held for 12 months, and then they're shipped.
2 You know, and then they're shipped when -- when it's ready
3 to -- when the client is ready and then shipped. And we
4 have the label, and that's it.

5 I think one other point that I'll make is that,
6 you know, we had, for many years, a process that, whereby,
7 we would outsource the shipping, the packing, the
8 shipping. And so when we did that, we sent the artwork to
9 be packed, shipped. We sent it to a third party. We sent
10 it to a shipper. We sent it to a framer that would pack
11 and ship. Now, we didn't retain a lot of those records,
12 unfortunately, because they were shipped by a third party.
13 We have since changed that practice completely.

14 After this audit we realize that, you know, we
15 brought everything in-house. We ship it now. We keep the
16 label. We -- we, you know, digitize the label. We have
17 the label, you know, in three different places because,
18 obviously, we realize our mistakes and our errors in terms
19 of these not keep -- not having that information because
20 it was outsourced. So we've changed our practices after
21 this audit to really have those records at hand. Because
22 I think that was one of the issues that, you know, we did
23 not have the shipping record in some cases because it was
24 outsourced.

25 Sometimes on the invoices as well, the auditors

1 were confused because they saw that, you know, they say,
2 well, this invoice, how could you have shipped it? You
3 didn't really ship it out of state because you didn't
4 charge for shipping. And that was another cause of
5 confusion. But it's very common in our industry -- in the
6 fine art industry to use shipping to -- as a discount, for
7 example, not charge shipping. So from time to time we
8 didn't charge shipping. We -- we took that cost in
9 ourselves and paid for that cost and charged them as a
10 greater incentive for them to purchase, or sometimes
11 purchase multiple pieces.

12 I'm just reviewing my notes to make sure I'm not
13 forgetting anything. I think that's it. I think there's
14 only one other thing to mention. Let's see here. I -- I
15 think it is also important to just bring up this one issue
16 that -- so the Judges can hear sort of directly from me.
17 The beginning of the process was a little bit difficult
18 for us. When the auditors originally came, there were two
19 auditors in particular, and we invited them in. And it
20 was a home office.

21 And so they came to the home, and we invited them
22 and opened up everything and opened up our books and
23 answered every question they had and so on and so forth.
24 But I have to say, it was a very unpleasant experience
25 because they were right from the beginning pretty --

1 pretty nasty, pretty suspicious, pretty accusatory, and
2 just looked at -- just kind of smirked in some cases with
3 some answers that were -- we were, you know, telling them
4 our business practices.

5 And they just, you know, how could that be? And
6 how could you do this, and why do you do this? And we
7 tried to explain over and over again, and there just
8 didn't seem to be a willingness to understand that. In
9 some cases they would say things, like, there were no
10 shipping labels at all. Well, that's not accurate.
11 There's -- there are many shipping labels. There's just
12 not all the shipping labels.

13 And I just want to say one other thing that I did
14 later find out that maybe part of the reason that they
15 looked at this with such suspicion was that I found out
16 later that one of our ex-employees, I believe in a
17 retaliatory manner because he was let go, was basically
18 acted as an informant to the BOE and was telling them all
19 kinds of things that just were very, very untrue, again,
20 in retaliation.

21 Anyway that's -- that's, you know, that's what it
22 is but -- and that's our business practices just so you
23 know. And I would -- I would -- and if there's any
24 questions, please, I'm willing to answer them.

25 JUDGE STANLEY: Okay. Thank you, Mr. Cooke.

1 Ms. Kahali, do you have any other questions you
2 would like Mr. Cooke to answer? You're muted, Ms. Kahali.

3 MS. KAHALI: Mr. Cooke -- this is Sima Kahali.
4 Mr. Cooke, do you want to talk about the Mexican sales?
5 Explain the Mexican sales.

6 MR. COOKE: Sure. I mean, do we want to go
7 into -- I think, Sima, that what the Judges said is that
8 she is -- they are admitting the Form BOE-52s. They are
9 accepting that as evidence. Do we want to hold off on
10 commenting on the BOE Form 52s for now? Is that --

11 MS. KAHALI: The fact is -- the fact is we don't
12 Mexican confirmation. But we have his business card, and
13 that's totally different. It's a publication 32, and it
14 was according to that. It should not be part of the 52
15 confirmation.

16 MR. COOKE: I think they're willing to accept
17 the --

18 MS. KAHALI: I'm not sure. We cannot make
19 assumption. Let's them to see if they have any objection
20 about that. Because last time Mr. Suazo had the objection
21 about that. That the name on the card does not match with
22 the name of the invoice. And I showed them that's the
23 same. First of all, it's the same person. Second is the
24 purchaser. He can bring the resale certificate or the
25 card to make purchase on behalf of the seller.

1 MR. COOKE: I think Judge Stanley has said that
2 she's accepting the Form 52. So I think we can let that
3 rest.

4 JUDGE STANLEY: This is Judge Stanley. For
5 clarification, Mr. Cooke, I think you're representative
6 was talking about the exhibits that you have in the record
7 that are not declarations under penalty of perjury. So
8 the non-forms that are related to non BOE-52 Forms. So I
9 don't know if you would like to take a moment and testify
10 about those.

11 MR. COOKE: Well, I think they're just
12 self-explanatory. I mean, that was -- he did sign a
13 B-50 -- a Form 52, I believe.

14 Sima, did --

15 MS. KAHALI: Mr. Cooke, let's forget about
16 Form 52. We need -- we have an exemption certificate on
17 the file, and he was exempt to be charged tax. Let's talk
18 about this.

19 MR. COOKE: Oh, I see. Oh, Luis. You're talking
20 about Luis.

21 MS. KAHILI: Yeah. Yeah.

22 MR. COOKE: Oh, I'm sorry. I thought you meant
23 the person -- the witness that was going to call this
24 morning. I apologize.

25 MR. KAHILI: No. He's about to call.

1 MR. COOKE: I see. Okay. No. Luis -- Luis,
2 yeah. Luis, I can speak to very clearly. Yeah. He -- he
3 has a resale license. He came to us at one of our
4 exhibits. He's an interior designer. He has had a
5 company for years in Mexico. He's an interior designer.
6 He bought artwork for a project and gave us his -- card --
7 business card showing us he was a designer, and then later
8 furnished us with his resale license. I mean, that --
9 that's as straightforward as it gets in our industry.

10 And one of the things that I believe was brought
11 up was that there was an objection to that, that for some
12 reason this was invalid. It wasn't the right, you know,
13 certificate or what-have-you, or didn't match exactly.
14 Well, his last name is the name of his company. His last
15 name is literally the name of his company, and that's on
16 the resale certificate.

17 So yes, I would like -- I would like to request
18 that the Judges, you know, review that and accept that
19 resale certificate as valid and reason for an exemption on
20 taxes. Yes. Of course. Thank you.

21 JUDGE STANLEY: This is Judge Stanley.
22 Ms. Kahali, do you have any more questions of Mr. Cooke?

23 MS. KAHILI: In meanwhile I don't have question
24 for Mr. Cooke. I want the judges knows that the informant
25 came in for retaliation. And the staff, they haven't told

1 me all the way to the end. And then I was talking with
2 one of the lawyer of the Board. He told me this audit is
3 based on the informant's information and the way that he
4 explain to them.

5 Therefore, it was -- it was a kind of confusion
6 for me why they are pushing so much for little money. And
7 my -- I just want to prove that you guys understand -- you
8 Judges understand that that gentleman was kicked out from
9 company because he wants the share of the company. And
10 even the day before the audit, he was checking his
11 e-mail -- his calendar and sending a page that, "Good luck
12 with your tomorrow's meeting," because he planned it.

13 JUDGE STANLEY: Ms. Kahali, can I ask that you
14 use all that when you wrap up in your closing statement.
15 What we're focusing on right now is getting the testimony
16 on the record that we need so that the Panel of Judges has
17 all the information that we need to make a fair decision
18 in this case.

19 MS. KAHALI: Okay.

20 JUDGE STANLEY: So if you're through with
21 Mr. Cooke, I'm going to ask Mr. Suazo if CDTFA has any
22 questions for Mr. Cooke.

23 MR. SUAZO: No questions.

24 JUDGE STANLEY: Judge Geary, do you have any
25 questions?

1 JUDGE GEARY: I do not. Thank you.

2 JUDGE STANLEY: Judge Aldrich, do you have any
3 questions?

4 JUDGE ALDRICH: Hi. This is Judge Aldrich. I
5 have a couple of questions for Mr. Cooke. So you spoke in
6 generality as to your sales practice. But I was wondering
7 if you could speak to some specifics, specifically,
8 regarding the ones -- the sales that were contested in the
9 D&R. So those sales were to a J. Hochwalt, a D. Antone,
10 an L. Marris, George -- sorry -- a G. Bryan, a T. Tan,
11 Lourdes Navarro, and a Roy -- or R. Chakarun. Could you
12 go through how the sale occurred on those transactions?

13 MR. COOKE: I'm sorry. I don't have any of those
14 in front of me, and I would -- I wouldn't want to do it
15 just from memory. So I -- I apologize. I was just -- I
16 thought today was more I was a witness to our business
17 practices in general. So I don't have the, you know, I
18 don't have any of that paperwork in front of me as to
19 those particular sales. I would have, you know, the
20 invoices exactly, you know, all the information.

21 JUDGE ALDRICH: Okay.

22 MS. KAHALI: Hi. This is Sima Kahili. I need
23 permission to answer your question because reviewed all
24 those sales. Am I -- do I have the permission?

25 MR. COOKE: Sure.

1 JUDGE STANLEY: Ms. Kahali, this is Judge
2 Stanley. If you are going to testify, then I will need to
3 also swear you in. Is it your intent to testify as to
4 facts that you know?

5 MS. KAHALI: Yes.

6 JUDGE STANLEY: Okay.

7

8 SIMA KAHALI,

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

12

13 JUDGE STANLEY: Thank you. I'm sorry. I cut
14 myself off. You made proceed.

15

16 WITNESS TESTIMONY

17 MS. KAHALI: Some of those I looked through all
18 those invoices, those error that I listed on Exhibit 11.
19 And I put some notes next to them. On one of -- on Troy
20 are two transactions from Troy. That gentleman lives in
21 San Francisco. The sales tax was charged separately on a
22 separate invoice, not on those invoices. Those invoices
23 does not show the sales tax but charged separately and
24 paid to the estate in the follow up -- follow-up period --
25 in the second period of that year 2014.

1 I send some information some exhibit from the
2 way -- unfortunate way that they were -- they were
3 preparing the return, which is not correct to me at all,
4 which made me upset. I couldn't go back and pinpoint the
5 fact that additional sales tax was submitted on the
6 following quarter.

7 But from the schedule that I send, the copies to
8 you, is the sales has been -- paid amount has been noted
9 in there. But when you compare it with the reported
10 amount on the return, it's overstatement on the return.
11 Obviously, that's not overstatement. That's for the taxes
12 of Troy -- for Troy invoices. Even if it's not complete,
13 but his taxes overstatement on the quarter after that is
14 related to the Troy invoices.

15 On Luis Qah-Laqoror in Mexico, Mr. Cooke
16 explained what happened.

17 And on Shneir he is -- he's trying to call in.
18 I send him message why he's not calling. He didn't have
19 the meeting number. I forward him the meeting number, and
20 meanwhile I knew that he was going to call in soon.

21 This is three of them. I didn't catch two more
22 of those item that Judge ask. Can you tell me again?

23 JUDGE ALDRICH: Sure. So the sales to Navarro
24 and Bryan. The Santos sale where it looks like there's
25 a -- it may have been sent to the Philippines. It may

1 have been sent to Illinois, but it may have been also been
2 delivered to the hotel room. The Hochwalt sale, Antone
3 sale, the Tan sale.

4 MS. KAHALI: I believe Antone had confirmed that
5 he received the product in that -- in his estate. And
6 about the two others, which I'm trying to find them in my
7 schedule, the one on Philippines, he's one of those that
8 he wants to be sent to the hotel. However, later on he
9 changed his mind. You can confirm it. Mr. Cooke can
10 confirm it. That's what I've been told. And he was -- he
11 had the recollection that this was sent by Worldwide
12 Express. Sent out by worldwide express to Philippines,
13 but he -- they didn't check the record.

14 Antone I explained. And I'm looking for -- I'm
15 trying to find the other one. You asked for Bryan. See
16 Bryan -- this business had shows in different states,
17 Dallas, Arizona, and New York, which ended up in Dallas --
18 Arizona in 2017 and Dallas at the end of quarter of 2018,
19 and I have their records for. These was the show of the
20 Texas show, and he picked up at the Texas show. He didn't
21 deliver it to them. When they come to Texas show they
22 pick up there. We have many invoices from Texas show.

23 What is I'm listening here?

24 MR. COOKE: I think someone is trying to call in.

25 MR. SHNEIR: Hello?

1 MS. KAHALI: That's Mr. Shneir. That's who I
2 showed him how to get in.

3 JUDGE ALDRICH: Okay. I believe, Judge Stanley,
4 I'm going to turn it back over to you.

5 MR. SHNEIR: Okay.

6 JUDGE STANLEY: Thank you. This is
7 Judge Stanley. Is that Mr. Shneir on the phone?

8 MR. SHNEIR: Yes.

9 JUDGE STANLEY: Mr. Shneir?

10 MR. SHNEIR: Yes.

11 JUDGE STANLEY: Okay. Is that --

12 MR. SHNEIR: Can you hear me.

13 JUDGE STANLEY: Yes this is Judge Stanley. Am I
14 pronouncing your name correctly?

15 MR. SHNEIR: Yes. Yes, Judge.

16 JUDGE STANLEY: Okay. And since we're on the
17 record in this matter, can you please spell that for our
18 court stenographer.

19 THE WITNESS: The first and last name?

20 JUDGE STANLEY: Yes, please.

21 THE WITNESS: It's Igor, I-G-O-R. And the last
22 name is S-H-N-E-I-R.

23 JUDGE STANLEY: Okay. Thank you. And I
24 understand Mr. Shneir has limited time. I do have a
25 couple of questions for Mr. Cooke, but I'm going to

1 reserve those for Mr. Shneir to go ahead and testify.

2 Ms. Kahali, can you please proceed with
3 questioning Mr. Shneir. Oh, wait excuse me. One more
4 thing.

5 Mr. Shneir, this is Judge Stanley again.

6

7 IGOR SHNEIR,

8 produced as a witness, and having been first duly sworn by
9 the Administrative Law Judge, was examined and testified
10 as follows:

11

12 JUDGE STANLEY: Okay. Thank you.

13 Ms. Kahali, you made proceed.

14

15 WITNESS TESTIMONY

16 MS. KAHALI: Mr. Shneir, you confirm that you
17 received the item in Canada.

18 MR. SHNEIR: Yes, I did.

19 MS. KAHALI: However, they brought in the --
20 since the shipping document was not available at the time
21 of the review of the invoice, since the phone number that
22 you have on the invoice is the Los Angeles phone number --

23 MR. SHNEIR: Right.

24 MS. KAHALI: -- there's some confusion. Can you
25 tell us that you received the item in Canada, not in

1 Los Angeles?

2 MR. SHNEIR: Yeah. Right. It was the present
3 for my brother-in-law. So we send it with both up here,
4 and we send it to the Canada, to Toronto.

5 MS. KAHALI: Do you have any other question for
6 him?

7 JUDGE STANLEY: Mr. Suazo, do you have any
8 questions of this witness?

9 MR. SUAZO: Basically, just want to ask, the item
10 that you received was it the actual artwork, or was it
11 authentication paperwork?

12 MR. SHNEIR: No, it -- what do you mean? We send
13 it the artwork.

14 MR. SUAZO: So it's the actual artwork not the
15 authentication or verification of the value of the art?

16 MR. SHNEIR: No. No.

17 MR. SUAZO: Okay. And it was sent directly to
18 Canada without you taking title or possession in
19 California?

20 MR. SHNEIR: Yes.

21 MR. SUAZO: Okay. That's my questions, Your
22 Honor.

23 JUDGE STANLEY: This is Judge Stanley. Judge
24 Geary, do you have any questions?

25 JUDGE GEARY: No, I don't. Thank you.

1 JUDGE STANLEY: This is Judge Stanley again.
2 Judge Aldrich, do you have any questions for this witness?
3 JUDGE ALDRICH: No, I don't. Thank you.
4 JUDGE STANLEY: Okay. If nobody has any
5 questions, I think we can excuse this witness.
6 Ms. Kahali, do you have any follow up, or can we
7 excuse Mr. Shneir?
8 MS. KAHALI: You can excuse it.
9 JUDGE STANLEY: Okay. Mr. Shneir, thank you for
10 calling in, and we appreciate your testimony here today.
11 And you can leave at any time you like, or you can stay on
12 and listen to the rest of the hearing if you'd like.
13 MR. SHNEIR: Thank you. Have a good one.
14 Bye-bye.
15 JUDGE STANLEY: Thank you. Bye.
16 This Judge Stanley. Going back to judge Aldrich
17 his questions, have you finished asking what you needed to
18 ask?
19 JUDGE ALDRICH: Yes. Thank you.
20 JUDGE STANLEY: Okay. Then this is
21 Judge Stanley. I have a couple of follow-up questions for
22 Mr. Cooke. We have -- we do have the BOE-52 Forms for
23 certain invoices. And I appreciate your explanation of
24 how these happen with your business from time to time and
25 people changing their minds and having it shipped after

1 they say they'll take possession, but we need to focus
2 here on the audit period and the documentation that we
3 have.

4 So I was looking at, in particular, Exhibits 6
5 and 10, which are the Salon D' Art invoices. Do you have
6 personal knowledge that those -- that the art included on
7 those invoices was, in fact, shipped to Mexico?

8 MR. COOKE: I rely on, as you can imagine -- I
9 mean, I rely on several people in the company to do
10 certain tasks and do certain jobs that are delegated to
11 them, whether it be shipping, framing, transportation, you
12 know transport, setting up the exhibits, sales team. So
13 the direct knowledge that I have is just, you know, what
14 they tell me. And in these cases, yes, I was aware.

15 I'm -- I should say -- I'm trying to answer your
16 question -- under the impression that that's, you know,
17 from what they're telling me, this is what I know. But
18 did I, you know, did I bring it there to the shipper, pack
19 it, and ship it? No. So I'm trying to answer your
20 question.

21 MS. KAHALI: I have objection here. Can I
22 answer?

23 MR. COOKE: Yeah. In terms of do I have direct
24 knowledge, I guess, can you be more -- what do you mean by
25 direct -- I didn't ship it myself. So what do you mean by

1 direct knowledge?

2 JUDGE STANLEY: Since you didn't ship it
3 yourself, and you don't -- you didn't participate in that
4 part of it, perhaps you can tell us about business
5 practices related to shipping and addresses that show up
6 on your invoices. Maybe that would help.

7 MR. COOKE: Well, as I explained, the invoices is
8 written -- let me -- let me go back a little bit here.
9 The invoice is written at the time of sale. Things change
10 after that sale. So these are evening exhibits. They're
11 in the hotel. There's wine. There's cheese. People, you
12 know, make a decision to purchase a piece of fine art and,
13 you know, this is an important investment to them, an
14 important thing to them. These are, you know, a \$1,000
15 and up, a \$1,000 to \$30,000 each.

16 And so when that happens, they're, you know,
17 often times, okay, caught up in the moment. They buy a
18 work of art. And then later they're deciding, okay, where
19 does this work of art go. Is it going to go -- you know,
20 is it going to go in this home? Is it going to go in that
21 home? And so in -- when we write-up the invoice, they may
22 tell us right there on the spot, okay, I'm going to have
23 it for my San Francisco home, and here's the address. And
24 you can deliver it you know Tuesday. I'll be home. And
25 that's fine. And we write that down. The salesperson

1 writes all that information down. It's all there.

2 The morning after, after discussing it or
3 thinking about it or what happened the morning after to
4 two days later, they will say, "You know what, we decided,
5 you know, we're going to -- we want this in Texas. Please
6 ship it."

7 And so then we make that note. But the note is
8 not made -- the change of that is not made on the invoice
9 at that point. At that point it's either, you know, the
10 salesperson calls us and tells us there's a change, or
11 there's, you know, so it's not -- it's not -- it's no
12 longer on that -- that form.

13 So that's -- that's in terms of the paperwork, in
14 terms of these of the practice, that's how that went.
15 That's how it used to be. We've changed. Again, we've
16 changed the practice after this audit. But that's how it
17 was at the time.

18 JUDGE STANLEY: Okay. Thank you. I don't see
19 anyone else signaling that they have other questions for
20 you. So I'm going to turn back to Ms. Kahali and see if
21 you have any other testimony that you want to present in
22 this hearing.

23 MS. KAHALI: Yes, Your Honor. I am wondering if
24 is it Mexican sales and according to Publication 32 for
25 the Mexican, they can show that they are doing business in

1 Mexico, and they come and pick up the -- purchase the item
2 and pick up it and take it with them. I have worked with
3 the import export company in Los Angeles. We have
4 everyday tons of them coming to Los Angeles and buying and
5 picking up the merchandise. As long as they have their ID
6 that shows that they have resale -- they have business in
7 Mexico, we were listening to them.

8 And we had -- we went to the audit, and
9 everything was accepted. My impression is that the 32 on
10 the Mexican transaction we have enough evidence that even
11 he pick it up -- even you say that he pick it up -- he
12 then pick up later on was shipped to him, he should be
13 non-error to me because of the Publication 32.

14 And another thing that I'm concerned is the fact
15 that this audit was based on the record of informant. And
16 the way that they try to do it, they try to pick up as
17 much as -- as more as they can. Therefore, they changed
18 the population to be a smaller population to have a larger
19 percentage and apply it to the total. That's my problem.

20 JUDGE STANLEY: This Judge Stanley. I'm going to
21 stop you again because you're doing your closing statement
22 instead of giving testimony. So are you done with your
23 presentation of evidence at this point, Ms. Kahali?

24 MS. KAHALI: Yes, I'm done.

25 JUDGE STANLEY: Okay. Then I am going to -- and

1 Mr. Suazo, CDTFA does not have any witness or testimony to
2 present; correct?

3 MR. SUAZO: No. No witness.

4 JUDGE STANLEY: Okay. Okay. So I'm going to go
5 ahead and turn back to you Ms. Kahali and let you go ahead
6 and -- no. What I'm going to do is I'm going to let CDTFA
7 give their presentation. And for those who are listening
8 in, I'm not swearing in any of the CDTFA representatives
9 because they are not testifying here today. They're only
10 arguing their case. So I'm going to go ahead let
11 Mr. Suazo give his presentation.

12 And then, Ms. Kahali, I'll turn to you for
13 closing.

14 MS. KAHALI: Okay.

15

16 PRESENTATION

17 MR. SUAZO: This is Randy Suazo.

18 The Appellant is a limited liability company
19 operating a retail art dealership located in Hercules,
20 California. The Appellant also sells at exhibition shows
21 throughout California. In addition to art sales, the
22 Appellant performs advisory, consulting, and evaluation
23 services. The Appellant's sellers permit was issued on
24 January 1st, 2002. This is the first audit.

25 The audit period is July 1st, 2011, through

1 March 31st, 2014. The Appellant maintains a single-entry
2 accounting system. The Appellant reported total sales and
3 use tax, shipping charges, advisory, consulting, and
4 evaluation charges. The only claimed exemption was for
5 interstate or foreign commerce sales. Appellant failed to
6 maintain shipping records for the entire audit period.
7 The auditor reviewed sales invoices for January 1st, 2013,
8 through March 31st, 2014, Federal Express shipping
9 documentation for January 1st, 2013, through March 31st,
10 2014, federal income tax returns for 2011 and 2012,
11 invoice statements for the audit period and merchant
12 statements for January 2012 through December 2013.

13 Because the Appellant did not maintain shipping
14 documents, a block test was conducted that included only
15 periods which the Appellant was able to obtain shipping
16 documents from Federal Express. The block test that was
17 conducted spanned five quarters, from January 1st, 2013,
18 through March 31st, 2014. Sales invoices were scheduled,
19 totaled, and compared to reported total sales. A
20 difference of \$2,154 was noted; Exhibit F, page 29.

21 Review of sales invoices disclosed that the
22 Appellant had overstated their expected interstate or
23 foreign commerce sales. The test showed three types of
24 errors in this category. The first type of error consist
25 of taxable California sales where the Appellant actually

1 charged and collected sales tax from customers, but then
2 reported the sale as an exempt interstate or foreign
3 commerce sale.

4 The auditor calculated the difference between tax
5 collected per the scheduled sales invoices of \$497,860;
6 Exhibit F, pages 30 through 37, less the taxable measure
7 reported for the five-quarter period of \$432,501;
8 Exhibit F page 23. This totaled over \$65,000 in
9 unreported taxable sales.

10 The second type of errors comprised of taxable
11 California sales where the Appellant's invoice reflects
12 that sales tax was not charged to the customer. In these
13 instances, the sales taxable -- the sales were taxable
14 because either they purchased the items and picked them up
15 in California, or the items were shipped to a California
16 location. The Appellant, however, reported these taxable
17 sales as exempt interstate or foreign commerce sales.
18 There are 21 instances with a total of almost \$100,000.

19 Third type of error is sales with an out-of-state
20 location with no supporting documentation, which were
21 reported as exempt interstate or foreign commerce sales.
22 This occurred in five instances totaling over \$11,000.
23 This allowed interstate or foreign commerce sales for the
24 five-quarter period totaled almost \$180,000, which was
25 compared to the reported interstate or foreign commerce

1 sales during the same period of \$627,000, the computed
2 percentage of error of 28.53 percent; Exhibit D, page 7.

3 The 28.53 percentage of error was applied to
4 reported interstate or foreign commerce sales for the
5 period from July 1st, 2011, through December 31st, 2012.
6 The amounts found in error for the periods that were
7 reviewed, again from January 1st, 2013 through
8 March 31st, 2014, were assessed on an actual basis.

9 Based on the fact that all the errors were
10 derived from interstate or foreign commerce sales claimed
11 exemption, the auditor used the reported interstate or
12 foreign commerce sale as a base to apply a computed 28.53
13 error rate. This allowed interstate or foreign commerce
14 sales for the audit period total to over \$375,000;
15 Exhibit D, page 6.

16 The Appellant disagrees with the projection
17 computed and the base amounts, which is applied. As
18 stated earlier, the sales in three areas of error were all
19 reported as exempt sales under the interstate or foreign
20 commerce sales exemption. The percentage of error and the
21 application of the percentage error to the reported exempt
22 for foreign commerce sales is considered a proper approach
23 in this instance.

24 Furthermore, the Appellant's computation of an
25 error rate fails to include the \$65,000 in taxable

1 California sales that the Appellant had charged tax on,
2 but then reported as exempt interstate or foreign commerce
3 sales. For these reasons, the Appellant's error rate,
4 computation, and projected taxable sales were rejected.

5 The Appellant has specifically cited three types
6 of transactions be removed as errors on the sales test:
7 One, a sale involving a Mexican physical identification
8 Form. Two, sales were a BOE Form 52 certificate of
9 verification of out-of-state delivery are involved; and
10 three, sales were a sales tax only, which was prepared in
11 another period.

12 The first type of transaction specifically cited
13 by the Appellant, The Appellant has provided a copy of a
14 physical identification form dated, March 8th, 2017, for a
15 company named Wah Diseno of Mexico City; Exhibit 4. The
16 Appellant claim the documentation is related to the
17 disallowed sale for Luis E. Quah-Laquoror, dated
18 June 21, 2013, in the amount of just over \$7,000;
19 Exhibit F, page 31, line 31.

20 The documentation presented by the Appellant is
21 insufficient to exempt the sale of property as a valid
22 sale for resale to a purchaser from Mexico. To qualify as
23 an exempt sale for resale at the time of sale, the
24 Appellant should have secured the following documents per
25 Regulation 1668 CDTFA Pamphlet 32, page 4, and Audit

1 Manual 409.50.

2 A, copy of the completed retail certificate; B, a
3 signed statement preferably on business letterhead stating
4 that the reason the company is not required to hold a
5 California sales permit; and C, documentation to support
6 the purchaser's legitimate business. The Mexican
7 identification form is not a resale certificate. Nor does
8 it meet key requirements necessary to exempt the sale as a
9 sale for resale; such as description of item purchase for
10 resale and signature of the purchaser. In addition, the
11 address listed on the Mexican identification form differs
12 from the address listed on the invoice.

13 The department notes the questioned transaction
14 includes a notation under special instructions stating "No
15 Delivery". So, therefore, the customer took delivery in
16 California. Therefore, the sale does not qualify as a
17 sale in interstate or foreign commerce as well and the
18 purchase is subject to California sales tax. This is on
19 Exhibit 10.

20 The second type of transaction specifically cited
21 by the Appellant involves BOE Form-52, the certificate of
22 verification of out-of-state delivery, which was presented
23 as evidence of shipment out of state for three
24 transactions. Since the Department was not a party to the
25 verification process and the original documents were not

1 provided by the customer directly to the Department,
2 attempts were made to verify the exempt status of the
3 sale, as per Audit Manual 414.12.

4 One of the three transactions was verified, and
5 an adjustment was made. The other two transactions at the
6 time could not be verified. July 5th, 2013, Igor Shneir
7 \$5,000; Exhibit F, page 32, line 19. The information
8 included the audit work papers. Information included with
9 the audit work papers indicates the customer was charged
10 \$135 shipment, which is the normal rate charge for
11 within-California deliveries.

12 Due to the low shipping cost of \$135, which,
13 again, is the normal rate charged for the Appellant for
14 California shipping in-state deliveries. No insurance
15 documentation associated with the shipping or customs
16 documentation is presumed that the item was not shipped by
17 the Appellant out of state and that the customer took
18 delivery in California.

19 The other item associated with Form-52,
20 September 20th, 2013, Donald Bentley, Mount Sterling,
21 Kentucky, for \$1,142; Exhibit F, page 33, line 52. The
22 customer was not charged for shipping and no shipping
23 documentation nor insurance documentation was associated
24 with -- was associated with the sale. The BOE Form-52
25 provided indicates shipment to Kentucky; Exhibit 3,

1 page 3. The Department attempted to contact the customer
2 to verify whether the item was shipped out of state.
3 Despite multiple attempts, the Department was unable to
4 verify this transaction. It was noted that they were
5 supposed to be shipped certificate of authenticity and
6 "Written Appraisal Will Follow" on the notation of the
7 invoice.

8 The Appellant -- the third type of transaction
9 specifically cited by the Appellant. The Appellant claims
10 that two sales to Troy Chakarun, one dated
11 November 22, 2013, in the amount of \$5,846; Exhibit F,
12 page 34, line 21; and the other dated January 22, 2014, in
13 the amount of \$2,150; Exhibit F, page 36, line 6.

14 For tax and other period, both invoices show San
15 Francisco in the customer info section. The Appellant has
16 provided a tax only invoice dated April 23rd, 2014, for
17 \$691.17 showing the San Francisco address, Exhibit 6. The
18 Appellant has also provided a summary-level listing only
19 of amounts that were used to report the measure of tax to
20 the State and a summary of payment voucher; Exhibit 7
21 and 8.

22 The review of summary-level worksheet does not
23 show that the taxable measure was included in the second
24 quarter 2014 return. Which, by the way, is outside the
25 audit period. A review of the return for the

1 Department -- from the Department's system does not show
2 any tax allocated to San Francisco County, only Napa,
3 Sonoma, and Los Angeles Counties have tax allocation for
4 the second quarter of 2014. This indicates that the
5 Appellant was billed and receipt -- the Appellant billed
6 and received the sales tax from the customer, however,
7 failed to remit it to the State.

8 Additionally, the sales tax amounts were placed
9 in an area of the invoice that is typically reserved for
10 the sales and not placed in the "Sales Tax Billed", which
11 is usually used to compile sales tax. The sales tax may
12 have -- the sales tax may not have been included in the
13 reporting as it may have been included in exempt sales,
14 which reported it all. Also, the measure was also not
15 included on the invoice, only the tax amount. Again,
16 since the amount was listed with where the sales are
17 normally listed. If included, the sales tax itself may
18 have been recorded as a measure, and only a small portion
19 of the tax may have been reported again, if at all.

20 It's the Department's experience that when
21 tax-only invoices are used because, of the issues just
22 mentioned, they are at times not reported at all or only a
23 small portion of the actual sale is reported. Due to
24 these issues, the Department does not believe an
25 adjustment should be made to these transactions.

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

3 JUDGE STANLEY: This is Judge Stanley. Thank
4 you, Mr. Suazo.

5 Judge Geary, do you have any questions for CDTFA?

6 JUDGE GEARY: I do. Thank you. This is
7 Judge Geary speaking. Mr. Suazo, what's the Department's
8 position -- or let me ask. Has the Department's position
9 changed at all as a result of the testimony from
10 Mr. Shneir today?

11 MR. SUAZO: I would leave that to you.

12 JUDGE GEARY: Thank you. That's all I have.

13 JUDGE STANLEY: This is Judge Stanley.
14 Judge Aldrich, do you have any questions for CDTFA?

15 JUDGE ALDRICH: Judge Aldrich. No questions for
16 CDTFA. Thank you.

17 JUDGE STANLEY: Okay. Thank you.

18 I'm going to turn back to you, Ms. Kahali, and
19 you may proceed with your closing statement.

20

21 CLOSING STATEMENT

22 MS. KAHALI: This is Kahali -- Ms. Kahali. I
23 heard the CDTFA argument, which went through it for many
24 times. I've shown how in the past the sales report was
25 prepared, and sales tax was reported to the State.

1 Obviously, those individual that they were preparing those
2 reports for submitting the -- for submitting the sales tax
3 was not doing a good job. I admit that.

4 However, on Troy case the difference, they charge
5 for the sales tax only because they couldn't charge the
6 total sales again. It would multiply the -- increase the
7 sales. Therefore, they charge the sales tax only, and
8 they added into the end of when they were reporting, added
9 the value that they reported. According to the schedule,
10 there is over statement compared to the value that is
11 reported. Maybe just they reported certain tax, and they
12 did not report all of it. That, I agree. But they have
13 it -- they meant to report it. That's first thing.

14 About those error that it is in the list. For
15 Mexican, to checking the exempt sales, there is always
16 alternative method. And there are a few of them, -- five
17 or six of them -- mentioned in the audit manual. And one
18 of them picking up the phone and calling the customer,
19 checking the phone book. And I sent the address and the
20 phone number of the Mexican merchant for whoever wants to
21 call him and get the confirmation on the phone.

22 I couldn't get him the confirmation because these
23 people are afraid to come to CDTEFA and make the
24 presentation. I totally understand. Since that time,
25 that individual is not contacting Mr. Cooke for follow up

1 and for additional purchases. Basically, he's losing
2 their business due to the audit. That's the first thing.

3 Second is, based on the informant information,
4 they pulled the audit, and they will check. I'm glad they
5 did because Mr. Cooke learn lesson how he should do his
6 business properly. But overstating -- overstatement is
7 not acceptable. They did -- they had five quarter as a
8 block test. The day that they came to the business,
9 Mr. Cooke provide them with the folder of invoices for
10 each year. And there were many shipping documents in that
11 folder, which auditor never mentioned and said there was
12 no -- no shipping document.

13 There was shipping document per statement from
14 the FedEx that they come. Maybe not even 10 of them were
15 in that list that they come from FedEx. The rest of it
16 was in the folder, and he never mention it. He put wrong
17 information there, which I'm kind of upset why the auditor
18 allow himself to do not provide whatever he sees. The
19 method they have chosen as Mr. Sauzo explain, the
20 gentleman in this audit was in the business since 2002 or
21 2004, and he might have the same type of manner or
22 reporting fashion to the book.

23 They try to charge him for the time that they
24 missed it, because they are penalizing the taxpayer for
25 the time that he was not under the audit. And you tell

1 me, if they are in the position to penalize the taxpayer
2 for the time that they missed, and they didn't look at his
3 record. They should have used block test. They set the
4 boundary. They did not have audit plan. If they had the
5 audit plan and they put in their audit plan that they
6 want -- this is their plan to do it and go back and use
7 the population base as interstate commerce part of the
8 population base. That was acceptable.

9 But they haven't had any plan. The routine audit
10 says you pull the block test, you pull the error, and you
11 apply the percentage error to the population. They
12 decrease the population to pick up more, to penalize the
13 taxpayer. This is my opinion. You judge in between.
14 There were error in this business no doubt, but the way
15 that they handle it is -- upsets everybody.

16 I'm done. Thank you. I leave it on Your Judges
17 your judgment to see which one is acceptable and which one
18 is not acceptable. I appreciate that.

19 JUDGE STANLEY: Thank you, Ms. Kahali.

20 At this point I'm going to see if Mr. -- if
21 Judge Geary has any further questions before we conclude.

22 JUDGE GEARY: I do. Not thank you.

23 JUDGE STANLEY: And Judge Aldrich?

24 JUDGE ALDRICH: No questions. Thank you.

25 JUDGE STANLEY: Okay. Then I want to thank

1 everybody for participating. This went extremely well,
2 especially compared to our last attempt, and we appreciate
3 everybody's cooperation with this. And we will issue a
4 decision.

5 The Panel will get together after this hearing,
6 and we will issue a decision in writing within 100 days.
7 I do have one item I need to address before I close the
8 record.

9 Mr. Suazo, I left it open for you to voice an
10 objection to any of the Form BOE-52s. Would you like to
11 do so at this time?

12 MR. SUAZO: Just stating that the B-52 for the
13 sale in Kentucky has not been verified by our Department
14 as is required in the Audit Manual.

15 JUDGE STANLEY: This is Judge Stanley. Are you
16 objecting to admission on the document on that basis
17 because it could not be verified?

18 MR. SUAZO: Yes.

19 JUDGE STANLEY: Okay. Pursuant to our rules for
20 tax appeals, we have a process that CDTFA did not follow
21 in order to try to elicit written answers from the person
22 who signed that under penalty of perjury. Would you like
23 an opportunity to keep the record open and issue written
24 questions?

25 MR. SUAZO: This is Randy Suazo again. At this

1 point, if we could keep it open, and we'll decide at a
2 later -- we can talk among ourselves and decide at a later
3 date.

4 JUDGE STANLEY: Okay. I'm just going to keep it
5 open -- hold the record open just for five days while you
6 make that decision. And then once you make that decision,
7 I will issue an order as to whether or not we'll keep it
8 open longer than five days to allow for question and
9 answer.

10 But before I go there, Ms. Kahali, do you want to
11 respond to the objection?

12 MS. KAHALI: No, Your Honor. The only thing I
13 want to add, I want to save you time. For \$1,000 I don't
14 want to take your time to get for their confirmation for
15 the Kentucky sales. It's up to the Board. It's up to you
16 to accept or reject it, but \$1,000 it doesn't -- it
17 doesn't matter that much at this point.

18 JUDGE STANLEY: This is Judge Stanley. Thank
19 you, Ms. Kahali.

20 So I will hold the record open for five days, and
21 CDTFA must notify the Office of Tax Appeals within that
22 five-day period whether they intend to send out written
23 questions, at least for the Kentucky witness. All the
24 documents will be admitted regardless. All the exhibits
25 we admitted earlier are admitted regardless of the

1 objection.

2 And so at this point, we are going to conclude
3 this hearing. We're going to recess until 10:45 for the
4 next hearing. And once, again, thank you all for
5 participating and making this run smoothly.

6 (Proceedings adjourned at 10:28 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 12th day
of January, 2021.

ERNALYN M. ALONZO
HEARING REPORTER