

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
KHUSHI INVESTMENTS, LCC,) OTA NO. 19075063
)
) APPELLANT.
)
_____)
)

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Tuesday, November 17, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead: ALJ ANDREW WONG

Panel Members: ALJ NGUYEN DANG
ALJ DANIEL CHO

For the Appellant: SNEHAI SONI
JITESH KOTHARI

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

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1 Sacramento, California; Tuesday, November 17, 2020

2 11:33 a.m.

3

4 JUDGE WONG: We're opening the record in the
5 appeal of Khushi Investments, LLC, before the Office of
6 Tax Appeals and OTA Case Number 19075063. Today is
7 Tuesday, November 17, 2020. The time is 11:33 a.m. We
8 are holding this hearing by video conference, but the
9 location for the record is technically Cerritos,
10 California. Although, the agenda does say Sacramento, the
11 notice was for Cerritos.

12 I am lead Administrative Law Judge Andrew Wong.
13 And with me today are Judges Daniel Cho and Nguyen Dang.
14 We are the panel hearing and deciding this case.

15 Individuals representing Appellant, please
16 identify yourselves and spell your names for the record.

17 MR. KOTHARI: Jitesh Kothari, J-i-t-e-s-h
18 K-o-t-h-a-r-i.

19 MR. SONI: And this is Snehal Soni spelled as in
20 S for Sam, N for Nancy, E for eagle, H for horse, A for
21 apple, l for Larry. Last name S for Sam, O for orange, N
22 for Nancy, and I for ice.

23 JUDGE WONG: This is Judge Wong thank you.
24 Individuals representing the California Department of Tax
25 and Fee Administration, which I will refer to by its

1 acronym CDTFA. Please identify yourselves and spell your
2 names for the record.

3 MR. SUAZO: This is Randy Suazo. R-a-n-d-y,
4 Suazo, S-u-a, Z as in zebra, o.

5 MR. PARKER: Jason parker, J-a-s-o-n P-a-r-k-e-r.

6 MR. BROOKS: Christopher Brooks, C-h-r-i-s-t-o, p
7 as in Paul, H-e-r. Last name brooks, B-r-o-o-k, s as in
8 Sam.

9 JUDGE WONG: This is Judge Wong. Thank you very
10 much. We are considering one issue today, whether a
11 reduction to the amount of unreported taxable sales is
12 warranted.

13 Is that a correct statement of the issue,
14 Appellant?

15 MR. KOTHARI: This is correct.

16 JUDGE WONG: Thank you. CDTFA?

17 MR. SUAZO: This is Randy Suazo. Yes, that's
18 correct, Your Honor.

19 JUDGE WONG: This is Judge Wong. Thank you.

20 Appellant has identified and submitted proposed
21 Exhibits 1 through 4 as evidence. Appellant has no other
22 exhibits to offer, and CDTFA had no objections to them.
23 Therefore, Appellant's proposed Exhibits 1 through 4 will
24 be admitted into the record as evidence.

25 ///

1 (Appellant's Exhibits 1-4 were received
2 in evidence by the Administrative Law Judge.)
3 CDTFA has identified and submitted proposed
4 Exhibits A through E as evidence. CDTFA had no other
5 exhibits to offer as evidence, and Appellant had no
6 objection to them. Therefore, CDTFA's Exhibits A through
7 E will be admitted into the record as evidence.

8 (Department's Exhibits A-E were received in
9 evidence by the Administrative Law Judge.)

10 And Appellant had no witnesses, and CDTFA had no
11 witnesses. All right.

12 Appellant, please proceed with your presentation.
13 You have 20 minutes.

14

15 PRESENTATION

16 MR. SONI: Yeah. This is Snehal Soni. I will go
17 ahead with the presentation. So for our presentation as
18 we have written on the exhibits, our -- you know, we --
19 we -- we were selected as part of. We don't know the
20 reason why we were initially selected for the -- for this
21 audit. The problem was initially this -- it seemed like,
22 you know, like when we -- all -- this whole process
23 started that they wanted to just wait and wait and wait
24 and -- because the initial notice we got was sometime in
25 May.

1 We request -- we asked for some documentation.
2 We provided all, you know, the documentation we could
3 provide, like bank statement and all the credit card
4 statements and everything to Mr. Rubio. Then the -- he
5 kept pushing for, you know, for every -- every time we
6 submit something, they will ask another list of something
7 else. We kept doing that to push this onsite observation
8 dates to November and December, which are obviously -- you
9 know, for any retail business, it's a different month.
10 It's the holiday season.

11 So those days they purposely tried to push those
12 into holiday months. The big picture that we were given
13 was the height of our Thanksgiving holidays and Christmas
14 holidays where when, you know, in any retail business
15 those are -- those are the months where, you know,
16 everybody will have a different sales compared to other --
17 other time of the year. So the dates they were give --
18 selected was in November, which was 11/19/20 and
19 11/22/2016 at Smoke Outlet, which was one of the
20 locations. 11 and 19 and 22 had one location at 11/21 at
21 one location which is right before Thanksgiving holiday.

22 That's your -- you know, that's the sea -- that's
23 when shopping season is actually right there. Then the
24 second day which were given for site observation was 12/15
25 and 12/16 so which was right before Christmas. So they

1 kept pushing for these dates although -- even though this
2 whole process started in May. We waited until this -- for
3 site observation for 11 and 12, those dates around
4 Thanksgiving and -- and Christmas.

5 Then Mr. Rubio and Mr. Kothari was exchanging via
6 e-mail. Mr. Kothari kept requesting him to expedite the
7 process because, you know, we were submitting everything
8 they wanted and asked as soon as we can. As soon, you
9 know, as soon as we could. He first disagreed with our
10 credit card statement. He didn't believe that the credit
11 card statements we are providing are true, real. Means
12 high -- we were submitting the paper, which we're with
13 Bank of America logo on them. But he thought he wanted
14 something directly from Bank of America, which, you know,
15 we tried to do because it's two, three years old thing
16 from 2016.

17 Banks and bank America, you know, the online
18 account I had was, you know, wasn't giving me that access
19 to three-year-old document. So that took another two
20 months and there was no reason for not believing the
21 original documents we were submitting. And every time we
22 submit something, he will ask for something else. He
23 wouldn't give me -- give us a list from the start that,
24 okay, this is the 10 things I will need. He will give me
25 two things. Then once we submit two things, he will say

1 okay, there is another two things I need. So he kept
2 delaying that whole process.

3 Now obviously, you know, this observation of
4 this -- this amount they are coming up of that, that I was
5 short paying on -- short on the sales, which for a
6 three-year period it's \$1.5 million, which we -- they are
7 saying we underreported. So as a business owner, or for
8 anyone to understand that if I have \$1.5 million
9 underreporting of the sale, and I have 94 percent gross
10 profit, which they are showing on their worksheets, why
11 would I close the business? That business itself is worth
12 over 3 to \$4 million. I would rather sell and just pay
13 you -- pay them \$1.5 -- you know, \$150,000 they are asking
14 for.

15 Their whole intention upon starting this audit
16 was to maximize how much they can maximize in terms of,
17 you know, underreported sales. Now, basically, you see,
18 I'm not -- based on -- based on their worksheet I have
19 reviewed, it seemed like they are coming up with this
20 amount based on this five days of observation for three
21 years. They averaged out five best -- five days, which
22 are in the best months for any retail business and average
23 out that five days of observation to three years of sale.

24 Out of those three years, one location was even
25 closed before this audit started. We have assumed this --

1 so this amount they are coming from is based on
2 assumption. And I'm fighting this case to their
3 assumption that this was -- the sale was for five -- you
4 know, three years based on the five days of observations.
5 Second thing, it seems like is -- they have made
6 assumption of the credit card transaction which is for
7 those five days percentage-wise. So those are the two
8 things I am -- my understanding is in terms of how they
9 have calculated this amount.

10 Now, the third thing which they -- you know, if
11 we look at their exhibits on page number 4 on report of
12 the field audit, the first paragraph says penalty. In
13 penalty they are saying no penalty is recommended since
14 there is no evidence of negligence or intent to evade tax,
15 but I have it. Then they are saying that I have evaded
16 \$1.5 million of sales underreporting for three years. So
17 if I don't qualify for that penalty, if they're not saying
18 that I don't have any penalty, then on the other side they
19 are saying that I have underreported even though I didn't
20 have any intent to evade.

21 Now, the reality, the facts of the matter is all
22 these exempt -- all these findings and -- is based on
23 averages, and they came up with this amount, at the end of
24 the day, I -- my business closed down all locations right
25 after I got this notice. I would -- who in their, you

1 know, right mind frame -- frame of mind would close down
2 the business, which is based on this audit facts, is worth
3 over \$3 million.

4 I have attached my financial position
5 throughout -- you know, throughout the with those -- with
6 that e-mail conversation I had with the landlord, the
7 landlord for the both location was the same, which was
8 Reliable Properties. I have sent -- submitted that e-mail
9 record for their -- and their ledger showing how much
10 amount I was -- I owed them, which -- which amounted
11 around \$20,000. So if I had this kind of money, why would
12 I not pay rent and forced out to close the business?

13 They have assumption but I have this fact that
14 okay. I have two businesses -- two locations which were
15 forced to close out due to back rents. One location was
16 forced to close out in -- before this audit started
17 because of multiple robberies. And I presented those, you
18 know, pictures for that location, which was closed out
19 because of multiple robberies to Mr. Rubio. At that time
20 I showed them what the condition of the store was after
21 that robbery at one location. It was completely -- there
22 was nothing left in the store.

23 Now, the next part of -- the next part of my
24 argument is they are -- they are saying -- Mr. Rubio has
25 said he collected some invoices from different vendors.

1 Now, that different went -- out of those different
2 vendors, he hasn't presented -- he hasn't shown us
3 anything what he got from those vendors. He -- all he
4 has -- all he's mentioning here is that three vendors
5 which are -- which are -- which they got the response back
6 was -- one was Sam's Club, one was Swisher Sweets, and two
7 were the vendors which are -- now another was Cartons to
8 Go and -- and the statewide distributors.

9 Now, out of these four vendors, they are
10 talking -- he is saying only Sam's Club. I ask them
11 why -- where represent of I.D. required when you make
12 purchase? Like, you know, how if you have, you know,
13 Sam's Club a membership, yes, there is an I.D., you know,
14 picture I.D., you know, on their membership card. The
15 other two places, anybody can go and tell that, okay, I
16 need to make this purchase, and this is the store I'm
17 coming from. They can make that purchase. They never --
18 there they don't ask for present I.D. or who you are. So
19 anybody can go there and just say that I'm coming from
20 this place, and this is what I'm purchasing, and ring up
21 under this -- this place, and that -- they can.

22 So although they have -- if they have -- if they
23 have even shared what they have bought and we would have
24 verified with our records, but unfortunately, they never
25 shared that. All they did was just come up with this

1 amount which was, you know, record of taxable purchase
2 which we know for us, we have reported all the invoices we
3 had in our books.

4 Now, they have more than double of that invoices.
5 Then they should have at least, you know, shared that with
6 us. They are making comments about certain things which
7 we are selling. Yes, we do sell that, but we don't --
8 this business was primarily was selling tobacco products.
9 Now, accessories are not something which, you know, this
10 business purchases on a daily basis. Daily basis or on a
11 daily or weekly basis main purchase was tobacco products
12 like cigarettes.

13 Now we, you know, we told Mr. Rubio that we have
14 Walmart at both locations, and we are competing with
15 Walmart as a small business. Now, in tobacco products
16 like cigarettes or any other cigars and all that, there
17 was -- since Walmart opened in 2013 or 2014, we -- we
18 do -- technically, we were completely -- completely facing
19 two challenges. One was bigger -- bigger -- you know,
20 biggest retailer of the world sitting in front of our
21 stores selling the same -- most of the same stuff which we
22 are selling as a small business.

23 And second thing was, you know, 2011 or -- '11,
24 tobacco taxes double, you know, went up. Cigarettes
25 prices back in 2011, which was \$3.50 for Marlboro went up

1 to \$8 by 2014 due to the increase in tobacco taxes, and
2 that was a federal tax increase. And then there were
3 other taxes, like, on cigarettes on that stamps they put
4 on cigarettes. So technically, our business on a
5 tobacco-related products was, you know, very hard to hit
6 with different taxes which were -- which started in 2011,
7 '12.

8 So 2013 onwards we -- we were hardly making means
9 end. This business is we're a family business. It's not
10 like we, you know, we -- I had a couple of my uncles and
11 my brothers who were intermittently just running this
12 business. It was not like we -- we had particular time,
13 of which means we did try to open and close as much as
14 possible at the same time. Now, they -- on the audit they
15 are saying my Google and Yelp account was saying my open
16 time and close time is such. But you know, we have to --
17 when we do that or, you know, open when we put it on the
18 Google it's like we can't go and change the timings every
19 day.

20 It means we tried. It was a family business. It
21 was not where I had employees who were working in shifts.
22 It was more or less whoever was available that will go and
23 open the store. And it was more for myself I am -- I
24 never -- I never -- I had another full-time job. I am in
25 health care industry, and I work full time in health

1 industry. These businesses were open more or less to
2 support family. And they -- and personally, I never -- I
3 never spent much time at the locations itself other than,
4 you know, helping with buying stuff, making purchases, and
5 all that.

6 I was going to the locations every day but not
7 for, like, full day. I was going there to check on
8 things, a few things here and there, making sure that
9 inventory they need -- I help them buying. Now, as I, you
10 know, said earlier, these business was -- we were
11 staying -- you know, we were behind rents. We had
12 multiple issues of robbery. And now since, you know, this
13 whole audit thing, the amount they have come -- came up is
14 based on the exemption of those three days of observation
15 sited in one place and two days at another site, and the
16 third place was closed already.

17 So the profit margins which they had came up with
18 is 94 percent and that is because they are saying that I
19 didn't report all the sale -- I didn't provide all the
20 invoices, which I disagree. They had came up with this
21 94 percent gross profit margin based on the sales
22 purchases I had made. Which if this was 94 percent, I
23 would not be, you know, not be in a position to pay the
24 rent or close down the business. And vendor surveys they
25 have done, you know, as I have said, means the two places

1 they are talking about doesn't even have any I.D. system
2 to check. Anybody can go there and just say I'm coming
3 from this place. So no.

4 Now markup calculation for tobacco product, you
5 know, is less than 5 percent if we are buying cigarettes.
6 Means anywhere -- especially business like I had, which is
7 specialized business for tobacco products. So that
8 business doesn't have more than 5 percent margin in
9 overall in the tobacco product.

10 Do I have more time? I didn't look at the time.
11 So are we -- am I under or --

12 JUDGE WONG: This is Judge Wong. You have about
13 three minutes.

14 MR. SONI: Okay. Mr. Jitesh, do you have
15 anything to add?

16 MR. KOTHARI: (INDISCERNIBLE)

17 JUDGE WONG: This is Judge Wong. Sorry to
18 interrupt. Mr. Kothari, could you speak a little bit more
19 slowly. We're having trouble understanding you.

20 MR. KOTHARI: I say I have a speech
21 (INDISCERNIBLE), Judge Wong. (INDISCERNIBLE) Mr. Soni?

22 MR. SONI: Yes, Mr. Kothari. What did you ask?

23 MR. KOTHARI: (INDISCERNIBLE)

24 MR. SONI: Yes, I agree.

25 MR. KOTHARI: (INDISCERNIBLE)

1 MR. SONI: This is where I didn't understand you
2 either.

3 MR. KOTHARI: Okay. (INDISCERNIBLE)

4 MR. SONI: Are you asking me?

5 MR. KOTHARI: Yeah. I said (INDISCERNIBLE).

6 MR. SONI: No. You're saying the invoices which
7 we give it to him, you still have copy of those voices,
8 right?

9 MR. KOTHARI: Yes. Right. (INDISCERNIBLE) he
10 refused to recheck those invoices.

11 MR. SONI: Yeah. He refused to recheck those
12 invoices, yes.

13 MR. KOTHARI: (INDISCERNIBLE)

14 MR. SONI: Yeah. We went to sign those, and
15 he -- we asked for those invoices right, and he refused.

16 MR. KOTHARI: Yes.

17 MR. SONI: Yes. He refused to share those
18 invoices when we went to their office to meet with them.

19 MR. KOTHARI: Right.

20 MR. SONI: Yeah, he didn't -- he never submitted.
21 That's what I said. He never submitted or shared with us.
22 He refuse when we went there. So yes, Judge Wong, we
23 tried to ask for it, but that was not shared with us. So
24 now, you know, before we -- my time is over for this
25 20 minutes, so only to one thing which I want to be able

1 to emphasis is that, you know, this amount we're -- we are
2 fighting with the exemption of this five-days of
3 observation. And that is maybe that five days may apply
4 to those months but not -- maybe this, you know, three
5 days of November they did.

6 Maybe they can apply that for three years of
7 November to the three years of November, like November
8 2013, '13, '14, '15, and '16. But all in December for the
9 other store. But it cannot apply for three years of total
10 sales, and that's where my biggest disagreement lies. And
11 I made, you know, my -- I'm very confident that I have --
12 I have reported all the sales tax. But it solves the
13 problem where, hey, I can maybe -- then agree to pay
14 difference for those months, not those years.

15 JUDGE WONG: Mr. Soni, I think your time is up.
16 Could you finish up in, like, 15, 30 seconds?

17 MR. SONI: Yes. I'm -- I'm done. I'm saying
18 that, you know, that I -- this observation is for the
19 month of November and December. Maybe this observation
20 and findings can apply for those months of those years for
21 the audit section, but not for the whole three years for
22 those averages, for those -- for those things.

23 JUDGE WONG: This is Judge Wong. Thank you very
24 much. We were having a little difficulty understanding
25 Mr. Kothari. So we will provide an opportunity, if you

1 would like, to provide a written statement at the end --
2 after the hearing. Would you like to do that?

3 MR. KOTHARI: Yes, I can do that, Judge Wong.
4 Thank you for giving me opportunity.

5 (Following the oral hearing, the Panel
6 requested and received a written summary
7 of Mr. Kothari's oral presentation, which
8 is included here.)

9 Honorable Judge Wong and respected member of
10 Office of the Tax Appeal,

11 First and foremost, hope everyone had good and
12 safe Christmas holiday. I would like to thank Judge Wong
13 for giving me an opportunity to submit my presentation in
14 writing and giving me enough time to submit. Due to my
15 recent health condition, I have developed severe speech
16 disability and I apologize to Judges and other members
17 they couldn't understand me when I was talking.
18 Hon judge Wong, what I wanted to present in the case is
19 that when we had appeal conference at Cerritos District
20 Office with Appeal Conference Auditor Angela Maffei and
21 Guillermo E Alvarez who presented California Department of
22 Tax Administration from the Riverside District Office on
23 February 21, 2019, taxpayer was warranted for an
24 additional cash receipts when CDTFA were very well aware
25 that taxpayer cannot produce additional cash receipts as

1 all available cash receipts were submitted to Mr. Juan
2 Rubio of State Board of Equalization when he initiated
3 audit. Taxpayer had informed Mr. Rubio that his place of
4 business was ransacked twice and had submitted pictures of
5 the place and the police reports. During appeal conference
6 taxpayer had offered or asked about vendor survey and Mr.
7 Guillermo had mentioned that vendor survey is not reliable
8 source of conducting audit in this type of business as
9 many vendors do not cooperate with the CDTFA.

10 On the worksheet Mr. Rubio created on February 2, 2017 on
11 worksheet 12D, Mr. Rubio is used 94.44% profit margin.
12 Judge Wong there is no way this type of business can have
13 over 35% margin and that is industry standard. All
14 purchases and sales are on assumption basis based on five
15 days observation and this observation was done during busy
16 time of the year that is between thanksgiving and
17 Christmas although on July 1, 2016 taxpayer representative
18 had informed Mr. Rubio to start in store observation
19 immediately. Mr. Rubio had informed taxpayer that he was
20 not going to rely on purchases and yet his worksheet shows
21 Mr. Rubio assumed purchases and did not request taxpayer
22 for an additional purchase invoices.

23 In considering all the circumstances and fact that
24 taxpayer closed his business in less than 30 days after
25 assessment notice was issued to him. If business had 94%

1 margin, and if taxpayer took home approximately \$500,000
2 in cash every year as stated in audit worksheet, taxpayer
3 would have gladly paid \$187,000 in additional taxes and
4 moved on. Taxpayer is well aware that court judgement is
5 based on evidence and not circumstantial, where as Mr.
6 Rubio have demonstrated tax assessment all circumstantial
7 and estimated.

8 Thank you.

9 (End of written statement.)

10 JUDGE WONG: Okay. Thank you. This is
11 Judge Wong. I'll now turn to my co-panelist. Judge Cho,
12 did you have any questions for Appellant?

13 JUDGE CHO: This is Judge Cho. I just wanted a
14 clarification. So you said certain invoices were not
15 being shared with you. Would you mind explaining what
16 invoices. Were those the invoices from the observation
17 test?

18 MR. SONI: Okay. Mr. Rubio from the tax
19 department, he said that they did vendor surveys. For
20 those vendor surveys they got some -- they got some
21 invoices back from vendor surveys. He said that there are
22 more invoices they got than I have, you know, reported. I
23 asked them to share those more invoices they were talking
24 about. They never shared it with us.

25 Now, the two locations they' are talking about in

1 terms of vendor surveys, doesn't have any I.D. system.
2 Anybody can go and tell them, okay, I need this much stuff
3 and I'm coming from that store. They can. So back to --
4 except Sam's Club, there was -- the other two locations
5 are not reliable location because of they don't have the
6 I.D. system to check.

7 JUDGE CHO: This is Judge Cho. Thank you very
8 much. That's what I was looking for. So these are the
9 vendor survey.

10 MR. SONI: Thank you.

11 JUDGE CHO: Thank you. That's the only question
12 that I had.

13 JUDGE WONG: Thank you, Judge Cho. This is
14 Judge Wong.

15 Judge Dang, do you have any questions for
16 Appellant?

17 JUDGE DANG: Thank you, Judge Wong. This is
18 Judge Dang speaking.

19 I do have a question -- a brief question for you,
20 Mr. Soni. Typically, outside of the five-day observation,
21 typically, to the best of your knowledge, what was
22 Appellant's -- what percentage of Appellant's sales were
23 paid for via credit card?

24 MR. SONI: Outside -- outside this five days?

25 JUDGE DANG: Just in general with this business,

1 were the sales predominantly paid for via credit card or
2 did customers pay cash?

3 MR. SONI: Oh, it was both. But the credit card
4 purchase was more than half. It mean, you know, nowadays
5 since last 10 years the credit card purchases are going
6 up. And we had our -- a lot of -- most of the times
7 transactions were credit card, and that's what, you know,
8 I have. But I think I remember, if I look at the
9 averages, it should be more than half which was to credit
10 card, around 75 percent. And, you know, it's going up
11 every year. I mean, you know, the cash compared to 2013,
12 '14 was higher, I think, or '14 and '15 was higher.

13 But we, you know, we -- it was, it means again,
14 we are in a location in the city where, you know, it was
15 one location was -- two locations were in Pomona. So
16 we -- we were challenged with some, you know, location was
17 not in an area where we would push for cash that much
18 because we were, you know, right in -- I don't know how
19 familiar you are with Pomona, but we had multiple
20 robberies. It means that all locations. Two locations --
21 one location was closed down because of robbery.

22 But that's why we were pushing for more credit
23 card. We didn't want to have cash at the location because
24 it was only one person at the store. We -- we -- we
25 can -- we were pushing for credit card purchases as much

1 as possible.

2 JUDGE DANG: This is Judge Dang speaking. During
3 the observation test I believe that CDTFA had determined
4 that, based on what they had observed, about 21 -- roughly
5 21 percent of sales were paid for by credit card.

6 MR. SONI: Yeah. That --

7 JUDGE DANG: Is there some reason that number
8 would be so different than what you're telling me what
9 your response was.

10 MR. SONI: Well, I think because of that holiday
11 season. Because of that holiday season. It means we were
12 right -- this was done a week before, you know, during
13 that Thanksgiving week. And it was done right before
14 Christmas at one location. So that's the only thing --
15 only reason I can think of.

16 JUDGE DANG: Are you saying that, essentially,
17 customers tend to pay more with cash during the holidays
18 than they otherwise would?

19 MR. SONI: No. I don't have any way to tell
20 that, but that's what I'm assuming with this whole
21 observation thing, you know. As I said, this whole amount
22 just came up based on the observation and assumption. So
23 at that time it means I'm only guessing that it was
24 because, you know, that holiday time maybe it was more
25 cash at that time.

1 JUDGE DANG: This is Judge Dang speaking. Thank
2 you. I don't have any further questions.

3 MR. SONI: Thank you, sir.

4 JUDGE WONG: Thank you, Judge Dang.

5 This is Judge Wong. I just had a question. From
6 what I recall in the audit working papers it seemed that
7 both CDTFA and Appellant agreed to the dates of the
8 observation test. Can you comment on how those dates were
9 decided upon?

10 MR. SONI: Agreed means they told me we come on
11 this day. Do you have any objection? What objection
12 could I put. It means I can't have a reason to object
13 that. They kept pushing for the date, you know. I was --
14 we were requesting them to do this, you know, earlier.
15 But it's not like I can come up with relevant objection
16 because my store is open. They can -- I can't say that
17 I'm, you know, I'm closing the stores because you guys are
18 coming on this date.

19 JUDGE WONG: This is Judge Wong. There's also a
20 sheet. I think it's called the -- in the record it was in
21 Exhibits A. It's called a BOE 805 Observation Test Fax
22 Sheet. In part B of that fax sheet it's called test
23 criteria. There are several boxes. And one of these
24 boxes is labeled "Busy Months", and another box is labeled
25 "Slow Months". And both of those indicate that those are

1 not applicable. (INDISCERNIBLE) Appellant's
2 representative. If holiday months are busier, like, why
3 wasn't that noted in the BOE 805?

4 MR. SONI: Well, when Mr. Kothari wanted to be
5 done before -- before, you know, before the tax season
6 starts in January. So that's why he was pushing for this
7 to happen, you know, before the tax season start in
8 January.

9 JUDGE WONG: This is Judge Wong. Okay. Thank
10 you. I have no further questions at the time.

11 So I will now turn to CDTFA. Please proceed with
12 your presentations. You have 15 minutes. Thank you.

13

14 PRESENTATION

15 MR. SUAZO: This is Randy Suazo. The Appellant
16 is a limited liability corporation that operated three
17 smoke shops during the audit per period: Smoke Shop in
18 Pomona; Smoke Depot in Pomona, which closed on
19 June 30, 2015; and Smoke Outlet in Corona. The store sold
20 tobacco products, vapes, water pipes, soda, energy drinks,
21 snacks, and miscellaneous taxable items.

22 The Appellant's seller's permit start date is
23 July 1st, 2007. This is the Appellant's first audit. The
24 audit period is from April 1st, 2013, through
25 March 31st, 2016. The hours of operations posted on the

1 business' door is different from what was listed on Yelp
2 and Google and what was stated on the observation fact
3 sheet. The posted opening and closing times on the doors
4 of both remaining stores in Pomona and Corona were from
5 9:00 a.m. to 8:00 p.m., Monday through Saturday. On
6 Sunday hours of operation are from 10:00 a.m. to 3:00 p.m.
7 Exhibit A, page 28.

8 The opening and closing times per Yelp and Google
9 were Smoke Shop, which is located in Pomona 8:30 a.m. to
10 7:30 p.m. Monday through Saturday, closed on Sunday; and
11 Smoke Outlet located in Corona, from 8:30 a.m. to 8:00
12 p.m. Monday through Saturday, open Sunday 8:30 a.m.
13 through 3:00 p.m. This is on Exhibit A, page 28.

14 The opening and closing times for the observation
15 test fact sheet Form 805, which is listed on Exhibit A,
16 pages 109 and 110 are 10:00 a.m. to 6:00 p.m., Monday
17 through Saturday. However, the observation test began at
18 9:00 a.m. and ended around 6:30 p.m. The Appellant's
19 representative, Mr. Kothari, mentioned that sometimes the
20 Appellant is open on Sunday. However, this was rare;
21 Exhibit A, page 52.

22 For reporting purposes the Appellant recorded
23 sales on a sheet of paper and reported monthly totals with
24 the accountant, who then prepared the sales and use tax
25 returns based on the information; Exhibit A page 29.

1 Total sales for the audit period were about \$1,150,000.
2 \$165,000 deduction for exempt food sales was taken,
3 resulting in reported taxable sales of close to \$985,000;
4 Exhibit A page 18.

5 Records available for the audit period were
6 federal income tax returns for 2013 and 2014; bank
7 statements; and merchant statements for the audit period;
8 daily sales worksheets for the fourth quarter of 2016,
9 which was outside of the audit period; cash register
10 Z-tapes for the Smoke Shop in Pomona for 26 days in 2016,
11 again, outside the audit period; and cash register Z-tapes
12 for Smoke Outlet in Corona for the entire month of 2016,
13 again, outside of the audit period; and purchase invoices
14 for first quarter 2016.

15 Appellant did not provide general subsidiary
16 journals, cash register receipts, daily sales, summary
17 worksheets, and purchase invoices, with the exception of
18 the one-quarter period of first quarter 2016 for the audit
19 period. Federal income tax return sales were compared to
20 sales and use tax returns and disclosed no discrepancies.
21 Federal income tax returns disclosed that no salaries and
22 wages were claimed. And if other income was not included,
23 the Appellant would have losses of roughly \$40,000 each
24 year, and a negative cash flow for almost the same amount.

25 Therefore, the Appellant would be losing money

1 each year on the actual operations of the business;
2 Exhibit A, page 77. A markup computation was performed
3 using recorded sales for federal income tax returns for
4 the cost of goods sold for 2013 and 2014. The recorded
5 markup average 21 percent. However, a review of purchases
6 for the first quarter of 2016 disclose that not all
7 purchases were included in the federal income tax returns;
8 Exhibit A, page 76.

9 The department attempted to confirm total
10 purchases for the business through vendor surveys and
11 purchase invoice amounts provided for the period of
12 January 1st, 2016, through March 31st, 2016. Only three
13 vendors responded to the vendor surveys. The Department
14 noted more purchases for the limited number of vendors
15 contacted compared to invoices provided by the Appellant.
16 The Department's extrapolation of the purchase amounts per
17 the information from the vendor surveys revealed that
18 purchases reported for the federal income tax returns were
19 likely understated; Exhibit A, pages 71 to 75.

20 Additionally, the Appellant's businesses do not
21 only sell cigarettes and tobacco products. Other products
22 sold include incense, weight scales, and smoking pipes.
23 The purchase receipts provided by the taxpayer and the
24 vendor request did not show any incense, weight scales,
25 and smoking pipes purchase. However, during the five-day

1 observation test, the taxpayer sold smoking pipes,
2 incense, and weight scales.

3 During the days of the observation test, the
4 Appellant stated his uncle, who was working in the Smoke
5 Shop location, which was in Pomona, used cash from daily
6 sales to buy inventory around twice a week or whenever
7 there was a need to purchase inventory. Since most of the
8 purchases were made in cash, it is likely purchase
9 receipts are missing throughout the audit period;
10 Exhibit A, again, page 79.

11 The first quarter 2016 markup of cost was
12 calculated using total purchase invoices, plus amounts per
13 vendor survey, and reported taxable sales per sales and
14 use tax returns; Exhibit A, page 71. Reported sales per
15 the sales and use tax returns for the first quarter of
16 2016 were close to \$58,000. Taxable purchases for the
17 same period, per invoices and vendor surveys, showed
18 \$80,000 worth of purchases. This showed a negative gross
19 margin of \$22,000. The taxable markup that was computed
20 was negative 27.59 percent.

21 The negative markup of cost means the Appellant's
22 cost of products sold to customers was greater than the
23 sales price charged for those goods. A negative markup of
24 cost is an indication of understated taxable sales. Thus,
25 the Department found that the reported amounts per the

1 sales and use tax returns and the federal income tax
2 returns were unreliable. Credit card deposits were
3 scheduled from the merchant and bank statements for all
4 three locates. Amounts were totaled in credit card
5 transactions were over \$548,000; Exhibit A, page 61.

6 To calculate the cash sale transactions during
7 the audit period, site tests were conducted. Site tests
8 were conducted on two locations that remained open. Three
9 site tests were conducted at the Smoke Shop located in
10 Pomona. The Smoke Shop sales totaled over \$2,500 for the
11 three days, which averaged to \$840 a day. Credit card
12 sales were only 20.33 percent of total sales; Exhibit A,
13 pages 38 to 53. Two site tests were conducted at the
14 Smoke Outlet in Corona. The Smoke Outlet totaled \$927 for
15 two days or \$465 per day. Credit card sales were
16 25.13 percent of total sales; Exhibit A pages, 54 and 60.

17 Each site test started at around 9:00 a.m. and
18 ended at roughly 6:30 p.m., with the exception of one,
19 which ended close to 8:00 o'clock. Please note, this is
20 an earlier closing time than posted on Appellant's store
21 and earlier times than on Yelp and Google. The combined
22 percentage of credit card sales was 21.62 percent;
23 Exhibit A, page 37. A credit card sales percentage was
24 applied to credit card sales for the audit period of,
25 again, \$548,000; an audited sales computed to over

1 \$2.5 million. The audited sales based on the credit cards
2 were compared to reported taxable sales and a difference
3 of \$1,552,595 was computed; Exhibit A, page 35.

4 Daily sales for both open locations average over
5 \$1,300 per day when the site tests were conduct. When
6 compared to the projected credit card sales for the last
7 three quarters when only two locations were open, the
8 audited sales amounts were considered reasonable;
9 Exhibit A, page 35.

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

12 JUDGE WONG: This is Judge Wong. Thank you.

13 Judge Cho, do you have any questions for CDTFA.

14 JUDGE CHO: This is Judge Cho. I don't have any
15 questions. Thank you.

16 JUDGE WONG: This is Judge Wong. Judge Dang, do
17 you have any questions for CDTFA?

18 JUDGE DANG: This is Judge Dang. Thank you,
19 Judge Wong. I do not have any questions.

20 JUDGE WONG: Thank you. This is Judge Wong. I
21 don't have any questions at the time for CDTFA. Now,
22 we'll turn back to Appellant for Appellant's rebuttal and
23 closing remarks. You have 15 minutes. You may proceed.

24 ///

25 ///

1 CLOSING STATEMENT

2 MR. SONI: Yes. So well, basically, my closing
3 is more or less, if this audit is true, if this are the
4 amounts I was underreporting, I never had the need to
5 close the store. I would have continued the business,
6 made money and paid this -- paid this amount, which they
7 have asked. The fact of the matter is the business are
8 closed because I could be pay rent and the robberies
9 happened at one location. So please consider that the
10 fact of the matter is that I don't have the business
11 running at this point. The businesses are closed for more
12 than three years now.

13 Now, in terms of the time they say, you know,
14 which is on Google or Yelp or on the store front, these
15 locations were in an area where safety was one of the
16 issues. So depending how soon, you know, it got dark,
17 sometimes, yes, they would not follow the time which is on
18 the door. Since it was run by, you know, run by -- run as
19 a family business, it was -- it was more -- it was --
20 there was more accountability as an owner, I am, for my
21 uncle and parents to open or close at certain time which
22 is posted.

23 Now, when we are talking about -- when they say
24 the cash which was used for purchases, the Sam's Club
25 purchases are, you know -- are the one which -- and the

1 other ones, but the cash we had was from lotto and
2 scratcher we were selling on a day to day basis. That's
3 why all -- you know, we had that much cash on hand to
4 purchase, you know, purchase with cash. Because how the
5 lotto and scratcher works is, they take out the money from
6 the bank account. So I could not touch that money in the
7 bank, which was deposited through the ATM, you know, so
8 for credit card sales we had.

9 Because we know that at every week that there was
10 a debit coming from California lotto. So that's why the
11 cash was used more for buying inventory, which was coming.
12 Major source of cash we were getting was from lotto
13 because we were not using credit card for lotto because we
14 were not using credit card for lotto because we can't.
15 And that's why we had this case to buy -- you know, to
16 use.

17 Now, I am personally, you know, me and my wife is
18 the LLC member of Khushi Investments, LLC. We were
19 residences of California for 20 years now. We have filed
20 tax returns every year. We have, you know, excellent
21 credit history. We don't owe anything to anyone right
22 now. My -- you know, fortunately we have been lucky
23 enough. We were -- we are hard-working people with my
24 wife taking care of my kids who are now college-going
25 kids. And myself I am working in a healthcare industry

1 for 20 years now with -- I'm a licensed healthcare
2 professional without any -- any negative markings on my
3 license in the healthcare profession or my, you know,
4 credit history throughout. In my background I have zero
5 negative. I just got one or two tickets, traffic tickets.
6 That's all I have in my background. If you check my
7 background, I have paid my taxes.

8 So I request, Judges, consider the fact that this
9 audit was conducted with the sole purpose of charging the
10 business, and we closed down because of the business. One
11 of the reasons we closed down was under -- not able to pay
12 rent. And one of the reasons also was this audit. So
13 please consider the fact that these businesses are closed,
14 and I don't have -- you know, if I was making that much
15 amount, which is showing on this -- on this audit I
16 wouldn't close. Nobody would close this business. I
17 would sell this business and payoff this extra bill, which
18 I have been given.

19 That's all I have. Thank you.

20 JUDGE WONG: This is Judge Wong. Thank you,
21 Mr. Soni.

22 Judge Cho, do you have any final questions for
23 either party?

24 JUDGE CHO: This is Judge Cho. I don't have any
25 final questions. Thank you very much.

1 JUDGE WONG: This is Judge Wong. Judge Dang, do
2 you have any final questions for either party?

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

5 JUDGE WONG: This is Judge Wong. I did have one
6 question for CDTFA that I forgot to ask earlier. In the
7 Appeals Bureau's decision there was a mention that the
8 calculated bookmark ups for 2013 were, like, 22.65 percent
9 and 19.58 percent for 2014. And CDTFA expected a higher
10 markup for this type of business. I was just wondering
11 what type of markup would you expect for this type of
12 business?

13 MR. SONI: The tobacco products --

14 MR. SUAZO: This is Randy --

15 MR. SONI: Oh, sorry.

16 JUDGE WONG: Yeah. Sorry, this Judge Wong. This
17 is a question directed at CDTFA.

18 MR. SUAZO: This is Randy Suazo. It would
19 probably be between 25 to 30 percent.

20 JUDGE WONG: This is Judge Wong. Thank you.

21 Okay. We had mentioned earlier that we would
22 offer the opportunity to Appellant to provide a written
23 statement. Does CDTFA have any objections to that?

24 MR. SUAZO: This is Randy Suazo. We don't have
25 any objections, Your Honor.

1 Is Judge Wong still on?

2 JUDGE WONG: Thank you. Would you like an
3 opportunity to respond to a written statement from
4 Appellant?

5 MR. SUAZO: This is Randy Suazo. Yes, we would
6 like an opportunity if we believe that -- yes.

7 JUDGE WONG: This is Judge Wong. Okay. We're
8 going to hold the record open, and I will send out a
9 letter to both parties to solicit written statement and an
10 answer from both parties, and I will set some deadlines
11 for that. Be on the lookout for that in the next few
12 days. Okay.

13 This concludes --

14 MR. SUAZO: Judge Wong?

15 JUDGE WONG: This is Judge Wong. Yes, Mr. Suazo.

16 MR. SUAZO: Oh, this is Randy Suazo. Basically,
17 if the Appellant wrote a letter, we would have the
18 opportunity to respond to it. But we don't really have to
19 write a letter on our own unless it's generated by the
20 Appellant; correct?

21 JUDGE WONG: That is right. You would just be
22 answering a statement from -- a written statement from
23 Appellant. You don't have to respond to it if you don't
24 wish to. We'll provide you the opportunity, and then if
25 you wanted to respond, you can just respond in writing

1 that you declined to provide an answer.

2 MR. SUAZO: No. I was just -- this is Randy
3 Suazo again. I was just wondering because you were going
4 in and out.

5 JUDGE WONG: Yes. Sorry. Apologies. I'm having
6 network issues. Be on the lookout for the written
7 communication, and that should conclude the details.

8 Okay. This is Judge Wong again. This concludes
9 the hearing. We're going to hold the record open. And so
10 this hearing is now adjourned. Thank you all for your
11 participation, and we are adjourned until tomorrow.

12 Thank you.

13 (Proceedings adjourned at 12:28 p.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 29th day of December, 2020.

ERNALYN M. ALONZO
HEARING REPORTER