

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
F. MARTINEZ,) OTA NO. 19075087
)
) APPELLANT.)
)
)
_____)

TRANSCRIPT OF VIRTUAL PROCEEDINGS

Cerritos, California

Wednesday, January 20, 2021

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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TRANSCRIPT OF VIRTUAL PROCEEDINGS, taken at
12900 Park Plaza Dr., Cerritos, California, 91401,
commencing at 1:19 p.m. and concluding
at 3:15 p.m., on Wednesday, January 20, 2021,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ NGUYEN DANG

Panel Members: ALJ TERESA STANLEY
ALJ ANDREW WONG

For the Appellant: FRANCISCO MARTINEZ

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

RANDY SUAZO
KEVIN SMITH
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-9 were received at page 8.)
(Department's Exhibits A-G were received at page 8)

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1 Cerritos, California; Wednesday, January 20, 2021

2 1:19 p.m.

3

4 JUDGE DANG: We're opening the record in the
5 appeal of Francisco Javier Martinez before the Office of
6 Tax Appeals. The Case Number is 19075087. It's presently
7 1:19 p.m., January 20th, 2021.

8 Consistent with the Governor's Executive Order
9 Number 2520 to reduce and minimize the spread and risk of
10 Corona virus infection, and with the agreement of the
11 parties, this hearing is being conducted via Webex video
12 conferencing. This case is being heard and decided
13 equally by a panel of three judges. My name is Nguyen
14 Dang, and I am the lead judge for purposes of conducting
15 this hearing. And also on the panel with me today are
16 Judges Andrew Wong and Teresa Stanley.

17 Will the parties please state their appearances
18 for the record, beginning with the Appellant.

19 Mr. Martinez, please state your appearance for
20 the record.

21 MR. MARTINEZ: Good afternoon everybody. I'm
22 just here to state that I have a disagreement with the --
23 I'm here in this disagreement with the auditor's results.

24 JUDGE DANG: This is Judge Dang speaking.
25 Mr. Martinez, could you please just state your name at

1 this point for the record.

2 MR. MARTINEZ: Yes. My name is Javier Francisco
3 Martinez, and I'm the Appellant.

4 JUDGE DANG: Thank you. I just would like to
5 clarify. This is Judge Dang speaking again. I'd like to
6 clarify. I noticed that in our records your name is
7 indicated as Francisco Javier Martinez. Could you just
8 clarify the order of your name, what your exact name is?
9 Is it Javier Francisco Martinez, or is it Francisco Javier
10 Martinez?

11 MR. MARTINEZ: My correct name is Javier
12 Francisco Martinez.

13 JUDGE DANG: This is Judge Dang speaking. Thank
14 you, Mr. Martinez.

15 Respondent, could you please state your
16 appearances for the record.

17 MR. SUAZO: Randy Suazo, Hearing Representative.

18 MR. PARKER: Jason Parker, Chief of Headquarters
19 Operations Bureau.

20 MR. SMITH: Kevin Smith from the CDTFA Legal
21 Department.

22 THE INTERPRETER: I'm sorry that was kind of cut
23 off. Can you please repeat that?

24 MR. SMITH: Kevin Smith from the CDTFA Legal
25 Department.

1 JUDGE DANG: This is Judge Dang speaking. Thank
2 you. The sole issue presented in this case is whether
3 adjustments are warranted to unreported taxable sales.

4 Mr. Martinez, does that sound correct to you?

5 MR. MARTINEZ: That is correct.

6 JUDGE DANG: This is Judge Dang speaking. Thank
7 you.

8 CDTFA, does that sound correct to you as well?

9 MR. SUAZO: This is Randy Suazo. That is
10 correct.

11 JUDGE DANG: This is Judge Dang speaking. Thank
12 you.

13 Prior to the hearing today, the parties were
14 provided with a copy of the exhibit hearing binder for
15 this appeal. This binder contains Appellant's Exhibits 1
16 through 9 and Respondent's Exhibits A through G.

17 Mr. Martinez, do you have any objection to the
18 admission of this binder into evidence today?

19 MR. MARTINEZ: No.

20 JUDGE DANG: Thank you. This is Judge Dang
21 speaking.

22 CDTFA, do you have any objections?

23 MR. SUAZO: This is Randy Suazo. No objections.

24 JUDGE DANG: This is Judge Dang. Thank you.

25 The exhibit binder is now admitted into evidence.

1 (Appellant's Exhibits 1-9 were received
2 in evidence by the Administrative Law Judge.)
3 (Department's Exhibits A-G were received in
4 evidence by the Administrative Law Judge.)

5 At this time I'd like to administrator the oaths,
6 beginning with the Interpreter, Ms. Garzon. If you could
7 please raise your right hand.

8

9

CLARA GARZON,

10 produced as an interpreter, and having been first duly
11 sworn by the Administrative Law Judge, translated from
12 Spanish to English and English to Spanish:

13

14

JUDGE DANG: Thank you.

15

16

And Mr. Martinez, if you could raise your right
hand please.

17

18

JAVIER FRANCISCO MARTINEZ,

19 produced as a witness, and having been first duly sworn by
20 the Administrative Law Judge, was examined and testified
21 as follows:

22

23

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JUDGE DANG: Thank you. This is Judge Dang
speaking once again. Mr. Martinez, if you're ready to
begin with your presentation, you have 20 minutes for

1 presentation and testimony.

2

3

PRESENTATION

4 MR. MARTINEZ: Yes, thank you very much. The
5 situation here in question is the restaurant. It's a
6 fast-food restaurant, and it was registered with the State
7 Board on January 2001. At the beginning there were only
8 two persons preparing the food, and that was only because
9 we had a working cooler available at the location. And we
10 would only prepare -- there was no customers. And we
11 would only prepare food for catering.

12 And then later on we did open the restaurant in
13 2007 to the public. We were selling tacos at \$0.75 and
14 burritos at \$2.99. And, in average, we we're selling food
15 for no more than \$5. In 2013 I had a family problem. My
16 wife separated from me, and it was difficult for me to
17 continue with the business. And based on my emotions and
18 sentimentalism, I was unable to continue with the
19 business.

20 So in 2000 -- in January of 2014, I asked
21 Mr. Isaias Martinez, who is a person -- a trustworthy
22 person to continue managing the restaurant. So in -- on
23 January 15, 2014, this person accepted to work jointly
24 with me. However, on September 23rd, of 2014, the Health
25 Inspector came to the place and noticed that the walk-in

1 cooler was not functioning and that the meals were above
2 the cooling temperature. And so on September 23rd, of
3 2014, the Health Inspector closed the business, and it is
4 shown on Exhibit 1 that my license was suspended.

5 And so after a month we received -- I obtained a
6 permit to reopen on October 7, 2014. I met with a Health
7 Inspector, and so on October 20th, I reopened. And that's
8 shown on Exhibit 2. The problem I had with my wife and
9 the whole problem I had with keeping the restaurant,
10 things just got more difficult to maintain it. So after a
11 while I decided to just separate myself from the whole
12 situation, and I decided to close the restaurant. The
13 last day was October 30th of 2014. And on November 1st of
14 2014, I made a call to the State Board of Equalization to
15 cancel the permit I had.

16 During the month of November, I did owe two
17 salaries to the person who was working with me, Isaias
18 Martinez. And so what I had suggested to him is there was
19 plenty of food that remain in the walk-in cooler and in
20 the restaurant. So I told him that if he wanted to, he
21 could continue throughout that month so that he can gain
22 the salary that I owed him. And so at the beginning of
23 December Mr. Isaias proposed to me that I let him continue
24 operating the restaurant.

25 My apologies. I inadvertently didn't mention

1 that Exhibit 3 reflects the cancellation of the permit as
2 of November 1st. And on November 24th I did receive the
3 last statement from the State Board of Equalization so
4 that I -- so that I paid the amount due. And at the
5 beginning of December Isaias called me so that asking me
6 to leave him the restaurant so that he can continue to
7 operate it. I did agree with him, and on December 10th,
8 we signed a mutual agreement with certain conditions. And
9 that -- it's reflected on Exhibit 5, which is the mutual
10 agreement.

11 The conditions were as follows: Business
12 transfers as is with all the equipment; being a stove, a
13 grill, and a small refrigerator, and a vaporizer, and five
14 tables, tables and pots -- I'm sorry -- pots and plates.
15 I didn't receive any money from Isaias. I Javier agreed
16 that the rent and the credit cards and the utilities were
17 to remain under my name and the bank statements until the
18 whole amount in its totality would be paid off.

19 We agreed on that because Mr. Isaias, when he
20 agreed to keep the restaurant, he said, and he had agreed
21 to pay all the back or due accounts. And the reason why
22 he asked me that everything remained under my name is
23 because back then he didn't have a valid social security
24 number. Isaias and I agreed that I was released from
25 responsibility of the restaurant on October 30th of 2014,

1 and that the sales permit was canceled as of November 1st
2 of 2014.

3 Isaias also agreed to pay or committed to pay all
4 the back rents and any utilities that were outstanding.
5 Isaias agreed to continue to pay the monthly rent directly
6 to the company of Lankershim Plaza. That is the agreement
7 that was signed. Right after we signed the agreement
8 Mr. Isaias made some remodelings inside the place. He
9 changed the menu of the food. He added a menu, a lighted
10 menu on the wall. He added new photos of the food. He
11 added new equipment, new plates. He changed the prices
12 and added the working hours and other minor things that he
13 did. And those immediate changes brought more clientele
14 and, of course, the sales went up.

15 On July 17th I was contacted by an auditor via
16 cell phone, that his name is Mr. Matt. And he told me he
17 was a tax auditor. And he advised me and informed me that
18 my account has been selected to be audited. And he made
19 an appointment to speak with me to talk about the -- an
20 audit from January of 2012 to December of 2014. And that
21 is reflected in Exhibit 6.

22 On May 18, 2015, was the first time that I met
23 with him in person at the Glendale office. And at that
24 point, I gave him documents that I had, like, bank account
25 statements, report of daily sales, reports -- quarterly

1 reports of sales, the personal tax returns. And at that
2 point, I explained to him that the place was no longer
3 mine since October 30th of 2014. But he did insist that
4 he still needed to conduct an audit, and that he needed to
5 present himself at the restaurant to also make an audit of
6 the sales.

7 I explained to him that the sales cannot be
8 compared -- the current sales cannot be compared to the
9 ones back then because they're totally different,
10 primarily, because my first source of income was through
11 catering. And so that's why the actual sales cannot be
12 compared to the sales back then because they're totally
13 different. I gave an example that I used to sell my tacos
14 as \$0.75 and burritos at \$2.99. And for every client that
15 spend money there, they would spend an average of \$5.

16 And so after 7 months and 21 days since the time
17 that I have not been in the restaurant, now the average
18 cost per client is \$15. I also explained to him that the
19 operation hours were five days from Wednesday through
20 Sunday from 11:00 a.m. to 8:00 p.m., and the new owner
21 operates the business seven days a week with more than
22 14 hours a day. So on May 21st, 2015, like I said,
23 7 months, 21 days after, I was not responsible for that
24 business anymore the auditor went to the business.

25 And send us the audit report on November 9, 2015.

1 It was more than a year after -- after the transfer of
2 ownership. Basing his report based on the comparison of
3 the sales -- the current sales from the past sales and
4 based on the percentage of the -- the -- based on the
5 percentage of the sales of the credit cards. I have also
6 noticed that the auditor's report reflect the date of
7 February 28, 2015, which is even four months after I was
8 no longer responsible for the business knowing that as of
9 October 30th, 2014, I was no longer responsible.

10 JUDGE DANG: Mr. Martinez, I do apologize for
11 interrupting you. I'd just like to let you know that your
12 20 minutes is up, but we don't have any further hearings
13 scheduled for today so we can be a little bit more lenient
14 with the time. I'd like to ask, if you can, please try to
15 wrap this up. Focus on your arguments. There's no need
16 to recite many of these facts which we already have in the
17 record.

18 MR. MARTINEZ: In summary to brief, to summarize
19 in brief is the following: So in summary, the audit was
20 based on the actual percentage -- the percentage of actual
21 sales of credit cards not taken into consideration the
22 sales that were brought by catering services. The audit
23 was also conducted based on eight months almost after
24 everything had been remolded and everything. So it's
25 based on the actual sales after the remolding almost eight

1 months later.

2 And that's why I am in disagreement that I am
3 being charged eight months after on the actual sales. So
4 my primary source of income was through catering services,
5 and the present owner does not provide catering. The
6 auditor based -- was basing his audit on
7 February 28, 2015, on present sales, and this date was
8 four months after I transferred the business.

9 Also taking into consideration -- the auditor
10 took into consideration the sales of 365 days. When I had
11 the business, it was only five days a week. Exhibit 9
12 reflects the situation of Isaias Martinez during the time
13 that he and I were together.

14 That is all.

15 JUDGE DANG: This is Judge Dang speaking. Thank
16 you for your presentation, Mr. Martinez.

17 At this time I'd like to ask CDTFA, do you have
18 any questions for Mr. Martinez.

19 MR. SUAZO: This is Randy Suazo. No questions.

20 JUDGE DANG: Ms. Garzon, I'm not sure if you're
21 going to translate?

22 This is Judge Dang speaking. I'd like to turn to
23 my Co-Panelists and see if they have any questions for
24 Mr. Martinez, beginning with Judge Stanley.

25 JUDGE STANLEY: This is Judge Stanley. I don't

1 have any questions at this time.

2 JUDGE DANG: Thank you.

3 Judge Wong, did you have any questions for
4 Mr. Martinez?

5 JUDGE WONG: This is Judge Wong I did have some
6 questions. Thank you.

7 Mr. Martinez, are you related to Isaias Martinez?

8 MR. MARTINEZ: Yes. We are distant cousins.

9 JUDGE WONG: This is Judge Wong. Did you and
10 Mr. Isaias make any arrangements about the seller's
11 permit -- your seller's permit?

12 MR. MARTINEZ: No. We agreed that he was going
13 to take out his own permit.

14 JUDGE WONG: Do you know when he took out his own
15 permit?

16 MR. MARTINEZ: No. I'm not sure. I believe it
17 was some time after March, but I'm not sure.

18 JUDGE WONG: This is Judge Wong. So the
19 restaurant was operating November, December 2014 and
20 January and February 2015?

21 MR. MARTINEZ: Yes. I wasn't here. I had to
22 leave to Mexico, but apparently, he was here operating the
23 restaurant.

24 JUDGE WONG: This is Judge Wong. In your
25 opinion, who is responsible for tax liabilities during

1 that four-month period?

2 MR. MARTINEZ: The new owner.

3 JUDGE WONG: And that would be --

4 MR. MARTINEZ: He committed to assume any cost
5 involved ever since he had the restaurant.

6 JUDGE WONG: This is Judge Wong. Just to clarify
7 the new owner being Mr. Isaias?

8 MR. MARTINEZ: Yes.

9 JUDGE WONG: This is Judge Wong. So you
10 mentioned that you called the Board of Equalization to
11 cancel your seller's permit. When was that again?

12 MR. MARTINEZ: November 1st of 2014.

13 JUDGE WONG: This is Judge Wong. Do you remember
14 who you called?

15 MR. MARTINEZ: I only remember that it was a
16 lady, but I do not recall the name.

17 JUDGE WONG: This is Judge Wong. I had a
18 question about your Exhibit 3. It's titled "Notice of
19 Close Out For Seller's Permit". At the bottom there is a
20 signature and the date November 1st, 2014. Is that your
21 signature?

22 MR. MARTINEZ: Yes, indeed.

23 JUDGE WONG: This is Judge Wong. Had how did you
24 acquire that document and when did you fill it out and did
25 you send it in?

1 MR. MARTINEZ: It was on November 1st of 2014
2 when I called the State Board of Equalization that I spoke
3 to the lady. And the lady indicated to me that I could
4 download the document on that day.

5 JUDGE WONG: And then how did you send it in? Or
6 did you send it in?

7 MR. MARTINEZ: I'm not very sure, but I think it
8 was mailed. Yes, it was mailed.

9 JUDGE WONG: Okay. This is Judge Wong. Now, I
10 had a question about another document in Exhibit D,
11 page 73. This is Judge Wong. It is also a BOE 65, Notice
12 of Closeout for Seller's Permit. At the bottom is a
13 signature, and there's also a date, which is
14 March 15, 2015. Is that your signature, and did you also
15 fill out this document?

16 MR. MARTINEZ: I don't have the document here
17 with me.

18 JUDGE WONG: This is Judge Wong. If it helps
19 exhibit -- oh, yes. If it helps, it's Exhibit D, which is
20 from CDTFA, and it's page 102 of the PDF of the exhibit
21 binder.

22 THE INTERPRETER: Mr. Martinez is asking if
23 you're referring to the "Notice of Close of Sales Permit"?

24 JUDGE WONG: Yes.

25 MR. MARTINEZ: Yes, it's my signature indeed.

1 This document was not -- it is my signature, but this
2 document was not sent or mailed out to the State Board of
3 Equalization because there was an error on the date on
4 line 2 that dates November 20th, 014. And then it was
5 correct to numerical 11/01/2014. So for that, it was not
6 sent back to them.

7 JUDGE DANG: This is Judge Wong. So if you
8 didn't send it to them, how did CDTFA get a copy of it
9 because this is from, I think, their records.

10 MR. MARTINEZ: You have this one on record
11 because I gave it to the auditor, and -- but it's the
12 incorrect or with the incorrect date. This one that I'm
13 showing is the correct one, which is correcting the errors
14 that were made on the first one.

15 JUDGE WONG: Okay. Thank -- sorry. One last
16 question. Same exhibit, Exhibit D, page 111 of the
17 binder; this is a handwritten statement indicating that
18 you closed your business on or about February 2015.

19 MR. MARTINEZ: Thank you for bringing that up. I
20 also wanted to add this, but thank you for bringing up
21 this exhibit.

22 JUDGE WONG: Did you prepare this document? Is
23 that your signature?

24 MR. MARTINEZ: I have never prepared anything
25 handwritten, and it's not my signature. I wasn't aware of

1 this document until I received a copy of it.

2 JUDGE WONG: This is Judge Wong. Do you know who
3 prepared this document?

4 MR. MARTINEZ: I have no idea.

5 JUDGE WONG: Thank you. Oh, sorry. What --
6 promise one last question. Same exhibit, Exhibit D
7 page 98, this is Waiver of Limitation.

8 MR. MARTINEZ: Yeah. I would like to mention
9 again that I have all these documents on my computer but,
10 yes, I do recall the waiver. Yes, this -- I was aware of
11 this when I met with the auditor. It was at the beginning
12 of May, and that was the first time that I had seen this
13 document, the waiver.

14 JUDGE WONG: This is Judge Wong. Is that your
15 signature on the document?

16 MR. MARTINEZ: Yes. I put my name there.

17 JUDGE WONG: Okay. I was just -- this is
18 Judge Wong. I was asking because this signature looked
19 different from the signatures on the close -- on the
20 Notice of Closeouts.

21 MR. MARTINEZ: Yes, it is different because I was
22 asked -- the auditor had asked to put my name down. So I
23 wasn't sure if whether it was a signature or a printed
24 name. So that's why it looks different because I printed
25 my name.

1 JUDGE WONG: This is Judge Wong. Thank you. No
2 further questions at this time.

3 MR. MARTINEZ: Thank you.

4 JUDGE WONG: Judge Dang, I think you're muted.

5 JUDGE DANG: My apologies. My apologies. This
6 is Judge Dang speaking again. As I was reviewing the
7 exhibit binder, it appeared that, based on several of
8 these documents in there, that you may have given three
9 separate dates for when you began operating as a
10 restaurant. I believe your opening brief you had stated
11 it was three years prior to closeout.

12 On the petition for redetermination that you had
13 filed with CDTFA, you stated, I believe, it was
14 October 15th, 2013. And in your latest -- I believe it's
15 the document entitled evidence to support appeal, which
16 you submitted with your exhibits. You stated it was
17 January 1st, 2007. I was wondering if you could maybe
18 clarify those dates for us and maybe just let us know
19 when -- what was the exact date you began operating as a
20 restaurant?

21 MR. MARTINEZ: It was January 1st of 2007. So
22 the October 15th, 2013, date is an error because I was
23 confused, and that was during the time that I was going
24 through a separation with my wife. So that date is
25 erroneous.

1 JUDGE DANG: Thank you. I'm sorry. This is
2 Judge Dang speaking. Thank you, Mr. Martinez. I'm also
3 curious you mentioned a number of changes in your
4 testimony that Isaias Martinez had made to the business
5 after he took over. One of them was that he had increased
6 the prices and expanded the menu items that were
7 available.

8 My question to you is, how exactly would these
9 changes impact the credit card sales ratio? In other
10 words, why would these changes compel any of the customers
11 to pay with cash rather than credit. It would seem to me
12 that if you were to increase the prices, that would
13 actually increase the ratio and not decrease it.

14 MR. MARTINEZ: The increase of the percentage of
15 credit cards may reflect on the fact that when I had my
16 business it was primarily catering. Then I would always
17 get paid in advance for the catering service with a credit
18 card.

19 JUDGE DANG: This is Judge Dang speaking. Thank
20 you. I have one final question for you, Mr. Martinez.
21 Were you aware -- I believe in your testimony you
22 mentioned that when you transferred the business to Isaias
23 Martinez he didn't have a social security number, so he
24 couldn't register a seller's permit.

25 MR. MARTINEZ: No, I didn't say that he

1 couldn't -- that he wasn't able to obtain a sales permit
2 because he didn't have a social security. What I did say
3 was that he wasn't able to transfer the utilities, the
4 rent contract, the bank accounts, the credit cards because
5 they were all in my name, and he wasn't able to trans --
6 we weren't able to transfer that to his name because he
7 didn't have a social security.

8 JUDGE DANG: This is Judge Dang speaking. Did
9 you allow or were you aware that Mr. -- I believe
10 Mr. Isaias Martinez had been using your seller's permit
11 between the period of October -- the end of October
12 through at least -- at least through the end of February?

13 MR. MARTINEZ: No, I wasn't aware of that because
14 the agreement was that the permit was going to be canceled
15 as of November 1st of 2014.

16 JUDGE DANG: This is Judge Dang speaking. Thank
17 you, Mr. Martinez. I don't have any further questions.

18 At this time I'd like to turn it over to CDTFA
19 for their presentation.

20 I'm just going to note, Mr. Martinez, for your
21 benefit, I'm not swearing in the Department because
22 they're just making arguments. They are not presenting
23 any evidentiary testimony today.

24 CDTFA, if you're ready to begin, you have
25 20 minutes.

1 PRESENTATION

2 MR. SUAZO: Thank you. This is Randy Suazo.

3 The Appellant operated a Mexican restaurant named
4 El Taco Loco Restaurant, located in North Hollywood area
5 of Los Angeles. The start date of the sole appropriate is
6 January 2nd, 2001. The seller's permit was closed out as
7 of February 28th, 2015, as a business was transferred to a
8 family member; Exhibit F, page 112.

9 During the audit period, the establishment had
10 seating available for customers. Hours of operation were
11 Monday through Friday, 11:00 a.m. to 9:00 p.m., and
12 Saturday, 11:00 a.m. to 12:00 a.m. The audit period is
13 from April 1st, 2012, through February 28th, 2015. No
14 prior audit was conducted on the business. Federal income
15 tax returns for 2012 and 2013, bank statements for 2012
16 through 2014, and 1099-K merchant credit card statements
17 for 2011, 2012, and 2013 were the only financial records
18 provided.

19 INTERPRETER: I'm sorry?

20 MR. SUAZO: Profit and loss statements, general
21 subsidiary ledgers, purchase invoices, cash register
22 tapes, Z-tape summaries, and guest checks were not
23 provided. Review of the income tax return show the
24 following:

25 Total sales per the federal income returns for

1 2012 was \$53,000 and for 2013, \$47,000. The two years of
2 sales amounted to only \$100,000. For any expense claimed
3 on the federal income taxes returns was \$26,000 each year.
4 The rent expense totaled more than 50 percent of recorded
5 sales. In our experience for this industry, rent expense
6 is expected to range between 6 to 15 percent of total
7 sales. Federal income taxes returns also showed zero
8 wages paid for each of the two years. The net income for
9 2012 was \$432 and for 2013 was \$383.

10 The Appellant had already been operating the
11 business for 12 to 13 years. Claimed cost of goods sold
12 per the federal income taxes returns could not be
13 verified, as purchase invoices were not provided. Federal
14 and income total -- total sales for federal income taxes
15 returns were \$10,000 and \$9,000 greater than total sales
16 recorded on the sales and use tax returns for 2012 and
17 2013. No explanation was given for the differences;
18 Exhibit D, page 64.

19 Review of the transcript of the Appellant's sales
20 and use tax returns revealed average daily sales of \$124
21 from April 1st, 2012, through December 31, 2014. The
22 Appellant had mentioned that he would purchase the
23 ingredients he needed and paid his workers cash from sales
24 made. He would then report the remaining cash as sales.
25 He reported some of the amounts he paid to his workers as

1 nontaxable labor on the sales and use tax returns. Again,
2 the Appellant recorded zero wages on federal income taxes
3 returns for both years.

4 Based on the information, auditor disallowed
5 exemptions claimed. Bank deposits were scheduled, cash
6 and credit card transactions were segregated, and results
7 show that credit card sales accounted for 75 percent of
8 deposits applicable to sales. 1099-K reports were
9 obtained for periods 2011 to 2013. 2011 credit card
10 transaction, which are prior to the audit period was
11 \$31,000. 2012 credit card transactions were \$33,000 and
12 for 2013, \$31,000. So the transactions were constant for
13 the periods reviewed; Exhibit D, page 60.

14 Two observation tests were conducted with
15 cooperation from the restaurant owner on Thursday,
16 May 21, 2015, from 9:00 a.m. to 10:00 p.m., and Tuesday,
17 June 9, 2015, from 9:00 a.m. to 10:00 p.m. The credit
18 card sales averaged 30.36 percent for the two days
19 combined. One day was 28.9 percent, and the second day
20 was 32.7 percent. Average sale for both days ended up
21 being \$7.72. Daily sale for two days test average \$474.
22 A \$351 difference from the \$124 average for the periods
23 from 2Q 2012 through December 31st, 2014. The difference
24 showed a 282 percentage of error.

25 The credit card ratio of 30.36 percent was

1 applied to tax credit card transactions per 1099-K reports
2 for 2012 and 2013 to project audited taxable sales. The
3 audited taxable sales were then compared to reported
4 sales, and percentage of error of 275.27 percent for 2012
5 and 246.85 percent for 2013 were computed. The overall
6 percentage of error was 261.1 percent; Exhibit D, page 50.

7 The audited sales for the period from
8 April 1st, 2012, through December 31st, 2014, is \$291,612.
9 This translates the daily average sales of \$343. The site
10 test, again, average \$474. The 2012 -- for 2012, the
11 275.2 percent error rate was applied to reported sales and
12 for 2000 -- let me start this again.

13 For 2012 the 275.27 percent error rate was
14 applied to reported sales and for the periods from first
15 quarter 2013 through fourth quarter 2014. A 246.85
16 percent error rate was applied. The Appellant did not
17 report any sales from January 1st, 2015, through the
18 closeout of February 28, 2015. For this period the
19 quarterly average taxable measure was computed and
20 multiplied by two-thirds to arrive at additional taxable
21 sales of \$17,000 -- over \$17,000; Exhibit D, page 49.

22 In the Appellant's opening brief, he stated that
23 three years prior to close out the business shifted from a
24 catering operation to a fast-food operation, and no
25 customer seating was available. No records such as

1 contracts, agreements, billings for customer payments have
2 ever been provided to show that the Appellant did catering
3 services. However, Yelp reviews, which is Exhibit E,
4 pages 88 to 111, show the Appellant had been serving
5 Mexican-style fast-food to customers since 2008, which is
6 well before the audit period began.

7 The Department's records also show that the
8 Department's State Compliance and Outreach Program known
9 as the SCOP Unit, visited the establishment on
10 May 23rd, 2013; Exhibit F, page 114. The Department's
11 records indicated that the fast-food Mexican restaurant
12 had 32 seats, and hours of operation were from 11:00 a.m.
13 to 9:00 p.m. Monday through Friday, and Saturday from
14 11:00 a.m. to midnight. The Appellant also claims the
15 close of business in October of 2014, however, a Yelp
16 review shows that the restaurant was still in business on
17 November 7, 2014; Exhibit E page 96.

18 The Appellant gave a handwritten statement,
19 Exhibit D, page 82, stating that the business was closed
20 on or about February 2015, a transfer to Isaias Martinez.
21 The document was signed by Francisco Javier Martinez on
22 June 18, 2015. The document was provided to the
23 Department from the owner on June 26, 2015, per
24 document -- per Department records; Exhibit F, page 113.

25 The taxpayer is now claiming that he never saw

1 the document. The document was included in the decision
2 dated 6/27/2019, page 24. And it was also included in the
3 CDTFA report dated September 10, 2019. The auditor did
4 visit the restaurant in January 2015; Exhibit D, page 49.

5 JUDGE DANG: My apologies. This is Judge Dang
6 speaking. Oh, thank you, Mr. Martinez. I believe you
7 needed to mute.

8 Please continue.

9 MR. SUAZO: It's okay. The auditor visited the
10 restaurant in January of 2015; Exhibit D, page 49, and
11 purchased a meal at the restaurant. A receipt of the
12 purchase is dated January 9, 2015. And the receipt is
13 included in the exhibits packet; Exhibit D, page 87.
14 1099-K report show that sales transpired in November and
15 December of 2014, along with January and February of 2015;
16 Exhibit G, pages 115 and 120.

17 There is a noticeable increase in monthly
18 transactions occurring in March 2015 when the new owner
19 takes over and that increase then continues for the rest
20 of 2015. In addition, the auditor was notified -- was not
21 notified until April 17, 2015, that a new owner was
22 operating the restaurant. The Appellant did not mention
23 this in prior conversations with the auditor that were
24 held on January 19th, 2015, February 26, 2015,
25 March 17, 2015, March 26, 2015, and April 8, 2015. If the

1 Appellant had ceased operations in November 2014, they
2 would have notified the Department.

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

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

7 At this time I'd like to ask my Co-Panelists if
8 they have any questions for CDTFA, beginning with
9 Judge Stanley.

10 JUDGE STANLEY: This is Judge Stanley. I have no
11 questions.

12 JUDGE DANG: Judge Wong, did you have any
13 questions for respondent?

14 JUDGE WONG: This is Judge Wong. CDTFA was --
15 sorry. I have to rephrase. Did CDTFA -- oh, I guess
16 I'll -- let me refer to the exhibits. So Exhibit D,
17 page 80 -- sorry. It's -- the Bates stamp is number 80.
18 In the binder it's page 109. Okay. So this looks like a
19 printout, and at the top written in it says, "Seller
20 Info", and it looks like it's dated June 16/20/15; is that
21 correct?

22 MR. SUAZO: Yes.

23 JUDGE WONG: This is Judge Wong. And then on the
24 left -- upper left-hand side there's a -- it says, "C/O
25 Date 11/01/14." Does that mean closeout date

1 November 1st, 2014?

2 MR. SUAZO: But if you look at --

3 JUDGE WONG: That's a yes or no question. Sorry.

4 MR. SUAZO: That's a -- the close out date shown
5 on there is 11 -- yes.

6 JUDGE WONG: Okay. So as of June 16th, 2015,
7 CDTFA was under the impression that the closeout date was
8 November 1st, 2014; is that right?

9 MR. SUAZO: Yes. But if you look at page 113?

10 JUDGE WONG: Right at the handwritten -- yeah.

11 MR. SUAZO: No, no, no. Page -- Bates stamp 113.

12 JUDGE WONG: Okay. Yes.

13 MR. SUAZO: If you go to June 16, 2015, there's a
14 notation that it was updated afterwards. They changed the
15 closeout date to reflect what was told to them in the
16 handwritten one.

17 JUDGE WONG: Okay.

18 MR. SUAZO: So he -- it might have got put in
19 there, but then it was later corrected to show the true
20 closeout date, which is end of February 2015.

21 JUDGE WONG: Let's pause for translation for
22 Mr. Martinez.

23 THE INTERPRETER: Thank you.

24 JUDGE WONG: Okay. I had no -- so this is
25 Judge Wong. So based on this handwritten statement, CDTFA

1 believes the actual closeout date was at the end of
2 February 2015; is that right?

3 MR. SUAZO: Yes. With that along with the 1099-K
4 information, which is in Exhibit G.

5 THE INTERPRETER: What was the exhibit? I'm
6 sorry, Mr. Suazo?

7 MR. SUAZO: Exhibit G. You see the \$3,000 and the
8 \$3,000 and then all of a sudden it bumps up in March to
9 \$4,000-something. So you see a big jump when the new
10 owner would have taken over, I think, from the credit
11 cards.

12 JUDGE WONG: This is Judge Wong. I had a
13 question about -- then this was in the Department's
14 September 10, 2019, response during briefing; Exhibit B.

15 MR. SUAZO: Okay.

16 JUDGE WONG: So it's entitled "1099-K Data," and
17 it reflects a payee, Francisco Javier Martinez. And it's
18 showing -- so it shows payee receiving credit card
19 deposits through the end of 2017; is that correct?

20 MR. SUAZO: Yes.

21 JUDGE WONG: So for 2014 isn't there also a bump
22 from October of 2014 to November 2014? It looks like it
23 goes --

24 MR. SUAZO: October 2014 is only \$1,500. Then it
25 goes \$35, \$36, \$35, \$36, and then \$36, \$36. But then you

1 see it going to \$47 to \$45 to \$43. It drops down to \$36
2 way into June, but then it comes back up to almost \$5,000
3 in July, August, and September continues in the
4 mid-\$4,000s. But it's a noticeable jump from -- I mean,
5 because in 2014 it increased from the two prior years but
6 not that significant of an amount.

7 MR. PARKER: Mr. Wong, this is Jason Parker. I
8 would like to add something.

9 JUDGE WONG: This is Judge Wong. Go ahead.

10 MR. PARKER: You asked about October the amounts
11 being lower. That was the period where the taxpayer had
12 the health inspection in late September. And so the
13 September credit card is lower, and it appears the October
14 credit card is lower probably because he was closed for a
15 certain period.

16 MR. SUAZO: And if you look in the mid-2014s
17 there's about eight months that it's running over \$3,600.
18 But then you notice a sizable jump starting in March, and
19 it continues.

20 JUDGE WONG: This is Judge Wong. Got it. Yeah,
21 I was just wondering because you had mentioned the jump in
22 credit card sales from February to March. And then there
23 was another jump from October to November. I think both
24 you, Mr. Suazo and Mr. Parker, answered the question I was
25 going to ask. Thank you.

1 This is Judge Wong. No further questions at this
2 time.

3 JUDGE DANG: This is Judge Dang. Mr. Martinez,
4 if you're ready, you would have to unmute yourself, but
5 you would have five minutes for your rebuttal.

6

7

CLOSING STATEMENT

8 MR. MARTINEZ: So as I mentioned -- and before I
9 forget, I'd like to refer to Exhibit G that you're talking
10 about the increase of amounts of November and December.
11 November I was still working with Mr. Isaias. But as of
12 December and based on the contract and the agreement that
13 he and I signed, that he would assume all responsibility
14 of the credit cards, the bank accounts, and any of the
15 rental payments of any cost involved of the restaurant.

16 So I just wanted to make that clear before I
17 forget about exhibit -- so I'm not exactly sure, you know,
18 why he didn't make the changes in terms of the credit
19 cards and the bank accounts and all of that. But based on
20 the 1099 form, you can see -- I believe it's 2016 -- that
21 I should not have any financial responsibility over that
22 anymore.

23 So based on the personal tax returns that you
24 were mentioning of the differences of \$10,000 or more from
25 2013 to 2014, that I explained that in Exhibit 1, page 1.

1 Allow me -- I'm looking for the actual page. It's
2 Exhibit 1, page 17. There's a note on the upper hand of
3 the form saying that the difference of what I reported in
4 that year, it's the amount I received. I don't know if
5 you want to make reference to it or look at it or read it.
6 It's page 17, Exhibit 1 from the exhibits that I received.

7 The difference in sales -- the note says, and it
8 shows the difference in sales from my personal taxes.
9 That is when I was being contracted. Those amounts
10 reflect the contracts that I had when I was doing catering
11 services of the orders that I received without, you know,
12 putting -- indicating any food or anything like that, just
13 the contact information of the people who contacted me for
14 catering services. Those payments I added then to my
15 personal income tax. And those payments are also
16 reflected in the bank statements.

17 Another -- I'd like to call your attention to
18 Exhibit E, page 8. I just want to rectify that the
19 restaurant has been in operation in 2007. I don't know
20 where the information from Yelp was obtained that it was
21 from 2008. Exhibit F, page 114, the city enforces us to
22 put a sign in the restaurant that maximum capacity is 32
23 people. That doesn't mean that it's 32 seated like the
24 attorney -- back then I had only five tables.

25 As to the handwritten note on page 82, I've

1 already declared that I did not hand wrote that letter and
2 I don't know who wrote that note. As to Exhibit E,
3 page 87, the sales receipt, a notice of error. It's
4 referring to the rent receipts. And as I mentioned
5 already, it shows that it was there until 2015. But like
6 I mentioned already, Mr. Isaias had already made some
7 remodeling and increased prices and made some changes. So
8 those receipts are not part of when I was working there.

9 And also, I want to rectify on page 120 that in
10 the upper corner it said the closing date was June, where
11 the closing date is actual November 1st of 2014. And
12 again, I just want to reiterate that the attorneys'
13 information on the numbers is based on 360 days of
14 operation, when I was only operating 260 days. And based
15 on the 1099-K form, you can clearly see the increase. The
16 increase in sales was from 2014 to 2015; which means that
17 there is a significant increase in sales from that time,
18 but which is different from when I had the business. So
19 there really isn't any comparison to be made.

20 And lastly, the attorney mentioned that there was
21 a significant increase of interest of 30 percent sales in
22 credit cards and even mentioned that there was a 72 to 75
23 increase in sales of credit cards. But the 70, 75
24 percentage includes the sales of credit cards and the
25 catering service. And the sales do not include the

1 catering service, only the sales made from the
2 restaurants.

3 That's why you're not taking into the
4 consideration the sales I had when there was catering
5 services, which is a lot greater than the increase of the
6 credit card -- the increase of the credit cards. And to
7 close, all the transactions and all the adjustments are
8 based on current sales and not on the sales before the
9 actual transfer.

10 I'm open to any questions.

11 JUDGE DANG: This is Judge Dang speaking. Thank
12 you, Mr. Martinez. If I can please ask you to mute your
13 mic once again. Thank you.

14 At this time I'd like to ask my Panelists before
15 we conclude if they have any final questions for either of
16 the parties. Judge Stanley?

17 JUDGE STANLEY: This is Judge Stanley. I don't
18 have any questions.

19 JUDGE DANG: Thank you.

20 And Judge Wong?

21 JUDGE WONG: This is Judge Wong. I just had a
22 couple of more questions for Mr. Martinez. This is
23 Judge Wong. I just -- regarding the handwritten
24 statements -- this was on page 111 of the binder, Bates
25 stamp page 82. This is Judge Wong. There are two phone

1 numbers on the right -- middle right side of the page.
2 This is Judge Wong. Mr. Martinez, do you recognize either
3 of these two phone numbers?

4 THE INTERPRETER: Okay. He's looking for the
5 page.

6 MR. MARTINEZ: The first number -- the first
7 number I do not recognize, but if you allow me, I can look
8 at my cell phone to look for the second number. The
9 correction. The first number I don't recognize. The
10 second number is my personal cell phone number.

11 JUDGE WONG: This is Judge Wong. I would
12 recommend not reading this over -- we're being streamed by
13 YouTube, so I would not read the phone number.

14 THE INTERPRETER: So to reiterate, the first
15 number is unknown to him. The second number is his
16 personal cell phone number. He's not sure, but it seems
17 like that number is Mr. Martinez' number -- Isaias
18 Martinez.

19 JUDGE WONG: This is Judge Wong. Okay. So the
20 first number is Mr. Isaias' number, and the second number
21 is your number?

22 MR. MARTINEZ: The first number I cannot confirm
23 that it is Isaias', but I can look for it my cell phone
24 number -- in my cell phone. But the second phone number
25 is my cell phone number.

1 JUDGE WONG: This is Judge Wong. Just
2 reference -- refer you to Exhibit 9, which is a witness
3 declaration. At the top left it says, "Isaias Martinez
4 Escobar," and then his telephone is listed there.

5 MR. MARTINEZ: Yes, it is effective. It's the
6 same number. So I confirm that it is Isaias' number.

7 JUDGE WONG: So this is Judge Wong. So in this
8 handwritten statement, which is purportedly signed by
9 someone claiming to be Francisco Javier Martinez, why
10 would they list Mr. Isaias' number along with your phone
11 number?

12 MR. MARTINEZ: That's the same question I ask
13 myself. So whoever wrote that statement is somebody --
14 obviously, somebody that knows information.

15 JUDGE WONG: This is Judge Wong. Last question.
16 So the date of this handwritten statement is June
17 18th, 2015. Were you in the United States on that date?

18 MR. MARTINEZ: I left to Mexico after I spoke
19 with the auditor, but I don't recall that date. It seems
20 that I was here on that date. If you -- I call your
21 attention to Exhibit 5, page 25, which is a Petition For
22 Redetermination. If you look at my handwriting there, it
23 does not compare -- excuse me -- to the handwriting of the
24 handwritten note. I had no knowledge that that note
25 existed until it was included in the exhibit.

1 JUDGE WONG: This is Judge Wong. Sorry one last
2 question in reference to page -- Exhibit D, page 96. This
3 document is entitled, "Assignment Activity History." It's
4 a BOE-414Z. For the entry of June 9th, 2015, it states,
5 "Auditor received an e-mail from taxpayer Francisco
6 Martinez saying that he was back in Mexico and would not
7 be back until the beginning of next month."

8 THE INTERPRETER: What was the returning date?
9 I'm sorry.

10 JUDGE WONG: Until the beginning of -- he would
11 not be back until the beginning of next month. This is
12 Judge Wong. Does this refresh your recollection as to
13 your whereabouts during June of 2015?

14 MR. MARTINEZ: I was in Mexico.

15 JUDGE WONG: This is Judge Wong --

16 MR. MARTINEZ: I repeat, after I spoke with the
17 auditor I had to go to Mexico.

18 JUDGE WONG: This is Judge Wong. I have no
19 further questions at this time.

20 JUDGE DANG: This is Judge Dang speaking. I'd
21 like to thank everyone at this time for their
22 presentations today.

23 The record is now closed, and the matter is
24 submitted for decision. The Panel will meet and
25 deliberate upon the arguments and the evidence that was

1 presented to us today. And we will endeavor to send you
2 our written opinion within 100 days from today's date.

3 Once, again, thank you everyone, and this hearing
4 is now adjourned.

5 (Proceedings adjourned at 3:15 p.m.)

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I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 1st day of February, 2021.

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HEARING REPORTER