

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
M. BECERRA, ) OTA NO. 18113991  
 )  
 APPELLANT. )  
 )  
 )

## TRANSCRIPT OF VIRTUAL PROCEEDINGS

Tuesday, February 23, 2021

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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APPELLANT. )  
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Transcript of Virtual Proceedings,  
commencing at 1:23 p.m. and concluding  
at 2:27 p.m. on Tuesday, February 23, 2021,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

1 APPEARANCES:  
2  
3 Panel Lead: ALJ ANDREW WONG  
4  
5 Panel Members: ALJ DANIEL CHO  
ALJ MIKE LE  
6 For the Appellant: M. BECERRA  
FLORA ESTRADA  
7  
8 For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
9 FEE ADMINISTRATION  
10 RAVINDER SHARMA  
11 JASON PARKER  
CHAD BACCHUS  
12 Interpreter: LAURA JOOSEE  
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I N D E X

E X H I B I T S

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1 State of California; Tuesday, February 23, 2021

2 1:23 p.m.

3

4 JUDGE WONG: Okay. We're now going on the  
5 record.

6 We're opening the record in the Appeal of Becerra  
7 before the Office of Tax Appeals. This is OTA Case  
8 Number 18113991. This is Judge Wong today is Tuesday,  
9 February 23, 2021. This is Judge Wong. The time is  
10 1:23 p.m., and we are holding this hearing by video  
11 conference.

12 I would like to first swear in the interpreter.  
13 Please raise your right hand.

14

15 LAURA JOOSEE,  
16 produced as an interpreter, and having been first duly  
17 sworn by the Administrative Law Judge, translated from  
18 Spanish to English and English to Spanish.

19

20 JUDGE WONG: Thank you. I'm lead Administrative  
21 Law Judge Andrew Wong, and with me today are  
22 Judges Daniel Cho and Mike Le. This is Judge Wong. We  
23 are the panel hearing and deciding this case. This is  
24 Judge Wong. Individuals representing taxpayer please  
25 identify yourselves and spell your names for the record.

1 MS. ESTRADA: Should I spell Monico Becerra's  
2 name?

3 JUDGE WONG: This is Judge Wong. Yes, please.

4 MS. ESTRADA: M-O-N-I-C-O, space, B-E-C-E-R-R-A.

5 JUDGE WONG: This is Judge Wong. Could you also  
6 identify yourself, Ms. Estrada.

7 MS. ESTRADA: F-L-O-R-A -- sorry. Flora Estrada,  
8 F-L-O-R-A, space, E-S-T-R-A, D for David, A.

9 JUDGE WONG: Thank you. This Judge Wong again.  
10 Individuals representing the California Department of Tax  
11 and Fee Administration or CDTFA, please identify  
12 yourselves and spell your names for the record.

13 MR. SHARMA: Ravinder Sharma, spelled  
14 R-A-V-I-N-D-E-R, last name Sharma, S-H-A-R-M-A.

15 MR. PARKER: Jason Parker, J-A-S-O-N P-A-R-K-E-R.

16 MR. BACCHUS: Chad Bacchus, C-H-A-D  
17 B-A-C-C-H-U-S.

18 JUDGE WONG: Thank you. This is Judge Wong. The  
19 first issue we're considering today is whether a reduction  
20 to either unreported taxable sales or disallowed claim  
21 deductions is warranted. This is Judge Wong. The second  
22 issue is whether relief of the failure to file penalty is  
23 warranted.

24 Is that correct, Mr. Becerra?

25 MR. BECERRA: Yes.

1 MS. ESTRADA: Yes.

2 JUDGE WONG: This is Judge Wong. Is that  
3 correct, CDTFA?

4 MR. SHARMA: That is correct.

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

6 Appellant is not submitting any exhibits as  
7 evidence. CDTFA has identified and submitted proposed  
8 Exhibits A through D as evidence. CDTFA has no other  
9 exhibits to offer as evidence. Appellant had no  
10 objections to those exhibits. Therefore, CDTFA's  
11 Exhibits A through D will be admitted into the record as  
12 evidence.

13 (Department's Exhibits A-D were received in  
14 evidence by the Administrative Law Judge.)

15 Appellant has one witness, Ms. Flora Estrada.  
16 CDTFA has no witnesses.

17 Okay. I will now swear in Ms. Estrada as a  
18 witness. Could you please raise your right hand.

19 We've lost Mr. Sharma. Oh, there he is.

20 Mr. Sharma, can you hear us? Mr. Sharma can you hear us?

21 MR. BACCHUS: Mr. Wong, this is Chad Bacchus.  
22 We're going to have Mr. Sharma call in because of his poor  
23 connection.

24 JUDGE WONG: Okay. Let's go off the record and  
25 take a brief recess of, let's say, five minutes.

1 (There is a pause in the proceedings.)

2 JUDGE WONG: This is Judge Wong. Let's go back  
3 on the record.

4 This Judge Wong. I was about to swear in the  
5 witness.

6 Ms. Estrada, could you please raise your right  
7 hand.

8

9 FLORA ESTRADA,

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

13

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

15 Mr. Becerra, please proceed with your  
16 presentation.

17 This is Judge Wong. It looks like we've lost  
18 Mr. Becerra. Let's go off the record one more --  
19 Mr. Becerra, this is Judge Wong. Mr. Becerra, can you  
20 hear me?

21 MR. BECERRA: Yes. Yes.

22 JUDGE WONG: Mr. Becerra, will you also be  
23 testifying today?

24 MR. BECERRA: Yes.

25 JUDGE WONG: Okay. I will also swear you in.



1 This is Judge Wong.

2 M. BECERRA,

3 produced as a witness, and having been first duly sworn by  
4 the Administrative Law Judge, was examined and testified  
5 as follows:

6

7 JUDGE WONG: This is Judge Wong. Thank you. You  
8 have 15 minutes for your opening presentation.

9 MS. ESTRADA: Are you ready?

10 MR. BECERRA: Yes.

11 JUDGE WONG: This is Judge Wong. Mr. Becerra,  
12 you can start talking.

13

14 PRESENTATION

15 MS. ESTRADA: Look, unfortunately, I think what  
16 happened is that fate put us here. They're charging  
17 \$24,000. \$24,000 that I consider that we don't owe  
18 because we've never done the accounting ourselves because  
19 we have an accountant, and we bring all of our papers to  
20 that accountant.

21 JUDGE WONG: This is Judge Wong. Ms. Estrada,  
22 could you pause periodically for interpretation. And also  
23 could you state your name before you speak for the  
24 transcript.

25 MS. ESTRADA: Okay. As I said, unfortunately,

1     fate has put us here. We're getting charged \$24,000. I  
2     don't think that we owe this because we've always given  
3     everything to the accountant, and that person does the  
4     accounting. The accountant was the one who did it. We  
5     never did it. The only thing we did was work, and he  
6     always paid our taxes through the accountant.

7             And then all of a sudden someone came along. I  
8     remember her name was Juanita, and she told us there was  
9     going be to be an audit. And we didn't understand what  
10    audit, if we always paid our taxes through the accountant.  
11    Now, they're telling us that we owe \$24,000. And it's not  
12    that I'm refusing to pay that, but I believe that as a  
13    citizen we should be able to request that amount be  
14    reduced.

15            Because for me, I'm going to have to work for --  
16    we're going -- I'm going to have to work for two years to  
17    be able to put that kind of money together. So I believe  
18    I don't owe that because as I said, I do my taxes through  
19    the accountant.

20            JUDGE WONG: This is Judge Wong. I think we've  
21    lost Appellants.

22            This is Judge Wong. Ms. Estrada, Mr. Becerra,  
23    can you hear me?

24            MS. ESTRADA: Yes.

25            JUDGE WONG: This is Judge Wong. Sorry. We lost

1       you there for a minute. Please continue.

2               MS. ESTRADA: So I want to ask you to reconsider  
3       that debt.

4               JUDGE WONG: This is Judge Wong. Do you have  
5       anything else?

6               MS. ESTRADA: I would like you to ask as a  
7       petition to reconsider that debt so that -- and reduce it,  
8       so that I can be able to pay it.

9               JUDGE WONG: This is Judge Wong. Do you have  
10       anything else?

11              MS. ESTRADA: That's all.

12              JUDGE WONG: This is Judge Wong. I will open it  
13       up to CDTFA for any cross-examination.

14              MR. BACCHUS: This is Chad Bacchus with CDTFA.  
15       We have no questions.

16              JUDGE WONG: This is Judge Wong. I will now turn  
17       to my co-panelists for questions, starting with Judge Le.

18              JUDGE LE: This is Judge Le. I have no questions  
19       at this time.

20              JUDGE WONG: This is Judge Wong. Judge Cho, do  
21       you have any questions for Appellant?

22              JUDGE CHO: This is Judge Cho. I don't have any  
23       questions at this time. Thank you.

24              JUDGE WONG: This is Judge Wong. I also do not  
25       have any questions for Appellant. So I will turn it over

1 to CDTFA for their presentation.

2 This is Judge Wong. You have 20 minutes.

3

4 PRESENTATION

5 MR. SHARMA: Thank you, Mr. Wong. This is

6 Ravinder Sharma.

7 Appellant is sole proprietorship, operated a  
8 Mexican restaurant in Spring Valley selling beer, wine,  
9 and liquor.

10 THE INTERPRETER: Mr. Sharma, could you repeat  
11 where the restaurant is located.

12 MR. SHARMA: Okay. Appellant is sole  
13 proprietorship, operated a Mexican restaurant in Spring  
14 Valley.

15 THE INTERPRETER: Supreme Valley?

16 MR. SHARMA: Spring -- Spring Valley.

17 THE INTERPRETER: Apologies. I'm not --

18 MR. SHARMA: S-P-R-I-N-G, Spring. With special  
19 events for dine-in and take out. During the audit period,  
20 Appellant's business was open seven days a week.  
21 Appellant's sales are subject to 80/80 rule.

22 THE INTERPRETER: Sales are subject to what?  
23 Sorry, Mr. Sharma.

24 MR. SHARMA: 80/80 rule.

25 THE INTERPRETER: 80/80 rule?

1           MR. SHARMA: Yeah. Eight-zero, eight-zero.

2           THE INTERPRETER: Thank you.

3           MR. SHARMA: Pursuant to Regulation 1603, so all

4 sales are subject to tax. The Department performed an

5 audit examination for the period April 1, 2013, through

6 March 31, 2016. For the audit period, Appellant reported

7 total sales of almost \$379,000 and claimed total

8 deductions of just over \$101,000, resulting in reported

9 taxable sales of more than \$277,000. Appellant did not

10 file sales and use tax returns for fourth quarter '15 and

11 first quarter '16.

12           THE INTERPRETER: Could you repeat that,

13 Mr. Sharma?

14           MR. SHARMA: For fourth quarter '15 and first

15 quarter '16; Exhibit A, pages 17 and 18.

16           Appellant maintains a single-entry set of books

17 and records.

18           THE INTERPRETER: Could you repeat that,

19 Mr. Sharma?

20           MR. SHARMA: Appellant maintains a single-entry

21 set of books and records. Appellant provided credit card

22 statements, some bank statements, cash register Z-tapes --

23           THE INTERPRETER: Cash register Z-tapes?

24           MR. SHARMA: Yeah. Yes.

25           -- paid bills --

1 THE INTERPRETER: Could you say that again?

2 MR. SHARMA: Paid bills.

3 -- and reconstructed sales reports --

4 THE INTERPRETER: Could you say that again?

5 MR. SHARMA: -- reconstructed sales reports for

6 all periods except first quarter '15, fourth quarter '15,

7 and first quarter '16. No federal income tax returns were

8 available for the audit period.

9 THE INTERPRETER: Could you repeat that,

10 Mr. Sharma?

11 MR. SHARMA: No federal income tax returns were

12 available for the audit period. Our reporting after this,

13 Appellant provides cash register tapes and purchase

14 invoices to an outside accountant.

15 THE INTERPRETER: Could you repeat that,

16 Mr. Sharma?

17 MR. SHARMA: -- and purchase invoices to an

18 outside accountant, which are used to prepare and file

19 sales and use tax returns. During the audit period, the

20 Department noted that exempt food sales and sales for

21 resale --

22 THE INTERPRETER: Could you repeat that,

23 Mr. Sharma?

24 MR. SHARMA: -- exempt food sales --

25 THE INTERPRETER: Food sales?

1           MR. SHARMA: Yes, exempt food sales and sales for  
2 resale were rung up in error --

3           THE INTERPRETER: Could you repeat that?

4           MR. SHARMA: -- were rung up in error.

5           THE INTERPRETER: Were rung up in error?

6           MR. SHARMA: Yeah, due to a cash register  
7 programming error. These sales were then claimed as  
8 exempt on Appellant's sales and use tax returns by the  
9 outside accountant.

10           Because these sales were subject to sales tax,  
11 the Department disallowed claimed deductions for food  
12 sales of \$94,622; Exhibit A, page 27. And sales for  
13 resales are \$6,410 for second quarter '15 on an actual  
14 basis; Exhibit A, page 26.

15           The Department examined various sales reports  
16 provided by Appellant. And after necessary  
17 verification --

18           THE INTERPRETER: Could you repeat that,  
19 Mr. Sharma?

20           MR. SHARMA: And after necessary verifications,  
21 accepted these sales records as correct and reasonable.  
22 Based on these sales reports, audited total sale was  
23 determined to be around \$578,000 for the audit period;  
24 Exhibit A, page 33. Appellant reported total sales of  
25 \$379,000, resulting into an understatement of almost

1       \$200,000 for the audit period; Exhibit A, page 25. When  
2       combined with disallowed claimed exempt sales --

3               THE INTERPRETER: Can you repeat that,  
4       Mr. Sharma?

5               MR. SHARMA: Sure. When combined with disallowed  
6       claimed exempt sales --

7               THE INTERPRETER: Disallowed exempt sales?

8               MR. SHARMA: Yeah, disallowed claimed exempt  
9       sales and disallowed claimed exempt food sales, total  
10       understatement is \$300,668 for the audit period;  
11       Exhibit A, page 24.

12              The results of the audit testings are reasonable.  
13       The Department obtained Form 1099-K data from its data  
14       analysis section and combined the data with processive  
15       statements.

16              THE INTERPRETER: With what statements?

17              MR. SHARMA: Processive -- combined the date with  
18       statements provided by the Appellant to arrive at audited  
19       credit card deposits of \$305,000 for the period from  
20       second quarter '13 to fourth quarter '15. After a line  
21       and deduction of an estimated credit card tips of  
22       10 percent --

23              THE INTERPRETER: Credit card tips?

24              MR. SHARMA: Tips, yeah, of 10 percent and  
25       deductions of sales tax included amount, the Department



1 arrived at X tips and X tax sales credit card sales of --

2 THE INTERPRETER: Could you repeat that?

3 MR. SHARMA: Sure. Department arrived at X

4 tips --

5 THE INTERPRETER: X?

6 MR. SHARMA: Tips. Tips, like credit card tips,

7 T-I-P-S, tips.

8 THE INTERPRETER: But what was the word before

9 tips? Sorry, Mr. Sharma.

10 MR. SHARMA: Arrived at calculated.

11 THE INTERPRETER: Oh, I thought you said some X

12 tips? So it's just arrived at tips?

13 MR. SHARMA: Yeah, yeah. Department calculated X

14 tips and X sales tax credit cards.

15 THE INTERPRETER: Okay.

16 MR. SHARMA: Sales of \$256,972 for the sale

17 period. When compared with audited taxable sales of

18 \$529,054.

19 THE INTERPRETER: Could you repeat that?

20 MR. SHARMA: When compared with audited taxable

21 sales of \$529,054, the cash sale ratio is 51 percent for

22 the period from second quarter '13 to fourth quarter '15;

23 Exhibit A, page 43.

24 Based on Department's experience in audits of

25 similar business in Appellant's area, the Department

1 concluded that this ratio is reasonable and support the  
2 reasonableness of audited taxable sales.

3 THE INTERPRETER: Could you repeat that?

4 MR. SHARMA: And supported the reasonableness of  
5 audited taxable sales.

6 THE INTERPRETER: Supported the reasonableness?

7 MR. SHARMA: Yeah.

8 THE INTERPRETER: Okay. Thank you.

9 MR. SHARMA: Appellant has failed to provide any  
10 additional documents and evidences to show that the  
11 assessed liability is not correct. Therefore, based on  
12 the evidence presented, the Department has fully explained  
13 the basis for the deficiency.

14 THE INTERPRETER: What was the last word that you  
15 said?

16 MR. SHARMA: Deficiency.

17 THE INTERPRETER: Could you spell that?

18 MR. SHARMA: D-E-F-I-C-I-E-N-C-Y.

19 THE INTERPRETER: Thank you.

20 MR. SHARMA: And shown that the determination was  
21 reasonable based on available books and records.  
22 Appellant has not provided documentation to show that the  
23 Department's findings are unreasonable. Appellant did not  
24 file quarterly sales and use tax returns for fourth  
25 quarter '15 and first quarter '16. So a mandatory

1 10 percent failure to file returns penalty has been  
2 imposed under Revenue & Taxation Code 6591.

3 Appellant requested a relief from the penalty and  
4 claims that his outside accountant failed to file the  
5 sales and use tax returns for fourth quarter '15 and first  
6 quarter '16 without any notification to him. Appellant  
7 claims this to be a reasonable cause for failure to timely  
8 file his sales and use tax returns.

9 However, Revenue & Taxation Code 6592 provides  
10 that the relief of penalty is warranted only when the  
11 taxpayer shows that the failure to file a return is due to  
12 reasonable cause and circumstances beyond a person's  
13 control, and occurred notwithstanding the exercise of  
14 ordinary care.

15 THE INTERPRETER: Could you repeat that,  
16 Mr. Sharma?

17 MR. SHARMA: And occurred notwithstanding the  
18 exercise of ordinary care.

19 THE INTERPRETER: What was the very first word  
20 you said?

21 MR. SHARMA: Occurred, O-C-C-U-R-R-E-D.  
22 Notwithstanding the exercise of ordinary care. Here,  
23 Appellant has not shown that his accountant's failure --

24 THE INTERPRETER: Could you repeat that?

25 MR. SHARMA: Here, Appellant has not shown that

1 his accountant's failure to file returns for fourth  
2 quarter '15 and first quarter '16 was due to a  
3 circumstance beyond his control. The Department request  
4 that Appellant's appeal be denied.

5 This concludes my presentation, and I'm available  
6 to answer any question you may have.

7 Thank you.

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

9 I will now turn to my co-panelists for any  
10 questions. Judge Le?

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

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

14 Judge Cho, do you have any questions for CDTFA?

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

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

18 I have no questions either. We will now turn  
19 back to Appellant for their rebuttal and closing remarks.

20 You have 15 minutes.

21 MS. ESTRADA: For me or --

22 JUDGE WONG: This is Judge Wong. Yes,  
23 Mr. Becerra or Ms. Estrada, if you would like to make any  
24 closing statements or respond to CDTFA's presentation, now  
25 is the time to do so.

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CLOSING STATEMENT

MS. ESTRADA: Look I'm -- I'm remembering that what this person said is true in 2015 in the third quarter. In the fourth quarter the accountant didn't do the tax return. So I -- but I was paying my accountant's fees. And I also remember that in 2016 in the first quarter he also didn't do the tax return, but I was still paying his fees, and that's when the audit came about. So those two quarters I do owe them. I do owe them because the accountant didn't pay my taxes for me. Those two quarters, yes, now that it was repeated to me, yes, I remember.

As I said, I would really like you to reconsider this debt. And even more so now that we're having this pandemic of this Covid-19, and for me it's hard, extremely hard to get by with this business because I haven't gotten any help. I haven't gotten any loan from the government. As I said, I'm all alone trying to pay these debts, and I would like -- I have payments for electricity, for rent, and I haven't gotten any government help. So it's very hard. So I'm asking again for you to reconsider.

Again, I'm not denying -- I'm not refusing to pay for the fourth quarter of 2015 and 2016. Because as I said, I was paying my accountant his fees and, unfortunately, he wasn't doing things correctly, and

1       that's when the audit began.  You -- you have to realize  
2       that from when I got this business from 2009 to 2015, I  
3       was paying all of my taxes.  Unfortunately, there was one  
4       failure.

5               JUDGE WONG:  This is Judge Wong.  Is there  
6       anything else?

7               MS. ESTRADA:  That's all.  You can also check and  
8       see that from 2016 until now I've paid all of my taxes.  
9       All of them are paid.  And that's not even considering  
10      that we've had one year of the pandemic.  The restaurant  
11      has been closed.  I have come to work by myself to pay the  
12      taxes.

13              Thank you.

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

15              I will now turn for a final time to my  
16      co-panelists for any final questions.

17              Judge Le?

18              JUDGE LE:  This is Judge Le.  I have one question  
19      for the CDTFA.  I was wondering if the Department has any  
20      programs to help taxpayers who may have hardship or  
21      trouble paying their tax amount?

22              MR. PARKER:  This is Jason Parker.  The CDTFA  
23      does have some program to help taxpayers with a  
24      settlement.  And I believe this taxpayer has looked into  
25      settlement with our Department in the past and was unable

1 to reach a settlement agreement. So that's why it's now  
2 with OTA.

3 Oh, sorry.

4 THE INTERPRETER: Thank you.

5 JUDGE LE: This is Judge Le. Thank you. I have  
6 no further questions.

7 JUDGE WONG: This is Judge Wong. Judge Cho, do  
8 you have any final questions?

9 JUDGE CHO: This is Judge Cho. I have no  
10 questions. Thank you.

11 JUDGE WONG: This is Judge Wong. I also had no  
12 final questions.

13 I want to thank everyone today for appearing.  
14 This concludes the oral hearing. The record is closed,  
15 and the case is submitted today. The judges will meet and  
16 decide the case based on the exhibits presented and  
17 admitted as evidence, as well as witness testimony. We  
18 will send both parties our written decision no later than  
19 100 days from today.

20 This oral hearing is now adjourned.

21 (Proceedings adjourned at 2:27 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 10th day  
of March, 2021.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER