BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,	)	
	)	
B. ALZANDANI,	)	OTA NO. 19044593
	)	
APPELLANT.	)	
	)	
________________________________	)	

TRANSCRIPT OF VIRTUAL PROCEEDINGS

Tuesday, February 23, 2021

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Virtual Proceedings, commencing at 3:23 p.m. and concluding at 4:40 p.m. on Tuesday, February 23, 2021, reported by Ernalyn M. Alonzo, Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead:	ALJ NATASHA RALSTON
Panel Members:	ALJ SUZANNE BROWN ALJ ANDREA LONG
For the Appellant:	B. ALZANDANI ADEL ASUMARI
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION NALAN SAMARAWICKREMA MARIFLOR JIMENEZ CHAD BACCHUS

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E X H I B I T S

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State of California; Tuesday, February 23, 2021

3:23 p.m.

JUDGE RALSTON: We're now on the record in the Office of Tax Appeals' oral hearing for the Appeal of Barak Alzandani, OTA Case Number 19044593. The date is February 23rd, 2021, and the time is 3:23 p.m.

In response to the Covid-19 State of Emergency, the Office of Tax Appeals will be conducting today's hearing electronically with the agreement of all parties and participants. I am Judge Natasha Ralston, and I am the lead Administrative Law Judge for this hearing. My co-panelists today are Judge Suzanne Brown and Judge Andrea Long.

I'm going to ask the parties to please identify themselves and who they are representing, starting with the Respondent.

Respondent, please introduce yourself for the record. CDTFA can you start, please, and introduce yourselves?

MR. SAMARAWICKREMA: Nalan Samarawickrema, representing the CDTFA.

JUDGE RALSTON: Thank you.

MR. PARKER: Jason Parker, representing CDTFA.

JUDGE RALSTON: Thank you.

MR. BACCHUS: And Chad Bacchus representing CDTFA.

JUDGE RALSTON: Thank you.

And Appellant, can you please introduce yourselves for the record.

Mr. Asumari, can you please -- can you and Mr. Alzandani please introduce yourselves for the record.

MR. ALZANDANI: Barak Alzandani.

MR. ASUMARI: Taxpayer.

MR. ALZANDANI: Taxpayer.

MR. ASUMARI: And Adel Asumari, translator slash witness to Alzandani.

JUDGE RALSTON: Thank you.

The parties have agreed the issue to be decided in this case is whether any reduction to the amount of unreported taxable sales is warranted.

Appellant has not submitted any exhibits. Respondent has submitted Exhibits A through G. Appellant has indicated that he does not have objection to Respondent's exhibits. Respondent's Exhibits A through G are admitted without objection.

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

Okay. Mr. Alzandani, I am going to swear both you and Mr. Asumari in first, and then you will be able to present your case. So, Mr. Alzandani, can you please raise your right hand.

BARAK ALZANDANI,

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

JUDGE RALSTON: Okay. Mr. Asumari, same thing. Can you please raise your right hand.

ADEL ASUMARI,

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

JUDGE RALSTON: Thank you. And I just want to confirm because of your role today, Mr. Asumari, as also a sworn-in witness you may be asked questions by Respondent and also by the panel.

MR. ASUMARI: No problem. Yes.

JUDGE RALSTON: Okay. Thank you.

Okay. Appellant, you can go ahead and begin your case, please, when you are ready Mr. Alzandani or Mr. Asumari. Okay.

MR. ALZANDANI: Okay.

OPENING STATEMENT

MR. ASUMARI: Okay. So, again, our starting point is going to be how the State reached -- so, okay. This is going to be Schedule R2-12A. I don't know what exhibit this was part of because I have hundreds of papers, but it's page 23. It's marked Schedule R2-128. This was the breakdown from the 1099 credit card sales for all three years; all quarters from first quarter of 2013 to fourth quarter 2015. So when they collected -- when the State collected the credit card sales from the 1099 for all these -- for all three years, they reached an amount of $901,126. Okay.

Now, what they failed to adjust that amount was, according to Mr. Alzandani at the time when I showed him this, he said 10 percent of those credit card sales for all three years, so 10 percent of $901,126 went back to cash back to customers. And he said he disclosed that during the audit, but they did not ask him for any proof at the time. And this was for the auditor, Michael Carlson. Also, we have to subtract credit card fees that are paid to the processors, which roughly equals about 4 percent.

So in reality his credit card sales for all three years, all quarters, you know, actual sales, given the cash back and the credit card fees, which would -- so we subtracted 90 -- roughly about $90,000, then another $36,045 for credit card fees. So the adjusted -- the actual adjusted amount would be $775,081.

Now, when you go to Column D, they have the ratio of merchant sales to total sales, which they marked up the first year of 2013 at 148.9 percent. The following year of 2014 at 176.97 percent, and the last year of 2015 at 171.46 percent, which gave them the audited taxable sales based on a markup of purchases which equaled $1,493,000.12. So the problem -- and they have to clarify this because it doesn't make sense. But even if we didn't calculate the 90,000 cash back sales and the credit card fees, if we just stuck with the -- the number that we have on the schedule of $901,126, they marked up the 148 percent for 2013, 176 percent for 2014, 171 percent for 2015, and that gave them a total of $1,493,126.

But the problem is 1099 credit card sales are sales that already have the markup included. So they took sales that were already marked up. They added another markup, which we still don't understand how they got those figures. And that's how they reached the 1 point -- or the $1,493,126. So we're trying to figure out that because that is the heart of the audit.

That's how they subtracted the reported taxable sales by Mr. Alzandani at $769,086, which gave them the difference for all three years of $724,040 with the state tax rate of 7.6250, which gave them a combined sum for all three years of $55,210. Then, of course, penalties and interest and so forth, which gave them a complete liability as of August 31st, 2019 of $73,755, which was the final audit amount.

But to get to that number, or to even to object to that audit amount, we need to go back to the 1099-K -- uh, 1099 credit card sales of$901,000, which is accurate. It's correct because those are 1099s that are provided by IRS, that was submitted by the bank that he was a merchant with. But how did they take the sales and add -- and markup sales that have already been marked up and -- and got the$1,493,000?

So credit card sales are sales that have already been marked and sold. So they took that amount, did an additional markup, which at the time the auditor said in one of the meetings that we had during the tax appeals process, they said we recommend 48 percent. We were at 53 percent, but to accommodate your objection, we'll go down to 48 percent. And even at that time -- that's why we went through the tax appeals process because we didn't agree with the 48 percent.

We told them the actual markup up of his industry, his clothing, you know, business is an actual 20 percent. They didn't agree. We didn't agree with their markup. But even if we were to -- even if we had agreed at 48 percent at the time, they marked up 76.97 percent 2014 and 71.46 percent 2015, which they did not disclose. So why isn't it 48.9 percent across the board? Which we originally didn't even consider because when we asked them during the panel judge at the time -- or I forgot what hearing it was -- they said they Googled it, which at the time was kind of absurd because you can't Google a markup that you have no evidence providing.

Because, I mean, if that's the case, you know, if you go to forbes.com that tracks different industries in their markup you margins and other website that tracks profit margins for different business, both Forbes and Sharon Business Solutions have clothing industry range between 4 to 13 percent after wages, adjustments to rent, and so forth. And since he has low overhead, that extra 7 percent, if we were to go with a high number from Forbes at 13 percent, add his wages and rent and so forth, his overhead in general, add another 7 percent, we would reach the 20 percent that we were fighting for from the beginning.

So they marked up -- the credit card sales were already marked up 20 percent from Mr. Barak when he provided the 1099s. The State marked up another 48 percent, 76 percent, and 70 percent. Each year is different. So that would make his industry over 200 percent markup.

So we're trying to justify how they reached the $1,493,000 on Column E, under the audited taxable sales based on a markup of purchases. How did they get that number, and why did they markup sales that have already been marked up? So we've got to start with that first.

That's all.

JUDGE RALSTON: Okay. Mr. Asumari, does that conclude your opening statement?

MR. ASUMARI: That's the opening statement, yeah. That's -- that's the heart of where we want to go in this hearing. That's the beginning.

JUDGE RALSTON: Okay. Did you have any testimony that you or Mr. Alzandani wanted to give, or are you just open to questions?

PRESENTATION

MR. ASUMARI: Okay. Well, just a brief statement. Okay. So when we told the auditors, -- it was this whole process started when he said he was being audited. And I know there's a lot of comments during the process. Bank records were not provided. This was not provided. Z-tapes were not provided.

MR. ALZANDANI: No. I was at home.

MR. ASUMARI: Okay. Mr. Alzandani was in an war-torn country in his home country of Yemen. He fled to the neighboring country of Gabouti [sic] -- Djibouti to seek asylum at the US Embassy where he was held for three years with his family. And from there, he finally got temporary residence status for his children and his wife, and he finally arrived back in America in 2015. You know, with the passport we showed proof of that, of course.

So I understand he's the taxpayer. Everything was still under his name. Business was conducted under his seller's permit. Now, a lot of things, you know, the reason some paperwork was missing, invoices, bank statements, was, yes, he did have somebody that was running for him, in form of a manager, but also embezzled thousands of dollars from him it was later revealed. But --

MR. ALZANDANI: It looks like through a loan. I don't know how he did it under my name. He signed some kind of documents.

MR. ASUMARI: But that's just a reason why he was missing a lot of paperwork, bank statements and -- and other, you know, forms of proof. Now, he did provide what he had available. You know, of course, his paperwork wasn't complete, but it was accurate. 1099s proved it. Invoices proved it.

At the time the only objection we had with the auditors was one, they're markup. They stood by their markup. So we said okay. Instead of us arguing back and forth, we have the right as taxpayers to conduct a field test. You come and you conduct a field test for as long as you want, a day, two, three, a month. Then you could see the actual markup, and then we could move forward with the audit and figure out a solution.

They refused. They said, you know, I don't know what their argument was. It's in there somewhere. It was just a lack of invoices and so forth. But I thought a field test shows actual sales while the agent is at the place of business, and he could actually see actual sales and he can determine. But I guess one of the arguments that the auditor made was that his sales were inconsistent throughout the year to get a successful field test.

Well, the clothing industry is very inconsistent. It depends on times of the year. It's not -- it's not consistent where people tend to buy clothes when it's colder versus when it's hotter, then the industry kind of goes, you know, a little slower. So it's not like the restaurant business. It's consistent year-round because it's food. Clothing is different.

It's -- there's like a spring collection, and there's a fall collection. So if he was to order for his fall collection, he would have to order in July and wouldn't be able to receive it until October. So there might be a time frame where he doesn't have certain brands that he can present to his customers, and that creates, you know, kind of irregular -- irregularities in sales between those months, between when he gets his spring or summer line versus his fall line.

That's how clothing manufactures operate. They just don't flood the market every single month with certain brands. You know, you have to take the spring line up. That's got to last you three or four months. If you sell it or you don't. It's none of their concern, but that's what they have available, and that's what you have until your next line up.

But so for the auditor to say that his sales were inconsistent, of course, that's the case in his line of work. But the field test, nonetheless, was denied. It was not conducted, and that's also a reason why there's a lot of objections to the final audit. That's all.

JUDGE RALSTON: Okay. Thank you.

CDTFA, did you have questions for either witness?

MR. SAMARAWICKREMA: Nalan Samarawickrema here.

No questions.

JUDGE RALSTON: Thank you.

I'm going to turn to my panel. Judge Brown, did you have any questions?

JUDGE BROWN: This is Judge Brown. I will start with one or two questions, and then I may have more after we hear CDTFA's presentation. If I can ask the taxpayer, earlier you stated that the auditor should have conducted a field test. I noticed that in the appeal that you filed with our office, the Office of Tax Appeals, you indicated that they refused to conduct a -- that the auditor refused to conduct a shelf test. Is that what you mean when you say field test, or do you mean an actual observation test?

MR. ASUMARI: So that's what I meant. I'm sorry. Field test, observation test, an actual, yeah, test at the --

JUDGE BROWN: An observation where the auditor --

MR. ASUMARI: Yes.

JUDGE BROWN: -- comes to your business and checks the sales?

THE STENOGRAPHER: Hold on. I can't tell who is talking between the two gentlemen there. One is out of the screen, and then he's got a mask on. So if you could please identify yourselves?

MR. ASUMARI: Okay. Well, I'm sorry. The mask is, you know, for my protection. But, yeah, I'm the one talking the whole time is me the translator, witness to Mr. Alzandani.

MR. ALZANDANI: And my name is Barak Alzandani.

JUDGE RALSTON: Going forward if we could just remember -- this is Judge Ralston. I forgot myself. Going forward just when you start to speak say, "This is --

MR. ASUMARI: Yes, I'm talking.

JUDGE RALSTON: -- Judge Ralston," and then ask your question or give your statement. Thank you.

MR. ASUMARI: I should -- I should have kind of told you who was talking. My -- my fault. I'm sorry, Judge.

JUDGE BROWN: This is Judge Brown.

MR. ASUMARI: I -- sorry.

JUDGE BROWN: I will just pick up with my questioning of the taxpayer.

MR. ASUMARI: Yeah.

JUDGE BROWN: So in your appeal that you filed with the Office of Tax Appeals, are you still objecting? Or are you still arguing that the auditor should have conducted a shelf test? Or has that been resolved given that, apparently, they -- the appeals decision indicates that they did conduct a shelf test?

MR. ASUMARI: No. We requested, and they -- and they denied it.

JUDGE BROWN: So you're saying that the CDTFA never conducted a shelf test, not in --

MR. ASUMARI: No.

JUDGE BROWN: Okay. The opinion says that they conducted one in, I think, August 2018.

MR. ASUMARI: Yes. No. I have that where it shows the notes of the auditor saying that since the sales were inconsistent throughout the year, that a certain test was not -- I mean, they came by and they looked, but they didn't --

MR. ALZANDANI: Five minutes.

MR. ASUMARI: Yeah. They just -- they looked at a few clothing lines where they, you know, they seen some pricing, but I have it here somewhere. I mean, but it wasn't, like, an actual shelf test where they -- they stayed and compared actual sales. Because, you know, when he -- if he -- when he didn't have z-reports sometimes during an audit, they say, okay. Well, to verify your sales, we need to do a shelf test where the auditor stays for sometimes a day or two, sometimes longer to -- to see actual sales.

Okay. Let me see her here. So, yeah. I know it was on here, okay, where the taxpayer requested it, but at the time his -- but, I mean, the problem was more of the markup. That's the biggest -- that was the big -- okay. So this was page 11. Page 11, it says, name of comment -- commenter, "Auditor gave Mr. Montes" -- at the time Mr. Montes was a tax representative that represented Barak Alzandani that he hired.

This was -- it's not an actual -- oh, it says -- okay. "Auditor gave Mr. Montes a call to him, for him a site test would not be an option for Funky Town Apparel since the business does not have consistent sales throughout the year. It would not be" -- "and it would not be representative of his actual yearly sales. Auditor Explained that if the taxpayer does not agree with the audit approach, a markup can be done on 2016 most recent invoices and so forth."

But yeah, it -- it just says that the auditor explained or -- or made the decision that since Funky Town does not have consistent sales throughout the year, it would not be a representation of his actual yearly sales. That's in the notes. Auditor was Michael Carlson at the time. There's no date. I think -- oh, sorry. It's dated October 25th, 2016.

JUDGE BROWN: This is Judge Brown. Thank you for addressing my question. I don't have any other questions at this time. So I will turn it back to the other panel members.

MR. ASUMARI: Thank you.

JUDGE RALSTON: Thank you, Judge Brown. This is Judge Ralston.

Judge Long, did you have any questions?

JUDGE LONG: This is Judge Long. I have no questions.

JUDGE RALSTON: Thank you, Judge Long.

So I think we're ready to move on to Respondent's case. Mr. Samarawickrema, please feel free to begin when you're ready.

PRESENTATION

MR. SAMARAWICKREMA: This is Nalan Samarawickrema. Thank you.

Appellant operates a men's clothing store in Modesto, California, doing business as Funky Town Apparel. The Department audited Appellant's business for the period of January 1st, 2013, through December 31st, 2015. During the audit period, Appellant reported around $800,000 as taxable sales and claimed around $300 as food sales. And that will be on Exhibit A pages, 17 and 18.

Appellant did not provide cash register Z-tapes, sales journals, or sales summaries to support his reported sale for the audit period. Appellant did not provide complete purchase invoices.

JUDGE RALSTON: Mr. Samarawickrema, I'm going to stop you for a second. It looks like we might have lost the taxpayer. So if you could hold on for just a second while we get him back on the line. Thank you.

MR. ASUMARI: Okay. I'm sorry. We -- we lost --

MR. ALZANDANI: We lost video.

JUDGE RALSTON: Okay. Thank you. Did you hear the --

MR. ASUMARI: No.

JUDGE RALSTON: -- start their representation?

MR. ASUMARI: No. As soon as he said Funky Town Apparel --

MR. ALZANDANI: We lost --

MR. ASUMARI: -- it just froze, and now you came at the end.

JUDGE RALSTON: Okay. So --

MR. ASUMARI: I don't know what happened.

JUDGE RALSTON: That -- that's fine. We're having some technical difficulties. That happens at these hearings. So this is Judge Ralston again.

Respondent, if you please feel free to maybe begin again, and you'll still have your 20 minutes. Thank you.

///

PRESENTATION

MR. SAMARAWICKREMA: This is Nalan Samarawickrema. Thank you.

Appellant operates a men's clothing store in Modesto, California, business as Funky Town Apparel. The Department audited Appellant's business for the period of January 1st, 2013, through December 31st, 2015. During the audit period Appellant reported around $800,000 as taxable sales and claimed around $300 as food sales. And that will on your Exhibit A, pages 17 and 18.

Appellant did not provide cash register Z-tapes, sales journals, or sales summaries to support his reported sales for the audit period. Appellant did not provide -- Appellant did not provide complete purchase invoices or purchase journals for the audit period. Appellant was unable to explain from what sources and how Appellant reports --

JUDGE RALSTON: Just a reminder to please mute your microphone if you're not speaking.

MR. SAMARAWICKREMA: Appellant was unable to explain from what sources and how Appellant reports his sales, audit sales, and use tax returns. Appellant rejected -- sorry. Excuse me.

The Department rejected Appellant's reported taxable sales due to lack of reliable records; no book markups, high credit card ratios. It was also determined that Appellant's records were such that sales cannot be verified by a direct audit approach. Therefore, the Department estimated sales using cost plus markup method for this Appellant.

During my presentation, I will explain why the Department rejected Appellant's reported taxable sales, why the Department used an indirect audit approach, and how the Department estimated Appellant's unreported sales tax for the audit period. The Department completed four verification methods to verify the reasonableness of Appellant's reported taxable sales.

First, the Department compared Appellant's reported total sales with sales reflected on Appellant's federal income tax returns, and calculated an overall difference of around $240,000. And that will be on your Exhibit B, page 31.

Second, Appellant provided incomplete bank statements for various periods. And that will be on your Exhibit B, pages 27 and 29. Because the bank statement for year 2014 appeared to be complete, the Department compared 2014 net bank deposits to reported total sales. Appellant deposited more cash and credit card sales into his bank account, and then reported sales for sales and use tax return and federal income tax returns. And that will be on your Exhibit F, page 2, and Exhibit G, page 4.

Third, the Department compared reported total sales to claimed purchases reflected on Appellant's federal income tax returns and calculated an overall markup of 20 percent. And that will be on your Exhibit B, page 30. However, based on the analysis of current selling prices and related cost, the audited markup was 48.0 percent. And that will be on your Exhibit A, page 25.

Fourth, because Appellant did not provide any concrete sales records, the Department obtained Appellant's credit card sales information from its internal sources and calculated an overall reported credit card ratio of 109 percent. And that will be on your Exhibit B, page 33. This shows that Appellant's credit card sales exceeded reported total sales by around $68,000 for the audit period. And that will be on your Exhibit G, page 2.

The Department also compared Appellant's total sales recorded on federal income tax return to the credit card sales and calculated an overall credit card ratio of 83 percent. And that will be on your Exhibit G, page 6. However, based on the audited sales, the audited credit card ratio was 56 percent. And that will on your Exhibit A, page 27.

Appellant was unable to explain the differences found in his federal income tax returns; net bank deposit differences, no book markups, and high credit card ratios. The Department conducted further investigation by analyzing Appellant's purchase information. To verify the accuracy of purchases recorded on purchase journals and purchase claims on the federal income tax return, the Department conducted a vendor's survey of Appellant's vendors using contact information listed on purchase invoices provided by Appellant.

The Department was not able to obtain purchase information from all of Appellant's vendors. The Department found that purchase information from the vendors that did respond exceeded Appellant's 2014 recorded purchases by around $80,000. And that will be on your Exhibit B, page 21. The Department also noted that Appellant's purchases for year 2014 of around $325,000 recorded on vendor purchase information and Appellant's purchase journals did not match with the purchases Appellant claimed on his 2014 federal income tax return of around $250,000. And that will be on Exhibit B, pages 21 and 51.

Appellant did not report more than 31 percent of its purchases on his 2014 federal income tax return. And that will be on your Exhibit G, page 3. Thus, it appears that Appellant's federal income tax return was incomplete and unreliable. Because not all vendors responded with purchase information, incomplete recorded purchase of Appellant and large month-to-month purchasing variances, the Department concluded that it did not obtain complete purchase information from Appellant's vendors.

Therefore, the Department's scheduled monthly purchase invoice information obtained from vendors, in addition to the purchase invoices recorded in Appellant's purchase journals, to understand Appellant's purchasing behavior for a year. In doing so, the Department noted that purchases for May, July, August, and December 2014 were lower than the purchases for the other eight months of 2014. Because unrecorded purchases were noted in the analysis of purchases per vendor information, Department concluded that purchase amount from the other vendors who did not respond to the Department's request for information were also likely understated.

Rather than estimating additional purchase amounts for the entire year to account for the understated purchases from other vendors, the Department used the eight-month purchase information from vendors and recorded purchases to estimate audited purchase for year 2014. Audited purchases and recorded purchases reflected on Appellant's 2014 federal income tax return were used to compute unrecorded purchase percentage of 57 percent. And that will be on your Exhibit B, page 20.

The Department used claim purchases on Appellant's federal income tax returns and the unrecorded purchase percentage to estimate audited purchases for the audit period. And that will be on your Exhibit B, page 19. Using the audited purchases we noted that the Department recalculate Appellant's overall reported markup of negative 24 percent. And that will be on your Exhibit G, page 5. This means that Appellant's cost of goods sold is higher than it says.

As mentioned earlier, because of the negative markups, the Department rejected Appellant's reported taxable sales for the audit period. Appellant claim many of his products are sold at deep discounts, but Appellant has not provided any concrete sales records for verification. Upon observation of Appellant's business location, the Department noted that products either had no price tags, or the price tag attached to the product was sold provided by the manufacturer with a suggested retail selling price, which typically included at least 100 percent markup of cost.

The Department also observed a signage advertising 25 percent off of certain items on a small clearance rack. The Appellant claimed he sold slow-moving inventory for 50 percent off the retail selling price. Appellant did not provide any complete sales records for the Department to compute how much merchandise was sold at regular retail price and how much merchandise was sold at a discounted price. Therefore, based on the overall layout of the store and the Department's observation, the Department estimated that 15 percent of all products was sold at clearance. And that will be on your Exhibit E, page 13.

To calculate the audited markup, Appellant provided only two purchase invoices totaling $29,600 from two different vendors dated July 2018. Both invoices included suggested selling prices and corresponding cost amount which reveal a 100 percent markup. According to Appellant, he offers a discount of 25 percent on items from one vendor and 20 percent of items from the other vendor. The Department reduced the suggested selling prices noted on both invoices by the applicable discount percentages and calculated Appellant's normal discounted price markup of 56.45 percent. And that will be on your Exhibit A, page 25.

The Department also calculated a separate clearance markup of 0.35 percent by reducing suggested retail prices by 50 percent. The audited weighted markup of 48.04 percent was calculated by weighting the markups achieved with 85 percent sold at Appellant's normal discounted price, and 15 percent sold at clearance. And that will be on your Exhibit A, page 25.

Department then estimated audited sales using audited purchases and the weighted markup factor. Audited total sales were compared with reported taxable sales to compute unreported taxable sale of $724,000. And that will be on your Exhibit A, page 24. Unreported taxable sales were just allocated based on Appellant's credit card sales to estimate correct amount of unreported sales for each quarter of the audit period. And that will be on your Exhibit A, page 23.

Using the audited sales, we note that the Department recalculate Appellant's overall credit card ratio of 56 percent and compared with the reported credit card ratio of 109 percent. And that will be on your Exhibit A, page 27 and Exhibit B, page 33. When the survey information and the purchase invoices dated July 2018, and the recorded credit card sales information and the site visit information constituted the best available information to determine the unreported sales tax for this Appellant.

As mentioned earlier, Appellant did not provide documentation such as cash register Z-tapes. Appellant did not provide complete purchase invoices. Appellant did not provide complete sales journals or complete sales summaries. Appellant failed to provide document to support his taxable sales for the audit period. The Department was unable to verify the accuracy of reported taxable sales using a direct audit method. Therefore, an alternate audit method was used to determine unreported taxable sales.

Accordingly, the Department estimated the unreported sales tax based upon the best available information, the evidence shows that the audit produced fair and reasonable results. In regard to Appellant's claim that the Department did not do a complete shelf test using two purchase invoices dated July 2018, the Department review 500-plus items on those two invoices and understood Appellant's pricing policing based on cost.

Appellant has only one pricing policy for all items listed on those two invoices. Then the Department used one of the shortest ways to compute the expected markup for this business from two purchase invoices. Like in a situation like here, computing a markup using 1 item or computing markup using 500-plus items give the same markup for each vendor. That was the reason the Department used a way that they used to compute markup on Exhibit A, page 25. There's no procedural or mathematical errors on Exhibit A, page 25.

Appellant has not provided any reasonable documentation or evidence to support an adjustment to the audit finding. Therefore, the Department request the appeal be denied. This concludes my presentation, and I'm available to answer any questions the panel may have.

Thank you.

JUDGE RALSTON: This is Judge Ralston. Thank you.

Judge Brown, did you have any questions?

JUDGE BROWN: This is Judge Brown. I don't have any questions right now. Thank you.

JUDGE RALSTON: This is Judge Ralston. Thank you.

Judge Long, did you have any questions?

JUDGE LONG: This is Judge Long. I have no questions. Thank you.

JUDGE RALSTON: This is Judge Ralston. Thank you.

Mr. Asumari, you have approximately five minutes for rebuttal, and you can begin when you're ready.

Are you still with us, Mr. Asumari and Mr. Alzandani? Perhaps you're muted?

This is Judge Ralston. Thank you everyone for your patience. We seemed to have lost the taxpayer. If everyone could just hold on tight for a second while we try to get them back, that will be great. Thanks.

This is Judge Ralston. Everyone, we're going to take about a five-minute recess while we try to reach out to Mr. Alzandani and get him back on the line. I appreciate everyone's patience, and we'll be back in about five minutes. So we're going to go off the record for about five minutes. Thank you.

(There is a pause in the proceedings.)

JUDGE RALSTON: So we're back on the record.

MR. ASUMARI: Yes, I'm here.

JUDGE RALSTON: And, Mr. Asumari, I just want to know, did you hear CDTFA's entire presentation?

MR. ASUMARI: Yes, I did.

JUDGE RALSTON: Okay. Thank you. Did you want to take five minutes for a rebuttal?

MR. ASUMARI: Yes.

JUDGE RALSTON: Okay. You can begin when you're ready.

CLOSING STATEMENT

MR. ASUMARI: Okay. The CDTFA's whole 20-minute argument was taking us left and right on different methods, different calculations that they used during the audit, and we are not arguing on what methods that they used. We are arguing with the methods that they used their miscalculations on Schedule R2-128, page 23. Again, he didn't answer the question of why the whole criteria of this audit, the amount that they reached, that they imposed on taxpayer was based on their calculation of the 1099 merchant sales.

They used those sales, and they marked them up again, and that's how they got the figure of $1,500,000 or $1,493,000. Minus what the taxpayer reported for all three years, that gave them the difference of $724,000. I'm talking about the numbers that they provided that they used to determine the audit. He spoke about all the different methods, what the taxpayer didn't provide, what he didn't have. Okay we can argue his paperwork was not flawless based on his personal circumstances and where he was. We understand that.

We're going by the numbers provided by the CDTFA audit that there is something wrong. There's miscalculations. He didn't take into effect the 4 percent fees from the 1099s. He didn't take into effect the 10 percent cash back fees. So the actual amount of $901,000 is an actual only $775,000, which is the actual amount. And if you compare it to the reported taxable sales, you're only going to get a difference of about $10,000.

So how does he justify marking up $900,000 of sales again, and he didn't even use his own numbers during his speech. He used sometimes 48 percent. And I couldn't understand what he meant about the discounted items on the floor that were marked up 0.03 percent. It's all confusing. All we know is numbers. We're looking at numbers. The actual markups are at 20 percent across the store. There's no different brand. The -- the -- on the floor he sells them at cost.

MR. ALZANDANI: Full cost.

MR. ASUMARI: But -- but when we calculated all the new brands, the unused brands, and the clearance brands, that's how we get 20 percent. You can't say the new clothing is at -- marked at 57 percent, and we put in the criteria of the discounted items at cost, but we still have 50 percent markup. No. It averages at 20 percent the way -- his whole inventory, old and new.

But, again, can he please explain the sales of $901,000 that they base their audit on? Why is it marked up 176 percent on top of the 20 percent that the sales are already included the markup in? So he has sales of $100,000. Those are sales that have already been conducted with the markup. Then they took those marked up sales and marked up again and not even on the numbers that he disclosed. I'm looking at the paper on page 23. You can see it clearly right there, 48.9 percent for 2013.

76.97 percent for 2014, which I don't know why every year it's keeps -- it's doubling in percentage. But, again, it goes down to 71.64 percent in 2015.

We're not saying there's not a mix up of paperwork or -- we understand that. We're just trying to justify the amount. When they're imposing an extra $725,000 in unreported sales, that's -- what he's trying to say in basic terms is Mr. Alzandani only reported to the State half of what he made, which is -- it's -- it's not even close to the fact because that's insane. I mean, when -- when he cut -- the reason he got to $724,000 is because he marked up 171 percent on top of the 120 percent from the actual sales that they obtained from the 1099s.

So we're not arguing about the methods that they might have used based on the paperwork that they had. Yes, Mr. Alzandani was stuck in a foreign country for over three years -- five years, actually. And yes, he came -- it was a bit of a mess; very mismanaged, no z-reports, some invoices, which, technically, there's no invoices missing because we gave him full contact to all the vendors. They had all the contacts from all the vendors with all the invoices provided to them by all the vendors.

Now, he claims well some vendors won't return their phone calls, and they only got partial documents. We don't know. There's no proof of that. They --

whatever invoices that they received from the vendors is the invoices that we received from the vendors. So we're not hiding nothing. Because even if we were trying to hide invoices, big reputable companies do not hide invoices. So we -- we can't really take that into their findings, you know, some invoices were missing.

The only argument we've had since day one was their method of markup. They took it upon themselves to just create a number. It wasn't based on invoices. It wasn't based on purchases. Because all they did was come and look at the suggested retail tag that the manufacturer suggest to the vendor to sell it at. It doesn't mean that they're going to sell it at that price because every location is different. He's more of an a -- an in-town. He's not at the mall. He's not a store front. He doesn't have a big overhead where he can mark his clothing 50, 60 percent. He has lower overhead.

He's a -- and so every business is different. For example, if you have two restaurants, one in an upscale neighborhood that has $10,000 versus one that has $1,200 rent, their markups are going to be the same. I mean, they're going to be different. You can't say no, every restaurant their markup is this amount. It doesn't exist in the real world because it doesn't make sense. But even putting that aside, we still need to know why they marked up the 1099s 172 percent on sales that have been already sales marked up. And that's how they came up with the amount of $724,000 unreported taxes.

That's why based on their findings and their numbers, there is a flaw on their calculations. And we just want the Board to look, and they will determine that these numbers are extremely exaggerated and do not make sense whatsoever. And that's why we do not agree with the $724,000 of unreported taxes. We had a figure close to -- now, I did say there might have been mistakes. Yes. But based on your calculations the difference should only be $312,265. We're not saying zero because that doesn't, you know -- I mean, of course, there might have been mistakes since he was gone against his own will, but not $724,000.

We found the mistakes. We did our homework. We did the calculations, and we have a difference of $312,000 for all three years. Which if you compute the tax and you will get his liability of close to $20,000 not $70,000. So look. All you have to do is look at page 23. You'll see the 1099 sales of $901,000 that have been marked up 20 percent, and they added another average 160 percent for all three years on top of that.

So they took merchandise -- they took sales that have been marked up, and they marked them up on numbers they're not even reporting to the panel. Because on all the documents it shows that their final decision was 48 percent. That was it. They were not going to go any lower. Their original pre -- the original audit was 53 percent. But after some phone calls, they came to their senses, and they dropped it down to 48 percent. Which, clearly, we said it's more at 20 percent.

But even if we were, for argument's sake, to say, okay. For argument's sake, we'll go with 48 percent, which we're not. We are for argument's sake. They took that 48 percent of marked items sold for all three years and added another 171 percent on top of that. So it's clear. It's right there. You can see it for yourself. It shows credit card sales, not cost. Sales. They added their markup again. They reached a $1,493,000.

That's insane. I don't know any clothing store outside the mall, not alone inside the mall that does those kinds of numbers. But that's the numbers they came up with. They got the difference. They subtracted the $769,000 of reported sales. They got $724,000, and they audited that amount, which resulted in the liability. Now, all we're saying is that $724,000 that he came up with, in reality is only $312,000. And we're being honest, and that's the numbers that we have. And it's all there.

We took that $101,126 at 120 percent. We got

$1,081,351 minus the $769,086 reported tax, and that's how we got $312,265. And that's the actual real numbers. And we're only saying -- the reason we're saying it's $312,000 because for argument's sake, there was paperwork missing. His paperwork wasn't flawless. We understand, but the method that they computed the liability is wrong. It's very clear. It wasn't the way they -- he -- he was all over the place. He confused me and probably confused the whole panel about how they did this and did that and marked this and never once answered the question, why he marked up the sales again at 176 percent.

So 120 percent original markup, plus 176 additional markups, that gives us 300 percent markup. No wonder they got$1,500,000. So it's right there. I ask the Judges and the Board to review the paperwork that the CDTFA provided and just to -- maybe it was a mistake on their end, I don't know. I mean, but it's clearly a mistake because it is not $724,000.

And that's all.

JUDGE RALSTON: Okay. Thank you, Mr. Asumari. This is Judge Ralston. I just wanted to confirm the schedule that we have on page 23. Schedule R2 -414 A2, is that the schedule you were referring to as part of CDTFA's Exhibit A?

MR. ASUMARI: Yeah. Yeah R2-12 A, yes. That's the schedule that I was referring to.

JUDGE RALSTON: This is Judge Ralston. Thank you.

I'm going to turn to my panel now to see if they have any questions. Judge Brown, did you have any questions?

JUDGE BROWN: This is Judge Brown. No, I do not. Thank you.

JUDGE RALSTON: Judge Long, did you have any questions?

JUDGE LONG: This is Judge Long. No questions. Thank you.

MR. ASUMARI: Sorry, Judge. I lost your voice there. You're -- okay.

JUDGE RALSTON: Yes. This is Judge Ralston. I apologize. I was muted.

I think we're ready to wrap up the hearing. I want to thank everyone for their participation. This concludes our hearing.

The judges will meet and decide the case based on the documents and testimony that was presented today. And we will mail a written decision no later than 100 days after the close of the hearing.

MR. ASUMARI: Thank you very much.

JUDGE RALSTON: Oh, thank you.

The record is now closed, and the matter is submitted for decision. Thank you.

(Proceedings adjourned at 4:40 p.m.)

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<u>HEARING REPORTER'S CERTIFICATE</u>

I, Ernalyn 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 15th day of March, 2021.

____
ERNALYN M. ALONZO
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