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APPEARANCES:

Panel Lead: ALJ ALBERTO ROSAS

Panel Members: ALJ MICHAEL GEARY  
ALJ ANDREW KWEE

For the Appellant: A. ALZAGHA

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE ADMINISTRATION  
  
RANDY SUAZO  
JASON PARKER  
CHRISTOPHER BROOKS

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I N D E X

E X H I B I T S

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California; Tuesday, June 22, 2021

10:05 a.m.

JUDGE ROSAS: We are on the record in the Matter of the Appeal of Alzagha, OTA Case Number 19115463. It is June 22nd, 2021, and the time is approximately 10:05 a.m. This hearing was duly noticed for Sacramento, California, but due to the ongoing concerns regarding Covid and with the agreement of all the parties, we're holding this hearing remotely using video conferencing.

The panel of judges includes Michael Geary, Andrew Kwee, and me, Alberto Rosas. Our stenographer for today is Ms. Alonzo who is reporting this hearing verbatim. To ensure we have an accurate record, we ask everyone speaks one at a time and does not speak over each other. Also, please speak slowly and clearly. If needed Ms. Alonzo will stop the hearing process and ask for clarification. After the hearing the stenographer will produce the official hearing transcript, which will be available on the Office of Tax Appeals website.

With that said, I'm going to ask for appearances, which means I'm going to ask all the parties to please state your name.

We'll start with taxpayer, sir.

MR. ALZAGHA: Almotasem Alzagha.

1           JUDGE ROSAS: This is Judge Rosas. Thank you,  
2 Mr. Alzagha.

3           And for the representatives for CDTFA.

4           MR. SUAZO: This is Randy Suazo, Hearing  
5 Representative.

6           MR. PARKER: Jason Parker, Chief of Headquarters  
7 Operation Bureau.

8           MR. BROOKS: Christopher Brooks, Tax Counsel for  
9 CDTFA.

10          JUDGE ROSAS: This is Judge Rosas. Before we  
11 discuss exhibits, because I realize we did receive an  
12 additional exhibit, I do want to say something about  
13 virtual hearings in general and, in particular, about the  
14 visual optics on screen. During today's virtual hearing,  
15 it may sometimes seem that I'm not looking at you or that  
16 I'm distracted, but rest assured that is not the case, I  
17 have multiple monitors in front of me.

18          I'm using an instant message app where I can  
19 communicate with my co-panelists, with tech support, and  
20 with management and staff members who work behind the  
21 scenes to make these hearings possible. But regardless of  
22 how I may come across on screen, it is important for me to  
23 assure you that I'm listening to you, and I'm taking good  
24 notes.

25          Before we continue, I just want to ask whether

1 there's anything that either of my co-panelists wish to  
2 add.

3 Judge Geary?

4 JUDGE GEARY: This is Judge Geary. No, thank  
5 you.

6 JUDGE ROSAS: Judge Kwee?

7 JUDGE KWEE: I don't have anything further.  
8 Thank you.

9 JUDGE ROSAS: This is Judge Rosas. We held a  
10 prehearing conference on June 1st of this year. It  
11 resulted in the issuance of a prehearing conference  
12 minutes and orders, which included the issuance of 7  
13 orders. The prehearing conference minutes and orders are  
14 self-explanatory but just in case, I will ask the parties  
15 whether they have questions.

16 Mr. Alzagha, do you have any questions regarding  
17 the prehearing conference minutes and orders?

18 MR. ALZAGHA: No, not at all.

19 JUDGE ROSAS: This is Judge Rosas. Thank you,  
20 Mr. Alzagha.

21 Mr. Suazo, any questions regarding the minutes  
22 and orders?

23 MR. SUAZO: No questions.

24 JUDGE ROSAS: This is Judge Rosas. Thank you.

25 Give me one second, gentleman. I want to receive

1 a message on the instant messenger app from one of my  
2 colleagues. I want to respond to it quickly.

3 As stated in the prehearing conference minutes  
4 and orders, as a result of a reaudit, Respondent reduced  
5 the measure of tax for unreported taxable sales to  
6 \$987,457. And, therefore, Respondent reduced the tax to  
7 \$88,581.10.

8 The issue is whether further adjustments to  
9 unreported taxable sales are warranted.

10 Mr. Alzagha, do you have any questions regarding  
11 this issue statement?

12 MR. ALZAGHA: No questions. I'm Almotasem  
13 Alzagha. No questions.

14 JUDGE ROSAS: This is Judge Rosas. Thank you,  
15 Mr. Alzagha.

16 Mr. Suazo, any questions regarding this issue  
17 statement?

18 MR. SUAZO: This is Mr. Suazo. No questions.

19 JUDGE ROSAS: This is Judge Rosas. Thank you,  
20 gentleman.

21 After the prehearing conference minutes and  
22 orders Mr. Alzagha submitted additional evidence. We  
23 marked it as Exhibit 5 for purposes of identification.  
24 And Exhibit 5 consist of approximately 38 -- that's three,  
25 eight -- pages of articles and other materials.



1           Mr. Suazo, do you have any concerns with  
2 Exhibit 5 being admitted into evidence?

3           MR. SUAZO: This is Mr. Suazo. No concerns.

4           JUDGE ROSAS: Very well. In that case, Exhibit 5  
5 will be admitted into evidence.

6           (Appellant's Exhibits 5 were received  
7 in evidence by the Administrative Law Judge.)

8           Mr. Alzagha, do you have any questions before we  
9 move on with you and your witness' presentation and  
10 testimony.

11           MR. ALZAGHA: Almotasem Alzagha. I'd like to  
12 start with the witness when we start so we can release him  
13 to his businesses. He has a busy day. And then we can  
14 make a note, if you don't mind, with what he gives us, and  
15 then we can catch up on it with the rest later.

16           JUDGE ROSAS: This is Judge Rosas. Mr. Alzagha,  
17 that's a really good point. You actually read my mind. I  
18 was going to ask about that. Not that these hearings are  
19 not so entertaining and interesting that Mr. Atari wanted  
20 to stick around, but I understand your concerns and we  
21 will go forward with Mr. Atari's testimony first. Thank  
22 you, Mr. Alzagha.

23           Other than that any other questions or points  
24 that you want to discuss before we begin, Mr. Alzagha.

25           MR. ALZAGHA: Almotasem Alzagha. No questions.

1           JUDGE ROSAS: This is Judge Rosas. Thank you,  
2 Mr. Alzagha.

3           And for Respondent, from Mr. Suazo, any questions  
4 before we move on?

5           MR. SUAZO: This is Mr. Suazo. No questions.

6           JUDGE ROSAS: This is Judge Rosas. Thank you,  
7 gentleman.

8           So just a point of order so everyone is on the  
9 same page. We will begin with Mr. Atari's testimony.  
10 Following that, Mr. Atari will be able to log off. Then  
11 we will turn it over to Mr. Alzagha for Mr. Alzagha's  
12 testimony and presentation in his case. Following that,  
13 we will turn it over to Respondent for their case  
14 presentation. And after that, we will go back to  
15 Mr. Alzagha and give Mr. Alzagha an opportunity to respond  
16 or rebut anything that Respondent has said as part of  
17 their case presentation.

18           Now, I do want to make just one point for Mr. --  
19 for everyone's benefit. One of the good things about OTA,  
20 taxpayers can represent themselves, as is the case here  
21 with Mr. Alzagha. We try to make things easy for  
22 taxpayers by being informal. But one problem that I've  
23 noticed, one of the problems that many taxpayers face when  
24 they represent themselves is that they have to deal with  
25 trying to understanding legalese.

1           This is like trying to understand a new language.  
2       Legalese is very formal, very technical, and it is often  
3       hard to understand. I must admit that I myself sometimes  
4       have a difficult time understanding it. There's a judge  
5       in the East Coast. I believe she is in the State of New  
6       Jersey. And she once said that, legalese is the language  
7       we use to confuse."

8           Mr. Alzagha, if one of the judges or if one of  
9       the representatives says anything that you do not  
10      understand, that is not your fault. That is our fault for  
11      not communicating in a way to make ourselves understood.  
12      I'm going to try to talk in plain clear language and  
13      simple English. I'm going to try to keep it simple. But  
14      you have a role in this too, Mr. Alzagha. You need to  
15      speak up if you don't understand something.

16           If one of the judges or representatives says  
17      something that you don't, if we're using a complicated  
18      technical term, please let us know. Ask us to explain the  
19      technical term. After Respondent presents its case, we  
20      will come back to you, Mr. Alzagha, so you can respond to  
21      what you heard. And for you to be able to respond, it is  
22      important that you understand. So as I mentioned, if you  
23      don't understand a technical term, please let us know.

24           As for Respondent, Mr. Suazo, I realize that you  
25      already prepared your written presentation, but if you

1 can, please take a moment to explain any technical terms.  
2 That will be very helpful. And please keep in mind that  
3 Mr. Alzagha may interrupt you and ask you to clarify any  
4 technical terms that he doesn't understand. Don't worry  
5 if we go over time. I will gladly grant you additional  
6 time. To me it's more important that Mr. Alzagha  
7 understands your presentation so that he's able to respond  
8 and properly rebut.

9 With that said, we're going to move forward with  
10 the witness testimony. I'm going to go ahead and swear in  
11 both witnesses at the same time. Mr. Atari and  
12 Mr. Alzagha, if you be so inclined, please raise your  
13 right hands. Thank you, gentleman.

14

15

A. ALZAGHA,

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

19

20

R. ATARI,

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

24

25

JUDGE ROSAS: Okay. Thank you, gentleman. I

1 know you both spoke at the same time, but I did hear both  
2 of you confirming. Thank you.

3 We're going to get started with Mr. Atari's  
4 testimony.

5 Mr. Atari, I would like to remind you that may  
6 testify in the narrative, which means that basically you  
7 can just tell us your story in your own words, or you can  
8 read from a prepared statement if you have one. You can  
9 also testify by using a question and answer method, which  
10 means that Mr. Alzagha can ask you questions. Or we can  
11 use any combination of these three.

12 At this moment I'll turn it to Mr. Alzagha.

13 Mr. Alzagha, how is your witness going to testify  
14 today?

15 MR. ALZAGHA: Probably to -- Almotasem Alzagha.  
16 I'm sorry. To make things to work accordingly, may be I  
17 should ask him questions, and he will answer it.

18 JUDGE ROSAS: That sounds great, sir. You may  
19 begin whenever you're ready.

20

21 DIRECT EXAMINATION

22 BY MR. ALZAGHA:

23 Q Okay. Mr. Atari, what's your relationship with  
24 me?

25 A I'm your IT for your business since, I would say,

1 2010.

2 Q Almotasem Alzagha. Mr. Atari, we've had problems  
3 with POS system on a couple of occasions, major problems.  
4 Do you have -- in your recollections, do you have the date  
5 of the crashes?

6 A Yes. I have dig back into my system here to get  
7 all this information. Because even though it's been a  
8 while, I could see that we have created an invoice for you  
9 back on December 28th, 2012, for a new POS system. And  
10 that was installed beginning of the year of 2013. Also,  
11 later I found that the hard drive crashed, even for a new  
12 system, and that was at that time -- I have my notes here.

13 Seagate, the manufacturer of those hard drives,  
14 they were putting a failure through to your hard drives.  
15 So yeah, there was in June 2013, there was also a  
16 replacement for the hard drive in your system.

17 Q And can you confirm the date on installing that  
18 new hard drive?

19 A It was on -- hold on a second. I'm sorry.  
20 Because I'm trying to open those all that's here. Yeah.  
21 It was on June 26, 2013.

22 Q And the second crash where the system was  
23 replaced, what date was that?

24 A Well, let me dig on your account, your act number  
25 here. I'm trying to get out of my system.

1           JUDGE ROSAS: Mr. Atari, my sincere apologies for  
2 interrupting. At least on my end, sometimes I'm having a  
3 difficult time to hearing you. But it seems that when  
4 you're looking towards the computer screen and you're  
5 speaking towards the screen, that's when you're sort of  
6 going in and out. If you could try to speak towards the  
7 microphone, that will be very helpful.

8           THE WITNESS: I see. Yeah. I see also there was  
9 a problem and -- I'm sorry. There is also there was a  
10 problem on 2013. We were there in December, but the issue  
11 wasn't clarified completely here. But there was an issue  
12 with this POS system. The only thing I can confirm here,  
13 replacing a hard drive in June 26, 2013, and that was a  
14 normal period for Seagate hard drives that we were getting  
15 a lot of problems with it. Not only at Bean Bag but  
16 everywhere.

17 BY MR. ALZAGHA:

18           Q Okay. This is, actually, you just made me think  
19 of another important question. When did you install the  
20 POS for the Bean Bag Cafe for the first time ever?

21           A The first time as a -- I went back to this. I  
22 found the system was ready and the invoice was created end  
23 of December 2012, 28, and installed beginning of 2013.  
24 So, basically, you start using in June 1st, 2013.

25           Q June 1st, 2013. Perfect.

1           MR. ALZAGHA: That's all I have for Mr. Atari,  
2 Judge. And I'll leave him to your hands now. I'm so  
3 sorry. Can I interrupt a little bit?

4           JUDGE ROSAS: Please continue, Mr. Alzagha.  
5 That's fine. Thank you.

6 BY MR. ALZAGHA:

7           Q Another important question, Mr. Atari. When did  
8 we start accepting credit cards? Do you have recollection  
9 for that, for Bean Bag Cafe.

10          A Yeah. I have also look on to this. Well, let me  
11 just put it -- let me grab all of this. Wait a second.  
12 I'm looking to that EDC. There is an EDC that we have  
13 installed at that time to start processing the credit  
14 cards, and that's going to tell me exactly when we  
15 installed that EDC to allow you to process credit cards.

16                 So what I'm doing is I'm going to go to your old  
17 invoices and see when we get it. I suppose I can  
18 actually -- yeah there's a couple of them. I'm sorry for  
19 that. I suppose -- I got them. Actually, I cannot find  
20 it. Yeah. There's a couple of them. I'm sorry. I  
21 cannot find it so easily because there's a couple of them  
22 here. And I have to dig into each number. That's why. I  
23 don't want to be actually holding so long.

24          Q Maybe I can make another question to make it  
25 easier for everybody. Did we accept credit cards before



1 installing the POS system?

2 A No. No. No. You installed way later. I would  
3 say years after.

4 Q Okay.

5 MR. ALZAGHA: Judge, if you and everybody don't  
6 mind, that's all I want to get out of that. That's the  
7 main meat of the question.

8 JUDGE ROSAS: This is Judge Rosas. Thank you,  
9 Mr. Alzagha.

10 CDTFA, do you have any questions for this  
11 witness?

12 MR. SUAZO: This is Randy Suazo. We have no  
13 questions.

14 THE WITNESS: Yeah. I see here four process with  
15 pieces, which is Wells Fargo Bank. That was issued in  
16 May 24, 2017. And there was a --

17 JUDGE ROSAS: Mr. Atari, this is Judge Rosas.  
18 Thank you very much, but we think you already answered  
19 Mr. Alzagha's question. So we're moving on. Thank you.

20 THE WITNESS: You're welcome. Thank you.

21 JUDGE ROSAS: At this moment -- Mr. Atari?

22 THE WITNESS: Yes.

23 JUDGE ROSAS: Do not hang up.

24 THE WITNESS: Oh, I'm sorry. Thank you. Thank  
25 you.

1 JUDGE ROSAS: No, no. I wanted to stop you just  
2 in case.

3 THE WITNESS: Okay.

4 JUDGE ROSAS: This is Judge Rosas. At this  
5 moment I'm going to see if any of my fellow co-panelists  
6 have any questions for you, Mr. Atari.

7 Judge Geary do you have any questions?

8 JUDGE GEARY: No questions. Thank you.

9 JUDGE ROSAS: This is Judge Rosas. Judge Kwee do  
10 you have any questions?

11 JUDGE KWEE: Hi. This is Judge Kwee. Yes, I do  
12 have a question or two for the witness. And I'm just  
13 curious because we're talking about installing the new  
14 point-of-sale system in 2013, which was after the audit  
15 period. Was there a prior point-of-sale system that was  
16 replaced? Do you know, Mr. Atari?

17 THE WITNESS: I'm sorry. Can you repeat the  
18 question, please.

19 JUDGE KWEE: Did you replace a previously  
20 existing point-of-sale system when you installed the new  
21 one in 2013?

22 THE WITNESS: No, we did not replace. Just the  
23 hard drive in 2013.

24 JUDGE KWEE: Okay. So was the data for, like,  
25 for example, 2010 to 2012 was that -- was that lost. Is

1       that why you replaced --

2               THE WITNESS: There was no data in 2010. They  
3 didn't use it. They started using it beginning of 2013.

4               JUDGE KWEE: Yes, I understand that part. And  
5 what I was asking, basically, was whether or not there had  
6 been a system in place that would have covered 2010 to  
7 2012 that you replaced?

8               THE WITNESS: No. They didn't have a system by  
9 then.

10              JUDGE KWEE: They didn't. Okay. Okay. I just  
11 wanted to know if there was a system before that. Thank  
12 you.

13              THE WITNESS: You're welcome, Judge.

14              JUDGE KWEE: I do not have any further questions  
15 for this witness.

16              JUDGE ROSAS: This is Judge Rosas. Thank you,  
17 Judge Kwee.

18              Mr. Atari, I do not have any questions for you,  
19 sir, but I do want to turn it over to Mr. Alzagha.

20              Mr. Alzagha, based on the questions that  
21 Judge Kwee asked your witness, do you have any additional  
22 questions for Mr. Atari?

23              MR. ALZAGHA: One only. One question, if you  
24 don't mind.

25              JUDGE ROSAS: Okay.

1 REDIRECT EXAMINATION

2 BY MR. ALZAGHA:

3 Q Almotasem Alzagha again. I'm sorry. What kind  
4 of system did we have. That's the question to write.  
5 What kind of system did we have before 2013? Can you  
6 explain what the system we used?

7 A Well, to be honest, all what I remember there was  
8 something tick, tick, tick, tick. But what is it exactly?  
9 I don't know. I have a POS system guy, even though I  
10 don't know about the old system. So, yeah, you started  
11 get advanced in 2013.

12 Q Okay. Thank you very much.

13 MR. ALZAGHA: That's all for me.

14 THE WITNESS: Yes.

15 MR. ALZAGHA: Judge?

16 JUDGE ROSAS: Thank you, Mr. Alzagha.

17 And thank you, Mr. Atari. Mr. Atari, we have no  
18 questions for you. You may log out whenever you're ready.  
19 Thank you, sir, for your time today.

20 THE WITNESS: Thank you, Your Honor. Thank you  
21 and have a great day.

22 JUDGE ROSAS: Likewise.

23 Mr. Alzagha, we're now going to move forward with  
24 your testimony. And again as we discussed at the  
25 prehearing conference, you can testify in the narrative,

1 basically, just telling us your story in your own words or  
2 read from a prepared statement or any combination of these  
3 two options. Mr. Alzagha, take your time. Please speak  
4 slowly and clearly, and you may begin whenever you're  
5 ready, sir. Thank you.

6 THE WITNESS: Thank you.

7

8 PRESENTATION

9 MR. ALZAGHA: I would like just to reiterate on  
10 his answer. We had the old-style cash registers, just to  
11 clarify. And it was -- it wasn't the most sophisticated  
12 system. But any way, I'd like to start by explaining the  
13 history of Bean Bag Cafe. I believe understanding the  
14 history of Bean Bag Cafe I can give a clear -- better  
15 picture on the type of business we had and the numbers  
16 changing and -- and the outcome of the investigation or  
17 the audit at the time of 2013.

18 So we took over or I took over Bean Bag Cafe in  
19 December of 1994 where it was opened by a gentleman and  
20 his wife who bought a building at the time at an auction.  
21 It was a building. It was caught on fire, and it was  
22 auctioned. And they bought that building, and they decide  
23 to open a cafe in the bottom floor. And they built a  
24 counter, features espresso machine, coffee, and toaster.  
25 And that's how they opened it.

1           And if we look at that area, the general area in  
2 those days, the Divisadero area was a very low income,  
3 under developed area where high crime and -- and not up to  
4 par area. So the cafe was built to suit such an area and  
5 such a low income. And mainly it was selling coffee,  
6 pastry, and bagels. Four months later his wife decided  
7 no, she cannot takeover, so I took over it. Otherwise, it  
8 was just a transfer without paying anything. I just took  
9 over it.

10           Until -- and we kept it the way it is until 1996.  
11 We decided to add a kitchen with limited menu, but we did  
12 not remodel or upgrade anything. It stayed rundown  
13 old-style looking cafe. 1999 -- we decided at the end of  
14 the 1999 to paint and remove the counter and build a new  
15 counter and upgrade the menu a little bit. That was the  
16 second remodeling. And then until 2007 this area was still  
17 run down under-developed for low-income families to live  
18 in it.

19           2007, San Francisco City as I sent in the  
20 exhibits I sent to you, that was my best finding to give  
21 you on what was going on in that area then. 2007, San  
22 Francisco decided to upgrade the corridor of Divisadero  
23 and mainly from Page Street to McAllister and probably up  
24 to Geary. But those were the five blocks that the main  
25 remodeling. They widened the sidewalks. They built new

1 islands with new flowers. They upgraded the lighting, and  
2 they slowed down the stoplights to slow down the traffic  
3 coming down Divisadero, which was a highway then. And  
4 they wanted to slow it down. So they added more lights to  
5 slow the traffic where the cars were stopped almost every  
6 block.

7 So by the 2010 this remodeling was completed, and  
8 that's when a new energy start come into the area. New  
9 businesses started opening up and invited a whole new line  
10 of business to open up. And new people start moving to  
11 the area. Building owners start upgrading their  
12 buildings, and the real start -- price start increasing.  
13 So the whole city -- the whole area start moving from  
14 underdeveloped low-income to mid-income and up-to-date  
15 area. All throughout this upbringing, Bean Bag Cafe  
16 stayed the way it is. So we did not benefit from this  
17 increase because we did not keep up with our menu and our  
18 remodeling with the area.

19 2010, the city decided to build the only paid for  
20 by the city park left in the City of San Francisco. And  
21 it was benefited a competitor, actually, only five doors  
22 away from me who very much had the same menu like I;  
23 coffees, pastries, and breakfast. And it really effected  
24 on our business a great deal. We debated. As a matter of  
25 fact, there was a time when we debated whether we are

1 staying here, or we closing doors and going home.

2           Until 2013 by right, as an upscale Whole Food  
3 Market, that is very popular in San Francisco, opened up  
4 very much across the street from our location. And that's  
5 when it changed my thinking about my business when I  
6 decided to invest in remodeling and bring it up to date.  
7 So we went ahead and remodeled. We get new floor, new  
8 painting, new tables, new counter, new refrigeration,  
9 upgrading the lighting, put the POS system. And the most  
10 important element of this remodeling, we added the credit  
11 cards in addition to all of that where we never taken  
12 credit cards before as we've seen from our witness on the  
13 subject with the POS.

14           We upgraded the menu. We invited a chief. We  
15 hired a chef, who is unfortunately now back in Mexico, to  
16 train our cooks on providing a higher-end dishes to  
17 complement everything going on in that area. And so you  
18 look from 2010 to 2013 our business increasing because the  
19 area was improving in such speed but not enough. And then  
20 from 2013 after the remodeling and up our business  
21 increased incredibly. And we go through these numbers in  
22 a little bit.

23           When the audit happened in June of 2013, if I may  
24 recall, that was right after the remodeling. And that's  
25 when we start seeing the benefit of our remodeling and the



1 area what it has now to offer. So what the numbers were  
2 collected at the audit time does not reflect on the  
3 numbers that was happening before then. Just to  
4 reiterate, we remolded in May of 2013, and we opened the  
5 doors in June 1st, 2013. And then she came at the time of  
6 the audit, I think three-weeks after that approximately.

7 So that's when we start seeing the energy  
8 changing. If we look at the numbers just to show because  
9 a question may come, or it cannot be increasing that much  
10 in such a short time. If you look at the numbers, what we  
11 reported in 2010, 2011, 2012, and 2013 to 2014, if we look  
12 at that -- and I'm not sure if you have those numbers with  
13 you. This record should be with you as well. I'll just  
14 go through the numbers quick, if you don't mind.

15 In 2010 we reported \$328,678. In 2011 we  
16 reported \$344,119. That's an increase of \$15,441. In  
17 2012 we reported \$370,080. That's an increase of \$25,961  
18 from the year before. Then in 2013, which we did the  
19 remolding in June, we reported \$697,191, which is \$327,000  
20 increase. To be exact, \$327,111 increase from the year  
21 before. That's almost double. We almost doubled the  
22 sale. Now, to go to -- that's because we benefited about  
23 five to six months of that after the remolding.

24 To go to 2014, we reported \$1,158,656. That's a  
25 full year of seeing -- benefiting from the remolding and

1 that area improvement. That is very much almost double  
2 the sale of 2013. That's an increase of \$461,465 from the  
3 year before. To look at the gross income -- the gross  
4 increase of the business from 2011 to 2014, it's \$829,978.  
5 This will give us a picture of how fast this area has been  
6 moving up. So when you look at our numbers before 2010  
7 and before -- to 2013, there's a slight increase. But you  
8 look from 2013 and up, it's a tremendous increase. And  
9 that explains why the numbers where the audit seeing is  
10 different than the numbers were reported before the  
11 remodeling.

12 I hope everybody is following me on this. If you  
13 have questions, please stop me on this. It's important to  
14 make -- I'm so sorry. I made a mistake on the  
15 calculation. The total increase -- my apology. The total  
16 increase between the time before the remodeling and after  
17 remodeling -- we're looking at just the six-month  
18 different -- is \$788,576. Tremendous increase. Credit  
19 cards account for -- at the time, if you look back at  
20 2014, credit card sales account for 70 percent of our  
21 sales. That 70 percent of our sales was not there before  
22 credit cards. We lost on that business. And that also  
23 made the different in the improvement of the sales.

24 This is also I would point to look at. Give me  
25 one second, if you don't mind, to go through my notes. So

1 this is the full picture of what was going on. To go back  
2 to the numbers that she asked me, at the time the auditor  
3 when she came, she stayed with me until 3:00 o'clock in  
4 the afternoon. I left at 2:00 o'clock in the afternoon.  
5 She asked me to pull the numbers for her around that time.  
6 My system was new, and she actually had to show me. She  
7 came physically behind the counter to show me how to pull  
8 the numbers, and we pulled the numbers.

9 Then she asked me to send the rest of the day to  
10 her because she has to go home, and I said absolutely. At  
11 the end of the day when we wanted to get that number for  
12 her, the system had crashed. And as you've seen from our  
13 witness, he came and refixed the -- the system on the day  
14 after of that. Then there was a request of giving her the  
15 sales for the rest of the year and the same thing. The  
16 system had crashed also by December.

17 Let me explain why the system had crashed on both  
18 occasions. What we found out -- we had those computers  
19 before installing the POS system. These computers our  
20 employees were surfing the net on the computers. These  
21 computers were full of viruses, and unfortunately effected  
22 the POS system and ultimately crashed because of that.  
23 For 2000 -- for the December of 2013 the big crash where  
24 we change and that cost us -- we have an invoice actually.  
25 I should have sent it, but I can send it to you guys --

1 for \$6,000, a little bit more over \$6,000 changing the  
2 full system.

3 We used to offer Wi-Fi. We still offer Wi-Fi for  
4 our customers. Unfortunately, our system was not secured  
5 against this Wi-Fi offering. Anyone can enter our system  
6 and do harm. And we believe that's what caused the crash  
7 for the December of 2016, which ultimately we ended up  
8 recreating the whole system again, which cost us a lot of  
9 money. And, ultimately, we couldn't send her the numbers  
10 she needed for the rest of the year from the POS system.  
11 We've had a record of it, but she needed it from the POS  
12 system at that time.

13 I think that sums up where I'm trying to reach  
14 the number she got, and she estimated is -- is depending  
15 on the number she came and saw at the minute of the audit,  
16 which does not reflect on the actual business that was  
17 happening before then. If you look at our sales, our  
18 best -- at the time our purchasing, which you do have a  
19 record of that. Our best supplier was our coffee company  
20 and that was, I believe then around the \$600 a month -- a  
21 week of coffee. So our purchasing was only coffee and  
22 pastry and bagels all along. You don't make that much  
23 money if you're just selling coffee, pastry, and bagels in  
24 such an area.

25 That's -- that's all I have, Judge.

1           JUDGE ROSAS: This is Judge Rosas. Thank you,  
2 Mr. Alzagha.

3           MR. ALZAGHA: You're welcome.

4           JUDGE ROSAS: At this point, I'm going to turn it  
5 over to CDTFA to see if they have any questions for  
6 Mr. Alzagha.

7           MR. SUAZO: This is Randy Suazo. We have no  
8 questions.

9           JUDGE ROSAS: This is Judge Rosas. Judge Geary,  
10 do you have any questions for Mr. Alzagha?

11          JUDGE GEARY: This is Judge Geary. I do not.  
12 Thank you.

13          JUDGE ROSAS: This is Judge Rosas. Judge Kwee,  
14 do you have any questions for Mr. Alzagha?

15          JUDGE KWEE: I did want to ask one clarification.  
16 Mr. Alzagha, is your position that you correctly reported  
17 during the audit period, or do you believe that there was  
18 an underreporting but that the amount calculated by CDTFA  
19 was overstated because they were looking at a period when  
20 your sales had increased as opposed to comparing it to the  
21 audit period?

22          MR. ALZAGHA: Yeah. No. As far as our  
23 reporting, our reporting was correct 100 percent.

24          JUDGE KWEE: Okay. And I would like to ask a  
25 follow-up question about that. And I was looking at the

1 exhibit binder, and that's page 45 in the exhibit binder  
2 that was distributed. It's also entitled Exhibit D, page  
3 19 of 33. It says, "CDTFA Exhibit," and that document is  
4 the bank deposit analyses. And looking over these, the  
5 schedule, it looks like the amount of cash deposits  
6 exceeded the amount of reported total sales.

7 So, for example, if you look at line number 9  
8 there, that's the second quarter of 2010. CDTFA's  
9 analysis of your bank statements indicated that your  
10 business deposited \$155,000 in cash in the bank, but that  
11 the reported total sales for the business was only  
12 \$78,000. And then, you know, and then the following  
13 quarter it was \$145,000 deposited, but only \$80,000  
14 reported in total sales. And I'm just wondering -- and  
15 similarly for the quarter that followed.

16 And I'm just wondering how you could -- if,  
17 potentially, you might want to explain the inconsistencies  
18 of how come the bank deposits, you know, or in some cases  
19 twice as high as the amounts reported as total sales from  
20 the business. I'm just trying to understand.

21 MR. ALZAGHA: Yes. I'm going to use my  
22 recollection. I don't have -- I don't have these exhibits  
23 in front of unfortunately. But -- he said -- what page  
24 number was that, Judge, again?

25 JUDGE KWEE: Oh, yes. I was looking at

1 page number 45, and it's titled Exhibit D, page 19 of 33,  
2 in the electronic file that was -- I believe would have  
3 been distributed by OTA for the hearing exhibit binder.

4 MR. ALZAGHA: We're looking for this, but we did  
5 explain at the time and you have a record of it. We had  
6 money held from our families, especially, from my brother  
7 at the time was helping. We've had a lot of loans coming  
8 in from the family to support the business at the time.  
9 So most of these as we explained before -- I don't have  
10 those papers in front of me. But if you go back to the  
11 record, it shows that we were borrowing money from family  
12 and especially my brother at the time to cover for the  
13 losses that we are going through.

14 You know, the questions is why would you want to  
15 do this. Unfortunately, I did not finish high school.  
16 That was the only thing going for me to live on and the  
17 family understood that and they were behind me 100 percent  
18 to get my feet going on this. So they were lending me a  
19 lot of money in secured loans at the time, and still I  
20 still owe them a lot of money until today. But it merely  
21 came from loans at the time. It was not the only month.  
22 It wasn't the only year throughout the whole years they  
23 supporting me.

24 JUDGE KWEE: Yes. And I guess just one more  
25 question about the loans. I believe I saw copies of

1 checks. That would have been the loans from your brother?

2 MR. ALZAGHA: Correct.

3 JUDGE KWEE: I don't believe I saw anywhere in  
4 the file that was distributed copies of bank statements so  
5 that we can, you know, for example look at the check to  
6 see if there was a bank statement deposit during the  
7 timeframe. I just wanted to make sure that the bank  
8 statements they aren't in the file; I wasn't missing  
9 anything.

10 MR. ALZAGHA: 2000 -- when was that -- what  
11 was -- Bank America. We used to deal with Bank of  
12 America. Bank of America decided to close our account and  
13 never offered an explanation. When we called them, they  
14 did not have an answer for us. They said to call a  
15 number. I called that number, and that number we only get  
16 recording that says, "Bank of America has the right to  
17 close any account," and they don't have to explain  
18 anything.

19 We went to the branch, the main branch that was  
20 next to the cafe and talked to the manager. She was  
21 surprised at the time and the same thing. To make the  
22 long story short, they closed us down. And we tried -- we  
23 asked for copies more than 10 times, on numerous occasions  
24 from Bank of America. They will not respond to us  
25 whatsoever. Until today, we haven't got response from



1       them.

2               I am not sure what was the cause of -- we know we  
3       have a small account and probably the maintenance of it  
4       more than what gain. They probably were cleaning bad  
5       accounts, what they call, and ours is one of them. But  
6       they never give us explanation, and they never allowed us  
7       to get any records from them. And I think we explained  
8       that also in the notes back then.

9               JUDGE KWEE: Okay. Thank you for answering my  
10       questions. I'll turn it back to the lead Judge,  
11       Alberto Rosas.

12              MR. ALZAGHA: Thank you.

13              JUDGE ROSAS: This is Judge Rosas. Thank you,  
14       Judge Kwee.

15              Mr. Alzagha, I do have a few questions. Some of  
16       them are going to piggyback on what Judge Kwee asked.  
17       First of all, I just want to be clear so that we're all on  
18       the same page. Respondent says that for the three years  
19       at issue that you had unreported taxable sales; basically  
20       that you underreported your taxable sales and that that  
21       amount is a little less than \$1 million, \$987,000. Is it  
22       your position that you did not underreport any sales, that  
23       what you reported was 100 percent correct?

24              MR. ALZAGHA: Absolutely.

25              JUDGE ROSAS: I know during your testimony you're

1 talking about the initial audit, the observation test,  
2 because you were referring to the auditor left at  
3 2:00 p.m., I believe was your testimony. But eventually  
4 CDTFA, Respondent, decided to change its audit method, and  
5 they calculated the audit taxable sales using bank  
6 deposits and cash payouts. I'm hoping you can provide  
7 some testimony about the bank deposits and the cash  
8 payouts and focus more on that as opposed to the  
9 point-of-sale system breaking down and what the auditor  
10 observed.

11 Because if CDTFA focused on the bank statements  
12 that you provided and that formed the basis of the audit,  
13 I'm hoping you can shed some light, walk us through, and  
14 tell us about these bank statements and the cash payouts.

15 MR. ALZAGHA: So the bank statements -- what the  
16 bank deposit that shows more than the sales, the money  
17 mainly was coming from family. In particular, my brother  
18 was supporting me to make sure I keep the doors open. He  
19 kept helping me with deposits and payouts. And,  
20 ultimately, also we were -- he was pulling cash and giving  
21 it to me so I can pay it as well as I need.

22 There -- if it wasn't for his help, the doors  
23 would have closed. And he was counting on keeping the  
24 doors -- he had a vision more than I did, and he knew that  
25 this area would change one day and it's worth the

1 investment. And he kept my doors open until that  
2 happened.

3 JUDGE ROSAS: This is Judge Rosas. Thank you,  
4 Mr. Alzagha. I want to follow up on the aspect of the  
5 loans. You referred to your brother that he kept things  
6 going, that he provided you with loans. Exhibit 3, which  
7 you submitted, are copies of three checks. And I believe  
8 two of them were from January 2011. And if I'm not  
9 mistaken, one of them is from February 2012. These three  
10 checks total \$95,000. Just to be clear so we're on the  
11 same page, are you saying that these three checks in the  
12 amount of \$95,000 were loans from your family?

13 MR. ALZAGHA: That's correct. Absolutely.

14 JUDGE ROSAS: During the three years at issue,  
15 the audit period, is it your position that they were more  
16 loans other than the \$95,000 represented by these three  
17 checks, or are these the totality of the loans?

18 MR. ALZAGHA: There has been much more loans  
19 coming in at small amounts throughout until 2013. Even  
20 the remodeling money at the time came from my family.

21 JUDGE ROSAS: I'm going to ask you to -- let me  
22 take a step back. Obviously, you have lived this  
23 experience so you know the story, you know the facts, you  
24 know the events. We do not. So we're going to ask you to  
25 walk us through. And more importantly, let us know what

1 evidence you've submitted or that there might be out there  
2 that proves the existence of loans. Because so far the  
3 only thing I have in our file are three checks made out  
4 from your account -- personal account to your business  
5 account.

6 There are references to an alleged notarized  
7 letter from your brother. We do not have that. That was  
8 not submitted into evidence. So I want you to just walk  
9 us through in terms of what loans were made, the amounts  
10 of those loans.

11 MR. ALZAGHA: Unfortunately, it was done in old  
12 fashion way where I don't have amounts of loan. It was as  
13 I need it. Can I have this? Yes. We go. The best I can  
14 do -- I thought -- do we have -- I can easily, if you give  
15 me the time -- unfortunately, one of my brothers is  
16 deceased now but the brothers -- I have three brothers  
17 that I can get statements notarized from them -- they are  
18 all overseas -- and show their support been continuously  
19 nonstop from 1994 up to 2013 collectively as I need it.

20 Unfortunately, it's done in such old fashion way  
21 where no papers. Luckily, we have those paychecks to  
22 show. I wish I can show more. The best I can do is I can  
23 get notarized letters from them to -- to reconfirm all  
24 these loans. And then when we say loans, they were more  
25 like grants than loans. I am not bonded of paying back

1       whatsoever. It was a help more than anything else.

2               And oh, I forgot. My wife is here. She reminded  
3 me. Not to mention, my mother and father continually  
4 supported me, and they are deceased now unfortunately.  
5 But that's the best I can offer to show you all the  
6 support coming in.

7               JUDGE ROSAS: This is Judge Rosas. Thank you,  
8 Mr. Alzagha. At this point my focus -- I'm not going to  
9 ask you to go out and get new evidence after the fact.  
10 But I'm curious about something that's referenced in the  
11 files and Respondent referenced to it in one of their  
12 documents. There's a reference to a notarized letter  
13 dated March 10, 2017, from your brother with Motazbelah  
14 Zagha. And my apologies if I mispronounced their name.

15               We do not have that. The Office of Tax Appeals  
16 does not have that. Is that a piece of evidence that you  
17 have in your possession, this March 10, 2017, letter? And  
18 if so, would you be interested in submitting that to our  
19 office if we kept the record open?

20               MR. ALZAGHA: We definitely going to look for it.  
21 My wife as we -- you mentioning.

22               Did we not submit it to tax office?

23               We did.

24               JUDGE ROSAS: You did not submit it to the Office  
25 of Tax Appeals. It's very likely that you submitted it to

1 Respondent CDTFA because they did reference it in their  
2 pleadings or exhibits. But in terms of evidence submitted  
3 to the Office of Tax Appeals, the answer to that question  
4 is no, we do not have that.

5 MR. ALZAGHA: I see. I see. Two different  
6 department. We -- okay. Yeah. We could give that.  
7 Apparently my wife thinks if they have it, that means we  
8 have it somewhere in the files. If we have to look.  
9 Unfortunately, we have many files. So if you give us  
10 time, we'll -- we'll try to find it.

11 JUDGE ROSAS: We will. And we will discuss that  
12 towards the end of today's hearing. We'll talk about a  
13 deadline for you to submit that. Bear with me. Give me  
14 one moment, Mr. Alzagha. I'm looking through my notes to  
15 see if I have additional questions for you.

16 I don't have additional questions for you at this  
17 time, Mr. Alzagha, but after your rebuttal I may have a  
18 few additional questions. I do realize that based on  
19 questions from the Judges, Mr. Alzagha, you provided  
20 additional testimony about the bank statements. You  
21 provided additional testimony about the loans. So I would  
22 like to give Mr. Suazo an opportunity if they want to ask  
23 you any questions.

24 Mr. Suazo, would you like to cross-examine  
25 Mr. Alzagha based on this new line of inquiry from the

1 Judges?

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

3 JUDGE ROSAS: This is Judge Rosas. Thank you,  
4 Mr. Suazo.

5 Mr. Alzagha, anything else you would like to add  
6 before we turn it over to Respondent?

7 MR. ALZAGHA: I'm hoping -- this is Almotasem  
8 Alzagha. I am hoping that -- I understand that the  
9 business was not done the way things are normally done in  
10 a sophisticated way at the time before the POS system. I  
11 hope everybody understand. I -- I think it's important  
12 that you understand that I -- and I'm not making excuses  
13 why. If I'm guilty of something, I'm guilty of  
14 disorganized not guilty in covering numbers. I -- my  
15 education is to 7th grade.

16 Unfortunately, I grew up in society where sports  
17 is the main important thing, and they let you slide for  
18 playing sports. And I never been to a classroom after the  
19 7th grade. I am learning as I move. I have learned a  
20 great deal. I'm still learning everyday. I made mistakes  
21 in organizations. Still I'm not the most organized guy,  
22 but decedent, honest, hardworking businessman who wakes up  
23 every morning, 4:00 o'clock in the morning.

24 JUDGE ROSAS: This is Judge Rosas. Thank you for  
25 that, Mr. Alzagha.

1           At this moment we're going to turn it over to --  
2           first of all, thank you, Mr. Alzagha, for your time and  
3           your testimony. You will have an opportunity to respond.  
4           We're going to turn it over to Respondent. They are going  
5           to do their case presentation. And, again, if there's any  
6           technical legalese or jargon that you don't understand,  
7           please let us know because I do want to provide you with  
8           an opportunity to respond to any accusations or  
9           allegations against you. So I do want to make sure that  
10          you understand what is being said. And you will have an  
11          opportunity to respond after CDTEFA presents their case.  
12          We'll turn it back to you, sir.

13                 With that said, Mr. Suazo, you may begin whenever  
14          you're ready, sir. Thank you.

15                 MR. SUAZO: Okay.

16

17                                 PRESENTATION

18                 MR. SUAZO: Appellant is a sole proprietorship  
19          operating a restaurant near the Panhandle section of the  
20          Golden Gate Park in San Francisco. The restaurant began  
21          operations December 1st, 1994. The business opened from  
22          7:00 a.m. to 10:00 p.m., 15 hours, and has seating for  
23          approximately 40 customers.

24                 Two POS systems were is used. The sales system  
25          was closed twice a day when shifts end at 2:00 p.m. and



1 10:00 p.m. There are two servers per shift plus kitchen  
2 staff. The cafe serves breakfast, lunch, and dinner.  
3 Menu items include omelets, hot and cold sandwiches,  
4 salads, burgers, crepes, bakery items, coffee, soda, beer,  
5 and other beverages. Sales of cold food to go are exempt.

6 This is the Appellant's first audit. The  
7 Department performed an audit examination of the  
8 Appellant's business for the period from  
9 January 1st, 2010, through December 31st, 2012. Analysis  
10 of the sales and use tax transcripts disclose that the  
11 Appellant claimed exactly 40 percent of all reported sales  
12 to be the nontaxable sales of food product every quarter.  
13 Therefore, the Department determined that the Appellant  
14 used an estimate to report exempt food sales and did not  
15 rely on cash register tapes to report exempt food sales.

16 Records provided by the Appellant for the audit  
17 were bank statements for 27 of 36 months of the audit  
18 period; federal income tax returns for 2010, 2011, and  
19 2012; and manually prepared sales journals for the audit  
20 period, which included only totals. No taxable sales to  
21 nontaxable sales amounts were included in the manually  
22 prepared sales journals. The Appellant did not provide  
23 general ledgers, point of sale, otherwise known as POS  
24 cash register tapes, POS sale reports, guest receipts,  
25 purchase journals, or purchase invoices for the audit

1 period.

2 The Appellant was notified of the audit in  
3 March 2013 and claims the POS system crashed on  
4 April 29th, 2013. Because the Appellant did not provide  
5 complete books and records for examination, the Department  
6 was unable to perform any direct testing of recorded  
7 amounts. Review of the federal income tax returns,  
8 Exhibit F, page 22 of 45, show the following: Comparison  
9 of federal income tax returns to sale and use tax returns  
10 disclosed differences in 2010 and 2011 totaling \$18,000.

11 Rent expense claimed on the federal income tax  
12 returns average \$121,000 per year. The rent expense  
13 totaled 35 percent of recorded sales. In our experience  
14 for this industry, rent expense is expected to range  
15 between 6 to 15 percent of total sales. Cost of labor,  
16 which is wages paid to the employees, averaged just over  
17 \$55,000 per year, which appears to be quite low  
18 considering there are two shifts with two servers plus  
19 kitchen staff. Net income averaged just over \$14,000 per  
20 year for the three years, which again is low considering  
21 the restaurant had been operating for 15 years.

22 A markup on cost of goods sold revealed a 360  
23 percent markup; Exhibit F, page 19 of 45. However, since  
24 purchases could not be verified, the recorded markup was  
25 not deemed valid. The 27 months of bank deposits provided

1 were scheduled and compared to the 12 quarters of reported  
2 sales and disclosed an ex-tax difference of over \$446,000;  
3 Exhibit F, page 25 of 45. The difference does not include  
4 any adjustments for the missing nine months of bank  
5 statements.

6 An observation test was conducted on Wednesday  
7 June 26, 2013, from 7:00 a.m. to 2:24 p.m. The site test  
8 disclosed a taxable ratio of roughly 89 percent on total  
9 sales of \$1,433. The Appellant was instructed to keep the  
10 sales receipts for the rest of the day. However, the  
11 Appellant claimed that the register crashed and no  
12 additional sales receipts for the day were available;  
13 Exhibit F, page 17 of 45. The Appellant did provide a  
14 sales register tape for June -- for Tuesday,  
15 June 25th, 2013. Total sales were \$2,191, with recorded  
16 taxable sales of almost 91 percent.

17 In the original audit, a \$2,191 sales amount was  
18 used to project total sales for the audit period, which  
19 was reduced in earlier periods for price increases. The  
20 taxable percentage of 88.8 percent observed during the  
21 site test was applied. Taxable sales were established and  
22 compared to reported sales which resulted in a difference  
23 of over \$1.25 million; Exhibit F, page 16 of 45.

24 The Appellant did not concur to the original  
25 findings projected sighting that both the projected total

1 sales and computed taxable ratio were overstated. The  
2 auditor attempted to perform two more observation tests.  
3 However, the Appellant did not wish to have the site test  
4 conducted. A reaudit was conducted and the bank deposits  
5 with estimated deposits for the nine months of missing  
6 bank statements; Exhibit D, page 20 of 33, along with cash  
7 payouts; Exhibit D, page 23 of 33, were used to project  
8 total sales of \$2 million.

9 A taxable percentage of 80 percent was given as  
10 the Appellant stated that the sales mix had changed after  
11 renovations to the cafe. The 80 percent taxable ratio was  
12 applied to the audited total sales to produce audited  
13 taxable sales of \$1.6 million. When compared to reported  
14 taxable measure of \$615,000, underreported taxable sales  
15 of \$987,456 were computed; Exhibit D, page 18 of 33.

16 The liability established in the reaudit is based  
17 on bank deposits during the audit period, plus audit cash  
18 payouts during the audit period. Based on the audit  
19 approach taken, any increase in sales volume or in selling  
20 prices would automatically be accounted for using this.  
21 Thus, no adjustments were warranted for either of these  
22 categories.

23 The Appellant has stated that they did receive  
24 loans from relatives. However, the documentation provided  
25 does not support the claim. As a reasonable test, the

1 audited total sales were compared to rent expenses per  
2 federal income tax returns disclose a percentage of rent  
3 of two sales of 18.10 percent. The ratio shows that the  
4 audited sales are very conservative.

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

7 JUDGE ROSAS: This is Judge Rosas. Thank you,  
8 Mr. Suazo.

9 I'm going to turn it over to my co-panelists.  
10 Judge Geary, do you have any questions for CDTF?

11 JUDGE GEARY: This is Judge Geary. I do.

12 Mr. Suazo, the hearing binder that I have  
13 contains one page of bank statements, and it's marked  
14 page 1 of 9. I can't remember which month it's for  
15 exactly. But was it agency's intent to provide copies of  
16 all the bank statements that it obtained from the  
17 Appellant?

18 MR. SUAZO: What we're trying -- on that I don't  
19 recall off the top of my head, however -- or no, we  
20 wouldn't have shown the bank statements. Basically, the  
21 schedule that we provided showing the deposits coming in  
22 was what was intended to be shown.

23 JUDGE GEARY: So it was the agency's intent to  
24 not provide the bank statements to allow OTA to verify the  
25 information contained on the schedule?

1           MR. SUAZO: I think we only had one bank  
2 statement available.

3           JUDGE GEARY: At some point, did you have other  
4 bank statements available? Where did you get the  
5 information that appears in the schedule of deposits?

6           MR. SUAZO: Are you talking about -- can you  
7 refer me to the page you're talking about specifically?

8           JUDGE GEARY: I think it's -- I believe  
9 Judge Kwee referred to it earlier, and I think he -- I  
10 think it was page 45 of Exhibit D, if I'm not mistaken.

11          JUDGE KWEE: Yes, that's correct. This is  
12 Judge Kwee. It was page 45 of the all briefing binder,  
13 and it was also labeled CDTFA Exhibit D, page 19 of 33.  
14 So it had two labels on it.

15          JUDGE GEARY: That is the schedule that purports  
16 to identify the deposits. Sorry. This is Judge Geary.  
17 It purports to identify the deposit. I presume that was  
18 taken from bank statements that CDTFA obtained from the  
19 Appellant. My question would be, where are those bank  
20 statements?

21          MR. SUAZO: They're probably with the Appellant.  
22 A lot of times when we do these things, what we do is we  
23 just schedule the deposit amounts. We don't make copies  
24 of them. We just schedule them and then give back to the  
25 Appellant. There may be one copy made for -- just to get

1 the account number or something like that. But other than  
2 that, we normally just give it back to the taxpayer.

3 JUDGE GEARY: Okay. Thank you. Those are the  
4 only questions that I have.

5 JUDGE ROSAS: This is Judge Rosas. Thank you,  
6 Judge Geary.

7 Judge Kwee, do you have any questions for CDTFA?

8 JUDGE KWEE: This is Judge Kwee. I did want to  
9 ask about the cash payouts. So from understanding the  
10 audit liability that CDTFA calculated was based on two  
11 elements to establish the underreporting. The one element  
12 was the comparison of the bank statements to the reported  
13 total sales, and the other aspect was analyzing the cash  
14 payouts.

15 MR. SUAZO: Yes, that's correct.

16 JUDGE KWEE: Thank you. And so for the cash  
17 payouts I understand CDTFA had added an additional  
18 approximately \$200,000 -- \$200,000, \$300,000 based on cash  
19 payments made to five vendors or certain vendors. If I'm  
20 understanding, is -- CDTFA, are you saying that  
21 Appellant's made -- basically, paid cash out of the  
22 register that wasn't deposited in the bank and that's why  
23 that was added? Is that what the contention is in cash  
24 payouts?

25 MR. SUAZO: That is correct. Basically, when we

1 looked at -- when they tried to do a purchase segregation,  
2 they saw that some vendors were paid with check, some  
3 vendors were paid only with cash. So what they did is  
4 they listed the vendors that paid with cash and then they  
5 circulated the vendors and then received the information  
6 from the vendors. I think with one vendor they weren't  
7 able to do that. So they had to extrapolate with those.  
8 And you have to remember it's a limited amount of vendors  
9 that they actually tested. There could be a lot more  
10 vendors that they paid in cash that we have no idea.

11 I mean, he could have went to Costco and bought  
12 stuff there. If you look at it, we don't have any beer  
13 vendors on there. I believe we also don't have Coca Cola,  
14 7-Up, or Pepsi on there. So there's other vendors that  
15 probably should be included that are not included. So  
16 that's why I'm saying based on our analysis of what we  
17 established, we're very conservative. Because if you look  
18 at the rent expense and what the norm should be for this  
19 industry, they are still higher than what the norm of the  
20 industry is.

21 JUDGE KWEE: This is Judge Kwee. Just to follow  
22 up on that did -- when CDTFA was scheduling this, did they  
23 verify, for example, that there weren't withdrawals from  
24 the bank account that corresponded to the payments to the  
25 vendors since it was excluded from the cash deposits?



1           MR. SUAZO: That I cannot answer yes or no  
2 because I'm not positive. But I would say the normal  
3 industry practice is you get cash in the register. The  
4 vendor comes over. You pay them with the cash from the  
5 register, otherwise a cash payout, and then he's paid. So  
6 basically it would already be subtracted out of any money  
7 that would have gone to the -- into the bank as a deposit.

8           JUDGE KWEE: Okay. Thank you.

9           MR. SUAZO: Okay.

10          JUDGE KWEE: I might have questions for the  
11 Appellant about that later when we go back to his  
12 testimony. For now I'll turn it over to the lead judge,  
13 Judge Rosas.

14          JUDGE ROSAS: This is Judge Rosas. Thank you,  
15 Judge Kwee.

16          Mr. Suazo, in one of the pleadings or exhibits  
17 that your office submitted, you indicated that petitioner  
18 did not provide bank statements for nine months from the  
19 audit period. So I just want to confirm. Did Appellant  
20 provide a bank statement for January 2011? That's one of  
21 the months where we have two checks from the purported  
22 loans.

23          MR. PARKER: This is Jason Parker. Mr. Rosas, in  
24 looking at the amounts in the audit, we do have -- we do  
25 show bank deposits for January 2011. The amount that we

1 have on the schedule for that month is \$58,000 in  
2 deposits.

3 JUDGE ROSAS: This is Judge Rosas. Second  
4 related question, did Appellant provide a bank statement  
5 for February 2012, which is the period for a third of the  
6 checks that were provided for the period?

7 MR. SUAZO: February 2012. When I'm looking at  
8 the schedule of February of 2012 shows \$45,000.

9 JUDGE ROSAS: This is Judge Rosas. I'm sorry,  
10 Mr. Suazo. Can you repeat that?

11 MR. SUAZO: February 2012 shows deposits of  
12 \$45,000, according to scheduling. March of 2012 shows  
13 \$60,000. It's on Exhibit D, page 19 of 33, or if you're  
14 using the Bate's numbering system, page 45.

15 JUDGE ROSAS: This is Judge Rosas. Thank you,  
16 Mr. Suazo.

17 We have Exhibit 3 which identifies three checks:  
18 One, \$140,000, January 2011; second for \$30,000,  
19 January 2011; and third \$25,000, February 2012. Based on  
20 CDTFA's review of bank statements, were there  
21 corresponding deposits into the business account in these  
22 amounts?

23 MR. SUAZO: Since I don't have the breakdown of  
24 the bank deposits, I can't tell you yes or no. However, I  
25 will say that, if you noticed as you pointed out earlier,

1 this is on the taxpayer -- or the Appellant's private  
2 checking account or personal checking account. So the  
3 question would be where was the money obtained from. Did  
4 he comingle the money, the revenue from the business into  
5 his personal account, and then when needed would write a  
6 check to cover expenses or other purchases when needed?

7 In this industry, when we have done audits of  
8 this nature, again, we have seen that occur many, many  
9 times because, basically, you're not a corporation. It's  
10 a sole proprietorship. It's your own money. So where you  
11 deposit to is up to you.

12 MR. PARKER: This is Jason Parker. I'd like to  
13 add something onto that. I would like to note that the  
14 average bank deposits for the 27 months were just over  
15 \$50,000. The two checks in January 2011, I believe,  
16 totaled \$75,000, even though we only had -- we only showed  
17 \$58,000 of deposits. Typically, ours would exclude large  
18 check deposits in bank accounts. And so the amount for  
19 February of '12 is \$45,000, which is still below the  
20 average bank deposits for the 27 months.

21 So it appears that the auditor, if these deposits  
22 were made into the business account, excluded these from  
23 the cash deposits included on the schedule.

24 JUDGE ROSAS: This is Judge Rosas. And if these  
25 bank deposits were excluded from the schedule, why would

1       that be? Is it because they're considered as a loan and  
2       excluded? I'm trying to wrap my brain around that  
3       information.

4               MR. PARKER: This is Jason Parker. Typically,  
5       when we're trying to use the bank deposits to arrive at  
6       what are actually sales deposited into the bank account.  
7       So if there's unusual large deposits, we try to find out  
8       what the reason is for that. And so if these are, you  
9       know, a \$40,000 deposit as a loan to the business, we  
10      would exclude that from the amounts in the bank deposit  
11      analysis because we're really only trying to look at what  
12      the sales are from the business deposited into the bank.

13              JUDGE ROSAS: This is Judge Rosas. Thank you,  
14      Mr. Parker. I appreciate the information about what  
15      generally happens. Do we have any information in the  
16      evidence submitted about what actually happened in this  
17      case?

18              MR. SUAZO: This is Randy Suazo. The bank -- on  
19      the bank deposits there's no breakdowns as to the daily  
20      deposit amounts. What we have is just basically what was  
21      deposited as well as stated on the statement. So -- but  
22      as Mr. Parker had stated, if an auditor had seen that  
23      there was a large deposit, they would exclude it saying  
24      it's a loan or something, a nonrecurring item type of  
25      idea. So, basically, they would exclude it, and what you

1 would be looking at are net sales from the business.

2 JUDGE ROSAS: This is Judge Rosas. Thank you,  
3 Mr. Suazo. Again, I just want to clarify, because your  
4 providing information about what the auditor may have  
5 done, may have excluded it. And you said may have  
6 excluded it because it was a loan or may have thought it  
7 was loan. But there are indications in the file that --  
8 and I'm quoting from CDTFA that, "Essentially the  
9 Appellant did not provide documentation in support of the  
10 cash loan."

11 So I'm just trying to clarify. Is it now CDTFA's  
12 position that Appellant has established, based on his  
13 testimony, based on Exhibit 3, the three checks, and based  
14 on that notarized statement that the \$95,000 were a loan?

15 MR. SUAZO: That, again, we don't know if that  
16 came from loan money or not. Because as stated earlier, a  
17 lot of times what happens is if you're a sole  
18 proprietorship at a restaurant, sometimes the money  
19 gets -- or the money will get commingled between personal  
20 account and business account. Okay. And, basically, as a  
21 sole proprietorship the -- how the money gets split up  
22 initially, as long as you report it correctly, would be  
23 fine. Okay.

24 In this case as the Appellant had stated, they  
25 are not the most organized person in the world. Okay. So

1       whether or not this occasion we don't have anything to  
2       show that these were actually loans from outside sources.  
3       We don't know that the money that he put into his personal  
4       account did not come from the sales of the store.  Because  
5       as stated earlier, if you look at the federal income tax  
6       returns, net income is only showing \$15,000 per year.  So  
7       how did he all of a sudden get \$75,000 or \$95,000 if he's  
8       only showing \$15,000 of net income?

9                JUDGE ROSAS:  This is Judge Rosas.  Last  
10       question, Mr., Suazo, regarding this issue because I know  
11       you're saying you don't have anything to prove the loan.  
12       So I just want to make certain.  Based on this the  
13       notarized statement from Appellant's brother, based on Mr.  
14       Alzagha's testimony here today, and based on the three  
15       checks identified as Exhibit 3, is it still Respondent's  
16       position that Appellant has not provided adequate  
17       documentation in support of these cash loans totaling  
18       \$95,000?

19               MR. SUAZO:  It would still be our position.  
20       Basically what's occurring or on the -- we don't see the  
21       actual money getting into the bank account that -- that  
22       we're drawing our sales from.  Okay.  So as far as we know  
23       these are sales made to the restaurant or sales made by  
24       the restaurant.  And as stated earlier, you know, this is  
25       an extremely conservative estimate.  Because, again, if

1 you look at the wages that were paid in San Francisco,  
2 which is normally the highest living area in the country,  
3 if not the world, the wages are quite low.

4 The net income is quite low. The rent to sales  
5 is quite high. The purchases we know are not all there  
6 when we did our review of it. So because of all these  
7 factors, we had to do an alternative method. The best  
8 alternative method approach that we had in this case was  
9 the bank statements.

10 MR. PARKER: This is Mr. Parker. I'd like to add  
11 something on to that. The three checks that may be  
12 considered loans, when looking at the bank deposits we  
13 have scheduled, the Appellant has still not shown that the  
14 amounts that we have scheduled in his cash bank deposits  
15 or our cash bank deposit analyses, he has not shown that  
16 the amounts we have on that schedule actually include  
17 additional loan amounts that need to be removed.

18 JUDGE ROSAS: This is Judge Rosas. And just to  
19 be clear, Mr. Parker, when you're saying that Appellant  
20 has not shown that, you're saying he has not provided  
21 anything other than that notarized statement, the three  
22 checks, and his testimony here today; is that correct?

23 MR. PARKER: This is Mr. Parker. That is  
24 correct. We would need to see the bank statements for  
25 those months to see those deposits and see if they were

1 counted in the amount that we have schedule in the audit.

2 JUDGE ROSAS: This is Judge Rosas. Thank you,  
3 gentleman.

4 Does either one of my co-panelists have any  
5 additional questions for Respondent before we turn it over  
6 to Mr. Alzagha?

7 JUDGE GEARY: This is Judge Geary. I do not.  
8 Thank you.

9 JUDGE KWEE: This is Judge --

10 JUDGE ROSAS: And I take it --

11 JUDGE KWEE: Sorry.

12 JUDGE ROSAS: I was going to say, I take it from  
13 Judge Kwee's silence that he has no questions.

14 JUDGE KWEE: That's correct. Thank you,  
15 Judge Rosas.

16 JUDGE ROSAS: This is Judge Rosas. Thank you,  
17 Judge Kwee.

18 Mr. Alzagha, we're going to turn it back to you.  
19 You have an opportunity to rebut or, essentially, respond  
20 to anything that you just heard. Please take your time.  
21 I remind you to speak slowly and speak clearly. And you  
22 may begin your final presentation whenever you're ready,  
23 sir.

24 ///

25 ///



1                                    CLOSING STATEMENT

2                    MR. ALZAGHA: I think the best way for me to  
3 answer -- Almotasem Alzagha. I'm sorry.

4                    The best way to answer is take each item and --  
5 and try to explain it. I have three items written in  
6 front of me that I -- the payroll, the rent, and the bank  
7 statements. Payroll, it's a family business. The reason  
8 payroll is very low because we -- until today, I have the  
9 help of the family. At the time my brothers were here.  
10 They were lending hands. My wife, their wives, everybody  
11 is lending hands in the business. They come when they  
12 can, and they lend hands. And they take a lot of the  
13 load, a big load of what's supposed to be.

14                   We have to remember, again, I need to reiterate.  
15 At the time of your audit, it's completely, completely  
16 different business than before the audit as I explained  
17 before. The rent until today. I pay the highest rent in  
18 San Francisco probably. I have a landlord who will not  
19 budge, and I have to work it and try to work during --  
20 I'll give you an example.

21                   During the pandemic, everybody lowered their  
22 rent. I'm still paying \$15,000 a month. Am I making,  
23 during the pandemic, enough business to offset the  
24 \$15,000? I'm not even making the \$15,000. But that's the  
25 landlord I have, and I have the choice between paying it

1 or leaving. I am not leaving.

2 That's the only thing in my hands. And I'm going  
3 through same thing again that I have to pay what I have to  
4 pay. I'm getting the loans and everything I can until  
5 hopefully life go back to -- I feel like I'm going through  
6 the same -- with this pandemic, the same exact story like  
7 before.

8 Bank statements, you guys are the government.  
9 You have the power. If you don't believe me, subpoena  
10 Bank of America. Let them give you those nine statements  
11 that I didn't give you. I gave you 3 years of statements  
12 except for the 9 months. So you have, when we do the  
13 calculations, 25, 26 months of statements. Why would I  
14 give you 26 and not give you those 9? Unfortunately. My  
15 bookkeeper is not up to par. I lost the 9 months and --  
16 and you have to power to subpoena. But that's what I've  
17 been telling everybody from day 1. I couldn't get Bank of  
18 America to give them to me. No matter what I tried, I  
19 don't have that power.

20 So I could see it's a game of speculation, and  
21 I'm sorry to say that because you are pushing me for my  
22 disorganization but not my dishonesty. I'm an honest man.  
23 I report what I report and I -- as for the cash, that's  
24 how we conducted business all our life. It's -- we don't  
25 have credit with these people. We have to pay them cash

1 as they come in. Our credit is not up to par, and we have  
2 to pay them cash. It's their request. We had some in the  
3 past. We had some checks that returned, came back.

4 We couldn't -- we couldn't keep up with the  
5 checks, so it was their -- the company's decision to take  
6 cash from us for most. Then we decided okay. Whoever  
7 comes in pay them cash out of the drawer, if we have. If  
8 we don't have it, call the brother. Bring me cash. We're  
9 getting this today. It's an old fashioned business. I  
10 wish I can tell you more. And that changed. And when  
11 we -- when we opened, we had at the time one of the  
12 partners of the building was -- a deceased man now -- is  
13 Sam Tota [sic] who was a CPA.

14 They are the ones as I explained. They're the  
15 ones who opened this little place before me. And they set  
16 up a 60/40 system with the tax Department. It wasn't my  
17 call. And they were doing my books for the longest time  
18 paying 60/40. And if you look at our sales, then there is  
19 merely coffee and pastry. This is nontaxable items, the  
20 majority of them. And we sold bagels until 2000, then we  
21 added the menu. And the menu wasn't the biggest selling  
22 in the business. It still stayed with coffee and pastry.

23 As I was reading the other day your website,  
24 coffee is not taxable. Baked goods is not taxable. And  
25 that was the majority of our business at the time, not

1 now. I don't think I missed any other point, but that's  
2 what I have. Again, please subpoena Bank of America.  
3 It's not my power.

4 Thank you.

5 JUDGE ROSAS: This is Judge Rosas. Thank you,  
6 Mr. Alzagha.

7 At this point I'm going to turn it over to my  
8 co-panelists to see if either of them have questions for  
9 either party.

10 Judge Geary.

11 JUDGE GEARY: Thank you. This is Judge Geary.  
12 Mr. Alzagha, do you disagree with any of the amounts that  
13 CDTFA lists in its bank deposit analysis? And I'm looking  
14 at Schedule R1 12A 1a, and that is Bate's stamp page 45  
15 from Exhibit D, or it's page 19 of 33 for Exhibit D. Do  
16 you disagree with any of the numbers that CDTFA states as  
17 representing your deposits for each of the months listed?

18 MR. ALZAGHA: Could you please repeat -- I'm  
19 sorry. Yeah. Could you repeat that page number and  
20 exhibit number?

21 JUDGE GEARY: It's Exhibit D. And if your  
22 looking at the exhibit numbers and page numbers in blue at  
23 the center, it would page 19 of 33.

24 MR. ALZAGHA: Okay. Give me one second.

25 JUDGE GEARY: This is a document you should have

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seen before.

MR. ALZAGHA: Yeah. Yeah. Definitely the total sale I disagree 100 percent with.

JUDGE GEARY: So you disagree with the total amount of deposits listed on that document?

MR. ALZAGHA: The amount of deposits are correct, however, the sales is not correct.

JUDGE GEARY: So you're saying the reported sales amounts is not correct?

MR. ALZAGHA: I have to look. Give me one second, Judge, if you don't mind.

JUDGE GEARY: Of course.

MR. ALZAGHA: My disagreement is with their findings. The difference is where I'm disagreeing 100 percent on it.

JUDGE GEARY: All right. This is Judge Geary. So let me confirm. Do you agree with the total figure at the bottom that is \$1,471,712, which the Department represents is the total deposits for the months for which you provided bank statements?

MR. ALZAGHA: You mean for the year?

JUDGE GEARY: For the period of time reflected on that schedule, which would be January of 2010 through December of 2012. Those are the dates reflected for period.

1           MR. ALZAGHA: Total of three years. I see. I do  
2 not disagree with the deposits.

3           JUDGE GEARY: All right. And do you -- this is  
4 Judge Geary again. Do you have any bank statement that  
5 shows a deposit of a loan from anybody during that same  
6 period?

7           MR. ALZAGHA: We -- we give them all the bank  
8 statements. As a matter of fact, if you look at the  
9 auditor note, she -- part of her notes tell you she picked  
10 up the notes, the bank statements. However it's missing  
11 nine months, and that's what I cannot get.

12           JUDGE GEARY: This is Judge Geary again. I  
13 understand that, sir. But I'm asking you because the  
14 Department has indicated the bank statements were returned  
15 to you and that they don't have copies of the bank  
16 statements. I'm asking you if you can produce any bank  
17 statement the shows the deposit of any loan to you during  
18 that period of time.

19           MR. ALZAGHA: I have -- I have to check what I  
20 have. I cannot give you an answer right away. I have to  
21 check them and see. We are --

22           JUDGE GEARY: That's fine.

23           MR. ALZAGHA: We're looking at 2010, 11, 12 years  
24 away, so I need to look at them again.

25           JUDGE GEARY: I appreciate that. And this is

1 Judge Geary. You don't have to give me the answer today  
2 because I believe Judge Rosas is going to tell you that  
3 you will have a period of time within which to produce any  
4 such documents. And my request would be that you produce  
5 copies of all of the bank statements that you have.  
6 However, it will be your choice to submit whatever bank  
7 statements you choose to submit. And those are the only  
8 questions that I have of you now. Thank you.

9 MR. ALZAGHA: Thank you.

10 JUDGE ROSAS: This is Judge Rosas. Thank you,  
11 Judge Geary.

12 Judge Kwee, do you have any questions for either  
13 party?

14 JUDGE KWEE: I have just a very brief follow up  
15 for the Appellant.

16 Appellant, did you pay for your goods in cash?  
17 Did you pay your vendors in cash, or how did you pay them?

18 MR. ALZAGHA: Many of them in cash. As I  
19 explained, we did not have credit with them, and that was  
20 their request. So many of them -- well, we only had a few  
21 of the vendors. We didn't have a lot of vendors. We had  
22 the coffee company, the milk company, and the pastry.  
23 Really, that's our vendors. And I believe the coffee and  
24 the pastry -- the coffee was paid cash only. The pastry  
25 and the milk company were paid checks.

1 JUDGE KWEE: Okay. Thank you. I have no further  
2 questions.

3 MR. ALZAGHA: You're welcome.

4 JUDGE ROSAS: This is Judge Rosas. I have no  
5 further questions at this time.

6 Mr. Alzagha --

7 JUDGE GEARY: Judge Rosas, may I interrupt for  
8 one moment please. I apologize.

9 JUDGE ROSAS: Of course. Go ahead.

10 JUDGE GEARY: I wanted to ask the Respondent a  
11 question -- this is Judge Geary -- either Mr. Suazo or  
12 Mr. Parker, whoever chooses to respond, my understanding  
13 of what you indicated earlier was that if an auditor in  
14 reviewing bank statements found a deposit entry that the  
15 auditor suspected was something other than the deposit of  
16 the cash receipts of the receipts from the business, they  
17 would -- for example, if they saw a \$20,000 deposit that  
18 they might suspect would be a loan, they would take  
19 further action, follow up with the taxpayer that was being  
20 audited, and in some fashion document the results of that  
21 further investigation. Do I understand correctly what  
22 you've indicated?

23 MR. SUAZO: This is Randy Suazo. Normally, that  
24 would be -- that's what occurs, sir.

25 JUDGE GEARY: Thank you. And Judge Geary again.



1 Is there any indication in the audit work papers for this  
2 audit that there was such a deposit that drew the  
3 attention of the auditor and on which the auditor followed  
4 up?

5 MR. SUAZO: Based on the -- what's written on  
6 there, it doesn't appear that they saw anything that would  
7 be of a loan-type situation.

8 JUDGE GEARY: Thank you.

9 I appreciate you allowing me that opportunity,  
10 Judge Rosas. That's all I have.

11 JUDGE ROSAS: This is Judge Rosas. I do have  
12 just one final question. I'm going to piggyback on  
13 Judge Geary's question. This is to Respondent.

14 Respondent, if you would take a look at  
15 Exhibit 3, the three checks that were made out to the  
16 business. On the back it says, "For deposit only," and  
17 there is the account number of the business. Does this  
18 account number correlate to the bank account that resulted  
19 in the bank cash deposit calculation in the bank  
20 statements? Are we talking about the same bank account  
21 number, essentially?

22 MR. SUAZO: I'm still trying to get to it. Hold  
23 on.

24 JUDGE ROSAS: Take your time.

25 MR. PARKER: Mr. Rosas, this is Jason Parker. I

1 did lookup the one bank statement that we do have that was  
2 in the audit files, list the business checking. And it  
3 matches the number that's on the back of the check, the  
4 15 -- well, I'm not going to read the account number just  
5 in case. So it does match.

6 MR. SUAZO: Again, Judge Rosas, if he's using his  
7 own personal account, the question begs where did the  
8 money come from, because did he just commingle the amounts  
9 and he just transferred. He's falling short on the  
10 account and he's just commingling it, writing it to cover  
11 another check. And that's the problem.

12 JUDGE ROSAS: I understand what you're saying,  
13 Mr. Suazo. And I know that from your position you  
14 obviously want to be convinced beyond a reasonable doubt.  
15 But here the burden of proof is the preponderance of the  
16 evidence, which is just 50 percent and the feather. But I  
17 understand where you're coming from. I have no more  
18 questions about Exhibit 3. I know we've discussed it long  
19 enough.

20 Mr. Suazo, is there anything else that you'd like  
21 to add before we conclude this hearing, or Mr. Parker?

22 MR. SUAZO: Basically, I think I believe the  
23 Appellant had state that the menu items had changed, but  
24 if you look at some of the -- where we have some of the  
25 pictures in the very last exhibit. It shows -- like,

1 there's some pictures in there from 2010 and then after  
2 the remodel. And pretty much the menu items that were  
3 visible on the pictures stayed the same. The prices may  
4 have increased, but the items stayed the same.

5 And also, even though the prices increased, the  
6 audit methodology, there wouldn't be an adjustment for  
7 that because of we're doing statements plus cash payouts.

8 JUDGE ROSAS: This is Judge Rosas. Thank you,  
9 Mr. Suazo.

10 Mr. Alzagha, you are the Appellant. You're the  
11 taxpayer, and it's your responsibility to prove your case.  
12 So I want to give you the last word, Mr. Alzagha. Now,  
13 you do not need to repeat yourself. But my question is,  
14 other than what you've already said here today, and other  
15 than the evidence that you've already submitted to the  
16 Office of Tax Appeals, is there anything else you think  
17 this panel needs to know in order for us to make a  
18 well-informed decision?

19 MR. ALZAGHA: This is Almotasem Alzagha. The  
20 only thing I want to add to all of this is answer question  
21 that was thrown about the menu. I never said the menu  
22 changed. I said we upgraded the menu. We upgraded the  
23 food. We hired a chef to upgrade. So we're selling the  
24 same items but a higher quality ingredient, better  
25 finishing. That's why we were able to charge more for it,

1 but we did not change the menu. And we didn't add  
2 anything to the menu, and we didn't take anything out of  
3 the menu. We just upgraded.

4 JUDGE ROSAS: This is Judge Rosas. Thank you,  
5 Mr. Alzagha. Anything else, Mr. Alzagha, before we  
6 conclude?

7 MR. ALZAGHA: This is Almotasem Alzagha. No,  
8 thank you.

9 JUDGE ROSAS: This is Judge Rosas. Thank you,  
10 Mr. Alzagha. Mr. Alzagha, as was mentioned we're going to  
11 keep the record open. We're going to allow you an  
12 opportunity to submit additional evidence, and we're going  
13 to limit the scope of that evidence. What I'm asking --  
14 what we are asking you to submit is: Number one, a copy  
15 of that notarized letter dated March 10, 2017, from your  
16 brother. So that's number one, the notarized letter dated  
17 March 10, 2017.

18 And number two, the follow up to Judge Geary's  
19 request. You may submit as many or all of the bank  
20 statements for the audit period at issue as you wish. The  
21 audit period is January 1st, 2010, through  
22 December 31st, 2012. I realize some of those bank  
23 statements you may not have, but if you have any of them  
24 please submit it. If you wanted to focus just on the bank  
25 statements that prove the loans, the \$95,000 of the

1       purported loans, feel free, but the option is yours.

2               Today is January -- I'm sorry. Today is  
3       June 22nd. And just to keep it simple, we're going to  
4       close the deadline for you to submit this evidence exactly  
5       one month from now, July 22nd. If we received your  
6       evidence earlier or if we don't receive any evidence, at a  
7       certain point, our office is going to submit an order just  
8       saying that we've close the record. It might be after you  
9       submit the evidence. If you submit the evidence sooner  
10      rather than later, then the parties will receive that  
11      order indicating that we received the evidence --  
12      actually, give me one second. I'm getting ahead of  
13      myself.

14              Would CDTFA like an opportunity to respond to  
15      this evidence. Purportedly it's evidence that you've  
16      already seen, but I do want to throw it out there. Are  
17      you going to want an opportunity to review and respond?

18              MR. SUAZO: This is Randy Suazo. I believe we'd  
19      like an opportunity.

20              JUDGE ROSAS: Mr. Alzagha, I'm going to give you  
21      30 days to submit that evidence if you so choose. CDTFA  
22      will have an opportunity to respond to that, depending on  
23      when you submit that, Mr. Alzagha. As we've indicated  
24      during the prehearing conference, please always include  
25      CDTFA in your e-mail submissions to our office, so

1 everyone is on the same page. CDTFA will have up to  
2 30 days as well to provide a response.

3 And, CDTFA, you're 30-day clock will begin after  
4 Appellant e-mails that to you, that evidence.

5 Are there any questions regarding the issuance --  
6 I'm sorry -- the submission of these additional exhibits  
7 and the deadlines? Hearing none. Okay.

8 In that case that concludes today's hearing in  
9 the Appeal of Alzagha. As mentioned, we're going to keep  
10 the record open for the submission of additional evidence  
11 and exhibits. Afterwards the parties will receive written  
12 orders regarding the matter being submitted and the record  
13 being closed. And after that record is closed, you will  
14 expect this panel's written decision no later than  
15 100 days thereafter.

16 Thank you to both of the parties, to my  
17 co-panelists, the stenographer, and to all of the OTA  
18 members behind the scenes.

19 This hearing is now adjourned, and that concludes  
20 today's calendar. Thank you all very much.

21 We may now go off the record.

22 (Proceedings adjourned at 11:53 a.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

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

I have hereunto subscribed my name this 12th day of July, 2021.

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