

## BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
V. ONYEABOR, ) OTA NO. 18063297  
 )  
 APPELLANT. )  
 )  
 )

## TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Tuesday, July 20, 2021

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Virtual Proceedings,  
taken in the State of California, commencing  
at 1:40 p.m. and concluding at 3:59 p.m. on  
Tuesday, July 20, 2021, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ ALBERTO ROSAS

Panel Members: ALJ NGUYEN DANG  
ALJ ANDREW WONG

For the Appellant: DAVID PIDAL

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

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-17 were received at the prehearing conference. )  
(Appellant's Exhibit 18 was received on page 71.)  
(Department's Exhibits A-J were received at the prehearing conference. )

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California; Tuesday, July 20, 2021  
1:40 p.m.

JUDGE ROSAS: Good afternoon. We're on the record in the matter of the Appeal of Onyeabor, OTA Case Number 18063297. Today is July 20th, 2021, and the time is approximately 1:40 p.m. This hearing was duly noticed for Sacramento, California, but due to ongoing concerns regarding Covid and with the agreement of all the parties, we're holding this hearing remotely using video conferencing.

The panel of Administrative Law Judges includes Nguyen Dang, Andrew Wong and me, Alberto Rosas. Although I may be the lead Administrative Law Judge for purposes of conducting this hearing, please know that the three of us on this panel we are all equal participants and equal decision makers.

Our stenographer today is Ms. Alonzo who is reporting this hearing verbatim. To ensure we have an accurate record, we ask that 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

1 Appeals' website.

2 Now, I'm going to ask participants to please  
3 state their appearance, state their name for the record,  
4 starting with Appellant's representative.

5 MR. PIDAL: Yeah. David Pidal.

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

8 And now for Respondent's representatives.

9 MR. SAMARAWICKREMA: This is Nalan  
10 Samarawickrema, Hearing Representative.

11 MR. PARKER: This is Jason Parker, Chief of  
12 Headquarters, Operations Bureau.

13 MR. BROOKS: This is Christopher Brooks, Tax  
14 Counsel for CDTFA.

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

17 I do want to point something out about virtual  
18 hearings in general and the visual optics of how I may  
19 come across onscreen. Today's virtual hearing -- during  
20 today's virtual hearing, it may sometimes seem that I'm  
21 not looking at you or that I am distracted, but that is  
22 not the case. I have two monitors in front of me. I'm  
23 also using an instant messenger app where I am able to  
24 communicate with my co-panelists, or earlier, I was able  
25 to communicate with tech support, and where I'm able to

1       communicate with management and staff members who work  
2       behind the scenes to make these virtual hearings possible.  
3       Regardless of how I may come across onscreen, I assure you  
4       I am listening to you, and I am taking good notes.

5               Now, before we continue, I just want to ask  
6       whether there's anything that my co-panelists wish to add  
7       at this time.

8               Judge Dang?

9               JUDGE DANG: This is Judge Dang speaking. Thank  
10       you, Judge Rosas. I have nothing further to add.

11              JUDGE ROSAS: This is Judge Rosas. Thank you,  
12       Judge Dang.

13              Judge Wong, anything to add before we continue?

14              JUDGE WONG: This is Judge Wong. I also have  
15       nothing to add. Thank you.

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

17              We held a prehearing conference on June 29th of  
18       this year. As a result of that conference, Appellant's  
19       Exhibits 1 through 17 were admitted into evidence without  
20       objection. Also, Respondent's Exhibits Alpha through  
21       Juliet were admitted into evidence without objection.

22              The conference resulted in the issuance of  
23       prehearing conference minutes and orders, and those  
24       minutes and orders included six orders. Those orders and  
25       the minutes and orders are self-explanatory. But just in

1 case, I will ask the parties whether they have any  
2 questions.

3 Mr. Pidal?

4 MR. PIDAL: Yes. David Pidal. No question.

5 JUDGE ROSAS: This is Judge Rosas. And for  
6 Mr. Samarawickrema.

7 MR. SAMARAWICKREMA: This is Samarawickrema. No  
8 questions. Thank you.

9 JUDGE ROSAS: This is Judge Rosas. Thank you,  
10 gentlemen.

11 Before I proceed, I do want to address the recent  
12 development regarding what has been marked for  
13 identification as Exhibit 18. This was an exhibit that  
14 Mr. Pidal sent to everyone earlier today via e-mail.

15 Mr. Pidal, what was Exhibit 18?

16 MR. PIDAL: Yes. Thank you. This is David  
17 Pidal. Exhibit 18 is, basically, were purchases that were  
18 marked up by CDTFA. I found that some of those vehicles  
19 were resold to Manheim, an auction house. So, therefore,  
20 it would be deleted from the purchases that are marked up  
21 and should be allowed as an exempt sale for resale.

22 JUDGE ROSAS: This is Judge Rosas. Thank you,  
23 Mr. Pidal.

24 Respondent, do you have any objections or  
25 concerns regarding the admissibility of Exhibit 18 at this



1 stage?

2 MR. BROOKS: This is Christopher Brooks. Yes,  
3 Your Honor. The -- excuse me. Yes, Mr. Rosas. The  
4 exhibit is obviously late. We haven't had the time to  
5 adequately go through it, and so we would object to it.

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

8 I do realize that we did indicate and inquire  
9 during the prehearing conference whether there were any  
10 additional exhibits. And, generally, per OTA's  
11 regulations, any new exhibits should be submitted 15 days  
12 prior to the oral hearing, or sooner if requested by the  
13 Administrative Law Judge. There was no indication  
14 regarding this exhibit, but I'm not going to rule on that  
15 at this time. I'm going to reserve my ruling on that.

16 In discussing other matters with my co-panelists,  
17 it may very well be that we might be asking the parties  
18 for post-hearing briefs. We don't know. We'll discuss  
19 that before we conclude this hearing. In the event that  
20 we do request pre-hearing briefs, at that time we'll also  
21 probably ask Respondent to respond regarding Exhibit 18.  
22 For the time being it's not being admitted as mentioned,  
23 but I do reserve the right to admit it at a later time.

24 Any questions or concerns regarding Exhibit 18  
25 before we move on? Was it clear what I mentioned

1       regarding the fact that I'm reserving making a ruling on  
2       the admissibility of that exhibit?

3               MR. BROOKS:  No, Your Honor.  This is Christopher  
4       Brooks again.  I just want to make it clear.  The  
5       Department believes that these documents -- these sales  
6       have already been removed.  But, again, we haven't had a  
7       chance to go through the exhibit carefully, and that's why  
8       we make our objection.

9               JUDGE ROSAS:  This is Judge Rosas.  No, I  
10       understand, Mr. Brooks.  Thank you for that objection.

11              Moving forward I do want to give the parties an  
12       opportunity to discuss the issues before us.  As stated in  
13       the prehearing conference minutes and orders, the parties  
14       disagreed as to the specific issues that this panel is  
15       asked to decide.  As I mentioned, it's fine to disagree.  
16       The parties may agree to disagree.  In fact, that's why  
17       we're here because there has been a disagreement between  
18       the parties.

19              But as indicated during the prehearing  
20       conference, I did want to give each party a brief  
21       opportunity to provide an opening statement, specifically,  
22       focusing on the issues that you believe this panel must  
23       decide.  And by brief, I mean one to two minutes.  And  
24       I'll get started with Mr. Pidal first.

25              Mr. Pidal, whenever you're ready please provide a

1       brief statement of the issues.

2

3                               OPENING STATEMENT

4               MR. PIDAL:   Yeah.   Excuse me.   This is David  
5       Pidal the representative.   Basically, my understanding is  
6       that the Appellant was issued a wholesale license with the  
7       occupational license, which is part of DMV, therefore, was  
8       not able to prepare a report of sales book or report of  
9       sales as a normal used car lot or a used car dealer.

10              Initially, the CDTFA, they got the purchases from  
11       the auction houses, various auction houses in the area,  
12       and they marked up the purchases by 50 percent.   And later  
13       on during the appeals -- later on during the audit, they  
14       arbitrarily marked it down -- used a markup of 25 percent,  
15       which they said was the industry average or below the  
16       industry average.   I don't know where that industry  
17       average comes from.   I have worked with the Board of  
18       Equalization for 34 years.   I've been representing  
19       taxpayers for 12 years.   So I have 45 years of experience  
20       with the Board of Equalization.   I've never heard such a  
21       markup in the used car dealership.

22              CDTFA did make some adjustments for resales and  
23       for vehicles that were assessed tax on the cost because  
24       they were either gifted, as they put it, or used as  
25       demonstration display.   My main contention is that the

1 25 percent markup that's being used is overstated. And  
2 based on information contained in the audit-working  
3 papers, I've established a 7.24 percent markup, which is a  
4 lot more reasonable than what the -- than the 25 percent.  
5 And it's supported by research I did on the internet.  
6 It's supported by the Audit Manual itself. And it's  
7 supported by the statements that the Appellant had made  
8 during the appeals conference that they only sell for \$100  
9 to \$300 a vehicle.

10 And, unfortunately, the Appellant is -- is under  
11 the strong belief that they sold the vehicles for resale  
12 or sales in interstate or foreign commerce. However,  
13 unfortunately, the documentation to support those exempt  
14 sales were not available. Therefore, CDTFA used the  
15 markup of 25 percent. So I want to establish that the  
16 7.24 is much more reasonable.

17 And Exhibit 18, I know we won't discuss at this  
18 time, but there are other adjustments that should be made  
19 to the purchases.

20 JUDGE ROSAS: This is Judge Rosas. Thank you,  
21 Mr. Pidal.

22 Now to Respondent, Mr. Samarawickrema, whenever  
23 you're ready a brief statement of the issues.

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1           MR. PIDAL: Yeah. This is David Pidal. As I  
2       said, I've worked with Board of Equalization for 34 years.  
3       So, yes, I understand the adjustment, and although the  
4       Appellant doesn't agree with it, I know what -- I know  
5       what it is. I know what the regulation says. I know what  
6       the law is. I know how the audit procedure is. So I  
7       cannot disagree with that -- with those items, the 160th  
8       and the 140th, or the cost of vehicles.

9           JUDGE ROSAS: So just to be clear, Mr. Pidal.  
10      We're going to -- Appellant is going to concede what has  
11      been described as Issues 2 and 3, and we're just going to  
12      move forward focusing on the bulk of the appeal, which is  
13      the unreported taxable sales and the markup that applies  
14      to those; is that correct?

15           MR. PIDAL: That's correct.

16           JUDGE ROSAS: Okay. And I believe I saw  
17      something in the chatter function. One of my co-panelists  
18      wanted to clarify something.

19           JUDGE DANG: This is Judge Dang speaking. Judge  
20      Rosas, I did have the same question that you had just  
21      asked the Appellant, so thank you.

22           JUDGE ROSAS: Thank you, Judge Dang.

23           At this point, we're going to just move forward  
24      with the oral argument. And I realize that the Appellant  
25      is not here nor is the other witness. So we're just going

1 to avoid any issues regarding witness testimony, and we're  
2 going to skip right to the argument portion. I want to  
3 thank both parties for already clarifying the issues  
4 before us. That is very helpful to the panel.

5 We'll turn it over to Mr. Pidal as Appellant's  
6 representative to provide his presentation. As we  
7 discussed, a vague estimate was 20 minutes. But if you  
8 need any additional time, Mr. Pidal, please just let us  
9 know if you need additional time.

10 Also, in terms of Exhibit 18, even though I have  
11 not ruled on the admissibility of it, feel free if you  
12 want to address it or make any arguments. At this point,  
13 Exhibit 18 is just for identification purposes, but I  
14 don't know whether the panel will decide after we meet and  
15 confer whether that exhibit needs to be admitted. We'll  
16 cross that bridge when we get to it. We'll deal with the  
17 admissibility of Exhibit 18 in due course. At this point  
18 I'm reserving any order on that admissibility, but that  
19 does not mean that either party has to avoid addressing  
20 Exhibit 18. If either party wants to talk about it to the  
21 extent that you can, please feel free to do so.

22 With that said, Mr. Pidal, I will turn it over to  
23 you. You have approximately 20 minutes for your  
24 presentation. And as I mentioned, you and the panel, we  
25 all have the PDF, the electronic exhibit binder. In the

1 event that you want to refer to any exhibits, please do  
2 so, and we will be able to follow along. I'll turn it  
3 over to you, Mr. Pidal. Thank you, sir.

4  
5 PRESENTATION

6 MR. PIDAL: All right. Thank you. This is David  
7 Pidal. Thank you.

8 I submitted exhibits, I believe, 12 through 17 to  
9 support the markup of 7.24 percent. And I'm not sure if I  
10 need to explain what the markup is, but -- but, basically,  
11 CDTFA took the cost of the vehicles from the auction  
12 houses, made adjustments for vehicles gifted or sales for  
13 resale that were verified. And as I said, initially, they  
14 were -- the CDTFA marked them up at 50 percent.

15 It was then determined by, I believe, the  
16 Riverside office that did the audit, that the Appellant  
17 did not have a used car lot. Exhibit 12 that I submitted  
18 is a picture of the office space that the Appellant had.  
19 It was about a 200-square foot office. There was no lot.  
20 There was no inventory of vehicles.

21 And on that premise, I believe CDTFA said, well  
22 instead of using 50 percent, we'll use 25 percent. And,  
23 basically -- I'm reading in the analysis -- basically as I  
24 quote, it says, "Staff used a conservative retail markup  
25 percentage of 25 percent." Again, I don't know where



1 CDTFA got the conservative markup of 25 percent. I don't  
2 know where they got 50 percent.

3 Again, I worked for the Board for 34 years. I've  
4 represented clients for the last 12 years. Nowhere have I  
5 come across that type of markup in the used car lot. But  
6 using the information contained in the audit working  
7 papers, I was able to trace some cost of vehicles and  
8 trace the respective selling prices. And that's in my  
9 exhibit -- that's my Exhibit 13, which basically schedules  
10 vehicles that are in the audit working papers. As I note  
11 in the exhibit, lines 1 through 17 are from the audit  
12 working paper 1R-12E-1. And lines 17 and 18 are from the  
13 working paper 2R-12F.

14 Now, if you look at the Exhibit 13, there's  
15 about -- at least 17 vehicles. And you can see that the  
16 markup ranges are all over the place. So to try to get  
17 some kind of representative markup I -- I subtract -- I  
18 took out the two highest and the two lowest markups of  
19 vehicles, you know, for -- to eliminate, you know, the  
20 significant aberrations in that test. After adjusting for  
21 that, the markup that is scheduled on Exhibit 13 is 7.24.

22 Again, that 7.24 is in line with what the  
23 Appellant had tried to sell. They would go to the  
24 auction. They would sell the vehicles. And it's stated  
25 in the decision and recommendation that he would sell for

1     \$100 to \$300, which would even be a lower markup than the  
2     7.24 percent. I also did some research on the internet,  
3     and I searched what is the markup on a used vehicle on  
4     a -- or a used car dealer.

5             My research indicated that they say that the  
6     average markup in a used car dealer is between 10 and  
7     15 percent, which is Exhibit 14, Autohitch website. Of  
8     course, they say the average cost of a vehicle is between  
9     10 and \$20,000. My client or the Appellant doesn't have  
10    that type of vehicle. Their vehicles are anywhere from,  
11    you know, \$7 -- actually, range from \$200 up to, you know,  
12    \$5,000. So that type of vehicle they're not going to  
13    generate a 25 percent markup or let alone a 15 percent  
14    markup. So again, my research on the internet indicates  
15    that the 25 percent markup that CDTFA used is over. It's  
16    way too high, even though they say it's a conservative  
17    markup.

18            The other thing is that the -- the Audit Manual.  
19    My client is -- was issued a license, a wholesale license,  
20    not a retail, license under the occupational license part  
21    of DMV. Audit Manual Section -- sections -- Audit Manual  
22    Section 0604.10 talks about used car wholesalers. And in  
23    the Audit Manual it states that they have a small margin  
24    of profit, 25 to \$50 per vehicle. And that's what my --  
25    that's what the Appellant is, a wholesale license.

1           So they have a -- the CDTFA's Audit Manual alone  
2     understands that there's a low markup when you're dealing  
3     with wholesale. Keep in mind that these vehicles are not  
4     sold at retail. They were sold either interstate or  
5     foreign commerce for sales for resale. And they are not  
6     being allowed because the documentation was not there to  
7     support such exemptions. So if they're not supported as  
8     an exemption, they should be marked up to a fair markup.  
9     Again, the Audit Manual itself talks about used car  
10    wholesale; Exhibit 17, which quotes Audit Manual Section  
11    60 -- I mean, 0604.1.

12           Furthermore, the Appellant was never issued any  
13    report of sale books until February of 2011. The  
14    Appellant has no idea who requested it. DMV -- I'm sorry.  
15    Yeah. DMV or the Consumer Use Tax Division of CDTFA got  
16    the information saying that somehow on 2/28/11,  
17    Exhibit 16 -- on 2/28/2011, our ROS sales -- report of  
18    sales were requested. They could not find a hard copy of  
19    who requested that. So I -- the Appellant denies or has  
20    no knowledge of requesting that.

21           As a matter of fact, in 2011, February of 2011,  
22    the landlord of the office that I showed you -- they did  
23    not pay the rent. So they got kicked out of the office.  
24    And with that, unfortunately, they lost their records.  
25    That's about the time when somebody requested these report

1 of sale books. I don't know if someone saw the records  
2 and said, hey, let's request some records. I don't know.  
3 DMV could not provide a hard copy of the application.

4 So again, in summary, I believe a fair markup to  
5 be used to apply to the purchases would be 7.24 percent.  
6 And Exhibit 18 is additional adjustments to those  
7 purchases that are marked up. Whether it's at 7.24 or at  
8 25 percent, those vehicles were not adjusted. CDTFA did  
9 make adjustments, and those were not adjusted.

10 So that is what we're seeking here is that the  
11 markup is applied to adjusted purchases is 7.24 percent,  
12 and the purchases should be adjusted for the amounts  
13 listed on Exhibit 18. I didn't -- I didn't do the math  
14 and the extensions of the measure of tax on that, but  
15 those are the adjustments that we're seeking.

16 JUDGE ROSAS: This is Judge Rosas. Thank you,  
17 Mr. Pidal. It seems that concludes your presentation. Is  
18 that correct, sir?

19 MR. PIDAL: It's David. Yes, that's correct,  
20 Judge Rosas.

21 JUDGE ROSAS: Thank you, Mr. Pidal.

22 Before we turn it over to CDTFA to give their  
23 presentation, I'm going to see if any of my co-panelists  
24 have any clarifying questions for Mr. Pidal based on his  
25 presentation.

1 Judge Dang.

2 JUDGE DANG: This is Judge Dang speaking.

3 Mr. Pidal, I did have a few questions for you, if you  
4 wouldn't mind indulging me, please. It's my  
5 understanding, and please correct me if I am wrong in any  
6 way, but that license wholesale dealers are required to  
7 file a wholesale report of sale with the DMV whenever they  
8 dispose of the vehicles in the manner that you're  
9 asserting here, that they were either resold back to the  
10 auction house or sold to other retail dealers. Do you  
11 happen to know if Appellant had ever filed any of these  
12 wholesale ROS reports?

13 MR. PIDAL: Yeah. This is David -- David Pidal.  
14 There were only 24 issues per DMV per the request from  
15 CDTFA from the Consumer Use Tax Division. There were only  
16 24 ROS's requested for wholesale. You are correct in that  
17 the whole -- the -- I'm not sure what the form is, but  
18 currently it's called a Reg 396. I don't know what it was  
19 back in 2011 and 2009 and that, but they're supposed to,  
20 yes, complete the information.

21 Again, I don't know what was on there back then,  
22 but if you look -- when I looked at the website of DMV,  
23 yeah, they're supposed to complete it, and it comes in  
24 triplicate. They are supposed to retain one copy, a blue  
25 copy. Unfortunately, as I stated earlier whether or not

1 the Appellant completed those ROS's -- and I'm thinking  
2 based on the amounts that are involved with the auction  
3 houses, if they only had 24, I don't see how they're going  
4 to complete the 24. I mean, they only have 24. So did  
5 they complete them? I'm going to say I don't know.

6 JUDGE DANG: This is Judge Dang. Thank you,  
7 Mr. Pidal. If I could get some clarification from CDTFA  
8 before I proceed with my questions for you.

9 Was Respondent able to obtain -- was it the  
10 actual ROS that Respondent obtained, or was it  
11 registration information? Is there some difference here  
12 that I may be missing?

13 MR. SAMARAWICKREMA: This is Nalan  
14 Samarawickrema. We requested the DMV information for the  
15 99 cars. You know, for the audit period there were 99  
16 cars, and the Department received 37. And we make  
17 adjustment based on that 37 DMV information.

18 JUDGE DANG: This is Judge Dang, if I can just  
19 interrupt you for a moment. The information that you  
20 received from DMV, was that registration related  
21 information, or was that information that would be  
22 contained within a report of sale?

23 MR. SAMARAWICKREMA: This is Nalan  
24 Samarawickrema. This is according to the sale -- the --  
25 when the dealer makes a sale, they have to file the

1 paperwork, the report of sales. So that -- that  
2 information is the one -- the information that we receive  
3 from the DMV.

4 JUDGE DANG: Okay. This is Judge Dang. I just  
5 want to be very clear. So when Respondent -- when  
6 Department says that there's no information available for  
7 50-some-odd transactions from DMV, are you saying that's  
8 because either the vehicle was not subject to registration  
9 in California, or are you saying that no report of sale  
10 had been filed?

11 MR. SAMARAWICKREMA: That no report of sale has  
12 been filed.

13 JUDGE DANG: Okay. Thank you.

14 MR. SAMARAWICKREMA: Yeah.

15 JUDGE DANG: Mr. Pidal, do you want to comment as  
16 to Department's response? Or does that comport with your  
17 understanding as well?

18 MR. PIDAL: Yeah. This is David. Yes, I mean,  
19 they started with 99 vehicles. So the other vehicles that  
20 were found in DMV records would indicate that they're not  
21 registered in California, which kind of says that either  
22 they were sold -- I mean, shipped outside of the state or  
23 outside of the country. Again, unfortunately, the  
24 Appellant does not have the documentation to support sale  
25 in interstate commerce or sale in foreign commerce.

1 But to me, I would say that indicates that that  
2 vehicle was never registered in California. Because if  
3 you -- if the vehicle is in California, DMV is going to  
4 have it in their records. Again, I don't -- I don't  
5 remember what -- how they did things back in 2009, 2010,  
6 2011. I know they're a little better today, and I say a  
7 little better because there's still a lot of information  
8 that is not available. So I don't know if I answered your  
9 question.

10 So -- so I would say that because of those  
11 vehicles not being traced to DMV records, to me that's a  
12 good indication that they never were registered in  
13 California as opposed to an ROS not being made out for a  
14 wholesale or whatever. Because, again, my client -- I'm  
15 sorry. The Appellant believed, again, these were sales  
16 for resale or sales of interstate commerce or sales in  
17 foreign commerce.

18 I believe, as I explained to the Appellant, I  
19 said -- you know, if they take delivery in California, and  
20 whether they ship it to Nigeria, Mexico, or Arizona, once  
21 they take delivery in California, it's subject to tax in  
22 California. But -- so if you don't have the  
23 documentation, can't support the exemption. And that's  
24 why CDTFA said, "Okay, let's mark it up."

25 And what I'm saying is mark it up at 7.24



1       percent.

2               JUDGE DANG: This is Judge Dang speaking. Thank,  
3       you, Mr. Pidal. My concern is that I don't really  
4       understand what it means when Respondent comes back and  
5       says, "We asked DMV for information, but they are only  
6       able to provide information on 37 transactions," or  
7       however many it was. If it is as you state that it's  
8       just, you know, this is based on registration information,  
9       then we really don't know the disposition of the vehicles.  
10      Because they could have been something that we're not --  
11      these could have been vehicles that were not required to  
12      be registered within the state, and that's why there was  
13      no information available at the DMV.

14             But on the other hand, if your client had filed  
15      wholesale report of sales as it was required to do so  
16      under its license, there should -- I'm thinking there  
17      should be a record at DMV or somewhere of that report that  
18      was filed. Do you happen to know why the Appellants  
19      weren't able to obtain that information, or why there's no  
20      information such as affidavits or other  
21      transaction-related information with these other dealers  
22      or auction house that they are asserting they sold these  
23      vehicles to ultimately?

24             MR. PIDAL: I'm sorry. This is David. Were you  
25      asking me, Judge?

1 JUDGE DANG: Yes, I'm asking you.

2 MR. PIDAL: Oh, okay. I'm sorry.

3 JUDGE DANG: There's just --

4 MR. PIDAL: Yeah. I mean --

5 JUDGE DANG: -- a huge dearth of evidence here.

6 And --

7 MR. PIDAL: Yeah.

8 JUDGE DANG: -- my understanding also is that if  
9 they did make these sales to dealers, the dealers would  
10 need the wholesale ROS form in order to obtain, for  
11 example, temporary plates, or to be able to even resell  
12 the vehicle to begin with. So shouldn't there be a record  
13 somewhere of that transaction?

14 MR. PIDAL: I would agree. A lot of times  
15 they're sold back to the auction. For example,  
16 Exhibit 18, you'll see that they were purchased from an  
17 auction house and then within a week or two weeks or maybe  
18 a month or so, they're sold right back to Manheim, another  
19 auction or -- or the same auction house. So did they  
20 prepare -- they, meaning the Appellant -- prepare an ROS  
21 for each transaction? Apparently not because I would say  
22 that if an ROS was prepared, then it should be in DMV  
23 records.

24 But as I mentioned, I only have a notation here  
25 that they were only issued 24 ROS's for wholesale, and

1       they purchased 99. They don't have enough wholesale ROS's  
2       for the vehicles involved. So, apparently, auction houses  
3       are able to buy or sell vehicles to other retailers or  
4       other wholesalers and somehow not getting into DMV's data.  
5       I don't -- I don't know DMV's system, unfortunately.

6               JUDGE DANG: This is Judge Dang, if I could just  
7       ask a quick clarifying question to that point. Wouldn't  
8       there need to be some transfer of title, a recorded  
9       transfer of title for an action house to sell a vehicle?  
10      And if that did not occur and it's not in the DMV records,  
11      how is it that these auction houses would be able to  
12      resell the vehicle?

13              MR. PIDAL: I'm not sure how -- this is David.  
14      I'm sorry. I'm not sure how auction houses work. They  
15      sell a lot of vehicles. They buy a lot of vehicles. So  
16      what documentation is required by DMV from auction houses?  
17      I don't -- I don't know.

18              JUDGE DANG: This is Judge Dang. Thank you. And  
19      I just wanted to follow up with my previous question  
20      regarding the auction houses and the dealers that  
21      Appellant allegedly sold to. Is there some reason why  
22      you're unable to go back to these entities to obtain any  
23      type of records or evidence?

24              MR. PIDAL: This is David. Well, this is where  
25      the information came from. Whether CDTFA got it, or the

1 Appellant got it, but in Exhibit 18 it shows that the  
2 source of the purchases are in Exhibit 10. I mislabeled  
3 Exhibit 18. It's actually Exhibit 3, and it's not --  
4 Exhibit 18 says Exhibit 3 and 10. It's just Exhibit 3.  
5 Exhibit 10 is the purchases. But Exhibit 15 is a  
6 schedule, that I'm assuming that CDTFA prepared, of the  
7 purchases of the vehicles based on the information that  
8 was received from the auction houses.

9 So a lot of this information was, in fact,  
10 received from the auction houses, either to support they  
11 bought from the Appellant, or they sold to the Appellant.  
12 And they're labeled sell or purchase.

13 JUDGE DANG: This is Judge Dang. Thank you. I  
14 do believe there's a large number of transactions for  
15 which no sale information -- I mean, the ultimate  
16 disposition of this vehicle, information pertaining to  
17 that, appears to be missing. Do you have any explanation  
18 for why Appellant was not able to produce this  
19 information? Were the dealers out of business? The  
20 records are no longer available?

21 MR. PIDAL: There was only one car dealer that  
22 was involved, according to my interview with the  
23 Appellant, and that was -- it was called Clem's Auto. It  
24 was referenced in the decision and recommendation as  
25 Clem's Motors. And the Appellant stated that they dealt

1 with a gentleman named Michael, and there was no -- CDTFA  
2 couldn't find anything under Clem's Motors or Clem's  
3 Autos. So the answer is the vehicles went somewhere. So,  
4 you know, like I said, if they sold it in interstate or  
5 foreign commerce, which they thought they did. But they  
6 may not have put it in the stream of commerce and,  
7 therefore, the exemption would not apply.

8 JUDGE DANG: This is Judge Dang. Thank you,  
9 Mr. Pidal for your responses. I have no further  
10 questions.

11 JUDGE ROSAS: This is Judge Rosas. Thank you,  
12 Judge Dang.

13 Judge Wong, do you have any clarifying questions  
14 for Mr. Pidal?

15 JUDGE WONG: This is Judge Wong. Yes, I did have  
16 a couple of clarifying questions for Mr. Pidal. So for  
17 these 60 ROS's for which -- that weren't registered with  
18 DMV, what did your client claim they did with them?

19 MR. PIDAL: Well, this is David. Their whole  
20 contention is that they were -- they're not -- they don't  
21 hold ROS retails. They're not a dealer, a used car  
22 dealer. They're not licensed with an occupational license  
23 as a used car dealer. Therefore, they cannot register the  
24 vehicle to a consumer. Okay. So their contention is that  
25 the vehicle was sold for interstate and/or foreign

1 commerce or a sale for resale. However, again, no  
2 documentation. Therefore, CDTFA said, "You owe tax on  
3 retail."

4 JUDGE WONG: So they contend they sold these cars  
5 to other states or overseas?

6 MR. PIDAL: Well, they sold them to other -- they  
7 sold them to either a used car dealer in California or  
8 could be out of state. Or they sold them to someone to  
9 ship to Nigeria. Okay. But, again, under the regulation  
10 if they, the Appellant, does not deliver to a freight  
11 forwarder or the common carrier or put it in stream of  
12 foreign commerce, the exemption for foreign commerce is  
13 not available. They're getting -- the CDTFA takes the  
14 position that that transfer of title and possession was in  
15 California, therefore, subject to California sales tax.

16 JUDGE WONG: This is Judge Wong. So your clients  
17 are not claiming that they themselves exported the car.

18 MR. PIDAL: Well, they don't -- they -- they were  
19 not clear on that, unfortunately. But as I explained to  
20 them, if they don't have the documents, whether or not  
21 they did -- if they did it, they should have the  
22 documents. If they didn't do it and then the buyer  
23 shipped them, their exemption is lost, basically.

24 JUDGE WONG: This is Judge Wong. Thank you. I  
25 just had one last question. I think you touched on it

1       before, but I want to clarify. I think the measure of  
2       unreported taxable sales is about \$314,000, but you're  
3       claiming that the markup should not be 25 percent. It  
4       should be 7.24 percent plus some other adjustments that  
5       are recorded in proposed Exhibit 18. What should the  
6       measure of unreported taxable sales be after your proposed  
7       adjustments?

8               MR. PIDAL: I didn't schedule that but -- so I  
9       don't have -- I did it, but I don't have it readily  
10      available. If you want me to do it, I can take the time  
11      to do it. But it's basically -- if you want to take  
12      Exhibit 18 into consideration -- I mean, the total  
13      purchases on schedule 18 is \$26,975. If you mark that up  
14      by 25 percent -- and excuse for this chatter here. I'm  
15      just going to use my calculator here.

16             The measure on that is \$33,719. That's the  
17      measure for those vehicles that are being marked up by  
18      25 percent. If you mark it up by 7.25 percent that I'm  
19      suggesting we use, it would be -- the measure would be  
20      less. But the main thing is these purchases on Exhibit 18  
21      were resold to an auction house, Manheim, and not be  
22      marked up, whether it's 25 percent or 7.25 percent. So  
23      that's --

24             JUDGE ROSAS: This is --

25             MR. PIDAL: I'm sorry. So the measure of tax

1       that we're talking about right now is at 25 percent, this  
2       \$33,719.

3               JUDGE WONG:   This is Judge Wong.   Thank you.   I  
4       just wanted to see what portion of that \$314,000 measure  
5       your client conceded and just try to figure out exactly  
6       what the measure is at issue.   But thank you.

7               MR. PIDAL:   You're welcome.   This is David.  
8       You're welcome.

9               JUDGE ROSAS:   This is Judge Rosas.   Judge Wong,  
10      does that conclude your question?

11              JUDGE WONG:   This is Judge Wong.   Yes, I have no  
12      further questions at this time.   Thank you.

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

15              Mr. Pidal, I just wanted to clarify something,  
16      and I want to make sure I am able to fully wrap my brain  
17      around your position.   I understand what you're saying  
18      about Exhibit 18 that those -- that that sum of  
19      approximately \$27,000 should not have been included in the  
20      unreported taxable sales measure because you're saying  
21      that those cars were sold back -- resold back to the  
22      auction; is that correct?

23              MR. PIDAL:   This is David.   What -- what  
24      Exhibit 18 is the cost of the vehicles that were marked up  
25      25 percent.   So the actual measure -- if you mark up that



1       -- \$26,975 is the cost. But if you mark that up at  
2       25 percent, the selling price of the measure of tax is  
3       \$33,719. So what I'm saying with Exhibit 18 is that  
4       whatever markup is applied to the purchases, purchases  
5       should be decreased by \$26,700 -- I'm sorry -- \$26,975.  
6       So hopefully that --

7               JUDGE ROSAS: Understood. Thank you for that  
8       clarification. And taking a step back in terms of your  
9       broader argument, if I'm understanding you correctly, not  
10      counting the cars that are identified in Exhibit 18 by VIN  
11      number, not counting those, but it seems that you're  
12      saying that all the other cars that were part of the  
13      unreported taxable sales measure, you're saying that,  
14      technically, those cars are exempt from taxation; that  
15      they were sold out-of-state commerce or resold to dealers.

16             But you're agreeing that your clients do not have  
17      the documentation. So they know that because they cannot  
18      prove that these vehicles are subject to resales, but --  
19      sorry -- subject to sales tax. But your point is that,  
20      okay, because we don't have documentation and we know that  
21      these transactions are going to be subject to sales tax,  
22      we agree with that. But we disagree with the 25 percent  
23      measure. Is that a fair summary of your client's  
24      position, Mr. Pidal?

25             MR. PIDAL: This is David. But it's not the 25

1       percent measure. It's the 25 percent markup.

2               JUDGE ROSAS: Right.

3               MR. PIDAL: Okay. But yeah. That's -- you put  
4       it -- you summarized it well. Thank you.

5               JUDGE ROSAS: Okay. And thank you for correcting  
6       me on that terminology, Mr. Pidal.

7               MR. PIDAL: That's all right.

8               JUDGE ROSAS: I know it's really important in  
9       this industry. Thank you so much. I do have a few other  
10      clarifying questions for you, Mr. Pidal. I do want to  
11      talk briefly about Exhibit 14, page 1, which you provided.  
12      Now, at Exhibit 14, page 1, it indicates car dealers will  
13      mark up a used car around 10 to 15 percent for the average  
14      used car. And that the average used car refers to cars  
15      priced between \$10,000 or \$20,000.

16              But Appellant was not a used car dealer.  
17      Appellant was a used car wholesaler. And based on the  
18      documentary evidence, it seems that Appellant's cars were  
19      priced on average below \$4,000. So even though the facts  
20      listed in Exhibit 14 are different than the facts in this  
21      appeal, can you make the connection in terms of why you  
22      believe that 10 to 15 percent markup is more reasonable  
23      than the 25 percent that CDTFA applied?

24              MR. PIDAL: Well, CDTFA -- this is David. Hello.  
25      This is David. Yeah. What -- what I'm trying to convey

1 is that I do not know where 25 percent markup came from.  
2 Okay. Because keep in mind, they started off with  
3 50 percent. And then through conversation, through  
4 negotiation they realized that the Appellant does not have  
5 a used car dealer -- I'm sorry -- used car dealer lot. So  
6 they said we'll mark it down to 25 percent because they  
7 don't have a lot.

8 So all I'm trying to show is that the 25 percent  
9 is not reasonable. How they got -- how CDTFA got  
10 25 percent, I have no idea. In our -- in our quote that I  
11 quoted, I said, "Staff used a conservative retail markup  
12 percentage of 25 percent." A conservative markup. I  
13 mean, I really don't know where that came from and perhaps  
14 CDTFA can explain that. But the correlation that I'm  
15 trying to make is that 25 percent cannot be substantiated  
16 any more so than 50 percent.

17 So taxes are going to be due, but let's be fair  
18 and let's use whatever information we have that is  
19 applicable to the Appellant. That information is coming  
20 right from the Appellant's records. And the mark ups just  
21 bare -- I mean, the price of it any car -- I'm sorry -- of  
22 any used car, you can go to a car lot and they'll -- they  
23 may be asking for \$7,000. That doesn't mean you're going  
24 to buy for \$7,000. You may say, hey, I'll offer you  
25 \$5,000.

1           So the price is going to change. So you can make  
2     \$100. You can make\$1,000. You can make \$2,000. It just  
3     fluctuates. But where is 25 percent coming from? I have  
4     no idea. I referenced the Audit Manual section that talks  
5     about wholesalers where there's -- it's a fast turnaround.  
6     It's a \$25 to \$50 transaction. And if you use that, the  
7     markup would be real low. It would be below 25 percent --  
8     7.25 percent.

9           JUDGE ROSAS: This is Judge Rosas. Thank you,  
10    Mr. Pidal, for that clarification.

11           At this point I'm ready to turn it over to  
12    Respondent for their presentation, but I'd just like to  
13    hear from co-panelists.

14           Gentlemen, any questions for Mr. Pidal or are we  
15    ready to move on?

16           JUDGE DANG: This is Judge Dang. I have no  
17    further questions. Thank you.

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

20           JUDGE ROSAS: This is Judge Rosas. In that case  
21    we're going to turn it over to Respondent for their  
22    presentation. Gentlemen or Mr. Samarawickrema, I don't  
23    know who is going to provide the argument, but you may  
24    begin whenever you're ready. Thank you.

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1 reported its sales on its sales and use tax returns.  
2 Appellant was also unable to explain what sources it  
3 relied upon to file its sales and use tax returns.

4 The Department rejected Appellant's reported  
5 sales due to lack of reliable records and negative book  
6 markups. It was also determined that Appellant's records  
7 and such that sales could not be verified by a direct  
8 audit approach. Therefore, the Department estimated sales  
9 using cost plus markup method for this Appellant. The  
10 Department completed two verification methods to verify  
11 the reasonableness of Appellant's reported total and  
12 nontaxable sales.

13 First, according to Appellant, she can only  
14 purchase 24 cars per year. And that will be on your  
15 Exhibit H, page 7, line 12. Based on this information,  
16 the Department computed the average selling price of a car  
17 of around \$1,000 using reported sales. And that will be  
18 on your Exhibit A, page 32. However, based on audited  
19 taxable sales, the average retail selling price of a car  
20 is around \$5,000. An average cost of a car is around  
21 \$3,400. And that will be on your Exhibit A, page 30, 33  
22 and 37.

23 Second, because Appellant did not provide  
24 complete purchase records the Department audited Appellant  
25 auction house purchase information. And that will be on

1 your Exhibit C, pages 39 to 44, and Exhibit E. The  
2 Department compared reported total sale of \$48,000 to  
3 purchase of \$337,375 reflected on Appellant's auction  
4 house purchase information for the audit period and  
5 calculated a negative markup of 85 percent. And that will  
6 be on your Exhibit A, page 33.

7 The total purchases of \$337,375 is also more than  
8 seven times larger than the reported total sale of \$48,000  
9 for the audit period. In other words, this means that  
10 according to Appellant's reported sales, Appellant was  
11 losing money every time it made a sale. However, based on  
12 the analyses of available exempt sales and purchase  
13 information, the overall exempt sale markup was  
14 23.76 percent. And that will be on your Exhibit A,  
15 page 34.

16 The Department rejected Appellants's reported  
17 total sales due to lack of reliable report, no reported  
18 selling prices, and negative reported markups. Therefore,  
19 the Department conducted further investigation by  
20 analyzing Appellant's auction house purchase information.  
21 The Department was able to obtain Appellant's auction  
22 house purchase information, which includes vehicle auction  
23 report of sales data. The Department analyzed auction  
24 house purchase information and determined Appellant  
25 purchased 99 vehicles that had a total purchase price of

1       \$337,375. And that will be on your Exhibit A, pages 41  
2       through 47.

3               The Department attempted to track the vehicle  
4       information received from the auto auction houses to DMV  
5       information to determine whether any other vehicles were  
6       sold to other motor vehicle dealers. Out of the 99  
7       vehicles, the Department found DMV and sales information  
8       for 37 of the vehicles. The Department determined these  
9       transactions were not retail sales and removed them from  
10      the auto auction house purchase information to compute the  
11      purchases available for retail sales. And that will be on  
12      your Exhibit A, pages 35 through 37.

13              Specifically, the detailed DMV registration  
14      information indicated 10 other vehicles were sold to other  
15      used car dealers. Two of the vehicles were registered to  
16      Appellant's family members. Another was registered to  
17      Appellant's business name. And another was taken by a  
18      lienholder. And that will be on your Exhibit A, pages 39,  
19      40, and 46. With respect to the remaining 23 vehicles in  
20      which the Department located DMV and sales information,  
21      the Department noted that the information was limited to  
22      the auction house transactions.

23              Nonetheless, the Department was able to determine  
24      that these 23 transactions represented nontaxable sales  
25      because Appellant eventually resold the vehicles back to



1 the auction house. And that will be on your Exhibit A,  
2 page 38.

3 After removing the 37 vehicle transactions, the  
4 Department determined that Appellant did not have  
5 sufficient supporting documentation to establish that the  
6 remaining 62 vehicles, which had an aggregate total  
7 purchase price of \$251,250, was sold as exempt sales for  
8 the audit period. Therefore, the subsequent sale of these  
9 vehicles was considered taxable retail sale. No  
10 documentary evidence was provided to show the retail sale  
11 prices for used vehicles sold. Therefore, the Department  
12 was unable to conduct a shelf test for this Appellant.

13 All the used car dealers have an average industry  
14 markup of 50 percent. The Department decided to use a 25  
15 percent markup to estimate audited taxable sales for the  
16 audit period to give a benefit for the Appellant. Audited  
17 taxable sales were compared with reported taxable sales to  
18 compute unreported taxable sales based on auto auction  
19 house information of \$314,063 for the audit period. And  
20 that will be on your Exhibit A, page 30.

21 We are not going to make our arguments on audit  
22 issues numbered 2 and 3, unless your panel wants to hear.  
23 Subsequently, on July 13, 2021, the Department received  
24 Appellant's federal income tax returns from the Franchise  
25 Tax Board. The Department reviewed Appellant's federal

1 income tax return for years 2009, 2010, and 2011.  
2 Department noted that Appellant did not report any  
3 purchases on her federal income tax return for these three  
4 years. The Department also noted Appellant only reported  
5 a sale of \$4,800 for year 2009; sale of \$9,300 for year  
6 2010; and zero sales for year 2011 on her federal income  
7 tax returns.

8 However, based on auditor taxable sales of  
9 \$314,063 and the number of vehicles of 62, the average  
10 retail selling price of a car is around \$5,000. And that  
11 will be on your Exhibit A, pages 30 and 37. Thus, it  
12 appears that Appellant reported only one car for year 2009  
13 and two cars for year 2010. For federal income tax  
14 returns, Appellant reported a net loss of \$54,361 for year  
15 2009 and net loss of \$2,983 for year 2010. Appellant did  
16 not report any sales and purchases in her 2011 federal  
17 income tax returns. Appellant understated her purchases  
18 by \$137,025 for year 2009 and \$158,800 for year 2010. And  
19 that will be on your Exhibit A, page 33.

20 If Appellant included these purchases and  
21 recomputed net losses for these years, then the reported  
22 net loss of \$54,361 for year 2009 will increase to net  
23 loss of \$142,456, and the reported net loss of \$2,983 for  
24 year 2010 will increase to net loss of \$161,783.  
25 Therefore, the audit calculation of unreported taxable

1 items based on available auto auction house and DMV  
2 information were reasonable. And Appellant's federal  
3 income tax return information further support the  
4 Department's deficiency measure.

5 Appellant provided Exhibit 18 and requested  
6 additional adjustments for purchases available for retail  
7 sales. The Department allowed this adjustment, and these  
8 vehicles were not part of the 62 vehicles that the  
9 Department marked up. And that will be on your Exhibit A,  
10 pages 35 through 37, 38, 39 and Exhibit B, pages 17 and  
11 20. Appellant stated some vehicles were sold to  
12 out-of-state customers, and those vehicles were shipped to  
13 an out-of-state location. Appellant did not have proper  
14 documentation to support delivery to an out-of-state  
15 location, such as bill of lading or custom documents.

16 Even though no information is available regarding  
17 California DMV registration after Appellant's purchases  
18 from the auction house, it cannot be assumed that vehicles  
19 were sold as exempt in foreign or interstate commerce. If  
20 the customer or their representative take possession of  
21 the vehicles in California, even if temporary, the sale  
22 does not qualify as an exempt in foreign or interstate  
23 commerce. Appellant did not provide shipping documents  
24 supporting that the Appellant delivered the vehicles by a  
25 common carrier, custom broker, or shipper to an

1 out-of-state location.

2 Appellant claim that the 25 percent markup that  
3 was used to estimate audited taxable sales is arbitrary.  
4 To support this, Appellant provided some selected exempt  
5 sales and purchase information to claim a markup of  
6 7.24 percent. And that will be on your Exhibit 13,  
7 page 1. The Department used the same complete exempt  
8 sales and purchase information and computed an overall  
9 exempt sale markup of 23.76 percent. And this will be on  
10 your Exhibit A, page 24.

11 This overall exempt sale markup is a little less  
12 than the retail markup that the Department used in this  
13 audit. Therefore, the Department concluded that the  
14 retail markup of 25 percent was not arbitrary, and this  
15 retail markup of 25 percent is in line with Appellant's  
16 overall exempt sale markup of 23.76 percent. Based on the  
17 exempt sales markup, the Department finds it was fair and  
18 reasonable to use 25 percent markup to estimate audited  
19 taxable sales for the audit period.

20 Appellant also claimed that she did not make any  
21 retail sale of vehicles. Appellant explained that she  
22 only has a wholesale license from the DMV, which prevent  
23 her from making retail sales of vehicles. However,  
24 according to DMV information, Appellant's relatives were  
25 able to register the vehicle under their own name as gift

1 from Appellant without the payment of tax. And that will  
2 be on your Exhibit A, page 61.

3 This fact indicates that it is possible for a  
4 vehicle to be registered with the DMV even if purchased  
5 using a wholesale license. Appellant has not provided any  
6 supporting documentation to establish that the vehicles  
7 were sold to another dealer or transported or shipped to  
8 an out-of-state location.

9 Appellant has not provided any documentation to  
10 show that any of the unreported taxable sales determined  
11 in the audit did not occur. Appellant has not identified  
12 any errors in the Department's computations or provided  
13 any reasonable documentary evidence to establish a more  
14 accurate determination. Therefore, the Department request  
15 the appeal be denied.

16 This concludes my presentation, and I'm available  
17 to answer any questions the panel may have.

18 Thank you.

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

21 I'm going to turn it over to my colleague to see  
22 if they have any clarifying questions. Judge Dang?

23 JUDGE DANG: Thank you. This is Judge Dang  
24 speaking. I did have a few questions for Respondent. One  
25 of my concerns in this matter is that -- I believe these

1 facts are undisputed -- that Appellant was only licensed  
2 as a wholesale dealer and, also, that Appellant did not  
3 possess a retail sales lot. The evidence in the record --  
4 and, again, please correct me if I am wrong. The evidence  
5 in the record, what CDTFA was able to obtain from DMV,  
6 shows that the Appellant either withdrew these vehicles  
7 for personal use or were transferred to their relatives or  
8 that the vehicles were sold for resale to either a dealer  
9 or auction house.

10 Does CDTFA have any -- is there anything in the  
11 exhibits that CDTFA can point to indicating that the  
12 Appellants made any retail sales of vehicles? Or is it  
13 just your position that it was possible for them to do so,  
14 and they should carry the burden of proving that they did  
15 not?

16 MR. SAMARAWICKREMA: The Department requested DMV  
17 information for all those 99 cars, but the Department only  
18 received 37 -- the information for 37 cars. So based on  
19 the 37 cars of -- 23 cars were sold -- purchased and sold  
20 in the auction house, and it was listed separately in one  
21 of our schedules. And, also, there were 10 cars that were  
22 sold to another dealer. It's also listed, as I explained  
23 during my presentation.

24 And there are 3 cars that it transferred between  
25 relatives, and one was transferred to the Appellant's

1 business name. And for the other remaining 62 of the  
2 vehicles, we don't have. And, you know, even if we have  
3 them, it's only limited to the auction transaction;  
4 meaning, we didn't see transfers after they purchased from  
5 the auction house.

6 JUDGE DANG: Thank you. This is Judge Dang. Is  
7 it not sufficient that the Appellant has demonstrated that  
8 they are a licensed wholesale dealer and that the record  
9 contains no evidence -- I'm assuming based on your  
10 response, the evidence contains no record of any retail  
11 sales being made?

12 MR. SAMARAWICKREMA: This is Nalan  
13 Samarawickrema. That's a true statement, yeah. There's  
14 no record to show retail sales.

15 MR. PARKER: Mr. Dang, this is Jason Parker. I'd  
16 like to add on to that as well. The wholesale license  
17 allows the dealer to buy vehicles to resell them, and they  
18 can only resell them in wholesale transactions. They're  
19 not allowed to sell it at retail. However, they are able  
20 to purchase them for resale. And in this case, they may  
21 have resold them in a retail transaction but not a retail  
22 transaction that can be registered with DMV in California.

23 If these vehicles are taken to other states or  
24 other countries, I'm not familiar with the registration  
25 requirements of other states and other countries. But if

1 someone purchased a vehicle from outside of California,  
2 whether from a dealer or from a private party, and brought  
3 it into California, they would register that through our  
4 Department of Motor Vehicles.

5 JUDGE DANG: Thank you. This is Judge Dang. I  
6 do understand the point that you've made, Mr. Parker. I  
7 guess my question pertains more to as to the burden of  
8 proof. CDTFA, as I'm sure you're well aware, is required  
9 to -- carries the initial burden in some cases of showing  
10 that the -- that their determination is reasonable and  
11 rational. It's a very minimal burden. But in this case,  
12 I'm having a difficult time understanding why CDTFA  
13 believes that the Appellant made retail sales when, in  
14 fact, they were licensed as a wholesale dealer, did not  
15 have the retail lot, and none of the transactions came  
16 back as being sold in a retail transaction to a consumer.

17 MR. SAMARAWICKREMA: This is Nalan  
18 Samarawickrema. During the field -- during the audit  
19 notes, the Appellant claimed most of the cars went out of  
20 the state to a Nigerian customer. So as I explained in my  
21 presentation, if a customer buys from the Appellant and  
22 ships it to an out-of-state location by the customer, then  
23 it comes under the definition of exempt for interstate  
24 commerce. And -- but if the taxpayer -- if the Appellant  
25 can show that they hired a shipping company or a custom



1 broker and shipped directly to an out-of-state location,  
2 yeah, then it's exempt.

3 And we -- the Department also gave the  
4 opportunity for Appellant to contact the shipping company  
5 or broker, custom broker, and get that information. And  
6 they were unable to -- to obtain that information, and the  
7 Department believes they sold it to another customer in  
8 California or a representative of a customer, and that  
9 particular customer shipped it to an out-of-state  
10 location. Meaning, the Appellant is responsible for the  
11 sales tax because they made the sale in California and  
12 gave the possession of the car to a California customer or  
13 their representative.

14 JUDGE DANG: This is Judge Dang. I do agree with  
15 that assessment in that situation, but I'm a bit confused  
16 as to the facts.

17 I believe, Mr. Pidal, maybe you can clarify.  
18 This question is for you. Are you -- is it your position  
19 that Appellant sold vehicles out of state in a retail  
20 transaction or is it that they sold them out of state to  
21 other wholesalers -- or I'm sorry -- other retailers?

22 MR. PIDAL: This is David Pidal. It could be  
23 both. Unfortunately, there are no records. That's why  
24 we're in this mess. The Appellant is in this mess because  
25 there's no records. There's no indication what particular

1 vehicle was sold to what used car dealer. The only  
2 documentation -- the best documentation, unfortunately,  
3 that the Appellant had was the information that was  
4 obtained by CDTFA from the auction houses. And I believe  
5 the Appellant was able to get some information too from  
6 the auction houses. So who were they sold to?  
7 Unfortunately, I can't answer that.

8 But as I've stated previously and then you are  
9 well aware, there's no record of that vehicle being  
10 registered in California as retail sale or even a  
11 wholesale for that matter. So we know that the vehicle  
12 was purchased by the Appellant because it was purchased  
13 from an auction house. We know that some adjustments were  
14 made based on DMV information that was obtained by CDTFA.  
15 And the balance then, again, they're -- CDTFA is marking  
16 it up at 25 percent. And they said the average -- Mr. --  
17 I'm sorry. I can't see your last name.

18 Anyway, CDTFA -- the Respondent said that the  
19 average markup for a car dealer is 50 percent. I don't  
20 know where that comes from. I don't know where 25 percent  
21 comes from. And, you know, I don't know where those -- so  
22 to answer your question, you said, "Is it a sale for  
23 interstate commerce to a customer or to another retailer?"

24 I don't know the answer. I'm sorry.

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

1 I'm going to go ahead and move on to my next  
2 question for Respondent. During your presentation you had  
3 mentioned a 23.7 percent markup that you had computed  
4 from -- I think you said exempt sales. I couldn't follow.  
5 I missed that part. If you could just please clarify  
6 again how you came up with the support for the 25 percent  
7 markup.

8 MR. SAMARAWICKREMA: This is Nalan  
9 Samarawickrema. The Appellant provided Exhibit 13 to  
10 claim that markup for 7 points -- a little over percent.  
11 And the Department used the same information because when  
12 Appellant computed 7 percent, they removed extraordinary  
13 items from that list. So what we did, we -- the  
14 Department used the 15 cars in that Schedule 13. There  
15 are 15 cars. The Department took all the 15 with high  
16 markups and low markups, including negative markups. So  
17 we combined. We took the whole -- all the information as  
18 is. And based on that, the overall exempt markup was 23  
19 percent.

20 So the reason we said it's exempt because those  
21 were -- we got the selling prices from the auction house  
22 information. Because when they bought it -- the Appellant  
23 bought it and sold it to auction. So that's the only  
24 selling prices the Department had. And that -- if we had  
25 the retail selling prices, we would have computed the

1 shelf test. But in this case, we only exempt sales and  
2 the purchase information. That's why we compute a little  
3 over 23 percent. And we believe --

4 JUDGE DANG: This is --

5 MR. SAMARAWICKREMA: I'm sorry. We believe that  
6 the exempt sale markup is 23 percent. You know,  
7 25 percent is very reasonable. And, also, in preparing  
8 for this hearing, if I -- if you take all the sales,  
9 including resales and -- the overall markup is 15 percent.  
10 And if you compare -- the way I got that number by  
11 comparing the total purchase to \$314,000 taxable sales and  
12 \$48,000 -- \$42,375 of sales listed under my exhibit -- our  
13 Exhibit A, page 38 and Exhibit A, page 39, our resale  
14 amount was \$32,450; Exhibit A, page 39. So the overall  
15 markup based on everything, based on that 99 cars, the  
16 overall markup for this Appellant is 15, including resale,  
17 exempt sales.

18 JUDGE DANG: This is Judge Dang. Thank you for  
19 that detailed explanation. If I'm hearing you correctly  
20 then, it sounds as if the Department has some evidentiary  
21 basis for the 23-some percent markup. But as far as  
22 25 percent, is there anything in the record that you can  
23 point to that supports that figure?

24 MR. SAMARAWICKREMA: Yeah. If the exempt sale is  
25 23 percent and -- because always -- most of the time

1 exempt sale, you know, the resale markup or exempt sale  
2 markup is lower than the retail markup. And according to  
3 Judge Rosas, you know, Exhibit 14, page 1 of the -- the  
4 articles say 10 to 15 percent markup for the cars between  
5 \$10,000 and \$20,000. But for this particular Appellant,  
6 average cost of a car is \$3,400. So it is our position  
7 that the 25 percent markup is very reasonable and fair and  
8 also, is in line with the overall exempt markup of 23  
9 percent.

10 JUDGE DANG: Thank you. This is Judge Dang. I  
11 just have one final question for you. I don't want to  
12 assume anything because I really don't know much about  
13 these types of transactions. But I'd like to ask you just  
14 to clarify. Why -- again, why would a retail transaction  
15 have a higher markup than a wholesale transaction?

16 MR. SAMARAWICKREMA: When the -- when the -- when  
17 they -- they always go, you know, like if it goes with the  
18 volume. Like if it's a resale, it always goes with the  
19 volume, and also so many cars they buy. When the  
20 Appellant find low prices, they buy it, and they turn over  
21 the vehicle within a few days by going to the auction. So  
22 the object is to have a -- to make a profit, you know, as  
23 soon as they see an opportunity.

24 But when you -- when you do a retail sale, you  
25 know, the turnover rate is lower than the retail

1 turnover -- I mean, exempt sales turnover. So based on  
2 experience and based on the audit that we completed, most  
3 of the time retail markup is higher than the exempt sales  
4 markup.

5 JUDGE DANG: This is Judge Dang. Thank you so  
6 much for your explanations. I have no further questions.

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

9 Judge Wong, do you have any questions for  
10 Respondent?

11 Judge Wong, if I'm not mistaken, I believe you  
12 are on mute.

13 JUDGE WONG: Apologies. How about that? Can you  
14 hear me now?

15 JUDGE ROSAS: Sounds great. Yes, sir.

16 JUDGE WONG: Okay. Sorry. I did have one  
17 question for CDTFA. When did CDTFA check with DMV for  
18 information on the 99 cars? Like, at what point in time  
19 did that request take place?

20 MR. SAMARAWICKREMA: This is Nalan  
21 Samarawickrema. It's during the -- when the Department  
22 was -- got some information from the Appellant, and it's  
23 during the revised audit.

24 JUDGE WONG: During the revised audit?

25 MR. SAMARAWICKREMA: Yeah. I can give you the

1 exact date if you want.

2 JUDGE ROSAS: Sure.

3 MR. SAMARAWICKREMA: May I have a moment, please.

4 JUDGE WONG: Sure.

5 MR. SAMARAWICKREMA: It's our Exhibit A, pages 15  
6 through 19, during June 2012.

7 JUDGE WONG: This is Judge Wong. Okay. So  
8 that's in the point of time where CDTFA checked with DMV  
9 about information for these 99 cars. And that's the  
10 freshest -- if I use that term -- information CDTFA has?  
11 After that we just don't know what happened to these other  
12 62 cars, or at least CDTFA has not checked.

13 MR. SAMARAWICKREMA: This is Nalan  
14 Samarawickrema. That's true.

15 JUDGE WONG: Okay. Thank you. I have no further  
16 questions.

17 JUDGE ROSAS: This is Judge Rosas. Thank you,  
18 Judge Wong.

19 Mr. Samarawickrema, I just wanted to clarify.  
20 You were talking about the overall markup of the 99 cars.  
21 Did you say that the overall markup was 15 percent,  
22 one-five, or 50, five-zero?

23 MR. SAMARAWICKREMA: I'm sorry. This is Nalan  
24 Samarawickrema. 15 percent, one-five. The way I -- the  
25 way we computed the total purchases were \$337,375 and

1 compared that to the audited taxable sales of \$314,000,  
2 plus resale allowed, \$32,450 listed in page 39 of  
3 Exhibit A, and page 38 of the same Exhibit, \$42,375.

4 JUDGE ROSAS: And I just want to make sure I'm  
5 following along. Does that Exhibit A, pages 38 and 39,  
6 show that overall 50 percent markup?

7 MR. SAMARAWICKREMA: I'm sorry. No, it doesn't  
8 show the overall markup. It shows the amount that we used  
9 to compute that 15 percent.

10 JUDGE ROSAS: Understood. Thank you. Another  
11 point of clarification. I want to focus on the markup.  
12 Mr. Samarawickrema, you were referring to Exhibit A,  
13 page 34. And you mentioned that, essentially, you were  
14 looking at the same vehicles that Appellant listed in  
15 Appellant's Exhibit 13, with the exception that, if I'm  
16 not mistaken, Mr. Pidal mentioned that in Exhibit 13 it  
17 lists 18 vehicles, and it includes the vehicles' purchase  
18 price as well as the sales price at auction.

19 And as to these 18 vehicles, Mr. Pidal deleted  
20 the two highest and the two lowest markups in order to  
21 arrive at the 7.24 percent markup, which is the basis of  
22 Mr. Pidal's argument. But back to you,  
23 Mr. Samarawickrema, are you saying that you -- that  
24 Exhibit A, page 34, uses all of these vehicles with the  
25 only difference being that you're not removing the highest



1 or the lowest, the way Mr. Pidal did?

2 MR. SAMARAWICKREMA: This Nalan Samarawickrema.  
3 Yes, that's correct.

4 JUDGE ROSAS: Okay. Can you briefly talk,  
5 Mr. Samarawickrema, in terms of Mr. Pidal's argument that  
6 removing the two highest and two lowest markups to arrive  
7 at a 7.24 percent? Is it more reasonable than not  
8 deleting those vehicles?

9 MR. SAMARAWICKREMA: This is Nalan  
10 Samarawickrema. There was another schedule in the audit  
11 working papers. If I use -- there's another schedule in  
12 the audit working papers that listed all exempt sales. So  
13 if you combine the Schedule 13 with that schedule -- in a  
14 moment I can give you the exact page number. The overall  
15 markup by incorporating those other vehicles, the overall  
16 markup is 20.37. In that test we have -- that is using 21  
17 cars. And I can -- I'll give you the schedule of that;  
18 Bates Number 152 and 154. That is Exhibit C, page 32.

19 So if the Department included the information in  
20 page C -- excuse me -- Exhibit C, page 32, and Exhibit C,  
21 page 52, the overall exempt sales markup was  
22 20.27 percent. But if the Department used only 152, then  
23 the exempt markup is a little over 23 percent.

24 JUDGE ROSAS: This is Judge Rosas. Thank you,  
25 Mr. Samarawickrema. That concludes my questions for you

1 at this time. I believe one of my colleagues had a  
2 follow-up question.

3 JUDGE DANG: This is Judge Dang. I do apologize.  
4 I did have one additional follow-up question. You had  
5 stated that the retail markup -- you have given a great  
6 explanation of why the retail markup should be higher than  
7 the exempt sale or the sale for resale markup -- wholesale  
8 markup, how we would like to refer to it. And the reason  
9 was based on turnover. And I'm assuming the fact that  
10 associated cost -- selling a vehicle in such a manner is  
11 lower than in a traditional retail channel where you might  
12 have to maintain, you know, a retail location. You have  
13 salespeople. You have test drives and the like.

14 In this situation it seems that Appellant -- even  
15 if we were to assume that Appellant made retail sales,  
16 wouldn't those also be fairly quick low markup-type sales  
17 just because they don't have the facilities. They don't  
18 have the traditional sales -- retail sales channel. It  
19 would be, I'm assuming, based on what Appellants have  
20 asserted. They simply take a customer to the auction  
21 market and say, "Is this the car you like?" And they  
22 would somehow work out the deal later.

23 So I'm just wondering if that fact maybe changes  
24 the analyses in any way as to whether or not, you know,  
25 there should be a higher markup than the 23 percent --

1       some odd percent calculated by Respondent?

2               MR. SAMARAWICKREMA:   This is Nalan  
3       Samarawickrema.  It depends.  When we start the field  
4       work, according to Appellant, they buy and sell 24 cars  
5       per year.  So, you know, during the audit period, 99 cars.  
6       So we believe the information is close to 75 versus 99.  
7       And the -- when we -- when the Department checked page  
8       100 -- Exhibit C, page 30, and Exhibit C, page 54, the  
9       selling -- the date sold and the date purchases were very  
10      close.

11             Like some days it's like -- yeah, it's like, for  
12      example, Bates Number 152, Exhibit C, page 30.  If you  
13      take line 1 of the Appellant purchase on May 5th and sold  
14      on May 21st, and the Item Number 12 in the same schedule,  
15      you know, bought on April 24th and sold in 2018.  And the  
16      reason they have, like, a two-month gap because the  
17      Appellant used some vehicles.  18 vehicles were used, and  
18      we didn't make our presentation on that audit Item  
19      Number 3.

20             But, you know, so the date quickly -- either they  
21      didn't use it, they sold within few days or few weeks, and  
22      we -- the Department did not have enough information to  
23      make a conclusion that, you know, whether they sold by  
24      using the office parking lot.  The Appellant had the  
25      office in a building.  So they have some parking.  And

1       according to exhibit -- Appellant's Exhibit 12, page 1,  
2       they have a large parking lot.

3               So we -- the Department did not have enough  
4       information to conclude, you know, how they bought and  
5       sold. And we -- the Department did not know their selling  
6       practice and the business model they used during the audit  
7       period. And it says particularly the Exhibit 12, page 1,  
8       it's a big parking lot. And they only bought 99 cars  
9       during the three years.

10              JUDGE DANG: Thank you. This Judge Dang. Maybe  
11       I can rephrase my question to make it easier for you to  
12       answer. I think what the Department is saying is that as  
13       a general principle for vehicle dealers who sell both  
14       retail and wholesale, the retail markup will be higher  
15       than wholesale markup. But in a situation where you have  
16       a person who is licensed only as a wholesale dealer and  
17       they don't have a retail lot, and they go beyond the scope  
18       of their license, there's really no way to say what the  
19       markup could be on a retail sale in that situation;  
20       whether it's higher or lower than the wholesale markup.

21              MR. SAMARAWICKREMA: Based on the experience, the  
22       Department had most of the time the retail markup is  
23       higher than the resale markup of the -- is because of the  
24       volume and because of the duration that they hold the  
25       vehicle. And, you know, like the -- of the -- this is all

1 the information we had. And based on the wholesale  
2 markup, the Department believe that the retail markup is  
3 more than -- more than the exempt sales markup, you know.

4 If the retail -- if the Appellant is selling the  
5 vehicle to another dealer, and the other dealer they know  
6 the prices, they know the comparables. They don't pay if  
7 the other dealer can't make a profit. So that's why  
8 typically the used car dealer markup is 50 percent or  
9 little over 50. And the taxpayer information -- if the  
10 taxpayer's own records for the information vehicle from  
11 the auction house shows 20-plus markup on exempt sales, so  
12 we use 25 percent at that time.

13 JUDGE DANG: This is Judge Dang. I promise last  
14 follow up here. You mentioned holding time turnover. For  
15 a dealer who doesn't have a retail lot, where are they  
16 supposed to store this inventory? Wouldn't they also  
17 necessarily be required to have a high turnover rate as  
18 well -- or I'm sorry -- a faster turnover rate?

19 MR. SAMARAWICKREMA: This like the -- this is the  
20 business model the Department don't know. So that's why  
21 it doesn't mean that the dealer goes -- I mean the  
22 Appellant goes and buys 10 cars. They buy, like, a few  
23 cars or one car per week. They only bought 99 cars. So  
24 it's like per week. You know, they buy, like, a car per  
25 week. So we didn't -- you know, that's 99 cars during

1 150 weeks for a year, 52 times, 356 weeks, but they only  
2 bought 99 cars.

3 So we -- we, you know, like 99 cars, you know, we  
4 can also check if you go to Exhibit 41, page -- I mean,  
5 Exhibit A, page 41 through 47. It lists all the 99 cars.  
6 And it, you know, it also has the purchase date under  
7 Column 4. It says sales date, you know, this is the  
8 purchase date. For the auction it's a sale. So that's  
9 why they listed the sale dates. So, you know, if you  
10 check the line 1, the purchase of one car on January 2nd,  
11 2009, the second car was -- there are two cars purchased  
12 on January 23rd, 2009.

13 Then after that, they only purchased one car on  
14 February 3rd, 2009, and another one on August 6. So  
15 they're not buying a lot. They buy, like, two cars per  
16 day. Over a period of 156 weeks, they only bought 99  
17 cars. And it specifically says -- it specifically shows  
18 the date of the purchase when you review Exhibit A, page  
19 41 through 47. And I don't see -- I'm just -- I don't see  
20 they bought five cars on a particular day. On the -- on  
21 the first transaction only one car. That's Item 2 and 3  
22 on the same day, January 23rd.

23 And on line 14 and 15 on the same schedule,  
24 May 15th they bought two cars. And after that they bought  
25 only one car -- sorry -- two cars on May 29th. And then

1 after that, they bought one car June 19 on page 42,  
2 Item 18. So like page 42 on September 10, 2009, they  
3 bought two cars. So they don't -- they don't need to have  
4 a large lot because their buying practices is not bulk.  
5 They buy one car or two or three cars per week.

6 JUDGE DANG: This is Judge Dang speaking. Thank  
7 you so much for answering all my questions. I don't have  
8 any further questions at this time.

9 JUDGE ROSAS: This is Judge Rosas. Thank you,  
10 Judge Dang. I know that we started late today because of  
11 technical issues, but I believe we've been going at it for  
12 about two hours. Next, we're going to have Mr. Pidal's  
13 rebuttal argument, and then we're going to be wrapping  
14 this up shortly thereafter. But before we move on to the  
15 rebuttal argument, does anyone need a short break?

16 Okay. I see Mr. Pidal's hand. Okay. Thank you,  
17 Mr. Pidal.

18 We're going to take a short recess.

19 Ms. Alonzo, please go off the record.

20 (There is a pause in the proceedings.)

21 JUDGE ROSAS: Good afternoon. Welcome back.  
22 We're back on the record.

23 Mr. Pidal, at this moment we're going to give you  
24 an opportunity to respond to anything that you heard. You  
25 heard CDTFA's argument, and you also heard their responses

1 to various questions. So at this time you have a brief  
2 opportunity, up to five minutes if you wish, to respond to  
3 anything that you heard from CDTFA.

4  
5 CLOSING STATEMENT

6 MR. PIDAL: Yeah. This is David Pidal.

7 With all due respect, I still have not got a good  
8 answer as to where CDTFA got the 50 percent or 25 percent.  
9 It seems like CDTFA used my Exhibit 13, which I  
10 acknowledged that I eliminated two -- four of the  
11 aberrations, the two lowest and the two highest. Again,  
12 this is not a normal used car dealer. And I believe CDTFA  
13 said they computed the overall markup at 15 percent,  
14 one-five. And if I understood correctly, that was after  
15 factoring in the audited taxable sales, which was computed  
16 at, like, a 25 percent markup.

17 So, I mean, that's like a circular reference to  
18 me. So, again, aside from what -- where these vehicles  
19 went because it has not been established that any of these  
20 vehicles were registered as a retail sale. I honestly  
21 cannot answer whether they were sold to a consumer or sold  
22 in interstate commerce because there's no documentation.  
23 And that's why we're here because, again, there's no  
24 documentation to support any exemption sale for resale or  
25 sales in interstate commerce or sales in foreign commerce.



1           So I'm trying to come up with a fair resolution  
2       as to using a reasonable markup applicable to the  
3       Appellant, not to what the industry average is because  
4       this is not an average car dealer. And so you saw the  
5       lot. The lot is not used to inventory cars. The lot is  
6       used to -- for patrons to park their vehicles when they're  
7       occupying the office space. So that office -- that  
8       parking lot has nothing to do with holding inventory. The  
9       vehicles are purchased.

10           I might be speaking too fast, so I apologize.

11           The vehicles are purchased with a specific  
12       customer in mind, usually, as Mr. Godwin Onyeabor, the  
13       Appellant's husband, he would go to the auction. If I  
14       wanted a vehicle, he would charge \$100 or so, but there's  
15       no proof of that. But that's what he would do. And that  
16       alone tells you that he's not buying vehicles to put in  
17       inventory. He's buying vehicles for a specific customer.  
18       It may not be 100 percent of the time, but I would say,  
19       you know, I'm going to guess, 90 percent of the time he  
20       has a customer in mind when he's bidding on a vehicle at  
21       an auction house.

22           The markup, again, is not 25 percent. It's not  
23       50 percent as CDTFA started. And the only closest  
24       explanation or justification I got for the 25 percent is  
25       using my Exhibit 13 information to support a 23 percent

1 markup, which as CDTFA explained, well, retail sales have  
2 a higher markup. And that may be true, but we're not  
3 talking about normal. This is not a normal operation.  
4 That's what we're trying to establish.

5           Aside from the tax returns that CDTFA mentioned,  
6 we're -- we're not disputing that. We're -- all  
7 Appellant -- all we are as Appellant wants is a fair and  
8 reasonable answer to any under -- any understatement of  
9 tax, only because they do not have the proper  
10 documentation. We've already conceded that. They don't  
11 have their resale certificates. They don't have the  
12 shipping documents. They don't have proof that the car  
13 was put in a foreign -- stream of foreign commerce.  
14 That's not a question.

15           The question is what should the Appellant be held  
16 response -- held liable for, at a 25 percent markup or  
17 something more reasonable. And that's why I submitted  
18 Exhibit 13. I knew well beforehand when I submitted it  
19 that it was 23 percent. I didn't submit that to support  
20 the 25 percent.

21           So that's -- that's my rebuttal.

22           JUDGE ROSAS: This is Judge Rosas. Thank you,  
23 Mr. Pidal.

24           Do either of my co-panelists have any questions?  
25           Judge Dang?

1 JUDGE DANG: This is Judge Dang. No questions.  
2 Thank you.

3 JUDGE ROSAS: Judge Wong?

4 JUDGE WONG: This is Judge Wong. I did have just  
5 one follow-up question for Mr. Pidal.

6 Do you have any authority for disregarding the  
7 highest two markups -- the two transactions with the  
8 highest markup and the two transactions with the lowest or  
9 the highest negative markup? Like, why disregard two  
10 transactions at either end? Why not one or three?

11 MR. PIDAL: I'm sorry. Yeah. This is David  
12 Pidal. That's a very good question. As I stated earlier,  
13 I have 34 years of experience with the Board of  
14 Equalization as an auditor, as a reviewer, as a  
15 supervisor, as a manager. And I have 12 years of  
16 experience representing taxpayers. Whenever a shelf test  
17 is done -- and that's what this is, Exhibit 12 -- a shelf  
18 test is done. We want to get something that's  
19 representative. When a shelf test is prepared, you want  
20 to take out something that's not representative.

21 You question why not one, why not two, why not  
22 five. I didn't know what the markup was. I just said  
23 two. I saw the two highest one, and I'm looking at it  
24 right now. The two highest -- the highest one is \$224,  
25 and the next one is \$102. So I said if I take out the two

1 high ones, I should take out the two low ones. So I took  
2 out the two low ones. So it's a minus 42 and a minus 91.

3 Is there authority for that? No. It's  
4 judgmental based on my experience working for the Board of  
5 Equalization and representing clients after, the last  
6 12 years. There's no legal authority.

7 JUDGE WONG: This is Judge Wong. Thank you.  
8 Just one last question. If you're relying on your  
9 extensive experience with the Board for this audit method,  
10 couldn't the Department also rely on their experience for  
11 the 50 percent markup, the 25 percent markup?

12 MR. PIDAL: I have 34 years of experience.  
13 Again, I don't mean to keep saying that, but I've never  
14 used a 50 percent markup in my working years with the  
15 Board of Equalization or representing people. I've never  
16 seen a 25 percent markup. As I explained earlier, when  
17 you buy -- and this is not a normal used car lot. But  
18 even if you went to a car lot, they'll have a -- they may  
19 have a sales price on it, you know, \$5,000. It doesn't  
20 mean you're going to pay \$5,000, you know.

21 So whatever you can buy that for, you're  
22 obviously not going to pay more than \$5,000. And the same  
23 holds true for a new vehicle. You see the suggested  
24 retail price. Normally you're not going to pay that. But  
25 that's based on my experience. And CDTFA -- I worked for

1 BOE, which was prior to CDTFA. So I'm using my  
2 experience. I have -- I haven't seen anything written in  
3 the Audit Manuals and any memorandums that I saw when I  
4 worked for the Board of Equalization that says the markup  
5 for a used car lot is 50 percent or 25 percent.

6 JUDGE WONG: This is Judge Wong. Thank you so  
7 much, Mr. Pidal. No further questions.

8 JUDGE ROSAS: This is Judge Rosas. Mr. Pidal, I  
9 don't have any questions.

10 I did want to discuss briefly with both parties  
11 Exhibit 18. I mentioned I was going to reserve ruling on  
12 that. Before I forget, I do want to get back to  
13 Exhibit 18. So Exhibit 18 is a document that Mr. Pidal  
14 prepared. And based on what's on the document and based  
15 on what Mr. Pidal mentioned during today's argument, it's  
16 a compilation of data from Exhibit 15 and Exhibit 3; is  
17 that correct, Mr. Pidal?

18 MR. PIDAL: Yeah. This is David Pidal. Yes, I  
19 have referenced Exhibit 3 and 10, but 10 is actually the  
20 purchases. So it should just be Exhibit 3.

21 JUDGE ROSAS: Right. I do believe you corrected  
22 that during your presentation.

23 MR. PIDAL: Okay. Okay.

24 JUDGE ROSAS: It is just Exhibits 15 and 3.

25 MR. PIDAL: Yes, that is correct.

1 JUDGE ROSAS: And the point is Exhibit 18 is not  
2 a factual document. It seems to the panel that it is more  
3 of a -- it's more argument, and it's an organized way of  
4 presenting Mr. Pidal's argument and allowing the panel to  
5 visually follow along and understand his position. It's  
6 not a factual document and will not form the basis of any  
7 factual finding. With those caveats, we're going to admit  
8 Exhibit 18 into evidence.

9 (Appellant's Exhibits 18 was received  
10 in evidence by the Administrative Law Judge.)

11 But I do want to allow Respondent an opportunity  
12 if they want to provide any argument in terms of how much  
13 weight they believe this panel can give Exhibit 18, if  
14 any.

15 MR. SAMARAWICKREMA: This is Nalan  
16 Samarawickrema. If you compare Exhibit 18 with Exhibit A,  
17 page 38, it's listed as "Motor Vehicle Resold Back to The  
18 Auto Auction House." All this \$26,975 worth of cars were  
19 adjusted in page 38. So Chris will add more.

20 Thank you.

21 JUDGE ROSAS: Thank you, Mr. Samarawickrema. And  
22 we'll take that into consideration in terms of the weight,  
23 if any, to be given. As I mentioned, Exhibit 18 in and of  
24 itself will not form the basis of any factual finding.  
25 It's just an organizational tool, and we're considering it

1 as argument.

2 With that said we are going to wrap this up, but  
3 I do want to hear last -- I do want to give each side a  
4 final opportunity to be heard. I'll start with CDTFA, and  
5 then I'll give Mr. Pidal the last word.

6 Does CDTFA have anything else that they would  
7 like to add?

8 MR. SAMARAWICKREMA: This is Nalan  
9 Samarawickrema. We have nothing to add.

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

12 Mr. Pidal, you represent the Appellant.  
13 Appellant filed the appeal. Appellant has the burden of  
14 proof, so I want to give you the last word. Now, I don't  
15 need you to repeat yourself, sir. But my question is,  
16 other than what you've already told us here today, and  
17 other than the exhibits that have already been admitted  
18 into evidence, is there anything else that you believe  
19 this panel needs to know in order for us to make a  
20 well-informed decision?

21 MR. PIDAL: I do not have -- this is David. I do  
22 not have any additional information that I have not  
23 already voiced my opinion or facts.

24 JUDGE ROSAS: This is Judge Rosas. Thank you  
25 very, much Mr. Pidal.

1           In that case this concludes the hearing in the  
2   Appeal of Onyeabor. Evidence has been received. The  
3   record is now closed, and the matter is submitted as of  
4   today, July 20th, 2021. A written decision will be issued  
5   no later than 100 days from today.

6           Thank you to all the representatives, to my  
7   co-panelists, to our stenographer, and to all of the OTA  
8   team members who work behind the scenes. This hearing is  
9   now adjourned, and that concludes today's calendar. Thank  
10   you.

11           And we may go off the record.

12           (Proceedings adjourned at 3:59 p.m.)

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

I have hereunto subscribed my name this 6th day  
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