

BEFORE THE STATE OF CALIFORNIA
OFFICE OF TAX APPEALS
COUNTY OF SACRAMENTO
KEITH LONG, ADMINISTRATIVE LAW JUDGE

In the Matter of:)
)
FERDOUS MOLLAI MEHRJERDI)
)
Appellant.)
)
)
)
_____)



Case No. 19024324

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TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Thursday, August 26, 2021

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Reported by:

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1 APPELLANT'S EXHIBITS

2

3 Exhibit	Description	ID	EVID
4 1	CDTFA IRIS comment 4/7/2010	prmkd	9
5 2	CDTFA Audit Schedule 12L and 6 Federal income tax return	"	"
7 3	BOE 414Z Assignment Activity History	"	"
8 4	CDTFA Appeals Bureau decision and recommendation	"	"
9 5	Audit Schedule 12G and commingled 10 financial statements	"	"
11 6	BOE-836A Report of discussion of Audit findings 10/6/2010	"	"
12 7	Sample bank statements for 13 Sebastopol Fast Gas Station and Kenwood Gas Station 9/2009	"	"
14 8	Original audit schedule 20-G3 15 Ad hoc fuel report for 108 for Kenwood Gas Station with auditor notations 16 and Revised Audit Schedule 20-G3	"	"

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CDTFA' EXHIBITS

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Exhibit	Description	ID	EVID
A	Appeals Bureau Decision and Recommendation dated 1/26/16	prmkd	9
B	Appeals Bureau D & R with Exhibit for Case ID 852214 2/26/16	"	"
C	NOD dated 2/4/2011	"	"
D	NOD dated 10/29/2014	"	"
E	Comment from CDTFA's IRIS 4/7/2010	"	"
F	Comment from Centralized Revenue operating system dated 5/19/2010	"	"
G	Comment from IRIS 6/28/2010	"	"
H	Waiver of Limitations forms for 1/1/2007 through 6/30/2007	"	"
I	Waiver of Limitations forms for the Period 10/1/2009 to 6/30/2007	"	"
J	Appellant's claim for refund dated 9/2/2015	"	"

1 SACRAMENTO, CALIFORNIA, THURSDAY, AUGUST 26, 2021

2 10:15 A.M.

3 ADMINISTRATIVE LAW JUDGE LONG: We are opening the
4 record in the appeal of Ferdous Mollai Mehrjerdi. The OTA
5 case number is 19024324. This matter is being held before
6 the Office of Tax Appeals. Today's date is Thursday,
7 August 26, 2021, and the time is approximately 10:15 a.m.
8 This hearing is being convened at Sacramento, California.

9 Today's hearing is being heard by a panel of three
10 administrative law judges. My name is Keith Long, and I
11 will be the lead administrative law judge.

12 Judge Suzanne Brown and Judge Josh Lambert are the
13 other members of this tax appeals panel. All three judges
14 will meet after the hearing and produce a written decision
15 as to both participants. Although the lead judge will
16 conduct the hearing, any judge on this panel may ask
17 questions or otherwise participate to ensure that we have
18 all the information needed to decide this appeal.

19 For the record, will the parties please state
20 their names and who they represent, starting with the
21 representatives for CDTFA.

22 MR. BACCHUS: Chad Bacchus.

23 MR. HUXSOLL: Cary Huxsoll.

24 MR. BACCHUS: And also Jason Parker who is sitting
25 in the front row.

1 ADMINISTRATIVE LAW JUDGE LONG: Thank you.

2 And for the Appellant.

3 MR. STRADFORD: Mitchell Stradford representing
4 Ferdous Mehrjerdi.

5 MR. DUMLER: James Dumler.

6 ADMINISTRATIVE LAW JUDGE LONG: Thank you. For
7 preliminary matters, my understanding is that Mr. Kazemini
8 who was originally listed to be a witness will not be
9 appearing today.

10 Is that correct?

11 MR. STRADFORD: That is correct.

12 ADMINISTRATIVE LAW JUDGE LONG: Thank you. And
13 the exhibits for this appeal consist of CDTFA's Exhibits
14 No. A through L. The exhibits were emailed to the parties
15 after the prehearing conference. Appellant has not raised
16 any objections to FTB's exhibits.

17 Appellant's exhibits are numbered 1 through 8 and
18 were also emailed to the parties. CDTFA previously objected
19 to admission of Appellant's Exhibit 4 following the
20 March 4th, 2020 prehearing conference. CDTFA objections
21 were overruled. CDTFA has no other objections to admitting
22 THE exhibits identified above.

23 CDTFA, is the summary I just provided accurate?

24 MR. STRADFORD: Yes, it is.

25 MR. BACCHUS: Yes.

1 ADMINISTRATIVE LAW JUDGE LONG: And for the
2 Appellant, was the summary I provided accurate?

3 MR. STRADFORD: Yes, it is. I would like to add
4 we prepared an additional exhibit, basically a summary we
5 would like to discuss during our presentation. I have
6 copies here to distribute.

7 ADMINISTRATIVE LAW JUDGE LONG: Okay. We will
8 take five minutes for CDTFA to review it. I presume you did
9 not get a chance to review the exhibit beforehand, and if
10 there are any objections after five minutes, we will hear
11 them then. Please go ahead and distribute the exhibit.

12 We'll go off the record during this time.

13 (Off the record.)

14 ADMINISTRATIVE LAW JUDGE LONG: We'll go back on
15 the record now.

16 Does CDTFA have any objections to proposed Exhibit
17 9?

18 MR. BACCHUS: CDTFA does object to the admission
19 of proposed Exhibit 9 based on the fact that it was not
20 provided timely 15 days prior to the date of today.

21 Also, we note that Row 6 on the spreadsheet has to
22 do with the case at hand, issue at hand today, and some of
23 the information is still in dispute.

24 ADMINISTRATIVE LAW JUDGE LONG: Thank you. I am
25 going to -- I am not going to accept Exhibit 9 into

1 evidence, as it is merely a summary of Exhibit 4. The best
2 evidence is the original documentation contained within
3 Exhibit 4; however, you may feel free to refer to this
4 document in your argument.

5 Otherwise, Exhibits A through L, CDTFA's
6 Exhibits A through L and Appellant's Exhibits 1 through 8
7 are admitted into evidence.

8 (CDTFA's Exhibit A through L admitted.)

9 (Appellant's Exhibits 1 through 8
10 admitted.)

11 ADMINISTRATIVE LAW JUDGE LONG: Next, as confirmed
12 at the August 3rd, 2021 prehearing conference, the parties
13 agree that the assessed deficiency amount is no longer at
14 issue in this appeal.

15 Is that correct, Mr. Dumler, Mr. Stradford?

16 MR. STRADFORD: That's correct.

17 ADMINISTRATIVE LAW JUDGE LONG: There is one issue
18 in this appeal. It is whether the notice of determination
19 was issued to the wrong taxpayer and therefore must be
20 canceled. As discussed at the prehearing conference, we'll
21 begin with the appellant's opening statements. They will
22 have approximately 20 minutes, then CDTFA will be given 30
23 minutes to make its presentation, and then Appellant will be
24 given ten minutes to make a final statement, and CDTFA five
25 for any closing remarks.

1 and procedures in this case by inaccurately claiming that
2 the prior cases in which it canceled determinations or
3 portions thereof under the same relevant facts are distinct
4 from the facts in this case.

5 Exhibit 4, which we will discuss later,
6 demonstrates why CDTFA's attempts to distinguish this case
7 from others is misplaced. The relevant facts in this case
8 are consistent with the relevant facts in the cases that we
9 referenced in our brief, which are further summarized in
10 Exhibit 9 which we provided earlier. We will show today
11 that CDTFA was notified of the correct ownership well before
12 it issued the NOD to the appellant. We will show that it
13 even changed the seller's permit from Appellant to the
14 partnership for the taxpayer before it issued the NOD to
15 Appellant. And we will show that the law and longstanding
16 CDTFA annotations and interpretations and policy support
17 that the NOD issued to Appellant is improper. Ultimately,
18 CDTFA had everything it needed within its knowledge and
19 possession to issue the NOD to the correct person, but it
20 failed to do so. Despite CDTFA claims, there are no facts
21 which excuse its error.

22 With that summary in mind, I will now address the
23 facts which demonstrate the CDTFA was notified of the
24 correct ownership well before the NODs were issued. The
25 notices of determination were issued on February 4th, 2011

1 and on October 29th, 2014. Notice to the CDTFA of the
2 correct ownership is evidenced by the BOE 414Z form, which
3 is labeled "Assignment Activity History," which we provided
4 as Appellant's Exhibit 3, wherein the auditor notes the
5 correct ownership of the business on October 27th, 2009;
6 February 3rd, 2010; March 5th, 2010; and July 29th, 2010.
7 The auditor also included comments within the audit itself
8 on the 223 tax reconciliation and income tax return Schedule
9 12L. We also provided those in Appellant's exhibits.

10 Further, the correct ownership of the account is
11 also identified by the principal auditor on April 7th, 2010
12 in the 414Z comments as well as on BOE 836 discussion of
13 audit findings form, which is dated October 6, 2010.

14 There are at least six separate instances in
15 CDTFA's own files, which demonstrate several people within
16 CDTFA recognize that the partnership was the taxpayer, not
17 the Appellant. CDTFA correctly identified the correct
18 ownership of the business based on representations made
19 directly to CDTFA by Mr. Ali Kazemini, husband of Appellant
20 and one of the partners, and based on financial
21 documentation provided in connection with the audit
22 activities.

23 As the 414Z comment states and as Audit Schedule
24 12L reflects, on the federal income tax return Schedule C,
25 profit or loss from business for 2007, the revenues and

1 expenses of both Sebastopol Gas Station and Kenwood Gas
2 Station were consolidated on the federal income tax returns.
3 The reason this is relevant is because the Kenwood Gas
4 Station was accurately registered as a married co-ownership
5 with CDTFA.

6 As the auditor recognized, because of revenues and
7 expenses are consolidated on a single income tax return, it
8 is clear that the ownership of both gas stations was the
9 same. Also on the Schedule C, one of the names listed for
10 the partnership is Ali Kazemini, further demonstrating that
11 the business was operated by a partnership, not Appellant as
12 a sole proprietorship. We included a copy of the 2007
13 federal income tax return, which is notably the earliest
14 period at issue here in Audit Schedule 12L, which reflects
15 the same information as the income tax returns in
16 Appellant's Exhibit 2.

17 Finally, with respect to the income tax returns,
18 we note that there should be no dispute that the income of
19 the two gas stations were consolidated, not only because the
20 form itself states it's for both gas stations, but also
21 because consolidated financial statements were provided to
22 the auditor for both gas stations, which we have provided as
23 Appellant Exhibit 5.

24 The bank statements of the business were also
25 provided to the auditor. The bank statements list the

1 partnership, Ferdous Mehrjerdi and Ali Kazemini, as the
2 account holders of the business account of Sebastopol Fast
3 Gas. Appellant's Exhibit 7 is a sample bank statement from
4 September 2009 to demonstrate this fact.

5 We've also included a sample bank statement of the
6 Kenwood Gas Station, which was registered with CDTFA as a
7 partnership. As was the case with Sebastopol Fast Gas
8 account, the partnership of Ferdous Mehrjerdi and Ali
9 Kazemini were the account owners for the Kenwood Gas Station
10 as well. Although we provided a single sample statement of
11 each account, the auditor notes that the accounts were
12 jointly held for the entire audit period. At the conclusion
13 of the audit activities and prior to issuing the NOD, CDTFA
14 transferred this business to a separate seller's permit that
15 is held by the partnership. This transfer is a clear and
16 unambiguous action that demonstrates CDTFA knew that the
17 business was owned by the partnership.

18 The bottom line is that the ownership of the
19 business is a well-settled matter based on representations
20 made by Mr. Kazemini, CDTFA's numerous comments which
21 acknowledged the partnership ownership, financial documents
22 of the business which name the partnership, and CDTFA's
23 transfer of the account under permit held by the partnership
24 that it continues to operate under to this day.

25 We now turn to the legal authority that makes it

1 very clear that the liability issue to Appellant must be
2 canceled. Although audits occasionally result in refunds,
3 audits generally result in deficiency determinations.
4 Revenue and Taxation Code Section 6481, labeled "Deficiency
5 Determination" states in pertinent part: If the Board is
6 not satisfied with the return or returns of the tax or the
7 amount of tax or other amount required to be paid to the
8 State by any person, it may compute and determine the amount
9 required to be paid upon the basis of the facts contained in
10 the return or returns or upon the basis of any information
11 within its possession or that may come into its possession.

12 Further, Revenue and Taxation Code Section 6486,
13 Notice of Determination states in pertinent part: The Board
14 shall give to the retailer written notice of its
15 determination.

16 "Retailer" is defined by Revenue and Taxation Code
17 Section 6015 as follows: Retailer includes every seller who
18 makes any retail sales or sales of tangible personal
19 property and every person engaged in the business of making
20 retail sales at auction of tangible personal property owned
21 by a person or others; every person engaged in the business
22 of making sales for storage, use, or other consumption.

23 "Seller" is defined by Revenue and Taxation Code
24 Section 6014, which states: Seller includes every person
25 engaged in the business of selling tangible personal

1 property of the kind of gross receipts from the retail sale
2 of which are required to be included in the measure of the
3 sales tax.

4 Finally, "person" is defined by Revenue and
5 Taxation Code Section 6005. It states in relevant part:
6 Person includes any individual -- the appellant in this case
7 is an individual -- firm, partnership who we claim should
8 have been issued the NOD, joint venture, limited liability
9 company, association, social club, fraternal organization,
10 corporation --

11 (Reporter interrupted.)

12 MR. STRADFORD: -- organization, corporation,
13 estate trust, business trust, receiver, assignee for the
14 benefit of creditors, trustee, trustee and bankruptcy,
15 syndicate, United States, this state, any county, city and
16 county, municipality, district or other political
17 subdivision of the State or any other group or combination
18 acting as a unit.

19 In this case, the person is the partnership of
20 Ferdous Mehrjerdi and Ali Kazemini. A partnership is a
21 different person than an individual, which is why it is
22 listed separately in Revenue and Taxation Code Section 6005.

23 The partnership is the seller and the retailer.
24 Appellant, who is an individual of the partnership, is not
25 the retailer. The notice of determination was issued to

1 Ferdous Mehrjerdi, who is an individual and not the
2 retailer. Because the notice of determination was not
3 issued to the retailer, it is not valid. This analysis
4 related to this issue under law is well-known to CDTFA. It
5 is common for the ownership of the business on a seller's
6 permit to be incorrect. The most common example is when an
7 individual incorporates his or her business into a
8 corporation for a limited liability company. In those
9 circumstances, CDTFA requires the entity to register for its
10 own seller's permit because it is a different person. The
11 entity permit start date in the context of an audit is
12 backdated to when it began operating the business and
13 returns were transferred from the individual seller's permit
14 to the entity's seller's permit. The reason this is done is
15 so that the reporting can be attributed to the correct
16 person, and if applicable, a notice of determination can be
17 issued to the right person.

18 This occurrence is common enough that our firm has
19 represented numerous taxpayers whose ownership information
20 on its seller's permit was incorrect at the time that the
21 audit started. We provided five examples of CDTFA decisions
22 and recommendations for taxpayers our firm has represented
23 as Exhibit 4 in which we summarize on Exhibit 9.

24 In those cases, the same type of ownership issues
25 were addressed with CDTFA at an appeals conference. In four

1 of the five examples we presented, the determinations were
2 issued to the correct legal person, but the waiver of
3 limitations were invalid because they were not executed by
4 the correct legal person, and therefore the determinations
5 were not timely for certain periods.

6 In the fifth example, the CDTFA representative
7 agreed that the notice of determination was issued to the
8 wrong person and recommended that it be canceled. And it
9 subsequently reissued the determination for the periods that
10 were available under the statute of limitations to the
11 correct person. All five of the cases underscore the
12 necessity of CDTFA to issue the determination to the correct
13 person, as we contend was not done in this case. The
14 occurrence of this within CDTFA audit activities is also so
15 common that the audit manual addresses how an auditor is
16 supposed to complete the field audit report with the correct
17 ownership.

18 Audit Manual Section 0202.39, which is titled
19 "Owner," states the taxpayer's legal name must be accurate,
20 since determinations issued to the wrong person are invalid.

21 The audit manual also addresses the change in
22 ownership and transfer -- and the transfer of the returns to
23 a new permit.

24 Audit Manual Section 0219.10 states in relevant
25 part: A new account number must be obtained for the new

1 entity and the start date of this account should be the
2 effective date of the ownership change. Notably, it does
3 not state that the start date should be on a perspective
4 basis, as was done in this case.

5 CDTFA has even written legal opinions which
6 instructs CDTFA on how to handle the statute of limitations
7 under these scenarios, which resulted in published
8 annotations that we referenced in our briefing. Those
9 annotations are business tax loss annotation 465.1542 and
10 465.1544. As noted in Yamaha Court versus the State Board
11 of Equalization, longstanding annotations relied upon by
12 CDTFA should be given great weight.

13 In summary, the annotations state that returns
14 filed by the predecessor are to be treated as returns filed
15 by the successor. In this case, the quote, unquote
16 successor is the partnership, since it was the owner of the
17 business.

18 Annotation 465.1544 even states, as is relevant
19 here, that the notice of determination issued in the names
20 of the partnership is not notice of liability owed by the
21 corporation. In this case, the notice of determination to
22 Appellant is not notice of liability owed by the
23 partnership. These are CDTFA's own longstanding policy and
24 interpretations. The annotations date back to 1982 and
25 1996, so this issue is not new by any means. A ownership of

1 a business being incorrect on a seller's permit is common.
2 What is uncommon is that the CDTFA failed to correctly issue
3 the notice of determination to the correct person. In this
4 case, CDTFA needed to issue the notice of determination to
5 the partnership. They did not do that. Instead, they
6 issued the notice of determination to the wrong person and
7 as a result, the notice of determination that they issued is
8 invalid and must be canceled. Thank you.

9 ADMINISTRATIVE LAW JUDGE LONG: Thank you. And I
10 have some questions, and my panel may as well, but I'm going
11 to start.

12 First, with respect to Exhibit 4, do any of the
13 cases in that exhibit discuss a situation in which the
14 Appellant requested a later close-out date?

15 MR. STRADFORD: They do not.

16 ADMINISTRATIVE LAW JUDGE LONG: Okay. And so
17 relatedly, with respect to CDTFA's Exhibits F and G, it
18 appears that the taxpayer chose not to close out the sole
19 proprietorship until June 30th. Is that in dispute?

20 MR. STRADFORD: The taxpayer did not recall the
21 exact circumstances of the cigarette and tobacco citation
22 and what occurred with that.

23 ADMINISTRATIVE LAW JUDGE LONG: Well, is it your
24 position, then, that these conversations which are
25 documented in Exhibits F and G should be -- should have been

1 disregarded by CDTFA?

2 MR. STRADFORD: Our position is absolutely, yes,
3 they should have been disregarded. First, I would note that
4 if they issue a citation to the wrong taxpayer, they should
5 reissue the citation to the correct taxpayer and have that
6 taxpayer serve their suspension. For instance, if the
7 account were registered to an unrelated party, certainly the
8 CDTFA could correct that in its record.

9 Second, it has really no bearing on whether or not
10 CDTFA should have issued the notice of determination to the
11 right person. There's just -- in our opinion, it just
12 doesn't matter at all.

13 For instance, if the appellant had requested that
14 CDTFA not issue a notice of determination at all, certainly
15 that request would have been completely disregarded. And
16 the issuance of the citation really had nothing to do with
17 the notice of determination being issued to the correct
18 person. They are just unrelated in our opinion.

19 ADMINISTRATIVE LAW JUDGE LONG: Okay. Thank you.
20 I'll open it up to my panel.

21 I will start with Judge Brown. Do you have any
22 questions?

23 ADMINISTRATIVE LAW JUDGE BROWN: I was going to
24 have questions for the witness, and I don't know whether the
25 representative will -- whether you have the knowledge to

1 answer the question, so if --

2 MR. STRADFORD: I will to the best of my ability.

3 ADMINISTRATIVE LAW JUDGE BROWN: Right. I
4 understand. I guess I'm just saying that as a caveat.

5 MR. STRADFORD: Sure.

6 ADMINISTRATIVE LAW JUDGE BROWN: I wanted to ask
7 the witness about why the -- why the partnership didn't
8 notify CDTFA earlier that the co-ownership was operating the
9 business such as, you know, all of the filings under the
10 sole proprietorship name and permit. Is there a reason why
11 the partnership decided to continue to have that occur?

12 MR. STRADFORD: I'm sorry. I didn't hear the last
13 part.

14 ADMINISTRATIVE LAW JUDGE BROWN: Is there a reason
15 why the partnership made that decision or was it just lack
16 of understanding about the process?

17 MR. STRADFORD: I believe at the time there was
18 just a lack of understanding regarding the registration for
19 the seller's permit. What I would note is that they did
20 notify CDTFA numerous times prior to the notices of
21 determination being issued. So there was nothing that would
22 have precluded CDTFA from issuing the correct notice of
23 determination.

24 ADMINISTRATIVE LAW JUDGE BROWN: For example,
25 Exhibit J, claim for refund.

1 MR. STRADFORD: Bear with me one second.

2 ADMINISTRATIVE LAW JUDGE BROWN: Sure.

3 MR. STRADFORD: Okay. Yeah, that was filed by me.

4 ADMINISTRATIVE LAW JUDGE BROWN: So it was filed
5 under the name of the sole proprietor and that seller's
6 permit. If the partnership, the co-ownership was the one
7 operating the business, why would they file a claim for a
8 refund under the name of the sole proprietorship?

9 MR. STRADFORD: Right. The determination was
10 issued to the sole proprietorship under that permit number.
11 That's why I filed it under that account number.

12 ADMINISTRATIVE LAW JUDGE BROWN: I think those are
13 all my questions for now. Thank you.

14 ADMINISTRATIVE LAW JUDGE LONG: Thank you, Judge
15 Brown.

16 Judge Lambert, do you have any questions?

17 ADMINISTRATIVE LAW JUDGE LAMBERT: This is Judge
18 Lambert. Yeah. I guess just to clarify the arguments that
19 the seller's permit, even though it was recorded under the
20 sole proprietorship, that these other facts indicate we
21 should look beyond what was in reported to CDTFA.

22 MR. STRADFORD: I'm sorry. I didn't hear the
23 middle part.

24 ADMINISTRATIVE LAW JUDGE LAMBERT: The fact the
25 sole proprietorship on the seller's permit and held

1 themselves out as a sole proprietorship, that should not be
2 something that we should look at. We should look at other
3 facts that they were in reality not a sole proprietorship.
4 Is that the argument whether CDTFA should be aware of what
5 is reported to them this is a sole proprietorship?

6 MR. STRADFORD: In general, I would say, yes. The
7 CDTFA has an obligation to issue notice of deficiency
8 determination to the person that actually made the sales.
9 The person literally mean the legal person that owns the
10 business. In this case, Appellant did not own and operate
11 the business as a proprietorship, the partnership did. And
12 as a result, they should have issued the notice of
13 determination to the partnership.

14 I would say, also, that like -- in general, like
15 this isn't really like a -- a disputable thing. Like I
16 mentioned, the audit manual and their annotations and such,
17 what generally happens is the proprietor owns a business.
18 They incorporate at some point in time. When they get
19 audited, the auditors, their first job is to verify all the
20 taxpayer information in the system, so not just ownership,
21 but mailing address, telephone number and so forth. If they
22 find out that it's actually owned by a corporation, what
23 they do is they require the taxpayer to register a new
24 permit and transfer the returns over and then they issue a
25 bill to the LLC or the corporation that's operating the

1 business. This happens like probably like 20 percent of
2 audits. It's that common. In this case it's a little bit
3 tricky in that I think the main reason that the error
4 occurred is because there was a separate permit that was
5 already registered as a partnership. So when they went to
6 do it, they were like, "We don't need to create a new permit
7 because there's a partnership permit that already exists.
8 We'll just transfer this location over to the partnership."

9 It's also a little tricky in that it's very
10 difficult for them to transfer the returns from one account
11 to the other in this case because returns already exist for
12 the partnership account. So you can't have duplicate
13 returns, so what they needed to do was create a separate
14 permit. They can do it either with the taxpayer's
15 compliance where the taxpayer registers for a partnership
16 permit with a start date, in this case, would have been
17 March 22nd, and a closeout date of June 30th, 2010, transfer
18 the return to the partnership account, issue the
19 determination to the partnership. Or if the taxpayer
20 doesn't comply, the CDTFA has the ability to create
21 arbitrary permit number under the partnership on their own
22 accord without any compliance from the taxpayer and make
23 sure they issue the determination to the correct person.

24 So really our position is that the CDTFA has the
25 obligation to issue the notice of determination to the

1 correct person. In this case, the taxpayer was also
2 compliant in that they actively participated in the process.
3 There wasn't any, like, hiding or anything like that.
4 Obviously, the record showed that they noted the correct
5 ownership numerous times.

6 ADMINISTRATIVE LAW JUDGE LAMBERT: Okay. Thank
7 you very much. That's all I have.

8 ADMINISTRATIVE LAW JUDGE LONG: Thank you. And
9 CDTFA, we're ready for your presentation. You have 30
10 minutes.

11 OPENING STATEMENT

12 BY MR. BACCHUS, Attorney for CDTFA:

13 Initially, I just want to point out that the
14 Department does not recognize a married co-ownership as a
15 partnership. At one point in time it did. Subsequently,
16 based on legal guidance, the Department stopped recognizing
17 the married co-ownerships as partnerships, and that's
18 evidenced in the Department's Compliance Policy and
19 Procedure Manual Section 722028, which is regarding the
20 disclosure of confidential information.

21 It states that account numbers for individuals --
22 in parentheses -- sole owners, husband/wife co-ownerships,
23 and domestic partnerships are considered confidential
24 because an individual's account number, when input into the
25 resale verification function on CDTFA's website, would

1 reveal an individual's name and address, which is considered
2 confidential. In the long run, we don't think that
3 necessarily matters one way or the other, but just wanted to
4 point that out for the record.

5 In this appeal, the only dispute is whether the
6 notices of determination were properly issued to Appellants.
7 On March 22nd, 2007 Appellant opened a seller's permit as a
8 sole proprietorship operating a gasoline station with a
9 mini-mart doing business as Sebastopol Fast Gas. Appellant
10 filed sales and use tax returns as a sole proprietor.

11 In 2009 the Department conducted an audit of
12 Appellant's business. During the audit, the Department
13 communicated with Appellant's husband, Ali Kazemini, who ran
14 the business operations. On October 27th, 2009, the
15 Department became aware that Appellant and Mr. Kazemini were
16 operating another gas station as a husband and wife
17 co-ownership doing business as Kenwood Food and Gas. Upon
18 further investigation, the Department noted that some of the
19 bank accounts for Sebastopol were jointly held with Kenwood.

20 On February 2nd, 2010, the Department informed
21 Mr. Kazemini that ownership -- that the ownership of the
22 business should be changed due to the fact that Kenwood was
23 purchasing fuel for both locations under its account, and
24 Appellant and Mr. Kazemini were combining revenues from both
25 locations on Schedule C of Kenwood's federal income tax

1 returns. Appellant then signed a power of attorney form
2 granting Mr. Kazemini authority to act on behalf of the
3 appellant in matters with the Department.

4 On April 7th, 2010 Mr. Kazemini met with the
5 Department and signed a statement that Appellant's seller's
6 permit would be closed effective March 31st, 2010 and that
7 Sebastopol would be added as a sub location on Kenwood's
8 permit. That's in Exhibit E.

9 Subsequently, Mr. Kazemini decided that Appellant
10 would not close its seller's permit until after Appellant
11 served a 20-day suspension of its cigarette and tobacco
12 product retailer license, which is in Exhibit F. On
13 June 28th, 2010 Mr. Kazemini stated that the permit should
14 be closed effective June 30th, 2010 and that Sebastopol
15 should be added to Kenwood's permit as a sub location
16 effective July 1st, 2010. That is in Exhibit G.

17 Thereafter the Department made the requested
18 changes. On March 8, 2010, which was during the audit and
19 prior to the closure of the sole proprietorship seller's
20 permit, Appellant signed a waiver of limitations form
21 extending until October 31st, 2010, the time within which
22 the Department could issue a determination for the period of
23 March 22nd, 2007 through June 30th, 2007 -- two thousand --
24 right -- June 30, 2007. That's in Exhibit H, page one.

25 On September 23rd, 2010 Mr. Kazemini signed an

1 extension to the original waiver extending the October 31st,
2 2010 deadline until April 30, 2011. That's on Exhibit H,
3 page two. The original waiver and extension both list
4 Appellant's seller's permit number. The Department issued a
5 notice of determination to Appellant dated February 4, 2011.
6 And that's in Exhibit C.

7 For the subsequent audit period, Appellant's
8 representative signed a waiver of limitations form dated
9 June 14, 2013, extending until October 31st, 2013 the time
10 in which the Department would issue a determination for the
11 period October 1st, 2009 to June 30th, 2010. That's Exhibit
12 I, page one.

13 Appellant or Appellant's representative signed
14 four extensions of the original waiver ultimately extending
15 the October 31st, 2013 deadline to January 31st, 2015.
16 That's Exhibit I, pages two through four.

17 The original waiver and extensions all list
18 Appellant's seller's permit number. The Department issued a
19 notice of determination to Appellant, dated October 29th,
20 2014. That's Exhibit D.

21 Pursuant to Revenue and Taxation Code Section
22 6487, for taxpayers filing returns on other than an annual
23 basis, a notice of deficiency determination must be mailed
24 within three years after the last day of the calendar month
25 following the quarterly period for which the amount is

1 proposed to be determined or within three years after the
2 return is filed, whichever is later. Per Revenue and
3 Taxation Code Section 6488, a determination is timely if
4 mailed before the expiration of a period for which a written
5 waiver is given. There is no dispute that Appellant filed
6 returns for Sebastopol using her seller's permit. There is
7 also notice that the Department secured waivers of the
8 statute of limitations under Appellant's seller's permit.

9 Finally, there is no dispute that the Department
10 issued the notices of determination at issue under the same
11 seller's permit. Accordingly, the Department timely issued
12 the notices of determination pursuant to the secured waiver
13 of limitations forms.

14 Appellant's claim that the Department should have
15 issued the notices of determination to the husband and wife
16 co-ownership ignores the evidence and facts of this appeal.
17 Appellant opened her seller's permit as a sole
18 proprietorship in March 2007. At that time Kenwood had
19 already been operating as a husband and wife co-ownership
20 since January 2006. Appellant could have added Sebastopol
21 to that seller's permit instead of opening her own permit as
22 a sole proprietor, but she did not.

23 Moreover, aside from the revenues of the two
24 businesses being combined for purposes of filing federal
25 income tax returns, Appellant had not taken any other

1 affirmative steps signifying that she wanted to change
2 business entities.

3 Once Mr. Kazemini discussed the potential change
4 with the Department in 2010, it was Appellant and
5 Mr. Kazemini who determined the date the entity should
6 change. The fact that Appellant chose to wait to make the
7 entity change until after it was served the notice of
8 suspension is proof that Appellant did not want the entity
9 to change prior to that date. Appellant's contention that
10 the business entity changed prior to the start of the audit
11 directly contradicts Appellant's own request that the change
12 occurred at the end of June 2010. Appellant cannot
13 affirmatively request one closeout date during the liability
14 period and then wait until the relevant statute of
15 limitations has passed to assert a different closeout date
16 as a means to avoid the tax liability.

17 Regarding the audit manual sections, Appellant
18 references several audit manual sections in Chapter 2. We
19 note that mostly these deal with where there is a question
20 in ownership, and the Department believes that there was no
21 question. Appellant, again, affirmatively requested to keep
22 the permit open until June, the end of June 2010, which is
23 what happened.

24 As for the cases, appeals bureau cases cited by
25 Appellant in its Exhibit 4, we note that appeals bureau

1 decisions have no precedential value, and one decision
2 cannot be used as the basis for the conclusions of a
3 different case.

4 Moreover, the Department does not agree that the
5 cases cited to all involve -- sorry -- that the cases cited
6 to by Appellant are similar to the appeal at issue.

7 Most notably, the cases cited involve an official
8 change in business entity, for example, a partnership to an
9 LLC or a LLC to a corporation or sole proprietorship to a
10 corporation, and those changes occurred prior to the start
11 of the audit period. No such official change happened in
12 this appeal.

13 Also in those cases, the Department -- once the
14 Department became aware of the entity change, the Department
15 backdated the start date of the new entity's seller's permit
16 to the date of the official entity change. So whereas in
17 this case the Department and Appellant worked together to
18 set the date of the entity change to after -- to a later
19 date. In these other cases, generally the change of the
20 entity occurred prior to and the Department and the taxpayer
21 agreed to move the start date of the entity change for the
22 new seller's permit to prior to the audit period. In those
23 cases, despite completing that step of backdating the
24 seller's permit, the Department secured waivers using the
25 predecessor seller's permit number, but issued the NODs to

1 the new entity's seller's permit number. Again, this did
2 not happen in this case. This appeal does not follow the
3 same set of facts. Based on the foregoing, the Department
4 requests that the appeal be denied. Thank you.

5 ADMINISTRATIVE LAW JUDGE LONG: Thank you. I'd
6 like to open it to my co-panelists.

7 Judge Brown, do you have any questions?

8 ADMINISTRATIVE LAW JUDGE BROWN: Yes. I may have
9 a question. I don't -- for CDTFA, I don't recall if you
10 addressed how the annotations do or do not apply in this
11 case. Maybe you did and I missed it, but the annotations
12 that the appellant is citing.

13 MR. BACCHUS: Again, I did not address it in my
14 presentation, but essentially the annotations fall under the
15 same basic -- the same basic purview as the appeals cases,
16 whereas the facts and circumstances presented in those cases
17 are not present in this, in the appeal at issue today,
18 whereas the Department agrees had the Department backdated
19 the seller's permit in this case to March 22nd, 2007 and
20 secured waivers using the sole proprietorship account number
21 but issued the notice of determination to the husband and
22 wife co-ownership, that would be the same set of facts and
23 circumstances and we wouldn't be here today. But the fact
24 that the -- the new -- the change in ownership to a husband
25 and wife co-ownership, because that happened subsequent to,

1 then the Department believes that the notices of
2 determination were properly issued and the annotations are
3 not on point.

4 ADMINISTRATIVE LAW JUDGE BROWN: Thank you. I
5 don't have any further questions at this time.

6 ADMINISTRATIVE LAW JUDGE LONG: Thank you, Judge
7 Brown.

8 Judge Lambert, do you have any questions?

9 ADMINISTRATIVE LAW JUDGE LAMBERT: This is Judge
10 Lambert. Maybe one question just about to clarify
11 Appellant's arguments that the wrong retailer was issued the
12 NOD. And if -- I think the argument is that the NOD issued
13 was actually, in fact, not the retailer. And just maybe you
14 can comment on that because it seems like we're going on the
15 seller's permit name, whose name is on the seller's permit,
16 does that some -- kind of trump everything, or are we
17 actually looking at who is actually the retailer under those
18 arguments, you know, interact -- or can you comment on their
19 arguments on that matter?

20 MR. BACCHUS: Sure. So, yes, we agree that the
21 seller or the retailer is the one that the Department should
22 issue the notice of determination to, that it is the
23 retailer that owes tax based on their gross receipts. Our
24 response, the Department's response is that the sole
25 proprietorship was the retailer. There was no affirmative

1 change prior to June 30th, 2010 that that would have changed
2 it.

3 The potential issue in this case is that there is
4 no -- there is no legal filings required to change to a
5 husband/wife co-ownership, mainly because it is a fiction of
6 the Department. There isn't something that you can
7 necessarily -- there is no -- for better -- for lack of a
8 better explanation, if you incorporate a business, there are
9 filings that happen, or if you create an LLC, there are
10 filings that -- official legal filings that happen. And so
11 it's easy to determine the date that that happened, that the
12 change happened.

13 For a sole proprietorship and husband/wife
14 co-ownership, there isn't necessarily any legal filings.
15 And so for the Department, the fact that the sole
16 proprietorship had held a permit and filed returns under
17 that permit and made no indication to the Department prior
18 to the -- prior to 2010 that it was not operating the
19 business, the Department believes that it was the sole
20 proprietorship that was operating the business and making
21 retail sales.

22 MR. HUXSOLL: Continue to state during the appeal
23 process while -- or during the audit that the sole
24 proprietor was the retailer by requesting that the seller's
25 permit number not be changed until June 30th, 2010.

1 Mr. Kazemini, who is the husband and wife co-ownership, said
2 to the Department that the business was operating as a sole
3 proprietorship and should continue to do so till June 30th,
4 2010 by requesting that that permit number stay open until
5 then. So they continued to sign waivers under that seller's
6 permit number. Appellant's representatives continued to
7 sign waivers under that seller's permit number asserting
8 they were operating as a sole proprietorship for those
9 dates.

10 ADMINISTRATIVE LAW JUDGE LAMBERT: I think I got
11 it. Thank you.

12 ADMINISTRATIVE LAW JUDGE LONG: Thank you. I have
13 no questions, so we will turn it over to Appellant who has
14 ten minutes to make a rebuttal. You may begin when you're
15 ready.

16 REBUTTAL ARGUMENT

17 BY MR. STRADFORD, Attorney for Appellant:

18 Okay. So first we would like to dispute some
19 things that the Department is saying are facts. At no point
20 did Ali Kazemini state that the business was owned by his
21 wife as a proprietor. He merely requested that the
22 cigarettes suspension be carried out. It's not even clear
23 that he made that request or the Department did that
24 unilaterally without them.

25 Also, the sole proprietor was not the retailer

1 during the periods that are at issue here. That's clear by
2 the evidence that we presented. The bank statements, the
3 income tax returns clearly show that the business was
4 operated by a partnership. A partnership is a distinct
5 legal person from a sole proprietor. There doesn't need to
6 be a Secretary of State filing for that to be true. That's
7 why they're listed as different persons in Revenue and
8 Taxation Code Section 6005.

9 As far as the waivers of limitation that were
10 executed or various communications, first of all, we note
11 that all the waivers are invalid. The Department was put on
12 notice of the actual ownership of the business. If the
13 notices of determination had been issued to the correct
14 legal person, we would be here talking about how certain
15 periods need to be canceled because the statute of
16 limitations wasn't properly extended. The reason that the
17 appeals cases are relevant is that CDTFA actually issued the
18 NOD to the right person in those cases. So only the periods
19 that were expired under the statute of limitations because
20 the waivers were invalidly executed were canceled.

21 So they did more right in those cases than they
22 did in this one where they couldn't even issue the
23 determination to the right person. And even one of the
24 examples we provided, they did issue it to the wrong person
25 and they subsequently canceled it.

1 The real issue is just who was the retailer during
2 these periods, who was liable for the tax. CDTFA has to
3 issue a notice of determination to that person. They were
4 notified ad nauseam in this case and the evidence supports
5 who the true retailer was. CDTFA states that they stopped
6 recognizing the different married co-ownership, but it seems
7 like it more has to do with disclosure of residential
8 addresses than an actual distinction in the law between a
9 partnership and an individual.

10 Further, if there was no difference, it's unclear
11 to me why the auditor would comment four different times
12 that the permit needs to be changed or why they would
13 transfer the permit to the married co-ownership at the
14 conclusion of the audit in the first place if the
15 distinction isn't relevant. Obviously, the distinction is
16 extremely relevant, in our opinion.

17 So for us, a lot of this, even the cigarette
18 citation or the waivers of limitation or even the similar
19 cases we provided, they're all kind of -- don't matter that
20 much. The basic fact is the retailer is the person who must
21 be issued the NOD. The retailer was the partnership, which
22 is supported by the evidence. The Department was put on
23 notice of the correct ownership of the business and they
24 failed to issue the notice of determination to the right
25 person. Because it was issued to the wrong person, it has

1 to be canceled. Thank you.

2 ADMINISTRATIVE LAW JUDGE LONG: Thank you. Thank
3 you. And I would like to ask my co-panelists if they have
4 any questions.

5 Judge Brown?

6 ADMINISTRATIVE LAW JUDGE BROWN: I don't have any
7 questions, further questions. Thank you.

8 ADMINISTRATIVE LAW JUDGE LONG: Judge Lambert, do
9 you have any questions?

10 ADMINISTRATIVE LAW JUDGE LAMBERT: No questions.
11 Thanks.

12 ADMINISTRATIVE LAW JUDGE LONG: Thank you.

13 And, CDTFA, you have five minutes to make any
14 closing remarks.

15 CLOSING ARGUMENT

16 BY MR. BACCHUS, Attorney for CDTFA:

17 Thank you. We'll just point out that in Exhibit H
18 that the note there states the taxpayer requested the
19 change, whether that was -- assuming that was Appellant and
20 not Mr. Kazemini who requested that the date of the closeout
21 of the permit be changed to the end of June.

22 And also we wanted to point out that -- that the
23 Department -- the auditor came to the conclusion based on --
24 based on the evidence that perhaps the entity should change
25 to be -- to be under the Kenwood permit. It wasn't anything

1 that Appellant or Mr. Kazemini came forward and told the
2 Department to make the change. The Department came to them,
3 to Appellant, Mr. Kazemini, and suggested it. And, again,
4 it was Appellant and/or Mr. Kazemini who determined when
5 that change should happen. Had they requested the change
6 happen in 2007, then that's when it would have changed.
7 That's when the Department would have made the change. It
8 would have backdated it.

9 The fact that Appellant did not request that to
10 happen but instead requested the change to happen in
11 June 2010, is the one determining factor on how this case
12 should be decided. And, again, those were affirmative steps
13 and requests by Appellant for the change to happen at that
14 time. So until they request a change, it was Appellant that
15 was making retail sales and it was Appellant that owed the
16 tax. The waivers were secured using that permit number and
17 then the notices of determination were issued to that permit
18 number. So those are valid and they should be sustained.
19 Thank you.

20 ADMINISTRATIVE LAW JUDGE LONG: Thank you.

21 Judge Brown, do you have any questions?

22 ADMINISTRATIVE LAW JUDGE BROWN: No, I don't have
23 any further questions. Thank you.

24 ADMINISTRATIVE LAW JUDGE LONG: Judge Lambert, do
25 you have any questions?

1 ADMINISTRATIVE LAW JUDGE LAMBERT: No questions.
2 Thanks.

3 ADMINISTRATIVE LAW JUDGE LONG: All right. Thank
4 you.

5 Mr. Stradford, Mr. Dumler, we heard your
6 presentation and argument this morning. Do you have any
7 final remarks before we conclude our hearing?

8 FURTHER CLOSING ARGUMENT

9 BY MR. STRADFORD, Attorney for Appellant:

10 I do have one final remark. The Department
11 appears to rely on Appellant's request. Appellant is
12 requesting that this determination be canceled, so we'd like
13 them to grant the Appellant's request.

14 ADMINISTRATIVE LAW JUDGE LONG: Okay.

15 MR. STRADFORD: Thank you.

16 ADMINISTRATIVE LAW JUDGE LONG: Thank you. We're
17 ready to conclude this hearing. Is the panel ready to close
18 this appeal?

19 This case is submitted on Thursday, August 26th,
20 2021. The record is now closed. Thank you, everyone, for
21 coming in today. The judges will meet and decide your case
22 later on and we will send you a written opinion of our
23 decision within 100 days after the record is closed, within
24 100 days from today.

25 Today's hearing, the appeal of Ferdous Mollai

1 Mehrjerdi, is now adjourned. This concludes all of the oral
2 hearing matters scheduled for this morning. Thank you.

3 MR. STRADFORD: Thank you.

4 MR. BACCHUS: Thank you.

5 (Conclusion of the proceedings at 11:05 a.m.)
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1 REPORTER'S CERTIFICATE

2 STATE OF CALIFORNIA)

3 COUNTY OF SACRAMENTO) ss.

4 I, MARIA ESQUIVEL-PARKINSON, do hereby certify
5 that I am a Certified Shorthand Reporter, and that at the
6 times and places shown I recorded verbatim in shorthand
7 writing all the proceedings in the following described
8 action completely and correctly to the best of my ability:

9 LOCATION: California Office of Tax Appeals
10 400 R Street, Ste. 470, Sacramento, CA

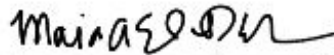
11 ADMINISTRATIVE LAW JUDGE: Keith Long

12 CASE: In the Matter of Ferdous Mollai Mehrjerdi

13 DATE: Thursday, August 26, 2021

14 I further certify that my said shorthand notes
15 have been transcribed into typewriting, and that the
16 foregoing 42 pages constitute an accurate and complete
17 transcript of all my shorthand writing for the dates and
18 matter specified.

19 IN WITNESS WHEREOF, I have subscribed this
20 certificate at Sacramento, California on this 9th day of
21 September, 2021.



22 _____
23 Maria Esquivel-Parkinson
24 CSR No. 10621, RPR

25 _____
26 Maria Esquivel-Parkinson
27 CSR No. 10621, RPR

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