

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
CYBERANNEX CORPORATION,) OTA NO. 19075030
)
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 APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, November 19, 2021

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF,)
CYBERANNEX CORPORATION,) OTA NO. 19075030
APPELLANT.)
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:11 p.m. and concluding at 2:06 p.m. on
Friday, November 19, 2021, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ ANDREW WONG

Panel Members: ALJ SUZANNE BROWN
ALJ KEITH LONG

For the Appellant: ARMAN AMINLOO

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION

CHAD BACCHUS
STEPHEN SMITH
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received at page 6.)

(Department's Exhibits A-J were received at page 6.)

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California; Friday, November 19, 2021

1:11 p.m.

JUDGE WONG: We are now going on the record. We're opening the record in the appeal of CyberAnnex Corporation before the Office of Tax Appeals. This is OTA Case Number 19075030. Today is Friday, November 19, 2021, and the time is 1:11 p.m. We're holding this hearing by video conference.

I am lead Administrative Law Judge Andrew Wong. And with me today are Judges Suzanne Brown and Keith Long. We are the panel hearing and deciding this case.

Representatives of Appellant or taxpayer CyberAnnex Corporation please identify yourselves.

MR. AMINLOO: Arman Aminloo.

JUDGE WONG: Thank you.

CDTFA representatives, please identify yourselves.

MR. BACCHUS: Chad Bacchus.

MR. SMITH: Stephen Smith.

MR. PARKER: Jason Parker.

JUDGE WONG: Thank you.

We are considering three issues today. The first issue is whether any reduction to the measure of unreported taxable sales of IT equipment, for the period

1 of 2005 to 2011, is warranted. The second issue is
2 whether any reduction to the measure of unreported taxable
3 sales of phone equipment is warranted. And the third
4 issue is whether there's reasonable cause to relieve the
5 failure to file penalties for the period of 2005 through
6 2008.

7 Appellant has identified and submitted proposed
8 Exhibits 1 through 3 as evidence. Appellant has no other
9 exhibits to offer as evidence, and CDTFA has not objected
10 to them. Therefore, Appellant's Exhibits 1 through 3 will
11 be admitted into the record as evidence.

12 (Appellant's Exhibits 1-3 were received
13 in evidence by the Administrative Law Judge.)

14 CDTFA has identified and submitted proposed
15 Exhibits A through J as evidence and has no other exhibits
16 to offer. Appellant has no objections to them.
17 Therefore, CDTFA's Exhibits A through J will be admitted
18 into the record as evidence.

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

21 Appellant has no witnesses, and CDTFA has not
22 identified any witnesses. All right. We're ready to
23 begin with Appellant's presentation.

24 Mr. Aminloo, please proceed. You have 25
25 minutes.

1 PRESENTATION

2 MR. AMINLOO: Good afternoon.

3 I started my business back in 2001 as an IT
4 company, and solely an IT company. My company was
5 providing services to our customers. And from time to
6 time we had to buy equipment for them and sell it to them.
7 At the time, we did not hold any resale permits. So all
8 the taxes for all the tangible products that we purchased
9 was paid to our vendors or place of our purchases. So in
10 turn we charge our customers, you know, for those taxes
11 that were collected. So all the taxes we collected were
12 actually paid by myself.

13 So in 2005 we started providing some internet
14 service for our clients. These internet services, you
15 know, we were charged taxes for all our services.
16 That's -- if we look at the exhibit that we provided, it
17 shows the purchases -- I'm sorry -- Exhibit 3. It shows
18 our providers aren't collecting taxes from us. We're
19 passing on the taxes to our clients. We have collected --

20 I did run some reports the last few days, and I
21 have -- I can -- what I had -- I can show taxes were
22 collected in 2005 to 2008. It was, you know, roughly
23 around \$10,000. And from 2009 through 2011, it was
24 roughly \$23,000. We're not disputing the taxes were
25 collected 2009 through 2011. The ones that we're

1 collecting -- you know, disputing is 2005 through 2008
2 because we pay for those taxes, and we collected it from
3 our customers.

4 I apologize. I'm all over the place right now.
5 I'm not familiar with type of settings. So we're
6 basically asking for leniency in -- from 2005 to 2008 for
7 the tax liabilities and not filing the tax returns. We
8 also paid our taxes. We paid some taxes in 2013 for 2009
9 through 2011, which we have not received any kind of
10 indication from -- from OTA that this payment has been
11 made. We have no written -- you know, we have proof of
12 payment, but we just don't have any information that it
13 was paid. The payment was almost \$5,000 made in February
14 of 2013.

15 So what we're saying or what I'm saying is all
16 the taxes were collected roughly about \$23 -- \$24,000.
17 We're willing -- you know, we would like to, you know,
18 repay that back. But the taxes that it was -- it was
19 calculated, or it was estimated was from 2011 to 2013 was
20 very inaccurate. So that's what -- I mean, that's what
21 we're disputing.

22 I don't have any other documents to show. I
23 don't have -- you know, I can run all the reports from my
24 system saying what we collected. And the reason we did
25 not file those tax returns because the tangible products

1 that we were selling we assume -- we pay for the taxes so
2 it was not something we need to file the taxes. That was
3 my mistake, and it should not -- you know, I take
4 responsibility for that.

5 The taxes for the internet we collected those
6 because, you know, our upstream providers were charging
7 us. And it was our mis -- or my mistake for identifying
8 those as taxes. It should have been as fees. You know,
9 we mislabeled those fees.

10 So I'm hoping that you can understand, you know,
11 where we -- why I make that mistake and if there's a way
12 we can settle this and just close the account. I have no
13 further than -- I'm sorry. I was applying for 25 minutes,
14 but I have no other comments to make right now.

15 JUDGE WONG: Thank you, Mr. Aminloo. Just to
16 clarify, OTA, this is not really the forum for settlement.

17 MR. AMINLOO: I understand.

18 JUDGE WONG: Okay. We're here today just to
19 figure out if you owe taxes -- oh, sorry -- if CyberAnnex
20 owes taxes and what the correct amount should be.

21 Settlement would be between you and CDTEFA.

22 MR. AMINLOO: I understand.

23 JUDGE WONG: Thank you.

24 I will turn to my co-panelists to see if they
25 have any questions for Appellant, starting with

1 Judge Brown.

2 JUDGE BROWN: Yes. Good afternoon. I guess,
3 Mr. Aminloo, I may just have one question at this time. I
4 saw that in the CDTFA decision it indicates you had made
5 the argument that you had sold items after the end of the
6 audit period and presumably kept them in inventory. You
7 didn't mention that in your presentation. So I was
8 wondering if that was still your position.

9 MR. AMINLOO: I'm sorry. Selling items after --

10 JUDGE BROWN: After the end of the audit period.

11 MR. AMINLOO: No. The items in our inventory
12 from the wireless company that we had, since the company
13 was already closed, we sold those to the company in Texas.
14 They just basically bought everything that we had.

15 JUDGE BROWN: And when did you make that sale?

16 MR. AMINLOO: It was probably 2012.

17 JUDGE BROWN: Are those the items from -- that
18 you had purchased from Celluphone?

19 MR. AMINLOO: Yes.

20 JUDGE BROWN: And is there any evidence that you
21 provided that shows that the sale was made in 2012?

22 MR. AMINLOO: I can get it. It was done through
23 PayPal. They -- you know, there was a list of the items
24 that was sold. It was roughly about \$3 to \$4,000. It
25 wasn't very much.

1 JUDGE BROWN: This is Judge Brown. I don't have
2 any further questions right now.

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

4 Judge Long did you have any questions for
5 Appellant.

6 JUDGE LONG: This is Judge Long. I do have a few
7 questions. So I just want to be clear. Prior to -- in
8 previous briefings and parts of this appeal you've said
9 that no tangible personal property was sold before 2010.
10 It sounds like now what you're saying is any tangible
11 personal -- any property that was sold, you paid tax on
12 when you purchased it? Is that correct?

13 MR. AMINLOO: Correct. The items we purchased
14 for our customers, we went to local retail store and
15 purchased them. We pay the taxes, and we sold it with
16 tax.

17 JUDGE LONG: Okay.

18 MR. AMINLOO: Maybe that's not the proper way.
19 I'm sure it wasn't the proper way, but that's --

20 JUDGE LONG: Okay. So with respect to, for
21 example, invoice 9869, which is CDTFA's Exhibit G, I'm
22 looking at your exhibits. Where in your exhibits -- or is
23 there anything in your exhibits that shows that you paid
24 the tax corresponding to these pieces of property that
25 were sold?

1 MR. AMINLOO: I apologize. Those exhibits were
2 just samples to show you how we pay those taxes. Those
3 taxes we pay to our providers for our upstream, you know,
4 or vendors.

5 JUDGE LONG: Okay.

6 MR. AMINLOO: It's still true today. You know,
7 we still have the same kind of services. You know, we pay
8 cost and AT&T, you know, same taxes. So those -- like I
9 said, were only for, like, sampling.

10 JUDGE LONG: Okay. So then there's nothing that
11 specifically addresses --

12 MR. AMINLOO: No.

13 JUDGE LONG: -- 9869 or either that is what's for
14 Exhibit G or the 2009 Exhibit J, page 1? Sorry.
15 Exhibit J, page 1, which is an invoice from 2009?

16 MR. AMINLOO: Right. Like, for instance, for
17 this one, yes, we did. You know, if you just look at
18 those exhibits that I sent, Exhibit 1, the purchase is to
19 Dell. We paid taxes to Dell.

20 JUDGE LONG: Okay. I see that. And I'm looking
21 at it, and it does say quotation. Do you have the actual
22 invoice from them?

23 MR. AMINLOO: I couldn't. I went to the website.
24 I mean, I went through my e-mails. What I found was that,
25 but we didn't have any resale permit at the time, so we

1 had to pay the taxes.

2 JUDGE LONG: Okay. Thank you. I do not have any
3 further questions. Thanks.

4 MR. AMINLOO: No audio. Judge Wong, there's no
5 audio.

6 JUDGE WONG: Sorry. My apologies. This the
7 Judge Wong. Mr. Aminloo, I just want to give you the
8 opportunity to walk us through the Exhibits 1 through 3
9 that you provided and just explain the significance of
10 those just so we get a clear picture.

11 MR. AMINLOO: Sure.

12 JUDGE WONG: Some are just samples and examples
13 of what you did.

14 MR. AMINLOO: Absolutely. For instance,
15 Exhibit 1, I have a quotation from Dell for purchase of a
16 computer. It does show there's a tax that's going to be
17 collected. I don't have the actual invoice, but I can
18 show you one from the most recent one that, you know, has
19 this, you know, the same product but no tax. It's gonna
20 be how to sell with a resale permit but right now. At the
21 time, we did not have it, so we paid the taxes.

22 The Exhibits B or 2 -- I'm sorry -- Celluphone.
23 These were the items we -- basically, it was showing what
24 we purchased. But this was with our resale permit, so
25 there was no taxes with these. Basically, I want to show

1 you know how there was very low purchases, and they -- you
2 know, low sales. The whole month we're doing like 11
3 activations. It wasn't a huge amount of, you know,
4 purchases that, you know, we that we were doing.

5 What I -- the purpose of this thing, you know, is
6 to show, you know, roughly, you know, the number of
7 activations. And we never disputed, you know, the taxes
8 that we had to pay. So that, you know, we agreed that,
9 you know, the taxes we collected, that's what we pay back.

10 Exhibit C or Number 3 -- I'm sorry -- these are
11 internet providers. First is Century Link. It -- they
12 charge us taxes for their internet. We purchase the
13 internet from the Telecom companies and we sell them to
14 our customers. So their -- Century Link charge us, you
15 know, a lot of taxes for that. We pass it onto them.
16 Then parts the same thing. Everything, you know, we
17 purchase them or subscribe to their services. That is
18 taxable. Even right now it is taxable because it's not
19 basically for resale.

20 The other one is from New Edge. If you look at
21 it, there's taxes, you know, involved with that. Now,
22 these are not our own services. These are the services we
23 buy for, you know, for our customers. So I passed on the
24 taxes to customers, and I should have labeled them as
25 fees, not -- not taxes.

1 JUDGE WONG: Thank you, Mr. Aminloo. If you have
2 nothing else at this time, I will move over to CDTFA for
3 their presentation.

4 MR. AMINLOO: Okay.

5 JUDGE WONG: You may proceed.

6

7

PRESENTATION

8 MR. BACCHUS: Good afternoon. This is Chad
9 Bacchus for the Department.

10 In this appeal the following periods remain at
11 issue, January 1st, 2005, through December 31st, 2008,
12 consisting of unreported taxable sales of IT equipment
13 measuring \$138,534, and a failure to file penalty of
14 \$1,083.65, and January 1st, 2009, through
15 December 31st, 2011, consisting of unreported taxable
16 sales of IT equipment measuring just over \$238,000, and
17 unreported taxable sales of wireless phone equipment
18 measuring \$144,379.

19 For unreported taxable sales of IT equipment,
20 there's no dispute that during the period,
21 January 1st, 2005, through December 31st, 2011, Appellant
22 made sales of IT equipment and did not remit sales tax to
23 the State. For the period January 1st, 2005, through
24 December 31st, 2008, the Department obtained two of
25 Appellant's invoices found at Exhibit G, both showing that

1 for those transactions Appellant sold tangible personal
2 property and collected sales tax reimbursement from its
3 customers.

4 The Department also noted that according to
5 Appellant's sales journals for 2007 and 2008, which are
6 also found in Exhibit G, Appellant listed amount of sales
7 tax of \$1,805.36 in 2007, and \$6,611.34 in 2008.
8 Appellant did not report any of the recorded sales tax
9 listed on -- in those sales journals on their sales and
10 use tax return for 2007 or 2008. The Department used the
11 sales tax rates from the jurisdictions where the equipment
12 was sold to calculate unreported taxable sales of just
13 over \$23,000 for 2007 and just over \$84,500 for 2008.

14 Appellant did not provide sales journals for 2005
15 and 2006. Department, instead, reviewed Appellant's
16 federal income tax returns found in Exhibit H and noted
17 that Appellant reported gross receipts for 2005 and 2006.
18 The Department determined that Appellant must have made
19 taxable sales in 2005 and 2006, given that Appellant had
20 been in business since 2001, it reported gross receipts on
21 its federal returns, and recorded sales tax reimbursement
22 collected in its sales journals for 2007 and 2008.

23 To calculate estimated unreported taxable sales
24 for 2005 and 2006, the Department reviewed Appellant's
25 federal returns for 2005 and '06 and 2007 and noted that

1 gross receipts for 2006 were 76 percent of the gross
2 receipts for 2007. The Department determined that this
3 downward trend should also be applied to taxable sales.
4 Accordingly, the Department calculated taxable sales for
5 2006 of just over \$17,500 and for 2005 of more than
6 \$13,300.

7 In December 2012, Appellant filed sales and use
8 tax returns for the period January 1st, 2009, through
9 December 31, 2011, reporting no taxable sales. The
10 Department reviewed Appellant's sales journals for 2009
11 and 2010 and noted the Appellant did not record any sales
12 tax reimbursement collected. The Department informed the
13 Appellant that its invoices from 2009, '10, '11, found in
14 Exhibit J, show that Appellant collected sales tax
15 reimbursement on its sales of tangible personal property.

16 Appellant then provided revised sales journals,
17 found in Exhibit D, showing sales tax reimbursement
18 collected of over \$7,600 in 2009 and more than \$8,500 in
19 2010. Appellant did not provide a sales journal for 2011.
20 Therefore, the Department estimated Appellant's 2011
21 collected sales tax reimbursement of \$8,100 by calculating
22 an average of the 2009 and 2010 amounts. This resulted in
23 total sale tax reimbursement collected of \$24,300 for
24 2009, '10, and '11.

25 The Department gave Appellant credit for asserted

1 misreported use tax resulting in revised sales tax
2 reimbursement collected of \$20,440. The Department
3 calculated an estimated taxable measure of just over
4 \$238,000 using the applicable tax rates of the
5 jurisdictions where the sales were made.

6 Revenue & Taxation Code Section 6051 imposes a
7 sales tax on a retailer's sales of tangible personal
8 property measured by gross receipts, unless the sale is
9 specifically exempt or excluded from taxation by statute.
10 Pursuant to Revenue & Taxation Code Section 6481, when the
11 accuracy of a sales and use tax return is in question, the
12 Department may base its determination of the tax due upon
13 any information that comes within its possession.

14 Here, Appellant's sales journals for 2007, '08,
15 '09, and '10, show that Appellant listed amounts as sales
16 tax, but Appellant did not report those amounts on sales
17 and use tax returns. Because Appellant's invoices include
18 amounts listed as sales tax, and the sales journal show
19 amounts in the sales tax column, and the fact that
20 Appellant did not report any taxable sales on sales and
21 use tax returns, the Department has met its burden that
22 the determination of unreported taxable sales for 2007
23 through 2010 is not only reasonable, it is based on
24 Appellant's own recorded amounts.

25 Moreover, Appellant's federal income tax returns

1 for 2005 and 2006 show amounts reported as gross receipts.
2 Even without invoices or sales journals for this period,
3 the fact that Appellant began business operations in 2001
4 and reported gross receipts in 2005 and 2006, it is
5 likely -- it is more likely than not that some of those
6 gross receipts included sales of tangible personal
7 property. Therefore, the Department's determination that
8 Appellant made taxable sales of IT equipment in 2005 and
9 2006 is reasonable.

10 For 2011, there's no dispute that Appellant
11 continued to operate its business during this period, and
12 there is no evidence that Appellant changed its business
13 operations or stopped selling IT equipment during that
14 time. In fact, invoices from 2011 found in Exhibit J show
15 that Appellant collected sales tax reimbursement on sales
16 of IT equipment. Therefore, the Department's
17 determination that Appellant made taxable sales of IT
18 equipment in 2011 is also reasonable.

19 Appellant has not provided any evidence to show
20 that it was not selling IT equipment in 2005, 2006, or
21 2011, or that the gross receipts reported on its federal
22 returns were not related to the sale of tangible personal
23 property. Moreover, while Appellant has claimed that
24 amounts recorded as sales tax on its sales journals were
25 actually service fees, Appellant has provided no credible

1 evidence that such is the case.

2 Appellant has failed to provide complete books
3 and records for the Department to calculate a more
4 reasonable amount, and Appellant has not met its burden to
5 show that the Department's audited taxable sales are
6 overstated. Accordingly, Appellant owes tax on its sales
7 of IT equipment during the period January 1st, 2005,
8 through December 31st, 2011. Appellant did in his
9 presentation today make an argument about that it paid tax
10 on its purchases, which we would consider to be a tax-paid
11 purchases resold credit.

12 However, we -- the Department has not seen and
13 Appellant has not provided evidence that the equipment
14 that it purchased was also the equipment that it sold.
15 For example, Appellant's Exhibit 1 has quotes from Dell
16 for computers and other items. However, those are items
17 that we -- the Department would expect that Appellant
18 would have used in the operation -- in its business
19 operations. And that's not to say that Appellant did not
20 sell those items as well, but we -- the Department has not
21 received or seen any indication that those particular
22 items were resold.

23 If Appellant could show via documentation,
24 credible documentation that it purchased items tax paid
25 and subsequently resold those items, then the Department

1 would be willing to make an adjustment for those
2 particular items. But to this point, the Department has
3 not seen any evidence that would cause us to make an
4 adjustment at this time.

5 Before we get into the audit of wireless
6 equipment, we note that Regulation 1585, which outlines
7 how tax applies to sales of bundled transactions of
8 wireless telecommunication devices and wireless service is
9 the subject of pending litigation. In the case Bekkerman
10 versus the California Department of Tax and Fee
11 Administration, the trial court held that Regulation 1585
12 has applied to wireless retailers was inconsistent with
13 the sales and use tax law. The Department has appealed
14 this ruling, thus, the Department has deferred some
15 appeals involving Regulation 1585. However, the
16 Department has not deferred this appeal because the ruling
17 in Bekkerman applies only to carrier retailers, and
18 Appellant is not a carrier retailer.

19 For unreported sales of wireless equipment, the
20 Department contacted Celluphone Incorporated and confirmed
21 that Appellant began purchasing wireless phone equipment
22 in August 2010. According to Celluphone's records, found
23 in Exhibit D, for the period August 2nd, 2010, through
24 November 17th, 2011, Appellant's ex tax purchases totaled
25 \$122,355. For 2010, the Department noted that Appellant

1 collected tax reimbursement on a measure of \$17,624 but
2 did not collect any tax reimbursement in 2011.

3 Because Appellant was bundling wireless phones
4 with service plans from Verizon Wireless, the Department
5 applied an 18 percent markup to Appellant's cost of the
6 wireless equipment pursuant to Regulation 1585(a)(4).
7 This resulted in taxable sales -- audited taxable sales of
8 \$144,379. Regulation 1585 sets specific rules for the tax
9 treatment of sales of cellular phones. It states that tax
10 applies to the gross receipts from the retail sale of a
11 wireless telecommunication device sold in a bundled
12 measured by the unbundled sales price of that device.
13 Regardless of whether the device and utility service are
14 sold for a single price or separately stated on the
15 invoice.

16 If the retailer cannot establish an unbundled
17 sales price to the satisfaction of the Department, the
18 unbundled sales price of the device will be equal to the
19 fair retail selling price of that device. If tax is
20 reported and paid on an amount equal to the cost of the
21 device, plus a markup on cost of at least 18 percent, that
22 amount will be regarded as the fair retail selling price.
23 Here Appellant was unable to provide documentation
24 regarding its bundled sales of wireless equipment it
25 purchased from Celluphone and resold to its customers.

1 Some of Appellant's wireless invoices found in
2 Exhibit D show that it did collect some sales tax
3 reimbursement on its discounted sales of wireless
4 equipment, but Appellant did not report any sales tax on
5 its sales and use tax returns. Appellant also did not
6 provide any documentation as to the unbundled price of the
7 wireless equipment it sold to its customers. Therefore,
8 the Department's use of an 18 percent markup was not only
9 reasonable, it follows the authorized markup outlined in
10 Regulation 1585. Accordingly, the Department's use of an
11 18 percent markup to determine the fair retail selling
12 price of the wireless equipment is reasonable and follows
13 the Department's regulations. Appellant has not provided
14 any evidence or argument to suggest the Department's
15 approach was unreasonable or overstated.

16 As for the failure to file penalty, Appellant
17 failed to file sales and use tax returns for the period
18 January 1st, 2005, through December 31st, 2008.
19 Therefore, the Department imposed a 10 percent penalty of
20 \$1,083.65. Appellant submitted a request for relief of
21 penalty stating that relief was warranted because
22 Appellant is disputing the audit findings. Under
23 Revenue & Taxation Code Section 6592(a), relief of the
24 penalty may be warranted if the failure to file returns
25 was due to reasonable cause and circumstances beyond the

1 taxpayer's control and occurred, notwithstanding, the
2 exercise of ordinary care and -- in the absence of willful
3 neglect.

4 Appellant has not presented any evidence or
5 argument that its failure to file returns for the period
6 in question was due to circumstances beyond its control.
7 In fact, Appellant's recording of sales tax in its sales
8 journals and listing amounts for sales tax on invoices
9 suggest that Appellant did not exercise ordinary care when
10 handling its sale and use tax responsibilities. Based on
11 the foregoing, the Department has demonstrated that its
12 audit findings are reasonable and based on the best
13 evidence available, and that the failure to file penalty
14 was properly imposed.

15 Appellant has not shown the determination is
16 overstated in any way. Thus, the Department request the
17 appeal be denied. Thank you.

18 JUDGE WONG: Thank you. I will now turn to my
19 co-panelists to see if they have any questions for CDTFA.

20 Judge Brown, do you have any questions.

21 JUDGE BROWN: This is Judge Brown. I don't think
22 I have any questions at this time.

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

24 Judge Long, do you have any questions for CDTFA?

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

1 questions.

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

3 I just had one question for CDTFA. He had
4 addressed Appellant's Exhibit 1. I just wanted to give
5 you an opportunity if you wanted to address Exhibits 2 and
6 3. Just as I had given Appellant the opportunity to
7 explain the significance, would you like to address the
8 other exhibits that Appellant had submitted on appeal?

9 MR. BACCHUS: This is Chad Bacchus with the
10 Department. We don't have anything specific to address
11 for those exhibits other than to say we don't believe that
12 those exhibits include any information that would warrant
13 any reduction to the taxable measure.

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

15 Now, I will turn back to Appellant to give you
16 time for closing remarks and rebuttal. Mr. Aminloo, you
17 have -- I budgeted five minutes but you didn't use your
18 full 25 minutes, so you have some leeway as to the amount
19 of time.

20 MR. AMINLOO: Okay.

21 JUDGE WONG: Please go ahead.

22 MR. AMINLOO: This is Mr. Aminloo. Mr. Bacchus,
23 you mentioned something about the tax returns showing the
24 sale of --

25 JUDGE WONG: Oh, Mr. Aminloo. Sorry. This is

1 Judge Wong. This is the opportunity not -- this not for
2 you to question CDTFA. If you do have a question --

3 MR. AMINLOO: No. I'm just going to address, you
4 know, whatever comments Mr. Bacchus made.

5 JUDGE WONG: Okay.

6

7

CLOSING STATEMENT

8 MR. AMINLOO: The sale -- the tax returns that I
9 recall, it showed revenue from, you know, sale of some
10 tangible products and also services that we -- that I
11 offered, nontaxable, consulting, you know, services
12 basically. So I think my understanding is that those
13 numbers that are being used for calculating the taxes. So
14 there's no way that -- you know, there's no way that I
15 could have collected that much money for taxes when my
16 bank account doesn't show that much, or my taxes don't
17 show that much money was, you know, received.

18 I can provide more documents. If you want, I can
19 go back to 2003 or '04 to show you that, you know, the
20 taxable items that were received was not nearly close to
21 what, you know, what they have been calculated. I have
22 the receipts from my accounting system. It shows exactly
23 how much I would -- I had collected, which amounted to
24 \$24,000 for 2005 through 2008. So I'm still disputing,
25 you know, the calculation. I understand, you know,

1 there's some taxable items, but the numbers do not match.

2 JUDGE WONG: Does that end your closing remarks?

3 MR. AMINLOO: Yes. That's my closing remarks.

4 Thank you.

5 JUDGE WONG: Thank you, Mr. Aminloo.

6 I'm going to have last questions for the panel,
7 but I just want to start. If you -- like, if you have
8 documents that you mentioned and alluded to today, how
9 come you haven't provided them before at the audits, at
10 the appeals before CDTFA --

11 MR. AMINLOO: I don't have the --

12 JUDGE WONG: -- at the prehearing conference when
13 you had an opportunity to provide evidence, documents?
14 Why now are you saying you have documents?

15 MR. AMINLOO: Judge Brown just mentioned
16 something about, you know, if I sold something. I said,
17 yes, you know, I sold my inventory. So I can go to PayPal
18 and get that document. I wasn't, you know, aware of that,
19 you know, that question. So if that's it, I can show you
20 that document. I can go to Dell and get those receipts
21 from them if, you know, you need them. There should be
22 the purchases that I made for those items were taxable. I
23 didn't think, you know, I could -- I needed them. I
24 thought maybe this document was good enough. But I can
25 try getting more documents, you know, if possible, if that

1 makes any difference.

2 JUDGE WONG: Thank you, Mr. Aminloo. I will now
3 turn to my co-panelists to see if they have any final
4 questions for you, starting with Judge Brown.

5 JUDGE BROWN: This is Judge Brown. I don't think
6 I have any further questions.

7 JUDGE WONG: Thank you, Judge Brown. This is
8 Judge Wong.

9 Judge Long, do you have any final questions?

10 JUDGE LONG: This is Judge Long. I do not have
11 any further questions. Thank you.

12 JUDGE WONG: Thank you. I want to take a
13 five-minute recess. I need to consult with my
14 co-panelists for just a moment. It is 1:52 right now.
15 Let's come back at 1:57. Let's make it 1:58.

16 Please turnoff your videos and mute, and then
17 we'll go back on the record. We're off the record now.
18 Thank you. We'll be back at 1:58.

19 (There is a pause in the proceedings.)

20 JUDGE WONG: This is Judge Wong. We'll go back
21 on the record.

22 So I have conversed with my -- consulted with my
23 co-panelists, and we decided, Mr. Aminloo, to give
24 CyberAnnex 30 days to provide whatever documents you can
25 provide to show that adjustments are warranted to the

1 Appellant's tax liability.

2 Now, Mr. Bacchus alluded to earlier about
3 tax-paid purchases resold, a credit and the type, and
4 CDTFA be willing to make adjustments if you're able to
5 provide proof or documents. I just want to turn to CDTFA.

6 What types of documents would you be looking for?

7 I think it's related to exhibit -- to Appellant's
8 Exhibit 1 where you provided two quotes from Dell and then
9 one actual invoice. Do you have any other invoices during
10 the liability period of these purchases? And can you tie
11 them to the sales that you made to your customers, like
12 these products. You purchased something from Dell. You
13 claim you paid tax on them, and then you resold them and
14 collected tax from your customers.

15 Do you have any documents that would tie the two?
16 Like, if you purchase the server from Dell and sold that
17 same server, is there something? Are those some types of
18 documents? But I'll let CDTFA specify what they're --
19 what types of documents they're looking for.

20 MR. PARKER: Yeah. Mr. Wong, this is Jason
21 Parker. So when we looked at the invoices from Dell, one
22 of the things I was looking at was seeing if they had the
23 same amount of sales tax in the sales journal for
24 corresponding invoice, which I was not able to locate any
25 exact matches for the sales tax. So what we would need to

1 see are the purchase invoices showing sales taxes paid and
2 then any corresponding sales invoices for the items that
3 were resold showing that they collected tax on those
4 items.

5 So showing tax that they paid on the equipment
6 that they ended up reselling, so we would need the
7 specific sales invoice that's listed in the sales journal
8 and any corresponding purchase invoices, which I would
9 expect would be around the same date of the sales invoice.
10 You know, based on the type of business they're probably
11 reselling in a short period of time.

12 JUDGE WONG: Thank you, Mr. Parker.

13 Mr. Aminloo, is that clear what type of
14 documents? I believe you're muted. I'm sorry. You're
15 muted right now. Still muted.

16 MR. AMINLOO: Can you --

17 JUDGE WONG: Yes. Sorry. Apologies, Mr.
18 Aminloo. When we went to recess, we muted everyone. So
19 when you came back we would have to unmute you.
20 Apologies.

21 MR. AMINLOO: This is Arman Aminloo. I wanted to
22 make sure this is for the period 2005 through 2008,
23 correct?

24 MR. PARKER: This is Mr. Parker. I just want to
25 clarify. It would be for any -- any period in which you

1 paid tax on an item that you resold. So I understand that
2 you were paying tax from the period of '05 through '08, so
3 I would expect it more from that period than the period
4 from '09 through '11. But if you have items that you did
5 pay tax on and then you resold and collected tax again,
6 adjustments could be made for those as well.

7 MR. AMINLOO: Okay. All right.

8 JUDGE WONG: And you had mentioned that you had
9 sold cell phones -- bulk cell phone sale to an
10 out-of-state company when -- this was through -- with
11 respect to your wireless phone business.

12 MR. AMINLOO: Correct. When we -- when we closed
13 our store, when we moved our business, the inventory that
14 was left over we put it on Craig's list. And they pay
15 with PayPal, and it was out of state. And I believe I can
16 get that information.

17 JUDGE WONG: This is Judge Wong. Yes. So that
18 type of information as well from PayPal, maybe the copy of
19 the Craig's list and --

20 MR. AMINLOO: And there was multiple robbery at
21 the store that we had. So a lot of our inventory was
22 miss -- you know, was stolen during those 10 months of our
23 operation. I have -- I do have the police reports for
24 those as well if you need those.

25 JUDGE WONG: This is Judge Wong. Yes, if you

1 have police reports, if you have claims with insurance
2 companies for lost of inventory, please provide those as
3 well. Is 30 days an adequate time?

4 MR. AMINLOO: Yes.

5 JUDGE WONG: I'm inclined to give you only --
6 okay.

7 MR. AMINLOO: This is Arman Aminloo. Yes.

8 JUDGE WONG: Okay. So I will hold the record
9 open for -- to give 30 days to Appellant to provide these
10 documents, and then CDTFA will have an opportunity to
11 address any documents that CyberAnnex submits, also
12 30 days. I think we're running into the holidays. Maybe
13 45 and 45? Would that be better, or do you -- are you --
14 can you -- is 30 days adequate for you, Mr. Aminloo?

15 MR. AMINLOO: 45 would be much better.

16 JUDGE WONG: Okay. Okay. I'll just do it 45 and
17 45 then. I will issue an order following this hearing
18 with the relevant deadlines. Okay.

19 Do my Co-Panelists have anything else they would
20 like to mention? Judge Brown?

21 JUDGE BROWN: I do not. Thank you.

22 JUDGE WONG: Judge Long?

23 JUDGE LONG: This is Judge Long. I do not.
24 Thank you.

25 JUDGE WONG: Okay. Thank you very much.

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So we will not be closing the record. We will be holding it open for additional submissions. So -- but once the deadlines have been reached, then the record will be closed at that time.

I would like to thank everyone for participating today and for your presentations. And we will adjourn for now then. Thank you all for your participation.

(Proceedings adjourned at 2:06 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 16th day of December, 2021.

ERNALYN M. ALONZO
HEARING REPORTER