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APPEARANCES:

Panel Lead: ALJ JOSHUA ALDRICH

Panel Members: ALJ ANDREW WONG  
ALJ ANDREA LONG

For the Appellant: H. NAVARRO  
HEIDI CHENG

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

Interpreter: VICKY SCUDDER

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I N D E X

E X H I B I T S

(Department's Exhibits A-K were received at page 8.)

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California; Friday, November 19, 2021

9:30 a.m.

JUDGE ALDRICH: This is Judge Aldrich. We are opening the record in the hearing of Hector Ramirez Navarro doing business as La Puente Tire before the Office of Tax Appeals, OTA Case Number 20046148. Today's date is Friday, November 19th, 2021, and the time is approximately 9:30. This hearing is noticed for an electronic hearing with the agreement of the parties.

Madam Interpreter was dutifully sworn prior to opening the record to interpret from English to Spanish and Spanish to English.

Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Josh Aldrich. I am the lead judge for purposes of conducting the hearing. At this point I'd like my co-panelists to introduce themselves, beginning with Judge Wong.

JUDGE WONG: This is Judge Wong. Good morning.

MR. NAVARRO: Good morning.

JUDGE ALDRICH: Thank you.

This the Judge Aldrich. And Judge Long.

JUDGE LONG: Good morning. This is Judge Andrea Long.

MR. NAVARRO: Good morning.

1           JUDGE ALDRICH: This is Judge Aldrich. During  
2 the hearing, panel members may ask questions or otherwise  
3 participate to ensure that we have all the information  
4 needed to decide this appeal. After the conclusion of  
5 this hearing, we three will deliberate and decide the  
6 issues presented.

7           I would like to remind today's participants and  
8 viewers that the Office of Tax Appeals is not a court.  
9 OTA or the Office of Tax Appeals is an independent appeals  
10 body. The panel does not engage in ex parte  
11 communications with either party. Our opinion will be  
12 based on the parties' arguments, the admitted evidence,  
13 and the relevant law. We have read the parties'  
14 submission, and we are looking forward to hearing your  
15 arguments today.

16           For Appellant we have a representative. Could  
17 you introduce yourself.

18           MS. CHENG: Good morning. Heidi Cheng, counsel  
19 for Appellant.

20           JUDGE ALDRICH: Thank you.

21           And for Department, who do we have representing  
22 the Department?

23           MR. SAMARAWICKREMA: Good morning. This is Nalan  
24 Samarawickrema, Hearing Representative for the Department.

25           MR. NAVARRO: Good morning.

1 MR. PARKER: This is Jason Parker, Chief of  
2 Headquarters Operations Bureau for the Department.

3 MR. NAVARRO: Good morning.

4 MR. BROOKS: Good morning. This is Christopher  
5 Brooks, Tax Counsel for CDTFA.

6 MR. NAVARRO: Good morning.

7 JUDGE ALDRICH: Thank you.

8 This is Judge Aldrich. The issues to be decided  
9 is whether Appellant has shown the adjustments are  
10 warranted to audited understatement of reported taxable  
11 sales, and whether CDTFA has established by clear and  
12 convincing evidence that the understatement was the result  
13 of fraud.

14 And Appellant's counsel, is that correct to your  
15 understanding?

16 MS. CHENG: Yes.

17 JUDGE ALDRICH: And Department?

18 MR. SAMARAWICKREMA: This is Nalan  
19 Samarawickrema. That is our understanding.

20 JUDGE ALDRICH: Regarding witnesses, we have  
21 Mr. Navarro as a witness, and the Department will not be  
22 calling a witness.

23 Is this correct, Appellant's counsel?

24 MS. CHENG: That is correct.

25 JUDGE ALDRICH: And Department?

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MR. SAMARAWICKREMA: This is Nalan

Samarawickrema. Yeah, that's correct.

JUDGE ALDRICH: I'd like to go ahead and swear in Mr. Navarro.

When you're ready, Mr. Navarro, please raise your right hand. Thank you.

H. NAVARRO,

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

JUDGE ALDRICH: Okay. Next, we'll discuss exhibits. So the Department's exhibits are identified as A through K.

You can put your hand down, Mr. Navarro.

And Appellant has not submitted exhibits. Does Appellant's counsel have any objections to admitting Department's proposed exhibits into evidence or into the oral hearing record as identified?

MS. CHENG: No objections.

JUDGE ALDRICH: Okay. Hearing no objections, we'll admit the exhibits identified as A through K.

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

1           And I believe -- okay. And let's see. So to  
2 give you an idea of how we plan for the hearing to  
3 proceed, Appellant's opening statement and witness'  
4 testimony, which we estimated at 45 minutes. Next, the  
5 Department will present a combined opening and closing for  
6 approximately 30 minutes. Appellant will then have 10  
7 minutes to present a closing statement or rebut the  
8 Department's argument.

9           These are estimates, and they're made for  
10 calendaring purposes. If you need additional time, please  
11 make the request and we can reassess at the time of the  
12 request. Also, please note that the Department may ask  
13 questions of the witness, whereas the panel may also ask  
14 questions of either party or the witness.

15           Does anyone have questions before we begin?

16           Appellant's counsel, do you have any questions?

17           MS. CHENG: No.

18           JUDGE ALDRICH: And Department?

19           MR. SAMARAWICKREMA: This is Nalan  
20 Samarawickrema. No questions.

21           JUDGE ALDRICH: Great. We're ready to proceed  
22 with your presentation.

23           Appellant's counsel, with respect to witness'  
24 testimony, Mr. Navarro may testify in the narrative, or  
25 you may ask him questions. Please begin when you're

1 ready.

2

3

PRESENTATION

4

MS. CHENG: Good morning. Heidi Cheng for the  
5 Appellant.

6

We are here today to appeal the Tax Board's  
7 finding of one, the underreporting of taxable sales and  
8 two, the finding of fraud.

9

The Appellant today is Hector Ramirez Navarro who  
10 operated La Puente Tires as a sole proprietorship. La  
11 Puente Tires is a tire sales installation and repair shop  
12 in La Puente, California. La Puente Tires is a small  
13 family owned and run tire shop that has been in business  
14 since 1982. Mr. Navarro is an immigrant with limited  
15 English speaking, reading, writing abilities.

16

He started La Puente Tires in the hopes of making  
17 a modest living to support his family. But as with many  
18 family-owned and run small businesses, La Puente Tires  
19 does not maintain sophisticated methods of accounting. In  
20 fact, during Mr. Navarro's time running the shop, he would  
21 handwrite all the receipts and invoices for La Puente's  
22 customers and suppliers.

23

All money that was made from La Puente Tires,  
24 Mr. Navarro would personally go and deposit all monies in  
25 the bank account. It was a very, very basic operation.

1 Every year during tax season, Mr. Navarro would take all  
2 of his receipts and invoices and take them to a CPA and  
3 rely on that CPA to prepare current tax returns for La  
4 Puente Tires. Mr. Navarro himself has no knowledge or  
5 experience in tax matters and has never done taxes on his  
6 own.

7 You're going to hear testimony from Mr. Navarro  
8 that in the nearly four decades that La Puente Tires has  
9 been in business, he has always done his taxes the same  
10 way. And that is he takes it to a CPA and relies on that  
11 CPA. He's never told any CPA to intentionally underreport  
12 any taxable sales, and he's never had a problem. That is,  
13 except for the audit period of 2005 to 2009.

14 Prior to that, Mr. Navarro had a CPA who had  
15 helped with La Puente Tires' taxes since its inception in  
16 1982. However, a little bit prior to 2005 he passed away.  
17 Needing to find another CPA for La Puente Tires,  
18 Mr. Navarro was referred to a man that he recalls being  
19 known as Mr. Lopez, a person that he was told was a  
20 licensed CPA and had experience preparing taxes for  
21 businesses. However, unbeknownst to Mr. Navarro,  
22 Mr. Lopez was, in fact, not a licensed CPA.

23 When this audit was started by the Tax Board,  
24 this purported CPA, probably fearful or nervous of what he  
25 had done or failed to do, absconded and left Mr. Navarro

1 to deal with these tax matters himself. Having nowhere to  
2 turn, Mr. Navarro found a company called Taxco in the  
3 yellow pages who advertised themselves to him to be  
4 licensed CPAs and tax attorneys. Mr. Navarro hired them  
5 to represent him during the initial audit and hearing but  
6 later found out that they were, in fact, not attorneys.  
7 That is the second time that Mr. Navarro had been scammed  
8 relating to this matter.

9 You're also going to hear testimony from  
10 Mr. Navarro that information provided to the Tax Board  
11 from La Puente Tires' suppliers are not reliable because  
12 he found out unauthorized individuals were using La Puente  
13 Tires' customer accounts to make purchases on his  
14 accounts, possibly so that they could benefit from the  
15 wholesale prices.

16 Mr. Navarro now stands to pay nearly \$900,000 in  
17 taxes and penalties that he simply cannot afford to pay.  
18 The Tax Board's finding of intentional underreporting of  
19 taxable sales should be reversed, and the fraud assessment  
20 should be reversed with the audit period reverting back to  
21 2007 to 2009 only.

22 And now I'd like to call the witness, Hector  
23 Ramirez Navarro.

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MS. CHENG:

3 Q Mr. Navarro, could you please state your name for  
4 the record?

5 A Hector Ramirez Navarro.

6 Q Mr. Navarro, you were at one point the owner of  
7 La Puente Tires; is that correct?

8 A Yes.

9 Q Did you operate it as a sole proprietorship?

10 A Yes.

11 Q And then at one point you retired from that  
12 position?

13 A In 2012.

14 Q In 2012 you retired?

15 A Yes.

16 Q And now your son and daughter manage La Puente  
17 Tires; is that correct?

18 A Yes. I retired about nine years ago.

19 Q Have you ever had any training or education in  
20 business administration or finances?

21 A No.

22 Q La Puente Tires was audited initially for the  
23 years 2007 to 2009, and the Tax Board determined that you  
24 had underreported sales for those years. The Tax Board  
25 later expanded the audit period to include 2005 and 2006

1 after a finding of fraud. Are you aware of these facts?

2 A Yes.

3 Q One of the bases for the finding of  
4 underreporting of sales was because they went to your  
5 suppliers and obtained copies of their invoices and  
6 receipts and compared that with your reported sales and  
7 found out the supplier's information included sales that  
8 were not reported by you?

9 A Yes.

10 Q Of the 12 suppliers they requested information  
11 from, they received responses from 8 of them. Are you  
12 aware of this?

13 A No, I didn't know that.

14 Q Were you the one that supplied your suppliers'  
15 information to the Tax Board for their investigation?

16 A Yes.

17 Q Did you supply all of La Puente Tires' own  
18 records, invoices, receipts, tax returns, and bank  
19 statements to the Tax Board?

20 A No. I believe that they searched for it.

21 Q Did you allow them to do that search?

22 A I gave them everything I had. I gave them all  
23 the purchases, all the sales. I gave them everything.

24 Q So would you say you fully cooperated with their  
25 investigation?

1           A    Of course.

2           Q    Do you agree that the invoices provided to the  
3 Tax Board by your suppliers accurately reflects La Puente  
4 Tires' actual sales?

5           A    I don't understand the question. Can you repeat  
6 that?

7           Q    Sure. Do you believe that the information  
8 provided by La Puente Tires' suppliers to the Tax Board  
9 accurately reflects the actual sales that La Puente did?

10          A    I never found out what they were given by them.  
11 But I want to say that I was never given the chance to  
12 talk. I was never given the chance to give my version of  
13 the facts. I was never given the opportunity to talk like  
14 we are talking right now.

15          Q    So why don't you tell the Board here today why  
16 you feel that La Puente did not underreport those sale.  
17 Why are those suppliers' information not reliable?

18          A    Well number one, I was never given the chance to  
19 defend myself. I was never given the reason to defend  
20 myself. I was given no reason to -- for them to tell me  
21 why they reached this decision.

22                    Number two, I did the research into the  
23 investigation, and I found out that those companies were  
24 selling to other people in my name. And we proved that,  
25 but I never found out who those people were.

1           Q    Anything else you want to add to that,  
2   Mr. Navarro?

3           A    Go ahead.

4           Q    Do you have anything else?  You said first, so I  
5   don't know if there was anything else you wanted to say?

6           A    I want to say that all the people that I met, all  
7   the bookkeepers, all the people I went to for help, all  
8   the people who said they were experienced in taxes, they  
9   are frauds.  They just took my money.  They just made  
10  things worse, and they didn't help me at all.

11          Q    You mentioned that some of your suppliers were  
12  selling to other people under La Puente Tires' account; is  
13  that correct?

14          A    Correct.

15          Q    Do you recall any of the specific suppliers that  
16  you found out that this was happening?

17          A    Of course I do.  I have the names of all the  
18  companies that did that, and I've been looking for others.

19          Q    Which ones can you remember today that you can  
20  tell us?

21          A    Yes.  There's a few of them that I remember,  
22  Turbo Wholesale Tires.  I went one time to pick up my  
23  tires -- to buy my tires.  Then I said I'm here for tires,  
24  and I saw that there were lots of tires there.  And  
25  somebody said, "Are you picking up the tires that you

1 ordered yesterday?"

2 I said, "I did not order any tires yesterday.  
3 They are not mine."

4 They said, "Yes. They're under your name. "

5 And I said, "No. I didn't order any tires."

6 There's another one -- another company that I  
7 went to twice when they had tires that they said that they  
8 ordered for me. There's another place, Valley Auto Parts,  
9 and they were selling tires to other people, to other  
10 mechanics. They were selling on the street too.

11 Excuse me, this is Parts -- Auto Parts -- Valley  
12 Auto Parts and Walnut Auto Parts and Valley Auto Parts.

13 Q Have you ever authorized a third party not  
14 associated with La Puente to purchase tires using La  
15 Puente's account?

16 A No. Never.

17 Q As you sit here today, do you know the identities  
18 of these third parties that made these unauthorized  
19 purchases on behalf of La Puente Tires?

20 A They didn't want to help me. They never wanted  
21 to give me any of the information. They didn't want to  
22 cooperate with the audit. They didn't want to help me.  
23 They didn't want to get involved. They didn't want to get  
24 in trouble with the people they were selling to.

25 Q The Tax Board made a determination of fraud and

1       assessed fraud penalties against you because it found that  
2       you intentionally underreported La Puente's sales, and  
3       it's the Tax Board's recommendation of fraud assessment.  
4       One of the Board's main reasons for finding fraud was  
5       because your gross bank deposits during the audit period  
6       exceeded the reported gross receipts. Are you aware of  
7       this?

8             A     Well, I think I made a mistake because of the  
9       lack of information. I only had one account, one bank  
10      account. And in that account, I put all the money that I  
11      got from everywhere, and I used the money to pay for my  
12      house, for my car. I didn't have any information. I  
13      didn't have two accounts. I only had one account, and I  
14      did everything from that account. I put everything, any  
15      kind of money that I got from anything into that bank  
16      account. I think I made that mistake. I admit I made the  
17      mistake.

18            Q     Are you saying that you used one bank account for  
19      La Puente Tires as well as yourself personally?

20            A     Correct.

21            Q     Let me ask you this. All of the money that you  
22      ever received from any sales at La Puente Tires, did you  
23      always deposit the entire amount received into that bank  
24      account?

25            A     Yes. Even if I sold a car, I would just put that

1 amount of money into the bank. Nobody told me anything.  
2 Nobody gave me any information. That's how I worked. I  
3 didn't have any information. I didn't know that I had to  
4 have a different account.

5 Q During the time you worked at La Puente Tires,  
6 how did you keep track of your sales? Did you have a  
7 computer system? Invoices? How was that done?

8 A Well no. Back then I did everything by hand.  
9 Everything I sold, everything I bought, I did everything  
10 by hand. By the end of the month the accountant would  
11 come in and take everything with him.

12 Q So whoever your accountant was at that time would  
13 come on a monthly basis and just take all your handwritten  
14 records with him; is that correct?

15 A That's correct.

16 Q How long has La Puente Tires been in business?

17 A Almost 40 years, I think, since 1982.

18 Q Did La Puente Tires use a CPA when it first  
19 started?

20 A Yes.

21 Q Do you recall his or her name?

22 A Alberto Barrios.

23 Q How long was he La Puente Tires' CPA for?

24 A Since 1982, until he passed away. I think it was  
25 2004 or 2005.

1 Q And then you had to look for a new CPA for La  
2 Puente Tires; is that correct?

3 A Correct. Yes, until I met this accountant who  
4 supposedly was really good. And I really -- I honestly do  
5 not know what he did.

6 Q Would that be Mr. Lopez?

7 A Correct.

8 Q How did you come to find him?

9 A Well, I was desperate and then because my  
10 accountant had died. And then somebody who came to the  
11 store said I can recommend you an accountant. I didn't  
12 even think about him being certified. I was desperate  
13 because I wanted to pay my taxes, my state and federal  
14 taxes. I would rather not eat every year than not pay my  
15 taxes.

16 Q You later found out Mr. Lopez was not a licensed  
17 CPA; is that correct?

18 A Correct.

19 Q How long did he provide services to La Puente  
20 Tires?

21 A I think he worked for us from 2005 until 2009.

22 Q Why did he stop?

23 THE INTERPRETER: Say that again, please.

24 BY MS. CHENG:

25 Q Why did he stop?

1           A    Well, when I informed him about the audit I said,  
2    "Just prepare everything. Prepare all the documents."  
3    And I noticed he was very insecure.

4           And he said to me, "I recommend that you leave  
5    the country. You should leave the country."

6           I didn't like his comment. I'm thinking I didn't  
7    kill anybody. Why am I going to leave the country? And  
8    that's when I found out he was a fraud.

9           Q    And you, in fact, didn't leave the country;  
10   right? You're here today.

11          A    Well, how can I leave? I didn't commit a crime.  
12   I didn't kill anybody. I'm not a criminal. After that I  
13   went to several accountants, and none of them wanted to  
14   help me.

15          Q    Did you ever tell Mr. Lopez to withhold any  
16   information from the Tax Board or underreport your sales?

17          A    No. Because I gave him all the documents every  
18   month in a box, monthly documents, and they would just  
19   take all the documents -- all the daily documents every  
20   month.

21          Q    So from 1982 from the time that La Puente was  
22   started throughout all the decades that you were involved  
23   with La Puente Tires, have you always followed the same  
24   protocol in reporting your taxes? That is, you give all  
25   of your documents to whoever your accountant was at the

1 time and relied on them to prepare correct tax returns; is  
2 that correct?

3 A Correct.

4 Q After Mr. Lopez left, you got another company  
5 called Taxco who represented to you that they were  
6 licensed CPAs and tax attorneys; is that correct?

7 A Costco. I mean Taxco. I hired somebody else to  
8 do the payroll, to do everything, all the accounting. And  
9 then after working with them for a while, they said, "Do  
10 you need attorneys? We can recommend some attorneys."

11 So they had taken a lot of money from me already.  
12 They recommended some attorneys who took a lot of money  
13 again from me, and then they just said -- the attorneys  
14 said, "You have to pay \$200,000 a month to the State."  
15 That's what they told me.

16 Q This is Taxco; correct?

17 A Well, Taxco was the accountants. They  
18 recommended the attorneys. The attorneys were the ones  
19 who told me that I had to pay \$200,000 a month to the  
20 State Board. Then after that my son checked online and  
21 found out that they were not attorneys.

22 Q Were these the people that represented you during  
23 the audit period and during your initial hearing?

24 A We only went once, and they didn't let me speak.

25 Q I'm sorry. Can you repeat that again?

1           A    We only went once, and they didn't even let me  
2 speak.

3           Q    Okay.  But was this the person you thought was an  
4 attorney, and then you later found out he was not an  
5 attorney; correct?

6           A    That they were not attorneys.

7           Q    Would you have hired him to represent you in that  
8 hearing if you would have known that he was not an  
9 attorney?

10          A    No, of course not.

11          Q    Who is La Puente Tires' CPA now?

12          A    Keith.  I don't remember the last name.  My  
13 daughter should have the name, but he's a CPA.

14          Q    Is it Breidinger?  Does that ring a bell?

15          A    Yes.

16          Q    And any issues you've had since you've stop  
17 working with Lopez?

18          A    Keith is the one who defended me with the IRS for  
19 the federal taxes.  They were talking about millions of  
20 dollars.  So what Keith did is he brought them to the  
21 store.  He showed them the store and told them this is a  
22 small store.  It's not a big store.  Why are you talking  
23 about millions?  And then they did the audit, and there  
24 was only \$1 difference at the audit.  Keith is the one who  
25 defended me.

1 MS. CHENG: I have no more questions for the  
2 witness. But just so that the panel is aware, I just  
3 became aware that the IRS did a similar audit of La Puente  
4 Tires and found that there was not that much of a  
5 difference in discrepancy. I'm trying to find -- or I'm  
6 trying to help La Puente Tires to provide those documents  
7 to show the IRS' audit for that period as well, but we  
8 have not been able to locate those documents. But if we  
9 did, would the Board allow us to supplement at a later  
10 date?

11 MR. NAVARRO: The only difference was \$1, and the  
12 IRS auditor said there was no problem. And then they  
13 closed the case immediately.

14 JUDGE ALDRICH: So just to clarify, the CPA that  
15 represented La Puente for the IRS matter it's -- are you  
16 still in contact with him?

17 MR. NAVARRO: He's the one doing my accounting  
18 right now.

19 JUDGE ALDRICH: Okay. And so the documents that  
20 you're having trouble obtaining, are they from the IRS or  
21 are they from the accountant or CPA? I guess I'm trying  
22 to figure out where the issue lays.

23 Appellant's counsel?

24 MS. CHENG: I have not seen the documents, but my  
25 understanding is that they -- it's an IRS notice notifying

1       them that there were -- the discrepancy was very, very  
2       minimal. And so they were not going to pursue anything  
3       further with them.

4               JUDGE ALDRICH: And for the same audit period?

5               MR. NAVARRO: Same period of time.

6               JUDGE ALDRICH: Okay. And CDTFA, would you have  
7       any objections to holding the record open to allow them to  
8       submit those documents, provided you were given time to  
9       respond?

10              MR. NAVARRO: What documents are you talking  
11      about?

12              JUDGE ALDRICH: Sorry. You're requesting to  
13      additional time to be able to submit documentation; is  
14      that correct, Appellant's counsel?

15              MS. CHENG: Yes.

16              JUDGE ALDRICH: And so my question is for the  
17      Department. Would you have an objection to allowing -- to  
18      holding the record open to allow them to submit those  
19      documents, provided you were allowed time to respond?

20              MR. BROOKS: This is Christopher Brooks. No  
21      objection.

22              JUDGE ALDRICH: Okay. And to clarify, the  
23      minimal discrepancy is between the reported income  
24      taxes -- federal income taxes?

25              MS. CHENG: I think so.

1 JUDGE ALDRICH: I think what we'll do -- I mean,  
2 how much time would you need to acquire those documents?

3 MS. CHENG: I just found out about this  
4 yesterday, so I will try my hardest to try to get those  
5 documents to you. I would maybe ask for 30 days.

6 JUDGE ALDRICH: Okay. 30 days is fine.

7 And for the Department, how long would you like  
8 to respond? 30 days as well? Does that work?

9 MR. SAMARAWICKREMA: This is Nalan --

10 MR. BROOKS: Oh, okay. I'll defer to  
11 Mr. Samarawickrema.

12 MR. SAMARAWICKREMA: This is Nalan  
13 Samarawickrema. 30 days is fine.

14 JUDGE ALDRICH: Okay. So at the conclusion of  
15 the hearing, the record will be held open to allow  
16 Appellant to submit those documents related to the IRS  
17 audit and -- for 30 days. And then upon receipt, CDTFA  
18 will have 30 days to respond to those documents. Does  
19 that work for Appellant's counsel?

20 MS. CHENG: Yes.

21 JUDGE ALDRICH: And for the Department? All  
22 right. Great.

23 And did you have more to add to your  
24 presentation, Appellant's counsel, or was that -- or were  
25 you going to end?

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MS. CHENG: End the presentation.

JUDGE ALDRICH: Okay. Thank you. This is Judge Aldrich.

Department, do you have any questions for Appellant?

MR. SAMARAWICKREMA: This is Nalan Samarawickrema. No questions. Thank you.

JUDGE ALDRICH: Okay. And for my panel members, Judge Wong, did you have any questions for Mr. Navarro, or would you prefer to hold those questions until after the Department has presented?

JUDGE WONG: This is Judge Wong. I did have a couple of questions. This is Judge Wong. I guess this could be either towards Mr. Navarro or his counsel.

You basically argue that there was no fraud or intent to evade here and that the liability for 2005 and 2006 should be deleted. I'll pause for interpretation.

So are you -- so if that were the case that we found no fraud and deleted 2005 and 2006, you have no -- do you have any issues with the liability determined for 2007 through 2009?

JUDGE ALDRICH: Let me pause you right there to make sure we didn't lose one of our panel members.

MR. NAVARRO: I have one question.

JUDGE ALDRICH: One second, please. So how about

1 this. Let's take a 10-minute recess, and during that  
2 recess you can mute your microphones and stop your video.  
3 Don't disconnect from the hearing. So that leave meeting  
4 button, leave that untouched, but just the stop video  
5 button and the mute button while we address the  
6 connectivity issues. Okay. So we'll resume the hearing  
7 at 10:51.

8 (There is a pause in the proceedings.)

9 JUDGE ALDRICH: We're going back on the record.  
10 I believe Appellant had a question before we had  
11 a break.

12 MR. NAVARRO: Yes. I have a question. About a  
13 year ago I reached an agreement. A couple of years ago --  
14 I'm not sure when it was. I reached an agreement that I  
15 was going to pay \$5,000 a month. We did a contract. And  
16 instead of paying the money to other people who were just  
17 scamming me, I decided to pay you \$5,000 a month. By the  
18 end of the contract, by the end of the year, I was asked  
19 to pay all of it.

20 So my question is what's going to happen with  
21 that? What's going to happen with the money that I paid  
22 so far? What's next because now I'm poor. I don't have  
23 any money. So it's just a simple question. I really  
24 don't know where I'm going with this.

25 JUDGE ALDRICH: So, Mr. Navarro, it sounds like

1 you're talking about some sort of settlement negotiation  
2 between you and CDTFA; is that correct?

3 MR. NAVARRO: You can ask that to my attorney, to  
4 Heidi.

5 MS. CHENG: Yeah. I'm going to have the  
6 Appellant refrain from discussing settlement  
7 communications with CDTFA. I can answer his question  
8 separately later.

9 JUDGE ALDRICH: Okay. Great.

10 MR. NAVARRO: Okay. Perfect.

11 JUDGE ALDRICH: Okay. I believe Judge Wong had  
12 some questions for Appellant. Would you like to resume?

13 JUDGE WONG: Sure. So my last question was to  
14 either Mr. Navarro or his counsel as to the scope of what  
15 they're contesting. Just to recap, if we did not find  
16 fraud or an intent to evade here and deleted the liability  
17 for 2005 and 2006, are you still contesting the audit  
18 liability for 2007 through 2009?

19 MS. CHENG: I can answer this question. I think  
20 maybe about a week ago if you would have asked me the same  
21 question, I think, you know, our basis for the dispute of  
22 the liability period was based upon the unauthorized use  
23 of La Puente Tires' sales accountant. But now with this  
24 new information that I've just been made aware of a  
25 similar IRS audit for the same time period, if they would

1 have found no discrepancy, then I think that we need to  
2 review that report before I make a -- commit to a position  
3 as to whether we're going to dispute those findings.

4 With that, I said to see if the Board would be  
5 agreeable to perhaps a continuance of this hearing. If we  
6 are able to find documents from the IRS, it may be  
7 necessary to possibly subpoena IRS witnesses or any other  
8 auditors that made those findings. And so I'm hesitant to  
9 kind of close our presentation today without me reviewing  
10 what those records are and if, you know, other witnesses  
11 would be necessary to help the Board's decision here  
12 today.

13 MR. NAVARRO: Good.

14 JUDGE ALDRICH: So this is Judge Aldrich. In  
15 response to your request for a continuance, the panel and  
16 I are going to confer for just a minute. So if you could  
17 give us -- let's see. I think we'll take another recess  
18 and -- for 10 minutes, and then we'll have your response  
19 as to whether or not we'll grant your request for a  
20 continuance.

21 But before we do, I was hoping to get CDTFA's  
22 input on their response to that request.

23 JUDGE ALDRICH: CDTFA, whenever you're ready.

24 MR. BROOKS: This is Christopher Brooks. The  
25 Department doesn't see a reason for a continuance. It's

1 not likely that there's any relevant witness to testify  
2 about anything. The witness would be an employee at the  
3 business location. It's highly unlikely the IRS is going  
4 to send someone to testify in a CDTFA -- in an OTA  
5 hearing.

6 JUDGE ALDRICH: Okay. And to Appellant's  
7 counsel, you discovered this IRS information when exactly?

8 MS. CHENG: Yesterday.

9 JUDGE ALDRICH: Okay. All right. The time is  
10 now 11:02. We'll resume at 11:12, and have your answer  
11 for you regarding the request, okay?

12 MS. CHENG: Thank you.

13 JUDGE ALDRICH: So once again mute and stop your  
14 video but do not leave the hearing room.

15 (There is a pause in the proceedings.)

16 JUDGE ALDRICH: We're going to go back on the  
17 record.

18 So in response to Appellant's counsel's request  
19 to continue the hearing to allow for potential discovery  
20 relating to the IRS audit, I think -- so what I'm going to  
21 do is I'm going to deny a request for a continuance.  
22 However, I'm going to extend the time period for -- from  
23 30 days to 45 days and then allow additional briefing  
24 based off of that information.

25 So, you know, and the reason that in part that

1 I'm denying it is that I'm not sure what probative value  
2 that an IRS income tax audit would have on a California  
3 sales and use tax matter. Then also, this case -- there's  
4 previously a request for a continuance for trouble finding  
5 documents. It sounds like those documents were unrelated  
6 based off of the date of discovery that Appellant's  
7 counsel indicated.

8 But with that said, the record will be held open  
9 for 45 days for Appellant's counsel to brief and provide  
10 documentation relating to the IRS audit. And then CDTFA  
11 may respond within 45 days as well. Just to be clear, I  
12 will issue orders -- post-hearing orders that -- to  
13 summarize these -- the briefing schedule.

14 Judge Wong, would you like to resume with your  
15 questions?

16 JUDGE WONG: This is Judge Wong. Thank you. So,  
17 Mr. Navarro, the alleged CPA that prepared the returns and  
18 did the bookkeeping during the liability period, did you  
19 take any action against that person?

20 MR. NAVARRO: Which one of all of them? Which  
21 one do you mean?

22 JUDGE WONG: I guess the person named Lopez.  
23 That was the person you --

24 MR. NAVARRO: He disappeared.

25 JUDGE WONG: Did you -- this is Judge Wong. Did

1 you notice any difference between -- let me back up.  
2 Sorry. Did you review the sale and use tax returns that  
3 he prepared?

4 MR. NAVARRO: No. All he brought to me was the  
5 documents saying how much I have to pay, and I paid.  
6 That's it.

7 JUDGE WONG: This is Judge Wong. I guess it's  
8 more a legal question for your counsel. So the CPA --  
9 alleged CPA was the agent of Mr. Navarro. Mr. Navarro was  
10 the principal?

11 MS. CHENG: I would say that he's not the agent  
12 of him. He hired independent outside bookkeeping services  
13 to do this for him for those years, but he's not his  
14 agent.

15 JUDGE WONG: This is Judge Wong. Do you have any  
16 legal authority for that statement?

17 MS. CHENG: I do not presently.

18 JUDGE WONG: Okay. This is Judge Wong.  
19 Mr. Navarro, did you -- what did you do when you found out  
20 unauthorized persons were making wholesale purchases from  
21 your suppliers using your account?

22 MR. NAVARRO: When we found out, we made a claim.  
23 And then the company gave us a code for them to know that  
24 it was us who were putting in the orders. That's when we  
25 found out that it wasn't the company that was doing that.

1 It was the employees that were doing that.

2 JUDGE WONG: This is Judge Wong. What employees  
3 were doing that? Were they your employees that were  
4 making unauthorized purchases?

5 MR. NAVARRO: No. The company's employees.

6 JUDGE WONG: This is Judge Wong. What company?  
7 The supplier -- the supply company?

8 MR. NAVARRO: Yes.

9 JUDGE WONG: This is Judge Wong. Did you take  
10 any action against the suppliers for their employees?

11 MR. NAVARRO: No.

12 JUDGE WONG: How many suppliers were -- how many  
13 suppliers did people make unauthorized purchases from your  
14 suppliers?

15 MR. NAVARRO: According to our investigation, we  
16 found out that there were four providers that were doing  
17 that. We just didn't want to continue doing all that  
18 research because it was too much for us to keep working  
19 and doing the investigation. But it was four providers.

20 JUDGE WONG: So -- sorry. This is Judge Wong.  
21 So there were four suppliers. And for each of these  
22 suppliers, their employees were making unauthorized  
23 purchases on your account?

24 MR. NAVARRO: Correct.

25 JUDGE WONG: This is Judge Wong. When did you

1 discover that the employees of these four suppliers were  
2 making unauthorized purchases on your account?

3 MR. NAVARRO: Before the audit was done.

4 JUDGE WONG: This is Judge Wong. Are you still  
5 doing business with these suppliers?

6 MR. NAVARRO: Two of them closed their  
7 businesses, so I'm working with two of them still. But  
8 now we have an identification number when we make a  
9 purchase.

10 JUDGE WONG: This is Judge Wong. So for these  
11 two suppliers you continue to work with, did they make it  
12 up to you that -- how did they make it up to you that they  
13 had these employees that were making unauthorized  
14 purchases on your account?

15 MR. NAVARRO: No.

16 JUDGE WONG: This is Judge Wong. Do you have any  
17 documents related to your investigation? Letters, emails,  
18 or things like that that you -- from these suppliers or  
19 any documents from this investigation that you can  
20 produce?

21 MR. NAVARRO: No.

22 JUDGE WONG: This is Judge Wong. That's all the  
23 questions I had at this time. Thank you.

24 JUDGE ALDRICH: This is Judge Aldrich.  
25 Judge Long, did you have any questions for Appellant?

1           JUDGE LONG: This is Judge Long. No questions at  
2 this time.

3           JUDGE ALDRICH: So I had a question for Appellant  
4 or his counsel. So up until 2004 or '05, the same CPA was  
5 doing the sales and use tax returns for the business;  
6 correct?

7           MS. CHENG: That's correct.

8           JUDGE ALDRICH: Okay. And then Mr. Lopez comes  
9 into the picture around 2005?

10          MS. CHENG: That's correct.

11          JUDGE ALDRICH: Okay. And I guess as far as the  
12 amounts reported across the quarters when compared from,  
13 like, 2003, '04, 2005, '06, was there anything noticeable,  
14 a change -- a noticeable change between the reporting?

15          MR. NAVARRO: I don't remember that. I really  
16 don't remember. I don't know.

17          JUDGE ALDRICH: Okay. Those are all the  
18 questions I had at this time. I'm going to -- I think  
19 we're going to switch gears over to Department's combined  
20 presentation.

21                 Department, are you ready to begin your combined  
22 opening and closing statement?

23          MR. SAMARAWICKREMA: This is Nalan  
24 Samarawickrema. Yes, Judge.

25          JUDGE ALDRICH: Okay. Please proceed when you're

1 ready.

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PRESENTATION

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MR. SAMARAWICKREMA: Appellant operated a tire sales installation and repair shop in La Puente, California. After operating this business for 23 years under the same business name and at the same business location, Appellant's ex-wife transferred the business to Appellant on April 1st, 2005. On September 14th, 2010, the business was reorganized as a corporation.

The Department audited Appellant's business for the period of April 1st, 2005, through December 31st, 2009. During the audit period, Appellant reported around \$4.2 million in total sales and claimed around \$1.2 million as nontaxable repair labor, and around \$235,000 as sales tax reimbursement included in reported total sales resulting in reported taxable sale of around \$2.7 million; and that will be on your Exhibit A, pages 15 and 16.

What the audit results found is that Appellant had over \$6.3 million of unreported taxable sales for the audit period; and that will be on Exhibit A, page 1. During my presentation, I will explain why the Department rejected Appellant's reported taxable sales; why the Department chose an indirect audit approach; how the

1 Department estimated Appellant's unreported sales tax for  
2 the audit period; and why the Department recommended a  
3 fraud penalty for the audit period.

4 During the audit period, Appellant failed to  
5 provide sufficient sales records. Appellant did not  
6 provide complete sales invoices, sales journal, or sales  
7 summaries to support his reported sales for the audit  
8 period. In addition, Appellant failed to provide complete  
9 purchase invoices or purchase journals for the audit  
10 period. Appellant was unable to explain how he reported  
11 his sales on its sale and use tax returns. Appellant was  
12 unable to explain what sources he relied upon to complete  
13 his sales and use tax returns.

14 The Department did not accept Appellant's  
15 reported taxable sales due to lack of reliable records and  
16 low reported book markups. It was also determined that  
17 Appellant's record was such that sales could not be  
18 verified by a direct audit approach. Therefore, the  
19 Department estimated sales using cost-plus markup method  
20 for this Appellant. The Department completed two  
21 verification methods to verify the reasonableness of  
22 Appellant's reported total and taxable sales.

23 First, the Department conducted a bank  
24 reconciliation comparing Appellant's bank deposit to his  
25 reported total sales. From January 2007 through

1 December 2009, he deposited around \$6.5 million but only  
2 reported total sale of around \$2.7 million. Thus,  
3 Appellant deposited around \$3.8 million going into his  
4 bank account than reported sales for sales and use tax  
5 returns and federal income tax returns; and that will be  
6 on your Exhibit B, pages 134 and 135, and Exhibit C.

7 Second, the Department compared reported product  
8 sales of around \$1.9 million to claim cost of goods sold  
9 of around \$1.8 million reflected on Appellant's federal  
10 income tax returns and calculated an overall markup of  
11 3 percent; and that will be on your Exhibit B, page 33.  
12 Appellant was unable to explain the significant bank  
13 deposit differences and low reported book markups.

14 Therefore, the Department conducted further  
15 investigation by analyzing Appellant's pricing policies  
16 and purchase information. To understand the Appellant's  
17 pricing policies, the Department perform a shelf test  
18 using 167 sales invoices dated July 1st, 2008, through  
19 July 10, 2008.

20 THE INTERPRETER: Can Mr. Samarawickrema repeat  
21 that, please?

22 MR. SAMARAWICKREMA: Yeah. To understand the  
23 Appellant's pricing policies, the Department performed a  
24 shelf test using 167 sales invoices dated July 1st, 2008,  
25 through July 10, 2008. Appellant also provided purchase

1 invoices for each sale of tires and parts. The Department  
2 compared the sales of tires and parts to the cost of tires  
3 and parts and calculated retail sales markup of  
4 17.45 percent; and that will be on your Exhibit B, pages  
5 114 to 125.

6 JUDGE WONG: This is Judge Wong. Can we pause a  
7 moment? I believe Judge Aldrich is having some technical  
8 difficulties. Let's go off the record and give him two  
9 minutes. I believe he's restarting his computer. Let's  
10 come back at 11:40, maybe four minutes. So please stop  
11 your video and mute, and once he's back online we'll  
12 restart.

13 (There is a pause in the proceedings.)

14 JUDGE ALDRICH: We're going back on the record if  
15 everyone is ready to go. It looks like everyone is  
16 present. So if the Department could resume with its  
17 presentation, that would be great.

18 MR. SAMARAWICKREMA: Judge Aldrich, do you want  
19 me to start on the last paragraph or --

20 JUDGE ALDRICH: So I believe where you cut off  
21 for me is when you were discussing the pricing -- the  
22 markup pricing calculation.

23 MR. SAMARAWICKREMA: Okay. The Department  
24 compared the sales of tires and parts to the cost of tires  
25 and parts and calculated a retail sales markup of

1 17.45 percent; and that will be on your Exhibit B, pages  
2 114 to 125. The Department also noted several sales  
3 invoices were issued to a single customer where no sales  
4 tax reimbursement was charged. Appellant provided a  
5 timely valid resale certificate supporting the sales to  
6 this customer as sales for resale.

7 The Department also performed a shelf test for  
8 the sales for resale using resale sales invoices for  
9 July 2008. Appellant also provided purchase invoices for  
10 each sale of tires and parts. The Department compared the  
11 resale sales of tires and parts to the cost of tires and  
12 parts and calculated a resale markup of 33.29 percent; and  
13 that will be on your Exhibit B, pages 126 through 132.

14 To support Appellant's sales for resale,  
15 Appellant provided a schedule of sales for year 2007 but  
16 did not provide sales invoices to support the amount  
17 reflected on that schedule of sales; and that will be on  
18 your Exhibit B, page 60. From the year 2007 schedule of  
19 sales, the Department identified the sales for resale of  
20 tires and parts and calculated a resale sales percentage  
21 of 1.51 percent using reported taxable sales; and that  
22 will be on your Exhibit B, page 61.

23 To verify the accuracy of purchases reflected on  
24 the statement of income and on the federal income tax  
25 returns, the Department conducted a vendor survey of

1 Appellant's 12 known vendors using contact information  
2 listed on purchase invoices provided by Appellant; and  
3 that will be on your Exhibit B, pages 111 to 113. The  
4 Department was only able to obtain purchase information  
5 from 8 vendors out of 12. Using the purchase information  
6 obtained from the 8 vendors, the Department calculated  
7 tires and parts purchases from January 2007 to  
8 December 2009; and that will be on your Exhibit B,  
9 page 62.

10 The Department compared the purchases reflected  
11 on statement of income for the eight vendors with  
12 purchases reflected on vendor statements and calculated  
13 unrecorded purchase percentages for years 2008, 2009, and  
14 2007; and that will be on your Exhibit B, page 62. The  
15 overall unrecorded purchase percentage was 228.81 percent  
16 for these three years.

17 The Department used the purchases reflected on  
18 Appellant's statement of income and unreported purchase  
19 percentages to estimate audited purchases from  
20 January 2007 through December 2009; and that will be on  
21 your Exhibit B, page 58. Two of the eight vendors  
22 provided purchase information for the period April 1st,  
23 2005, through December 31, 2006; and that will be on your  
24 Exhibit D, page 33, and Exhibit B, pages 63 to 85.

25 The Department did not receive the purchase

1 information for year 2006 from the other six vendors that  
2 provided purchase information for January 2007 through  
3 December 2009. Therefore, the Department estimated  
4 purchases of \$167,001 for the other six vendors using  
5 vendor provided purchase information for year 2007,  
6 instead of \$743,266 using audited purchases for year 2007,  
7 to give a benefit of \$576,265 for year 2006; and that will  
8 be on your Exhibit D, pages 33 and 38.

9 THE INTERPRETER: Can you repeat that, please?

10 MR. SAMARAWICKREMA: Yeah. Therefore, the  
11 Department estimated purchases of \$167,001 for the other  
12 six vendors using vendor provided purchase information for  
13 year 2007, instead of \$743,266 using audited purchases for  
14 year 2007, to give a benefit of \$576,265 for year 2006;  
15 and that will be on your Exhibit A, pages 33 and 38. The  
16 Department also computed the cost of resales using resale  
17 sales percentage, reported taxable sales, and resale  
18 markup from January 2006 through December 2009; and that  
19 will be on your Exhibit D, page 30.

20 The audited purchases and cost of retail sales  
21 were used to compute audited purchases available for sale  
22 at retail from January 2006 through December 2009; and  
23 that will be on your Exhibit A, page 30. Using the  
24 audited purchases available for sale at retail, the  
25 Department recalculated Appellant's overall reported

1 markup of negative 73 percent; and that will be on your  
2 Exhibit A, page 41. The audited total purchases of around  
3 \$7 million is also two times larger than the reported  
4 total sale of around \$3.5 million for the period  
5 January 1st, 2006, through December 31st, 2009; and that  
6 will be on your Exhibit A, pages 15 and 30.

7 In other words, according to Appellant's reported  
8 sales, Appellant was losing money every time it made a  
9 sale. As mentioned earlier, because of negative reported  
10 markups the Department rejected Appellant's reported  
11 taxable sales for the audit period. The Department then  
12 estimated the audited taxable sales of around \$8.3 million  
13 from January 1st, 2006, through December 31st, 2009, using  
14 audited purchases available for sale at retail and the  
15 audited markup factor.

16 Audited taxable sales were compared with reported  
17 taxable sales of around \$2.4 million to compute a  
18 percentage of errors.

19 THE INTERPRETER: A percentage -- can you repeat  
20 that?

21 MR. SAMARAWICKREMA: Audited taxable sales were  
22 compared with reported taxable sales of around  
23 \$2.4 million to compute percentage of errors. The  
24 Department applied the percentage of errors to reported  
25 taxable sales in corresponding periods and applied the

1 year 2006 percentage of error to the period  
2 April 1st, 2005, through December 31st, 2005, to establish  
3 understated taxable sales of around \$6.3 million for the  
4 audit period; and that will be on your Exhibit A, page 29.

5 The Department compared the unreported taxable  
6 sales with reported taxable sales of around \$2.7 million  
7 to compute an error rate of 229.15 percent for the audit  
8 period. That will be on your Exhibit A, page 29.

9 Appellant claims that the audited taxable sales were  
10 excessive and overstated because Appellant learned that  
11 unknown person not associated with Appellant had been  
12 using his account to make unauthorized cash purchases from  
13 his supplies during the audit period.

14 Appellant claims, therefore, that these purchases  
15 should not be included in the purchases available for  
16 sales since they were not made by Appellant.

17 THE INTERPRETER: The interpreter needs a second  
18 to get a new note pad.

19 JUDGE ALDRICH: Okay. We'll just stay on the  
20 record but take your time.

21 THE INTERPRETER: Thank you. Interpreter ready.

22 JUDGE ALDRICH: Great. Continue please.

23 MR. SAMARAWICKREMA: Appellant appealed at the  
24 appeals conference to provide evidence of such  
25 unauthorized purchases. However, on April 11th, 2013,

1 Appellant informed the Department that he was unable to  
2 obtain any information of the unauthorized purchases from  
3 his vendors; and that will be on your Exhibit F, page 174,  
4 line 27 and line 28.

5 To date Appellant has not provided any documents  
6 listing the unauthorized purchases that he claims for the  
7 audit period. Appellant has not provided any  
8 documentation to show that any of the purchases listed on  
9 Appellant's vendor records were not his purchases. As  
10 such, there's no basis to make any adjustments to the  
11 audited purchases using this audit. The Department finds  
12 that the vendor purchase information and the purchase  
13 invoices dated July 2008 constitute the best available  
14 information to determine the unreported sales tax for this  
15 Appellant.

16 The Department imposed a 25 percent fraud penalty  
17 for the audit period. The Department also issued a  
18 memorandum recommending the imposition of a fraud penalty;  
19 and that will be on your Exhibit C. Appellant claims that  
20 the Department has not shown specific acts, such as  
21 falsified records, demonstrating intent to evade the tax.  
22 Appellant also argue the Department has not presented  
23 documentation of verifiable evidence of fraud. The  
24 Department notes that the circumstantial evidence may be  
25 relied upon in establishing fraud.

1            Yet, the Appellant willfully and intentionally  
2 participated in an attempt to evade payment of tax due to  
3 the State. He handled his business affairs in such a  
4 manner to avoid recordkeeping of his transaction and acts  
5 or statement which could mislead or concede by not  
6 recording large amounts of actual purchases and sales.  
7 The Department found four indicators to support the  
8 evidence of fraud or the intent to evade taxes.

9            First, as mentioned, the Department obtained  
10 purchase information from eight of Appellant's vendors  
11 from January 2007 through December 2009. Merchandise  
12 purchases from these vendors exceeded the total sales  
13 Appellant reported on the corresponding sales and use tax  
14 return by around \$1.1 million for the period  
15 January 1st, 2007, through December 31st, 2009; and that  
16 will be on your Exhibit A, pages 15 and 40.

17            The Department also noted Appellant recorded five  
18 purchases from a vendor named Dapper of around \$600 for  
19 year 2007, around \$1,500 for year 2008, and none for year  
20 2009.

21            THE INTERPRETER: Can you repeat that, please?

22            MR. SAMARAWICKREMA: Yeah. The Department also  
23 noted Appellant recorded tire purchases from a vendor  
24 named Dapper of around \$600 for year 2007, around \$1,500  
25 for year 2008, and none for year 2009. However, Dapper's

1 records show that Appellant had purchases totaling around  
2 \$650,000 in 2007, around \$625,000 in 2008, and around  
3 \$680,000 in 2009; and that will be on your Exhibit B,  
4 page 63 and pages 111 to 113.

5 Although Dapper seems to be Appellant's largest  
6 tire supplier, Appellant failed to account for almost  
7 100 percent of those purchases.

8 THE INTERPRETER: Can you repeat the name,  
9 please?

10 MR. SAMARAWICKREMA: Dapper, D-a-p-p-e-r.

11 Failure to record such a significant portion of  
12 Appellant's purchases cannot be explained by negligence or  
13 lack of business knowledge. The Department finds the  
14 failure to record over \$600,000 in purchases each year is  
15 evidence of fraud or intent to evade taxes. The  
16 Department also found evidence of fraud between years 2005  
17 and 2006. Merchandise purchases from just the two vendors  
18 who provided purchase information from April 2005 through  
19 December 2006 exceeded the total sale Appellant reported  
20 on the corresponding sales and use tax return for that  
21 period by around \$100,000; and that will be on your  
22 Exhibit A, page 15 and Exhibit B, pages 63 to 85.

23 Second, the Department noted that bank deposits  
24 from January 2007 to December 2009 from sales proceeds of  
25 around \$6.4 million exceeded total sales reported on the

1 sales and use tax return of around \$2.7 million by around  
2 \$3.7 million. The Department calculated these differences  
3 represent an error rate of 137.55 percent.

4 THE INTERPRETER: 37.55?

5 MR. SAMARAWICKREMA: 137.55.

6 Thus, sales Appellant reported on the sales and  
7 use tax returns were less than half of his bank deposits  
8 from sales proceeds from this period; and that will be on  
9 your Exhibit B, page 135. Appellant has not explained why  
10 deposits from sales proceeds exceed sales reported on the  
11 sales and use tax returns. The Department finds this is  
12 further evidence of fraud or intent to evade taxes.

13 Third, the Department notes in particular that  
14 Appellant used sales invoices that were not numbered,  
15 making it practically impossible to determine if all  
16 invoices were available. The Department finds that a  
17 failure to assign invoice numbers in conjunction with  
18 other evidence is also an indication of fraud or intent to  
19 evade payment of tax.

20 Fourth, Appellant had knowledge regarding his  
21 responsibility to report his sales. For 23 years  
22 Appellant's family operated this business under the same  
23 business name and at the same location before this  
24 business transferred to Appellant on April 1st, 2005; and  
25 that will be on your Exhibit K. Appellant's website

1 specifically says, "Serving in La Puente, West Covina, and  
2 Rowland Heights since 1982."

3 MS. CHENG: Say that again, the last part.

4 MR. SAMARAWICKREMA: Since 1982.

5 When Appellant applied for a sellers permit on  
6 June 1st, 2005, the Department provided Appellant with  
7 forms and publication, including Publication 51, the  
8 resource guide to tax products and services for small  
9 businesses which explain that permit holders are required  
10 to report their sales of tangible personal property; and  
11 that will be on your Exhibit J, page 266. Appellant's  
12 knowledge regarding sales and use tax is evidenced by the  
13 fact he charged sales tax reimbursement on sales invoices  
14 and signed his sales and use tax returns; and that will be  
15 on your Exhibit I, pages 244, 248, 251, 255, and 260.

16 Appellant also had knowledge regarding his  
17 responsibility to maintain complete and accurate books and  
18 records and to ensure his reported amounts of taxable  
19 sales were correct. Those same forms and publications  
20 informed Appellant of his sales and use tax reporting  
21 requirements and instructed Appellant on how to accurately  
22 report his sales and use tax liabilities. Here,  
23 Appellant's total understatement of around \$6.3 million is  
24 a substantial deficiency representing an error rate of  
25 229.15 percent when compared to reported taxable sales of

1 around \$2.7 million; and that will be on your Exhibit D,  
2 page 29.

3 The failure to record such a significant portion  
4 of Appellant's sales cannot be explained by negligence or  
5 lack of business knowledge. Appellant had a continuous  
6 pattern of material understatements throughout this audit  
7 period, but he could not provide a credible explanation  
8 for those large discrepancies. The Department believes  
9 that large recurring errors that happen without any  
10 explanation consistent with lawful purposes constitute  
11 strong evidence of fraud.

12 Therefore, the Department concluded that  
13 Appellant willfully disregarded his own actual taxable  
14 sales and purchase amounts, and that his actions could  
15 only be described as fraudulent and as an act to  
16 intentionally evade the payment of tax for the audit  
17 period. The Department finds there is a clear and  
18 convincing evidence of fraud or intent to evade taxes for  
19 the audit period, and that the 25 percent fraud penalty  
20 was properly imposed for the audit period. Thus, the  
21 Department rejects Appellant's argument.

22 Appellant also claims that taxes for the period  
23 April 1st, 2005, through December 31st, 2006, were beyond  
24 the applicable statute of limitations. The application of  
25 fraud penalties can extend determination beyond the

1 three-year statute of limitation set forth in Revenue &  
2 Taxation Code Section 6487(a). Therefore, tax can be  
3 assessed, and penalties imposed for the period in which  
4 Appellant intentionally understated the tax liability.

5 As previously mentioned, the Department has shown  
6 clear and convincing evidence to establish evidence of  
7 fraud. Thus, the Department rejects this argument.  
8 Appellant has not provided any reasonable documentation or  
9 evidence to support an adjustment to the audit finding.  
10 Therefore, the Department request the appeal be denied.

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

13 Thank you.

14 JUDGE ALDRICH: This is Judge Aldrich. Thank  
15 you, Department.

16 I'm going to ask my fellow co-panelists to see if  
17 they have any questions for the Department. Judge Wong?

18 JUDGE WONG: This is Judge Wong. I have no  
19 questions. Thank you.

20 JUDGE ALDRICH: Judge Long?

21 JUDGE LONG: This is Judge Long. No questions.

22 JUDGE ALDRICH: Okay. And Appellant's counsel,  
23 would you like to take some time to present a closing  
24 argument or rebuttal?

25 I'm sorry, but I believe you're muted.

1 MS. CHENG: Thank you. I heard earlier something  
2 by the Department regarding three locations. I don't  
3 think I caught that. I think he mentioned something about  
4 La Puente, Rowland Heights, and West Covina. Can I ask  
5 him to repeat what he had stated?

6 JUDGE ALDRICH: So, Department, were you just  
7 referring to their website, that the website said it was  
8 serving those areas? Or were you suggesting that there  
9 were multiple locations?

10 MR. SAMARAWICKREMA: This is Nalan  
11 Samarawickrema. According to the website, it specifically  
12 says the Appellant was serving in the City of West Covina,  
13 La Puente, and Rowland Heights. It doesn't mean that they  
14 have three locations. It only says they are serving  
15 customers in those areas.

16 JUDGE ALDRICH: Thank you. This is  
17 Judge Aldrich.

18 Appellant's counsel, does that clarify things for  
19 you?

20 MS. CHENG: Yes. I just wanted to make that  
21 clear to the panel, because I'm aware that there's also  
22 another location called -- I think it's, like, Puente  
23 Tires or something that has no affiliation with the  
24 Appellant today.

25 JUDGE ALDRICH: Okay. Is there anything else you

1 would like to add, Appellant's counsel?

2 MS. CHENG: Yes, just my closing, briefly.

3 JUDGE ALDRICH: Please proceed when you're ready.

4

5 CLOSING STATEMENT

6 MS. CHENG: Fraud is not presumed, and it has to  
7 be determined by clear and convincing evidence taking into  
8 consideration all the facts and circumstances of the case.  
9 The burden of proof is on the Tax Board to show that  
10 Appellant had a specific intent to evade taxes. The  
11 Department stated that fraud was found because Appellant  
12 failed to provide complete purchase invoices and journals  
13 for the audit period.

14 The Department stated that fraud was found  
15 because the invoices provided were not numbered, but  
16 negligence and doing so does not constitute fraud. The  
17 fact that Appellant could have done a better job with his  
18 bookkeeping practices does not show an intent to fraud.  
19 Appellant testified that he did not have any business  
20 training and no accounting system in place and that he  
21 would only handwrite all of the receipts and invoices. He  
22 would in turn then provide them to his CPA on a regular  
23 basis, and he has done the same practice since the 1980s  
24 with no issues.

25 Pursuant to Marchica versus State Board of

1 Equalization, the failure to file a correct return does  
2 not constitute fraud. An understatement on a tax return  
3 made from the result of ignorance, bad advice, mistake,  
4 negligence, or misinterpretation of the law, but none of  
5 them itself constitute fraud. Appellant provided  
6 testimony that he relied upon Mr. Lopez who he believed to  
7 be a licensed CPA to prepare his tax returns. He was not  
8 licensed, and as soon as the audit began Mr. Lopez  
9 disappeared.

10 In fleeing, he advised the Appellant that he  
11 should flee himself, but Appellant did not do so. Why?  
12 Because Appellant honestly believed he had committed no  
13 wrongdoing. And, in fact, Appellant is the victim in this  
14 situation himself. Appellant never authorized or  
15 instructed Mr. Lopez to underreport sales, and he never  
16 authorized or instructed him to do anything contrary to  
17 the law. If Mr. Lopez is found to be an agent of  
18 Appellant, Mr. Lopez obtained that agency under false  
19 pretenses by representing himself to be a licensed CPA who  
20 was authorized to prepare taxes on the Appellant's behalf.

21 Finally, one of the Tax Board's main reasons for  
22 finding fraud in this case was that the bank deposits  
23 exceeded the reported sales amount, but Appellant fully  
24 cooperated and provided all bank statements to the  
25 auditors. If Appellant had the intent to evade taxes, he

1       could have simply not deposited all amounts received to  
2       make the bank statements match up, but he did not do so.

3               Appellant also testified that he mistakenly uses  
4       the same bank account for his business and personal uses,  
5       which could also explain any inaccuracies. However,  
6       ignorance or however incorrect this practice was, this  
7       does not show that he intended to defraud. In conclusion,  
8       the Tax Board admits that all they have in this case is  
9       circumstantial evidence to establish fraud. Given the  
10      facts and circumstances of this case, such circumstantial  
11      findings are not sufficient to show fraud by clear and  
12      convincing evidence.

13              Appellant may be responsible for trusting the  
14      wrong people, or he may be negligent for not keeping  
15      adequate records, but that does not mean he had a specific  
16      intent to defraud the government. Again, the burden of  
17      proof is on the Department, and the Department has failed  
18      to meet that burden here.

19              Thank you.

20              JUDGE ALDRICH: This is Judge Aldrich. I believe  
21      we have one or two more questions.

22              Judge Wong, did you have a question?

23              JUDGE WONG: This is Judge Wong. Actually, I  
24      have two questions. My first question is regarding the  
25      bank deposits. I believe Department mentioned, like,

1       there was \$6 million of deposits in the bank.  If not all  
2       of that was from the business, where did the other  
3       deposits come from?

4               This is for Mr. Navarro.

5               MR. NAVARRO:  I couldn't hear that.  I couldn't  
6       hear it.

7               JUDGE WONG:  This is -- the translation or my  
8       question?

9               MR. NAVARRO:  I couldn't hear you, the  
10      interpreter.

11              Can you repeat the question, please?

12              JUDGE WONG:  Sure.  The Department indicated that  
13      there was \$6 million of deposits, and your counsel has  
14      indicated that not all of those came from your business.  
15      So where -- what other sources of bank deposits were  
16      there?

17              MR. NAVARRO:  I don't remember.  Is that per  
18      year?

19              MS. CHENG:  I could have misheard him, but I  
20      believe he testified earlier that he used the same account  
21      for things that are unrelated to La Puente.  For instance,  
22      I think he said he sold a car at one point, and the  
23      proceeds of that were also deposited into that account.

24              MR. NAVARRO:  Oh, I fix cars.  I fix old cars.  
25      Sometimes I buy them, fix them, and then sell them.  And I

1       only have one account, so everything goes into that one  
2       bank account.

3               JUDGE WONG:   Okay.  Thank you.  Just another last  
4       question.  Who prepared your federal income tax returns  
5       from 2005 to 2009?  Was it the same person who prepared  
6       your sales and use tax returns?

7               MR. NAVARRO:  I don't remember.  I don't think  
8       that was him.  I think it was somebody else.  It wasn't  
9       him.  He was only in charge of the business.

10              JUDGE WONG:  This is Judge Wong.  Thank you.  No  
11       further questions.

12              JUDGE ALDRICH:  Judge Long, did you have any  
13       questions?

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

16              JUDGE ALDRICH:  Okay.  Appellant's counsel, is  
17       there anything else you would like to add before we  
18       conclude?

19              MS. CHENG:  Subject to the additional  
20       documentation that we will try to provide within 45 days,  
21       I have nothing further.

22              JUDGE ALDRICH:  Okay.  Thank you.

23              So thank you, everyone, for your time and for  
24       being flexible with the hearing format.  We're ready to  
25       conclude the hearing.  The record will close pursuant to

1 the orders that I'll be issuing subsequently. As I  
2 previously mentioned, it's 45 days for Appellant and  
3 followed by 45 days from the response of Appellant for the  
4 Department.

5 The panel will meet and decide the case based off  
6 of the evidence and arguments presented. We will send  
7 both parties our written decision no later than 100 days  
8 from the close of the record.

9 While this hearing has concluded, there are more  
10 hearings today. The hearing calendar will resume at  
11 approximately 1:00. Let me confirm that. Yup, at 1:00.  
12 Thank you very much.

13 (Proceedings adjourned at 12:43 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 13th day of December, 2021.

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