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APPEARANCES:

Panel Lead: ALJ SHERIENE RIDENOUR

Panel Members: ALJ JOSHUA ALDRICH
ALJ MIKE LE

For the Appellant: M. HOMAMI

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

COURTNEY DANIELS
CHRISTOPHER BROOKS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-11 were received at page 7.)
(Department's Exhibits A-D were received at page 7.)

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Sacramento, California; Wednesday, December 15, 2021

1:13 p.m.

JUDGE RIDENOUR: M. Homami, et al, doing business as Persian Grill, OTA Case Number 18011998. Today's date is Wednesday, December 15th, 2021, and the time is 1:13 p.m. This hearing is being convened in Sacramento, California.

Today's hearing is being heard by a panel of three administrative law judges. My name is Sheriene Ridenour, and I'm the lead judge. Judges Josh Aldrich and Mike Le are the members of this tax appeal panel. All three judges will meet after this hearing and produce a written decision as equal participants. Although the lead judge conducts this hearing, any judge on this panel may ask questions or otherwise participate to ensure that we have all the information to decide this appeal.

For the record, will the parties please state their names, and who they represent, starting with the representatives for CDTEFA.

MS. DANIELS: Hi. My name is Courtney Daniels I'm here for the Department with Christopher Brooks and Jason Parker.

JUDGE RIDENOUR: All right. Thank you.

And Mr. Homami, please introduce yourself.

1 MR. HOMAMI: My name is Masoud Homami. I'm the
2 former owner of Persian Grill.

3 JUDGE RIDENOUR: Thank you. This is
4 Judge Ridenour. Thank you.

5 As discussed and agreed upon by the parties at
6 the prehearing conference on November 16th, 2021, and as
7 stated in my minutes and orders, dated
8 November 18th, 2021, there are two issues on appeal. They
9 are whether Appellant has established that a reduction to
10 the amount of disallowed claimed exempt sales to the
11 United States government is warranted; and whether
12 Appellant has established that a reduction to the amount
13 of unreported taxable sales is warranted.

14 As for exhibits, each parties' exhibits are
15 listed in an exhibit log, which was attached to the
16 minutes and orders, as well as provided in an exhibit
17 binder, which was emailed to the parties after the
18 prehearing conference. Appellant submitted Exhibits 1
19 through 11, and CDTFA submitted Exhibits A through D.
20 During the prehearing conference, CDTFA raised no
21 objections to Appellant's exhibits.

22 Appellant's Exhibits 8 and 9 consist of medical
23 records, which are personal information. Therefore, we
24 order them sealed pursuant to California Code of
25 Regulations, title 18, sections 30213 subdivision (a) (10)

1 and 30430 subdivision (b).

2 Appellant raised an objection to CDTFA's
3 Exhibit D. CDTFA's Exhibit D is a revised audit that
4 CDTFA performed during the pendency of this appeal.
5 Appellant raised an objection to Exhibit D because
6 Appellant disagrees with the revised measure of tax
7 proposed to be assessed in Exhibit D.

8 As we discussed during the prehearing conference,
9 Appellant's objection and disagreements relate to the
10 merits of the revised audit, which is at issue on appeal,
11 and Appellant will have the opportunity to make arguments
12 regarding the audit during this hearing. Therefore, we
13 concluded that we are overruling the Appellant's objection
14 based on Exhibit D being relevant.

15 Therefore, pursuant to my minutes and orders,
16 Appellant's Exhibits 1 through 11 were admitted into
17 evidence, with Exhibits 8 and 9 ordered sealed, and
18 CDTFA's Exhibits A through D were entered into evidence.

19 (Appellant's Exhibits 1-11 were received
20 in evidence by the Administrative Law Judge.)

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

23 JUDGE RIDENOUR: Mr. Homami indicated that he'll
24 be testifying as such today, as such that he will be sworn
25 in before his presentation. There are no other witnesses

1 today.

2 As a reminder to the parties, during the
3 prehearing conference, we decided that Mr. Homami will
4 have 45 minutes to make his presentation, followed by
5 CDTFA having 15 minutes to make its presentation. Then
6 Mr. Homami will have five minutes to provide closing
7 remarks, should he choose to.

8 Does anyone have any questions before we move on
9 to the presentations? Mr. Homami?

10 MR. HOMAMI: Okay.

11 JUDGE RIDENOUR: Do you have any questions?

12 MR. HOMAMI: No.

13 JUDGE RIDENOUR: No.

14 CDTFA? Ms. Daniels?

15 MS. DANIELS: No.

16 JUDGE RIDENOUR: No. Okay. Thank you.

17 This is Judge Ridenour. We're ready to proceed
18 with Mr. Homami's presentation.

19 However, first I need to place you under oath so
20 we can consider your statements as testimony, and you will
21 remain under oath until the close of this hearing. Can
22 you please raise your right hand?

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M. HOMAMI,

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

JUDGE RIDENOUR: This is Judge Ridenour. Thank you. When you're ready, Mr. Homami, please begin your presentation.

MR. HOMAMI: That is for 45 minutes?

JUDGE RIDENOUR: Yes.

PRESENTATION

MR. HOMAMI: Okay. I can start, actually, from the beginning how I can -- I can actually get to him, this -- this position right now. That is that the person who actually inspired me to actually go to open the restaurant because it wasn't any person, actually. It was the dean of the DNI Middle Eastern Department. He told me, actually, that you can open your restaurant, and then we can send our service man or women to go over there to -- to actually practice their languages and learn the culture. Also, they ask me to actually do the choreography of the Persian rite.

JUDGE RIDENOUR: Mr. Homami, can I interrupt you real quick? Can you put the mic closer to you, please?

1 MR. HOMAMI: Okay. That was - that was the name
2 of the person. It was Mr. Mahmoud [INDISCERNIBLE]. He
3 was the dean of the Middle Eastern Department Order. And
4 if you don't want me to mention his name in the beginning
5 when we started, he said he don't want the other people to
6 think they get some benefit out of this -- this, for
7 example, the idea. He told me you can establish your
8 restaurant and then -- as a instrumentalities.

9 JUDGE RIDENOUR: As a -- pardon me. As a what?

10 MR. HOMAMI: As a instrumentalities.

11 JUDGE RIDENOUR: Okay. Can you move --

12 MR. HOMAMI: Instrument to the Persian rite, to
13 help the -- to help the -- the learning for the man and
14 woman in the military.

15 JUDGE RIDENOUR: I'm going to ask you again,
16 Mr. Homami. I -- I understand. I had the same
17 difficulties. Can you put the mic, like, extremely close
18 to your mouth?

19 MR. HOMAMI: Okay. This is good?

20 JUDGE RIDENOUR: That's much better. Thank you
21 so much, sir.

22 MR. HOMAMI: Okay. And then -- yeah. He said
23 that's about 600 students, actually. They are learning
24 the far -- the Farsi language over there. We can send
25 the -- send them periodically to your restaurant to

1 actually have Persian cuisine and also your staff,
2 actually. And I can communicate with them about their
3 conversation, how they order, for example, and also learn
4 the cuisine, and also the writing and the choreography.

5 And from the day one, that he recommended
6 sergeant, I actually come over there and join our staff.
7 The sergeant, that was -- their rank was -- I don't know
8 why they called it -- the chief military instructor. And
9 he actually came on board for the -- for the day one. He
10 wanted to work from 4:30 to 9:30 in my restaurant. He
11 was, I think, a high-paying active military person. But
12 he didn't need the job, or he didn't have any skill of
13 cooking or any, for example, any -- any restaurant, for
14 example, the experience.

15 And I thought that he was the one they send over
16 as a -- as a, for example, the security for the military
17 people. They come over there. They don't want to
18 [INDISCERNIBLE]. There's something that can be done to be
19 harmed over there. And he was actually undercover. They
20 came over from day one. And he told me to about
21 [INDISCERNIBLE]. I asked him about the -- they are
22 getting the contract with the military. And he told me if
23 you are inside the military, if you come, I can open your
24 restaurant inside the military installation. Then you
25 have to have a very strict agreement with the government.

1 But when you are outside the premises that is, a
2 simple agreement is going to be enough, for example, for
3 you to do the business. And that is all I actually -- for
4 approximately to go get the -- the agreement from them.
5 And I saw -- I thought that is -- is going to be just one
6 side of -- one side of that, I think, because they are not
7 actually obligated to do anything. It is only me. I have
8 to, for example, give them the service. I give them the
9 food. I'm just not charging the tax. That was it.

10 And then that is why I actually procrastinated
11 and didn't go get the agreement. I tried two or three
12 times, and I tried to do that to get the agreement. But
13 getting to the military installation, it was very
14 difficult. Anytime I go there, I ask them. They say what
15 you want to do? I say I wanted to talk to, for example,
16 there is a public relation. I wanted to get that
17 agreement. They say, okay. You have to actually send a
18 letter or something to them or email, then we can actually
19 give you an appointment or whatever.

20 That's why it's just going back and forth. It
21 took nine years after that for -- I was doing this. I was
22 doing, actually, I didn't collect the tax for the military
23 people who came over there, and then they gave me all
24 their IDs. They say this is a -- this is a military
25 person, and I didn't charge on tax. And for nine years, I

1 think that is how long I actually opened the business.

2 I got the -- the refinance my home, about
3 \$213,000 and pull out from my home, and then I put it into
4 this restaurant. And this was -- this was actually -- and
5 still today I'm paying every month \$1,000 for the things
6 that are actually lost with the business. And Mr. Rodman
7 was the person that actually came over there as a
8 coordinator with the -- the military and our staff. And
9 he was working in my establishment from 4:30 to 5:30
10 everyday. He started the operation in 2000 -- 2005 to
11 2006 and continued the business until 2014.

12 And no one actually raised the red flag for me to
13 say, for example, you are doing it wrong. You should
14 have, for example, the agreement or the piece of paper.
15 It says, for example, that you are not charging the tax to
16 military people. What I did, I did. I thought that is a
17 patriotic thing to do. And I was -- I was doing it, and I
18 was proud to do that. And everyday we worked about -- my
19 wife and my -- both without pay all these years. The
20 evidence of this, you can take a look at our -- our tax
21 returns to see we didn't have to get any benefits out of
22 this restaurant. We just actually put our money in there
23 and created jobs for nine years, and then after that we
24 actually lost it.

25 In March 2 to March 7, 2012, my wife actually get

1 into a major accident, and they airlift her to -- to Santa
2 Clara Hospital. And she actually got very -- the --
3 actually very bad injuries, and she got disabled from that
4 one. And she couldn't help me at the restaurant at that
5 time from 2012. And then I have to do it everything
6 alone. And then it seems like it evolved. I didn't have
7 time. I have to actually take her back and forth to the
8 hospital, and that's why I have to actually hire someone
9 else to come and help in the restaurant. And I couldn't
10 do it all together. I was doing it for free, and then I
11 have to pay the people to actually come and help me.

12 On the -- and then we were actually falling back
13 on the rent, on the expenses and everything as everything
14 got worse. And we were falling behind on -- and we were
15 under pressure from the landlord from here and then from
16 the suppliers. And we couldn't pay it. That's why,
17 actually, I file bankruptcy. And -- and the bank,
18 actually -- the bankruptcy discharge is there, actually,
19 as an exhibit. We actually put it in there. And I
20 actually kept the restaurant at that time. And we
21 actually thought maybe we are able to sell it to someone,
22 and I can get some money.

23 And then we get lucky to sell it. But on,
24 actually, November 30th that is we run out of options. We
25 couldn't sell it, and no one come forward to buy it. And

1 that is why, actually, we close the restaurant on
2 November 30th, 2014, and we close the restaurant at that
3 time. And then after that, the Board of Equalization I
4 could send -- send us after. After that, I don't what it
5 was. They send us a letter there for the audit, and I
6 told them this restaurant is closed. I didn't know. I
7 didn't know, actually, that says they closed restaurant.

8 The business, actually, went out of business and
9 still it's subject to audit. I thought that we are
10 actually done. In nine years when I was doing this kind
11 of practices, and I was doing it the same. And there's
12 nine years too, and no one actually tell me, for example,
13 you are doing it wrong. And finally at this stage they
14 tell me, actually, give us some information, whatever you
15 have. Then I wanted to actually make a deal with the
16 landlord. I told him I wanted to actually leave
17 everything I have; all the equipment, all the computer.

18 I'm sorry. The computer and network and
19 everything I have over there. And I put it over there,
20 and then you can sell it to give it to someone else to
21 come -- a new tenant -- and use this. For example, that
22 was about \$15,000 worth something that I had in the
23 restaurant. And finally they find someone. And they said
24 if you put your network intact and don't actually
25 dismantle it, and they can come and start using it for

1 the -- in the day one, you can actually do it.

2 We can -- we can actually forgive, for example,
3 the rent or the person actually come in. They can then
4 pay your back rent. And I accepted it. And from that
5 time I start, actually, cleaning up all those computers.
6 I didn't have -- because the -- from the tax court they
7 retain, I kept my information on the laptop. I never have
8 laptop in my premises. I had two computers. It was one
9 of them it had a Maitre'D that was a software, actually,
10 doing the business for restaurant. I had it in the back
11 office. And I start cleaning up all of those things and
12 delete all the files for Persian Grill. I didn't want it,
13 actually, all the information from the customers to
14 actually -- for the customers' security.

15 I -- I did all of them. I did all of them. I
16 didn't know actually that later on I'm going to be
17 audited. I delete it, and then I delivered everything,
18 actually, to landlord. I give the key and all the
19 equipment intact because there -- and then I receive the
20 letter from the articles. They said they wanted to,
21 actually, some information. I went back to -- to the --
22 my old restaurant and asked them if -- if I can take a
23 look at my back office. And I restored some of the files
24 actually, just my cash register report.

25 I got the cash register reports from the --

1 restored from -- from the deleted file. And then those
2 cash register reports are raw information. It does have
3 all the errors, all the duplicates, and everything in it.
4 And I -- I just hand it over to the tax agency and to do
5 that for them to take a look at it. And finally they send
6 me a bill and say you have to actually charge the customer
7 that you claim, and that was in the military. You're not
8 supposed to give them a tax free. You actually have to
9 charge them taxes. I said I didn't charge them tax. I
10 didn't collect the tax. They say you have to pay.

11 And then I'm not at the position that I came to.
12 I am -- all of my fixed income. I take social security.
13 And my wife had it a small business. Actually, that was
14 just a hair salon. She was actually making a few. My tax
15 return shows actually how much she made. We didn't have
16 that much money, actually, to pay. And still I'm paying,
17 for example, for -- for \$1,000 a month. That's still
18 today is 2021. That's still every month I'm paying \$1,000
19 for the restaurant, for the loan. Actually, I get it from
20 my -- I tried to actually get a loan for my small
21 business. They didn't give me. That's why they didn't
22 give me. They denied me because I didn't have a good
23 credit.

24 And the -- and these are -- they find, for
25 example, some discrepancies in my -- in my, actually,

1 file. I -- I am not a perfect person, and the people
2 actually working in the kitchen in the restaurant, for
3 example, the server. Those are not the expert, for
4 example, without error. They are making lots of errors in
5 that one. I can explain how the error actually made.

6 The service member, when they came over there,
7 for example, they are coming in the group. We were taking
8 their order. They are not paying in the first place.
9 They have to sit down and eat, and all the things actually
10 are done. And then after that, they actually come to the
11 payment. And then those people when they come over there
12 they -- for example, eight people come into the
13 restaurant. There was a problem with the Maitre'D. I had
14 the old version of Maitre'D software that was the -- it
15 had problem with the splitting the table.

16 For example, the person wanted to actually pay
17 separate from the total bill. That was problem with
18 splitting the table, and it did have problem with the --
19 with the gift card. These two problems was exist from the
20 day one. And anytime eight people come, for example, to
21 have dinner, at the end they were saying, okay, we will
22 have to split the table. And the sever didn't know how to
23 split. They close this ticket as a cash, and they try to
24 open the new -- the new table for every individual, and
25 they take the ticket to the kitchen.

1 They just -- they don't let the -- the ticket go
2 to the kitchen because they already deducted their food.
3 And at the end of the day when they want to reconcile
4 their -- their account, they were bringing those -- those
5 table. They close it as a cash, but they didn't get cash.
6 But they close it as a cash, and then they give us all
7 those tickets like they didn't go to the kitchen. So I
8 say, okay. We will actually reconcile those tickets. We
9 supposed to -- we actually kept all of those things in the
10 binders everyday. And those binders, unfortunately, I
11 destroyed all of them. I don't have them. I don't have
12 those things to represent it.

13 I am -- I am not a dishonest person. I am -- I
14 serve as a public servant in the County of Monterey for 15
15 years, and that is -- that is not what -- I am. I'm not a
16 dishonest person. The thing I'm telling you, this is a --
17 this is the right things -- correct. I'm saying -- saying
18 that this is the truth. It's not right. And that is
19 another thing. And the thing, actually, the tax agent
20 did. They take my -- my cash register report, and they
21 put it -- I don't know. They convert it to Excel or
22 whatever, and they just add it up. And they say, okay,
23 this is going to be your final amount.

24 This amount, these are all -- everything there.
25 All the errors are in there. All the duplicates is in

1 there. And they claim last time they actually find the
2 duplicate. There is no way you can find the duplicate.
3 They -- they actually -- that isn't going to be on my
4 benefit if they find the duplicate, but I'm saying they
5 can't find it. Because table for eight and then return
6 it, actually, convert them to table for four. For four
7 table as a -- as a one person for each -- for eight, one
8 person. That is how only they can find duplicate. These
9 are the duplicate I'm starting -- I'm talking about.

10 The -- the table for eight first, it wasn't in
11 the cash, and they put it in every individual in another
12 table. The timestamp and the sequence number is
13 different. There's no -- no single parameter in these
14 files that is going to be -- I think we can find it as
15 a -- as a, for example, similarity to say these are
16 duplicates. These are not. I'm sorry. I'm -- maybe I
17 have to actually check these for myself. I'm looking at
18 it one by one. I want to see what it is.

19 The only mistake I -- I had, actually, my mistake
20 was I didn't pursue to get the piece of paper after that,
21 the agreement. I -- I didn't get it, this is -- the piece
22 of paper. I -- I use the tax category, actually,
23 exists -- exists in the file. I -- I use that tax
24 category. And if that piece of paper you assume, for
25 example, you have that paper, you would have actually

1 granted my file. And just the missing paper -- and I
2 couldn't -- and Mr. Tabatabaye [sic] told me after I
3 reached him when he was alive, I told him.

4 He said, if you are taking me to the Sacramento,
5 I can come and testify for you. But I told him that he
6 was actually recommended me to go get the -- get their
7 agreement. But that was what -- that was my fault. I
8 didn't do it. But the other thing, actually, all the
9 things I talked about I said Mr. Tabatabaye, first come
10 and testify. But, unfortunately, he passed away, and I
11 don't have anything. There's nothing I can present, for
12 example, as an evidence, as a paper, or whatever because I
13 destroyed it. I just want it because I'm -- I don't
14 want -- my mind -- I am -- I have a cancer, and my wife
15 has a cancer also.

16 And all of these are numbers, you know -- and
17 then I actually don't want to put burden on my -- my kids,
18 for example, to get -- to carry out all of these,
19 actually, tax liability and all of those things. I didn't
20 collect the tax. I didn't cheat, you know. Some people,
21 I think, they actually they get the tax, and they say I
22 didn't get it. But I didn't, and this paper shows. That
23 is all my cash register reports. It shows who I'm getting
24 the tax, and who I didn't get it. And that shows I didn't
25 actually collect the tax.

1 That is why I just want to -- as in -- oh, gosh.
2 For the fairness of actually that said, to be fair, I ask
3 you to actually grant my request to accept my tax filing
4 and the -- these are all the things I could get.
5 Actually, I'm not arguing about what the tax agency
6 actually did. They are doing their job. They can't
7 actually -- if they -- I don't have a paper, they have to
8 do it. Something like that because I didn't have any
9 other supporting document.

10 And they were asking about the cash, for example.
11 I had to put lots of cash because I have in my account.
12 Then I get a loan from -- for my mortgage. They said if
13 you put it in, actually, a direct deposit to your account,
14 the direct deposit you have 25 -- .25 percent discount.
15 That is why I was paying all my mortgages every month from
16 the account I created. Actually, it's the only account I
17 have for the -- for my business. That's why I put in my
18 own cash. My son actually paying every month \$1,000
19 helping me by giving me loan for paying my -- my
20 mortgages.

21 And those are all inside that. And they said
22 there was some cash, actually, deposited in your account.
23 Those cash they consider, actually, cash from the
24 restaurant, but -- but it wasn't from restaurant. There
25 was the -- the amount of actually my car crash. Actually,

1 they paid my AAA. I put it in that account. I got a loan
2 from On Deck, about \$8,000. I put it in that account.
3 Those are all they consider this -- this amount actually
4 accumulated as a restaurant income, but it wasn't.

5 These are -- I'm not a perfect person, and
6 everyone makes a mistake. And this is -- this is the
7 mistake. These are -- I just wanted you guys, actually,
8 just consider all these things for me and just believe me.
9 I am under pressure from -- from 2014 since now when
10 they -- actually I got this letter. And still I'm under
11 pressure. And I didn't bring my wife. My wife is on a
12 chemotherapy everyday. And then she couldn't actually
13 handle this kind of stress. That's why I didn't bring her
14 over here.

15 And this is -- this is what I wanted to do, and
16 I'm asking for the interest of fairness and equity, just
17 grant me whatever -- whatever I have. I don't have
18 anything else to give you. I don't have anything because
19 I just destroyed everything because I -- I thought -- I
20 didn't know. It took so long. Right now we are talking
21 about at least 2021. And from 2014, 2015 to now, that was
22 six years it took. And at that time I was wrong. This
23 time I was under pressure. I don't know.

24 That is in your hands, and I am public servant
25 like you. I appreciate it. Thank you very much.

1 JUDGE RIDENOUR: Thank you, Mr. Homami. Thank
2 you very much.

3 Ms. Daniels, does CDTFA have any questions for
4 Mr. Homami?

5 MS. DANIELS: No, we don't.

6 JUDGE RIDENOUR: Okay. Thank you.

7 This is Judge Ridenour. Judge Aldrich, do you
8 have any questions?

9 JUDGE ALDRICH: Yeah, this is Judge Aldrich.
10 Yeah, I've got a couple of questions for Mr. Homami.

11 So when you're referring to the missing piece of
12 paper, are you saying that that's some sort of contract
13 between DLI and your restaurant, or --

14 MR. HOMAMI: Yes, yes.

15 JUDGE ALDRICH: Yeah.

16 MR. HOMAMI: I'm preparing for that one because I
17 didn't pursue on that one. It's just I procrastinated
18 that one for the day one. I thought that I am doing the
19 right thing. I thought I'm doing the right thing. I -- I
20 was actually proud to do it because I thought that it was
21 the patriotic thing to do. We are actually giving all
22 these services to the military people, and they -- they
23 are not actually paying, for example, taxes for the food
24 that they are eating.

25 JUDGE ALDRICH: And is that in reference to

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off-site --

MR. HOMAMI: Off-site --

JUDGE ALDRICH: -- food services or on-site?

MR. HOMAMI: No. Off-site. I -- I wasn't inside. I was off-site. My -- my restaurant was actually close to the base -- I can explain -- base center. I was in the street. And that is why it was a little bit relief for me. Because from the beginning I thought they said strict contract with the military. If you are inside -- inside the military, then you have to have all of those things put there, you know, the security. Especially after 9/11, you know, getting to a military installation it was very hard.

I -- I don't know if you experienced that, but I -- I did several times. Even I was food delivery, food to their installation, sometimes, for example, their events, it was very hard. Very hard to get in and get out.

JUDGE ALDRICH: Thank you. And you had made a reference to an ID. Were you talking about, like, specifically a military ID or some sort of USAA credit card?

MR. HOMAMI: At that time USAA or whoever, I -- I thought that is the -- that's the military credit card.

JUDGE ALDRICH: Okay.

1 MR. HOMAMI: They go on a credit card. But right
2 now they are actually open to everyone. But at that time
3 I -- I thought that this -- those are the military -- that
4 is the government credit card.

5 JUDGE ALDRICH: And, I guess, how did you come to
6 that belief? Or why did you think that that was the
7 military credit card?

8 MR. HOMAMI: They -- they show me the -- their ID
9 also because they're in uniform. They come over there.

10 JUDGE ALDRICH: Okay. So just an association?

11 MR. HOMAMI: Yeah.

12 JUDGE ALDRICH: And then I was just hoping to go
13 through the timeline. So restaurant closes when?

14 MR. HOMAMI: About the -- that is in November
15 30th.

16 JUDGE ALDRICH: Okay. And at what point do you
17 go back to access the hard drives?

18 MR. HOMAMI: Back then they actually -- they told
19 me, actually, just send me the letter.

20 JUDGE ALDRICH: So after you got the audit report
21 or the audit engagement letter?

22 MR. HOMAMI: When they send me a letter, they
23 said you are subject to audit. And I said I don't have
24 anything. I don't have the -- nothing actually present.
25 They insisted you have to find something. Then I actually

1 went to see. I went back to the restaurant and see if
2 they don't delete all the file, or they didn't actually
3 formatted the file, maybe deleted item is still there.
4 And it was a few things actually that I got out of there.
5 I just recovered and restore from that. They let me do
6 that.

7 JUDGE ALDRICH: Okay. And so you mentioned
8 something about paper copies that you would keep. So was
9 that, like, a sales ticket? How is the record keeping in
10 general of the restaurant?

11 MR. HOMAMI: Yeah, I was actually-- that's it. I
12 was keeping it, the credit card slips, and also I kept the
13 things. Actually, they were -- when they close the
14 ticket, for example, for eight people or four people, for
15 example, and they closed it as a cash. It was at the end
16 of the day they didn't have any cash to give me. And then
17 they say, okay, this cash is this ticket, actually. We
18 didn't send it to -- we didn't send it to our kitchen to
19 make the food, and we actually cross-referenced those
20 things.

21 And those are the two things, and then we put
22 those things in the binder. And at the end of the day, I
23 can really reconcile with the server. Actually, it was to
24 reconcile his account and give him whatever tip actually
25 he is supposed to give him, and then close his account.

1 And these are the account I can't do in Maitre'D, in that
2 software. It doesn't let you do this. And then you close
3 the ticket. You can't delete it. You can't modify it.
4 Nothing. That is just going to go in your record.

5 JUDGE ALDRICH: Okay. So you said at some point
6 those binders were destroyed?

7 MR. HOMAMI: Yes.

8 JUDGE ALDRICH: Okay. When did that happen?

9 MR. HOMAMI: The time, actually, I wanted to give
10 it to them -- give it to the landlord.

11 JUDGE ALDRICH: So when you -- your business --
12 when you were vacating the -- the lease, you wanted to
13 leave --

14 MR. HOMAMI: Yeah. I -- I just didn't take it
15 anywhere. I just put it in the -- take it to Watsonville
16 at a place, a shredding office. And there was boxes, for
17 example, all the credit cards and all these binders and
18 everything, actually. There was boxes of information.
19 And I -- I didn't want to keep those things. And, you
20 know, unknowingly actually I did that. Unknowingly.

21 Then I didn't know that they were going actually
22 after nine years come after me, because I -- I was doing
23 it the same thing. I was doing it, for example, from
24 2005, 2006. All these years they didn't actually raise
25 the flag, and I thought that was -- that was right. It's

1 okay.

2 JUDGE ALDRICH: And so you had mentioned that --
3 with respect to the cash register reports that there are
4 some errors --

5 MR. HOMAMI: Yeah.

6 JUDGE ALDRICH: -- and that it may be difficult
7 for CDTFA to see what the errors are.

8 MR. HOMAMI: Oh, yeah. I explained it to them.
9 I said, that is -- that is splitting the ticket. In this
10 way I can really explain it. I don't know if I explain it
11 right or not. That is -- that's it. Eight people come to
12 the restaurant.

13 JUDGE ALDRICH: I -- I understand that part, but
14 could you point out in the exhibits an example of that
15 error -- that kind of error?

16 MR. HOMAMI: Exhibit you say? I didn't make an
17 exhibit. I just told him that is -- that is for example,
18 if you find -- find, for example, one table for eight, and
19 then after that it says that one it closes as a cash. And
20 then there are some -- one, if not after that. This not a
21 sequence. For example, if you close the reg -- close the
22 eight-person ticket, it come, for example, maybe three or
23 four or five down there.

24 It's not going to be after that. They closed
25 that ticket, for example, and they recreated one. In the

1 meantime the other customers, like, at least order the
2 food also. That is why the sequence is not going to be
3 after that, for example.

4 JUDGE ALDRICH: So I understand that you're
5 saying that the error could be out of sequence of the
6 cash --

7 MR. HOMAMI: Yeah, it is there.

8 JUDGE ALDRICH: -- register report, but I'm
9 asking could you, like, refer to a specific example in the
10 cash register report? So we have an exhibit log. It
11 looks like there's cash -- cash register reports for
12 October 1st, 2012, through December 31st, 2012. Is there
13 an example you can give in that attachment? I believe
14 it's 51 pages.

15 MR. HOMAMI: Yeah. Okay. I can do that. I can
16 find one, for example, that say it's closed as a cash, and
17 then -- actually --

18 JUDGE RIDENOUR: Mr. Homami, do you want us to
19 take a recess so you can look for it?

20 MR. HOMAMI: Pardon me?

21 JUDGE RIDENOUR: Would you like us to take a
22 recess so you could look for it, an example?

23 MR. HOMAMI: Yeah, I can do that.

24 JUDGE RIDENOUR: We can take a five-minute recess
25 at anytime.

1 MR. HOMAMI: Okay. Okay. And I find it.

2 JUDGE RIDENOUR: Okay. We're going off the
3 record and taking a five-minute recess. Thank you.

4 (There was a pause in the proceedings.)

5 JUDGE RIDENOUR: We're back on the record.

6 MR. HOMAMI: Okay.

7 JUDGE RIDENOUR: Please proceed answering
8 Judge Aldrich's question.

9 MR. HOMAMI: There is 10 -- 10/27/2012.

10 JUDGE ALDRICH: Okay. Just one second. Could
11 you say the page number of the exhibit, so --

12 MR. HOMAMI: Page -- it doesn't have page.
13 Mine -- mine doesn't have page.

14 JUDGE ALDRICH: That's okay. So the date then?

15 MR. HOMAMI: That is the sequence number is going
16 to be 126266.

17 JUDGE ALDRICH: 126266?

18 MR. HOMAMI: Yes.

19 JUDGE ALDRICH: So if anyone else is looking at
20 the exhibit binder that should be Exhibit 4, page 7 of 51.
21 Okay.

22 MR. HOMAMI: This is -- this is a cash activity.
23 It closed at \$102.91. Then later they open, for example,
24 for -- for five people. It depends, actually. You have
25 to find it. That is an individual or maybe two people

1 next to this.

2 JUDGE ALDRICH: Okay. So --

3 MR. HOMAMI: Next -- it's not -- it's not the
4 next record. It's going to be down -- down in the list.
5 And they might -- they might actually, for example, some
6 other stuff. They order something else, and they -- they
7 actually pay their own. For example, the tape and
8 everything is not going to add up the same when you split
9 it.

10 JUDGE ALDRICH: So just to, you know, there's
11 lots of different point of sale systems. But it looks
12 like in this cash register report there is a number
13 associated with the entry, a date, and then the next item
14 is a time. It looks like it's in military time, a 24-hour
15 time. So would it be fair to say that if there was some
16 sort of division it would come after 90829?

17 MR. HOMAMI: Yes. Yes. That is -- that is after
18 that. They -- they all come after -- after this record.
19 It doesn't say, for example, which one it is, but -- but
20 that is the date. It created another sequence, another
21 timestamp. Actually, it depends when it's going to end.
22 For example, after this ticket closed, they might actually
23 have a lot of customers, actually, in between. They come
24 and they pay and they go. And then after that, they are
25 going to create another record for that. These are --

1 these are very hard to actually do, but you can. But this
2 supposed what happen in my restaurant.

3 It was always when there was, for example,
4 splitting the ticket. Always they had problem. And they
5 were closing it as a cash because they -- they wanted,
6 actually, to get rid of it because very time consuming,
7 actually, for the customer. They got frustrated. They
8 would get angry, for example, when it took so long. And
9 that is why they closed it as a cash and go and create,
10 for example, individual ticket and ask them, for example,
11 what did you have to order. They have to go one by one
12 again and take their ticket to the kitchen.

13 And those -- they take the ticket to the kitchen
14 and attach it to their, for example, that file for
15 reconciliation at the end of the day. And that was --
16 that was it.

17 JUDGE ALDRICH: Thank you. I think I understand.

18 That's all the questions that I had for
19 Mr. Homami at the moment. I'm going to refer it back to
20 Judge Ridenour.

21 JUDGE RIDENOUR: This is Judge Ridenour. Thank
22 you very much.

23 Judge Le, do you have any questions?

24 JUDGE LE: This is Judge Le. I do have a
25 follow-up question on that, the point that -- so looking

1 at the -- looking at the ID that you mentioned, the
2 126266, it looks like the next entry is for the following
3 day. So the entry for 126266, the entry date is
4 October 27, 2012. And that looks to be the last entry for
5 the day. I guess my question is, wouldn't this have
6 happened on the same day at a later time?

7 MR. HOMAMI: So you're saying that the ticket is
8 10/27?

9 JUDGE LE: I'm sorry. Can you repeat that?

10 MR. HOMAMI: 10/27?

11 JUDGE LE: Yeah. So for the examples that you
12 pointed out the --

13 MR. HOMAMI: Yeah.

14 JUDGE LE: -- one for 10/27/2012.

15 MR. HOMAMI: Yeah. Then after that is the end of
16 it. I -- I think that maybe that they closed it, for
17 example, at the end.

18 JUDGE LE: Okay.

19 MR. HOMAMI: They -- they might close it, for
20 example. They might close it after they did those
21 tickets. They separate them. They say this is the one I
22 did is over here. I identify that one as the one. It
23 depends, for example, when the server closes, you know.

24 JUDGE LE: Okay.

25 MR. HOMAMI: The server actually left and maybe

1 left that thing open until the end and closed it at that
2 time.

3 JUDGE LE: I see.

4 MR. HOMAMI: Maybe, actually, they -- they -- in
5 the -- split a ticket before that.

6 JUDGE LE: I see. Okay. Thank you. No further
7 questions from me.

8 JUDGE RIDENOUR: This is Judge Ridenour. Thank
9 you.

10 Mr. Homami, I have a quick question for you.
11 Okay. So just that I can clarify, CDTFA approached you
12 for an audit, and you indicated you did not have any
13 documentation because they were left at your --

14 MR. HOMAMI: I -- I couldn't hear you.

15 JUDGE RIDENOUR: Okay. CDTFA contacted you to
16 conduct an audit, and you originally indicated you were
17 unable to get source documentation because it was left at
18 the premise of your restaurant; is that correct?

19 MR. HOMAMI: No. I don't think so. They said --
20 they said they came over there. They came over there. I
21 haven't seen them. In nine years I didn't see them.

22 JUDGE RIDENOUR: No. When they -- when they
23 approached you to conduct an audit, you originally said
24 you did not have source documentation, but then you went
25 back to the premises to find your laptops.

1 MR. HOMAMI: Yeah. When -- yeah. When they told
2 me, I went back. I think when they asked me, for example,
3 give me some information, I said I don't have it. And
4 they -- then I -- I went to find out if there is any files
5 over there. It's not. It's still in the deleted file,
6 then I can recover it. And fortunately I find the -- I
7 think that's this cash register report. That was in my
8 garbage. It wasn't in my -- if was in my Maitre'D
9 network, those all wiped out because they wanted,
10 actually, to refresh for their businesses. They wiped the
11 main and everything.

12 And all things, actually, are wiped out. But
13 this was the one actually that I got it from -- from the
14 back office. It was in my document as a -- as a pdf file
15 and I could recover those things fortunately, and I gave
16 it back to them. Because at the first time I told them I
17 don't have anything.

18 JUDGE RIDENOUR: Thank you. This is Judge
19 Ridenour. So my follow-up question is, you provided that
20 during the audit, and then on appeal you have provided
21 additional quarterly reports. However, they differ. The
22 latter ones include additional sales.

23 MR. HOMAMI: Additional sales, actually, I do
24 remember that one. There was -- there was a template.
25 Because there are discrepancies and you're talking about

1 the discrepancies for the -- for example, the tax return.
2 I put it for the federal, and the tax, actually, I filed
3 it. That is the discrepancy you're talking about?

4 JUDGE RIDENOUR: The discrepancy is that the
5 latter provided quarterly reports that show additional
6 sales that were not provided on the originals. And so I'm
7 just trying to understand how you would have two different
8 sales reports.

9 MR. HOMAMI: That was -- that was one template I
10 created. For example, I had a monthly -- monthly
11 template. I always put the monthly figures in one -- on
12 that template and put it in -- in my -- I actually add it
13 to my QuickBooks. The QuickBooks I was using. That one
14 was 13 months instead of 12 months. One month that
15 template was included. I supposed to actually change the
16 date of that -- of that template too, for example, the
17 future month. That is why I didn't -- I actually forgot
18 to do that. That was a 13 month, and the figures a little
19 actually more.

20 But they didn't -- didn't actually effect the
21 outcome. I -- I was in loss position, you know. And that
22 was different timing, you know. Then I filed, for
23 example, for the State Board. It was one time and all tax
24 return. For my federal, it was a different time. And
25 that is why I -- I just didn't crosscheck that one.

1 JUDGE RIDENOUR: I see. Okay.

2 MR. HOMAMI: And that was -- that was the problem
3 on that. That's when I found out that there was a
4 template that is 13 months instead of 12 months.

5 JUDGE RIDENOUR: Thank you. And so your Maitre'D
6 information is on a computer at the restaurant. So where
7 was the QuickBook file?

8 MR. HOMAMI: It was in my back office. Those
9 are -- those are deleted also. And I -- I never have -- I
10 never had laptop. They were actually referring that I
11 have a laptop, but I didn't. But they were actually
12 trying to show, for example, I could have a laptop and
13 take it home over here, but I didn't have it.

14 JUDGE RIDENOUR: So was it on the hard drive. I
15 assume you --

16 MR. HOMAMI: It was on hard drive, yes. I --
17 there's just two network computers I have in the
18 restaurant, and those are all my information for that one.
19 And after these many years when they didn't actually raise
20 the flag and all of those things, I said everything was
21 okay. That's why I deleted all of the thing -- these
22 things, and then I -- I just end up in this position.
23 I -- I'm telling the truth.

24 JUDGE RIDENOUR: Thank you, Mr. Homami. This is
25 Judge Ridenour. I have some additional questions. So on

1 your sales summaries you have a column that says "Number
2 of Customers." Is that number of customers at the table
3 for that particular check?

4 MR. HOMAMI: No. At the -- at the table.

5 JUDGE RIDENOUR: At the table. Okay. Thank you.
6 This is Judge Ridenour. So I looked at your sales
7 summaries and some check sequences have zero -- zero under
8 the number of customers.

9 MR. HOMAMI: Those are -- those are -- those --
10 zero number of customers?

11 JUDGE RIDENOUR: Yes. So let me -- Check
12 Sequence Number 126879, I'm trying to find where it is.

13 MR. HOMAMI: What was the sequence number?

14 JUDGE RIDENOUR: 126879. Hold on.

15 MR. HOMAMI: 8 -- 26879.

16 JUDGE RIDENOUR: So page 23 of Exhibit -- of 51.
17 That's where they would be located.

18 MR. HOMAMI: My -- mine doesn't have --

19 JUDGE RIDENOUR: Okay.

20 MR. HOMAMI: -- page there.

21 JUDGE RIDENOUR: I'm sorry.

22 MR. HOMAMI: 126879?

23 JUDGE RIDENOUR: So January 4, 2013, for
24 date-wise.

25 MR. HOMAMI: That is January?

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JUDGE RIDENOUR: Yes.

MR. HOMAMI: 126879.

JUDGE RIDENOUR: So as you can see --

MR. HOMAMI: 7 -- 79. Okay.

JUDGE RIDENOUR: -- that one as well as the one there after, 126880, they both have zero. And so if you could please clarify as to why.

MR. HOMAMI: Yeah. I don't know. I have no argument.

JUDGE RIDENOUR: Okay. Thank you. I have --

MR. HOMAMI: That is -- that is the thing of it. I don't know.

JUDGE RIDENOUR: Okay. Thank you.

MR. HOMAMI: It suppose -- supposed to be customer number.

JUDGE RIDENOUR: It's supposed to be -- pardon me?

MR. HOMAMI: It's supposed to be customer number.

JUDGE RIDENOUR: Okay. Thank you.

MR. HOMAMI: Is -- is that in the software, actually, what it does or the server data. I have no idea.

JUDGE RIDENOUR: Thank you. One additional question. You indicate you didn't collect sales tax reimbursement. Is -- and if you need additional time, a

1 recess, I'd be more than happy to provide it. Could you
2 please point to an example of a transaction where you
3 didn't collect sales? Like, I've looked at the numbers
4 and sometimes the amounts, it appears that you collected,
5 like, tips or, et cetera. But if you could point to a
6 specific transaction where it indicates you didn't collect
7 tax and how it adds up efficiently to show that?

8 MR. HOMAMI: Tax, actually, when we actually
9 compare this to the total. And the payment, for example,
10 I think maybe that one -- you see the difference is
11 between -- between the total and the -- the payment is
12 going to be the amount of, for example, the tip or
13 whatever they put in there.

14 JUDGE RIDENOUR: Okay. Thank you very much. I
15 just wanted to --

16 MR. HOMAMI: Okay.

17 JUDGE RIDENOUR: Thank you very much. Thank you,
18 Mr. Homami. This is Judge Ridenour.

19 When you are ready, Ms. Daniels, you may please
20 begin your presentation.

21 MS. DANIELS: Thank you.

22

23 PRESENTATION

24 MS. DANIELS: Appellants are a husband and wife
25 partnership that operated a restaurant called the Persian

1 Grill in Monterey, California, near the Naval
2 Postgraduate. Appellants sold hot prepared food items to
3 the general public, including individuals who were US
4 Military personnel attending in/or involved with the
5 language Department at the Naval Postgraduate Academy.

6 Upon being audited by the Department in 2015, the
7 Appellants alleged that they did not charge sales tax for
8 a large majority of their sales because Appellants
9 believed that certain customers were exempt from paying
10 sales tax due to their employment with the US Military.
11 The Department disallowed the claimed nontaxable sales to
12 the U.S. government employees and issued a Notice of
13 Determination for the period of October 1st, 2012, through
14 March 31st, 2015, for approximately \$27,000. And you can
15 see that on Exhibit C.

16 In preparing this case, the Department reviewed
17 the audit work papers and determined that adjustments were
18 necessary. Those adjustments reduced the tax measure by
19 almost \$36,000. And, thus in turn reduced the owed tax
20 amount to \$20,803. And you can see that at the revised
21 work -- revised audit work papers, Exhibit D.

22 Appellants have provided the following arguments
23 in support of their appeal. First, Appellants contend
24 that they should not be liable because they did not
25 collect sales tax due to their mistaken belief that

1 military customer sales were nontaxable sales to the
2 United States Government. Second, Appellants contend that
3 the audit is somehow deficient and is based on sales data
4 that was not provided by Appellants. Third, Appellants
5 request a reduction to the liability amount due to an
6 inability to pay. I will address each argument in turn.

7 As to Appellants' first argument, Appellants have
8 presented a few reasons for why they believed that tax
9 exemptions were appropriate. First, Appellants allege
10 that certain payments made with USAA bank credit cards
11 denote government transactions. Second, Appellants
12 asserts that Rodman, the chief master language instructor
13 for the Naval Postgraduate Academy, was acting as an agent
14 for the United States government when he purchased food
15 from Appellants' business. Finally, Appellants appear to
16 argue that their business was an integral part of the
17 Naval Postgraduate Academy's language program. And, thus,
18 sales under this program should be exempt from tax.

19 Personal property sales to the United States
20 government or its agencies are exempt from sales tax under
21 Revenue & Tax Code Section 6381 subdivision (a). Tax
22 applies to sales to persons in the armed services of the
23 United States, notwithstanding the circumstance of the
24 merchandise may be billed through an Army or Air Force
25 Exchange service, Navy Exchange, Coast Guard Exchange, or

1 a similar organization. And that's California Code of
2 Regulations Title 18 Section 1614 subdivision (b).
3 Therefore, for a sale to be tax exempt, the purchaser must
4 be acting as an agent for the United States government or
5 its agencies, as sale to a government employee alone does
6 not suffice.

7 Any seller claiming a transaction as exempt under
8 Tax Code Section 6381 must obtain from the purchaser and
9 retain a government purchase order or documents
10 demonstrating direct payment by the United States to
11 support their claim. And that's California Code
12 Regulation Title 181614 subdivision (g).

13 Here there is no dispute that Appellants sold hot
14 prepared food items directly to members of the United
15 States armed services. However, members of the armed
16 services are not considered the United States or an agency
17 of United States without documentation that identifies the
18 United States government as the purchaser. Appellants
19 have not provided any evidence of an executed contract
20 with the United States government.

21 Instead, Appellants provided evidence of sales
22 where the buyer used a USAA credit or debit card. The
23 Decision and Recommendation at Exhibit A correctly
24 identified that USAA is a private financial institution
25 that markets to military personnel, but is not, in fact,

1 affiliated with the US government. Although the
2 Department understands the basis for Appellant's
3 confusion, this mistake is not a basis for tax exemption.

4 To the extent that Appellants contend that
5 Mr. Robin was acting as an agent of the United States when
6 purchasing food for members of the armed forces that were
7 enrolled in the Naval Postgraduate Academy, Appellants
8 have not provided any documents demonstrating direct
9 payment by the United States for any of these audited
10 sales. The documents provided consist of letters from
11 Appellants' business to the Naval Postgraduate Academy
12 detailing the menu options and prices that Appellants
13 offer. You can see Appellants' Exhibits 1-A and 1-B.
14 These do not suffice as purchase orders or proof of
15 payment from the United States government as required
16 under Section 1614 subdivision (g). As a result,
17 Appellants' sales to members of the public who happen to
18 be in the military do not qualify for exemption.

19 Lastly, to the extent that Appellants argue that
20 their business was a part of a language program at the
21 Naval Postgraduate Academy, this argument also fails
22 because it is not supported by any documentation from the
23 United States government. While the Department assumes
24 that Appellants provided valuable insight into military
25 personnel, Appellants have failed to meet their

1 requirements for tax exemption. Again, Appellants have
2 not provided any documentation that their services were
3 contracted by or paid for by the United States government.

4 Although the Department is sympathetic to
5 Appellants' situation, a mistaken belief does not relieve
6 Appellants from liability. Taxpayers are charged with
7 knowledge of the law, and ignorance of the law is not a
8 defense to the liability, not is it reasonable cause for
9 relief of a failure to file penalty. See *MacFarlane v.*
10 *Department of Alcohol Beverage Control* (1958) 51 Cal.2d
11 84, at page 90.

12 As to Appellants' concerns regarding the accuracy
13 of the data used in the Department's revised audit,
14 Appellants today have raised some specific transactions
15 that cause concern. The audit utilized items that were
16 provided to the Department by Appellants, including your
17 tax returns and Excel spreadsheets summarizing monthly
18 sales. The Department imported the information provided
19 into its audit software.

20 As previously addressed, the Department did
21 identify some duplicate and missing transactions and
22 adjusted the audit to rectify the duplications resulting
23 in reduction of tax liability amount. See the revised
24 audit work papers in Exhibit B, page 1. It provides a
25 summary of the deductions. The deductions included check

1 amounts that were duplicate as well as some transactions
2 that appear to be check number duplicates.

3 Finally, Appellants have requested relief from
4 their tax liability due to an inability to pay the
5 assessment. Unfortunately, Appellants have not provided a
6 legal basis that would support granting relief. The
7 Department is sympathetic to their mistaken belief and the
8 reasoning that resulted in the failure to collect sales
9 tax from military personnel purchasers. However, there's,
10 unfortunately, no basis to grant Appellants' request
11 because a mistake of the law is not grounds for reduction
12 in liability.

13 Pursuant to the foregoing, the Department ask the
14 Panel to affirm the Decision and Recommendation with the
15 exception of the adjustments made to the taxable measure
16 in the amount of \$35,778, and, thus, affirm Appellants'
17 tax liability in the amount of \$20,803 plus penalties and
18 interest.

19 Thank you.

20 JUDGE RIDENOUR: This is Judge Ridenour. Thank
21 you.

22 Judge Aldrich, do you have any questions?

23 JUDGE ALDRICH: This is Judge Aldrich. No
24 questions. Thank you.

25 JUDGE RIDENOUR: Thank you.

1 This is Judge Ridenour. Judge Le, do you have
2 any questions?

3 JUDGE LE: This is Judge Le. No questions.

4 JUDGE RIDENOUR: Thank you.

5 Ms. Daniels, I do have one question. So the
6 restaurant closed on November 30th, 2014, which I don't --
7 does CDTFA contest that?

8 MS. DANIELS: I don't believe so.

9 JUDGE RIDENOUR: So then my question is for
10 fourth quarter of '14, when you apply the percentage of
11 error to the lack of sales for that quarter, did you
12 prorate it to only -- did you only for the amount of days
13 up to 11/30 as opposed for the full quarter?

14 MR. PARKER: This is Jason Parker. So we used
15 the actual reported amounts by the taxpayer. So anything
16 that would have been prorated would have -- there was
17 already a reduction based on the amounts that they
18 reported for that period. So in Exhibit D -- let me pull
19 this up real quick.

20 So Exhibit D, page 9, shows the calculation of
21 the percentage of error. So we used the amounts reported
22 versus the amounts reported for fourth quarter 2012
23 through third quarter 2014, and we came up with the
24 percentage difference for those periods. So we applied
25 that to the reported amount. So the reported amount for

1 fourth quarter '14 was less than half of any other
2 quarterly. So technically it is prorated.

3 JUDGE RIDENOUR: Thank you. I just wanted to
4 clarify for the record.

5 Mr. Homami, if you would like, you may make a
6 brief closing statement or response to CDTF's argument or
7 to further address any of the questions asked by the
8 panel, but it is not required. Would you like to make
9 closing remarks?

10

11 CLOSING STATEMENT

12 MR. HOMAMI: I -- I did everything they say.
13 They are right because I was -- I was -- didn't have any
14 documentation. That is -- that is just didn't have
15 documentation. That's why all the things I didn't have it
16 because of that. And I just wanted to send my explanation
17 of why it happened. That -- that's why because for nine
18 years I did this and no one actually told me, for example,
19 you're doing it wrong. You have to have this and that.

20 And then when I closed the restaurant, there's no
21 way. And this outfit, I think, it's going to be for
22 correction. For example, if someone make a mistake, they
23 want to correct it. I don't have anything to correct
24 right now. I -- I lost everything. Everything, actually,
25 I have done. At least I created, actually, nine years

1 more before becoming, you know. And I -- I was trying to
2 be successful, but I failed. When someone fall, I'm happy
3 to actually give them a hand to pick them up, not to shake
4 it down.

5 And this thing, it seems to me they are pushing
6 me down more. I just want help, because I -- I was doing
7 something I was thinking that is the right thing to do.
8 But I didn't.

9 JUDGE RIDENOUR: Thank you, Mr. Homami.

10 MR. HOMAMI: It was too late when I came to
11 getting corrected when I didn't collect the tax. That has
12 not benefited me, and you can check my -- my tax returns
13 for all these years to see if I -- I got benefited from
14 all of this. I can -- I can authorize you to check all of
15 my tax returns.

16 JUDGE RIDENOUR: Thank you, Mr. Homami.

17 MR. HOMAMI: Okay.

18 JUDGE RIDENOUR: Before -- I just want to check
19 with my co-panelists to make sure they have any questions
20 for either party.

21 Judge Aldrich, do you have any questions?

22 JUDGE ALDRICH: No further questions. Thank you.

23 JUDGE RIDENOUR: Thank you. This is Judge
24 Ridenour.

25 Judge Le, do you have any questions for either

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party?

JUDGE LE: This is Judge Le. No further questions from me.

JUDGE RIDENOUR: Okay. This is Judge Ridenour, and I do not have any additional questions either.

So I want to thank everyone for participating today. At this point the case is now submitted, and the record is closed.

The judges will meet and decide this case later on, and we will issue a written opinion or decision within 100 days of today. Today's hearing in the appeal of The Partnership of M. Homami, Et Al, Doing Business as Persian Grill is now adjourned.

(Proceedings adjourned at 2:27 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 at the time and place set forth, that the testimony and proceedings were written 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 14th day of January, 2022.

ERNALYN M. ALONZO
HEARING REPORTER