

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
DESIGN HOME CENTER, INC., ) CASE NO. 20066251  
 )  
 ) APPELLANT. )  
 )  
\_\_\_\_\_ )

**CERTIFIED COPY**

VIRTUAL TRANSCRIPT OF PROCEEDINGS

State of California

Thursday, December 16, 2021

Reported by:

SHELBY K. MAASKE

HEARING REPORTER

Job No. 34631 OTA(C)

1 STATE OF CALIFORNIA OFFICE OF TAX APPEALS

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13 Virtual Transcript of Proceedings, taken in  
14 the State of California, commencing at 1:15 p.m.  
15 and ending at 2:07 a.m. on Thursday,  
16 December 16, 2021, reported by Shelby K. Maaske,  
17 Hearing Reporter in and for the State of California.  
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APPEARANCES :

Panel Lead:	JUDGE LONG
Panel Members:	JUDGE BROWN JUDGE ALDRICH
For the Appellant:	VICTOR CEBALLOS CARLOS CHATE
For the Respondent:	RANDY SUAZO CDFDT
Also Present:	JASON PARKER CHRISTOPHER BROOKS

I N D E X

EXHIBITS

(Appellants' Exhibits were received at page 6.)

(Respondent's Exhibits were received at page 6.)

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WITNESS TESTIMONY

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By Carlos Chait	28

1 Remote Proceedings; Thursday, December 16, 2021

2 1:15 p.m.

3  
4 JUDGE LONG: We are now going on the record.  
5 This is the hearing for the appeal of Design Home Center,  
6 OTA Case 20066251. It is Thursday, December 16, 2021, at  
7 approximately 1:15 p.m. This appeal was originally  
8 intended to be heard in Cerritos, California.

9 I'm the lead administrative law judge,  
10 Keith Long, and with me today is Judge Susan Brown and  
11 Judge Josh Aldrich. We will be hearing the matter this  
12 morning. I'm the lead administrative law judge, meaning,  
13 I will be conducting the proceedings, but my co-panelists  
14 and I are equal participants. We will all be reviewing  
15 evidence, asking questions, and reaching a determination  
16 in this case.

17 Will the parties, please, state their name and  
18 who they represent for the record? Beginning with the  
19 Appellant.

20 MR. CEBALLOS: Hi. My name is Victor Ceballos,  
21 president.

22 MR. CHAIT: This is Carlos Chait, CPA

23 JUDGE LONG: Thank you. And CDTFA?

24 MR. SUAZO: Randy Suazo here, representative of  
25 CDTFA.

1 MR. PARKER: Jason Parker, Chief of Headquarters  
2 Operations Bureau with CDTFA.

3 MR. BROOKS: Christopher Brooks, staff counsel  
4 for CDTFA.

5 JUDGE LONG: Thank you.

6 We have two issues in front of us today. First,  
7 whether any adjustments for the measure of unreported  
8 taxable sales are warranted; and, two, whether Appellant  
9 was negligent.

10 Appellant has submitted Exhibits 1 through 3  
11 which were admitted with no objection. CDTFA has  
12 submitted Exhibits A through G which are admitted into  
13 evidence with no objection.

14 (Appellant's Exhibits 1 through 3 were received.)

15 (Respondent's Exhibits A through G were received.)

16 JUDGE LONG: We will begin with Appellant's  
17 opening presentation, as Mr. Chait intends to testify as a  
18 witness. We will get his affirmation at this time.

19  
20 CARLOS CHAIT,  
21 called as a witness, and having been first duly sworn, was  
22 examined and testified as follows:

23  
24 THE WITNESS: Yes, I swear.

25 JUDGE LONG: Thank you. You have up to five

1 minutes. You may begin whenever you're ready.

2  
3 DIRECT TESTIMONY

4 MR. CHAIT: Okay. We sent some exhibits a month  
5 ago, I hope everybody got it, regarding the way that the  
6 audit was performed. There were two main questions. One,  
7 why the auditor did not accept our sales figures? As  
8 mentioned in Exhibit No. 1, Design Home Center had been  
9 working with a company who takes care of all of the sales.  
10 Because, as you know, a furniture store normally sells  
11 only big items. There are no small items. Everything is  
12 quite big. The furniture, the sofa -- everything is big.

13 It has to be handled by a system that allows for  
14 the company to sell and create the credit. The kind of  
15 clientele that Design Home Center has is the kind of  
16 clientele who pays by a different system. Nobody comes  
17 here with a bunch of cash. Everybody pays with a credit  
18 card or some kind of system besides a credit card or some  
19 assistance that the company offered to the potential  
20 client for the sale.

21 Everything is recorded here in this software,  
22 made by a company called GaliCorp, especially for  
23 furniture store that is here for -- how many years?  
24 Around 10 years we have it here. And that is who we use  
25 to prepare the sales tax every quarter, and up to now, we

1 use that system. Because we have the figures, as shown in  
2 Exhibit No. 1, the difference between the sales for the  
3 three years are very equal to the amount reported. It's a  
4 very, very light difference.

5 We reported \$1,944,494.00 for this year, and the  
6 report that includes in Exhibit No. 1, and mentioned  
7 \$1,999,809.00. So we are talking about a \$40,000.00 or a  
8 \$50,000.00 difference only. Okay? The report was  
9 included to you as Exhibit No. 1. All the sales for three  
10 years.

11 Number two, the auditor -- that's the reason why  
12 I'm not happy with the auditor, the way that he handled  
13 the situation and was working with the purchases. There  
14 is a lot of exhibits here and orders here, et cetera,  
15 et cetera, but the main way that they use to calculate the  
16 sales of Design Home Center is through the purchases. Its  
17 called cost of goods sold.

18 In the report on page 81, he used something  
19 called total confinement taxable purchase. According to  
20 him, he went over to the vendor to get information. We do  
21 agree with some of the vendors, but he added other vendors  
22 that we didn't have relations with at that time. I don't  
23 know where he got the information. He estimated from what  
24 invoice. And he generalized it for three years, which is  
25 ridiculous. And some of the vendors, we were not dealing



1 with them at that time. And some, we were just only  
2 occasionally -- very occasionally. Because if we have  
3 this discrepancy with the figures, we need to figure out  
4 all over-calculations.

5 And, also, it didn't consider the invoices the  
6 generated for some of the vendors. He didn't consider  
7 refundable merchandise refunded to the vendor because it  
8 is not sellable or the order had been canceled.

9 20 percent of the merchandise is rolled over into the  
10 following quarter, something called inventory. And as a  
11 matter of fact, all of the inventory on the floor, that is  
12 the inventory running every quarter. At the end of 2016,  
13 we have inventory estimated at about \$80,000.00.

14 Finally, there is some defective merchandise that  
15 we cannot sell. We calculate around 5 to 7 percent is  
16 damaged by whatever reason -- the packing is bad. Many of  
17 the purchases came from different places, and there are a  
18 lot of defective stuff.

19 Finally, in the sales, the auditor make a big  
20 deal about the figures and 1099K. That's the form that is  
21 associated with the credit card business or sales. Okay?  
22 Of course there was a discrepancy between the 1099K and  
23 the actual sale because there was a lot of purchases in  
24 2016 at the beginning of money received from the previous  
25 sale.

1 I have to explain. Before 2016, the company had  
2 a lot of sales. There was a lot of house sales. It was a  
3 good time where there were a lot of new houses and people  
4 wanted to buy furniture. And the company, at one time,  
5 the financing was good and the position was good, decide  
6 to create a house of financing brand. That was in 2008  
7 and 2009.

8 That created a balance for the company, over half  
9 of a million dollars, that, actually, some was reported at  
10 the time during those years, but we didn't get the  
11 payment. They didn't get the payment. But some of the  
12 money, it came later on, little by little, when the client  
13 wanted to buy something else or decides to buy some of the  
14 old debt or something like that. That was only drop.

15 But that is the reason for a lot of the confusion  
16 with the 1099K. After a while, the company decided to  
17 deal with a company called Synchrony that concentrates on  
18 the sales. There is no longer house of financing program.  
19 So that's the reason the 1099K is not adjusted exactly  
20 with the amount of sale. That's, basically, it.

21 JUDGE LONG: Thank you.

22 Mr. Chait, I just want to confirm, before I give  
23 CDTFA the opportunity to ask questions, that you are done  
24 with your opening presentation?

25 THE WITNESS: Yes, I'm done. I am assuming you

1 have Exhibits 1 and 2 and 3 in front of you?

2 JUDGE LONG: Yes, I do have Exhibits 1 through 3  
3 on my screen in front of me. Thank you.

4 So CDTFA, do you have any questions for the  
5 witness?

6 MR. SUAZO: No questions.

7 JUDGE LONG: Thank you.

8 And just as a reminder, please, state your name  
9 prior to speaking so that Ms. Maaske can get an accurate  
10 transcription. At this time I would like to turn this  
11 over to my co-panelists to see if they have any questions.

12 Judge Brown, do you have any questions?

13 JUDGE BROWN: Mr. Chait, I may have a few  
14 questions for you.

15 THE WITNESS: Okay.

16 JUDGE BROWN: You had pointed to Exhibit 1, sales  
17 report. Is there any -- is there any evidence  
18 corroborating the accuracy of the sales report? In other  
19 words, how do we, the judges, know that what's in the  
20 report is accurate? Is there anything we can compare it  
21 to that supports that information?

22 THE WITNESS: Let me give you Victor.

23 MR. CEBALLOS: The way we got the number was  
24 through our GaliCorp system. So we have our totals for  
25 the year, or quarterly, both. Our numbers match. I think

1 there's a \$45,000.00 or \$50,000.00 difference, but it's  
2 very close. I think we submitted that report for the  
3 three years. The date is on the top right. You can see  
4 the numbers there.

5 THE WITNESS: As I said before, Design Home  
6 Center is a furniture store. It's not like we are selling  
7 small stuff. If you came over here, you will see a big  
8 store with furniture, like, sofas and beds and all these  
9 things. There is nothing you can sell under the table.

10 Everything is sold through invoices, because  
11 multiple times, as I told you, 99 percent of the time,  
12 it's paid on credit. They want to have the guarantee or  
13 something like that, whatever they purchase. So it's  
14 nothing under the table. Everything is created in the  
15 computer, and an invoice is given.

16 And, also, as a matter of fact, much of stuff is  
17 delivered by the company. We have to have a record of  
18 going to the truck and delivering to the person,  
19 et cetera, et cetera. Everything is there. There is  
20 nothing that can be hiding here. That's the part where  
21 you don't understand. It's not like a store that sells  
22 small electronic stuff. No, it's not. This is a  
23 furniture store.

24 JUDGE BROWN: Thank you. Let me follow up my  
25 question with another question. Based on what

1 Mr. Ceballos said about \$45,000.00 to the \$50,000.00  
2 difference, if I said -- if I said approximately  
3 \$55,000.00, would that sound about right?

4 THE WITNESS: Yes, \$55,000.00. Around  
5 \$55,000.00.

6 JUDGE BROWN: Let me ask, then, does Appellant  
7 agree that that difference exists? That there were those  
8 reported taxable sales of \$55,000.00, approximately, that  
9 did not not get reported?

10 MR. CEBALLOS: Give me one second. Sorry.

11 JUDGE LONG: Mr. Ceballos and Mr. Chait, just as  
12 a reminder -- especially in your case, because you are in  
13 the same room, please, say your name when you are speaking  
14 so that our stenographer can get an accurate  
15 transcription. Thank you

16 MR. CEBALLOS: Okay. I was trying to get the  
17 right numbers here. But if you look at the report from  
18 Exhibit 1, we have the delivery costs. I don't know if  
19 you see that on Exhibit 1 there?

20 JUDGE BROWN: Yes.

21 MR. CEBALLOS: There's a \$34,769.00. So there is  
22 a little difference there.

23 THE WITNESS: Some of those items are nontaxable.  
24 That is the problem. If you want a full detail, we have  
25 to get back to the invoices. We have to see what's the

1 difference. At that time somebody else was doing the  
2 report and the quarterly report and there was some -- we  
3 have to analyze quarter by quarter why it didn't match,  
4 exactly, with the report.

5 In the three years, there's is a difference. We  
6 don't know exactly where it is. We have to go back. Was  
7 it delivery? Nontaxable item? It can be -- it could be  
8 many things.

9 JUDGE BROWN: Let me follow up and just say, is  
10 there any documents that we can look at that support what  
11 you are saying?

12 MR. CEBALLOS: As Carlos mentioned, we would have  
13 to get, for that difference, very deep in details to find  
14 that difference there.

15 THE WITNESS: The report is coming from the  
16 computer. Actually, we want to go to the invoice. I  
17 think we can do that today. We can get back to you.  
18 That's the reason we have a computer, to get information  
19 organized and timely.

20 Now, that's all I can say. If you want more  
21 information, we have to go to the document base with the  
22 invoice, but the invoice would be at the end, and it  
23 reflects in the report. Whatever we can do here.

24 MR. CEBALLOS: Another thing, we also have a  
25 thing called charge backs that sometimes we don't receive

1 them right away. We usually get them after from the  
2 credit card companies or from the finance companies -- any  
3 disputes that the consumer might have. Since we do sell  
4 furniture, sometimes you don't know what's defective and  
5 they just want to dispute because they were not satisfied  
6 after two or three months. So they dispute, and it gets  
7 charged back. That can be, also, one of the reasons why  
8 there is a little difference there.

9 JUDGE BROWN: I don't have any further questions  
10 right now.

11 MR. BROOKS: I'm going to object to the  
12 testimony. I think if we are going to have information  
13 coming from Mr. Ceballos, he needs to be sworn so that  
14 there is some proof to what he said previously was  
15 truthful and is truthful now.

16 JUDGE LONG: Thank you for your objection;  
17 however, I don't think any of us are considering  
18 Mr. Ceballos's statements to be testimony, but, rather,  
19 argument similar to any other appeals proceedings. So  
20 that's how we are going to go forward with that.

21 MR. BROOKS: Thank you, Judge.

22 JUDGE LONG: I wanted to turn to Judge Aldrich.  
23 Do you have any questions for Appellant?

24 JUDGE ALDRICH: So just back on that Exhibit 1  
25 for Appellant's witness. It says the total amount of

1 taxable retail that's indicated there, it's circled, you  
2 are saying that's for delivery charges? Is that correct?

3 MR. CEBALLOS: What was your questions again?

4 JUDGE ALDRICH: On the first page in Exhibit 1,  
5 there's an item that's labeled "total nontaxable retail."  
6 It's circled. It's approximately \$35,000.00. What are  
7 you attributing that to? I thought I heard that it was  
8 for delivery charges, but I just wanted to clarify.

9 MR. CEBALLOS: Yes, it was for delivery.

10 JUDGE ALDRICH: Okay. So then there is a -- I  
11 see below that, "delivery charges house credit sales" and  
12 "delivery charges cash sales."

13 MR. CEBALLOS: So the total taxable, is that what  
14 you are asking me about?

15 JUDGE ALDRICH: I guess I'm asking what are these  
16 nontaxable retail charges that are approximately  
17 \$35,000.00? What are you arguing that that's attributable  
18 to versus the total delivery charges which is  
19 approximately \$45,000.00?

20 MR. CEBALLOS: So I guess what I was trying to  
21 explain was referring to Judge Brown's questions, but we  
22 don't have that exact detail. I was just giving you what  
23 I think that the difference could be, why we were  
24 \$55,000.00 or so towards deliveries and charge backs,  
25 and -- you know. But like Carlos mentioned, for us to get



1 to exact numbers, we have to go through our invoices one  
2 by one to get that information for that amount. And  
3 there's returned merchandise and charge backs and stuff  
4 like that. But it's one of the reasons that there's a  
5 difference.

6 JUDGE ALDRICH: All right. Thank you.

7 I'm going to turn it back over to Judge Long.

8 JUDGE LONG: Thank you. I have a few questions.  
9 So first, with respect to Exhibit 1, during the audit, a  
10 complete set of books and records was not provided. Why  
11 are these invoices available now, and why weren't they  
12 provided previous to this hearing?

13 THE WITNESS: They were, all the time, available  
14 for the auditor. That's the reason my complaint about the  
15 auditor. He chose, the guy who -- if my English is poor,  
16 his is more poor than mine. We couldn't communicate. So  
17 he chose to call the vendor, to also work with the  
18 furniture we have on the floor and look at the price  
19 compared with the sales price, and trying to calculate a  
20 return of investment. He's using another way.

21 We never refused to give the information. We  
22 gave him the information, quarter by quarter. The report,  
23 but quarter by quarter. I don't know if he used it or  
24 not, but it was provided to him. Because he was here.  
25 You just press the button and the information is there.

1 He had the information we used to prepare the sales tax  
2 return every quarter up until now. Thank you.

3 JUDGE LONG: Additionally, with respect to the  
4 collections on previous and aged accounts receivable  
5 sales, my understanding, based on your testimony today,  
6 Mr. Chait, is that there were collections in 2013 and '14  
7 for sales that were made in 2008 and 2009; is that  
8 correct?

9 THE WITNESS: Unfortunately, the difference of  
10 the report of the sales with the generated report of the  
11 sales, every quarter, as we need the report, is more  
12 difficult to get from the past. Because we get a  
13 report -- this is a present report, showing all the  
14 accounts receivables are zero, coming from 2010 -- there  
15 is balance over 180 days, over six months, but we are  
16 talking about five years or four years. We don't know  
17 exactly, but we have almost half a million on balance.

18 JUDGE LONG: Okay. Thank you. And then to  
19 follow up on that. In your explanation that you included  
20 with Exhibit 1, you asserted that the credit card sales  
21 for 2013 and 2014 were artificially inflated because of  
22 these past debts, but in reviewing CDTFA's exhibits, the  
23 audit work papers, the credit card sales were consistent  
24 or greater in 2015 than they were in 2013 and 2014. And  
25 they are within, like, \$30,000.00 or \$40,000.00 per

1 quarter. Can you explain that discrepancy?

2 THE WITNESS: They are not credit card sale  
3 exactly. It's credit card collections including the  
4 sales. From the time of the credit card and also previous  
5 payment -- people keep paying. Unfortunately, not  
6 everybody pays. But we keep receiving payment. It's the  
7 payment received, not the sales. That's where it makes it  
8 confusing.

9 JUDGE LONG: Thank you. I don't have any more  
10 questions at this time. So we will move to CDTFA's  
11 presentation. You have 20 minutes. You may begin  
12 whenever you're ready.

13 MR. SUAZO: Thank you.

14

15 PRESENTATION

16 MR. SUAZO: The Appellant operates a retail  
17 furniture store located in San Fernando, California. The  
18 audit period is from July 1, 2013 through June 30, 2016.  
19 A prior audit of the business was conducted from July 1st,  
20 2002 to June 30, 2013. Exhibit A, page 10 of 27.

21 The Appellant did not provide necessary records  
22 from the audit. Items not provided include complete  
23 federal income tax returns, balance sheets, general and  
24 subsidiary ledgers, accounts receivable detail, point of  
25 sales system detail reports, sales invoices, bank

1 statements for the entire audit period, and purchase  
2 invoices for the entire audit period. Instead, Appellant  
3 provided only the first pages of the federal income tax  
4 returns profit and loss statement for 2013, 2014, and  
5 2015, a profit and loss summary page from 2015, purchase  
6 invoices from first quarter 2016, and second quarter 2016,  
7 and bank statements for first quarter 2016 and second  
8 quarter 2016.

9           Comparison of recorded sales which were reported  
10 on the next tax basis, to sales and tax returns, quarter  
11 sales disclosed differences of over \$785,000.00 from 2013  
12 through 2015. Exhibit D, page 25 to 34. When the  
13 Department compared recorded cost of goods sold to the  
14 federal income tax returns to sales, calculated a 45  
15 percent markup on the federal income tax sales. But, the  
16 comparison of cost of goods sold to reported sales on  
17 sales income tax returns, showed a markup of negative four  
18 percent. Exhibit D, page 24 of 34.

19           The negative markup indicates that not all sales  
20 were reported to the State. 1099K credit card sales  
21 information obtained by the Department's data analysis  
22 section of Franchise Tax Board was compared to reported  
23 sales for the period from third quarter 2013 to fourth  
24 quarter 2015. The comparison disclosed a next tax  
25 difference greater than \$460,000.00. Exhibit D, page 22

1 of 34.

2 Based on the above analysis, the Department  
3 considered the reported sales to be inaccurate and an  
4 alternative approach was used. The Department elected to  
5 use the sales amount recorded in the federal income tax  
6 returns. As percentage of error was computed for each  
7 period based on sales differences between federal income  
8 tax return sales and sales and new tax return sales.  
9 Exhibit D, page 21 of 34.

10 The percentages of error were applied to reported  
11 sales for the appropriate periods in unreported taxable  
12 sales of \$987,138.00 was established. For 2016, the  
13 overall percentage of 52.09 percent was used. Exhibit D,  
14 page 20 of 34.

15 During the re-audit requested by the CDTFA's  
16 Appeals Bureau, vendors were contacted to verify federal  
17 income tax returns and recorded purchase amounts. Eight  
18 vendors responded and four did not. Purchases from the  
19 eight vendors were totaled for the audit period.

20 For the nonresponsive vendors, the Department  
21 used Appellant's purchase invoices of the four vendors for  
22 the first and second quarters of 2016 and computed average  
23 quarterly purchase amounts for each of the nonresponsive  
24 vendors. The average quarterly amounts were applied to  
25 each quarter to obtain purchases for the audit period.

1 Exhibit E, pages 10 through 21.

2 Comparison of the audit of purchases to the  
3 recorded federal income tax returns for 2014 and 2015  
4 disclosed that quarter purchases were understated by  
5 \$227,728.00. The Appellant's purchases were impeached.  
6 It should be noted that the Appellant may have more than  
7 12 vendors. A shelf test using June 2016 purchase  
8 invoices and selling prices provided by the Appellant  
9 disclosed a markup of 44.76 percent. Exhibit E, page 22  
10 of 28.

11 Using the 44.76 percent markup factor and  
12 applying it the audited purchases of \$2,119,181.00 reveal  
13 a sales of over \$3 million. When compared to the reported  
14 sales of \$1.9 million, the difference is more than  
15 \$135,000.00 greater than the audit amount assessed of  
16 \$987,938.00. The audited sales of \$2,931,632.00 shows a  
17 markup of 38.34 percent when using the audited purchases.  
18 This is almost the same as the prior items marked up at  
19 39.43 percent. Exhibit D, page 15 of 34.

20 Based on the markup results, the assessed  
21 liability was deemed reasonable as applied by the  
22 Department. Appellant contends the assessment of taxable  
23 sales is overstated as the federal income tax return  
24 includes interest revenue from in-house financing and  
25 customers who purchase merchandise from the store, layaway

1 returns, customer's canceled orders, not taxable rental  
2 income from commercial space leased during the audit  
3 period, and finally, accounts receivable from prior  
4 periods.

5           During the audit and re-audit, the Appellant has  
6 not shown that interest revenue income nor layaway returns  
7 nor non-taxable rental income of commercial space were  
8 included in the federal income tax returns recorded sales.  
9 Exhibit E, page 27 of 28.

10           In addition, the recorded federal income tax  
11 returns sales are based on credit card transactions,  
12 therefore, revenues of these kinds would not be included  
13 in the federal income tax returns sales amounts. Exhibit  
14 E, page 6 of 28.

15           The Appellant has not provided details of the  
16 accounts receivable from the audit period. The aging  
17 report provided with Appellant's Exhibit 3 is dated  
18 February 14, 2019. The summary report does not provide  
19 information required for adjustments to be made for  
20 accounts receivable. For adjustments to be made, the  
21 Appellant needs to provide customer number, customer name,  
22 sales invoice number, sales invoice date, sales amount,  
23 tax amount, the sales register, accounts receivable  
24 detail, amount paid to date, amount still due to date,  
25 et cetera.

1           Again, because the federal income tax returns  
2 sales are based on credit card transactions, Appellant's  
3 receivable amounts would not be included in the  
4 assessment. The Appellant also contends that the audited  
5 purchases are overstated because the Department used  
6 estimates regarding four of the Appellant's vendors. The  
7 Appellant, however, has not provided evidence that the  
8 estimates are incorrect.

9           The 10 percent negligence penalty is warranted as  
10 the Appellant did not maintain adequate books and records.  
11 The amount of unreported sales is significant. The  
12 percent of error is substantial. This is the Appellant's  
13 second audit. The Appellant was aware of how to report  
14 the proper amount.

15           In addition, when looking at the Appellant's  
16 exhibits, specifically Exhibit 1, there is \$1 million --  
17 if I could get back to it. There's \$1,150,000.00 in cash  
18 sales for the audit period that he shows on his profit and  
19 loss statement. These are cash sales. These aren't  
20 payments. When you have a system set up and it's a  
21 payment, it's not going to record as a sale. It's going  
22 to go into the accounts receivable section as a balancing  
23 transaction. So it will show as a payment when the  
24 customer makes a payment and the receipt is given for the  
25 payment. So, normally, it wouldn't be construed as a



1 sale; otherwise, you would have difficulty finding out  
2 what is a true cash sale versus what is a payment on  
3 accounts receivable.

4 The taxpayer, basically, when they have a federal  
5 income tax returns, they're not including the sales tax.  
6 So what they're basically saying is that 9 percent of the  
7 sales are on a cash basis. However, looking at what's  
8 being showed on Exhibit 1, there's \$1,150,178.38 in sales  
9 which is, basically, 55 percent of the sales there.

10 In addition, when the Appellant is stating that  
11 they run a large store, however, the federal income tax  
12 returns show no wages. So that is something that is a  
13 little strange on where the cash sales are coming from or  
14 where the cash sales may be going.

15 The Appellant also states the inventory is around  
16 \$80,000.00 at the end of 2006. No detailed beginning and  
17 ending inventory reports have been provided. In addition,  
18 the inventory amounts have been stable for the period from  
19 2013 to 2015 for the federal income tax returns. So why,  
20 all of a sudden, in 2016, does he have this massive  
21 buildup in inventory when it was stable the whole time?  
22 That is the end of my presentation. I'm available to  
23 answer any questions you may have.

24 JUDGE LONG: Thank you. I'll ask my co-panelists  
25 if they have any questions.

1 Yes, Mr. Ceballos?

2 MR. CEBALLOS: So on our system, our cash sales  
3 are the finance company -- as Carlos mentioned during his  
4 testimony -- Synchrony Financial, everything is under cash  
5 sales because they paid us directly for the purchase. So  
6 you guys should have our 1099K from Synchrony and from the  
7 other finance companies we use. So that's all on the cash  
8 sales. Just to clarify that.

9 THE WITNESS: As I said before, there is no cash  
10 sales. That shows, again, that the auditor had no idea  
11 with the audit. The way the cash sales that show in the  
12 profit and loss is the sale to the company called  
13 Synchrony. Do you think this company is going to sell  
14 \$200,000.00 in every year in cash? No. There is no --  
15 that is not the situation.

16 They have no idea what they were doing. That's  
17 the reason, also, we went over to Mr. Chan, and Mr. Chan  
18 ordered in here to a re-audit. But the guy was so lazy.  
19 He didn't come in here and discuss it. Mr. Chan ordered,  
20 in September, a re-audit because he knows how defective --  
21 how poor the report was. And the auditor was saying all  
22 the paper he did not receive.

23 We provided the sales tax, the income tax, 1099K,  
24 all of that was provided to him. We provided, to him,  
25 everything. That is everything that he said was not

1 provided is a total lie, because we have the report. Why  
2 would we hide the report? We have the report that they  
3 did. Every year, it is here, available. The sales tax  
4 are here in the computer. The purchases are here, all  
5 paid by check, because they purchase big stuff with a big  
6 company. They don't pay in cash. They pay in check.  
7 Those are all the sales that are here. Now, regarding --

8 JUDGE LONG: Excuse me. Mr. Chait, while I  
9 appreciate you wanting to present your client's argument,  
10 I ask that you please hold any further rebuttal until it  
11 is your turn.

12 THE WITNESS: Okay.

13 JUDGE LONG: Because I want to make sure that my  
14 co-panelists are able to ask CDTFA any questions before we  
15 go further.

16 THE WITNESS: Okay.

17 JUDGE LONG: Judge Brown, do you have any  
18 questions for CDTFA?

19 JUDGE BROWN: I do not.

20 JUDGE LONG: Thank you, Judge Brown.

21 Judge Aldrich, do you have any questions?

22 JUDGE ALDRICH: No questions. Thank you.

23 JUDGE LONG: Thank you, Judge Aldrich.

24 I, also, do not have any questions.

25 So we will allow Mr. Chait to begin his closing

1 argument. Again, you have asked for five minutes. You  
2 may begin when you are ready.

3  
4 CLOSING ARGUMENT

5 MR. CHAIT: I'm going to repeat myself, that it's  
6 the way that it was conducted. I don't know why  
7 Mr. Brooks, Mr. Parker, and Mr. Suazo are here.  
8 Obviously, they are reading the report. I would like to  
9 meet with the guy who did the report. That's the guy who  
10 conducted the audit in a very, very lousy way.

11 Again, he doesn't know exactly what he was  
12 auditing. He was concentrating here in the purchases,  
13 including some assumption about the company that we didn't  
14 do any business during those years. We provided him some  
15 invoices for these company for 2016, I believe, and he  
16 generalized for three years which, economically, it's not  
17 right. And the other way to determining the cause of  
18 goods sold on the purchase, and all the other reports are  
19 here, our finance statement, our taxes, and 1099K,  
20 everything was provided to him. Okay. That's my  
21 rebuttal.

22 JUDGE LONG: Thank you, Mr. Chait.

23 MR. CEBALLOS: Just one last thing I wanted to  
24 mention, and to CDFTA, is that when you mentioned the  
25 44 percent markup, that is not every sale. Sometimes we

1 do have to go as low as 10 percent just to get rid of  
2 stuff, because not everything sells. So that price margin  
3 fluctuates all the time depending on what we are selling.  
4 So it's never that margin all the time.

5 And then, also, to clarify, we are not a big  
6 company. We are a small business. That is what we are  
7 considered here. And I try to, as far as numbers go, to  
8 try and keep everything on track. I have to run most of  
9 our departments because we are family-owned and ran.  
10 Sometimes my numbers can be a little off, but that  
11 something that Carlos helps me out with. And that wasn't  
12 a guess is what I wanted to say. Thank you.

13 JUDGE LONG: Thank you.

14 Judge Brown, do you have any questions for  
15 Mr. Chait?

16 JUDGE BROWN: No, I do not.

17 JUDGE LONG: Judge Aldrich, do you have any  
18 questions?

19 JUDGE ALDRICH: I just have a brief question for  
20 Appellant's representative, or either can answer. But my  
21 understanding is that there was a previous audit. Were  
22 there any steps taken after the previous audit to change  
23 the administrative practice on recordkeeping or things  
24 like that?

25 THE WITNESS: As a matter of fact, I started

1 doing the accounting only in 2016. That's why they have  
2 improved the system from before. I think from that time  
3 until now, we have very, very exact and correct figures.  
4 We pay a lot of sales tax every quarter.

5 MR. CEBALLOS: As to our first audit, I did learn  
6 a lot from the first one. I believe that from that 2013  
7 to 2016, I think I did a lot better job than I did those  
8 previous three years. So that first audit, I was just  
9 starting, but I do believe I was pretty good and pretty  
10 accurate on my numbers. It's just I didn't agree with the  
11 auditor when he came and just went by based on invoicing  
12 and margins and our price tags from before. That's the  
13 only thing I disagree with this audit. That's all I have.

14 JUDGE LONG: Thank you. I also had a question  
15 regarding Exhibit 1. So in your responses, Mr. Chate, you  
16 said that there were no cash sales, and that the records  
17 stated the cash sales were payments from Synchrony which  
18 all occurred from 2016 on; is that correct?

19 THE WITNESS: You are correct.

20 JUDGE LONG: Thank you, Mr. Chait. With respect  
21 to that, I'm looking at Exhibit 1, and it indicates that  
22 cash sales deposits were \$793,716.75, and this report only  
23 encapsulates six months of 2016, and that's approximately  
24 half of the taxable sales that are recorded here. Can you  
25 explain that difference? If the cash sales are only the

1 sales that were paid by Synchrony, but they're  
2 approximately half of the total sales, can you explain how  
3 that is that so many more sales occurred in that six-month  
4 period than in the previous three years?

5 THE WITNESS: Which form are you looking at?

6 JUDGE LONG: I'm looking at Exhibit 1, taxable  
7 retail is approximately \$2 million. But the total cash  
8 sales are about \$790,000.00, which is close to half. This  
9 report is only for six months of 2016. And, otherwise,  
10 you are saying nothing should be recorded as cash sales  
11 for the previous years, 2013 and 2014 and 2015; correct?

12 THE WITNESS: Exhibit 1 is for three years.

13 JUDGE LONG: I understand that. But you just  
14 told us a handful of times that the cash sales are only  
15 the payments by Synchrony which occurred in 2016, and  
16 there are approximately half of your total taxable sales.  
17 And I'm just trying to figure out how --

18 THE WITNESS: I am sorry if I give information  
19 incorrect. Synchrony always have been doing business with  
20 Design Home Center. This is not something new.

21 MR. CEBALLOS: Sorry. I think what Carlos is  
22 trying to say is that it's not only Synchrony. We have  
23 other finance companies we carry who also 1099 us that  
24 year. We do have -- it's not only Synchrony is what I'm  
25 trying to clarify. Is that what you are wanting to know?

1 JUDGE LONG: Yes. So that --

2 MR. CEBALLOS: So anything that is not -- under  
3 cash sales, it's our layaways, our Synchrony, our  
4 Progressive, our ASIMA, everything is under the cash sales  
5 report figures. So it's everything there. And that's  
6 aside from the receivables.

7 JUDGE LONG: Okay. Thank you. I have no further  
8 questions.

9 Does CDTFA have any closing remarks before we  
10 close the record?

11 MR. SUAZO: No closing remarks.

12 JUDGE LONG: Okay. Thank you.

13 Mr. Chait, we have your testimony and the  
14 evidence that you have provided today. Is there anything  
15 else that you would like us to know before we go off of  
16 the record?

17 THE WITNESS: No. Thank you for the opportunity.

18 JUDGE LONG: Thank you for your participation.  
19 The case is now submitted and the record is closed. The  
20 hearing is now adjourned. Thank you.

21 (The hearing was adjourned at 2:07 p.m.)  
22  
23  
24  
25



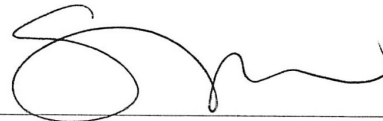
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2  
3 I, Shelby K. Maaske, Hearing Reporter in and for  
4 the State of California, do hereby certify:

5 That the foregoing transcript of proceedings was  
6 taken before me at the time and place set forth, that the  
7 testimony and proceedings were reported stenographically  
8 by me and later transcribed by computer-aided  
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10 foregoing is a true record of the testimony and  
11 proceedings taken at that time.

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

14 I have hereunto subscribed my name this 2nd day  
15 of January, 2022.

16  
17 

18 \_\_\_\_\_  
Shelby Maaske,  
19 Hearing Reporter

20 \_\_\_\_\_  
SHELBY K. MAASKE  
21 HEARING REPORTER

<hr/> <b>\$</b> <hr/>	<b>\$793,716.75</b> 30:22	<b>2013</b> 18:6,21,24 19:18,20 20:4,11, 23 25:19 30:6 31:11	<hr/> <b>5</b> <hr/>
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