

BEFORE THE OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
VG ENTERTAINMENT, INC., ) OTA CASE NO. 21037335  
 )  
 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(A)

1 STATE OF CALIFORNIA OFFICE OF TAX APPEALS

2 BEFORE THE OFFICE OF TAX APPEALS

3 STATE OF CALIFORNIA

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8 APPELLANT. )  
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12 Virtual Transcript of Proceedings, taken in  
13 the State of California, commencing at 10:30 a.m.  
14 and ending at 11:02 a.m. on Thursday,  
15 December 16, 2021, reported by Shelby K. Maaske,  
16 Hearing Reporter in and for the State of California.  
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APPEARANCES :

Panel Lead: JUDGE ALDRICH

Panel Members: JUDGE BROWN  
JUDGE GEARY

For the Appellant: MICHAEL APARICIO

For the Respondent: RANDY SUAZO  
CDTFA

Also present: CHAD BACCUS  
JASON PARKER

1 I N D E X

2  
3 EXHIBITS

4  
5 (Appellants' Exhibits were received at page 6.)

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

7  
8 PRESENTATION

	PAGE
9	
10 By Michael Aparicio	7
11 By Randy Suazo	13
12	

13 WITNESS TESTIMONY

	PAGE
14	
15 (None)	
16	

17 CLOSING STATEMENT

	PAGE
18	
19 By Michael Aparicio	24
20	

1 Remote Proceedings; Thursday, December 16, 2021

2 10:30 a.m.

3  
4 JUDGE ALDRICH: On the record. This is  
5 Judge Aldrich. We are opening the record in  
6 VG Entertainment, Incorporated before the Office of Tax  
7 Appeals, OTA Case No. 21037335. Today's date is Thursday,  
8 December 16, 2021, and the time is approximately  
9 10:30 a.m. This hearing is a virtual hearing with  
10 agreement of the parties.

11 Today's hearing is being heard by a panel of  
12 three administrative law judges. My name is  
13 Josh Aldrich. I'm the lead judge conducting the hearing.  
14 At this point I would ask my co-panelists introduce  
15 themselves beginning with Judge Brown.

16 JUDGE BROWN: Good morning. This is  
17 Judge Brown.

18 JUDGE ALDRICH: Judge Geary, you are a little  
19 hard to hear.

20 JUDGE GEARY: Is that better?

21 JUDGE ALDRICH: Yes, thank you.

22 JUDGE GEARY: This is Judge Geary.

23 JUDGE ALDRICH: During the hearing, the panel  
24 members may ask questions or otherwise participate to  
25 ensure we have all the information to decide this appeal.

1 After the conclusion of the hearing, we three will  
2 deliberate and decide the issues or issues presented. As  
3 a reminder, the Office of Tax Appeals is not a court. It  
4 is an independent appeals body.

5 The panel does not engage in ex parte  
6 communications with either party. Our opinion will be  
7 based off of the parties' arguments and admitted evidence  
8 and the relevant law. And we have read the parties'  
9 submissions and are looking forward to hearing the  
10 arguments today.

11 For Appellant, we have enrolled agent,  
12 Michael Aparicio. Is there anyone else planning to appear  
13 for Appellant, Mr. Aparicio?

14 MR. APARICIO: No, just myself.

15 JUDGE ALDRICH: Thank you.

16 And for Respondent, or the Department, we have  
17 Randy Suazo, Chad Baccas, and Jason Parker.

18 Is that correct, Mr. Suazo?

19 MR. SUAZO: That is correct.

20 JUDGE ALDRICH: Great.

21 The issue to be decided today is whether  
22 Appellant has shown that adjustments are warranted to the  
23 audited understatement of reported taxable sales.

24 Mr. Aparicio, is that correct?

25 MR. APARICIO: Yes, that is correct.

1 JUDGE ALDRICH: Thank you.

2 Mr. Suazo, is this correct?

3 MR. SUAZO: That is correct.

4 JUDGE ALDRICH: Thank you.

5 Pursuant to our November 17, 2021 minutes and  
6 orders of prehearing conference, we admitted Appellant's  
7 Exhibit 1 through 6 and Department's Exhibit A through E.  
8 These exhibits were admitted without objections from  
9 either party.

10 Just to confirm, Mr. Aparicio, is this correct?

11 MR. APARICIO: Yes, that is correct.

12 JUDGE ALDRICH: And Department?

13 MR. SUAZO: That is correct.

14 JUDGE ALDRICH: Thank you.

15 (Appellant's Exhibits 1 through 5 were received.)

16 (Department's Exhibits A through E were received.)

17 JUDGE ALDRICH: Just to give everyone an idea of  
18 how we plan for the hearing to proceed, it will proceed as  
19 follows: Appellant's opening statement, we'll start  
20 there, and that will last for approximately 20 minutes.  
21 Next, the Department will present a combined opening and  
22 closing for approximately 20 minutes, followed by,  
23 approximately, ten minutes of questioning from the panel.  
24 It may go shorter than that, but just as an estimate.

25 And, lastly, we will have Appellant's rebuttal,

1 or closing, which we estimate at 5 to 10 minutes. And  
2 just to reiterate, these are estimates made for  
3 calendaring purposes. If you need additional, please,  
4 make the request and we can reassess at the time and see  
5 if we can grant you some additional time.

6 Do either parties have questions before we move  
7 to opening statements?

8 Mr. Aparicio?

9 MR. APARICIO: No.

10 JUDGE ALDRICH: And Mr. Suazo?

11 MR. SUAZO: No questions.

12 JUDGE ALDRICH: All right.

13 Mr. Aparicio, we are ready to proceed with your  
14 presentation. Begin when you are ready.

15 MR. APARICIO: Okay. Thank you, Judge.

16

17 PRESENTATION

18 MR. APARICIO: We would like to begin this  
19 hearing here. We do want to show that we do think this  
20 does warrant adjustments based on a number of facts that  
21 we do have here. So I do want to begin with our first  
22 reason here. We state that the first reason is that th  
23 alternative method should have never been warranted in the  
24 first place. As it is stated on our Exhibit 4, page 3,  
25 under section "Total Sales," the CDTFA stated that "Total



1 sales were reconciled to federal income tax returns and no  
2 material differences were noted. Further POS sales were  
3 reconciled with reported taxable sales and immaterial  
4 differences were noted."

5 To us, this shows all records from the sales tax  
6 returns, federal income tax returns, and POS reports were  
7 consistent with each other. The CDTFA then states, "The  
8 overall markups per the federal income tax returns were  
9 calculated to be around 230 percent for 2014 and  
10 205 percent for 2015. And based on the low markup  
11 results, further analysis was required and a shelf test  
12 was completed."

13 We would like to state that these markups, we  
14 don't believe, reflect the true markup that should have  
15 been reflected on these reports or these analyses that  
16 were made. These markups were not adjusted to reflect  
17 cost of goods sold connected with the actual taxable  
18 sales. The tax return includes cost of goods sold and  
19 includes items that are not connected with the taxable  
20 sales, for example, supplies and materials, that shouldn't  
21 be connected to that.

22 If, maybe, a deeper dive would have been done and  
23 only liquor and alcohol purchases would have been taken  
24 into account, the markup percentage is closer to 300 to  
25 365 percent, which is what we believe it should be around

1 and what the industry standard is, would not have  
2 warranted a further analysis. Further analysis lead to an  
3 expanded shelf test which greatly overstated the markup  
4 and the underreporting of sales. I would like to wrap up  
5 our first points.

6 Our second reason being here that the CDTFA was  
7 suspected by their own auditor, the original auditor, that  
8 they used methods of assumption and speculations when  
9 assessing percentages and ratios, or, in our case, markup  
10 percentages. If you refer to Exhibit 3, that is an e-mail  
11 from our regional auditor, Mr. Katherine Kim.

12 Please note, Ms. Katherine Kim was our initial  
13 auditor that presented an initial audit report in the  
14 amount of \$12,000.00 based on methods that were not  
15 speculative in nature and solely factual. Please refer to  
16 Exhibit 1, page 2, the \$12,000.00 tax liability.

17 Ms. Katherine Kim's manager did not accept this audit and,  
18 subsequently, led to a second audit which resulted in a  
19 tax liability of \$155,000.00.

20 We did not agree to this. This resulted to a  
21 third audit report that resulted in a liability of  
22 \$85,000.00. You can refer to this on Exhibit 4, page 1.  
23 The wide range of audit results makes us question the  
24 validity, accuracy, and reasonableness of the audit.

25 According to the CDTFA's Field Audit Manual

1 Chapter 8, "When the market analysis indicates that there  
2 were underreported sales during the audit period, the  
3 reasonable evaluation must be performed to support the  
4 audit findings. The auditor should make specific comments  
5 regarding the reasonableness of the audited figures to  
6 explain the reinforced and proposed audit assessment."

7 Please note, no reasonableness explanation was  
8 provided to us to explain or reinforce the proposed audit  
9 assessment. And in our opinion, \$300,000.00 in sales per  
10 year of underreporting is not reasonable considering the  
11 sales tax return, federal income tax return, and POS  
12 reports were all in accordance with each other.

13 And our third point, we would like to indicate  
14 that the accuracy of the most recent audit, we feel to be  
15 not accurate. As you can see on Exhibit 4, page 19, the  
16 liquor sales test done for well drink are skewed to  
17 reflect the markup of 2,238 percent. This shelf test  
18 fails to include all types of well drinks served. This  
19 shelf test only includes vodka and tequila and fails to  
20 include other liquors, for example, rum, whisky, gin, et  
21 cetera.

22 If the lowest prices of these different liquors  
23 were included in the shelf test, this would severely bring  
24 down the overall markup of the shelf test. We did bring  
25 this up during the appeals conference, and a new shelf

1 test was requested by the Appeals Conference auditor,  
2 Ms. Cindy Fang, on July 28, 2020.

3 After multiple extensions were requested,  
4 Mr. Nalan Samuel Rema responded on October 8, 2020, that  
5 the Department would not be doing a new shelf test because  
6 it is not recommended. Please see Exhibit 6 for our  
7 e-mail thread in regard to this issue.

8 In conclusion, due to the fact that we believe an  
9 alternative method should have been used. Also, that the  
10 alternative methods lack completeness and accuracy. We  
11 feel that the liability for this audit should reflect only  
12 the differences between the sale tax returns, the federal  
13 income tax returns, and the POS sales which is a lot  
14 closer to \$12,000.00, which is a lot more reasonable.

15 This is due to an inadvertent oversight and not  
16 done on purpose. That will wrap up our presentation.  
17 Thank you very much.

18 JUDGE ALDRICH: Thank you, Mr. Aparicio.

19 I'm going to reserve questions for after the  
20 Department's combined statement.

21 Mr. Suazo, are you ready to proceed with your  
22 combined opening and closing?

23 MR. SUAZO: Yes, sir.

24 JUDGE ALDRICH: Please proceed when you are  
25 ready.

1 PRESENTATION

2 MR. SUAZO: Appellant is a corporation and offers  
3 a full-service bar on the bottom floor of an upscale hotel  
4 in Downtown Los Angeles. The bar serves liquor, beer,  
5 wine, food, and cigarettes. All sales reported as  
6 taxable. Records provided were federal tax returns 2014  
7 and 2015; general ledger profit-and-loss statements for  
8 2014, 2015, and 2016; ALOHA point of sales, POS, reports  
9 were 2014 through 2016; purchase registers on Excel for  
10 2014, 2015, and 2016; purchase invoices for the audit  
11 period, as well as April and May of 2017 purchase  
12 invoices. Comparison of federal income tax returns,  
13 reported sales for 2014 and 2015 disclose minimal  
14 difference. Exhibit D, page 82.

15 The view of the federal income tax returns shows  
16 Appellant claimed net income losses for both years, and no  
17 compensation to the officers was paid. Comparison of tax  
18 returns and reported sales to federal income tax returns  
19 cost of good sold in 2014 and 2015 disclosed markups of  
20 only 230 percent for 2014 and 205 percent for 2015. Based  
21 on this type of business, the markups were considered very  
22 low, Exhibit D, page 81.

23 Comparison of Appellant's merchant credit card  
24 statements to POS gross credit card amounts disclosed  
25 minimal difference. Exhibit D, page 8. A sales tax

1 reconciliation was conducted, and sales tax elected for  
2 Appellant's POS system was compared to sales tax reported,  
3 and a difference of over \$4,000.00 in sales tax was  
4 discovered. Exhibit D, page 75.

5 Mandatory tips listed as auto-gratuities listed  
6 on Appellant's POS systems reports were not taxed.  
7 Monthly amounts were scheduled and total assessment for  
8 this area amounted to over \$72,000.00 in taxable measure.  
9 Exhibit D, pages 72 and 73. Self-consumption was  
10 estimated based on two percent of purchases of cigarettes,  
11 liquor, beer, and wine. The taxable self-consumption  
12 amounts just under \$8,000.00 for the audited period.  
13 Exhibit D, page 71.

14 As previously stated, the company operated at a  
15 loss for 2014 and 2015, no compensation to the officers  
16 was paid, and the recorded markups were considered low for  
17 the business. Based on these factors, the Department  
18 deemed that further examination of accounts records was  
19 necessary to ensure the accuracy of the reported sales. A  
20 markup procedure was used to validate the reported sales  
21 amounts.

22 A purchase recommendation was performed for  
23 October 2014 and May 2016. Exhibit D, page 70. The  
24 purchases were segregated into the following categories:  
25 Well liquor, call liquor, premium liquor, domestic bottle

1 beer, premium bottle beer, domestic draft beer, premium  
2 draft beer, wine, and supply items. Weighted percentages  
3 for each category were computed.

4 A shelf test was conducted on the aforementioned  
5 categories using purchase invoices provided by Appellant  
6 for April and May 2017, and Appellant's detailed pricing  
7 list. Exhibit E, pages 146 to 149. Combined well, call,  
8 and premium drink markups for liquor was adjusted for  
9 happy hour, regular pricing, cocktail and non-cocktail  
10 pour sizes and 12 percent spillage allowance. Exhibit D,  
11 page 36 to 40.

12 Fair markups were adjusted for regular and happy  
13 hour pricing. One percent breakage allowance for bottle  
14 beer and a spillage allowance of ten percent for draft  
15 beer. Exhibit D, pages 41 to 43. Wine markups were also  
16 adjusted for happy hour and regular pricing, along with  
17 six percent allowance for spillage. Exhibit D, page 44.

18 The shelf test markups were applied to the  
19 weighted purchase percentages of the segregation test to  
20 calculate an overall weight markup of 556.77 percent on  
21 alcoholic beverages. Exhibit D, page 35.

22 A water bottle shelf test was also conducted.  
23 Exhibit D, page 45. The weighted alcohol beverage markup  
24 is Exhibit D, page 35. Because no records were provided  
25 to conduct a shelf test, cigarettes and food markups were

1 estimated at 50 percent and 200 percent respectively, and  
2 reused on those categories. Exhibit D, page 33. The  
3 appellant's recorded purchases of cigarettes, food, water,  
4 and alcohol were used in a markup process. Exhibit D,  
5 page 46.

6 Each category's purchase amounts were reduced by  
7 two percent for self-consumption and two percent for  
8 pilferage. Alcohol purchases were reduced by an  
9 additional 3.77 percent for mixes and supply items, and  
10 the adjusted purchases were then applied and markup  
11 factors that were obtained for the shelf test. Exhibit D,  
12 page 33.

13 The resulting computation disclosed sales from  
14 the period of January 1st, 2014, through December 31, 2016  
15 of \$2.7 millions. And when compared to the reported  
16 taxable sales, the same period of \$1.8 million, a total  
17 difference of over \$900,000.00 was noted. Percentages of  
18 error were computed for each year. Percentages of error  
19 were then applied to reported sales for applicable period.

20 For first quarter 2017, 22.37 percent percentage  
21 of error noted in 2016 was applied. The resulting  
22 unreported sales for the audit period totalled  
23 \$853,208.00. Exhibit D, page 32. Analysis of the audited  
24 sales in comparison with the credit card sales for 2014,  
25 2015, and 2016, which is on Exhibit D, page 74, disclose



1 that the cash-to-credit-card ratio is almost 50 percent  
2 which would be deemed reasonable for a bar.

3 To recap, a total audit assessment of \$933,695.00  
4 consists of unreported sales of \$852,208.00. In addition,  
5 unreported taxable mandatory tips of \$17,500.00 and  
6 taxable self-consumption of \$7,987.00. A sales tax  
7 reconciliation difference of \$4,000.00 in tax was not  
8 assessed as it was considered included in the markup  
9 process.

10 The Appellant disagrees with the use of the  
11 markup procedures used by the Department. The Appellant  
12 contends that the recorded sales should be used to  
13 determine the accuracy of the reported amounts on the  
14 sales income tax returns. The Department contends that  
15 based on the information that came into its possession for  
16 the reported sales amounts on the sales tax returns for  
17 the audit period were incorrect.

18 The Department used Appellant's purchase report  
19 to determine cost of goods sold. The Department used  
20 Appellant's purchase invoices and Appellant's pricing list  
21 to conduct the shelf test. The Department used  
22 Appellant's estimate to determine percentage of cocktail  
23 drinks sold. The Department used Appellant's sales  
24 reports to determine the sales percentages for pricing  
25 drinks between discounted happy hour prices and regular

1 selling prices.

2           The assumption of the markup of food was based on  
3 industry average and was considered appropriate when  
4 discussed with the Appellant. The markup on cigarettes  
5 was also considered appropriate when discussed with  
6 Appellant. The Appellant has had time to review the  
7 testing procedures, and corrections were made when  
8 Appellant provided documentation to support the  
9 contention.

10           Revenue and Taxation Code 7054 authorizes the  
11 Department to examine books, papers, records, and  
12 equipment of any person selling tangible personal  
13 property, and the Department may investigate the character  
14 of a business to verify the actual return. Moreover,  
15 Revenue and Taxation Section 6481 states that "If  
16 Department is not satisfied with a return or returns of  
17 the tax or the amount of tax or the other amount required  
18 to be paid to the State by any person, it may compute and  
19 determine the amount required to be paid upon the basis of  
20 the facts contained in the return or returns, or upon the  
21 basis of any information within its possession or that may  
22 come into its possession."

23           Over the past 70 years, California courts have  
24 upheld the Department's right to investigate beyond the  
25 taxpayers's books and records to calculate tax

1 proficiency.

2 In Maganini versus Quinn, the court held  
3 Sections 6481 and 7054 contemplate an examination behind  
4 the books in which original records such as purchase  
5 invoices, sales slips, cash register tapes, and inventory  
6 records will be audited and analyzed.

7 Similarly, in Riley B.'s versus BOE, the court  
8 reaffirmed the holding in Maganini, even when the  
9 taxpayer's books and records are comprehensive and in  
10 agreement with each other. The court in Maganini also  
11 found that where the Department has established that its  
12 determination is a reasonable, the burden of proof shifts  
13 to the taxpayer to explain the disparity between the  
14 taxpayer's books and records and the results of the  
15 auditor's determination.

16 The Department examined books and records, and  
17 even though they found them to be complete and in  
18 agreement, the Department was within its rights under  
19 Section 7054 to 1641 to examine behind the books.  
20 Accordingly, the Department's use of an alternative method  
21 to compute and determine the taxable sales and the  
22 applicable sales tax that should have been reported for  
23 the audit period was reasonable.

24 The Appellant contents that the initial audit  
25 findings provided by the prior auditor should be used as

1 the basis for the audit assessment. The primary purpose  
2 of the Department's audit program is to provide reasonable  
3 assurance that taxpayers pay either no more or no less  
4 than required by law In Audit Manual 402.10.

5 Therefore, the Department is required to correct  
6 its audit methodology during the course of the audit if it  
7 determines that more accurate information is available  
8 and/or it find that its previous conclusions are  
9 incorrect. Therefore, the initial findings do not  
10 preclude the Department from later revising the findings  
11 when the Department reviews the documentation and  
12 concludes that a different audit method, in this case, the  
13 markup method, was the most appropriate method based on  
14 available records.

15 The Department has shown that its determination  
16 was reasonable and the Appellant has not provided  
17 sufficient evidence or other documentation to prove  
18 otherwise. This concludes my presentation. I am  
19 available to answer any questions you may have.

20 JUDGE ALDRICH: Thank you, Mr. Suazo.

21 At this point I'm going to refer to my panel to  
22 see if they have any questions for either party.

23 Judge Brown, do you have any questions?

24 JUDGE BROWN: Not at this time.

25 JUDGE ALDRICH: Okay.

1 Judge Geary?

2 JUDGE GEARY: I do have a few questions. Thank  
3 you.

4 For Appellant's representative, does the  
5 Appellant still concede the measures for self-consumption  
6 and for mandatory gratuities?

7 MR. APARICIO: Yes, we do.

8 JUDGE GEARY: Is there any of the audited measure  
9 for unreported sales that the Appellant concedes? Does  
10 Appellant concede that some additional amount is due for  
11 unreported taxable sales?

12 MR. APARICIO: No, we do not agree with that.

13 JUDGE GEARY: Does Appellant agree that the cost  
14 data that was relied upon by Respondent in conducting the  
15 audit was accurate?

16 MR. APARICIO: No, we did not.

17 JUDGE GEARY: Will I find somewhere in the  
18 evidence submitted, cost data that Appellant contends is  
19 accurate?

20 MR. APARICIO: I'm sorry? With the evidence that  
21 was submitted by both parties -- I'm trying to understand  
22 the question.

23 JUDGE GEARY: Let me rephrase that. The  
24 Respondent has submitted, in its evidence, and maybe in  
25 your evidence also, the cost data that it relied upon for

1 it's shelf test and has argued that that cost data came  
2 from Appellant.

3 You indicated a moment ago on behalf of your  
4 client that Appellant does not agree with that cost data.  
5 Will I find in your submission or in the Department's  
6 submission different cost data that Appellant contends is  
7 accurate?

8 MR. APARICIO: The cost won't be the same. We  
9 did go off the same data. It's just, maybe, the  
10 segregation between the well, the call, and the premium  
11 that we do not agree with. And that's where we had an  
12 issue. But the cost data is correct, but the way it was  
13 segregated, we do not agree with that.

14 JUDGE GEARY: Okay. Let me ask you about  
15 segregation. Will I find somewhere in the evidence the  
16 segregation that Appellant contends should have been used?

17 MR. APARICIO: We just noted that, you know, the  
18 lowest price of those specific liquors, the gin, the  
19 whisky, that should have been allocated towards the well.  
20 That is our position there. So, yes, those liquors are  
21 included in those cost prices. And did we conduct a new  
22 segregation? No, we did not.

23 JUDGE GEARY: Do you agree or does Appellant  
24 agree with the estimated markup that Respondent used for  
25 cigarettes which was 50 percent and 200 percent for food?

1 MR. APARICIO: Yes, that's fine.

2 JUDGE GEARY: Does Appellant agree with the shelf  
3 test that the Department conducted concerning the sale of  
4 water at \$2.00 per half liter?

5 MR. APARICIO: Yes.

6 JUDGE GEARY: What about the purchase ratios that  
7 Respondent describes in its audit work papers, does  
8 Appellant agree with those purchase ratios?

9 MR. APARICIO: Yes, those purchase ratios were  
10 correct.

11 JUDGE GEARY: Maybe I can shortcut this. Is the  
12 only point of disagreement that the Appellant has with the  
13 audit relate to the pricing of well versus premium?

14 MR. APARICIO: That is one contention. I do know  
15 that Department argued that these various tax codes and  
16 court rulings does allow for these alternative methods to  
17 be used. We just want to note that the Department did  
18 state that. Because of the cost of goods sold was deemed  
19 to be too low, this is why they went toward this  
20 alternative method. And we want to contend that the  
21 cost-of-goods-sold analysis that they did initially is  
22 incorrect and does not reflect a true markup.

23 They have a markup of around 200. Our analyses  
24 are based on our own federal income tax returns were  
25 closer to 300 to 365 percent. And maybe if that would

1 have been conducted in the beginning, a second, you  
2 know -- a further analysis would have not needed to be  
3 done. That is what we contents as well. I do understand  
4 that Department does have the ability to do other methods  
5 as long as data is available.

6 JUDGE GEARY: Thank you.

7 Those are all the questions that I have.

8 JUDGE ALDRICH: Mr. Aparicio, would you like to  
9 present a closing argument or rebuttal or otherwise  
10 address arguments made by Department?

11 MR. APARICIO: Yes, I will do a closing argument.

12 JUDGE ALDRICH: Please proceed when you are  
13 ready.

14

15 CLOSING ARGUMENT

16 MR. APARICIO: In closing, we would just like to  
17 state here that the Department, on their most recent  
18 audit, Exhibit 4, page 3, they do state that because of  
19 the low cost of goods sold is why they went to do a  
20 further analysis. We just want to contend that further  
21 analysis may not have needed to be done. All the records  
22 were complete. They were cohesive with each other in  
23 terms of federal income tax returns, sales tax returns,  
24 and the POS reports.

25 If that would have been recognized from the



1 beginning, this alternative method would not have to have  
2 been done. We do not agree with the underreported sales  
3 of \$850,000.00 for three years is reasonable at all. It  
4 is more reasonable that it's, may be, around what the  
5 initial differences are of \$12,000.00 on the sales tax  
6 liability.

7 We just also do want to put on record that their  
8 own auditor does question their methodologies of their  
9 audits. And, also, that a reasonableness explanation was  
10 not given to us, further field audit manual wasn't given  
11 to us when a markup analysis is done. That was never  
12 given to us. So we contend that this is not reasonable,  
13 and it's really overstated. And based on mistakes on the  
14 cost-of-data analysis and, also, no reasonableness  
15 explanation was given to us. That would be it. Thank you  
16 so much.

17 JUDGE ALDRICH: Thank you, Mr. Aparicio.

18 I'm going to ask my co-panelists one more time if  
19 they have any questions before we conclude.

20 Judge Brown, do you have any questions?

21 JUDGE BROWN: I do not.

22 JUDGE ALDRICH: Okay.

23 Judge Geary?

24 JUDGE GEARY: No, I do not.

25 JUDGE ALDRICH: Thank you.

1 Thank you, everyone, for your time and being  
2 flexible with the hearing format. We are ready to  
3 conclude the hearing. The record is now closed.

4 (The hearing was adjourned at 1:02 p.m.)  
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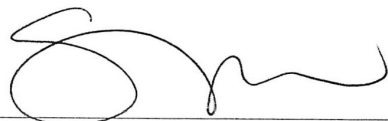
1 HEARING REPORTER'S CERTIFICATE

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  
9 transcription under my direction and supervision, that the  
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 26th day  
15 of December, 2021.

16  
17 

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

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

<hr/> <b>\$</b> <hr/>	<b>1:02</b> 26:4	<hr/> <b>4</b> <hr/>	<hr/> <b>A</b> <hr/>
<b>\$1.8</b> 16:16	<b>1st</b> 16:14	<b>4</b> 8:24 10:22 11:15 24:18	<b>a.m.</b> 5:2,9
<b>\$12,000.00</b> 10:14, 16 12:14 25:5	<hr/> <b>2</b> <hr/>	<b>40</b> 15:11	<b>ability</b> 24:4
<b>\$155,000.00</b> 10:19	<b>2</b> 10:16	<b>402.10</b> 20:4	<b>accept</b> 10:17
<b>\$17,500.00</b> 17:5	<b>2,238</b> 11:17	<b>41</b> 15:15	<b>accordance</b> 11:12
<b>\$2.00</b> 23:4	<b>20</b> 7:20,22	<b>43</b> 15:15	<b>account</b> 9:24
<b>\$2.7</b> 16:15	<b>200</b> 16:1 22:25 23:23	<b>44</b> 15:17	<b>accounts</b> 14:18
<b>\$300,000.00</b> 11:9	<b>2014</b> 9:9 13:6,8,9, 10,13,19,20 14:15,23 16:14,24	<b>45</b> 15:23	<b>accuracy</b> 10:24 11:14 12:10 14:19 17:13
<b>\$4,000.00</b> 14:3 17:7	<b>2015</b> 9:10 13:7,8, 10,13,19,20 14:15 16:25	<hr/> <b>5</b> <hr/>	<b>accurate</b> 11:15 20:7 21:15,19 22:7
<b>\$7,987.00</b> 17:6	<b>2016</b> 13:8,9,10 14:23 16:14,21,25	<b>5</b> 7:15 8:1	<b>actual</b> 9:17 18:14
<b>\$72,000.00</b> 14:8	<b>2017</b> 13:11 15:6 16:20	<b>50</b> 16:1 17:1 22:25	<b>addition</b> 17:4
<b>\$8,000.00</b> 14:12	<b>2020</b> 12:2,4	<b>556.77</b> 15:20	<b>additional</b> 8:3,5 16:9 21:10
<b>\$85,000.00</b> 10:22	<b>2021</b> 5:1,8 7:5	<hr/> <b>6</b> <hr/>	<b>address</b> 24:10
<b>\$850,000.00</b> 25:3	<b>205</b> 9:10 13:20	<b>6</b> 7:7 12:6	<b>adjourned</b> 26:4
<b>\$852,208.00</b> 17:4	<b>21037335</b> 5:7	<b>6481</b> 18:15 19:3	<b>adjusted</b> 9:16 15:8,12,16 16:10
<b>\$853,208.00</b> 16:23	<b>22.37</b> 16:20	<hr/> <b>7</b> <hr/>	<b>adjustments</b> 6:22 8:20
<b>\$900,000.00</b> 16:17	<b>230</b> 9:9 13:20	<b>70</b> 14:23 18:23	<b>administrative</b> 5:12
<b>\$933,695.00</b> 17:3	<b>28</b> 12:2	<b>7054</b> 18:10 19:3, 19	<b>admitted</b> 6:7 7:6, 8
<hr/> <b>1</b> <hr/>	<hr/> <b>3</b> <hr/>	<b>71</b> 14:13	<b>aforementioned</b> 15:4
<b>1</b> 7:7,15 10:16,22	<b>3</b> 8:24 10:10 24:18	<b>72</b> 14:9	<b>agent</b> 6:11
<b>10</b> 8:1	<b>3.77</b> 16:9	<b>73</b> 14:9	<b>agree</b> 10:20 21:12,13 22:4,11, 13,23,24 23:2,8 25:2
<b>10:30</b> 5:2,9	<b>300</b> 9:24 23:25	<b>74</b> 16:25	<b>agreement</b> 5:10 19:10,18
<b>12</b> 15:10	<b>31</b> 16:14	<b>75</b> 14:4	<b>alcohol</b> 9:23 15:23 16:4,8
<b>146</b> 15:7	<b>32</b> 16:23	<hr/> <b>8</b> <hr/>	
<b>149</b> 15:7	<b>33</b> 16:2,12	<b>8</b> 11:1 12:4 13:25	
<b>16</b> 5:1,8	<b>35</b> 15:21,24	<b>81</b> 13:22	
<b>1641</b> 19:19	<b>36</b> 15:11	<b>82</b> 13:14	
<b>17</b> 7:5	<b>365</b> 9:25 23:25		
<b>19</b> 11:15			

- alcoholic** 15:21
- Aldrich** 5:4,5,13, 18,21,23 6:15,20 7:1,4,12,14,17 8:10,12 12:18,24 20:20,25 24:8,12 25:17,22,25
- allocated** 22:19
- allowance** 15:10, 13,14,17
- ALOHA** 13:8
- alternative** 8:23 12:9,10 19:20 23:16,20 25:1
- amount** 10:14 18:17,19 21:10
- amounted** 14:8
- amounts** 13:24 14:7,12,21 16:6 17:13,16
- analyses** 9:15 23:23
- analysis** 9:11 10:2 11:1 16:23 23:21 24:2,20,21 25:11,14
- analyzed** 19:6
- and/or** 20:8
- Angeles** 13:4
- Aparicio** 6:12,13, 14,24,25 7:10,11 8:8,9,13,15,18 12:18 21:7,12,16, 20 22:8,17 23:1,5, 9,14 24:8,11,16 25:17
- appeal** 5:25
- appeals** 5:7 6:3,4 11:25 12:1
- Appellant** 6:11, 13,22 13:2,16 15:5 17:10,11 18:4,6,8 19:24 20:16 21:5,9,10, 13,18 22:2,4,6,16, 23 23:2,8,12
- appellant's** 7:6, 15,19,25 13:23 14:2,6 15:6 16:3 17:18,20,22,23 21:4
- applicable** 16:19 19:22
- applied** 15:18 16:10,19,21
- approximately** 5:8 7:20,22,23
- April** 13:11 15:6
- area** 14:8
- argued** 22:1 23:15
- argument** 24:9, 11,15
- arguments** 6:7, 10 24:10
- assessed** 17:8
- assessing** 10:9
- assessment** 11:6,9 14:7 17:3 20:1
- assumption** 10:8 18:2
- assurance** 20:3
- audit** 10:13,17,18, 21,23,24,25 11:2, 4,6,8,14 12:11 13:10 16:22 17:3, 17 19:23,24 20:1, 2,4,6,12 21:15 23:7,13 24:18 25:10
- audited** 6:23 11:5 14:12 16:23 19:6 21:8
- auditor** 10:7,11, 13 11:4 12:1 19:25 25:8
- auditor's** 19:15
- audits** 25:9
- authorizes** 18:10
- auto-gratuities** 14:5
- average** 18:3
- 
- B**
- 
- B.'s** 19:7
- Baccas** 6:17
- bar** 13:3,4 17:2
- based** 6:7 8:20 9:10 10:14 13:20 14:10,17 17:15 18:2 20:13 23:24 25:13
- basis** 18:19,21 20:1
- beer** 13:4 14:11 15:1,2,14,15
- begin** 8:14,18,21
- beginning** 5:15 24:1 25:1
- behalf** 22:3
- beverage** 15:23
- beverages** 15:21
- body** 6:4
- BOE** 19:7
- books** 18:11,25 19:4,9,14,16,19
- bottle** 14:25 15:1, 13,22
- bottom** 13:3
- breakage** 15:13
- bring** 11:23,24
- Brown** 5:15,16,17 20:23,24 25:20,21
- burden** 19:12
- business** 13:21 14:17 18:14
- 
- C**
- 
- calculate** 15:20 18:25
- calculated** 9:9
- calendaring** 8:3
- California** 18:23
- call** 14:25 15:7 22:10
- card** 13:23,24 16:24
- case** 5:7 10:9 20:12
- cash** 19:5
- cash-to-credit-card** 17:1
- categories** 14:24 15:5 16:2
- category** 15:3
- category's** 16:6
- CDTFA** 8:25 9:7 10:6
- CDTFA's** 10:25
- cetera** 11:21
- Chad** 6:17
- Chapter** 11:1
- character** 18:13
- cigarettes** 13:5 14:10 15:25 16:3 18:4 22:25
- Cindy** 12:2
- claimed** 13:16
- client** 22:4
- closed** 26:3
- closer** 9:24 12:14 23:25

**closing** 7:22 8:1  
12:22 24:9,11,15,  
16

**co-panelists**  
5:14 25:18

**cocktail** 15:9  
17:22

**Code** 18:10

**codes** 23:15

**cohesive** 24:22

**combined** 7:21  
12:20,22 15:7

**comments** 11:4

**communications**  
6:6

**company** 14:14

**compared** 14:2  
16:15

**comparison**  
13:12,17,23 16:24

**compensation**  
13:17 14:15

**complete** 19:17  
24:22

**completed** 9:12

**completeness**  
12:10

**comprehensive**  
19:9

**computation**  
16:13

**compute** 18:18  
19:21

**computed** 15:3  
16:18

**concede** 21:5,10

**concedes** 21:9

**conclude** 25:19  
26:3

**concludes** 20:12,  
18

**conclusion** 6:1  
12:8

**conclusions**  
20:8

**conduct** 15:25  
17:21 22:21

**conducted** 14:1  
15:4,22 23:3 24:1

**conducting** 5:13  
21:14

**conference** 7:6  
11:25 12:1

**confirm** 7:10

**connected** 9:17,  
19,21

**considered**  
13:21 14:16 17:8  
18:3,5

**consistent** 9:7

**consists** 17:4

**contained** 18:20

**contemplate**  
19:3

**contend** 23:20  
24:20 25:12

**contends** 17:12,  
14 21:18 22:6,16

**contention** 18:9  
23:14

**contents** 19:24  
24:3

**corporation** 13:2

**correct** 6:18,19,  
24,25 7:2,3,10,11,  
13 20:5 22:12  
23:10

**corrections** 18:7

**cost** 9:17,18 13:19  
17:19 21:13,18,25  
22:1,4,6,8,12,21  
23:18 24:19

**cost-of-data**

25:14

**cost-of-goods-  
sold** 23:21

**court** 6:3 19:2,7,  
10 23:16

**courts** 18:23

**credit** 13:23,24  
16:24

---

## D

---

**data** 21:14,18,25  
22:1,4,6,9,12 24:5

**date** 5:7

**December** 5:1,8  
16:14

**decide** 5:25 6:2

**decided** 6:21

**deemed** 14:18  
17:2 23:18

**deeper** 9:22

**deliberate** 6:2

**Department** 6:16  
7:12,21 12:5  
14:17 17:11,14,  
18,19,21,23  
18:11,13,16  
19:11,16,18 20:5,  
10,11,15 23:3,15,  
17 24:4,10,17

**department's**  
7:7,16 12:20  
18:24 19:20 20:2  
22:5

**describes** 23:7

**detailed** 15:6

**determination**  
19:12,15 20:15

**determine** 17:13,  
19,22,24 18:19  
19:21

**determines** 20:7

**difference** 13:14,  
25 14:3 16:17  
17:7

**differences** 9:2,4  
12:12 25:5

**disagreement**  
23:12

**disagrees** 17:10

**disclose** 13:13  
16:25

**disclosed** 13:19,  
24 16:13

**discounted**  
17:25

**discovered** 14:4

**discussed** 18:4,5

**disparity** 19:13

**dive** 9:22

**documentation**  
18:8 20:11,17

**domestic** 14:25  
15:1

**Downtown** 13:4

**draft** 15:1,2,14

**drink** 11:16 15:8

**drinks** 11:18  
17:23,25

**due** 12:8,15 21:10

---

## E

---

**e-mail** 10:10 12:7

**elected** 14:1

**engage** 6:5

**enrolled** 6:11

**ensure** 5:25 14:19

**Entertainment**  
5:6

**equipment** 18:12

**error** 16:18,21  
**established**  
19:11  
**estimate** 7:24 8:1  
17:22  
**estimated** 14:10  
16:1 22:24  
**estimates** 8:2  
**evaluation** 11:3  
**evidence** 6:7  
20:17 21:18,20,  
24,25 22:15  
**examination**  
14:18 19:3  
**examine** 18:11  
19:19  
**examined** 19:16  
**Excel** 13:9  
**Exhibit** 7:7 8:24  
10:10,16,22 11:15  
12:6 13:14,22,25  
14:4,9,13,23 15:7,  
10,15,17,21,23,24  
16:2,4,11,23,25  
24:18  
**exhibits** 7:8,15,16  
**expanded** 10:3  
**explain** 11:6,8  
19:13  
**explanation** 11:7  
25:9,15  
**extensions** 12:3

---

**F**

---

**fact** 12:8  
**factors** 14:17  
16:11  
**facts** 8:20 18:20  
**factual** 10:15  
**fails** 11:18,19

**Fair** 15:12  
**Fang** 12:2  
**federal** 9:1,6,8  
11:11 12:12 13:6,  
12,15,18 23:24  
24:23  
**feel** 11:14 12:11  
**field** 10:25 25:10  
**figures** 11:5  
**find** 20:8 21:17  
22:5,15  
**findings** 11:4  
19:25 20:9,10  
**fine** 23:1  
**flexible** 26:2  
**floor** 13:3  
**food** 13:5 15:25  
16:3 18:2 22:25  
**format** 26:2  
**forward** 6:9  
**found** 19:11,17  
**full-service** 13:3

---

**G**

---

**Geary** 5:18,20,22  
21:1,2,8,13,17,23  
22:14,23 23:2,6,  
11 24:6 25:23,24  
**general** 13:7  
**gin** 11:20 22:18  
**give** 7:17  
**good** 5:16 13:19  
**goods** 9:17,18  
17:19 23:18 24:19  
**grant** 8:5  
**gratuities** 21:6  
**Great** 6:20  
**greatly** 10:3

**gross** 13:24  

---

**H**

---

**half** 23:4  
**happy** 15:9,12,16  
17:25  
**hard** 5:19  
**hear** 5:19  
**heard** 5:11  
**hearing** 5:9,11,  
13,23 6:1,9 7:18  
8:19 26:2,3,4

**held** 19:2  
**holding** 19:8  
**hotel** 13:3  
**hour** 15:9,13,16  
17:25

---

**I**

---

**idea** 7:17  
**immaterial** 9:3  
**inadvertent**  
12:15  
**include** 11:18,20  
**included** 11:23  
17:8 22:21  
**includes** 9:18,19  
11:19  
**income** 9:1,6,8  
11:11 12:13  
13:12,15,16,18  
17:14 23:24 24:23  
**Incorporated** 5:6  
**incorrect** 17:17  
20:9 23:22  
**independent** 6:4  
**industry** 10:1  
18:3  
**information** 5:25

17:15 18:21 20:7  
**initial** 10:12,13  
19:24 20:9 25:5  
**initially** 23:21  
**introduce** 5:14  
**inventory** 19:5  
**investigate**  
18:13,24  
**invoices** 13:10,12  
15:5 17:20 19:5  
**issue** 6:21 12:7  
22:12  
**issues** 6:2  
**items** 9:19 15:2  
16:9

---

**J**

---

**January** 16:14  
**Jason** 6:17  
**Josh** 5:13  
**judge** 5:4,5,13,15,  
16,17,18,20,21,  
22,23 6:15,20 7:1,  
4,12,14,17 8:10,  
12,15 12:18,24  
20:20,23,24,25  
21:1,2,8,13,17,23  
22:14,23 23:2,6,  
11 24:6,8,12  
25:17,20,21,22,  
23,24,25

**judges** 5:12  
**July** 12:2

---

**K**

---

**Katherine** 10:11,  
12,17  
**Kim** 10:11,12  
**Kim's** 10:17

<hr/> <b>L</b> <hr/>	<b>manual</b> 10:25 20:4 25:10	<b>move</b> 8:6	<hr/> <b>P</b> <hr/>
<b>lack</b> 12:10	<b>market</b> 11:1	<b>multiple</b> 12:3	<b>p.m.</b> 26:4
<b>lastly</b> 7:25	<b>markup</b> 9:10,14, 24 10:3,9 11:17, 24 14:20 15:20,23 16:4,10 17:8,11 18:2,4 20:13 22:24 23:22,23 25:11	<hr/> <b>N</b> <hr/>	<b>pages</b> 14:9 15:7, 15
<b>law</b> 5:12 6:8 20:4	<b>markups</b> 9:8,13, 16 13:19,21 14:16 15:8,12,15,18,25	<b>Nalan</b> 12:4	<b>paid</b> 13:17 14:16 18:18,19
<b>lead</b> 5:13 10:2	<b>material</b> 9:2	<b>nature</b> 10:15	<b>panel</b> 5:11,23 6:5 7:23 20:21
<b>led</b> 10:18	<b>materials</b> 9:20	<b>needed</b> 24:2,21	<b>panel</b> 5:11,23 6:5 7:23 20:21
<b>ledger</b> 13:7	<b>measure</b> 14:8 21:8	<b>net</b> 13:16	<b>papers</b> 18:11 23:7
<b>liability</b> 10:16,19, 21 12:11 25:6	<b>measures</b> 21:5	<b>non-cocktail</b> 15:9	<b>Parker</b> 6:17
<b>liquor</b> 9:23 11:16 13:4 14:11,25 15:8	<b>members</b> 5:24	<b>note</b> 10:12 11:7 23:17	<b>parte</b> 6:5
<b>liquors</b> 11:20,22 22:18,20	<b>merchant</b> 13:23	<b>noted</b> 9:2,4 16:17, 21 22:17	<b>participate</b> 5:24
<b>list</b> 15:7 17:20	<b>method</b> 8:23 12:9 19:20 20:12,13 23:20 25:1	<b>November</b> 7:5	<b>parties</b> 5:10 8:6 21:21
<b>listed</b> 14:5	<b>methodologies</b> 25:8	<b>number</b> 8:20	<b>parties'</b> 6:7,8
<b>liter</b> 23:4	<b>methodology</b> 20:6	<hr/> <b>O</b> <hr/>	<b>party</b> 6:6 7:9 20:22
<b>long</b> 24:5	<b>methods</b> 10:8,14 12:10 23:16 24:4	<b>objections</b> 7:8	<b>past</b> 18:23
<b>Los</b> 13:4	<b>Michael</b> 6:12	<b>obtained</b> 16:11	<b>pay</b> 20:3
<b>loss</b> 14:15	<b>million</b> 16:16	<b>October</b> 12:4 14:23	<b>percent</b> 9:9,10,25 11:17 13:20 14:10 15:10,13,14,17,20 16:1,7,9,20 17:1 22:25 23:25
<b>losses</b> 13:16	<b>millions</b> 16:15	<b>offers</b> 13:2	<b>percentage</b> 9:24 16:20 17:22
<b>lot</b> 12:13,14	<b>minimal</b> 13:13,25	<b>Office</b> 5:6 6:3	<b>percentages</b> 10:9,10 15:2,19 16:17,18 17:24
<b>low</b> 9:10 13:22 14:16 23:19 24:19	<b>minutes</b> 7:5,20, 22,23 8:1	<b>officers</b> 13:17 14:15	<b>performed</b> 11:3 14:22
<b>lowest</b> 11:22 22:18	<b>mistakes</b> 25:13	<b>opening</b> 5:5 7:19, 21 8:7 12:22	<b>period</b> 11:2 13:11 14:12 16:14,16, 19,22 17:17 19:23
<hr/> <b>M</b> <hr/>	<b>mixes</b> 16:9	<b>operated</b> 14:14	<b>person</b> 18:12,18
<b>made</b> 8:2 9:16 18:7 24:10	<b>moment</b> 22:3	<b>opinion</b> 6:6 11:9	<b>personal</b> 18:12
<b>Maganini</b> 19:2,8, 10	<b>Monthly</b> 14:7	<b>orders</b> 7:6	<b>pilferage</b> 16:8
<b>make</b> 8:4 11:4	<b>morning</b> 5:16	<b>original</b> 10:7 19:4	<b>place</b> 8:24
<b>makes</b> 10:23		<b>OTA</b> 5:7	<b>plan</b> 7:18
<b>manager</b> 10:17		<b>oversight</b> 12:15	
<b>mandatory</b> 14:5 17:5 21:6		<b>overstated</b> 10:3 25:13	



**planning** 6:12  
**point** 5:14 11:13  
 13:8 20:21 23:12  
**points** 10:5  
**POS** 9:2,6 11:11  
 12:13 13:8,24  
 14:2,6 24:24  
**position** 22:20  
**possession**  
 17:15 18:21,22  
**pour** 15:10  
**preclude** 20:10  
**prehearing** 7:6  
**premium** 14:25  
 15:1,8 22:10  
 23:13  
**present** 7:21 24:9  
**presentation**  
 8:14,17 12:16  
 13:1 20:18  
**presented** 6:2  
 10:13  
**previous** 20:8  
**previously** 14:14  
**price** 22:18  
**prices** 11:22  
 17:25 18:1 22:21  
**pricing** 15:6,9,13,  
 16 17:20,24 23:13  
**primary** 20:1  
**prior** 19:25  
**procedure** 14:20  
**procedures**  
 17:11 18:7  
**proceed** 7:18  
 8:13 12:21,24  
 24:12  
**Proceedings** 5:1  
**process** 16:4  
 17:9

**proficiency** 19:1  
**profit-and-loss**  
 13:7  
**program** 20:2  
**proof** 19:12  
**property** 18:13  
**proposed** 11:6,8  
**prove** 20:17  
**provide** 20:2  
**provided** 11:8  
 13:6 15:5,24 18:8  
 19:25 20:16  
**purchase** 13:9,  
 10,11 14:22 15:5,  
 19 16:6 17:18,20  
 19:4 23:6,8,9  
**purchases** 9:23  
 14:10,24 16:3,8,  
 10  
**purpose** 12:16  
 20:1  
**purposes** 8:3  
**Pursuant** 7:5  
**put** 25:7

---

**Q**

---

**quarter** 16:20  
**question** 10:23  
 21:22 25:8  
**questioning** 7:23  
**questions** 5:24  
 8:6,11 12:19  
 20:19,22,23 21:2  
 24:7 25:19,20  
**Quinn** 19:2

---

**R**

---

**Randy** 6:17  
**range** 10:23

**ratio** 17:1  
**ratios** 10:9 23:6,8,  
 9  
**read** 6:8  
**ready** 8:13,14  
 12:21,25 24:13  
 26:2  
**reaffirmed** 19:8  
**reason** 8:22 10:6  
**reasonable** 11:3,  
 10 12:14 17:2  
 19:12,23 20:2,16  
 25:3,4,12  
**reasonableness**  
 10:24 11:5,7 25:9,  
 14  
**reassess** 8:4  
**rebuttal** 7:25 24:9  
**recap** 17:3  
**received** 7:15,16  
**recent** 11:14  
 24:17  
**recognized** 24:25  
**recommendation**  
 14:22  
**recommended**  
 12:6  
**reconciled** 9:1,3  
**reconciliation**  
 14:1 17:7  
**record** 5:4,5 25:7  
 26:3  
**recorded** 14:16  
 16:3 17:12  
**records** 9:5 13:6  
 14:18 15:24  
 18:11,25 19:4,6,9,  
 14,16 20:14 24:21  
**reduced** 16:6,8  
**refer** 10:10,15,22  
 20:21

**reflect** 9:14,16  
 11:17 12:11 23:22  
**reflected** 9:15  
**regard** 12:7  
**regional** 10:11  
**register** 19:5  
**registers** 13:9  
**regular** 15:9,12,  
 16 17:25  
**reinforce** 11:8  
**reinforced** 11:6  
**reiterate** 8:2  
**relate** 23:13  
**relevant** 6:8  
**relied** 21:14,25  
**Rema** 12:4  
**reminder** 6:3  
**Remote** 5:1  
**rephrase** 21:23  
**report** 10:13,21  
 17:18  
**reported** 6:23 9:3  
 13:5,13,18 14:2,  
 19,20 16:15,19  
 17:13,16 19:22  
**reports** 9:6,15  
 11:12 13:8 14:6  
 17:24 24:24  
**representative**  
 21:4  
**request** 8:4  
**requested** 12:1,3  
**required** 9:11  
 18:17,19 20:4,5  
**reserve** 12:19  
**responded** 12:4  
**Respondent** 6:16  
 21:14,24 22:24  
 23:7

- resulted** 10:18, 20,21  
**resulting** 16:13, 21  
**results** 9:11 10:23 19:14  
**return** 9:18 11:11 18:14,16,20  
**returns** 9:1,6,8 12:12,13 13:6,12, 15,18 17:14,16 18:16,20 23:24 24:23  
**reused** 16:2  
**Revenue** 18:10, 15  
**review** 18:6  
**reviews** 20:11  
**revising** 20:10  
**rights** 19:18  
**Riley** 19:7  
**rulings** 23:16  
**rum** 11:20
- 
- S**
- 
- sale** 12:12 23:3  
**sales** 6:23 8:25 9:1,2,3,5,18,20 10:4 11:2,9,11,16 12:13 13:5,8,13, 18,25 14:1,2,3,19, 20 16:13,16,19, 22,24 17:4,6,12, 14,16,23,24 19:5, 21,22 21:9,11 24:23 25:2,5  
**Samuel** 12:4  
**satisfied** 18:16  
**scheduled** 14:7  
**section** 8:25 18:15 19:19  
**Sections** 19:3  
**segregated** 14:24 22:13  
**segregation** 15:19 22:10,15, 16,22  
**self-consumption** 14:9,11 16:7 17:6 21:5  
**selling** 18:1,12  
**served** 11:18  
**serves** 13:4  
**severely** 11:23  
**shelf** 9:11 10:3 11:17,19,23,24,25 12:5 15:4,18,22, 25 16:11 17:21 22:1 23:2  
**shifts** 19:12  
**shortcut** 23:11  
**shorter** 7:24  
**show** 8:19  
**shown** 6:22 20:15  
**shows** 9:5 13:15  
**Similarly** 19:7  
**sir** 12:23  
**sizes** 15:10  
**skewed** 11:16  
**slips** 19:5  
**sold** 9:17,18 13:19 17:19,23 23:18 24:19  
**solely** 10:15  
**specific** 11:4 22:18  
**speculations** 10:8  
**speculative** 10:15  
**spillage** 15:10,14, 17  
**standard** 10:1  
**start** 7:19  
**state** 8:22 9:13 18:18 23:18 24:17,18  
**stated** 8:24,25 14:14  
**statement** 7:19 12:20  
**statements** 8:7 13:7,24  
**states** 9:7 18:15  
**Suazo** 6:17,18,19 7:2,3,13 8:10,11 12:21,23 13:2 20:20  
**submission** 22:5, 6  
**submissions** 6:9  
**submitted** 21:18, 21,24  
**subsequently** 10:18  
**sufficient** 20:17  
**supplies** 9:20  
**supply** 15:2 16:9  
**support** 11:3 18:8  
**suspected** 10:7  
**system** 14:2  
**systems** 14:6
- 
- T**
- 
- tangible** 18:12  
**tapes** 19:5  
**tax** 5:6 6:3 9:1,5,6, 8,18 10:16,19 11:11 12:12,13 13:6,12,15,17,18, 25 14:1,2,3 17:6, 7,14,16 18:17,25 19:22 23:15,24 24:23 25:5  
**taxable** 6:23 9:3, 17,19 13:6 14:8, 11 16:16 17:5,6 19:21 21:11  
**Taxation** 18:10, 15  
**taxed** 14:6  
**taxpayer** 19:13  
**taxpayer's** 19:9, 14  
**taxpayers** 20:3  
**taxpayers's** 18:25  
**ten** 7:23 15:14  
**tequila** 11:19  
**terms** 24:23  
**test** 9:11 10:3 11:16,17,19,23,24 12:1,5 15:4,18,19, 22,25 16:11 17:21 22:1 23:3  
**testing** 18:7  
**thread** 12:7  
**Thursday** 5:1,7  
**time** 5:8 8:4,5 18:6 20:24 25:18 26:1  
**tips** 14:5 17:5  
**today** 6:10,21  
**Today's** 5:7,11  
**total** 8:25 14:7 16:16 17:3  
**totalled** 16:22  
**true** 9:14 23:22  
**type** 13:21  
**types** 11:18

---

**U**


---

**underreported**

11:2 25:2

**underreporting**

10:4 11:10

**understand**

21:21 24:3

**understatement**

6:23

**unreported** 16:22

17:4,5 21:9,11

**upheld** 18:24**upscale** 13:3

---

**V**


---

**validate** 14:20**validity** 10:24**verify** 18:14**versus** 19:2,7

23:13

**VG** 5:6**view** 13:15**virtual** 5:9**vodka** 11:19

---

**W**


---

**warrant** 8:20**warranted** 6:22

8:23 10:2

**water** 15:22 16:3

23:4

**weight** 15:20**weighted** 15:2,

19,23

**whisky** 11:20

22:19

**wide** 10:23**wine** 13:5 14:11  
15:2,15**work** 23:7**wrap** 10:4 12:16

---

**Y**


---

**year** 11:10 16:18**years** 13:16 18:23  
25:3