

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
WMG CENTER, INC.,) OTA NO. 18083562
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Monday, January 24, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
WMG CENTER, INC.,) OTA NO. 18083562
)
 APPELLANT.)
)
)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 2:15 p.m. and concluding at 3:16 p.m. on
Tuesday, January 25, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Panel Lead: ALJ ANDREW WONG

Panel Members: ALJ JOSH ALDRICH
ALJ MICHAEL GEARY

For the Appellant: W. NEMIROFF
V. MANN

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

RANDY SUAZO
JASON PARKER
CHRISTOPHER BROOKS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

(Appellant's 1-7 Exhibits were received at page 6.)
(Department's Exhibits A-F were received at page 6.)

P R E S E N T A T I O N

	<u>PAGE</u>
By Mr. Nemiroff	7
By Mr. Suazo	26

W I T N E S S T E S T I M O N Y

	<u>PAGE</u>
By Mr. Mann	8

C L O S I N G S T A T E M E N T

	<u>PAGE</u>
By Mr. Nemiroff	40

1 California; Tuesday, January 25, 2022

2 2:15 p.m.

3
4 JUDGE WONG: We are now going on the record in
5 the appeal of WMG Center, Inc., before the Office of Tax
6 Appeals. This is OTA Case Number 18083562. Today is
7 Tuesday, January 25th, 2022. The time is 2:15 p.m. We
8 are holding this hearing by video conference and
9 telephone. I am lead Administrative Law Judge Andrew
10 Wong, and with me today are Judges Josh Aldrich and
11 Michael F. Geary. We are the panel hearing and deciding
12 this case.

13 Individuals representing Appellant please
14 identify yourselves.

15 MR. NEMIROFF: Warren Nemiroff.

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

17 Individuals representing CDTFA, please identify
18 yourselves.

19 MR. SUAZO: Randy Suazo, Hearing Represent.

20 MR. PARKER: Jason Parker Chief of Headquarters
21 Operation Bureau.

22 MR. BROOKS: Christopher Brooks, Tax Counsel for
23 CDTFA.

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

25 We are considering one issue today, whether any

1 further reductions to the amount of unreported taxable
2 sales is warranted.

3 Mr. Nemiroff, is that correct?

4 MR. NEMIROFF: That's correct.

5 JUDGE WONG: This is Judge Wong. CDTFA, is that
6 correct?

7 MR. SUAZO: This is Randy Suazo. That is
8 correct.

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

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

15 (Appellant's Exhibits 1-7 were received
16 in evidence by the Administrative Law Judge.)

17 CDTFA has identified and submitted proposed
18 Exhibits A through F as evidence, has no other exhibits to
19 add, and Appellant has not objected them. Therefore,
20 CDTFA Exhibits A through F will be admitted into the
21 record as evidence.

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

24 Now, Appellant has one witness, Vic Mann, and
25 CDTFA has no witnesses. So I'll take this opportunity to

1 swear in the witness. Would you please raise your right
2 hand.

3 MR. MANN: Okay.

4

5 VIC MANN,

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

9

10 JUDGE WONG: Thank you. All right. Appellant's
11 presentation, you may proceed for 30 minutes.

12

13 PRESENTATION

14 MR. NEMIROFF: Okay. I'm going to make it a
15 short opening statement.

16 In this case, as the government originally came
17 to the conclusion that there was almost, if not more, than
18 \$1 million in unreported income on a business that lasted
19 a little more than a year. When we went to appeals, the
20 appeals audit -- the appeals officer came to the
21 conclusion that the findings were -- I'm not going to use
22 the word ludicrous -- but then he wanted proof of
23 something from the Appellant himself to show what would be
24 a basis.

25 The basis he used was December of the only year

1 this business was in operation. Now, those findings are
2 slightly high, and this business went out of the business,
3 quite frankly, a little more than four or five months
4 later. If you do a mean average here, the Appellant in
5 issue would get a total refund.

6 One thing is certain. The audit findings here
7 have no basis in reality. They did not go into the
8 business in issue. They ignored the fact there was
9 another similar business close by. Whatever conclusions
10 they came to was third hand. And appeals itself had no --
11 saw no validity in them. So this is not a question of
12 whether the man deserves a refund. This is a question of
13 whether he deserves it all, and I think he does.

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

15 MR. NEMIROFF: Are you there?

16 JUDGE WONG: Yes. This is Judge Wong. Thank you
17 for that statement. Would you like to proceed with
18 examining your witness?

19 MR. NEMIROFF: Absolutely.

20

21 DIRECT EXAMINATION

22 BY MR. NEMIROFF:

23 Q Mr. Mann, are you there?

24 A Yes. Yes, I am.

25 Q Okay. When did this business start?

1 A I believe it was June 2011.

2 Q And when did this business end?

3 A In June 17th or 18th of 2012.

4 Q Okay. Did you acquire this business?

5 A Yes. I purchased it from the person who operated
6 it prior to me getting it.

7 Q And how much did you pay for that business?

8 A \$240,000.

9 Q Okay. Now, the business lasted a little more
10 than a year or a little less than a year; correct?

11 A Yes, like, a year and two weeks.

12 Q All right. What was the business in issue?

13 A It was the -- the -- it was the sale of
14 medical -- dispensary of medical marijuana products.

15 Q Okay. Had you previously ever been in such a
16 business?

17 A No. I didn't even smoke marijuana.

18 Q Okay. So why did you purchase this thing?

19 A Well, I was -- I was convinced and worked up that
20 it's a good business. It's all cash. It -- it's you get
21 money every day. It's an easy business to operate.
22 There's no competition. Just on and on. It just got me
23 pumped up that this sounds like a good business. Because
24 prior to that, I was in a legal business for many, many
25 years. And, also, I had been flipping houses and

1 purchasing houses in the back, and you have to wait one
2 year until you sell the house and get a check.

3 Q Yeah.

4 A So this sounded a lot more attractive, having
5 money come in on a weekly or daily basis.

6 Q Okay. Did you find out, when you took this
7 business, that there was a competitor close by to you?

8 A Well, as a matter of fact, the party that I
9 purchased it from opened up this exact same business,
10 another medical marijuana dispensary exactly two doors
11 down from my door. And this was a strip mall in which we
12 are separated by a common wall. He had all the
13 experience. I had none.

14 Q And you, obviously, didn't sign with him a
15 covenant not to compete before you did this, did you?

16 A Obviously not. I never dreamed he would do
17 something like that.

18 Q So you basically funded a competitor?

19 A Yeah. I mostly always dealt with honest people
20 most of my life.

21 Q Yeah.

22 A Many, many years ago I had a bail bond business
23 that I started, and marijuana at that time was a felony.
24 So I never became interested in trying that product.
25 Never once I was exposed to it until I purchased the

1 business.

2 Q Well, didn't you realize this was not allowed
3 under federal law?

4 A No, I did not. When I first went in, that was
5 not clear to me. But he kept showing me papers where
6 in 20 -- was it 2016 or -- or 2008, you could raise
7 marijuana. And then another one passed another year where
8 you were allowed to distribute, you know, grow it and
9 distribute it, a cooperative was the term they used. The
10 cooperatives became growers, and then they dealt with the
11 dispensary, which is the store that I bought. But I
12 didn't know how the system worked for sure until I got
13 into it.

14 Q And so that later on you found out about the
15 problems with the federal government?

16 A Yeah. Well, it started out with the police
17 coming by. So we had to go to court on that. I had to
18 hire an attorney because they were parking the police cars
19 right in the front door. And then the landlord was
20 pressured, and he tried to evict us after just being there
21 a few weeks. So we had to have the attorneys fight that
22 in court.

23 And then they went to the city, and it was just
24 constant money going out to attorneys fighting this whole
25 thing. In addition to that, the -- he became my

1 competitor. He was -- he had owned the business for about
2 three and a half years prior to me purchasing it from him.
3 So he was very experienced in the business. I have no
4 experience at all.

5 Q Okay. Now, you filed federal returns on this
6 business; correct?

7 A Yes, sir. I filed for 2011, and I filed a
8 federal return for 2012. And I made both of those
9 available to the Board of Equalization.

10 Q And they were accurate; correct?

11 A Absolutely. I never heard anything from the
12 Franchise Tax Board. I never heard anything from the
13 federal -- from the Internal Revenue Service.

14 Q Okay. All right. This is going to sound like
15 the most ludicrous question anyone has ever asked you.
16 Did you make a million dollars on the side on this
17 business and not reported it?

18 A I would not have closed the businesses if I would
19 have cleared a million on the side. I would have stayed
20 there and milked that.

21 Q Okay.

22 A I would not have just -- we couldn't even sell it
23 because I couldn't prove that we had enough income for
24 somebody to give us money for.

25 Q Yeah. Okay. When we went to appeals, I think I

1 remember that you gave them evidence the only month you
2 had for December. Okay?

3 A Yeah.

4 Q Even in that year, was December the best month?

5 A December was Christmas. I have always -- I have
6 always known that at Christmas time, you know, November
7 and December, unless you sell toys, liquor, or drugs,
8 you're not going to sell anything. So that was a very
9 good month.

10 Q So in other words, since you weren't selling toys
11 or liquor, you were selling number three?

12 A That's correct, sir.

13 Q All right. I had to ask that question. So the
14 business -- but you shut the business down; right?

15 A It consumed all the time. It was the -- even
16 though it was only opened 9 or 10 hours a day, we were
17 there 12, 13 hours a day checking on security, refilling
18 the jars with product, trying to see exactly if things
19 matched up. What should we order again? Trying to choose
20 the inventory that -- that would move rather than the ones
21 that sat there and became what they call shake, which is
22 when it dries up nobody wants to buy it.

23 Q Okay. All right. Would it be correct to say
24 that you made less money in January and February than you
25 made in December?

1 A That's for sure. Once the Christmas --

2 Q How about March?

3 A Same thing. Those were months that were light
4 months. And the expenses kept growing because one month
5 we would have to fight the Whittier PD. The next month it
6 was the landlord. Then the next month the city was after
7 us. And like I said, I had no idea that this business was
8 illegal, that it was a Class 1 narcotic. All I was ever
9 shown was the papers of California's, you know, SB 1240 --
10 or whatever they were -- and that convinced me that it was
11 a legitimate business.

12 Q Yeah. Was the fact that you found out that it
13 was illegal federally and that you couldn't deduct a lot
14 of expenses one of the reasons you closed?

15 A That was by far the biggest back breaker
16 financially, was that you were not allowed to deduct the
17 rent, which I think was \$3,000. You were not allowed to
18 deduct the electric bill, which you have to keep it air
19 conditioned to keep all the product fresh. That was \$600
20 and higher. And it was just -- it was just like
21 everything that we needed to deduct, we could not deduct
22 one penny of. It was just my reporting the gross, and the
23 gross almost became the net.

24 Q Okay. So one second. Okay. All right. Next
25 question. Did the auditor in question ever come into your

1 facility?

2 A No. Nobody from BOE ever came in there, ever
3 asked to come in, ever inquired about coming in. Never
4 one -- never one time.

5 Q So in other words, how did they audit this place?

6 A My understanding from what I read, from what they
7 wrote to me, was that they had a person out in the parking
8 lot and park out away from the front door several rows
9 back so they wouldn't be noticed. And -- and even though
10 there was a shop, like I said, right next door to mine, he
11 claimed that he saw so many people come out in the 28 or
12 29 minutes he was there. And then based upon that, he
13 determined there were so many an hour.

14 However, a lot of people would go in to price
15 check. Our prices were not the cheapest prices. We
16 didn't know for sure what was cheap. I had never been in
17 a competitive marijuana business. A lot of people would
18 walk in and walk out and not buy anything.

19 Q Right.

20 A Other people would walk in and complain that what
21 they bought they didn't like and they wanted their money
22 back, or they wanted more. And the only way we made a
23 sale was the State required that we put it in a bag and
24 seal it, which we stapled it. And if they didn't walk out
25 with that white bag in their hand, they didn't by

1 anything. And my understanding, the person counting in
2 the parking lot that was counting what he believed was the
3 walking in and out people to my business, he never once
4 made a note which ones had a white bag or which ones
5 walked out with nothing.

6 Q So in other words, he could have been counting
7 the people to the other business?

8 A It most likely he was because it was right --
9 like I said, it was two doors down. But the way the doors
10 were set up, it was only a few feet apart. And from the
11 parking lot, unless you parked up against the front row,
12 you were not really sure who walked out of where and most,
13 importantly, who actually made a purchase when they went
14 in there.

15 Q Okay.

16 A Once I was in the business, I went to other
17 marijuana dispensaries myself in person to see exactly
18 what their prices were, to see exactly if they have
19 specials, to see exactly how they handled customers.
20 Because like I said, I had never done this before. I
21 walked into many shops and never purchased anything, and
22 the same thing happened at our dispensary.

23 People would come in there, get into an argument
24 about the price, or claim that they bought it and it
25 wasn't that good and walked out, and never purchased

1 anything. And they were being counted too.

2 Q Okay. For the record, do you know whether your
3 neighbor was ever audited?

4 A No, I -- I'm not aware of it because once he --
5 once he sold the shop to me and opened to compete with me,
6 I never spoke to him again.

7 Q Got it. Okay. All right. So for the record, it
8 would be correct to say that you made no additional income
9 that you failed to report for the very short period of
10 time this was in business; correct?

11 A That's absolutely correct. I -- I even showed my
12 income tax to possible buyers, and they were not
13 interested because they knew the problems I was having
14 with the police department, with the landlord, with the
15 city, with everybody involved in it. And, like I said, I
16 did not know that under federal law it was a Class 1
17 narcotic that I was selling to people. I was not aware of
18 that when I went into the business.

19 Q Okay. All right. Is there anything else you
20 would like to add personally?

21 A Yes. Okay. I'm looking at some of the figures
22 that were generated for me -- and on one of them, I don't
23 have the front page -- but it's one of the many, many
24 papers that I was given showing how much they estimated.
25 On the lower part of page 5, it says that, "The average

1 selling price of an eighth of marijuana was \$48.47."

2 Well, an eighth is a bigger purchase than normal.
3 A lot -- by today it may be the standard but then it
4 wasn't. We also sold what they call one gram, and we also
5 sold what they call shake, which is when the marijuana
6 product sits there long enough it dries up. It crumbles,
7 and it's not attractive and people don't buy it. People
8 don't buy -- we sold shake for \$6 or \$8 a gram. That was
9 never taken into account.

10 The one-gram purchases of regular weed, that was
11 never taken into account. What the estimator did was like
12 going to General Motors and say, you know, you sell Chevy
13 Sprints for \$9,000, and you sell Escalades for \$120,000.
14 So the average of that is from 10 to 120, let's just say
15 \$60,000. So they used an average the equivalent of
16 \$60,000 per purchase.

17 Q So in other words, the auditor decided you were
18 the Cadillac of drug dealers?

19 A That's the only thing I can conclude from the way
20 this was written to me. It says very clearly -- and oh,
21 and the price they got was from the internet. It wasn't
22 from my shop. It said, "An ounce of marijuana has been
23 computed as an average selling price per order of \$48.47."

24 It's just a completely fictitious figure. It
25 just reminds me of buying a car from General Motors, and

1 it doesn't matter if you bought the Sprint for \$10,000 or
2 the Escalade \$120,000, it was still \$60,000 what they
3 estimated that you sold for that transaction.

4 And then they computed the number of customers.
5 He was there for either 28 or 29 minutes in the parking
6 lot, and he counted people coming out. He didn't
7 distinguish if they came out from my front door or from
8 the competitor's front door. He didn't distinguish if
9 they came out with a bag, proof of purchase. He didn't
10 distinguish any of those things. He just counted people
11 that appeared to come out of the both -- one of the shops,
12 and came out with 37 per hour.

13 And then he multiplied that times \$48.47, which
14 gave a total daily sale of \$1,793.53. And then they took
15 331 days and multiplied it times that, and I'm going to
16 read you the number. It says, "Based upon that computed
17 audited taxable sales of \$7,717,544 rounded off." Why
18 would I take a business that's generating almost
19 \$8 million a year and walk away from it? Not sell it, not
20 give it away, just close the doors. Why would I do that?
21 I've never made that kind of money. Never. It's just
22 these figures are beyond belief.

23 And then she continues with -- whoever wrote
24 it -- "When compared to the reportable sales of \$522,566,
25 the Department computed unreported taxable sales of

1 \$7,194,978."

2 I almost fell over when I read that. Why would I
3 take a business that made at the very least a million
4 clear a year, more than I reported, or the figures they
5 use of 7.19 -- \$7,194,000. Why would I take a business
6 and just shut it down and walk away? That doesn't even
7 begin to make sense. These figures are just outrageous.
8 The only thing I compare it with is somebody going to buy
9 something from General Motors.

10 Q Yeah.

11 A That's the only thing I can compare it with.

12 Q Well, I couldn't have said it better, and I can't
13 say more. Thank you, Mr. Mann.

14 A You're welcome. Thank you.

15 JUDGE WONG: This is Judge Wong. Mr. Nemiroff,
16 is there anything else?

17 MR. NEMIROFF: No. When something is said that
18 well, I just -- you know, when you say it right, I don't
19 think I should add anything. I'm just in total agreement.
20 He sounds like the appeals officer. Anyway I'm done.

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

22 I had just a quick question. The word shake, how
23 do you spell that.

24 MR. MANN: S-h-a-k-e. It's a term that's applied
25 when the marijuana bud becomes stale or dry or exposed to

1 pressure too long. It dries up, and it crumbles. When
2 you touch the little bud, it falls off. And when people
3 come in to buy it, that's the first thing they do. They
4 want to smell it. They want to look at it. They want to
5 touch it. And then when they realize it's shake, they
6 won't buy it. So you have to list it separately and
7 identify it correctly as shake, which is usually bought
8 for \$6.00 to \$8.00 a gram.

9 JUDGE WONG: This is Judge Wong. Thank you,
10 Mr. Mann.

11 MR. MANN: You're welcome.

12 JUDGE WONG: I'll open it up to CDTFA for
13 cross-examination if they should wish to do so.

14 MR. SUAZO: This is Randy Suazo. No questions.

15 MR. NEMIROFF: No questions. Okay. Hello?

16 JUDGE WONG: Sorry about that.

17 MR. NEMIROFF: Hello?

18 JUDGE WONG: Hi. Sorry. This is Judge Wong.
19 Now, I'll open it up to my co-panelists to see if they
20 have any questions for the witness or Mr. Nemiroff,
21 starting with Judge Aldrich.

22 JUDGE ALDRICH: Hi. This is Judge Aldrich. I
23 don't have any questions. Thank you.

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

25 Judge Geary?

1 JUDGE GEARY: This is Judge Geary. No questions.
2 Thank you.

3 JUDGE WONG: This is Judge Wong. Thank you. I
4 had just a couple of questions for Mr. Mann.

5 MR. MANN: Yeah.

6 JUDGE WONG: So you -- so did you purchase the
7 business by yourself, or did you have any partners,
8 or were there any co-owners?

9 MR. MANN: I have a partner by the name of
10 Chacon, Marco Chacon. And he led me to believe that he --
11 he understood the business.

12 JUDGE WONG: Okay. This is Judge Wong. Thank
13 you. And you purchased the business when?

14 MR. MANN: It was like the third week or the
15 second week of May, but we didn't operate it until
16 June 1st. He was taking some of his inventory out. He
17 had a lot of what they call glassware, you know, the pipes
18 to smoke it with, the bongs to smoke it with, a lot of
19 glass special -- he had a lot of glass stuff that we
20 agreed he would remove before we took it over, the
21 person -- the person I purchased it from.

22 JUDGE WONG: This is Judge Wong. Thank you.
23 Mr. Mann, were you involved with the business prior to
24 purchase?

25 MR. MANN: No. No. I -- I had never even been

1 in a marijuana dispensary. I had no knowledge of the
2 business whatsoever. Like I said, back in the 70s I
3 started a bail bond business, and I had run that business
4 for several years. And at that, even the smallest bit of
5 marijuana was considered a felony. You got arrested, you
6 were charged with a felony. And I operated that, and that
7 always instilled in me to stay away from that. That is
8 not a product to be used. That should be against the law,
9 and it was against the law then.

10 JUDGE WONG: This is Judge Wong. Thank you,
11 Mr. Mann. So you weren't involved in the predecessor,
12 what I will refer to as the predecessor?

13 MR. MANN: Yeah.

14 JUDGE WONG: My understanding is the corporate
15 owners remained the same. It's just that the stock -- who
16 owned the stock changed; is that correct?

17 MR. MANN: Yeah. Well, when we purchased the
18 business, there was -- we purchased just the inventory
19 that was re-sellable. That was part of it. It was we
20 operated the continuity of the business with some of the
21 product that was there.

22 JUDGE WONG: This is Judge Wong. That kind of
23 leads into my next questions. Are you aware of any
24 changes operationally, and how the business was run by
25 your predecessor, and how you ran the business?

1 MR. MANN: Well, like I said, he had experience.
2 And once he got paid, and immediately we found out he was
3 opening next door -- a very dishonest person to do what he
4 did knowing that I had no experience. And my partner had
5 some knowledge, but he's never run a business, a medical
6 marijuana dispensary, either. And one of the biggest
7 things that I found out that was the biggest shock was the
8 fact that on your federal income tax you could not deduct
9 anything except for the purchase of the marijuana product.
10 You couldn't deduct the rent. You couldn't deduct the
11 phones. You couldn't deduct any advertising. You
12 couldn't deduct the lights. You could not deduct
13 anything.

14 JUDGE WONG: This is Judge Wong. At some point,
15 I believe it was around October 2011, the business stopped
16 taking credit cards; is that correct?

17 MR. MANN: Yes, because the credit card was
18 originally hooked up to his bank, and he was supposed to
19 have terminated so that we could transfer it over to our
20 bank. And I had a nightmare trying to find a bank that
21 would take -- that would deal with credit card machines
22 with us because nobody wanted to be identified with that.
23 So he was the beneficiary of those sales on the credit
24 cards for the first few weeks that we had it.

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

1 Last question. This is for either Mr. Mann or
2 Mr. Nemiroff. Could you explain the significance of the
3 exhibits that you've submitted on appeal, in particular,
4 Exhibit 7?

5 MR. NEMIROFF: Which is Exhibit 7, since they're
6 not in front of me, Your Honor?

7 JUDGE WONG: It's a bunch of receipts from 2017.

8 MR. NEMIROFF: I can't explain that. I think
9 Mr. Mann has to.

10 JUDGE WONG: Mr. Mann?

11 MR. MANN: Could they be from 2012?

12 JUDGE WONG: They are.

13 MR. MANN: Is that the one --

14 JUDGE WONG: This is Judge Wong. The dates on
15 the receipts are from 2017, April it looks like.

16 MR. MANN: Okay. It's -- it's the cash register
17 machine that we used. My partner did not know how to
18 program it. And I thought he had a program, but they were
19 actually 2012. We were in business from June 2011 through
20 June -- I believe it was 17th or 18th of 2012. We were
21 not in the marijuana business in 2017. That's just an
22 error on setting up the cash register to show the correct
23 date, the correct year, the correct hours.

24 JUDGE WONG: This is Judge Wong. Thank you.
25 That's all the questions I had for now. Okay. I will now

1 turn to CDTFA. You may proceed with your presentation.
2 20 minutes. Thank you.
3

4 PRESENTATION

5 MR. SUAZO: Thank you. This is Randy Suazo.

6 The Appellant, a corporation, operated a retail
7 cannabis dispensary in a strip mall in the City of Santa
8 Fe Springs, California. The business was open from
9 9:00 a.m. to 10:00 p.m. Monday through Saturday and was
10 periodically open on Sundays. The Department notes that
11 the corporation held two separate seller's permits for the
12 same business location selling the same products;
13 Exhibit A, page 12, Exhibit B, page 12.

14 The first permit was in operation for the period
15 of January 10th, 2011 through May 19th, 2011; Exhibit F,
16 pages 2, 3, and 4. The second permit was in operation for
17 the period of June 15th, 2011, through June 17, 2012;
18 Exhibit F, pages 5, 6, and 7. The Department performed an
19 audit examination for the period of June 15, 2011, through
20 June 17, 2012. A timely Notice of Determination was
21 issued on November 4th, 2013; Exhibit C.

22 During the audit period, the Appellant provided
23 federal income tax returns for the years 2011 and 2012,
24 bank statements for May 2011 through June 2012, and sales
25 journals from May 2011 through December 2011. No source

1 documentation, such as sales invoices or purchase invoices
2 were provided to support reported amount; Exhibit A,
3 page 11. An analysis of taxable sales reported for sales
4 and use tax returns showed average daily sales amount of
5 \$1,578 with the Department estimated average sale per
6 customer \$48. The reported amounts results correlate to
7 only two-and-a-half customers per hour; Exhibit A, pages
8 18 through 20.

9 Based on the Department's experience with other
10 similar businesses, the reported amounts appear to be
11 understated. Therefore, audited taxable measure was
12 computed using an indirect audit methodology. The
13 Department transcribed and analyzed the Appellant's
14 available bank statements; Exhibit A, pages 27 and 31.
15 The Department noted that the Appellant's cash deposit
16 amounts vary, and for one month no cash was deposited.
17 The Department also contends the Appellant did not deposit
18 all cash sales. The Department also contends -- excuse
19 me.

20 They said some of the cash was used to purchase
21 cannabis and supply items. Since all cash was not
22 deposited, the Appellant's bank deposits were deemed
23 unreliable. The Department performed two separate
24 observation tests where staff observed the number of
25 customers entering and exiting the business. The first

1 test was on Monday, October 31st from 1:02 p.m. to 1:32
2 p.m. It was for 30 minutes, and 18 customers were
3 observed.

4 The second test was performed six-and-a-half
5 months later on Thursday, May 10th, 2012, from 2:41 p.m.
6 to 3:12 p.m. and lasted 31 minutes with 20 customers
7 noted; Exhibit A, page 34 and 35. The results of the
8 testing extrapolate to an estimated 37 customers per hour,
9 which is much greater than the Appellant's reported
10 two-and-a-half customers per hour; Exhibit A, page 18.

11 The Department obtained the Appellant's credit
12 card sales information per 1099-K; Exhibit A, page 36, and
13 Exhibit E, page 2. The third party 1099-K credit card
14 information was only available for the period of
15 January 2011 through October 2011. A review of credit
16 card sales and reported gross sales for both seller's
17 permits of the corporation show that the reported sales
18 amounts were much greater in earlier periods of operation,
19 i.e., the first permit than the latter periods, the second
20 permit.

21 Additionally, the percentage of credit card
22 payments to total reported amounts went from 32 percent,
23 Exhibit B, page 12, in early periods covered by the permit
24 to over 70 percent, Exhibit B, page 18, in the latter
25 period of the second permit. The Department contends that

1 it is unreasonable to resume a dramatic increase of credit
2 card used versus cash. The Appellant provided no source
3 documents which would support a decrease in cash sales
4 between the two periods or to support that less sales were
5 made overall.

6 Additionally, for the three quarters of first
7 quarter 2011, second quarter 2011, and third quarter 2011,
8 the average credit card sales remained relatively similar
9 with an average of \$1,460 per day. This indicates that
10 the Appellant's sales remain constant, and the change in
11 reported amounts were likely due to an understatement of
12 cash sales. Based on the 1099-Ks analysis, the Department
13 accepted the credit card percentage for the period of
14 January 2011 through May 2011 of 32.89 percent; Exhibit B,
15 page 12, as the most accurate representation of
16 Appellant's credit card percentage.

17 The audited credit card percentage was applied to
18 third party 1099-K amounts for the period of June 2011
19 through October 2011 to compute audited taxable sales paid
20 by cash and credit card. A comparison of audited sales
21 and reported amounts for the corresponding periods
22 resulted in a computed percentage of error of over
23 115 percent; Exhibit B, page 11. The understated taxable
24 measure for the audit period is \$601,591; Exhibit B,
25 page 10.

1 The Appellant claims the sales in the last four
2 months of the audit period were much lower because the
3 business was closing. Yet, the taxable -- yet, the
4 Appellant's reported taxable measure for April 1st, 2012,
5 through June 17, 2012, Exhibit A, page 9, contradict this
6 contention as the sales are higher than the previous
7 periods. Additionally, the year 2012 gross revenue per
8 IRS returns, which includes only the six-month period of
9 operation, shows an average monthly revenue, which is
10 greater than the 2011 amounts for the previous year;
11 Exhibit A, pages 29 and 30.

12 During the appeals process, the Appellant
13 provided register tape sales information for the 18-day
14 period of December 7, 2011, through December 24, 2011;
15 Exhibit D, page 18. The average daily sales amounted to
16 \$2,210, which if extrapolated for 31 days in December is
17 \$68,510. When compared to the recorded sales for the
18 daily journal for December 2011 of \$32,579, that's on
19 Exhibit A, page 28, the difference of \$35,131 is disclosed
20 and a percentage of error of 110 percent is derived. This
21 is additional information -- this additional information
22 supports the Department's audit findings.

23 The Department contends the indirect credit card
24 of the methodology is reasonable as the use of Appellant's
25 credit card transaction allows for fluctuations in sales

1 volumes by month and/or seasons. The assessed findings
2 disclosed at the cost -- that the sales averaged 5.39 per
3 hour using the Department's average selling price of
4 \$48.47, which is an eighth of an ounce; Exhibit B,
5 page 15.

6 When using the Appellant's average selling price
7 of \$23.56, which is on Exhibit D, page 18, hourly sales
8 were 11 customers per hour. Again, the Department's
9 observation test revealed an average of 37 customers per
10 hour entering the dispensary; Exhibit A, page 17, 34, and
11 35. This very analysis disclose that the Department's
12 audited sales are very conservative. The Appellant has
13 not provided substantive documentation to support change
14 to the audit findings. Therefore, the Department request
15 that the appeal be denied.

16 In addition, on the Exhibit 7 provided by the
17 taxpayer, it appears that the Sundays are not included in
18 the documentation provided to us. Also of note is that
19 4/19 the sales that the taxpayer states are 2012 are
20 basically double of the other sales for that period.
21 However, 4/19 -- or he's saying that's 4/19 on the
22 calendar. But if you look at the register tape, it's
23 4/20/2017. You would expect 4/20 because it's an
24 unofficial holiday for marijuana, I guess you would say,
25 would be the highest in all of April.

1 So it's sort of strange that the 4/20 date on the
2 system for 2017 appears to be correct. But on the stamped
3 4/20, which is a day for that, which according to him is
4 4/19, is actually higher. So there appears to be
5 inconsistencies on what was given to us on Exhibit 7 as
6 well, as the two Sundays appear not to be there as the --
7 there should have been a daily Z-tape for number 18.
8 Which if you look at the -- the Z-tape number 25 are
9 missing from the -- from what was provided in the data,
10 which would represent the Sundays that they said they are
11 closed, but they appear to be missing. And when you look
12 at the grand totals on the bottom of the tapes, there's a
13 gap in the dollar value as well.

14 And that concludes my presentation. I'm
15 available to answer any questions you may have.

16 JUDGE WONG: This is Judge Wong. Thank you,
17 Mr. Suazo.

18 I'll now turn to my co-panelists to see if they
19 have any questions for CDTF, beginning with
20 Judge Aldrich.

21 JUDGE ALDRICH: Hi. This is Judge Aldrich. I
22 just had a question for Mr. Mann. Are you still on the
23 line?

24 MR. MANN: Yes, I am.

25 JUDGE ALDRICH: So I was looking through the

1 Exhibit 7, and I was curious. What did you sell for a
2 dollar? I saw a couple of entries for a dollar, a couple
3 of entries for two dollars.

4 MR. MANN: Sometimes they would come in and buy a
5 cigarette lighter, or they would come in and buy some
6 marijuana papers to roll marijuana in.

7 JUDGE ALDRICH: Okay. And then -- so also, do
8 you have those documents in front of you, the -- in
9 Exhibit 7?

10 MR. MANN: I'm afraid I don't have that in front
11 of me. I gave all of those to my attorney.

12 JUDGE ALDRICH: Okay.

13 MR. NEMIROFF: Hello?

14 JUDGE ALDRICH: No further questions for
15 Mr. Mann. I'm going to refer it back to Judge Wong.
16 Thank you.

17 JUDGE WONG: This is Judge Wong. Thank you,
18 Judge Aldrich.

19 Judge Geary, do you have any questions for CDTFA?

20 JUDGE GEARY: I do. Thank you. This is
21 Judge Geary. Mr. Suazo, can you walk me through what you
22 would have expected this auditor, who was conducting the
23 observations, to do in order to ensure that he or she
24 counted only customers who are purchasing product.

25 MR. SUAZO: Normally what you would do is you see

1 the customer coming in, and then you see the customer
2 coming out. If it's the same customer, you would assume
3 that they made a sale. Normally, there's going to be an
4 allowance for customers who are not purchasing. I believe
5 currently we're giving five percent. So we would take the
6 amount of customers coming in and deduct five percent. So
7 if there were 37 people, I guess you're talking about
8 basically two people not counting. And then we would
9 assume that it would be 35.

10 However, since we did have the cash to credit
11 card methodology that we used, which was a far more
12 conservative approach, and in favor of the taxpayer, we
13 used that approach. And that approach shows that there
14 were only five customers coming in that we would apply the
15 \$48 to, which is, again, the average for the eighth of an
16 ounce. When you look at his menu, which was on the
17 website and which was included in the audit working
18 papers, it clearly shows that this is his location. And
19 the \$48 is the eighth of an ounce, which is what we
20 typically saw during -- when medicinal marijuana was being
21 sold.

22 Many people would not go through the hassle of
23 going all the way over there just to buy \$5 or \$10 at a
24 time because you have to sit in the waiting room. You
25 have to get out of the waiting room. You had to go into

1 the place to buy product, and then you come out. So we
2 saw that. Again, the methodology used was the credit card
3 ratio. And because we had that as a basis, we used -- we
4 went with that.

5 JUDGE GEARY: Thank you. This is Judge Geary.
6 That's the only question I have. Thanks.

7 JUDGE WONG: This is --

8 MR. NEMIROFF: This is Warren Nemiroff. May I
9 ask a question of the gentleman who was just speaking on
10 behalf of the State?

11 JUDGE WONG: This is Judge Wong. I believe
12 Mr. Suazo was arguing based on the facts in the record.
13 He's not testifying.

14 MR. NEMIROFF: All right.

15 JUDGE WONG: So he's not subject to examination.
16 If you have a question you would like to, pose, you could
17 either pose it to myself, and if --

18 MR. NEMIROFF: All right. Then I'll pose it to
19 yourself, Your Honor.

20 JUDGE WONG: Then if I think it's okay, I'll turn
21 it over to CDTFA.

22 MR. NEMIROFF: All right. Did the auditor know
23 that there was a competitor right next door to the
24 taxpayer in issue?

25 JUDGE WONG: This is Judge Wong. Was the CDTFA

1 aware of whether there were nearby medical marijuana
2 dispensaries to my Appellant?

3 MR. SUAZO: Off the top of my head, I can't
4 answer that. I'm not sure. I will say that because he's
5 going with the cash to credit card ratio, it does not
6 really apply because he's just using the sales based on
7 the percentage of cash to credit card that was previously
8 shown. And then also when you look at the December that
9 was provided, it still showed 110 error rate when you
10 compare it to what he recorded on his own daily sales
11 journal, which basically is in line with what the auditor
12 is picking up at the 115 percent.

13 JUDGE WONG: This is Judge Wong. I had a couple
14 of questions of my own. Did CDTFA use credit card
15 information from June to October 2011 to formulate the
16 credit card ratio, or was it just from the predecessor?

17 MR. SUAZO: It was from the predecessor to get
18 the 32.89 percent. Because what they did was they got
19 the -- what the reported sales amount was, the credit card
20 sales from the reported -- at that time and just divided
21 one to the other, and then you came out with 67 percent.
22 Basically, two-thirds was cash, and one-third was credit
23 card. And then what they did was they looked at the
24 credit cards in the period from June through October. You
25 don't see a decline. What you see is a stable

1 environment.

2 So you know that the sales are going to be a
3 constant. So what they did was they applied the same
4 two-thirds ratio of cash to one-third ratio of credit
5 card. They compared it to the recorded sales that he had
6 on his own sales journal and then came up with the
7 percentage of error of 115. And then they applied that
8 115 for periods -- for the whole thing.

9 So, basically, it encompassed the credit card
10 period as well. In addition, as I stated just a few
11 minutes ago to Judge, Geary, is that when we looked at the
12 December period, it still showed a 110 percent error rate
13 when you compared it to his December that he has to the
14 appeals hearing. If you extrapolate it out, the 2,210
15 times 31 days, it comes out to \$67,000 something. You
16 subtract that from what he reported, and you're going to
17 get the 110 percent, which is basically where we're at.

18 JUDGE WONG: This is Judge Wong.

19 MR. SUAZO: And, again, it's a very conservative
20 estimate.

21 JUDGE WONG: This is Judge Wong. So the
22 implication is --

23 MR. SUAZO: And in addition -- sorry. In
24 addition, his sales increased in the last quarter when he
25 actually has less -- less time available because he closes

1 in the middle of June. So his April, May, and June are
2 actually higher so than what he had -- he had reported the
3 two quarters before, I believe, previously.

4 JUDGE WONG: This is Judge Wong. So the fact
5 that they stopped taking credit cards sales did not -- it
6 didn't effect sales to a large degree. Is that what
7 CDTFA --

8 MR. SUAZO: Well, that's -- what we're saying is
9 that it doesn't agree because -- because a person would
10 just instead of having a credit card, they would just give
11 them cash at this point. Because most customers at this
12 point, for marijuana dispensaries during this time period,
13 would have been buying with cash anyway. There're very
14 few places that did take credit cards to tell you the
15 truth during this time period. And even to this date,
16 very few places take cash -- or take credit cards. Sorry.

17 JUDGE WONG: This is Judge Wong. Thank you. Let
18 me see if I have any other questions.

19 MR. NEMIROFF: Yeah, I have one other one. Is it
20 standard operating procedure for an auditor not to go into
21 the premises to see actually what's going on?

22 JUDGE WONG: This is Judge Wong. I'm not going
23 to pose that question to CDTFA as to what's standard.

24 MR. NEMIROFF: Oh, I'm sorry.

25 JUDGE WONG: Whether they could testify to

1 standard -- well, I guess Mr. Suazo did indicate what the
2 auditor did do, but I don't think that line of questioning
3 will be fruitful. So I'm going to --

4 MR. NEMIROFF: All right. Okay.

5 JUDGE WONG: Yeah, you could put it in your
6 argument.

7 MR. NEMIROFF: In closing I'll make the argument.

8 JUDGE WONG: Yes. Thank you. This is Judge
9 Wong.

10 Judge Aldrich, do you have any other questions
11 for CDTFA?

12 JUDGE ALDRICH: Hi. This is Judge Aldrich. I
13 don't have any further questions for CDTFA.

14 JUDGE WONG: This is Judge Wong. Judge Geary,
15 any questions for CDTFA?

16 JUDGE GEARY: No further questions for CDTFA.
17 Thank you.

18 JUDGE WONG: Okay. Judge Wong. Then I will now
19 turn to CD -- I'm sorry -- to Appellant to make their
20 rebuttal and closing remarks.

21 Mr. Nemiroff, I believe you have 10 minutes.

22 MR. NEMIROFF: Yes, I would like to.

23 JUDGE WONG: Okay.

24 ///

25 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

2
3
4
5
6
7
8

9
10
11
12
13
14
15

16
17
18
19
20
21
22
23
24

25

1 there's one other point. They made the point about the
2 fact that December did not include Sundays. The appeals
3 officer took that into account when he decided that the
4 man was owed at least a half refund. So that's been
5 already taken into account.

6 And to me, looking at the scenario, you have to
7 ask the only question that only matters. Why do you close
8 a business in barely more than a year if you're making a
9 lot of money? You don't. You don't, unless you find out
10 that it's physically impossible in this type of business
11 to make any money. And this is a business where he went
12 into it thinking he purchased a business, finds out the
13 man he purchases it from is directly next to him. That
14 has to cause a confusion in the auditor because they
15 didn't know where the bags of purchases were coming from.
16 And to me, this audit has no validity, and the man
17 deserves a total refund.

18 That's about as succinct as I can make it.

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

20 I'll turn to my co-panelists for any last
21 questions. Judge Aldrich?

22 JUDGE ALDRICH: Hi. This is Judge Aldrich. I
23 had just one quick follow up for Mr. Mann. On the
24 invoices on Exhibit 7 there's a difference between
25 Department 1 charges and Department 5 charges. Could you

1 speak or clarify why product was divided into different
2 departments if it was?

3 MR. MANN: We -- my partner and I we may have
4 used different keys when we made the sale. It's been
5 11 years now. I don't remember for sure. But he may have
6 always used Number 5 or I may have always used Number 1.
7 That's the only reason I can think of why that would show
8 up.

9 JUDGE ALDRICH: Thank you for the clarification.
10 No further questions.

11 MR. MANN: May I add a couple of comments,
12 please?

13 JUDGE WONG: This is Judge Wong. Sure. You are
14 still under oath just to remind you, but please proceed.

15 MR. MANN: Okay. There were two things that were
16 pointed out, and I would like to clarify them. If you've
17 never been in the medical marijuana dispensary business,
18 you would not know the significance of April 20th.
19 April 20th -- actually, it's 420, what it's known as. And
20 I believe that was Senate Bill 420. It was signed on
21 April 20th that made the distribution of marijuana legal
22 in California. So it's a big celebration date.

23 Okay. The person from the -- that spoke from the
24 California -- the other witness testified that we have
25 bigger sales on 4/19 than we did on 4/20 -- on April 20th.

1 Let me explain that. April 20th is the big give away day.
2 You try to get every person that ever bought marijuana
3 from you to come in there. If they buy the slightest
4 little thing, you give them a bag with a lighter in it,
5 with shake in it, with smoking papers in it.

6 It's a big giveaway day. That's not a big sale
7 day. We ran the sale on the day before on April 19th. We
8 did a lot of advertising, a lot of word of mouth. Come
9 in. Whatever you buy, you're going to get extra. You buy
10 a gram, you're going to get a gram and a half. You buy
11 and eighth, you're going to get extra stuff because we
12 wanted it to be a day where we had good sales. Because we
13 knew on 4/20 we knew that's a big giveaway day. If you
14 ever go into a marijuana dispensary on April 20th, you'll
15 the see the people coming out the door, and everybody is
16 leaving with goodies. It's just a good "be my customer"
17 day. That's one point.

18 The other point he was talking about, the sales
19 between April 2012 and June 2012 when we closed down, that
20 these sales were much higher than the previous months.
21 Well, in April of 2012 my partner and I decided let's get
22 out. We can't sell it. Let's just have a bunch of sales
23 and get rid all of the inventory so sometime in June we
24 can close the doors and get out. So, of course, we had a
25 lot of sales and a lot more income come in. But,

1 basically, we were just dumping inventory so that when we
2 close in June -- we weren't sure of the date yet.

3 So that when we did close in June, and I believe
4 it was June 17th, that there would be virtually no
5 inventory left. And that's what yielded those numbers.
6 We had already made up our minds that we weren't going to
7 stay in there. The hours were incredible. Those people
8 that came in and stole from us, we had to call the police
9 on these people. A lot of them just came in just to
10 lookie-loo. It was just not a good business.

11 I have been in the car business. I've had a
12 dealer's license. I've been in the bail bond business.
13 I've been in real estate, and they're all businesses where
14 you can deduct every penny that's used in the building and
15 operating that business. The marijuana business, you
16 cannot do that at all. The only thing you can deduct is
17 if you buy a pound of marijuana, you can deduct that. But
18 you cannot deduct anything else.

19 And then by this time we have the attorneys
20 fighting the police department, the city, the landlord.
21 Everybody wanted us out of there, and it was just
22 overwhelming. The amount of time it consumed, the amount
23 of money it consumed, you could not deduct it on the
24 federal.

25 JUDGE WONG: Mr. Mann?

1 MR. MANN: So for the month of April through June
2 we decided let's just have the biggest sale we can. Let's
3 just get rid of all the inventory, and we did exactly
4 that.

5 JUDGE WONG: This is Judge Wong. Thank you,
6 Mr. Mann.

7 I'd like to make two points or two things.
8 Number one, I'd like to correct myself. I might have
9 referenced Mr. Suazo's argument as testimony. He is not
10 testifying. He's not under oath. He was making argument.
11 So to the extent that I misspoke, I apologize for that. I
12 just wanted to correct that.

13 MR. MANN: Okay.

14 JUDGE WONG: Number two, does CDTFA have any
15 questions on cross-examination for Mr. Mann who just
16 completed testimony?

17 MR. SUAZO: This is Randy Suazo. No questions.

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

19 And I believe Judge Geary, do you have any final
20 questions for the parties?

21 JUDGE GEARY: This is Judge Geary. No further
22 questions.

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

24 And just to make sure, since Mr. Mann spoke,
25 Judge Aldrich, do you have anything?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE ALDRICH: This is Judge Aldrich. No further questions. Thanks.

JUDGE WONG: This is Judge Wong. Thank you.

All right. So with that completed, this concludes the hearing. The record is closed, and the case is submitted today. The judges will meet and decide the case based on the exhibits presented and admitted as evidence, as well as the testimony today. We will send both parties our written decision no later than 100 days from the today.

MR. NEMIROFF: Thank you.

JUDGE WONG: The oral hearing is now adjourned. Thank you to all the parties and representatives for participating, and we are adjourned.

Off the record.

(Proceedings adjourned at 3:16 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 14th day
of February, 2022.

ERNALYN M. ALONZO
HEARING REPORTER