

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
GLORIA'S RESTAURANT,) OTA NO. 18083613
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 APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, January 25, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:00 p.m. and concluding at 1:49 p.m. on
Tuesday, January 25, 2022, reported by
Ernaly M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ JOSHUA ALDRICH

Panel Members: ALJ ANDREW KWEE
ALJ NATASHA RALSTON

For the Appellant: WARREN NEMIROFF

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

RAVINDER SHARMA
CHRISTOPHER BROOKS
JASON PARKER

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California; Tuesday, January 25, 2022

1:00 P.m.

JUDGE ALDRICH: This is Judge Aldrich. We're opening the record in Gloria's Restaurant, Incorporated, before the Office of Tax Appeals, OTA Case Number 18083613. Today's date is Tuesday, January 25th, 2022, and the time is approximately 1:00 p.m. This hearing was duly noticed for a virtual hearing with the agreement of the parties.

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

JUDGE KWEE: Hi. This is Judge Kwee.

JUDGE ALDRICH: Thank you.

And Judge Ralston.

JUDGE RALSTON: Good afternoon. This is Judge Ralston.

JUDGE ALDRICH: Great.

During the hearing, panel members may ask questions or otherwise participate to ensure that we all have the information needed to decide this appeal. After the conclusion of the hearing, we three will deliberate

1 and decide the issues presented.

2 As a reminder the Office of Tax Appeals is not a
3 court it's an independent appeals body. The panel does
4 not engage in ex parte communications with either party.
5 Our opinion will be based off of the parties' arguments,
6 the admitted evidence, and the relevant law. We have read
7 the parties' submissions, and we look forward to hearing
8 your arguments today.

9 And for the Appellant, we have Mr. Nemiroff
10 together with witness Luis Jimenez CPA. And for the
11 Respondent for the Department we have Ravinder Sharma,
12 Christopher Brooks, and Jason Parker. Welcome.

13 The issues to be decided are as follows: Whether
14 adjustments are warranted to the unreported taxable sales
15 and whether Appellant was negligent.

16 Is this your understanding, Mr. Nemiroff?

17 MR. NEMIROFF: Yes, it is.

18 JUDGE ALDRICH: And Mr. Sharma?

19 MR. SHARMA: This is Ravinder Sharma. That's
20 Department's understanding.

21 JUDGE ALDRICH: Great.

22 So next, we're going to switch gears to exhibits.
23 In our December 17th, 2021, prehearing orders we
24 received -- or in response to them, we received the
25 exhibit index from the Department identifying Exhibits A

1 through M, together with a copy of those exhibits.

2 Mr. Nemiroff, do you have any objections to
3 admitting the Department's exhibits?

4 MR. NEMIROFF: No.

5 JUDGE ALDRICH: Okay. Hearing no objections,
6 we'll admit those into the record.

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

9 Mr. Nemiroff, we didn't receive exhibits but you
10 indicated that Mr. Jimenez, your witness, would be
11 supplying exhibits. Is that still --

12 MR. NEMIROFF: Well, here's the point. He did an
13 audit evaluation, which was submitted previously. I was
14 under the impression it's already part of the record.

15 JUDGE ALDRICH: So when you say it was presented
16 previously, could you indicate when?

17 MR. NEMIROFF: Mr. Jimenez, when was that -- when
18 were your analyses submitted?

19 MR. JIMENEZ: I believe it was the first time was
20 at the prehearing. I can't remember exactly what date.

21 MR. NEMIROFF: That was in another prehearing.

22 JUDGE ALDRICH: So let's see.

23 MR. JIMENEZ: Right.

24 JUDGE ALDRICH: So is that the one back in June
25 of 2019.

1 MR. JIMENEZ: There you go.

2 MR. NEMIROFF: Yes.

3 JUDGE ALDRICH: Sorry. I'm just -- let me --

4 MR. NEMIROFF: It's all right.

5 JUDGE ALDRICH: So there was a prehearing
6 conference statement request, and then there was a
7 prehearing conference. And then it looks like a
8 postponement and then a subsequent prehearing conference
9 statement request. Let me see. So the analyses that
10 you're referring to, was it an email attachment to a
11 prehearing conference statement?

12 MR. JIMENEZ: I believe it was something to that
13 effect. I can't recall. It's been a while. But
14 basically what we did was find -- submit that at that
15 time. I do recall doing that.

16 JUDGE ALDRICH: Okay. So I see a July 30th,
17 2019, prehearing conference statement in exhibits. And
18 then that -- I don't see the supporting documents attached
19 to that. So I just see a July 29th, 2019, email from
20 Sabio Tax attached to the prehearing conference statement
21 from Mr. Nemiroff, but I don't see supporting documents to
22 that. Were there supporting documents attached to that?

23 MR. NEMIROFF: Mr. Jimenez?

24 MR. JIMENEZ: I'm sorry. Yes, there were
25 supporting documents that should have been attached to

1 that.

2 MR. NEMIROFF: Your Honor, if I may?

3 JUDGE ALDRICH: Yeah.

4 MR. NEMIROFF: Maybe we should just simply leave
5 the record open for five days and let him supply them?

6 JUDGE ALDRICH: Okay. Let me see. So,
7 Department, if we were to take that kind of action and
8 leave the record open, would you A, object and B, if that
9 objection were overruled, would you request an opportunity
10 to respond?

11 MR. BROOKS: This is Christopher Brooks for the
12 Department. Yes, we would object. It would certainly
13 disadvantage the Department. We've had time to provide
14 these documents in advance so that both parties could be
15 prepared for the hearing, you know, what his analyses is
16 or what he's going to provide. But we wish to object to
17 it and then wait to hear your ruling on that.

18 JUDGE ALDRICH: So let me ask this, Mr. Nemiroff.
19 The analyses that was attached as supporting document,
20 were they primary source documents, like, for example,
21 Appellant's, like, point of sale system? Or were they
22 some sort of, like, exemplar that had been, like,
23 scheduled on Excel sheet?

24 MR. NEMIROFF: Mr. Jimenez, you're going to have
25 to answer this.

1 MR. JIMENEZ: That's fine. It was a point of
2 sale, exactly.

3 JUDGE ALDRICH: It was a point of sale. And is
4 that point-of-sale document not otherwise in the record?
5 Is it not in CDTFA's exhibits?

6 MR. JIMENEZ: I'm sorry. Are you still asking
7 me?

8 JUDGE ALDRICH: Yeah.

9 MR. JIMENEZ: Oh. Well, it was supposed to be
10 attached to it when it was submitted initially.

11 JUDGE ALDRICH: Okay.

12 MR. NEMIROFF: He is going to talk about it
13 today.

14 JUDGE ALDRICH: Yeah. I understand that. I'm
15 just trying to -- so it looks like there was an email on
16 the 30th of 2019, July 30th, 2019, but there was -- I
17 cannot -- how about this. We're going to take a
18 five-minute recess so I can see if we actually have those
19 in submission. And then we'll regroup then and discuss
20 whether or not to make any sort of arrangements. Okay.

21 MR. NEMIROFF: I stay on the phone, right?

22 JUDGE ALDRICH: You stay on the phone. Yeah. So
23 the only difference is that our video will be off and
24 we'll be muted for five minutes. So the time is 1:12 and
25 be prepared to return at 1:17. Okay.

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MR. NEMIROFF: All right.

(There is a pause in the proceedings.)

JUDGE ALDRICH: Okay. So, Mr. Nemiroff, I was wondering, you know, so we have this email from a couple of years ago, July -- sorry. Pull it up specifically. Ah, yeah. July 30th, 2019. Yes. Okay. Just to make sure everyone is -- we made sure that everyone is here, and I just wanted to let everyone know we're going back on the record.

And, Mr. Nemiroff, we have a July 30th, 2019, communication from you, and in that it references an additional attachment. Do you have an email that you could provide that shows that those additional documents were submitted?

MR. NEMIROFF: I don't know. I suppose I could find it. It's a couple of years ago.

JUDGE ALDRICH: Yeah. So I'm just -- I understand. I think, you know, the best course of action at this time is we will leave the record open. You can have two weeks. Well, how about we'll leave the record open for 30 days. You can submit those documents that were referenced. CDTPA can have 30 days to respond to those documents.

MR. NEMIROFF: Absolutely. That's perfect.

JUDGE ALDRICH: And then if you could find an

1 email that supports the proposition that they were
2 actually sent, I would appreciate if that were submitted
3 as well. So those have been -- that's how we'll handle
4 the exhibits that were referenced in the July 30th, 2019,
5 statement. I noted -- I note that the Department objected
6 due to timeliness. However, it does look like, based off
7 of those communications, that they had been submitted. So
8 I think that's the best course of action to proceed.

9 MR. NEMIROFF: I appreciate that.

10 MR. BROOKS: Your Honor, if I may? This is
11 Christopher Brooks. Not is it only just untimely, it puts
12 us -- it prejudices us because we don't know what their
13 argument is. We don't know what they're asserting.

14 JUDGE ALDRICH: Yeah. I understand that, and
15 that's why I'm giving you an opportunity to respond to
16 those arguments after the hearing. And that way you can
17 address anything that's referenced or raised therein.

18 MR. BROOKS: Thank you.

19 JUDGE ALDRICH: Okay. So with respect to the
20 hearing, now that we're ahead of those issues, Appellant,
21 you indicated that -- or Appellant's counsel indicated
22 that they required approximately 60 minutes, and then the
23 Department will have approximately 20 minutes to respond.
24 And then we'll take questions from the panel for
25 approximately 10 minutes, and then Appellant will have

1 about 5 to 10 minutes to close.

2 MR. NEMIROFF: I don't think it'll take that long
3 for me to make the presentation.

4 JUDGE ALDRICH: Okay. Like I was going to say,
5 these are estimates made for calendaring purposes. If you
6 need additional time, please make the request. If you
7 don't need the time, so indicate. So does either party
8 have questions before we move on to opening statements?

9 Mr. Nemiroff, I assume no questions?

10 MR. NEMIROFF: No. No.

11 JUDGE ALDRICH: And Mr. Sharma?

12 MR. SHARMA: The Department have no questions.

13 Thank you.

14 JUDGE ALDRICH: Okay. Mr. Nemiroff, please begin
15 when you're ready.

16 MR. NEMIROFF: Well I waive my opening statement.
17 I would like to question my witness so we can put this
18 case in front of the panel.

19 JUDGE ALDRICH: That works for me.

20 MR. NEMIROFF: Can we start?

21 JUDGE ALDRICH: Yes. Please proceed.

22 MR. NEMIROFF: Okay.

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WITNESS TESTIMONY

BY MR. NEMIROFF:

Q Mr. Jimenez, are you there?

A I am. Can you hear me?

JUDGE ALDRICH: Sorry, Mr. Nemiroff. Just as a point, I need to swear in the witness if you're going to be --

MR. NEMIROFF: All right. Sorry.

JUDGE ALDRICH: Yeah. It's okay. So Mr. Jimenez I know that we can't see you on the screen, but if you can raise your right hand.

MR. JIMENEZ: Okay.

LUIS JIMENEZ,

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

JUDGE ALDRICH: Okay. Thank you very much. Sorry. Resume, Mr. Nemiroff.

BY MR. NEMIROFF:

Q All right. I will make this simple.

Mr. Jimenez, you reviewed the audit findings by the State vis-à-vis the sales tax audit for the period in question. You then prepared your own findings. Would you please

1 detail what you found out in this case, and what your
2 opinion is?

3 A Well, I found that in the -- the audit was done
4 just very kind of like not, you know, not with real
5 information, accurate information, or realtime
6 information. It was more -- it was just basically what
7 I'm assuming is just going based on industry rather than
8 actual numbers. Also, when questioning about the method
9 of the audit, it was determined that the auditor, I
10 believe, did not request the proper, I guess, information
11 to determine the -- his -- or her finding.

12 So my opinion is this was just an attack on my
13 client, specifically. It wasn't something that was done
14 with accurate information to determine the amount that my
15 client was -- was assessed.

16 Q So you're of the opinion that the audit has no
17 validity or what?

18 A Well at that course, yeah, basically.

19 Q Did not the auditor claim that there were two
20 sets of books involved here?

21 A Yes. That was also another thing that was very
22 disturbing because there was an inclination from the
23 auditor that there were two sets of books when, in fact,
24 there aren't.

25 Q I mean, you know, I've been around for longer

1 than I want to care to say so, but that's the first time
2 I've heard of that in an audit?

3 A Right. Exactly. So it was quite disturbing to
4 find out that, again, this auditor was more like there.
5 And it was just very, very -- I mean, I don't want to use
6 this word, but it's just basically rogue. I mean, it's in
7 there for a purpose, and it wasn't a good purpose quite
8 frankly.

9 Q Okay. All right. For the record, do you think
10 this taxpayer owes any monies for the years at issue?

11 A There is -- there is a possibility they owe, but
12 just not the amount that was assessed to them.

13 Q Do you have any rough estimate in a document that
14 you previously submitted?

15 A From what I understand, anywhere between \$50,000
16 to \$60,000 at the most.

17 Q For the whole period?

18 A That's correct.

19 Q You said \$50,000 or \$60,000 for the whole period?

20 A That's correct.

21 MR. NEMIROFF: Okay. I have no further questions
22 for this witness.

23 JUDGE ALDRICH: Thank you, Mr. Nemiroff.

24 I wanted to extend the opportunity to CDTFA to
25 ask questions of the witness if they like.

1 MR. SHARMA: This is Ravinder Sharma. We have no
2 questions at this time, sir. Thank you.

3 JUDGE ALDRICH: Okay. Thank you.

4 And panel members, are you comfortable waiting
5 until after the Department has presented? Thumbs up.
6 Kwee -- Judge Kwee?

7 JUDGE KWEE: That's fine.

8 JUDGE ALDRICH: Okay. All right. So please stay
9 on the line, Mr. Jimenez. The Department is going to
10 present and then we may have some questions for you.
11 Okay?

12 MR. JIMENEZ: Yeah.

13 JUDGE ALDRICH: All right. So Department, are
14 you ready to proceed with your combined opening and
15 closing statement?

16 MR. SHARMA: This is Ravinder Sharma. Yes, we
17 are.

18 JUDGE ALDRICH: Thank you. Go ahead when you're
19 ready.

20

21 PRESENTATION

22 MR. SHARMA: This is Ravinder Sharma. Thank you.

23 Appellant, a corporation, has operated a
24 restaurant with a full bar in the City of Huntington Park
25 since January 1, 2014. Appellant did not provide any

1 details about its reporting method. The Department
2 performed an audit examination for the period January 1,
3 2014, through March 31st, 2016. Appellant reported total
4 sales of approximately \$2 million, claimed total
5 deductions of around \$135,000 for nontaxable sale
6 resulting into reported taxable sales of little more than
7 \$1.8 million for the audit period; Exhibit B, page 11 and
8 12.

9 The records available for the audit: Bank
10 statements for the audit period, except January and
11 February 2014, point of sales download for
12 January 1, 2015, to February 6, 2017, 1099-K data for 2014
13 and 2016, merchant statement for January 2017, sales
14 receipts and daily sales summary for January 1, 2017,
15 through January 19, 2017, and purchase invoices for
16 January 2017. Appellant did not provide any federal
17 income tax returns, purchase invoices, daily cash register
18 tapes, or guest checks for the audit period.

19 The Department's analysis of 1099-K data and
20 reported taxable sales show credit card sales ratio of
21 approximately 95 percent, which was significantly high for
22 this type of business; Exhibit B, page 28. Further
23 analyses show credit card deposits of little more than
24 \$2.2 million; Exhibit B, page 15, exceeded reported total
25 sales of approximately \$2 million; Exhibit B page 11.

1 It appears that Appellant reported minimum, if
2 any, tax sales for the audit period. The Department
3 reconciled point of sale data for first quarter '15
4 through first quarter '16 with reported taxable sales for
5 sales and use tax returns and noted that reported taxable
6 sales exceeded reported taxable sales by little more than
7 \$470,000; Exhibit B, page 27.

8 To verify the yachts of point-of-sale data, the
9 Department made seven cash purchases back in
10 January 22nd, 2016, and March 25, 2016. In review of
11 point-of-sale data for the same figure, shows that none of
12 these seven cash purchases were part of point-of-sale data
13 download provided by Appellant. For detailed comments
14 related to the cash purchases, please see statement of
15 facts Exhibit F, pages 38 to 45. Further analysis of
16 point-of-sale data shows that a total of 38,281
17 transactions appears to be missing from first quarter '15
18 to first quarter '16; Exhibit B, page 26.

19 Based on the above analysis, the Department
20 determined that Appellant's books and records were
21 incomplete and not reliable. So the Department decided to
22 perform an indirect audit method to verify the accuracy of
23 reported amounts and to compute audited taxable sales.
24 Due to lack of complete and reliable sales records, credit
25 card ratio method was determined to be the most accurate

1 audit method.

2 The Department asked Appellant to provide point
3 of sale daily sales summary for January 4, 2017, to
4 January 17, 2017. To verify the accuracy of point-of-sale
5 sales summaries, the Department conducted two on-site
6 observation tests on January 10, 2017, and
7 January 11, 2017. The Department also made cash purchases
8 during this period. After detailed review of analyses,
9 the Department found sales summaries for January 4, 2017,
10 to January 17, 2017, to be complete, reliable, and
11 acceptable.

12 The Department used sales summaries for 14 days
13 from January 4, 2017, to January 17, 2017, which included
14 two days of observation tests to calculate the credit card
15 ratio, excluding tax and tips of 48.26 percent and credit
16 card tips ratio of 6.69 percent; Exhibit B, pages 16 to
17 20. The Department used 1099-K data, bank statements, and
18 available records to calculate total credit card deposits
19 of little more than \$2.2 million for the audit period;
20 Exhibit B, page 15.

21 The Department applied credit card tips ratio of
22 6.69 percent and credit card sales ratio of 48.26 percent
23 to the credit card deposits of little more than
24 \$2.2 million to arrive at audited taxable sales of
25 approximately \$4 million. Appellant reported little more

1 than \$1.8 million in taxable sales resulting into
2 unreported taxable sales of approximately \$2.2 million for
3 the audit period; Exhibit B, page 15.

4 To show the audit results are reasonable, the
5 Department used a flat production method and point-of-sale
6 data download analysis method. Flat production method:
7 Based on sales summaries for January 4, 2017, to
8 January 17, 2017, Appellant's audited taxable sales would
9 be around \$4.3 million as compared to audited taxable
10 sales of approximately \$4 million based on the credit card
11 ratio method for the audit period.

12 Point-of-sale data download analyses method.
13 Based on point-of-sale data download for first quarter '15
14 through first quarter '16, the Department determined an
15 average sale of approximately \$32 per transaction. The
16 Department applied average sale per transaction to the
17 missing 38,281 transactions and determined total taxable
18 sales of little more than \$2.6 million of first quarter
19 '15 through first quarter '16; Exhibit B, page 26, as
20 compared to audited taxable sales of approximately
21 \$2.45 million; Exhibit B, page 15, based on credit card
22 ratio method for the same period. Each audited method
23 resulted into high unreported taxable sales, which means
24 credit card ratio method is reasonable and benefits
25 Appellant.

1 Appellant has failed to provide any documentary
2 evidence to show that credit card deposits of
3 approximately \$2.2 million are not correct, that credit
4 card sales ratio of 48.26 percent is incorrect, or that
5 the credit card tips ratio of 6.69 percent is incorrect.
6 The Department added a 10 percent negligence penalty to
7 the total assessment because the understatement is
8 120 percent of the reported taxable sales, which is
9 significantly large. Understatement is due to negligence
10 in keeping required books and records for sale and use tax
11 purposes.

12 Based on the above, the Department has fully
13 explained the basis for deficiency and proved that the
14 determination was reasonable based on available books and
15 records. Further, the Department has used approved audit
16 methods to determine the deficiency and issued a Notice of
17 Determination to the correct entity. Therefore, based on
18 the evidence presented, the Department request that
19 Appellant's appeal be denied.

20 This concludes my presentation, and I'm available
21 to answer any questions you may have. Thank you.

22 MR. NEMIROFF: May I ask a question, Your Honor?

23 JUDGE ALDRICH: Where is it being directed?

24 MR. NEMIROFF: To the gentleman that just
25 finished.

1 JUDGE ALDRICH: So you can ask me questions, but
2 unlike Mr. Jimenez, Mr. Sharma was providing argument.

3 MR. NEMIROFF: Okay. The gentleman who just
4 finished, I'd like to ask him a question.

5 JUDGE ALDRICH: So as I stated, he's providing
6 argument. If you want to --

7 MR. NEMIROFF: Yeah.

8 JUDGE ALDRICH: -- you know, address something in
9 your argument that he's brought up --

10 MR. NEMIROFF: Okay. Then I'll address --

11 JUDGE ALDRICH: -- that's fine. But --

12 MR. NEMIROFF: You're correct. I'll address it
13 in my closing comment.

14 JUDGE ALDRICH: Okay. Thank you.

15 So Judge Kwee, did you have any questions for
16 either party or witness?

17 JUDGE KWEE: Hi. This is Judge Kwee. Yes, I was
18 going to ask the witness or Appellant Mr. Jimenez a
19 question to -- if Mr. Jimenez is ready.

20 MR. JIMENEZ: Yes, Your Honor.

21 JUDGE KWEE: Great. Thank you. So I believe it
22 was your testimony that in your opinion there potentially
23 was an understatement, but then you thought it was closer
24 to \$50,000. And just a quick clarification, were you
25 saying tax? Or were you saying \$50,000 measure in

1 understatement?

2 MR. JIMENEZ: No. Tax.

3 JUDGE KWEE: Okay. And so I just wanted to ask
4 you if you have an opinion on a couple of items that were
5 mentioned in CDTFA's decision. One was that there were
6 apparently 38,000 transactions missing from the
7 point-of-sale report or at least that there were gaps in
8 the sequence of numbers indicating a potential --
9 potentially large number of missing transactions. I was
10 wondering if you had thoughts on why those transactions
11 or, I guess, just an explanation for why such a large
12 number of missing transaction numbers.

13 MR. JIMENEZ: At the time -- I believe during
14 that time my client had changed the POS system. I don't
15 believe they weren't given the opportunity to provide that
16 information.

17 JUDGE KWEE: Okay. So I guess a related question
18 then was that another item that was pointed out is there
19 was substantial differences, I believe, of over \$300,000
20 in gross receipts reported in the federal returns versus
21 the state returns. And I believe there's also an
22 additional \$400,000 in taxable sales recorded on the
23 available point-of-sale reports that were not reported on
24 the sales and use tax returns, and I'm not sure if you
25 have an opinion on potential reasons for the

1 discrepancies.

2 MR. JIMENEZ: Not at the moment, Your Honor. No.

3 JUDGE KWEE: Okay. I think that was the only
4 question I had for Appellant's witness. So yeah. I'll
5 turn it back to Judge Aldrich.

6 JUDGE ALDRICH: Hi. This is Judge Aldrich.
7 Quick question for you, Mr. Jimenez. So the liability
8 period is from January 1st, 2014, through March 31st,
9 2016. What relationship, if any, did you have with
10 Appellant during that time?

11 MR. JIMENEZ: I'm sorry.

12 JUDGE ALDRICH: So during the liability period,
13 which is January 1st, 2014, through March 31st, 2016, what
14 relationship, if any, did you have with Appellant?

15 MR. JIMENEZ: None.

16 JUDGE ALDRICH: So the analyses that you prepared
17 is all after the fact?

18 MR. JIMENEZ: That's correct.

19 JUDGE ALDRICH: I was just trying to get the idea
20 of, like, are -- if they were turning in daily sales
21 reports to you and then you were preparing --

22 MR. JIMENEZ: No.

23 JUDGE ALDRICH: Okay.

24 MR. JIMENEZ: They weren't.

25 JUDGE ALDRICH: Okay. Judge Ralston, did you

1 have questions?

2 JUDGE RALSTON: This is Judge Ralston. No
3 questions. Thank you.

4 JUDGE ALDRICH: Okay. All right. Let me see.
5 Judge Kwee, did you have any further questions?

6 JUDGE KWEE: This is Judge Kwee. I don't have
7 any further questions. Thank you.

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

11 MR. NEMIROFF: Yes, I would, actually.

12 JUDGE ALDRICH: Okay. And are you prepared to do
13 that?

14 MR. NEMIROFF: Yeah. I'm prepared to do it right
15 now.

16 JUDGE ALDRICH: Sound good. Please proceed.

17

18 CLOSING STATEMENT

19 MR. NEMIROFF: All right. Mr. Jimenez came to
20 the conclusion that the client in issue for the period in
21 question would owe an additional \$50,000 or \$60,000 in
22 tax. Okay. That would lead one to a conclusion that
23 there is an issue here, if properly done, approximately an
24 adjustment of about \$500,000.

25 The client at issue has never been subject to an

1 audit by the IRS, but here's the point. What the
2 government is saying here, unless I've misread it, is that
3 the client in issue almost failed to report one half of
4 the sales revenue for the period in issue. And, you know,
5 you go through -- you know, my expertise is basically the
6 IRS. God help me.

7 But, I mean, if that such is the case, these
8 people would have an additional, you know, couple of
9 million dollars floating around from this restaurant. And
10 it just boggles the mind to presume that that kind of
11 income is present here. You know, this is an
12 after-the-fact audit. This is something where, you know,
13 all the analysis is secondhand, meaning it's not based on
14 direct, you know, interaction with the Appellant. And
15 it's an analysis that goes on standard operating
16 procedures, but those standard operating procedures in
17 this case create a result that is almost physically
18 impossible to understand.

19 You're saying these people failed to report,
20 literally, the same amount they reported. That would make
21 them -- no offense intended -- one of the richest families
22 in that section of town. That's -- you know, this is an
23 economic net worth scenario on a, you know, gross receipts
24 tax, but that is a physical impossibility. Sorry. I
25 happen to think Mr. Jimenez' findings are much closer to

1 reality. And by the way, that presumes, unless Mr.
2 Jimenez would want to contradict me on adjustment of
3 almost half-a-million dollars.

4 Thank you.

5 JUDGE ALDRICH: Thank you everyone for your time
6 and for being flexible with the hearing format. We're
7 going to be concluding the hearing. But before I do so, I
8 wanted to indicate that I'll be issuing some post-hearing
9 orders to summarize the submission schedule. So I
10 indicated that Appellant will have 30 days to provide
11 those documents that were referenced in its
12 July 30th, 2019, communication that were supposed to be
13 attached or submitted separately.

14 Mr. Nemiroff, if you could provide an email that
15 supports that proposition, I would appreciate it.

16 The Department will have 30 days to respond,
17 which could include argument regarding that submission.
18 And you should expect the post-hearing orders shortly.
19 After the briefing schedule has concluded, the record will
20 be closed, and we'll send out a letter to indicate that
21 the record is closed and -- but the panel will meet and
22 decide the case based off the evidence and the arguments.
23 And we will send our written decision 100 days from the
24 date of closure.

25 And while this hearing has concluded, there

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are -- there's another hearing today.

MR. NEMIROFF: Yes. I'm on it.

JUDGE ALDRICH: I am as well, Mr. Nemiroff. And so I think we'll need a break --

MR. NEMIROFF: Yes.

JUDGE ALDRICH: -- in the mist. Yeah. So I think approximately 15 minutes from now is when we could start that process back up. And if you are in the next hearing, please make sure to end the current Webex session. So that will be a separate code and call in, but otherwise we're concluded for this hearing.

Thank you everyone for your time.

(Proceedings adjourned at 1:49 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 11th day of February, 2022.

ERNALYN M. ALONZO
HEARING REPORTER