

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
QUALITY MOTORS, LLC,) OTA NO. 19095290
)
)
APPELLANT.)
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_____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, March 29, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:30 a.m. and concluding at 10:01 a.m.
on Tuesday, March 29, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ TERESA STANLEY

Panel Members: ALJ KEITH LONG
ALJ SUZANNE BROWN

For the Appellant: JORGE OCHOA
J. KAHN

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

NALAN SAMARAWICKREMA
CARY HUXSOLL
JASON PARKER

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I N D E X

E X H I B I T S

(Department's Exhibits A-I were received at page 7.)

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

	<u>PAGE</u>
By Mr. Ochoa	8
By Mr. Samarawickrema	10

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California; Tuesday, March 29, 2022

9:30 a.m.

JUDGE STANLEY: We'll go on the record in the Appeal of Quality Motors, Inc., Case Number 19095290. The date is March 29th, 2022, and the time is about 9:30 a.m.

I have with me Judges Keith Long and Judge Suzanne Brown. I will be conducting this hearing but, for purposes of making a decision and issuing an opinion, we will co-deliberate and co-calibrate on that opinion.

I'm going to start with identifying yourselves once again this time on the record. And I'll start with Appellant Mr. Ochoa.

MR. OCHOA: Jesus Ochoa.

JUDGE STANLEY: Thank you.

And can I have the California Department of Tax and Fee Administration folks identify themselves, please.

MR. SAMARAWICKREMA: This is Nalan Samarawickrema, Hearing Representative for the Department.

MR. PARKER: This is Jason Parker, Chief of Headquarters Operations Bureau for CDTFA.

MR. HUXSOLL: This is Cary Huxsoll, also from the Legal Department of CDTFA.

JUDGE STANLEY: Okay. Thank you.

This is Judge Stanley speaking. First, I wanted

1 to note for the viewing public and for Appellant that the
2 Office of Tax Appeals is an independent agency. We are
3 not associated with the CDTFA or any other tax agency. We
4 are not a court, but we are an independent appeals agency
5 staffed by our own tax experts. The only evidence that we
6 have in our record is what has been submitted in this
7 appeal. So no documents that were submitted to CDTFA by
8 Appellant will be in our record unless either Appellant or
9 CDTFA has submitted them into the record.

10 The issues today, I have noted three that we
11 discussed at the prehearing conference. The first one is
12 whether Appellant has shown that "unwinds" or "rollbacks"
13 were incorrectly included in audited taxable sales; number
14 two, whether Appellant has shown that a reduction to
15 audited taxable sales is warranted based on including
16 sales tax on parts used on inventory and later taxed when
17 the repaired car was sold; and number three, whether
18 Appellant has shown that an adjustment is warranted based
19 on sales tax charged for smog fees and document
20 preparation fees.

21 Mr. Ochoa, do you agree that those are the
22 issues?

23 MR. OCHOA: Yes.

24 JUDGE STANLEY: This is Judge Stanley speaking.

25 And, Mr. Samarawickrema, do you agree that those

1 are the issues today?

2 MR. SAMARAWICKREMA: This is Nalan
3 Samarawickrema. Yes, that's our understanding.

4 JUDGE STANLEY: Thank you.

5 This is Judge Stanley. We'll move onto exhibits.
6 Appellant has not submitted any exhibits. Respondent or
7 CDTFA has submitted exhibits A through I, and I will note
8 that Exhibit A is as revised on February 28th, 2022.
9 Those exhibits will be admitted into the record without
10 objection. I note that Mr. Ochoa did not object at the
11 prehearing conference to those.

12 Mr. Ochoa, is that the way -- there's no
13 objection; correct?

14 MR. OCHOA: Correct.

15 (Department's Exhibits A-I were received in
16 evidence by the Administrative Law Judge.)

17 JUDGE STANLEY: Okay. All right. Then let's
18 move onto the Appellant's presentation.

19 I understand, Mr. Ochoa, that Mr. Kahn wasn't
20 able to make it today?

21 MR. OCHOA: Yeah, he's here.

22 JUDGE STANLEY: Oh, he is here.

23 MR. OCHOA: Yeah.

24 JUDGE STANLEY: Okay. So will he be testifying
25 as a witness as you indicated?

1 MR. OCHOA: No. He is helping me with the case
2 because a lot of this stuff I don't understand myself.

3 JUDGE STANLEY: Okay. So do you think he will be
4 speaking to the panel at all?

5 MR. OCHOA: No.

6 JUDGE STANLEY: Okay. All righty. Then you're
7 going to be the only witness?

8 MR. OCHOA: That's correct.

9 JUDGE STANLEY: Okay. Then can I ask you to
10 please raise your right hand.

11

12 J. OCHOA,

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

16

17 JUDGE STANLEY: Okay. Then you may proceed. You
18 can talk in a narrative and just explain your case and the
19 facts that you think are important for the panel to know.

20

21 PRESENTATION

22 MR. OCHOA: So my case is just I have a -- at
23 this moment due to the fires here in California, the
24 pandemic, the bad business for the last four years, I do
25 not have any money at this moment to make anything -- so

1 to pay anything at this moment. So we are asking for help
2 to get a payment plan, whatever the decision is made.

3 And my bookkeeper failed to do a lot of this --
4 keep all these records on the office here. So I'm not
5 trained as a bookkeeper. I don't have any experience or
6 anything. So I give all these books to professionals.
7 They filed the wrong information to this -- for this case.
8 And I don't have any money right now for bookkeeping or
9 hire any professionals to help me with this case. So
10 that's why I'm by myself here. And I'm not educated at
11 all myself to go and answer any questions that are really
12 legally. I don't have any experience on anything. So --

13 JUDGE STANLEY: This is Judge Stanley. Is that
14 everything you wanted to let us know at this point?

15 MR. OCHOA: Yes.

16 JUDGE STANLEY: Okay. To address part of your
17 statement. I need you to know that the Office of Tax
18 Appeals has no jurisdiction over settlement of any sort or
19 payment plans. So in the event that you are not
20 successful in this appeal, once the Office of Tax Appeals
21 opinion becomes final, you can contact the Department
22 directly and see if you can work something like that out.

23 Okay. Let us then move to CDTFA.

24 Mr. Samarawickrema, you may proceed.

25 ///

1 sales contracts, financing contracts, resale certificates,
2 repossession documents, sales journals, or sales summaries
3 to support its reported total taxable and nontaxable sales
4 for the audit period.

5 In addition, Appellant failed to provide complete
6 purchase information or purchase journals for the audit
7 period. Appellant was unable to explain how it reported
8 its sales on its sales and use tax returns. Appellant was
9 also unable to explain what sources it relied upon to
10 complete its sales and use tax returns. The Department
11 did not accept Appellant's reported taxable sales due to
12 lack of reliable reports and negative book markups.

13 The Department determined that Appellant's record
14 was such that sales could not be verified by a direct
15 audit approach. Therefore, the Department determined sale
16 using DMV information, auction house purchase information,
17 available dealer jackets, and available repair shop work
18 orders for the audit period. The Department completed
19 three verification methods to verify the reasonableness of
20 Appellant's reported total taxable and nontaxable sales.

21 First, Appellant informed the Department during
22 the audit period that it reported taxable sales based on
23 amounts recorded in the dealer jackets. However,
24 Appellant's dealer jackets sales amounts did not match the
25 amounts reflected on Appellant's sales and use tax

1 returns. Based on Appellant's description of reporting
2 tax based on dealer jackets, the Department determined
3 that Appellant's reported sales consisted entirely of
4 vehicle sales and did not include any sale of repair
5 parts. And that will be on your Exhibit G, page 278,
6 line 1 through line 3.

7 Appellant provided repair shop work orders for
8 the period January 1st, 2013, through December 31st, 2015.
9 The Department reviewed Appellant's repair shop work
10 orders for these years. And that will be on your
11 Exhibit A, pages 133 through 137. The Department noted
12 Appellant charged and collected sales tax reimbursement on
13 Appellant's repair parts sales of around \$30,000 for this
14 period. And that will be on your Exhibit A, pages 133 and
15 134. The Department concluded that Appellant collected
16 sales tax reimbursement on repair parts sales from
17 customers but failed to report the collected sales tax on
18 repair part sales to the Department.

19 Second, the Department compared Appellant
20 reported total sale of around \$1.8 million with sales
21 reflected on Appellant's federal income tax returns for
22 years 2013, 2014, and 2015 and calculated an overall
23 difference of around \$1.6 million. And that will be on
24 your Exhibit A, page 150. The Department also compared
25 reported total sales of around \$1.8 million to the

1 purchases of around \$2.5 million reflected on Appellant's
2 2013, 2014, and 2015 federal income tax returns, and
3 calculated an overall negative reported book markup of
4 29 percent. And that will be on your Exhibit A, page 159.

5 This means Appellant was losing money every time
6 it made a sale. Accordingly, the Department did not
7 accept Appellant's reported sales for the audit period.
8 However, based on the analysis of available DMV and
9 auction house purchase information, Appellant's overall
10 retail markup was 34.6 percent. And that will be on your
11 Exhibit A, pages 153 through 158.

12 Third, Appellant did not provide complete sales
13 record for the audit period. Therefore, the Department
14 obtained Appellant's DMV information, and that will be on
15 your Exhibit B. The Department compared Appellant's
16 reported taxable sales of around \$2 million for the audit
17 period with estimated sale of around \$3.3 million based on
18 DMV information and calculated an overall difference of
19 around \$1.3 million. And that will be on your Exhibit A,
20 page 152 and Exhibit B, page 210.

21 Appellant was unable to explain the differences
22 found in his repair shop work orders, federal income tax
23 returns, DMV information, and negative reported book
24 markups. Therefore, the Department conducted further
25 investigation by analyzing Appellant's dealer jackets, DMV

1 sales information, and auction house purchase information
2 for the audit period. The Department was able to obtain
3 DMV sales information for the audit period, which includes
4 report of sales data.

5 This DMV sales information is based on the retail
6 report of sale that Appellant submitted to DMV. The
7 filing of report of sale is presumptive evidence that the
8 dealer who filed the report of sale is the person who
9 actually made the sale. When the DMV received the report
10 of sale, the actual selling prices converted to a
11 two-digit alpha code also known as vehicle licensing code.
12 And that will be on your Exhibit B, Column 25.

13 Vehicle licensing codes are established in \$200
14 increments. The Department converted these vehicle
15 licensing codes to dollar values and used the lowest value
16 in the vehicle licensing codes range to determine the
17 sales price. And that will be on your Exhibit B and
18 Exhibit D. For the audit period, Appellant provided
19 incomplete report of sales, sales contract, and purchase
20 invoices. Therefore, the Department reconstructed
21 Appellant's sales information using Appellant-provided
22 dealer jackets, DMV sales information, and auction house
23 purchase information.

24 Specifically, the Department examined
25 Appellant-provided dealer jackets and determined, based on

1 this information, that Appellant had 235 retail sales
2 during the audit period totaling \$1,756,868. And that
3 will be on your Exhibit A, pages 111 to 130. Then the
4 Department compared the DMV sales data and auction house
5 purchase information to Appellant-provided dealer jackets
6 which disclosed 210 missing dealer jackets by Appellant.
7 And that will be on your Exhibit A, pages 111 to 130.

8 Appellant provided dealer jackets that listed the
9 actual selling prices or the vehicles sold. So the
10 Department determined the lowest selling prices from the
11 DMV sales information only for the sold vehicles with
12 missing dealer jackets. Based on DMV information and
13 available dealer jackets, the Department computed audited
14 vehicle sales totaling \$3,250,068 for the audit period.
15 And that will be on your Exhibit A, page 110.

16 The audit calculation of audited taxable vehicle
17 sales based on Appellant's DMV information was reasonable
18 and was in Appellant's favor for sales where the dealer
19 jacket was missing because the selling price the
20 Department included in the audit for DMV sales information
21 is the lowest value in the vehicle licensing codes range.
22 Audited vehicle sales were compared with reported taxable
23 sales of \$2,042,801 to compute unreported taxable sales
24 based on available dealer jackets and DMV information of
25 \$1,207,267 for the audit period.

1 The Department adjusted taxable sales of \$700 for
2 the third quarter 2014 and a credit amount of \$41,905 for
3 fourth quarter 2016 is not adjusted because Appellant did
4 not explain or provide supporting documentation for this
5 credit difference. And that will be on your Exhibit A,
6 page 110. Thus, the Department adjusted the unreported
7 vehicle sales to \$1,248,472 for the audit period. And
8 that will be on why your Exhibit D, pages 83 and 110.

9 Subsequently, the Department found that sale of
10 \$36,200 for five vehicles were missing from the DMV sales
11 information for the audit period. And that will be on
12 your Exhibit A, page 293. The Department also noted that
13 Appellant transferred six vehicles to Appellant's own
14 name. And that will be on your Exhibit B, Items 125, 163,
15 187, 221, 285, and 444. Based on auction house purchase
16 information, the average cost of a vehicle is around
17 \$5,700. And that will be on your Exhibit C.

18 In those instances, no use tax was reported or
19 paid to the DMV for an estimated amount of around \$34,000.
20 And that will be on your Exhibit B, Items 125, 163, 187,
21 221, 285, and 444 and Exhibit C. The Department also
22 noted there are six duplicates. One was totaling \$42,950
23 in this audit. And that will be on your Exhibit A,
24 page 114, Item 82, page 120, Items 249 and 254, page 122,
25 Item 317, page 127, Item 404, and page 130, Item 449.

1 The Department did not perform a reaudit to
2 account for the understatement of around \$27,000,
3 excluding an adjustment for documentation preparation fee
4 and smog fee for one vehicle. And that will be on your
5 Exhibit A, page 159. However, the final disposition of
6 this appeal included any additional adjustments to the
7 finding. The Department will include these five missing
8 vehicle sales and six vehicles subject to use tax. The
9 amount assessed in this audit is reasonable and benefit
10 Appellant.

11 In addition, Appellant's records show that
12 Appellant collected sales tax reimbursement on the sale of
13 repair parts but did not report such sales on its sales
14 and use tax return for the audit period. The Department
15 used Appellant's own records to compute audited taxable
16 sales of repair parts of around \$345,000 for period
17 January 1st, 2013, through December 31st, 2015. And that
18 will be on your Exhibit A, page 133.

19 Appellant did not provide repair parts sales
20 information for year 2016. Therefore, the Department
21 compared the audited taxable sale of repair parts of
22 around \$345,000 to audited vehicle sales of around
23 \$2.4 million for the period January 1st, 2013, through
24 December 31st, 2015, to compute an error rate of
25 14.53 percent to determine Appellant's sales of repair

1 parts for year 2016. And that will be on your Exhibit A,
2 pages 132 and 133.

3 In total, the Department calculated unreported
4 taxable sale of repair parts of around \$470,000 for the
5 audit period. And that will be on your Exhibit A,
6 page 131. The Department also notes that the Appellant
7 did not charge sales tax on amounts charged to customers
8 for documentation preparation fees, a smog fee of \$115 it
9 added to the selling price of a vehicle. These fees are
10 taxable as they were paid to Appellant as a dealer added
11 charge as opposed to fees collected on behalf of the State
12 and remitted to the State. Therefore, the Department
13 assessed these fees at \$150 per vehicle for the audit
14 period.

15 In total, the Department calculated unreported
16 taxable documentation preparation fees and smog fees of
17 around \$50,000 for the audit period. And that will be on
18 your Exhibit A, pages 138 through 148. In total, the
19 Department computed unreported taxable sales of around
20 \$1.8 million for the audit period. And that will be on
21 your Exhibit A, page 73. The Department then compared
22 total unreported taxable sales with reported taxable sale
23 of around \$2 million to compute the overall error rate of
24 86.71 percent for the audit period. And that will be on
25 your Exhibit A, page 73.

1 Appellant has not provided any documentation to
2 show that any of the unreported taxable sales determined
3 in the audit did not occur. Appellant has not identified
4 any errors in the Department's computations or provide any
5 documentary evidence to establish a more accurate
6 determination. Therefore, the Department requests the
7 appeal be denied.

8 This concludes my presentation, and I'm available
9 to answer any questions the panel may have. Thank you.

10 JUDGE STANLEY: This is Judge Stanley speaking.
11 Thank you. And speaking of questions I want to back up a
12 little bit and see if Mr. Samarawickrema, did you have any
13 questions for the witness today, Mr. Ochoa?

14 MR. SAMARAWICKREMA: This is Nalan
15 Samarawickrema. No. We don't have any questions.

16 JUDGE STANLEY: Okay. This is Judge Stanley
17 speaking.

18 Judge Long, do you have any questions of either
19 Mr. Ochoa or the Department?

20 JUDGE LONG: This is Judge Long. No, I do not
21 have any questions. Thank you.

22 JUDGE STANLEY: This is Judge Stanley.
23 Judge Brown, do you have any questions for either
24 Mr. Ochoa or the Department?

25 JUDGE BROWN: This is Judge Brown. No, I do not.

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Thank you.

JUDGE STANLEY: Okay. And this is Judge Stanley.
I don't have any questions at this point either.

Mr. Ochoa, I'm going to give you time to give
your rebuttal to what the Department presented, if you
wish to, or to supplement your earlier testimony. You can
proceed when you're ready.

MR. OCHOA: This is Jesus Ochoa, and I don't have
any questions.

JUDGE STANLEY: This is Judge Stanley. Do you
want say -- have any final words, Mr. Ochoa?

MR. OCHOA: No. I don't have any questions at
this moment.

JUDGE STANLEY: Okay. This is Judge Stanley
speaking. That will conclude this hearing.

The Judges will meet and determine the outcome of
the appeal based on the documents and testimony that was
presented. The record is now closed in this matter, and
we will issue a written opinion no later than 100 days
from today.

(Proceedings adjourned at 10:01 a.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 April, 2022.

ERNALYN M. ALONZO
HEARING REPORTER