

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
C. LEE,) OTA NO. 21017097
)
APPELLANT.)
)
_____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, March 22, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 2:20 p.m. and concluding at 4:12 p.m. on
Tuesday, March 22, 2022, reported by
Ernalyn 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 MICHAEL GEARY

For the Appellant: WAI LING SI
C. LEE

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

RANDY SUAZO
CHRISTOPHER BROOKS
JASON PARKER

Also Present: INTERPRETER
I-CHING

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-17 were received at page 8.)
(Department's Exhibits A-O were received at page 8.)

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California; Tuesday, March 22, 2022

2:20 p.m.

JUDGE ALDRICH: This is Judge Aldrich. We're opening the record in C. Lee doing business as Sushi Kinta before the Office of Tax Appeals, OTA Case Number 21017097. Today's date is Tuesday, March 22, 2022, and it's approximately 20 past 2:00. This hearing was duly noticed for an electronic hearing with the agreement of the parties.

Madam Interpreter was sworn in to dutifully interpret everything that is said from English to Cantonese or Cantonese to English prior to going on the record.

Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Josh Aldrich, and I'm the lead judge 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 Geary. Judge Geary, I don't -- I think you're muted.

JUDGE GEARY: Good afternoon, everyone. I'm

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Judge Geary.

JUDGE ALDRICH: Thank you, Judge Geary.

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

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

For the Appellant, we have representative Ms. Si. For the Respondent, for the Department, we have Hearing Representative Randy Suazo, Christopher Brooks and Jason Parker. Welcome everybody.

The issue to be decided is as follows: Whether Appellant has shown that adjustments are warranted to the audited understatement of reported taxable sales.

THE INTERPRETER: Judge, can you repeat that again?

JUDGE ALDRICH: Sure. Whether Appellant has shown that adjustments are warranted to the audited

1 understatement of reported taxable sales.

2 Ms. Si, is that your understanding of the issue?

3 MS. SI: Yes.

4 JUDGE ALDRICH: And, Department, is that your
5 understanding of the issue as well?

6 MR. SUAZO: This is Randy Suazo. Yes.

7 JUDGE ALDRICH: Thank you.

8 During the March 1st, 2022, prehearing
9 conference, we discussed exhibits. At that time
10 Respondent had identified Exhibits A through G. As
11 memorialized in the March 3rd, 2022, minutes and orders,
12 Respondent indicated that its wish to include an
13 attachment from its June 18th, 2021, brief as well as the
14 previous audit, as exhibits. For ease of reference,
15 Respondent timely resubmitted an updated index on
16 March 7th, 2022, that identified Exhibits A through O,
17 together with a copy of those exhibits.

18 Appellant indicated during the prehearing
19 conference that the five attachments to the
20 December 14th, 2022, opening brief, which we'll refer to
21 as Exhibits 1 through 5, the three attachments to the
22 April 25th, 2021, reply brief, which we'll refer to as 6
23 through 8, and the nine attachments to the July 15th,
24 2021, additional brief, which we'll refer to as Exhibits 9
25 through 17, constitute his proposed exhibits for the

1 hearing.

2 During the prehearing conference neither party
3 objected to the other's proposed exhibits. Does either
4 party wish to object to the admission of these exhibits?

5 Appellant's representative?

6 MS. SI: I have no objection.

7 JUDGE ALDRICH: And Department's representative?

8 MR. SUAZO: This is Randy Suazo. No objections.

9 JUDGE ALDRICH: Thank you.

10 Hearing no objections, the proposed exhibits are
11 accepted into the evidentiary record.

12 (Appellant's Exhibits 1-17 were received
13 in evidence by the Administrative Law Judge.)

14 (Department's Exhibits A-0 were received in
15 evidence by the Administrative Law Judge.)

16 So everyone has an idea of how this hearing will
17 proceed, we planned for the hearing to proceed as follows:
18 Appellant's opening statement and witness testimony, which
19 we estimated at 40 minutes. Next, the Department will
20 present a combined opening and closing for approximately
21 20 minutes. Then the panel will ask questions of the
22 parties for approximately 10 to 15 minutes. And then
23 Appellant will have 5 to 10 minutes to present a closing
24 statement or rebut the Department's argument. As
25 communicated during the prehearing conference, these are

1 estimates made for calendaring purposes. If you need
2 additional time, please make the request.

3 At this time, since we're going to have witness
4 testimony, I'd like to take the moment to swear in
5 Mr. Lee. If you could raise your right hand.

6

7

C. LEE,

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

11

12 JUDGE ALDRICH: Wonderful. All right. So now
13 we're going to transition to presentations. Does either
14 party have a question before we move to opening
15 statements? Appellant's representative?

16 MS. SI: I don't have questions.

17 JUDGE ALDRICH: Okay. And, Department, do you
18 have any questions?

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

20 JUDGE ALDRICH: Great. This is Judge Aldrich.
21 Appellant's representative, when you're ready to proceed
22 with your presentation, you may begin.

23 MS. SI: Okay. Can I start now?

24 JUDGE ALDRICH: Yes.

25 ///

1 allow Ms. Si to provide testimony. And in that case we're
2 going to ask you the same question we asked Mr. Lee. If
3 you could raise your right hand.

4

5

WAI LING SI,

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 ALDRICH: Wonderful. Okay. So you may
11 begin again. You could start from the beginning if you
12 like and that way it's uninterrupted. Okay.

13 MS. SI: Should I start from where I left off, or
14 I should start from the very beginning?

15 JUDGE ALDRICH: This is Judge Aldrich. I'll
16 leave that up to you.

17 MS. SI: I'll finish from -- I'll start from
18 where I finished.

19 The Appellant, my husband Mr. Chiu Ming Lee, he's
20 being engaged in the sushi business, so he does have a lot
21 of experience. But he has no experience about running a
22 business. And I, myself, Ms. Wai Ling Si, and I know
23 nothing about running a business. Therefore, when I took
24 over the business from my aunt, initially, it was my aunt
25 helping us, and I was under the shadow of guidance of my

1 aunt to operate it.

2 So we started the business slowly. Initially,
3 the business was not very good. However, after a period
4 of time, everything was on the right track. This
5 restaurant has overcome many difficulties and crisis.
6 Such as the great earthquake in California in 1989, and
7 the September 11th terrorist attack in 2001, and the
8 financial crisis in 2008, and the March 11th tsunami in
9 Japan in 2011. And even to this, date, the Covid-19
10 pandemic, which caused overall economic downturn and made
11 our business very difficult. It took us a very long time
12 to get through it, however, in comparison with dealings of
13 more than ten years with the California Taxation Bureau
14 and Payment Department, which cause great confusion and
15 frustration to us both physically and mentally.

16 They kept asking for payment from us. It was as
17 if there was a big piece of rock pressing us, and it's
18 very painful. It's very hard to deal with. It's hard to
19 describe that. We have been cooperating with the needs
20 and demands with the California Taxation and Payments
21 Bureau to provide all the data and information. However,
22 they still accused us for underpaying the taxable sales
23 taxes, this kind of unfair and unreasonable checks and
24 orders, which has forced us to seek fair and the correct
25 method and answer.

1 My friend asked me how can you exist for so long
2 to continue with this appeal? That's because I felt that
3 as long as you have the rationale and reasons, you can
4 overturn any unfair and unreasonable results. Therefore,
5 we never gave up on any opportunity for appeals and
6 interviews, even though our English is not great.
7 However, we do have some friends who are very righteous
8 who decide to help us voluntarily so that we can get to
9 this point, so that we can have a chance to defend
10 ourselves. I hope Your Honor can give me a fair trial and
11 give me a fair judgment.

12 That's all I have to say.

13 JUDGE ALDRICH: This is Judge Aldrich. And,
14 Mr. Lee, did you have anything to add?

15 MR. LEE: That's it for now.

16 JUDGE ALDRICH: Okay. So does that conclude your
17 presentation and testimony, Ms. Si?

18 MS. SI: Yes. And I have already provided all
19 the documents that are required.

20 JUDGE ALDRICH: Okay. Thank you. I'm going to
21 reserve questions from the panel until after the
22 Department's presentation, but if you could please both
23 stay on the line.

24 And before we switch to the Department's
25 presentation, I wanted to ask the Department if they wish

1 to cross-examine the witness?

2 MR. SUAZO: This is Randy Suazo. No.

3 JUDGE ALDRICH: This is Judge Aldrich. Thank
4 you, Mr. Suazo. Are you ready to begin your combined
5 opening and closing statement?

6 MR. SUAZO: This is Randy Suazo. Yes.

7 JUDGE ALDRICH: Please proceed.

8

9

PRESENTATION

10 MR. SUAZO: The Appellant is a sole
11 proprietorship and operates a restaurant in San
12 Francisco's Embarcadero Center, with tables and chairs
13 inside the restaurant, along with common area seating
14 outside of the restaurant and a food court area. The
15 Appellant serves Japanese-style food, which includes
16 sushi, hot foods, beverages, beer and wine. The Appellant
17 does sell combination meals that contain both cold and hot
18 food sold in one order as well. Sales are both dine-in
19 and to-go, along with resales to hotels in the area.

20 The seller's permit began on April 1st, 2007.
21 This is the Appellant's second audit. The first audit was
22 for the periods April 1st, 2009, through March 31, 2012.
23 The current audit was for the period from April 1st, 2012,
24 through March 31st, 2015. During the audit period, the
25 restaurant was open six days a week, Monday through

1 Friday, 10:30 through 4:00 p.m., and some Saturdays. The
2 business was closed on Sundays.

3 The records provided included federal income tax
4 returns for 2012, 2013, and 2014, cash register Z-tapes
5 for third quarter of 2014 and for March 31st, 2016,
6 through April 15th, 2016, sales for resale work sheets,
7 resale sales invoices, monthly sales logs, and bank
8 statements for the period from third quarter 2012 through
9 third quarter 2013.

10 The Department compared Appellant's reported
11 sales to recorded cost of goods sold for the federal
12 income tax returns to evaluate the markup of the business
13 for 2013 and 2014. The calculated markup was over
14 235 percent; Exhibit G, page 118. The auditor deemed that
15 to be a reasonable markup, therefore, total sales reported
16 were accepted.

17 The Department also reviewed Appellant's recorded
18 resales from the Appellant's general ledger and accepted
19 them. The recorded resales and reported sales tax were
20 subtracted from total sales to calculate sales sold
21 directly to consumers in restaurant of \$592,000;
22 Exhibit E, page 60. Analysis of restaurant sales to
23 consumers disclose that over the entire audit period only
24 34-and-a-half percent of sales were reported as taxable.
25 This differs from the taxable percentage on the first

1 audit where the rate is close to 70 percent; Exhibit H,
2 page 157.

3 An observation test was conducted on Wednesday,
4 March 30th, 2016; Exhibit L, pages 215 to 21, and
5 disclosed the following: Review of the Z-tape summary;
6 Exhibit L, page 217, showed that taxable sushi and salad
7 made up almost 22 percent of all sales. Taxable sushi
8 consisted of any sushi served in a combination meal with a
9 hot food item or any sushi consumed in the restaurant.
10 Taxable salads would be salads consumed in the restaurant.

11 Further review of the same Z-tape summary also
12 disclose that hot foods, along with taxable drinks and
13 other miscellaneous items, made up more than 27 percent of
14 total sales. When taxable sushi and salads are combined
15 with taxable hot foods and drinks, the total taxable sales
16 amounted to 49-and-a-quarter percent of total sales;
17 Exhibit E, page 61.

18 The Appellant was asked to maintain records for
19 the next 14 days. After analyzing the Appellant's Z-tapes
20 for the period from April 1st, 2016, to April 1st, 2016 --
21 or April 15th, 2016 -- sorry -- the Department rejected
22 the test as a whole. The Z-tapes revealed only three days
23 during the 13-day period following the Department's
24 observation test where Appellant recorded taxable sales of
25 over 40 percent. The other 10 days range from 29 to

1 38 percent taxable sales. The Department contends the
2 Appellant did not adequately ring up taxable sales and,
3 therefore, considered the test period invalid.

4 As stated earlier, the Appellant was previously
5 audited. During the first audit, the Department conducted
6 three observation tests, all within the time frame of the
7 current audit. Those observation tests revealed that the
8 taxable percentage was approximately 70 percent; Exhibit
9 H, page 157. Because of the three observation tests are
10 the best indicator of what occurred during this audit's
11 time period, the Department used them and combined them
12 with the observation test performed on March 30th, 2016.

13 Therefore, the total of four observation tests
14 were combined and a taxable sales percentage of over
15 62 percent was established; Exhibit E, page 61. The
16 taxable percentage was applied to the restaurant of
17 consumer sales of \$592,000 and taxable audited sales of
18 \$371,000 were determined. The audit determined taxable
19 sales were compared to reported taxable sales of
20 \$204,000 --

21 THE INTERPRETER: Sir, can you repeat that again?

22 MR. SUAZO: -- were compared to reported taxable
23 sales of \$204,000 and a difference of \$166,567 was noted
24 and assessed as unreported taxable sales; Exhibit E,
25 page 59.

1 The Department contends the observation test
2 conducted by the auditor show a true taxable ratio of the
3 restaurant based on the following: For the 414-Z
4 Assignment Activity History Log; Exhibit I, page 197,
5 dated January 28, 2013, during the first observation test
6 on Thursday, January 24, 2013. It was noted that the
7 Appellant was unaware that sales of food consumed on
8 premises were taxable.

9 Review of the Z-tape summaries for the prior
10 audit's observation test showed that the Appellant's
11 register was not programmed for taxable sales of sushi or
12 salad. Therefore, the Appellant never taxed these
13 transactions; Appellant's Attachment 4, Exhibit U.
14 Auditor did inform the Appellant's accountant of the
15 issue.

16 Observation tests were also conducted five months
17 later on Friday, June 28, 2013, and Monday July 1st, 2013.
18 The results of the observation test again showed that the
19 taxable sales were around 70 percent.

20 THE INTERPRETER: Is that 17 or 70?

21 MR. SUAZO: 70, seven-zero. The observation test
22 performed on March 30th, 2016, did use the Appellant's
23 Z-tape summary to obtain the total and taxable sales
24 amounts; Exhibit L, page 217. A comparison of Z-tape
25 summary for March 30th, 2016, to the Z-tapes of

1 June 28th, 2013, and July 1st, 2013, was conducted.

2 The comparison disclosed that the Appellant rang
3 up 38 orders of taxable sushi or salad during the
4 March 30th, 2016, observation test. Yet, on June 28th and
5 July 1st observation test, only five and eight ring ups of
6 taxable sushi and salads were rung up. Appellant's
7 Attachment 4, Exhibit U. The Department contends this
8 major discrepancy is a critical reason why the Z-tapes
9 provided by the Appellant are incorrect. Only when the
10 observation test was conducted during the second audit
11 where dine-in sales or combination sushi sales were
12 properly rung up.

13 The Appellant's state in their opening brief,
14 Appellant's Attachment 4, Exhibit O, Number 4, quote,
15 "There are many customers visiting my restaurant every
16 day, and I have no time to keep track of what my customers
17 ordered; sushi or hot combo, for eat-in or to-go, how many
18 drinks customers ordered, were the customers buying to
19 dine outside of my restaurant or elsewhere. My busy hours
20 are less than two hours a day. I have no time to ask each
21 customer these questions," unquote.

22 The Appellant also stated in the opening brief,
23 Appellant's Attachment 4, Exhibit O, Number 2, that they
24 did not charge tax on combination meals that included a
25 hot item. An archive internet service was used by the

1 Department to research Appellant's website to obtain
2 menus, which were applicable for the audit period. Review
3 of menus, Exhibits N and Exhibits O, pages 232 to 239,
4 shows that the Appellant did serve combination meals that
5 included both hot and cold foods, which would make the
6 combination orders taxable.

7 Yelp reviews, Exhibits M, pages 218 through 231,
8 posted during the audit period confirm the combination
9 meals included hot dishes, for example, miso soup
10 throughout the audit period. Of the 24 Yelp reviews --

11 THE INTERPRETER: Sorry. Can you repeat again?

12 MR. SUAZO: Of the 24 Yelp reviews, 18 were
13 75 percent of the reviews, referenced taxable hot food
14 sales. It appears that hot food items for combination
15 meals were popular.

16 Based on all the evidence reviewed by the
17 Department, it is apparent that the reported taxable sales
18 were materially understated. The Department contends the
19 audit approach used to determine the taxable sales
20 percentage was appropriate, and the result in
21 determination is correct.

22 This concludes my presentation. I'm available to
23 answer any questions you may have.

24 JUDGE ALDRICH: This is Judge Aldrich. Thank
25 you, Mr. Suazo.

1 At this time I'm going to ask my panel members if
2 they have any questions.

3 Judge Kwee, did you have any questions of either
4 of the parties?

5 JUDGE KWEE: Hi. This is Judge Kwee. Yes, I did
6 just want to get a couple of clarifications in about the
7 reporting. In looking at the Z-tape summaries, there were
8 different categories, hot food, salad, sushi. So my
9 question for the Appellant was or is, for the salad and
10 the sushi categories, were those reported exclusively as
11 nontaxable or was it split up between to-go orders and
12 dine-in orders to determine whether it was taxable when
13 reporting it?

14 MS. SI: Hi. I'm Wai Ling Si. For the salad and
15 sushi, as you mentioned earlier, if the customer were to
16 dine in, then we would follow the rules and charge the
17 taxes. And regarding the hot food and drinks, we have
18 been charging taxes. We do know that they are taxable
19 items, and we also know that the drinks and alcoholic
20 drinks and wine, they are also taxable.

21 During the peak hours when the customers come in,
22 we would not ask every one of them whether they were
23 dine-in or to-go because there's not enough time. In our
24 restaurant for the dine-in area, we have 16 seats.
25 However, if one person sits down, there won't be another

1 person sitting at the same table. So probably we would
2 only sit ten people, even though we have 16 seats. Even
3 if we were to have a full house, we would not stop and ask
4 every customer to see whether they're going to dine-in or
5 the order is to-go because there's just not enough time,
6 and we don't want the customer to stand there and wait for
7 the seat or for the food.

8 Anyhow, because during the lunch break, they only
9 have one hour or one hour and a half, so that's not enough
10 time. So if we do see that the seats are getting full, we
11 would just assume those customers are going to get their
12 meals to-go so we would just pack the food with the
13 plastic bag assuming that they were to-go. And once the
14 customers pick up their bags, we would not ask them
15 whether they are going to sit and dine-in or eat somewhere
16 else. We just won't ask them that kind of questions. We
17 don't know.

18 JUDGE KWEE: Okay. Thank you. And one more
19 question. So for sushi roll are those listed under sushi
20 or would they be -- or what category would a sushi roll
21 fall under?

22 MS. SI: It would be under the sushi category.

23 JUDGE KWEE: Okay. So, for example, sushi rolls
24 that are deep fried foods, like deep fried crab or tempura
25 like a dragon roll or a spider roll or an all-star roll,

1 those are also running up on the Z-tapes as sushi?

2 MS. SI: Yes, it still would be under sushi.

3 JUDGE KWEE: Okay. Thank you. I don't have any
4 further questions at this time.

5 JUDGE ALDRICH: Hi. This is Judge Aldrich. I
6 have a question for the Department. So there is in the
7 exhibit index observation test -- sorry exhibit index
8 list, Exhibit L as Observation Test March 30, 2016. Why
9 would a March 30th, 2016, observation test then have a
10 September 30th, 2011, date on it? And then also at the
11 bottom it says, "To In Site Test August 30, 2011"?

12 MR. SUAZO: This is Randy Suazo. When they print
13 out the pro forma sheet, they would -- in this case, they
14 didn't change the date in that situation.

15 JUDGE ALDRICH: Thank you.

16 And, Judge Geary, did you have questions for
17 either of the parties?

18 JUDGE GEARY: I do not. Thank you.

19 JUDGE ALDRICH: Thank you.

20 And Appellants would you like 5 or 10 minutes to
21 present a closing or otherwise respond to the arguments
22 that the Department has made?

23 MS. SI: I have a few questions to ask the
24 Department.

25 JUDGE ALDRICH: So just so you know, the

1 Department is just providing argument. And since they're
2 only providing argument and not testimony, you're not
3 entitled to cross-examine them. Do you understand?

4 MS. SI: Yes, I understand.

5 JUDGE ALDRICH: But you're welcome to ask me or,
6 you know, pose a statement.

7 MS. SI: Okay. Then I would like to provide my
8 closing statement.

9 JUDGE ALDRICH: Please proceed when you're ready.

10

11 CLOSING STATEMENT

12 MS. SI: The Appellant, Mr. Chiu Ming Lee, and
13 myself, Wai Ling Si, I would like to review what the
14 parties have shown from the presentation of the opening
15 statement until the provision of the exhibits -- what we
16 provided.

17 First of all, the California Taxation and Payment
18 Bureau only performed an observation for one day to
19 determine our revenue and make the claim that we have
20 underreported taxable sales taxes. And they said the tax
21 revenue reports, which we provided, were unreliable.
22 However, they said that without providing other supporting
23 documents.

24 Secondly, California Taxation and Payment Bureau,
25 when Mr. Keith Long from the Appeal Bureau, Tax Code Three

1 Specialization, made the conclusion, he never reviewed all
2 the errors in Item 2 that was issued. And regarding
3 Item 2 you can refer to the documents, CDTFPA of California
4 Taxation and Payment Bureau, under page 11 of the
5 document. They would not accept that, the understanding
6 of the Appellant. And they would not allow us to correct
7 the mistakes, which made the Appellant --

8 THE HEARING REPORTER: I'm sorry. Can you repeat
9 that, please?

10 MS. SI: -- may ask the Appellant to keep paying
11 their fees that were not supposed to be paid. Regarding
12 the interest and the penalty. It amounts to the large
13 sum, which is a huge pressure for small business owners
14 like us and since this case has become more complicated
15 from a simple case and has since dragged on to this day.
16 How come with just one mistake, we the Appellant, have to
17 be responsible for the consequences of all the mistakes.

18 Number three, the California Taxation and Payment
19 Bureau has been -- has kept using the data from the
20 observation test in 2013 to determine the taxable rate for
21 the taxable sales. And regarding that data, that figure
22 that was being used in 2013, the Appellant has made most
23 of the complaints saying that figure was incorrect.

24 The first issue is, however, in page 4 and page 5
25 of the additional brief in Exhibit K from the California

1 Taxation and Payment Bureau in March 7, 2022, and during
2 the observation test conducted on January 24, 2013, the
3 amount of total sales before tax was \$892. However, for
4 that day within the register of the Appellant, only \$721
5 were recorded. And regarding that, you can refer to
6 page 22 of Attachment 7 of the Appellant's reply brief on
7 July 15, 2021, which is part of the Appellant's exhibits;
8 so the difference is \$117.

9 As you can see there was an error from the first
10 instance as in the amount was different from the figure in
11 my register and, therefore, I sought an appeal and asked
12 for an interview. It is because after each test we would
13 both have the same kind of record --

14 THE HEARING REPORTER: Excuse me. Can you please
15 repeat that?

16 MS. SI: It is because after each test we both
17 have the same record. I would have the record, and the
18 person conducting the test would have the record. Since
19 there were many issues, therefore, I filed an appeal with
20 CDTFA, and they then arranged for two other tests to be
21 done. Those tests were dated June 28th, 2013, and
22 July 1st, 2013.

23 And the second issue -- and also the California
24 Taxation and Payment Management Bureau in the Exhibit E of
25 March 7, 2022, in page 13 where they listed under Computed

1 Taxable Percentage, and the percentage being calculated
2 from June 28, 2013, was 70.46 percent. And the percentage
3 being calculated on July 1st, 2013, was 66.14 percent,
4 which is a huge difference from the record being recorded
5 in the Appellant's register.

6 And regarding the sit tax record of the Appellant
7 on June 28, 2013, it was 32.61 percent. The difference
8 between the two comparing with the percentage calculated
9 by California Taxation and Payment Management Bureau it
10 was more than 1.16 times. And according to the sit tax
11 record of the Appellant's, the percentage for
12 July 1st, 2013, was 35.48 percent. In comparison with the
13 record from the California Taxation and Payment Bureau,
14 which was 66.14 percent, the difference was an extra of
15 86 percent.

16 And for each test, since after each test has been
17 conducted, we have the records. And because there's a
18 huge discrepancy, therefore, I did ask to have the hand
19 return record from those observation tests so that I can
20 verify and review them. And since 2013 to this date, I've
21 been asking for these records, but they have never
22 provided that to them -- to me. However, they were still
23 using the percentage derived from these reports. They
24 would charge me for these sums which I found unreasonable
25 and problematic.

1 Issue number three, and also in Exhibit L of
2 2022, March 7th, in page 1 and 2 of the observation test
3 conducted by the California Taxation and Payment Bureau,
4 and the date listed there in the sit-in table stated
5 August 30th, 2011, which away was not within the three
6 observation test dates. And Judge has asked the question
7 earlier.

8 Because of these mistakes including Item 2
9 mistake, which I mentioned earlier, and which the
10 Appellant has been accounted for and responsible for, I
11 felt that for all these mistakes and misinformation, I
12 need to file an appeal to correct them. For these three
13 tests, for the three tests, dated January 24th, 2013, and
14 June 28th, 2013, and July 1st, 2013, the resales made by
15 the California Taxation Payment Management Bureau has a
16 huge discrepancy with what actually happened.

17 THE HEARING REPORTER: Can you please repeat the
18 last sentence?

19 MS. SI: There's a huge discrepancy from the
20 figure of the California Taxation and Payments Bureau
21 versus what actually happened. Without the support of
22 other strong evidence by adopting the tax rate which they
23 deem to be correct, on contrary the Appellant has provided
24 all the necessary documents. The California Taxation and
25 Payment Management Bureau just said simply that the

1 information from the Appellant was not trustworthy.

2 Therefore, I felt that the California Taxation
3 and Payment Management Bureau only could make charges,
4 however, they don't have the evidence to back it up. And
5 they have this concept believing that restaurants have to
6 be -- let me start again.

7 And they have this concept believing that the
8 taxable percentage for restaurants would be 70 percent.
9 And that was a statement made by Mr. Calvin Chaves. The
10 last name is C-h-a-v-e-s. He said that for the audit of
11 2009 until 2020. He said that in front of me when I went
12 there for an interview. In addition to that, for the
13 first test made by the California Taxation and Payment
14 Bureau, they came up with the percentage as 47.25 percent
15 and -- which they used for the test and for the -- hang on
16 one second.

17 So to produce the report, they used the test
18 conducted on March 31, 2016, and also selected three days
19 from the sit down record from April 1st to April 15, 2016,
20 in order to make the calculation. They take the three
21 days among the 15 days with the highest tax rate to
22 compile the report. And why would they do that? And now
23 they calculated the rate as 69 point-something percentage,
24 which was based on March 30th of 2016 and also from the
25 three test and compiled the report.

1 However, each time when I provided the table to
2 the California authorities, whenever they saw that the
3 percentage was lower than that, they would say that it's
4 not trustworthy. However, I don't understand it. I don't
5 think any restaurant can just use 1 percentage for all the
6 businesses. That's out of my control.

7 And in comparison with the four tests that have
8 been done for March 30th, 2016 test, the percentage was 49
9 point-something percent. And with the other three tests,
10 the difference was about 20 some-odd percent. And why
11 would they think that is correct? I feel that these
12 allegations are very unfair. In each audit report the
13 amount would be much bigger each time. However, the
14 California Taxation and Payment Management Bureau, they
15 would use another method making the Appellant could not
16 retrieve the excess amount of money being paid for the
17 incorrect item too.

18 In addition to that, the Appellant would owe
19 another couple of thousand dollars. That has made us very
20 angry and frustrating. I hope Your Honor can rule on this
21 fairly and give me some justice so that I and my husband
22 would not be tormented by these painful experiences again;
23 so that we can avoid this kind of unfair treatment; so
24 that we can return back to our normal lives. And I hope
25 that you can rule that the excess amount of our

1 hard-earned money and payment can be returned to us.

2 Thank you.

3 JUDGE ALDRICH: This is Judge Aldrich. I think
4 that we're probably ready to conclude, but I wanted to
5 just confirm with Appellant that they've said everything
6 they'd like to say at this point.

7 MS. SI: I would like to make some addition.

8 JUDGE ALDRICH: Okay.

9 MS. SI: Earlier California Taxation and Payment
10 Management Bureau mentioned Exhibit O regarding the menu
11 of Sushi Kinta online. All the items in the online menu
12 include taxable charges. It's because for the online
13 items they would not divide them by categories, whether it
14 is salad or sushi or whatever. They would all be charged
15 with taxes for the online item.

16 And regarding that online menu, it only started
17 since 2013 when we joined the online platform. And the
18 platform does charge a certain amount or fees. At a time
19 the online platform was not that popular, there were not
20 that many customers who would order online. Therefore,
21 the revenue from the platform were not huge. And also for
22 our menu on the online platforms, there would be no sushi
23 and hot meal combos. Since it will be difficult to
24 control them, therefore, we do not offer these types of
25 meals online. It's only since 2021 because of the

1 pandemic.

2 Because of the pandemic, we would provide a
3 meal -- only one meal for lunch for sushi online in the
4 platform. However, since 2013 because of the cost, the
5 online meals would not include any hot drinks until now.
6 Therefore, the California Taxation and Payment Management
7 Bureau, when they came for the test, the sushi and hot
8 drink combination were no longer there.

9 That's all I have to supplement.

10 JUDGE ALDRICH: Thank you, Ms. Si. I believe one
11 of the panel members had a question for you.

12 Judge Geary, would you like to proceed with the
13 question for Appellant -- actually, maybe for the
14 Department? I'm not sure.

15 JUDGE GEARY: Yes. This is Judge Geary, and I
16 have a question for Mr. Suazo.

17 Mr. Suazo, referring to CDTFA's Exhibit L, this,
18 I take it, is the data from the March 30th, 2016,
19 observation; is that correct.

20 MR. SUAZO: This is Randy Suazo. That's correct.

21 JUDGE GEARY: This is Judge Geary again. Thank
22 you, Mr. Suazo. Can you confirm that similar data is in
23 CDTFA's evidence from the tests from 2013 that the CDTFA
24 relied upon?

25 MR. SUAZO: Exhibit L is for March 30th, 2016.

1 The January 24th, 2013, is included in the exhibits for
2 the -- I think it's what, June 28th, 2013, and
3 July 1st, 2013. Those, the audit staff did not include in
4 the audit. They did give the summary that they had
5 compiled in the audit, but the actual detail was not
6 included. We asked the office where the audit was
7 conducted, but they did not have it either. It's
8 referenced in Exhibit K, the additional brief. It's in
9 there.

10 JUDGE GEARY: This is Judge Geary again. And
11 when you say, Mr. Suazo, "that it's referenced there," is
12 the reference to the specific data or a summary or what?

13 MR. SUAZO: Exhibit K, Number 3, page 211, at the
14 bottom. The detailed work sheets used to compile the data
15 for observation test on June 28, 2013, and July 1st, 2013,
16 were not provided to the Appellant, nor were they
17 concluded in the audit working papers. The office in
18 which the audit was conducted does not have the detailed
19 schedule of the observation test. Therefore, copies are
20 not available.

21 JUDGE GEARY: This is Judge Geary.

22 MR. PARKER: Mr. Geary, this is Jason Parker. I
23 just wanted to add that the detail for the observation
24 test for January 24th, 2013, is Exhibit I, pages 184 and
25 185.

1 MR. SUAZO: This is Randy Suazo again. It's also
2 included as an attachment to Exhibit K. This is for
3 January 24, 2013, pages 213 and 214. So what we have, we
4 gave you.

5 JUDGE GEARY: Thank you. This is Judge Geary.
6 Those are the only questions that I have.

7 JUDGE ALDRICH: This is Judge Aldrich. I think
8 we're going to conclude. Is that okay with you,
9 Appellant?

10 MS. SI: Yes.

11 JUDGE ALDRICH: Great.

12 So I want to thank everyone for their time for
13 being flexible with the hearing format. I especially want
14 to thank our interpreter who -- this was a longer hearing,
15 but thank you very much for being accommodating to the
16 technology and our schedule.

17 We're ready to conclude the hearing. The record
18 is now closed.

19 The panel will meet and decide the case based on
20 the evidence and the arguments presented today. We will
21 send both parties our written decision no later than
22 100 days from today.

23 This is the last hearing for today. However,
24 there are hearings on calendar for tomorrow, which will
25 resume at 9:30 a.m.

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Thank you everyone and have a wonderful
afternoon.

(Proceedings adjourned at 4:12 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 4th day of April, 2022.

ERNALYN M. ALONZO
HEARING REPORTER