

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
PARTNERSHIP OF F. SABA-SYED,) OTA NO. 19034461
et al.,) 19034462
STAFF FOOD CONNECTIONS, LLC,)
)
APPELLANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, April 20, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead: ALJ NATASHA RALSTON

Panel Members: ALJ JOSHUA ALDRICH
ALJ ANDREW KWEE

For the Appellant: F. SABA-SYED
S. SIDDIQUI
Q. TAYYAB
S. FIAZ

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

RAVINDER SHARMA
STEPHEN SMITH
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-11 were received at page 7.)
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1 Sacramento, California; Wednesday, April 20, 2022

2 10:39 a.m.

3
4 JUDGE RALSTON: So we're now on the record in the
5 Appeal of Partnership of F. Saba-Syed, et al., and Staff
6 Food Connections, LLC. These matters are being heard
7 before the Office of Tax Appeals. The OTA Case Numbers
8 are 19034461 and 19034462. Today's date is Wednesday
9 April 20th, 2022, and the time is approximately 10:39.

10 Today's hearing is being held by a panel of three
11 Administrative Law Judges. I'm Judge Ralston, and I will
12 be the lead judge today. Judge Aldrich and Judge Kwee are
13 the other members of this tax panel. All three judges
14 will meet after the hearing and produce a written decision
15 as equal participants. Although I will be conducting the
16 hearing, any judge on this panel may ask questions or
17 otherwise participate to ensure that we have all the
18 information that we need to decide this appeal.

19 So I'm going to start with the Appellant, and I'm
20 going to ask you to please state your name and who you
21 represent for the record. So please go ahead when you're
22 ready.

23 MR. TAYYAB: Tayyab Alim.

24 JUDGE RALSTON: Yeah. You don't have to -- I --

25 MR. TAYYAB: Don't raise the hand yet?

1 JUDGE RALSTON: Yeah. Not yet. Just state your
2 name for the record and then -- both of you -- and then
3 I'll go ahead and swear you in.

4 MR. TAYYAB: It is Tayyab Alim, and I'm going to
5 represent the F. Saba-Syed Partnership as well as the
6 Staff Food Connections, LLC.

7 JUDGE RALSTON: Okay. Thank you. Okay.

8 And then I will ask you both in a few minutes
9 when -- right before you begin your testimony. Let's see.

10 And for Respondent CDTFA, can you please
11 introduce yourselves and let me know who you represent.

12 MR. SHARMA: Ravinder Sharma, Hearing
13 Representative, CDTFA.

14 MR. PARKER: Jason Parker, Chief of Headquarters
15 Operations Bureau with CDTFA.

16 MR. SMITH: Steven Smith, Legal Department,
17 CDTFA.

18 JUDGE RALSTON: Thank you.

19 So as confirmed at the prehearing conference, the
20 issues to be decided in this appeal are whether
21 adjustments are warranted to the partnership's measure of
22 unreported taxable sales, unreported taxable sales for
23 special events and/or festivals, and whether the
24 negligence penalties are warranted.

25 Okay. As discussed at the prehearing conference,

1 neither party intends to call any witnesses. As far as
2 exhibits, Appellant's have submitted Exhibits 1 through
3 11, and Respondent has not raised any objections to
4 Appellant's exhibits. So Appellant's Exhibits 1
5 through 11 are admitted without objection.

6 (Appellant's Exhibits 1-11 were received
7 in evidence by the Administrative Law Judge.)***

8 Also as discussed at the prehearing conference,
9 Respondent has submitted Exhibits A through H, and
10 Appellant has not raised any objections to Respondent's
11 exhibits. Respondent's Exhibits A through H are admitted
12 without objection.

13 (Department's Exhibits A-H were received in
14 evidence by the Administrative Law Judge.) ***

15 This hearing is expected to last approximately
16 60 minutes. Appellant will have 20 minutes for their
17 opening presentation. Respondent will have 20 minutes for
18 their presentation, and Appellant will have approximately
19 5 minutes for rebuttal.

20 Does anyone have any questions before we move on
21 to the opening presentations? No.

22 So I'm going to ask the Appellant to push the --
23 push the button on the front of the microphone before you
24 speak. Looks like they're having a little bit of trouble
25 hearing you over the live stream.

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MR. TAYYAB: I think it's on now.

JUDGE RALSTON: Okay. So we're ready to proceed with Appellant's opening presentation.

Can I have you both raise your right hand.

QUDSIA TAYYAB,

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

SHAHAB SIDDIQUI,

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

JUDGE RALSTON: Thank you. So you have 20 minutes for your presentation, and please begin when you're ready.

PRESENTATION***

MR. TAYYAB: Okay. It's an honor for all of us to appear here today before this honorable panel. On behalf of F. Saba-Syed Partnership and the Staff Food Connection, LLC, to present and discuss the case that was wrongly filed against F. Saba-Syed Partnership and Staff

1 Food Connections, LLC, regarding the sales tax based on
2 the assumptions about the sales and the customers served.

3 We are here today to contest the calculation of
4 CDTFA regarding the underreported sales for the
5 partnership and the Staff Food Connections, LLC. We will
6 also contest the calculations of CDTFA regarding the
7 outside sales for the partnership and the Staff Food
8 Connections, LLC. And, consequently, we will also contest
9 the negligence penalty imposed by the -- on the
10 partnership and the Staff Food Connections, LLC.

11 This case against Saba-Syed Partnership and Staff
12 Food Connections, LLC, was primarily based on the
13 achievement claimed on a website as per CDTFA letter
14 signed by Mr. Jason Parker. Although the facts have been
15 presented and our response at different occasions, but I
16 think it would be wise to repeat those facts again which
17 will help us to clarify and understand the discussion as
18 we move forward following all the facts that we must keep
19 in mind before going any further to discuss this case.

20 Number one, F. Saba-Syed Partnership dba Mehran
21 was in business from February 2005 until 31st, December,
22 2007. Number two, Staff Food Connections, LLC, dba Mehran
23 Restaurant was in business just for four months and
24 15 days from 1st, January 2008 until February -- until
25 May 15th, 2008. This could easily be verified by the

1 buyout agreement, which is attached here as Appendix 1.
2 And that Appendix 1 is also attached at the hearing binder
3 as Appendix 1 from page number 3 to page number 7.

4 Number three, Mehran Restaurant used to provide
5 food to many mosques in the San Francisco Bay Area at very
6 low prices, barely enough to cover the food costs. During
7 the period of -- during that period, Mehran has provided
8 lunch or dinner at a rate as low as \$4 per person.
9 Moreover, during the month of Ramadan, food and sweets
10 were also provided to many mosques located in the San
11 Francisco Bay Area.

12 In addition, Mehran Restaurant used to sell milk
13 cakes, rice pudding, milk balls and syrup, quarter cheese
14 ball and syrup, and other freshly made sweets to walk-in
15 customers for consuming off the premises of the
16 restaurant. Sales tax was never charged on these sales of
17 these sweets. And eventually, I mean, since we didn't
18 collect any sales tax on the sale of those sweets, we
19 never paid and claimed those sales as a nontaxable on our
20 quarterly returns.

21 Mehran Restaurant also has one banquet hall at
22 that time, and we used to rent that banquet hall either
23 with or without food. Most of the time customer rent the
24 banquet hall because, you know, this is an Indian and
25 Pakistani restaurant. A lot of people from the Hispanic

1 background or other people they just want to bring their
2 own food, they just want to rent the space. And we used
3 to do that. But if somebody wants the food, we provide
4 that, and then we charge the sales tax. But for the
5 rental of the hall, we did not charge any tax.

6 Also on some occasions Mehran Restaurant used to
7 provide complimentary food to different occasions,
8 concerts, functions, and in return they just display our
9 banner at the event. For example, Salman Khan Show was
10 occurred on 13th, October, 2006, and we just provided food
11 to them for the performers, and the volunteers. And in
12 return they just put a banner on -- on the venue.

13 Number six, neither F. Saba-Syed Partnership dba
14 Mehran Restaurant nor Staff Food Connections, LLC, dba
15 Mehran Restaurant has any website while they were in
16 operation. This can easily be verified by the owners of
17 FSF Caters who established this website for Mehran
18 Restaurant in 2009. Please see Appendix 2, which is also
19 attached with the hearing binder on page number 8.

20 On -- also on page number 52 of Exhibit D of the
21 hearing binder, it says that CDTFA under Verification of
22 Audited Amounts and Findings, states that, "There was no
23 material difference between the sales reported to the
24 CDTFA or the federal tax return or the bank statement
25 provided." They accepted that there is no material

1 difference between the numbers from all these three
2 sources. Normally, these three sources are enough to
3 justify that whatever the taxpayer is claiming is correct.

4 But what happened? CDTFA, based on the website
5 that was never made in our days, and there were some
6 claims which are totally exaggerated, and they used those
7 information to calculate the off premises sales or the
8 catering for the events and, you know, different
9 occasions. And also on page 52 of the hearing binder,
10 Exhibit D, CDTFA under Verification of Audited Amounts and
11 Finding states that as for taxpayer claim, "The rental
12 invoices does not include food, and that they include the
13 rental of the hall."

14 And then after examining the catering menu, which
15 offer a base-catering menu at \$7 per person, CDTFA assumes
16 that it does not seem reasonable that the price charged
17 for the rental does not include food. I don't know they
18 can reasonably say it or not, because reasonableness is a
19 subjective thing. Someone reasonable to you might be
20 unreasonable to me. So they cannot say that since they
21 think it's reasonable that \$10 should include the food as
22 well, so we should charge the sales tax. So they just
23 refuse our, you know, the -- the non-sale amount. They
24 included that as a sales tax amount on which we should
25 charge the sales tax.

1 Even -- even today, if we do some research, then
2 we could easily find that this is a common practice in all
3 of the banquet halls. I can give you an example. We can
4 just call any hotel in the area and ask them we just want
5 to rent your place. They're going to charge at least \$45
6 to \$55 per person, and just for that venue, just for the
7 tables and no food included. And even at that time in
8 2006 and '07 those charge like \$20 to \$25 per person, and
9 we used to charge like \$10. And these -- these facts can
10 easily be verified today as well.

11 So in line of the above assumptions made by CDTFA
12 regarding the charges for the hall rental were not correct
13 and can be supported by the market data then and now.
14 Again, there's another issue. As mentioned in the CDTFA
15 letter that the venue of some of the events were unknown.
16 In reality, the fact of the matter is those events took
17 place in Mehran Restaurant. Now, let me tell you that at
18 that time the Mehran Restaurant square footage was 8,611
19 square feet. They have one banquet hall with the capacity
20 of 170 people, and there is about 45 to 50 people can sit
21 in the restaurant.

22 Now, you can tell me is it possible for 3,000 or
23 2,000 or even 1,000 people to sit there and participate in
24 a function, 170 plus 50. So all together maximum 225,
25 230. And if we remove the tables and just put the chairs,

1 it could be like 250, 275. And whatever they calculated
2 based on -- again, based on the website, the main culprit
3 here is the website. So based on the website for those
4 events, which they say that the venue is unknown, that was
5 at the restaurant. And they claim 6,000 people, 4,000
6 people.

7 Actually, it should be in the hearing binder
8 Appendix 3, page 9 to 12. It gives you all the details,
9 that name of the function, amount of the -- I mean, the
10 money charged per person, and the number of people served.
11 So I don't know how we can serve 3,000 -- I mean, even 500
12 people in that restaurant. Even right now after the
13 expansion when FSF Caters took over the restaurant, they
14 acquired some additional place next to the restaurant.
15 And now that Mehran Restaurant is about -- about 15,
16 15,000 square feet, and they have three banquet halls.

17 Still they cannot accommodate more than 6 or 700
18 people. So I don't know where they get the number that we
19 can sit or have functions where the number of participants
20 is 2,000 or 3,000. You can see it's all -- it's all in
21 the binder. And then the letter that we received from
22 Mr. Parker, CDTFA estimated that the sales and the sales
23 tax based on the bank deposit reconciliation of FSF Caters
24 Corporation. Now, they are trying to calculate the sales
25 for the taxable income from the Staff Food Connection from

1 FSF Caters.

2 Now, the difference is that when they took over
3 the restaurant, they expanded it. Instead of one banquet
4 hall, they did two more banquet halls from 8,611 square
5 footage. So they went to 15,000 and some square feet. So
6 how can you compare the sales of a restaurant on 8,611
7 square feet with one banquet hall to a restaurant -- same
8 restaurant -- when it is with three banquet halls and
9 15,361 square feet? So, of course, their sale is going to
10 be a big jump after that -- when they took over the
11 adjacent place and expanded the banquet halls.

12 Then in the next paragraph of the same letter
13 from CDTFA, the off-site sales were estimated. These are
14 not my words. It's in parenthesis. It's on the letter.
15 "The off-site sales were estimated based on the
16 achievements listed on the taxpayer's website, which
17 included concerts, festivals, and events that took place
18 during the third and the fourth quarter," as per CDTFA
19 website. So that website does not belong to us. We
20 didn't make that. That website was made in 2009, and our
21 last day at Mehran Restaurant was February -- I mean, the
22 May 15th, 2008.

23 And, moreover, the achievement listed on the
24 website of FSF Caters were exaggerated for marketing
25 purposes. Moreover, the website was Mehran 2009 and its

1 claims for achievements cannot be implemented on F.
2 Saba-Syed dba Mehran Restaurant and the Staff Food
3 Connections, dba Mehran Restaurants. And then there's a
4 letter from the secretary of FSF Caters, which is on
5 hearing binder Appendix 2, page number 8. It clearly
6 explains what happened after he left Mehran Restaurant.

7 CDTFA also attached the bank deposit details
8 under Additional Bank Deposits Over Reported Total Sales
9 are shown on Exhibit 1, page 1. Bank deposits are on
10 page 2. I don't know why sales for information only.
11 Anyways, the last day of operation of Mehran Restaurant by
12 Staff Food Connections, LLC, was May 15, 2008. Therefore,
13 any deposit made after May 15, 2008, cannot be attributed
14 towards the Staff Food Connections, LLC. But on page 1 of
15 Exhibit 1, CDTFA claims that the deposit made in the
16 checking account number ending 2852 in the first quarter
17 of 2009 was considered as the sales for Staff Food
18 Connections, LLC, despite the fact that Staff Food
19 Connections, LLC, was dissolved on May 15, 2008. Again,
20 please see Appendix A on the hearing binder, page 3 to 7.

21 On page 2 of Exhibit 1, CDTFA explained it more
22 clearly. It shows that no deposit was made in the
23 checking account ending 2852 for seven months. How can a
24 business be in operation without any deposit, anything
25 going to the bank for seven months, from June 2008 through

1 December 2008? Then in January 2009, \$15,200, and in
2 February 2009, \$13,130 were deposited in the account
3 ending 2852. And then, again, there was no deposit for
4 the next -- for the rest of the period showing on page 2
5 of Exhibit 1. And it shows on the hearing binder
6 Exhibit 15, page number 14.

7 On Exhibit 2 of -- I'm sorry. On page 1 of
8 Exhibit 2 of CDTFA's attached, a page that titles "Our
9 Achievement." As mentioned earlier, the website was
10 Mehran 2009. CDTFA has highlighted in yellow some of the
11 achievement listed on the page 1 of Exhibit 2. Here are
12 some of the facts regarding those achievements. The first
13 achievement, official caters for Amitabah Bachchan Show
14 2008. This show occurred on July 27, 2008. Our last day
15 at Mehran Restaurant was May 15, 2008.

16 Even if Mehran Restaurant served maybe the whole
17 barrier of 100,000 people on that occasion, it has nothing
18 to do with us. We were gone on May 15th. So whatever
19 happened after that and CDTFA -- and CDTFA are required --
20 are quite very well aware of it that we were not there
21 after May 15th, but they still included that show. And
22 the second thing is that how can we advertise something
23 that has not happened yet?

24 Just for a second let's assume that the website
25 was ours. I accept that it was ours, but how can I

1 advertise something that has not happened yet? That event
2 occurred on July 27, 2008. How can we advertise it in our
3 website, if the website is ours? Our last day was May 15,
4 2008. How can we advertise that event on our website?
5 That is -- that is another contradiction that clearly
6 tells us that the website does not belong to the
7 taxpayers.

8 And then the official caterers for Salman Khan
9 Show 2007 in Oakland Coliseum. First of all, the Salman
10 Khan Show, the correct day was 13th, October, 2006, not
11 2007 as claimed. And on that occasion, we just
12 provided -- as I said earlier, we just provided food to
13 the artists, the volunteers, and they just put a banner as
14 a sponsor on the event. So that thing was just for the
15 marketing purposes that we -- and this is not the only one
16 occasion. We have done it for multiple purposes, multiple
17 occasions that we just provided the free food. In return
18 they just put a banner that this event Mehran Restaurant
19 is the sponsor -- or one of the sponsors of the event.

20 And then it says official caterers of Prince
21 Karim Agha Khan Community. Mehran Restaurant has provided
22 food for Agha Khan Community in 2006 for their annual
23 meeting. We provided food for about 300 people at a cost
24 of \$5 per person. And for those occasions whenever we do
25 sell some food at different occasions, when people come

1 back to the restaurant, they give us or tell us that, you
2 know, we sold 200 boxes. Here's \$1,000. Right away we
3 ring that in the register.

4 So these sales are already included in the sales
5 that were reported on a quarterly basis on our quarterly
6 tax returns. And then the next point was official
7 caterers of Burhan Uddin Community. Yes, we did serve
8 Burhan Uddin Community in 2006, and that was a big, big
9 event. We provide about -- food for about 2,500 people.
10 We sold those lunch boxes at \$5 each in 2006. And the
11 CDTFA claims that we catered in 2006 and '07 too. He
12 didn't even come to Bay Area in 2007, and it's a fact.
13 You can even Google it. You can easily -- anybody can
14 find it.

15 Normally, those people if they come one year, the
16 next time they come would probably be like 6, 7, 8 years
17 later. But they claim that they came in 2006, and I think
18 we serve like 700 people, not 7,000. We provided food for
19 2,500 people? And then he said he come again in 2007, and
20 he did not. But they calculated 2007 he came again, and
21 we provided food for 7,000 people at the charge of \$7. I
22 don't know where they get the \$7. I mean, we are the
23 owner. We dictate the price of a lunch box or anybody
24 else can do it. You don't know.

25 Even if it is -- even if it is not correct but

1 you have to go by my words. Time is gone, and I'm telling
2 you that we sell -- sold those food for \$5 per person.
3 Even if I say \$4, nobody can prove it. I don't know why
4 they kept on -- and for every event they use the standard
5 number, \$7, \$7, \$7. Everything is \$7. Looks like a
6 dollar shop. Menu prices changes based on the menu you
7 ask. I mean, of course, if somebody has the same items,
8 prices will not be the same, either you, him, me, or
9 anybody else.

10 But, normally, many changes with venue to venue
11 and, accordingly, prices changed too. Unless they just
12 ask her for the box, lunch box, \$5 we have a standard item
13 that we will put in the box, and that is \$5. So again as
14 I said, we did cater the Burhan Uddin Community in 2006
15 for 2,500 people but not in 2007. Why? Because he didn't
16 come to Bay Area in 2007. That's why we didn't serve
17 them. So in short, again, it proved that the whole case
18 is based on the assumptions that are not correct. Again,
19 this can easily be verified.

20 Then official cater for South Bay Islamic
21 association San Jose. Mehran Restaurant sold lunch boxes
22 at \$5 per box in each festival in 2006 and '07. On the
23 average of about 2 to 3,000 people used to attend that
24 festival in 2006 and '07. Some of the participants also
25 purchased food from different vendors. By the way, Mehran

1 Restaurant is not the only vendor. There's like four or
2 five different Bay Area restaurants that were selling the
3 food there, and Mehran was one of them. Normally, we sold
4 approximately 500 boxes on those occasions. And this can
5 be verified from the letter from Raheel Merchant, program
6 coordinator at South Bay Islamic Association, San Jose.

7 It is -- it is -- please see Appendix 4 from our
8 response and on hearing binder. You can see that letter
9 on -- as Appendix 4, page 13, and Raheel Merchant number
10 is there. You can call him and verify those information.
11 While on the CDTFA estimates I think we sold like 3, 4,000
12 of the -- I mean, like 3, 4,000 people don't even come to
13 the festival. Just like the event that took place in
14 Mehran Restaurant, they claim that we serve like 3,000,
15 2,000, 4,000 people while the capacity of the restaurant
16 at that time at the maximum is about 250. And if we
17 remove the tables, just put chairs like theater style,
18 still we cannot accommodate more than 375.

19 And then Mehran Restaurant provided lunch boxes.
20 \$5 for Pakistan American Culture Center meetings in 2006
21 and '07. That's true. We did. And we sold about
22 200 boxes on each of those meetings. And, again, those
23 sales were ringed up as soon as the event is over. So as
24 we can see from all above, that CDTFA copied the
25 information of achievements from the website. And without

1 any further confirmation or verification, CDTFA used those
2 achievements and imaginary calculated the sales and the
3 sales tax.

4 In other words, CDTFA based their case on either
5 false or grossly exaggerated claims or information listed
6 on the website, which neither belong to or not operated by
7 the taxpayer. Again, the website was Mehran 2009, while
8 the last day of our operation was May 15, 2008. I mean,
9 hopefully all the explanation and the documents attached
10 are enough to convince you that the office -- convince the
11 Office of Tax Appeals that the case built against the
12 taxpayers by CDTFA is not correct, and is based either on
13 the false facts or on grossly exaggerated numbers.

14 So we humbly request you to dismiss this case
15 against the taxpayers. Thank you.

16 MR. SIDDIQUI: Honorable Judge, may I take two
17 minutes?

18 JUDGE RALSTON: Yes. Go ahead.

19 MR. SIDDIQUI: Okay. Basically there is no
20 unreported sales. All outside sales we always ring
21 whenever we come back to the restaurant. Mr. Tayyab was
22 mentioning that, yes, we do go to different occasions.
23 And whatever sale we had we always come back to the
24 restaurant and we were ringing the sale. So there is no
25 unreported sale. All assumptions, all calculation by

1 CDTFA is based on website, even the website was not
2 existing.

3 And did you know it's a very common practice that
4 people actually did numbers on their websites. It's just
5 solely for the marketing purpose. So in reality it's not
6 possible the numbers they quoted 3,000, 4,000, 7,000 is
7 not practically possible. It can be verified. And as far
8 as sponsorships are concerned for the shows, normally it's
9 a very standard practice. You can make call to any Indian
10 promoters or any other community promoters. They do not
11 give you the money. They always get the food free, and
12 they advertise your restaurant. But they never give you
13 the money.

14 That's a very standard practice. It was
15 implementing at that time, and it is still a practice
16 right now. And anybody can call any promoter in Indian
17 community and ask, do they provide money for the food?
18 They don't. And normally a venue they have their own --
19 own place where they sell the food. And, normally, they
20 don't allow you to sell outside food. If you do Oakland
21 Coliseum, if you go to San Jose Civic, they don't allow
22 outside food. And very well the only food they allow
23 that's for the artist and for the crew members.

24 So I don't know where they come up with these
25 numbers. I think they were totally misguided by the -- by

1 reading the website. So all these numbers are
2 assumptions, and we never cheated, or we never -- under
3 oath, I'm telling you that we never cheated, and we never
4 tried to un-report or underreport any numbers. So all
5 numbers are correct.

6 We -- we are suffering for so many years because
7 this is a pain for us for so many years, over 10 years
8 now. And so we want the right conclusion for this one.
9 And under the oath we are telling you we never did
10 anything wrong, and we did everything with ultimate
11 honesty. Thank you very much.

12 MR. TAYYAB: I just wanted to add one thing --

13 JUDGE RALSTON: Okay.

14 MR. TAYYAB: -- that he reminded me. You know, at
15 Oakland Coliseum you can't even sell your food.

16 MR. SIDDIQUI: It's not -- it's not --

17 MR. TAYYAB: You can -- you can --

18 MR. SIDDIQUI: It's not allowed. They don't
19 allow.

20 MR. TAYYAB: We can just take a five-minute
21 break. Call Oakland Coliseum. Just tell them you're
22 going to have an Indian star coming next month, and we're
23 going to sell our food at the event. They will say no
24 because they don't. They don't allow. I mean, just like
25 is it possible for you to go and sell food at the Coliseum

1 while there's a baseball or football game is going on?
2 That's how they make money. Water bottle is \$4 or \$5.
3 Hot dog is \$10.

4 That's how they make money. They won't allow you
5 to do that. So that part is killed then and there just by
6 one call. Call them and ask them that we're going to have
7 an event, 10,000 people, and we're gonna sell our food.
8 They will say no. Thank you.

9 JUDGE RALSTON: Thank you. I'm going to ask just
10 because we had an issue with the microphones earlier, and
11 I want to make sure that our record is clear. Can you
12 both please repeat your names for the record so that we
13 know who is presenting later.

14 MR. TAYYAB: Tayyab Alim.

15 MR. SIDDIQUI: Shahab Siddiqui.

16 JUDGE RALSTON: Thank you. So I am going to turn
17 to my panel members and see if they have -- oh, I think
18 first let me see.

19 Since they were under oath, did CDTFA, did you
20 have any questions for the Appellant's?

21 MR. SHARMA: The Department has no questions.
22 Thank you.

23 JUDGE RALSTON: Thank you. Okay.

24 I'm going to turn to my panel members.

25 Judge Aldrich, did you have any questions for the

1 Appellant?

2 JUDGE ALDRICH: Hi. This is Judge Aldrich. Yes,
3 I have a couple of questions for you, gentlemen, if you'd
4 indulge me. So both of you had mentioned that when you
5 returned from events you would ring up sales. How are you
6 ringing up sales? What kind of system? Was it a
7 computer? Was it a --

8 MR. TAYYAB: No. It's a POS system. They were
9 recorded different ways to sell a transaction -- to enter
10 a transaction through the system. If you're ordering for
11 the restaurant -- I mean, the customer is sitting in the
12 restaurant, then you go to the menu page, select whatever
13 items he's ordering, and then put the total. It will
14 include the tax by itself, and it will give you the grand
15 total. And when you print the receipt, it will say the
16 food amount, tax, and then the total.

17 But if you come from an event, then there is a
18 one-cent key. Cent key means you can put that key and
19 enter any dollar amount. So we put, for example, the sale
20 is \$600. So we are going to put in 600 -- type in \$600 in
21 the POS, and hit the sales key, and then the tax key. It
22 will give you the total; sale, tax, and then the total.

23 JUDGE ALDRICH: Okay.

24 MR. TAYYAB: And -- and -- and if it is a hall
25 rental, for example, somebody is paying \$1,000 for the

1 hall rental. We're going to go \$1,000, cent key, enter,
2 nontaxable, and then open the register.

3 JUDGE ALDRICH: And I assume that this
4 point-of-sale system could reproduce what your daily sales
5 were or weekly sales or --

6 MR. TAYYAB: Oh, definitely.

7 JUDGE ALDRICH: Yes.

8 MR. TAYYAB: Oh, definitely.

9 JUDGE ALDRICH: So I guess what I was wondering
10 is that in the Department's Exhibits A and E, they mention
11 that none of those records were provided.

12 MR. TAYYAB: Actually, our -- our partnership and
13 the corporation ended on May 15th, 2008. Then the new
14 corporation, they got rid of the old system. They brought
15 the new system, and we didn't have any record. And then
16 our accountant has the record, but unfortunately later on
17 when we need it, we find out that he expired. And we --
18 we couldn't find any record from him.

19 JUDGE ALDRICH: Okay. And is the same true for
20 contracts for the rental hall? So, like, if somebody
21 wanted --

22 MR. TAYYAB: Exactly. Yeah.

23 JUDGE ALDRICH: Okay.

24 MR. TAYYAB: Exactly.

25 JUDGE ALDRICH: So neither of those are available

1 to you?

2 MR. TAYYAB: No.

3 JUDGE ALDRICH: Okay. So it sounds like, if I
4 can surmise, that you did have a recordkeeping system, but
5 the subsequent entity somehow did something to them or --

6 MR. TAYYAB: Exactly.

7 JUDGE ALDRICH: -- you failed to retain --

8 MR. TAYYAB: We somehow, you know, they cleaned
9 up the thing. They took the additional about 6,000 square
10 feet. They totally remodeled the restaurant. They teared
11 down the office. They built a new office. So in those
12 procedures somehow all those couple of boxes, those were
13 lost. And they have all of those information.

14 JUDGE ALDRICH: All right.

15 MR. SIDDIQUI: It's a very standard practice
16 when -- because when times change people change the POS
17 system also. Whenever the management, comes, if they find
18 a better POS system, so they will always try to put better
19 system. So if you go, we are talking about 2006, 2005.
20 So things change. The technology is improving as we go
21 along. Every -- every two years there's better
22 technologies. So it is very standard practice that people
23 after four years, five years, three years, they do change
24 the POS system. And so that's a very standard practice.

25 JUDGE ALDRICH: Okay. And then there are a few

1 times that Appellant argued that things could easily be
2 verified. Do you mean verified in the evidence that we
3 have before us, or are you suggesting --

4 MR. TAYYAB: No, no, no. No based on the
5 evidence. Verified means just it takes only a call. Call
6 any Crown Plaza in Sacramento and ask them what the rental
7 is for the venue. I bet you they're going to tell you \$45
8 to \$55 per person without food.

9 JUDGE ALDRICH: Okay.

10 MR. TAYYAB: So if -- I mean, at Mehran we're
11 still charging 10 -- we still charge \$15, \$20 per person.
12 They still charge.

13 JUDGE ALDRICH: Okay.

14 MR. TAYYAB: Because they cannot charge \$45, \$50
15 per person just for the rental. Otherwise, the customer
16 say hey, I better go to the Crown Plaza or Sheridan if I
17 have to pay that price. So then when I say we can verify,
18 this is easily verifiable by anyone.

19 JUDGE ALDRICH: And then you had also made
20 reference to market data. Is it -- are any verifiable
21 market data in the --

22 MR. TAYYAB: Market data means they charge \$55
23 today per person, the hotels. You can ask them how much
24 you used to charge in 2006 and '07. '06 and '07 as I
25 mentioned, they -- they were charging like \$20, \$25 per

1 person without the food. It can still be verified.
2 Although, we don't have any verification in hand right
3 now, but it could easily be verified just making a couple
4 of calls.

5 And at that time hotels were charging \$25, \$20
6 per person just for the service, no food. We were
7 charging \$10 for the same service. I mean, of course,
8 it's not as good as environment -- not as good as the
9 Crown Plaza, but you're saving half of the money. Instead
10 of 20, \$25, they were renting it for \$10.

11 JUDGE ALDRICH: Thank you, sir. I believe you've
12 answered my question. I'm going to refer back to
13 Judge Ralston.

14 JUDGE RALSTON: Okay. Thank you.

15 Judge Kwee, did you have any questions for the
16 Appellants?

17 JUDGE KWEE: This is Judge Kwee. Yes, I did have
18 a couple of questions.

19 MR. TAYYAB: Please.

20 JUDGE KWEE: So I understand one of the concerns
21 that you had was with respect to the website, the printed
22 website info from 2009. And the concern was that website
23 was being operated by a successor entity, not your entity
24 or the --

25 MR. TAYYAB: No. Yes.

1 JUDGE KWEE: Okay. So and then, I guess, the
2 other concern was that the later entity they -- they
3 discarded the records, which would have established
4 catering sales so you don't have that because the
5 subsequent entity eliminated the record? Is that what --

6 MR. TAYYAB: Not purposely eliminated it. They
7 remodeled the whole restaurant, and somehow those couple
8 of boxes they belong to the -- us. They were misplaced.
9 I mean, not misplaced. They must have been thrown away in
10 the dumpster.

11 JUDGE KWEE: Okay. And I was curious about --
12 because I was looking at the website printout, and it said
13 the Mehran Restaurant was founded in 1982 by Mr. Fiaz, and
14 he is still running the restaurant with his two other
15 partners. And I'm wondering, so the subsequent
16 restaurant, is that the three of you instead of four of
17 you? Or is that a different --

18 MR. TAYYAB: We were four of us, and then when we
19 were out Mr. Fiaz was still there, and he has two more
20 partners. So that statement is correct. He -- he
21 established the restaurant in early -- early 80s, not at
22 this location, I think in Union City. And then he moved
23 to this location, I believe, in 2000. And then we came in
24 as a partner, and in -- on February 2005, and we left on
25 May 15, 2008. And our whole case was based on between

1 that period.

2 JUDGE KWEE: Okay. I see now. And so as far as
3 the -- because the audit from my understanding that was
4 based on two components. One was --

5 MR. TAYYAB: Exactly. Partnership and the other
6 was a corporation. The corporation was for
7 four-and-a-half months, and the partnership was from
8 February 2005 to December 2007.

9 JUDGE KWEE: Right. And -- and during the audit,
10 from my understanding, CDTFA established a liability.
11 One, from disallowing claimed exempt sales that -- that
12 you made, and the other aspect was estimating catering
13 sales that you made. And I was curious because -- and
14 this I believe had to do with the website data that you
15 had where they estimated that, you know, there would be
16 like 5,000, 6,000 people served, you know, per event that
17 were picked up in -- in the audit.

18 And so from -- from what you were saying
19 was your -- are you saying that you -- your partnership,
20 the entity at issue in this field, they were never even
21 caterers at those events that were picked up? Or that
22 they -- they made, like, 100 sales instead of 8,000?

23 MR. TAYYAB: Some of the events we did cater, but
24 the amount -- the number of customers was grossly
25 exaggerated. Instead of 2 or 300, it says 6, 7,000. And

1 as I said earlier, some of those events took place in the
2 restaurant. I mean, you can visit restaurant right now.
3 And even today after expansion they cannot hold those 2,
4 3,000 people, no matter what.

5 MR. SIDDIQUI: I think maximum 400 to 500 even
6 now. I mean, even restaurant is right now I think is
7 13,000 square foot, and it accommodate 500 maximum people
8 in three halls. So the numbers were reported were totally
9 wrong because those numbers are not possible. And even
10 they're talking about 7,000, 10,000 people. I mean, you
11 know what, in reality where those 10,000 people come from?
12 And whenever if we -- if somebody have an event in -- in a
13 big, big ground or Alameda County Fair, I mean, they have
14 several vendors.

15 It's not only one vendor who can -- who is
16 feeding 10,000 people. And, practically, it's not
17 possible to feed that many people. Those numbers are
18 totally wrong, and it's based on website which was not
19 existing at that time. And website, people normally
20 exaggerate numbers just to attract people to -- because we
21 are very good caterer, and we can handle as many people as
22 possible. And there is no -- even vending event, probably
23 maybe once in a lifetime, you will go, and you will find
24 2,000 people or 1,000 people.

25 Normally, the numbers are 200, 300, max 400

1 people. So numbers are totally wrong. I mean, it --
2 it -- I mean, nobody can verify those numbers because
3 those doesn't exist.

4 JUDGE KWEE: And so, for example, were -- with
5 these catering events that are listed to the extent that
6 you did serve any of those events, would you be the only
7 caterer there, or was it something --

8 MR. TAYYAB: No. No, not the case. First of
9 all, in most of the venues they don't allow outside food
10 because they are some health requirements -- health
11 Department requirements so they do not allow outside food.
12 You can only provide the food to the artist, if they
13 allow. And some -- some even venue they won't even allow
14 outside food period. They don't allow any -- any outside
15 food.

16 And whenever they do -- let's say, just assume if
17 it's 1,000 people somewhere. They're not going to let one
18 caterer handle all those thousands of people. First of
19 all, among the thousand people only -- I'm going over time
20 or what? Sorry.

21 JUDGE RALSTON: No, you can finish.

22 MR. SIDDIQUI: So, technically, it is not
23 possible because if thousand people come, how many people
24 will eat? Maybe 50 percent? Maybe 30 percent? Not the
25 whole thousand people is going to eat because that's not

1 standard. It's not normal practice. Sometimes we all go,
2 and we don't eat anything. But there are people, so I
3 would say max 50 percent people eat. Not the whole
4 100 percent will come and buy food from -- from any
5 vendor.

6 So the numbers are totally wrong, totally --
7 it's -- it's just assumptions. They were misguided by
8 that website, and the website was not even existing at
9 that time, and restaurant square footage was so small.
10 And at that time maximum, as Mr. Tayyab said, the
11 restaurant can only accommodate only maximum 175 plus 50.
12 So how can you do that kind of a big event for such a
13 small space?

14 So that's our main argument, and that's what I
15 mention in Oakland when we had -- we -- we -- I mean, we
16 had one I think a few years back because there's so many
17 years. Even accountant passed away. I mean, you know, we
18 are humans. A memory does not last everything for so many
19 years. I mean, you know, if I ask you probably of what
20 happened 15 years ago, maybe 50 percent you forget too.
21 So we all are humans.

22 I mean, the sad part was accountant passed away
23 so we have no records because accountant was holding it.
24 And after you leave the place -- I mean, you are at the
25 mercy of the other owner who bought the place if they --

1 so some records probably maybe -- maybe we can find if the
2 accountant was alive, but accountant passed away a few
3 years back. So there's no way we can verify.

4 We don't know what happened and -- I mean, who
5 are we going to approach now? Because the accounting firm
6 is closed. The person doesn't exist. So it's so many
7 years. But even today's date the numbers are not
8 acceptable, and it cannot be verified, and I think it's
9 just they were misguided by the website. So that's --
10 that makes our case very strong that we did not
11 underreport. We did not under ring anything. We did not
12 try to do anything because our accountant was doing all
13 the paperwork.

14 And with honesty we were doing everything, and
15 this case, I believe, it should be -- it should be looked
16 at very carefully because there are so many -- so many
17 problems here. And those numbers cannot be verified.

18 MR. TAYYAB: Let me -- sorry. Let me briefly
19 answer your question that you raised. Yeah, for example,
20 give you an example that South Bay Islamic Association,
21 they said that we cater 7,000 people. While the letter
22 from the Raheel Merchant, who is the coordinator, he said
23 that the number of people that come to the festival around
24 2000, and some of them they purchase food. And there are
25 four more vendors in addition to Mehran Restaurant who

1 were selling the food.

2 So and -- and we used to sell like 200, 300, 400
3 sometimes lunch boxes, and they put down 7,000. Same
4 thing for -- the biggest event outside event that we
5 catered was the Burhan Uddin Community function when
6 Dr. Burhan Uddin came 2006, and we cater for 2500 people.
7 And they even, for that event, they put down I think 7 --
8 700 -- I mean 7,000. And then they put down again in
9 2007. Why he didn't come in 2007? He only came in 2006.
10 That also can be easily verified online. Thank you.

11 JUDGE KWEE: Thank you. And just one quick
12 follow-up question. So my understanding was that you --
13 these -- the income from hall rentals or catering, that
14 was reported on the sales and use tax return as total
15 sales and then deducted as a nontaxable sale. So you --

16 MR. TAYYAB: Exactly.

17 JUDGE KWEE: Okay. So your position is the total
18 income from all sources that you had was included on the
19 reported total sales. So then the -- the estimated
20 billing for catering sales should have been included?

21 MR. TAYYAB: Exactly. That is the case.

22 JUDGE KWEE: Okay.

23 MR. SIDDIQUI: Everything was reported. And even
24 if we do outside, even it's a \$200, we always come back,
25 and we do \$200. We have to ring up that one. Because it

1 was a partnership. It was not sole proprietorship. So
2 you know when you have a partnership, everything has to be
3 black and white, otherwise partners can fight with each
4 other. So it's not possible in partnership that you can
5 ring something or you cannot ring something. Because it's
6 not -- if it's sole proprietorship, you can do whatever
7 because you are the only one.

8 But if it's a partnership, then there are four
9 people involved. I mean, you know, I mean in -- in humans
10 they don't trust normally blindly to each other. So in
11 partnership everything has to be black and white. So any
12 partner can verify the numbers. So that's also -- I can
13 give you an idea, I mean, how the partnership system
14 works. So whatever sale we do outside, we have to ring up
15 because we have to justify among -- in front of other
16 partners also.

17 JUDGE KWEE: Thank you. I don't have any further
18 questions for the Appellants. So I turn it back to
19 Judge Ralston.

20 JUDGE RALSTON: Thank you.

21 I did want to ask. So the restaurant sold -- did
22 you say it sold only sweets? Or when it was operating --

23 MR. SIDDIQUI: No, that was a part of.

24 MR. TAYYAB: It was part of it.

25 MR. SIDDIQUI: It's not only sweet. It was a

1 part of our product. So basically, we were offering food
2 plus sweets, and that's what normally most of the
3 restaurants they do. And sweet is a -- it's a nontaxable
4 item.

5 MR. TAYYAB: It always rings up as a nontaxable
6 item.

7 JUDGE RALSTON: Okay. Thank you.

8 Judge Aldrich, did you have another question?

9 JUDGE ALDRICH: Yeah. I just had one follow-up
10 question.

11 MR. TAYYAB: Sure.

12 JUDGE ALDRICH: Could -- do you have an idea of
13 when your accountant may have passed, like, approximate
14 year?

15 MR. SIDDIQUI: See that it -- it's so long. I
16 mean, I think four or five years. 2014 he passed away.

17 MR. TAYYAB: Eight years ago.

18 JUDGE ALDRICH: Thank you.

19 JUDGE RALSTON: Thank you. Okay. Thank you.

20 I think that concludes the questions from the
21 panel at this time. So we're going to turn to CDTFA. You
22 have 20 minutes for your presentation. Please begin when
23 you're ready.

24

25

PRESENTATION***

1 MR. SHARMA: Thank you. Appellant One, a
2 partnership, and Appellant Two, an LLC, operated a full
3 catering service restaurant. Appellants provided off-site
4 location catering services to large groups of people for
5 special events and festivals. The Department performed an
6 audit for third quarter 2006 to fourth quarter 2007 for
7 partnership, and for first quarter 2008 to second quarter
8 2008 for LLC.

9 The Department also performed an audit for
10 corporation for June 2008 to second quarter 2009, which is
11 not under appeal before the Office of Tax Appeals.
12 Partnership reported total sales of approximately
13 \$1.35 million, claimed deductions for exempt food of
14 little more than \$893,000, resulting in reported taxable
15 sales of little more than \$461,000 for the audit period.
16 That's Exhibit D, page 76. LLC reported total sales of
17 little more than \$415,000, claimed deductions for food
18 items of approximately \$291,000, resulting in reported
19 taxable sales of approximately \$115,000 for the audit
20 period. That's Exhibit H, page 167.

21 Appellants claimed that reported amounts were
22 based on cash register Z-tapes. The Department could not
23 verify the accuracy of reported amount as Appellants did
24 not provide any cash register Z-tapes, sales summary
25 reports, or sale journals. Records available:

1 Appellant's provided only federal income tax returns for
2 2006 and 2007, and bank statements from July 2006 to
3 December 2006.

4 Despite various requests, Appellants did not
5 provide any cash register Z-tapes, sales summary reports,
6 sale journals, purchase journals, journal ledgers, or
7 profit and loss statements for the audit periods. The
8 Department computed markup using gross receipts and cost
9 of goods sold per Appellants' federal income tax returns.
10 The achieved markup was 196 percent for years 2006 and
11 2007, Exhibit D, page 100, which appear to be low for the
12 type and location of business.

13 Due to lack of purchase invoices and purchase
14 journals, the Department could not verify the accuracy of
15 cost of goods sold. The Department compared Appellants'
16 bank deposits for July 2006 through December 2006 with
17 reported amounts per sales and use tax returns and noted
18 no significant differences. However, based on review and
19 analysis of bank statements for June 2008 to June 2009 for
20 the subsequent audit related to the corporation, the
21 Department noted four bank accounts as compared to only
22 one bank account statements provided by Appellants.

23 Despite various requests, Appellants did not
24 provide any cash register Z-tapes, sales summary reports,
25 or sale journals to verify whether all sales were

1 deposited into bank account or not, and whether Appellants
2 provided bank statement for all bank accounts or not.
3 Based on the above analysis, the Department determined
4 that submitted bank statements were not complete and did
5 not represent all sales by Appellants.

6 During the audit process, Appellants claimed that
7 claimed exempt sales of food items are for sales to
8 charitable organizations and not consumed at business
9 premises. Despite various requests, Appellant did not
10 provide any detailed sales records or supporting
11 documents, such as exemption certificates, as required by
12 Regulation 1570 or resale certificates as required by
13 Regulation 1668. In the absence of any reliable and
14 complete books and records, exemption certificates, or
15 resale certificates, the Department could not conduct any
16 standard audit procedures to verify the accuracy of
17 claimed exempt sales.

18 Due to Appellants' failure to provide any
19 supporting documents, the Department disallowed claimed
20 exempt food deductions of little more than \$893 for third
21 quarter 2006 through fourth quarter 2007; Exhibit D,
22 page 95, and approximately \$291,000 for first quarter 2008
23 to second quarter 2008, Exhibit H, page 191. During
24 Department's statewide compliance and outreach program,
25 staff's visit to Appellants' business and during the audit

1 period, it was noted that Appellants provided catering
2 services to large groups of people at off-site locations
3 or special events and festivals.

4 Despite various requests, Appellant did not
5 provide any sales records for catering services at
6 off-site locations. In the absence of any books and
7 records, the Department relied on information contained on
8 Appellants' website to determine audited taxable sales for
9 these events. The website listed past special events
10 Appellant had catered, as well as the approximate number
11 of guests in attendance. The Department applied an
12 average price of per meal of \$7 per each catered guest to
13 determine unreported taxable sales of approximately
14 \$491,000 for third quarter 2006 to fourth quarter 2007.
15 The catered events and the number of guests at each event
16 are listed in Exhibit B, page 97.

17 Based on the above audit procedures, the
18 Department determined unreported taxable sales of
19 approximately \$1.4 million for third quarter 2006 to
20 fourth quarter 2007, Exhibit D, page 84, and \$291,000 for
21 first quarter 2008 to second quarter 2008, Exhibit H,
22 page 186. The Department assessed 10 percent negligence
23 penalty for third quarter 2006 to second quarter 2008.
24 Error rate for unreported taxable sales is approximately
25 300 percent for third quarter 2006 to fourth quarter 2007,

1 and 278 percent for first quarter 2008 to second quarter
2 2008.

3 These error rates are substantial and constitute
4 evidence of negligence. Unreported taxable sales is due
5 to Appellants' failure to maintain and provide mandatory
6 books and records as required by Revenue & Taxation Code
7 7053 and 7054 and Regulation 6098, which is also evidence
8 of negligence. Due to lack of books and records, the
9 Department could not use markup method or bank deposit
10 analysis to verify the reasonableness of audit findings.
11 However, the Department used rent to total sales ratio
12 analysis to see if audit findings are reasonable.

13 Based on Department's experience with similar
14 businesses in the surrounding area, reasonable rent to
15 total sales ratio should be around 10 percent. For
16 federal income tax returns, Appellant paid rent of
17 approximately \$179,000, Exhibit D, page 101, line 16, for
18 a total of --

19 JUDGE ALDRICH: Sorry to interrupt. But are you
20 saying Exhibit B or --

21 MR. SHARMA: Exhibit D. D like Denver.

22 JUDGE ALDRICH: Okay. Thank you.

23 MR. SHARMA: I'm sorry. Exhibit D, page 101,
24 line 16, for total sales of approximately \$892,000 for
25 2006, Exhibit D, page 101, line 1, and rent of

1 approximately \$214,000, same Exhibit D, page 101, line 16,
2 for total sales of \$907 for 2007, Exhibit D, page 101
3 line 1, which means rent to total sales ratio is
4 approximately 20 percent for 2006 and 24 percent for 2007.

5 This ratio is almost double of a reasonable rent
6 to total sales ratio of 10 percent. For a 10 percent
7 rental total sales ratio, total sales would be
8 approximately \$900,000 for July 2006 through December,
9 2006, and \$2.1 million for 2007, resulting into audited
10 taxable sales of approximately \$2.9 million for July 2006
11 to December 2007. This amount is significantly higher
12 than audited taxable sales of little more than
13 \$1.8 million, Exhibit D, page 84, for the same period. In
14 other words, the Department's determination of audited
15 total sales appears to be conservative when compared to
16 Appellants' rental payments.

17 Appellant stated various issues or concerns in
18 their prehearing conference statement, which are:
19 Appellants contend and attach documents to show that LLC
20 was dissolved in May 2008 and ownership changed to
21 corporation. The Department submits that even though LLC
22 audit is shown for the period from January 2008 to
23 June 2008, based on available information, reported
24 amounts appear to be for the period from January 2008 to
25 May 2008. Appellants have not provided any documents to

1 prove that reported amounts are incorrect.

2 Appellants contend that audit findings for
3 partnership and LLC are based on corporation's bank
4 deposits for June 2008 to June 2009. In response, the
5 Department submits that none of the audit findings are
6 based on bank deposits. Appellants contend that they did
7 not have any website during the audit period. Website was
8 started in 2009, and Department's use of website data is
9 not appropriate. In response, the Department submits that
10 website provided detailed information as to various
11 special events successful organized and completed by
12 Appellants from 2006 onwards. Appellants' website stated
13 that Appellants have been in this business since 1982, and
14 references for events and festivals could be provided upon
15 request, Exhibit A, pages 15 and 16.

16 Despite various requests, Appellant failed to
17 provide any documents to show that assessed amounts are
18 not correct. Appellants raised various concerns related
19 to bank deposit analysis and refer to Exhibit 1 and 2 from
20 the Department's additional response, dated
21 January 27, 2020. In response, the Department submits
22 that Appellants reference to bank deposit analysis belong
23 to the audit for June 2008 through June 2009 related to
24 the corporation, and corporation audit is not under appeal
25 before the Office of Tax Appeals.

1 The Department further submits that unreported
2 taxable sales for both the cases, partnership and LLC,
3 under appeal before the Office of Tax Appeals are
4 determined based on quarterly sales and use tax returns
5 filed by Appellants and available data from Appellants'
6 website. Additionally, in the PHC statement, Appellants
7 made various claims which are, Appellants' claim that
8 Amitabh Bachchan Show was in July 2008. That was after
9 May 15, 2008, and it should not be included in the LLC
10 audit.

11 In response, the Department submits that there is
12 no assessment for this show in either partnership or LLC
13 audit. Appellants claimed that there was no Salman Khan
14 Show in 2007. Instead, it was held in October 13, 2006.
15 And Appellants provided complementary food in return for
16 business' advertisement at the event, Exhibit D, D like in
17 Denver, page 97, reference 2. In response, the Department
18 submits that despite various requests, Appellant failed to
19 provide any sales contract or other documentary evidence
20 to support their claim.

21 Appellants' claim to have significantly lower
22 sales amounts as compared to determined unreported taxable
23 sales for other special events and festivals, Exhibit D,
24 page 97, but did not provide any supporting documents such
25 as sales invoices, sales contracts, or other documentary

1 evidence to support their claim. In the absence of any
2 documentary evidence to support the lower amount of sales
3 for these events, the Department is of the opinion that
4 data provided in Appellants' website deemed reliable and
5 reasonable and the Department's use of this data to
6 project the unreported taxable sales is an acceptable
7 audit method.

8 Based on the above, the Department has fully
9 explained the basis for the deficiencies and proved that
10 the determination was reasonable based on the available
11 books and records. Further, the Department has used
12 approved audit methods to determine the deficiency and
13 issue Notices of Determination to the correct ownerships.
14 Therefore, based on the evidence presented, the Department
15 request that Appellants' appeal be denied.

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

18 JUDGE RALSTON: Thank you.

19 I'm going to turn to my panel members first.
20 Judge Aldrich, did you have any questions for Respondent?

21 JUDGE ALDRICH: Hi. Yes. Department, you made
22 several references to exhibits with page numbers. Were
23 you making them in reference to your submission or the
24 exhibit binder?

25 MR. SHARMA: Yeah. It's the same, exhibit

1 submission and exhibit binder. It's the same page number.

2 JUDGE ALDRICH: Okay. And so the page number is
3 not the -- the Bates Stamp of the exhibit but rather the
4 page number of the overall packet?

5 MR. SHARMA: Exactly. That is right. Page
6 number for overall package. That is right. Thank you.

7 JUDGE RALSTON: Okay. Judge Kwee, did you have
8 any questions for Respondent.

9 JUDGE KWEE: Yes. This is Judge Kwee. I did
10 have a question, I guess, about the -- estimating the
11 unreported catering sale revenue and the reasonableness
12 rationalness of that aspect. It seems to me that,
13 essentially, what the audit did is it came up with the,
14 you know, \$500,000 in unreported taxable sales based on a
15 two-page website printout from a successor entity. And in
16 looking at that two-page print out, it doesn't even seem
17 to me that it's saying that necessarily every instance
18 involved catering for, you know, 5,000, 7,000 people. I
19 mean, looking at one line, catering for an event of 4,000
20 to 5,000 people, and then description full-day barbecue
21 sessions in Golden Gate Park, Civic Center San Francisco
22 on every Pakistan day.

23 I mean, it doesn't even seem to me that it's
24 saying that they fed a full meal to 5,000 people that day.
25 I mean, just looking at it, it could have easily been

1 saying that, you know, they setup a catering shop in, you
2 know, and not that 5,000 people stopped and were fed
3 there. But that, you know, may be like 400 or 500 people
4 like they were saying would have picked up food there.
5 But, like, these seem like major events, and I'm
6 wondering, like, the taxpayer is saying this is something
7 that could be easily verified. Is this something that,
8 you know, CDTFA could look at?

9 And it should be easy to see, like, whether or
10 not you have one caterer feed 7,000 people, or if this is
11 something where, you know, maybe someone comes and they --
12 there's like 50 different caterers that feed, you know,
13 whoever stops by to pick up food there. And it seems like
14 if you're going to be asserting a \$500,000 liability that,
15 you know, maybe some -- I'm sure if there was a background
16 verification done to see if these, you know, events even
17 had one person cater to 5,000 people, but it seems like
18 that's something that could be pretty easily verified,
19 like the taxpayers are asserting.

20 And I guess my question is just as far as the
21 reasonable and rationalness, I'm wondering what exactly
22 CDTFA has done to verify that, you know, this -- this
23 two-page printout from the website of the successor
24 accurately or like, you know, is reasonably targeted to
25 the \$500,000 liability that was picked up?

1 MR. SHARMA: During the audit period the
2 Department made various requests, asked the Appellants to
3 provide any sales contracts or any sales information or
4 any documents whatsoever they have to provide for the
5 Department to verify. These are the special events held
6 where the Appellants had some kind of contract with these
7 special event organizers.

8 Appellants could have easily arranged for those
9 documents to be provided to the Department for the
10 verification. So in the absence of documents, any books
11 and records where the Appellants contain their website
12 says these are our achievements, that's what they
13 successfully organized and catered for these events up to
14 that many number of people.

15 The Department has no other information, has no
16 other way to determine those things, and Appellants have
17 been given numerous opportunities to dispute those amounts
18 and provide us the documentation, any -- any documents,
19 whether sales contract, whether it's a POS report, or
20 sales invoices, cash register Z-tapes, or any amounts they
21 have already rung up into the cash register, the
22 Department has no sales records, not even one cash
23 register Z-tapes to do any kind of -- any sort of
24 verification.

25 So in the absence of those things, Department is

1 of the opinion that the contained information of the
2 website is deemed reliable unless the Appellants prove
3 otherwise. Thank you.

4 (Wherein the following question was
5 asked when the microphone was off.

6 This is a reconstruction of the
7 question to the best of Judge Kwee's
8 memory.)

9 JUDGE KWEE: Thank you. Yes. I understand that
10 once CDTFA meets its initial burden the taxpayer has the
11 burden to show error, and that Appellant did not provide
12 any documentation to rebut the billing. The concern that
13 I have is before that, whether CDTFA met its initial
14 burden of showing that the estimated billing is reasonable
15 and rational under the facts. The \$500K in estimated
16 catering sales appear to be based entirely on a two-page
17 internet printout from the successor's website, and it's
18 not clear to me that the statements in the printout
19 support the conclusions being drawn in the estimated
20 billing.

21 For example, the estimated billing assumes that
22 Appellant was the only caterer for all of these events,
23 and that Appellant fed 5000, 7000 people during the
24 events. But the statements on the successor's website are
25 ambiguous, for example the Pakistan Day event lists

1 "Catering for a[n] event of 4000-5000 people" which
2 doesn't necessarily mean Appellant fed all 5000 people
3 there, or that Appellant was the only caterer present for
4 that event. And these seem to be large and well-known
5 events, where you'd typically expect there to be many
6 different food booths.

7 So I'm also wondering whether it is reasonable to
8 assume that all 5000 people who attended one of these
9 events, for example the Pakistan day celebration, stopped
10 to eat a full meal from Appellants' booth? Or whether
11 Appellant would reasonably be expected to be able to feed
12 a full meal to all 5000 people who showed up that day? It
13 seems like these assumptions or the facts could be very
14 easily and readily verified by the parties. And it wasn't
15 clear if any attempt to do so had been made by either
16 party, but sounds like that was not the case, and that was
17 why I was asking for clarification of CDTFA's position on
18 why these assumptions were reasonable.

19 JUDGE KWEE: And I'm sorry. My mic wasn't on.
20 But, yeah, that was basically the question and the concern
21 that I had. If there's any -- either party would like to
22 further address that or clarify that, they're welcome to.
23 But that -- that was my only question there. Thank you.

24 MR. SHARMA: Thank you.

25 MR. SIDDIQUI: May I add one comment?

1 JUDGE RALSTON: Excuse me. I'm sorry. I didn't
2 hear you.

3 MR. SIDDIQUI: I said can I add one comment.

4 JUDGE RALSTON: Yes. Go ahead.

5 MR. SIDDIQUI: Okay. Again, all the numbers are
6 based on assumptions. Second thing is as it was mentioned
7 the Salman Khan event. Why would you not provide the
8 contract? But there was no contract to provide because we
9 gave them complementary food. So it can be checked with
10 the Oakland Coliseum that it is Mehran served the food.
11 They allow us to collect the money. It can be verified.
12 It's very simple.

13 Call Oakland Coliseum today and find out did
14 Mehran Restaurant serve the food, and did they charge the
15 money? That will give us -- give you the proof that we
16 are -- we are not lying because you can call. I'm not
17 telling you to call my friend. I'm telling you to call
18 Oakland Coliseum and find out is Mehran Restaurant serve
19 the food, and they allow them, and they -- we collect the
20 money. We did not collect the money. So there is no
21 contract.

22 So because our -- let me tell you. Because
23 Bollywood is a very big investment. They never go to any
24 small restaurants. So we are very small restaurant. That
25 was the first time they ever came to any Indian Pakistani

1 restaurant. Some of the artist came, and they stayed
2 there for half an hour and even they did not eat the food.
3 And the food we had to give them in the boxes so they can
4 take to the hotel. Because whenever a Bollywood star
5 comes, a lot of people come. A lot of people. We are
6 talking about those days like 400, 500 people can come
7 outside of your restaurant.

8 But we did not sell any food. It can be verified
9 from Oakland Coliseum that Mehran Restaurant did not
10 charge a single dollar. We did not sell any food. So
11 that can give you the proof that what we are telling you
12 is the truth. Because we are telling you to call Oakland
13 Coliseum and ask them did Mehran Restaurant ever charge a
14 single dollar in that restaurant -- in their premises.
15 Ever, ever, since existence of Mehran Restaurant did we
16 ever charge a single dollar. That can conclude.

17 MR. TAYYAB: Can I bring something up?

18 JUDGE RALSTON: Sure. Go ahead.

19 MR. TAYYAB: Actually, you know, the CDTFA
20 calculated the sales backward based on the industry
21 average for the rent, which -- which is true. I mean, for
22 the industry the rent is about -- should be 10 to
23 12 percent or 13 percent of the sale, but it is not
24 necessary that all the time that it is true. Sometimes
25 the rent is 15, 20 percent, and eventually those

1 businesses go out of business.

2 But for Mehran Restaurant, for example, the rent
3 that was claimed -- I'm referring to page number 101,
4 Exhibit D. The rent for 2006 we claimed \$179,071 on our
5 tax return. This is a common practice for Indian and
6 Pakistani restaurant to rent a house or an apartment for
7 the employees. Again, it could be confirmed easily. Call
8 any restaurant. You guys rent an apartment for the
9 employees? They will -- most of them, they will say yes.

10 So that rent includes the house that we rented
11 for our employees, and we used to pay \$1,500 per month for
12 that rent, which equates to \$18,000 per year. Secondly,
13 we used to pay triple net charges, which is also included
14 in the rent. That includes the property tax, insurance,
15 water bill, garbage bill, parking lot maintenance, and
16 cleaning. And the charge for that was \$0.50 per square
17 feet. So if you multiple it by 8,611 scare footage, that
18 amount comes down to \$4,330.

19 So \$4,330 for the common area maintenance and the
20 property tax and the insurance, plus \$1,500 per month for
21 the house that we rented for the employees, it adds up to
22 \$5,830 times 12, \$69,966 per year. If we subtract \$69,966
23 from the rent, then the amount comes out to be -- which is
24 12.1 percent of the sale. So it's not like 20 percent
25 because there are a lot of things that are included in

1 that rent. So that's why the rent is like almost
2 20 percent of the sale. And in reality, if you just
3 consider rent, rent was over 12 percent.

4 JUDGE RALSTON: Okay. Thank you.

5 MR. TAYYAB: And then, again, one more thing that
6 I think a couple of times it was mentioned about the bank
7 deposits from June 2008 to June 2009. We have nothing to
8 do with it. I mean, there's no point mentioning those
9 deposits that don't belong to us. I mean, what a waste of
10 everybody's time to bring up something that don't belong
11 to us, just like the website. I mean, we have nothing to
12 do with what happened from June 2008 to June 2009 because
13 that wasn't our money. We weren't there. So I don't know
14 why it was mentioned in our case. Thank you.

15 JUDGE RALSTON: Okay. Thank you. I do have a
16 question for CDTFA. You mentioned that you used the cost
17 of \$7 per meal for the catering events. Can you explain
18 how -- how you arrived at that number?

19 MR. SHARMA: During the audit period, the
20 Department reviewed the menu and other stuff available to
21 them and the information is on page 095 of our submission,
22 which will be Exhibit D, like Denver. It states over
23 here, the discussion with the tax representative
24 Mr. Kabir Wadhwanian, the claim for deductions also
25 included hall rentals and other stuff. And at the last

1 page they talk about how they come up with the \$7.

2 And that's the minimum possible. That's the
3 lowest possible menu prices the Department used, but it
4 goes from 7 up 8, 9, 10 and 11. And also during the
5 Departments visit to the location, they noted the same
6 price.

7 JUDGE RALSTON: Thank you. You said that was
8 Exhibit D, page 95?

9 MR. SHARMA: That's right. Correct.

10 JUDGE RALSTON: Thank you.

11 MR. SHARMA: Thank you.

12 MR. TAYYAB: Can I bring up something?

13 JUDGE RALSTON: Hold on. I will give you a
14 second for a rebuttal. Let's see. Does anyone have any
15 further questions for Respondent?

16 JUDGE KWEE: I have no further questions. Thank
17 you.

18 JUDGE ALDRICH: No further questions. Thank you.

19 JUDGE RALSTON: Okay. Thank you. Let me just --
20 okay. For Appellant, you have five minutes for a
21 rebuttal. If you would like to, go ahead and proceed.

22

23 CLOSING STATEMENT***

24 MR. TAYYAB: Yeah. A couple of things I would
25 like to mention. First, there was the rent, which was

1 already explained briefly, that whatever the rent is
2 mentioned on the tax return, that includes the rent of the
3 apartment, plus the property taxes, plus the charges for
4 water, garbage, insurance for the roof, and parking lot
5 maintenance. The actual rent was only about 12 percent of
6 the sales.

7 Second thing is that if we assume that the food
8 was \$7 per person. And if we charge \$10 per person for
9 the rental, it was mentioned by CDTFA that it is -- it is
10 reasonable to believe that the food is included in there.
11 So let's just assume it is correct for a minute. So 10
12 minus 7, \$3. Does it make any sense to charge \$3 per
13 person for the hall rental? You know, the linen on the
14 table, it cost about \$1.25 per piece, just the linen on
15 the table, \$1.25. And then the charges for the seat cover
16 is also \$1. So \$2.25 right there. Is it possible for
17 someone to charge \$3 for the hall rental per person?

18 That's where the -- that was the position that
19 CDTFA took. That seems like \$10, food is included.
20 That's why I said let's assume food is included in there.
21 So what is left for the rent? \$3. And I told you that
22 \$1.25 just for the round cloth on the table, white
23 tablecloth. The rent is \$1.25 per one cloth at that time.
24 Now it could be more. And then the \$1 for the seat cover.
25 So these are the two things that we always rent from the

1 outside vendor. So I don't think it is reasonable that
2 the \$10 should include food worth \$7.

3 And -- and \$7 is the starting point. It could be
4 \$9. It could be \$10. And if it is \$10 then it means \$10
5 for the hall rental, \$10 for the food. So, actually, the
6 rent is free. Because if we're charging \$10 for the
7 rental with the food -- so if the menu is a little bit
8 better, have a couple of meat items, then we are not
9 charging anything for the hall rental. Basically, we're
10 just charging for the food and everything is free, which
11 is not fact.

12 Because I told you, there is a lot of money, a
13 lot of things involved in catering a party at the
14 restaurant. Apart from this we also have -- sometimes we
15 have to rent the chairs as well, depending on the need of
16 the customer.

17 MR. SIDDIQUI: So in conclusion, basically, these
18 numbers -- actually, the sale they are using against us,
19 even with the larger banquet hall, it's still that sale
20 cannot be verified or cannot be justified. Because the
21 sale numbers they come up with after 15 or 14 years, it's
22 still that kind of sale is not there. That's what I --
23 you know, the numbers that we -- we were given.

24 So if 12 years ago when the prices were cheap and
25 the sale they are using against us is so high, even it can

1 all be proved today after 12, 14 years. So how can you
2 justify? Because it -- it should need to make sense.
3 Because if we after 14 years even the restaurant is not
4 generating that kind of a sale, and you are using those
5 numbers against us 14 years ago. So just think about it
6 and then decide on -- based on that one. Thank you very
7 much.

8 MR. TAYYAB: And for a minute I'm going to refer
9 back to Exhibit D, page 97. CDTFA says, "Even locations
10 were not available for these events. The locations are
11 assumed to be at the location of the business." What does
12 it mean? It means that CDTFA accept that location for
13 those events assume to be at the restaurant. I don't know
14 if their representative came to the restaurant multiple
15 times during the audit period, how come they cannot look
16 at the restaurant and feel is it possible for that
17 restaurant to sit -- seat 7,000, 6,000 people?

18 So the bottom line is this whole case was based
19 on the website that didn't belong to us. They use a
20 number -- I mean, outside catering you could say, oh,
21 somebody can cater \$100,000. Yes. Possible. They might
22 need 1,000 employees to do so. How can you cater a party
23 of 5,000, 7,000? The smallest one is 5,000, in a
24 restaurant 8,611 square foot restaurant with one banquet
25 hall for 170 people and dining room for 55 people. So

1 they were kind of careless on putting those numbers. I
2 mean, it would have been at CDTFA, I would never use that
3 number. I mean, I would use that number that could sell.
4 I mean, in this room? Can you put them all?

5 MR. SIDDIQUI: I believe --

6 MR. TAYYAB: There were 500 people in the
7 hearing. Can you say that? No because this room cannot
8 accommodate 500 people. So if someone says -- any one of
9 us says it means that that person is grossly negligent. I
10 mean, he doesn't know even what he's talking. I mean, if
11 they did not put this sentence, then probably they could
12 defend themselves. They put down with asterisk, "Event
13 locations were not available for these events." The
14 location assumed to be at the location of the business.

15 And look at the numbers, 5,100, 5,000, 5,000.
16 Oh, there's one 7,000 as well. So I mean, you can judge
17 that whole case was built up on numbers which were either
18 grossly exaggerated or totally wrong, especially, for the
19 events occurring at the restaurant. I'm going to conclude
20 with that. Thank you.

21 JUDGE RALSTON: Thank you. Just gathering my
22 notes here, if you guys can indulge me for a minute.
23 Okay. Thank you. I'm going to go one more time with my
24 panel. Judge Aldrich, did you have any questions?

25 JUDGE ALDRICH: No further questions. Thank you.

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JUDGE RALSTON: And, Judge Kwee, did you have any questions?

JUDGE KWEE: No further questions.

JUDGE RALSTON: Thank you. So we are ready to conclude this hearing. Today's hearing in the Appeal of the Partnership of Saba-Syed, et al., and --

Okay. Sorry. I had a little technical difficulty with my microphone, but we are ready to conclude this hearing.

Today's hearing in the Appeal of the Partnership of Saba-Syed, et al., and Staff Food Connections, LLC, is now adjourned, and the record is closed.

Thank you everyone for attending.

The panel will meet and decide your case later on, and we will send you a written opinion of our decision within 100 days. Today's hearing in the Appeal of Saba-Syed, and Staff Food Connections, is now adjourned.

(Proceedings adjourned at 12:18 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 16th day of May, 2022.

ERNALYN M. ALONZO
HEARING REPORTER