

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
F. BOUTROS,) OTA NO. 19105370
)
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) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, May 17, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken
at 12900 Park Plaza Dr., Suite 300,
Cerritos, California, 91401, commencing
at 1:06 p.m. and concluding at 2:23 p.m.
on Tuesday, May 17, 2022, reported by
Ernaly M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ ANDREW WONG

Panel Members: ALJ ANDREW KWEE
ALJ DANIEL CHO

For the Appellant: PAUL AZIR

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

NALAN SAMARAWICKREMA
CHAD BACCHUS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-9 were received at page 6.)

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

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Cerritos, California; Tuesday, May 17, 2022

1:06 p.m.

JUDGE WONG: We are now going on the record.

We're opening the record in the Appeal of Boutros before the Office of Tax Appeals. This is OTA Case Number 19105370. Today is Tuesday, May 17th, 2022. The time is 1:06 p.m. We're holding this hearing in person in Cerritos, California.

I'm lead Administrative Law Judge Andrew Wong, and with me today are Judges Andrew Kwee and Daniel Cho. We're the panel hearing and deciding this case.

Individuals representing the Appellant please identify yourselves.

MR. AZIR: Paul Azir.

JUDGE WONG: Thank you.

Individuals representing the California Department of Tax and Fee Administration, which I will refer to as CDTFA, please identify yourselves.

MR. SAMARAWICKREMA: Nalan Samarawickrema.

MR. PARKER: Jason Parker.

MR. BACCHUS: Chad Bacchus.

JUDGE WONG: Thank you.

We're considering one issue today; Whether a reduction to the amount of unreported taxable sales is

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warranted.

Is that correct, Mr. Azir?

MR. AZIR: Yes.

JUDGE WONG: Thank you.

CDTFA, is that correct?

MR. SAMARAWICKREMA: Yes.

JUDGE WONG: Thank you.

Appellant has identified and submitted proposed Exhibits 1 through 9 as evidence and has no other exhibits to offer as evidence. CDTFA had no objections to them.

Is that correct, CDTFA?

MR. SAMARAWICKREMA: Yes.

JUDGE WONG: Okay. And, therefore, Appellant's Exhibits 1 through 9 will be admitted into the record as evidence.

(Appellant's Exhibits 1-9 were received in evidence by the Administrative Law Judge.)

JUDGE WONG: CDTFA has identified and submitted proposed Exhibits A through G as evidence. They had no other exhibits to offer as evidence, and Appellant had no objections to them.

Is that correct, Mr. Azir?

MR. AZIR: Yes.

JUDGE WONG: Thank you.

Therefore, CDTFA's Exhibits A through G will be

1 admitted into the record as evidence.

2 (Department's Exhibits A-G were received in
3 evidence by the Administrative Law Judge.)

4 And neither party had any witnesses. All right.

5 So Mr. Azir, let's start with your presentation.

6 You have 15 minutes. Thank you.

7

8 PRESENTATION

9 MR. AZIR: Hi, Your Honors.

10 I go for page 5 from California Department of Tax
11 and Fee, and they have the descriptions for the business,
12 and we'll find several mistakes. Let me read what the
13 auditor said. Sole proprietorship owner Fady G. Boutros,
14 start date 7/11 -- 7/1/11 and T.O. Date 2/15/2016. No
15 prior audits. Discount Cigarettes had a prior audit
16 before, not with the same owner -- Discount Cigarettes
17 Market is a liquor store. It's not a liquor store. They
18 don't have a liquor license -- that sells cigarettes,
19 beer, carbonated and noncarbonated beverages, snacks,
20 sundry items, and lotteries. And other items, which is a
21 very important item, is cashing the checks.

22 Business acceptable is cash and credit card
23 payments. It located in 9465 Foothill Boulevard, Rancho
24 Cucamonga in a shopping center plaza where there are other
25 several businesses. It's open from 7:00 a.m. to

1 11:00 p.m. 7 days a week. The store has about 1,000 to
2 1,200 square feet retail place. Another mistake,
3 7:00 a.m. to 11:00 p.m. That's not accurate.

4 And then we back for my evidence here. We
5 provide so many evidence for the auditors and several
6 times and several occasions. First one in my Exhibit 1,
7 Check Cashing Permits. It's more than one permit, several
8 permits for several years, and the auditor ignore all the
9 permits. In my Exhibit Number 4, bank statement for three
10 years for 12 months each year, and each month showing
11 cashing the checks. Not even one transaction, several
12 transactions, hundreds of transactions probably monthly,
13 thousand of transactions annually. All of them has been
14 ignored by California Department of Tax and Fee. That's
15 second thing, not even that.

16 We provide copies of the checks has been cashed
17 with the bank, and we recorded it from the bank Wells
18 Fargo, and it showing it has been cashed. The auditor for
19 unknown reason ignore all of those and calculation of cost
20 of goods sold. And when cost of goods sold with Discount
21 Cigarettes buy the checks from the customers, they
22 purchase that and must be recorded as a cost of goods
23 sold. And the markup for the cashing the checks, as
24 Dr. Boutros said in his witness -- in his written
25 statement -- and he already apologize he can't be here

1 today for his board exam in Arizona. He's a medical
2 doctor.

3 At this period from the period of the audit, he
4 was a student. And I like to be that he was a student in
5 medical school, and he does that as a part-time to help
6 him in his expenses, and he has a big loan. And we do
7 provide as a loan as an evidence in my exhibit. Exhibit
8 Number 6, student loan evidence showing Dr. Boutros at
9 this period was an evidence, and he has several loans.

10 And then we provide all the documents for the
11 cashing checks. And for unknown reason, California
12 Department of Tax and Fee ignore of all of them. And it
13 is one bank account, and that's how it is. And I -- and
14 the taxpayer and I, we don't know why, and we try to do
15 that. And we ask even, if he doesn't like to use this
16 method, which is absolutely wrong, he can use the markup
17 test which is what the other auditor did for the same
18 location before. And they consider all the cash checks
19 from all the evidence has been had.

20 We went for the Sacramento Department and the
21 Sacramento Department, the auditor, she did a great job.
22 And she offer us the max. And I think it's about \$30,000,
23 \$38,000, but the taxpayer he said no. He doesn't owe
24 California Department of Tax and Fee about that much,
25 \$30,000. So we don't have any other reason except to go

1 for a bill. And before that, California Department of Tax
2 and Fee they asked, because we provide so many evidence
3 and it has been all them ignored by auditor.

4 And they request from the auditor to reaudit
5 again, but the auditor keep ignoring thousand of documents
6 and thousand of documents from different sources, like
7 bank, which is totally independent source. No one can
8 deny that. And they ignore the permits issued from State
9 of California for cashing the checks. And he ignored the
10 bank statement. And he ignored the checks written by
11 different customers, hundred of them. Hundreds of
12 customers owners. Hundred of customers owners has been
13 denied it intentionally from California Department of Tax
14 and Fee.

15 Has been denied several times, several occasions.
16 I have no idea why. I did handle so many audits before
17 with California Department of Tax and Fee for that
18 location and other locations and was very reasonable
19 auditors. But this case is little bit unique case, and
20 the taxpayer was completely surprising, and he was very
21 upset with the decision several times. The taxpayer was
22 completely saying that's very unfair, very, very unfair.

23 The auditor can probably has a doubt about one
24 document, but I haven't someone has a doubt about
25 thousands of documents. And that's include in his

1 calculations. And almost everything done wrong in the
2 calculation. And he said the markup test 11 percent is
3 not reasonable, et cetera, because he ignore these facts.
4 And we are here in front of Your Honors, and I believe
5 this case can be end zero taxes as the taxpayer believes.

6 Thank you very much for hearing me.

7 JUDGE WONG: Thank you, Mr. Azir.

8 Now I'll turn to my co-panelists to see if they
9 have any questions for you, starting with Judge Kwee.

10 Judge Kwee, you have no questions at this time?

11 JUDGE KWEE: Not at this time. Thank you.

12 JUDGE WONG: Judge Cho, did you have any
13 questions for Mr. Azir?

14 JUDGE CHO: I don't have any questions at this
15 time either. Thank you.

16 MR. AZIR: Thank you.

17 JUDGE WONG: I also didn't have any questions at
18 this time. So --

19 MR. AZIR: Thank you.

20 JUDGE WONG: -- we now turn to CDTFA for their
21 presentation.

22 You have 20 minutes.

23 MR. SAMARAWICKREMA: Thank you.

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25 ///

1 for the audit period.

2 In addition, Appellant failed to provide complete
3 purchase invoices or purchase journals for the audit
4 period. Appellant was unable to explain how he reported
5 his sale on its sale and use tax returns. Appellant was
6 also unable to explain what sources he relied upon to
7 complete his sales and use tax returns. The Department
8 did not accept Appellant's reported taxable sales due to
9 lack of reliable reports and low reported book mash ups.
10 It was also determined that Appellant's records was such
11 that sales could not be verified by a direct audit
12 approach.

13 Therefore, the Department estimated sales using
14 cost plus markup method to determine unreported sales tax
15 for the audit period. The Department completed four
16 verification methods to verify the reasonableness of
17 Appellant's reported total and taxable sales. First, the
18 Department reviewed Appellant's federal income tax returns
19 and noted low recorded net income of around \$3,400 for
20 year 2013, and \$5,000 for year 2014. And that will be on
21 your Exhibit B, page 83.

22 The amounts claimed for wages also appear low for
23 a business operating seven days a week. And that will be
24 on your Exhibit B, page 83. This analysis revealed that
25 the amount of total sales and reported total expenses are

1 likely understated.

2 Second, the Department reviewed the profit and
3 loss statements for years 2013 and 2014 and noted that the
4 recorded cost of goods sold was the same as the cost of
5 goods sold reflected on Appellant's federal income tax
6 returns for the same periods. However, these costs were
7 not categorized by type, such as taxable or nontaxable
8 merchandise. Therefore, the Department compared reported
9 total sale of around \$1 million to cost of goods sold of
10 around \$931,000 reflected on Appellant's federal income
11 tax returns, and calculated an overall reported bookmark
12 up of around 10 percent, which is low for this type of
13 store. And that will be on your Exhibit B, page 94.

14 Based on the types of items sold, customer base,
15 and the location of the store, the Department expected to
16 see a markup higher than the reported bookmark up.
17 Accordingly, the Department did not accept Appellant's
18 reported total sales for the audit period.

19 Third, Appellant only provided bank statements
20 for year 2015. The Department conducted a bank
21 reconciliation comparing Appellant's bank deposits to his
22 reported total sales. From January 2015 through
23 December 2015 Appellant deposited around \$355,000 but only
24 reported total sales of around \$291,000. And that will be
25 on your Exhibit B, page 87. Thus, Appellant deposited

1 around \$64,000 going into his bank account than reported
2 sales for sales and use tax returns. And that will be on
3 Exhibit B, page 87.

4 Fourth, the Department compared the reported
5 total sales with taxable sales for the audit period and
6 calculated the reported taxable sale percentage of around
7 24 percent. And that will be on your Exhibit B, page 88.
8 Based on the items sold, the Department expected to see a
9 higher taxable sale percentage than the reported taxable
10 sale percentage. This taxable sale percentage was very
11 low for this type of a store. Accordingly, the Department
12 did not accept Appellant's reported taxable sales for the
13 audit period.

14 Appellant has not provided any documentation for
15 the audit period to support Appellant's reported taxable
16 sales. Further, during the audit and appeal process,
17 Appellant acknowledged that it is unable to determine
18 taxable sales percentage because Appellant did not have
19 the information required to calculate this percentage.
20 Appellant was unable to explain the reason for low
21 reported book markups, excess bank deposits, and low
22 reported taxable sales percentages.

23 Therefore, the Department conducted further
24 investigation by analyzing Appellant's purchasing
25 information and pricing policies. Appellant did not

1 provide purchase journals or supporting merchandise
2 purchase invoices. The Department, therefore, could not
3 identify Appellant's vendors to obtain Appellant's
4 purchase information. Therefore, the Department used the
5 cost of goods sold of around \$931,000 reflected on
6 Appellant's federal income tax returns. And that will be
7 on your Exhibit B, page 83.

8 The Department could not perform a purchase
9 segregation test of taxable and nontaxable merchandise
10 purchases because of the lack of detailed merchandise
11 purchase records. The Department does perform a visual
12 observation of the store shelves and determined that the
13 nontaxable merchandise, such as noncarbonated beverages
14 and snacks were around 10 percent to 20 percent of the
15 shelf space. The Department used a higher nontaxable
16 ratio of 20 percent to give a benefit to the Appellant.
17 And the Department determined a taxable merchandise
18 purchase ratio of 80 percent.

19 The Department also reviewed three other similar
20 businesses and determined that 80 percent was a very
21 reasonable taxable purchase ratio to determine Appellant's
22 taxable cost of goods sold for the audit period. The
23 Department applied the taxable merchandise purchase ratio
24 of 80 percent to cost of goods sold of around \$931,000 to
25 estimate taxable cost of goods sold of around \$745,000.

1 And that will be on your Exhibit B, page 78.

2 Appellant stated he did not have any
3 self-consumption of taxable merchandise. Thus, the
4 Department did not include an allowance for
5 self-consumption. The Department calculated the audited
6 taxable cost of goods sold available for retail sale of
7 around \$737,000 using audited taxable cost of goods sold
8 and a 1 percent shrinkage. And that will be on your
9 Exhibit B, page 78.

10 Appellant did not provide cash register tapes and
11 merchandise purchase invoices for the audit period, and
12 the business was sold prior to the start of the audit
13 field work. Therefore, the Department was not able to
14 perform a shelf test. The Department does establish a
15 taxable markup based on audits of four similar businesses,
16 which had an average markup of around 35 percent.
17 Therefore, the Department determined that a 33 percent
18 markup was reasonable, given that it was close to the
19 average markup of similar businesses in the area.

20 Applying the markup fact of 133 percent to
21 audited taxable cost of goods sold, the Department
22 estimated audited taxable sale of around \$981,000. And
23 that will be on your Exhibit B, page 78. Audited taxable
24 sales were compared with reported taxable sale of around
25 \$214,000 to calculate unreported taxable sale of around

1 \$766,000. And that will be on your Exhibit B, page 78.

2 The Department compared the unreported taxable
3 sales with the reported taxable sale of around \$214,000 to
4 calculate an error rate of around 357 percent. And that
5 will be on your Exhibit B. Page 78. The Department
6 applied the error rate of around 357 percent to report a
7 taxable sale of around \$309,000 for the period
8 January 1st, 2013, through December 31st, 2015, to
9 calculate unreported taxable sales of around \$1.1 million
10 for the same period.

11 Appellant did not file sales and use tax return
12 for the period January 1st, 2016, to the close of date of
13 February 5th, 2016. The Department computed the average
14 daily audited taxable sales of around \$1,300 using audited
15 sale of around \$981,000. And that will be on your Exhibit
16 B, page 77. The Department then determined audited
17 taxable sales of around \$47,000 for the period
18 January 1st, 2016, through February 4th, 2016. And that
19 will be on your Exhibit B, page 77.

20 In total, the Department calculated total
21 unreported taxable sales of around \$1.2 million for the
22 audit period. And that will be on your Exhibit A,
23 page 29. Then the Department compared the total
24 unreported taxable sales with a reported taxable sale of
25 around \$309,000 to compute the overall error rate of

1 around 373 percent for the audit period.

2 To verify the reasonableness of audit finding,
3 the Department analyzed Appellant's available sales and
4 expense information. During the audit, Appellant provided
5 only his federal income tax returns and profit and loss
6 statements for 2013 and 2014. Appellant did not provide
7 any other source documents of original entry, such as cash
8 register tapes, purchase invoices, wage information,
9 insurance information, utility bills and other expense
10 details for the audit period.

11 Therefore, to compute average daily business
12 expenses, the Department relied on reported expenses on
13 Appellant's federal income tax returns. And that will be
14 on your Exhibit B, page 93. The Department reviewed
15 Appellant 2013 and 2014 federal income tax returns and
16 found Appellant did not report enough daily sales to cover
17 his daily expenses. In 2013 the ratio of daily expenses
18 to reported daily sales was 99 percent, and in 2014 it was
19 101 percent. This shows that Appellant's reported daily
20 sales are not sufficient to cover his reported daily
21 expenses for years 2013 and 2014.

22 This is an indication that Appellant did not
23 report all of his sales on his sales and use tax return
24 for the audit period. The Department also noted insurance
25 expenses, wages, and wage-related expenses were not

1 accurately reflected in Appellant's federal income tax
2 returns. And that will be on your Exhibit B, page 93. A
3 similar analysis was made comparing daily expenses to
4 average audited daily sales. In 2013 the ratio of daily
5 expenses to audited daily sales was 94 percent, and in
6 2014 it was 70 percent.

7 Based on these analyses, the Department concluded
8 that the audited taxable sales were reasonable and was in
9 Appellant's favor. And that will be on your Exhibit B,
10 page 93. As mentioned earlier, Appellant did not provide
11 complete source documentation, such as complete cash
12 register tapes, copies of USDA Food Stamp statements,
13 copies of EBT program statements. Appellant did not
14 provide complete purchase invoices. Appellant failed to
15 provide documentary evidence to support his taxable sale
16 for the audit period.

17 The Department was unable to verify the accuracy
18 of reported sales taxes using a direct audit method.
19 Therefore, an alternative audit method was used to
20 determine unreported sales tax. Accordingly, the
21 Department determined the unreported sales tax based upon
22 the best available information. The evidence shows that
23 the audit produced fair and reasonable results.

24 Appellant believes that he's entitled to
25 additional adjustments to the audit findings. As support,

1 Appellant provided a check cashing permit from the
2 Department of Justice, previous owner's Food Stamp Program
3 permit from U.S. Department of Agriculture, loan
4 documents, Form 1099 from California state lottery for
5 years 2013, 2014, and 2015, some bank statements, copies
6 of checks cashed for customers, multiple spreadsheets for
7 year 2015, and a declaration. And that will be on your
8 Exhibit 1 through Exhibit 8.

9 Appellant also provide some purchase information
10 from some vendors. And that will be on your Exhibit 9.
11 The Department reviewed and analyzed this information, but
12 ultimately determined that the information did not support
13 a reduction to the tax liability. Upon examination of
14 Appellant's provided information, the Department noted
15 that none of the information provided support any
16 adjustment to the taxable cost of goods sold for years
17 2013 and 2014. Appellant's --

18 JUDGE WONG: Mr. Samarawickrema, your time is up.
19 If you could, like, wrap it up in maybe a minute or two.

20 MR. SAMARAWICKREMA: All right.

21 JUDGE WONG: Thank you.

22 MR. SAMARAWICKREMA: Okay. Appellant failed to
23 support with documentary evidence that the cost of goods
24 sold amount reflected on Appellant's federal income tax
25 returns include other expenses not related to cost of

1 merchandise sold. Absent of complete and reliable
2 documentary information, Appellant is unable to support
3 that the cost of goods sold reflected on Appellant's
4 federal income tax return include other expenses not
5 related to cost of merchandise sold.

6 Appellant also believes that the audited taxable
7 sales include income from check cashing service and
8 lottery ticket sales. The Department rejected this
9 contention as a calculation method used cost of goods sold
10 as a basis for all calculations rather than determining
11 sales based on the bank statements or other income amount.
12 Appellant has not provided any reasonable documentation or
13 evidence to support an adjustment to the audit findings.
14 Therefore, the Department request the appeal be denied.

15 This concludes my presentation, and I'm available
16 to answer any question the panel may have. Thank you.

17 JUDGE WONG: Thank you.

18 I will turn to my panel for any questions that
19 they might have for CDTFA, starting with Judge Kwee.

20 JUDGE KWEE: This is Judge Kwee. Yes, I did have
21 maybe one or two questions. So in looking at the audit,
22 it looks like CDTFA picked up approximately \$1.1,
23 \$1.2 million in unreported taxable sales. You know, if
24 you consider the reported taxable sales of \$300,000, that
25 brings you to maybe audited taxable sales of approximately

1 \$1.5 million. And then if you consider, you know, total
2 sales during the period, that would bring you up to total
3 sales of maybe around \$1.8 million. But during the audit
4 period, it looks like the taxpayer only reported
5 approximately and even \$1 million in total sales.

6 Does CDTFA and -- approximately the same plus or
7 minus several thousand dollars to the IRS. So,
8 essentially, I guess what I'm getting at is this audit is
9 picking up approximately \$800,000 in additional total
10 sales income gross receipts that -- that weren't reported
11 to CDTFA or the IRS. And I'm just wondering, you know,
12 for business that only reported approximately \$1 million
13 to begin with, is that maybe overcompensating the amount
14 of additional income for the business?

15 That seems kind of high considering -- you're
16 saying, you know, looking at the bank receipts there is,
17 you know, some underreporting. But then that ratio of
18 that, you know, what was reported versus the income being
19 picked up in the bank deposits, it seems like that ratio
20 is a lot less than what is, you know, what I'm noting here
21 of approximately at 80 percent of reported total sales.

22 I was just wondering if you could comment on
23 that.

24 MR. SAMARAWICKREMA: Right. This audit is based
25 on the cost-plus markup method. And the purchases -- the

1 cost of goods sold for two years is -- 2013 and 2014 -- is
2 \$981,000. And if you use the 33 percent markup, it comes
3 to \$1.5 million. And the -- and we believe that the
4 percentage that we use for taxable and nontaxable
5 percent -- the purchase segregate according to, we were
6 unable to do a purchase segregate according to -- we were
7 unable to do a purchase segregation, but that's the reason
8 we use 80 percent. And if we make an adjustment for 80 --
9 like, if you assume that the 80 percent is taxable and
10 apply that percentage to cost of goods sold of 981, and
11 that's the number that we have.

12 And also, we also review the taxpayer's -- I mean
13 Appellant's federal income tax return for 2013 and 2014.
14 The daily -- and when the Department consider the total
15 sales -- total audited sales, we estimated additional
16 nontaxable sales by applying the same ratio of 20 person.
17 And by applying this 99 percent, auditor is 96 percent,
18 and we still believe it's not reasonable. And also if we
19 check 2014 it's 78 percent of total -- total and daily
20 expense -- sorry -- total daily expenses to audited sales.

21 So based on that we believe the estimate that we
22 determine for this audit is reasonable. And, you know,
23 the Appellant's, one of the arguments is like check
24 cashing. You know, it's only a small percentage. Like,
25 for example, if you -- if a customer comes with \$100

1 check, and they only cash like 95, 97 depending on the
2 percentage. So it's very even. You know, the cost of
3 goods sold can be included, the cost of those checks, you
4 know. Basically the double entry for that is, if you're
5 cashing a check, you know, it goes to the bank and also
6 the fees.

7 Based on the information we have, the Department
8 believes that we came up with a reasonable estimate after
9 considering whatever the Appellant reported for Federal
10 income tax returns.

11 JUDGE WONG: Thank you. And I understand the
12 concern with the reported amounts. I guess I was just
13 trying to consider the totality of the circumstances and
14 whether the upward limit was also reasonable. But in
15 getting at that, it looks like, I guess, one of the most
16 potentially questionable aspects was determining that 20
17 percent -- 80, 20 percent based on the shelf space it
18 seemed.

19 MR. SAMARAWICKREMA: Right.

20 JUDGE KWEE: And, you know, you have the, you
21 know, starting inventory plus the purchases less the
22 ending inventory to get the cost of goods sold and you
23 multiplied or I guess allocated, you know, 20 percent to
24 nontaxable and 80 percent to taxable. And I was just
25 curious, in doing that, that calculation, you know, is it

1 clear what -- was this included in the, you know, taxable
2 purchases?

3 Like, for example, they did the check cashing.
4 They did the lottery sales, stuff like that, like, you
5 know, not necessarily taking up much shelf space, but is
6 that something that would have been included in their
7 purchases that should be considered too? Or is that not
8 something that's included in their purchases? Like, I
9 guess in going over that ratio, I'm just trying to go
10 figure out how reasonable that 20 percent marker is.

11 You know, because if you moved it, it would
12 potentially make a significant impact on the liability.
13 And I'm just wondering what thought went into -- into
14 considering what was included in the purchases if we were
15 able to determine, you know, some basis to determine what
16 was in there besides just eyeballing the shelf space.

17 MR. SAMARAWICKREMA: Yeah. So when the
18 Department says 80 percent, 20 percent ratio, it only
19 relates to the tangible personal property. He doesn't
20 consider the check cashing income or the check cashing
21 cost because it doesn't go to the cost of goods sold. And
22 also the lottery is a -- the lottery cost is -- there is
23 no lottery cost. It is a commission, but if the taxpayer
24 has information to show that the cost of goods sold of
25 \$981,000 for two years include that type of cost, if

1 there's any, yeah, then we can have a look.

2 But the reason we use 80 percent, 20 is because
3 we did not have -- the Department did not have the
4 information to compute the real taxable purchase ratio.
5 And, you know, the Department has also reviewed three --
6 three similar businesses. One, the taxable ratio was
7 82 percent. The other one is 72 percent, and the third
8 one is 86. And the average was a little close to
9 81 percent. So based on that, we believe 80 percent is
10 reasonable, unless the taxpayer can show that the cost of
11 goods sold include any -- any cost related to the check
12 cashing or lotto. Then we -- we can make an adjustment.

13 It's very -- the Department did not receive such
14 information to consider, and the Department continues to
15 believe that 80 percent is taxable merchandise. And the
16 20 percent represents nontaxable merchandise, like
17 noncarbonated beverages, snacks, and it didn't take the
18 check cashing income or the lotto cost into that formula.

19 MR. PARKER: And generally speaking, with cost of
20 goods sold lotto and check cashing would not be included
21 in there. So those are not the merchandise that sold.
22 With the lotto, it's typically a commission. With the
23 check cashing it's a fee. So there's no purchase of
24 anything. So we typically don't see those amounts in
25 there.

1 So we would reasonably assume that they don't
2 include those amounts in the cost of goods sold. And
3 that's why we've looked to see have they provided anything
4 that shows that those amounts are included in there, which
5 we haven't received.

6 JUDGE KWEE: Okay. Thank you.

7 And this is Judge Kwee. So I'll turn it back to
8 Andrew Wong. I guess at some point I would just like to
9 offer Appellant's representative the opportunity to
10 comment on that aspect, if he wants to. But for now I'll
11 turn it back to you for questions.

12 JUDGE WONG: Do you just want to do it now?

13 JUDGE KWEE: Oh, yeah. Well, I guess if it's not
14 going to interpret. I would turn it over to Appellant's
15 representative if he would like to comment on that about
16 whether or not there was evidence that the lotto and the
17 check cashing expenses were included in the purchases
18 reported on the federal income tax returns, or if you have
19 a position on that.

20 MR. AZIR: Thank you. Actually, I have a lot of
21 comments, and I try to be probably in my time. I don't
22 want to spend more than 15 minutes, because I need hours
23 probably.

24 Number one, here in my exhibit was the Excel
25 worksheet. We are showing one month, month of

1 January 2015. The total cashing the check deposit is
2 \$17,563.28, and we present it to California Department of
3 Tax and Fee, and we did present it to the court. And the
4 total deposit is \$25,229.73. So we're talking about
5 probably 80 percent from the cost of goods sold it is
6 cashing the checks. And that's number one.

7 Number two, when we go for Schedule C from
8 Form 11 -- Form 1040, income tax return on the Internal
9 Revenue Service, which is profit and loss for business,
10 which the auditor uncorrectly [sic] using this one. The
11 cost of goods sold it can be reported there as buying --
12 as the store buying the checks from people.

13 So that's part of that cost because he buys it
14 and he sells it again to the bank. So it is cost of
15 merchandise. If our business involves it in cashing the
16 checks, so we sell the cash. We sell checks. We buy it
17 from the customers, and we sell it to the bank. So
18 absolutely it is reported correctly.

19 About the lottery, we just report it as
20 commission. So the auditor when he confuse between the
21 lottery and cashing the checks, it is. And that's
22 evidence number probably 7 or 9. And here in each bank
23 you find it there. Cash the checks went to the bank, went
24 directly to the bank. And no other way to go because no
25 one else you can cash the checks except the banks. And

1 it's thousand of transactions.

2 When California Department of Tax and Fee they
3 say they calculate small percentage or some percentage, no
4 it's a huge percentage; one example, \$17,225. And we did
5 complete this one in Excel for my Exhibit Number 8. It's
6 showing. It's showing we don't -- the taxpayer doesn't
7 owe any money if you add the cashing the checks. It's not
8 prohibited under Internal Revenue code to report it as a
9 cost of goods sold. It's not prohibited, again, in the
10 Schedule C to report cashing checks under cost of goods
11 sold because you buy checks and you sell the checks. You
12 buy it from customers with a discount, and you see it from
13 the Dr. Boutros' statement from 1 to 3 percent.

14 That's why we have the cost of goods sold there.
15 And that's lead us for evidence number three. California
16 Department of Tax and Fee they use wrong form, which is
17 Schedule C to calculate those evidence, evidence number 4
18 or 5 in my list. California Department of Tax and Fee
19 refuse to use other method like credit card method. I ask
20 the auditor, we can use different method? Auditor saying
21 the taxpayer did not provide any documents. Taxpayer
22 provide thousand of documents and thousand of documents.

23 JUDGE WONG: Mr. Azir, I think you answered
24 Judge Kwee's question.

25 MR. AZIR: Oh, I'm sorry. It's not my

1 presentation. I'm sorry.

2 JUDGE WONG: No, no.

3 MR. AZIR: I think that's my presentation. Oh,
4 I'm sorry. I'm sorry. Can you ask the question again, or
5 I did answer?

6 JUDGE KWEE: Oh, this is Judge Kwee, and I
7 believe you answered the question. I believe your answer
8 was that the lottery was not included in the cost of goods
9 sold because it was reported as commission, but the check
10 cashing was reported in the cost of goods sold and should
11 be considered. And that was the explanation for the
12 difference, if that summarizes briefly what you just said.

13 MR. AZIR: Yes. Thank you. Thank you. Thank
14 you very much, Your Honor.

15 JUDGE KWEE: Thank you.

16 JUDGE WONG: You will have a chance to finish
17 your rebuttal.

18 MR. AZIR: Sure.

19 JUDGE WONG: Judge Kwee, did you have any other
20 questions for CDTFA?

21 JUDGE KWEE: This is Judge Kwee. I do not have
22 any further questions for CDTFA. Thank you.

23 JUDGE WONG: Thank you.

24 And I'll turn to Judge Cho for any questions for
25 CDTFA.

1 JUDGE CHO: Just one quick question for
2 clarifying purposes. I just want to confirm, but, CDTFA,
3 you're saying that the way you determined the 33 percent
4 markup was based on an analysis of, I believe, four
5 businesses in that area; is that correct?

6 MR. SAMARAWICKREMA: Yes.

7 JUDGE CHO: Okay. And is that data anywhere in
8 the audit working papers or the exhibits that you
9 provided?

10 MR. SAMARAWICKREMA: It is not. In order to
11 protect the confidentiality of the other taxpayers, We
12 didn't -- the Department did not include. But based on
13 that four other businesses, one -- the taxable markup for
14 one was 45 percent. Another one is 35 percent. The third
15 one is 33 percent, and the fourth one is 28 percent. So
16 average came up to 35 percent, and for the audit the
17 Department used 33. So we -- the Department did not
18 include that spreadsheet because it was confidential, but
19 we analyze four businesses for four different markups in
20 that area.

21 JUDGE CHO: Okay. Thank you. And I believe
22 that's in preparation for today's hearing; correct?
23 Because according to the audit working papers, if you look
24 at page 79 of your exhibit file, it says, "Note 3.
25 Taxable markup of 33 percent is used to calculate the

1 audited taxable sales. The percentage is based on
2 personal auditor experience of doing audits for the
3 similar size and type of the business."

4 So that seems to be a little different than what
5 you've just said today.

6 MR. SAMARAWICKREMA: According to the audit
7 folder, we have a schedule. I saw a schedule listing that
8 four stores. But for preparation for this hearing, I used
9 the same four businesses and computes the purchase
10 segregation, 80 percent. So, you know, I compute the --
11 Department compute the 8 -- you know, the check
12 purchase -- a purchase, whether the taxable ratio is
13 using -- using the same information. But that is -- that
14 information came during the preparation for this hearing
15 but not the markup.

16 JUDGE CHO: Okay. So when the audit was
17 conducted, the 33 percent was based off of the auditor's
18 experience; is that correct?

19 MR. SAMARAWICKREMA: Based on the experience as
20 well as the available information. Like, when the
21 Department filed the opening brief, the Department
22 submitted the Excel folder. And if you look -- if you
23 check that folder, then you would see that schedule. But
24 when we submit the prehearing conference statement and
25 include the -- the experience, you know, we didn't include

1 that.

2 MR. BACCHUS: So just to clarify. The
3 spreadsheet that he's referring to that has the markup
4 percentage of the four other businesses was prepared prior
5 to and was included, redacted, in the audit folder. And
6 so it wasn't -- this wasn't pulled from businesses for the
7 purpose of the hearing. This was prepared by the auditor.
8 So her personal experience reference these businesses that
9 were audited for a similar audit period and are similar
10 types of businesses in the same regional area.

11 JUDGE CHO: Okay. I think that answers my
12 question. Thank you.

13 JUDGE WONG: I just want to clarify. So the
14 comparison for the 33 percent markup was done not in
15 preparation for this hearing but was done by the auditor?

16 MR. SAMARAWICKREMA: That is correct.

17 JUDGE WONG: But the comparison of the three
18 other businesses as far as the 80 percent, the 20 percent
19 nontaxable -- taxable, nontaxable ratio was for this here?

20 MR. SAMARAWICKREMA: Yes.

21 JUDGE WONG: Okay. Is there any overlap between
22 those businesses? Just curious.

23 MR. SAMARAWICKREMA: I don't understand the
24 question.

25 JUDGE WONG: Are the four businesses, that the

1 auditor used, the same as the three businesses that you
2 used in preparation for this hearing?

3 MR. SAMARAWICKREMA: Yeah. So the reason I did
4 not have -- I didn't have the information to compute the
5 taxable ratio from one business. So that's the reason I
6 said it's three businesses and compute to verify whether
7 80 percent is reasonable. Same -- same for businesses,
8 but one the Department did not have the information to
9 compute taxable ratio.

10 JUDGE WONG: Got it. Thank you.

11 And Mr. Azir at the beginning of his presentation
12 had taken issue with the Department's characterization or
13 description of this business saying it's not a liquor
14 store. So, like, how would you -- how would the CDTFA
15 characterize the business?

16 MR. SAMARAWICKREMA: This is a store selling
17 cigarette-related products and the name, you know,
18 describes that. But it doesn't affect the computation of
19 the unreported taxable sales.

20 JUDGE WONG: Got it. Thank you.

21 MR. AZIR: May I ask a question or comment? Does
22 the Court allow me?

23 JUDGE WONG: They are just making arguments, so
24 you can't ask them questions directly. But if you would
25 like to pose your question to the panel, and if we deem

1 that the answer would be probative or useful, then we can
2 pose it to CDTFA. So why don't you -- what question did
3 you have?

4 MR. AZIR: Sure. Does all four businesses have
5 cashing the checks and beer and wine and probably close to
6 your question. Does -- I mean, do all the other
7 businesses comparing to that business have cashing the
8 checks or not? That's question number one.

9 Question number two, when the auditor compare to
10 other businesses, why he doesn't compare his audit to the
11 previous auditor for the same location, for the same
12 business done in the past? So why he refuse that and he
13 use different businesses. And we have great matching,
14 apple to apple; same business, same business, same kind of
15 everything and done by other auditors. And he refused
16 that one, and he use other four and I don't anything about
17 them. They are liquor store or not. I think the auditor
18 confuse between liquor store and beer and wine. The
19 auditor confuse between cost of goods sold, cashing the
20 checks or not.

21 Thank you very much.

22 JUDGE WONG: Thank you. I will allow that
23 question. The panel is curious about the answer to that
24 question from CDTFA.

25 Just to let you know, after the question we're

1 going to take a 10-minute break. The panel is going to
2 confer on something, and then we'll start up again. But
3 please answer the question.

4 MR. SAMARAWICKREMA: At this point, we don't have
5 the -- to make a statement saying whether those four
6 businesses have check cashing services for their
7 customers. But if the panel needs to verify that, we are
8 happy to do that.

9 JUDGE WONG: Okay. Thank you.

10 All right. We're going to take a 10-minute
11 break. The panel is going to confer on some issues, and
12 we'll come back at 2:11 p.m. Okay.

13 We'll go off the record now. Thank you.

14 (There is a pause in the proceedings.)

15 JUDGE WONG: All right. Let's go back on the
16 record.

17 During the break my co-panelists and I conferred,
18 and we had a question for CDTFA. Would CDTFA be willing
19 to provide either a redacted version of the spreadsheet
20 that the auditor used to prepare the estimated 33 percent
21 markup, or some sort of spreadsheet with that information
22 without -- that redacts any identifying information, names
23 and what not?

24 MR. SAMARAWICKREMA: Yes.

25 JUDGE WONG: Okay. Great. We would also -- you

1 had also expressed willingness to provide some
2 characteristics of these three or four other businesses.
3 Again, if they have, like, checking cash services or lotto
4 services, that type of information, would CDTFA be willing
5 to provide, like, the characteristics of the businesses
6 that they compared Appellant to?

7 MR. BACCHUS: The Department is not averse to
8 doing so if we can -- if we can find that information. We
9 will -- we will look into it and provide what we can find.

10 JUDGE WONG: Okay. Great. Then at the end of
11 the hearing we won't be closing the record. We'll leave
12 it open, and we will allow CDTFA a certain amount of time
13 to provide that information. How much time do you --
14 would you need to provide that information or spreadsheet?

15 MR. SAMARAWICKREMA: A week is fine.

16 JUDGE WONG: A week. Okay.

17 Mr. Azir, would you like an opportunity to
18 respond to this submission -- additional submissions?

19 MR. AZIR: I'd like California Tax and Fee
20 compare this audit to the previous audit done for the same
21 location, for same kind of business for accuracy. Because
22 each business, in my opinion, needs to be evaluated
23 individually. The auditor, he refused to compare his
24 audit to other auditor's done for the same location, same,
25 same location. Same kind of business, same everything for

1 previous owners. And he said no prior audit, but it was
2 audited before for Discount Cigarette, the same location
3 located in 29465 Foothill Boulevard.

4 JUDGE WONG: Would you like an opportunity to
5 respond to their submissions?

6 MR. AZIR: Sure. But I need to review the other
7 audit. So we have to postpone today, and we come other
8 day for the decision?

9 JUDGE WONG: I'm sorry. Another audit? Is
10 there --

11 MR. AZIR: Discount Cigarette Market, the store
12 subject matter has been audited prior to --

13 JUDGE WONG: We're just -- I think we're just
14 talking about the audit -- this audit right now. We don't
15 have current jurisdiction over another audit that might be
16 appealed or anything like that.

17 MR. AZIR: It's not appealed or anything. It has
18 been done prior to that audit for the same Discount
19 Cigarette by different auditors. And it's done by
20 California Department of Tax and Fee. So that's why it
21 would be the most accurate audit.

22 JUDGE WONG: I think we're just focusing on the
23 audit and the audit method right now. And part of the
24 audit method they compared the business at hand to others
25 in formulating their audit results. So I think that's

1 what we're focusing on right now.

2 MR. AZIR: Right, about the percentage, 33
3 percent. But my issue is the cashing the checks,
4 including in this one, if even the percent is higher or
5 lower. It's really the most important thing that cashing
6 the checks it has been ignored by California Department of
7 Tax and Fee as a cost of goods sold.

8 JUDGE WONG: I mean, that prior audit I don't
9 think there's any -- is there any evidence? Is that prior
10 audit the results or audit working papers in the record of
11 this appeal?

12 MR. AZIR: No. We don't have it, but the
13 California Department of Tax and Fee have it for the same
14 location.

15 JUDGE WONG: That was a prior owner, are you
16 saying?

17 MR. AZIR: Prior owner. But same store and same
18 activities. No change.

19 JUDGE WONG: I think we're just focusing on this
20 audit right now. So --

21 MR. AZIR: I understand. I totally understand,
22 but we could right compare this audit to other four
23 businesses in the area.

24 JUDGE WONG: Yeah. We cannot order a reaudit.
25 We can just focus on this audit to see if taxes are owed

1 and, if so, what the amount of that tax. So we can't go
2 --

3 MR. AZIR: I'm not going to go back. I'm not
4 going to focus on any audit. I'm not going to reject or
5 anything. I'm just use the same method done by the other
6 auditors. Because the other auditors, they did audit the
7 same store.

8 JUDGE WONG: But I think at this audit they
9 didn't do comparison of this audit to that previous audit,
10 only to other businesses. So I don't think we can do
11 that.

12 MR. AZIR: Allow that?

13 JUDGE WONG: Yeah. So would you like an
14 opportunity -- well, let's give you time to respond to the
15 submissions that they provide. All right?

16 MR. AZIR: I do. I have to come here again?

17 JUDGE WONG: No. No. No. This is all done
18 through written submissions.

19 MR. AZIR: Oh, written submission?

20 JUDGE WONG: Yeah. Yeah.

21 MR. AZIR: But the decision is not going to be
22 today?

23 JUDGE WONG: The decision is not going to be
24 today, no.

25 MR. AZIR: Will it be later?

1 JUDGE WONG: The decision will be 100 days after
2 the record is closed, but we're not closing the record
3 today either. So --

4 MR. AZIR: Okay. Okay.

5 JUDGE WONG: Thank you.

6 MR. AZIR: Thank you.

7 JUDGE WONG: I do not have any further questions
8 for CDTEFA.

9 And so now we turn to Mr. Azir for your rebuttal
10 and closing arguments or presentation. You have
11 15 minutes.

12

13 CLOSING STATEMENT

14 MR. AZIR: Yeah. A few points here. I summarize
15 everything. We see the auditor compare, and in my
16 opinion, wrong businesses. We don't know yet. We're
17 going to check that. And we have an audit as I mentioned
18 done for this store and with other auditor. I like if the
19 Court can look at this one if it's available, and
20 Schedule C, profit and loss for business under 1040 --
21 Form 1040 of Internal Revenue code and the cost of goods
22 sold include cashing the checks.

23 And my exhibit where is I showing the calculation
24 will find 1 month \$17,563.28 from total deposit
25 \$25,229.73, it's from cashing the checks, and it's from

1 the bank statement. And we provide that all the checks
2 has been cashed by the bank. And we provide in Exhibit 4
3 the Excel worksheet showing this one. And as I mentioned
4 before, as the auditor saying, this business collect cash
5 and credit card payment. I ask from the auditor to use
6 credit card percentage, and he did refuse it too.

7 And discount Cigarette is not a liquor store.
8 It's not a liquor store, and it don't have license for
9 liquor store, and they don't sell liquor stores. Period.
10 Bank statement has been ignored. And very important
11 evidence is the auditor said several times that taxpayer
12 didn't provide any information or summaries of sales or
13 invoices. That's uncorrect. And the evidence where the
14 auditor used? In Exhibit A, page 25, an email from me to
15 Mr. Chung. And the email was in Friday, August 31, 2018.
16 And I told him to see all the purchase invoices and
17 summaries for 2015, because he choose 2015 as a sampling
18 year.

19 He never looked at them, and he never provide
20 them. And I have a copy here if the Court like to have
21 it, the email. Or you can find it in page 25 in
22 California Department of Tax and Fee Exhibit A. So really
23 I still -- I don't understand why the calculation of
24 cashing the checks is not included there, which is that's
25 the subject matter about. And it has been provided with

1 thousands of documents, and all the documents has been
2 ignored. And as auditor said, it's a very small
3 percentage applied, and I don't know why he applies small
4 percentage of cashing the checks and he does not apply
5 whole percentage.

6 I -- still very unclear on this one. And I did
7 ask several times from California Department Tax and Fees
8 for this question. If you apply small percentage like
9 what he said today, why you didn't apply the whole
10 percentage? And you have it from bank statement. And you
11 have it from checks by -- written by individuals, thousand
12 of individuals. And it has been cashed by the bank,
13 provided by a third party, and provided with cashing check
14 permit under California -- State of California.

15 If we calculate this one, we will see the audit
16 should be no change audit. And in Exhibit Number 8
17 it's -- you'll find this calculations. We make it easier
18 for support. Thank you very much.

19 JUDGE WONG: Thank you, Mr. Azir. For a final
20 time I will now turn to my co-panelists to see if they
21 have any final questions for you or CDTEFA, starting with
22 Judge Kwee.

23 JUDGE KWEE: This is Judge Kwee. I don't have
24 any further questions for the parties. Thank you.

25 MR. AZIR: Thank you.

1 JUDGE WONG: Thank you.

2 Judge Cho?

3 JUDGE CHO: I don't have any questions either.

4 Thank you very much.

5 MR. AZIR: Thank you.

6 JUDGE WONG: Mr. Azir, I just have one question.
7 So in the cost of goods sold for the 2013 and 2014 federal
8 income tax returns, that included expenses related to
9 check cashing. Is that your contention?

10 MR. AZIR: Yes.

11 JUDGE WONG: Okay.

12 MR. AZIR: Yes. When the store buy the checks
13 including there as a cost of goods sold.

14 JUDGE WONG: And does it also include expenses
15 related to lotto's, or is that not -- did not --

16 MR. AZIR: No. Lotto is not including there.

17 JUDGE WONG: Okay. Who prepared the federal
18 income tax returns?

19 MR. AZIR: I did prepare the federal income tax
20 returns.

21 JUDGE WONG: Okay. Thank you. No further
22 questions.

23 MR. AZIR: Thank you.

24 JUDGE WONG: Okay. So that concludes the oral
25 hearing for today. Just to recap we're not closing the

1 record. We're going to leave it open to allow CDTFA to
2 provide submissions. I will issue an order probably
3 tomorrow or the next day.

4 You indicated a week. I'll give you until next
5 Friday or a reasonable amount of time in the order that I
6 will be issuing. And I will also be providing Mr. Azir
7 the opportunity to respond to the new submissions. Okay.
8 Is that understood?

9 MR. SAMARAWICKREMA: Yes. Thank you.

10 MR. AZIR: Thank you. Thank you very much.

11 JUDGE WONG: Okay. The oral hearing is now
12 adjourned. Thank you. And this is the last one for the
13 day.

14 We're off the record. Thank you.

15 (Proceedings adjourned at 2:23 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 10th day of June, 2022.

ERNALYN M. ALONZO
HEARING REPORTER