

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
)  
PINE VALLEY, LLC, ) OTA NO. 18124143  
)  
APPELLANT. )  
)  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, June 29, 2022

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 1:07 p.m. and concluding at 3:09 p.m. on  
Wednesday, June 29, 2022, reported by Ernalyn M.  
Alonzo, Hearing Reporter, in and for the  
State of California.

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APPEARANCES:

Panel Lead: ALJ ANDREW WONG

Panel Members: ALJ MICHAEL GEARY  
ALJ DANIEL CHO

For the Appellant: RONSON J. SHAMOUN  
A. ATALLAH

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE ADMINISTRATION  
  
RANDY SUAZO  
CHRISTOPHER BROOKS  
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-2 were received at page 6.)

(Department's Exhibits A-I were received at page 6.)

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DEPARTMENT'S WITNESSES:

DIRECT      CROSS      REDIRECT      RECROSS

(None offered)

APPELLANT'S WITNESSES:

DIRECT      CROSS      REDIRECT      RECROSS

Alfred Atallah      11

CLOSING STATEMENT

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California; Wednesday, June 29, 2022

1:07 p.m.

JUDGE WONG: We are opening the record in the Appeal of Pine Valley, LLC, before the Office of Tax Appeals. This is OTA Case Number 18124143. And today is Wednesday, June 29th, 2022, and the time is 1:07 p.m. We're holding this hearing by video conference.

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

Individuals representing Appellant, please identify yourselves.

MR. SHAMOUN: Ronson Shamoun, RJS Law, on behalf of Appellant Pine Valley, LLC.

JUDGE WONG: Thank you.

Individuals representing the California Department of Tax and Fee Administration, please identify yourselves.

MR. SUAZO: Randy Suazo, Hearing Representative, CDTFA.

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

MR. BROOKS: Christopher Brooks, Tax Counsel for CDTFA.

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JUDGE WONG: Thank you.

We are considering one issue today, and that is whether adjustments are warranted to the audited understatement of reported gasoline sales. Appellant has identified and submitted proposed Exhibits 1 through 2 as evidence. Appellant has no other exhibits to offer as evidence, and CDTFA had no objections to them.

Is that correct, CDTFA?

MR. SUAZO: This is Randy Suazo. That is correct.

JUDGE WONG: Okay. Therefore, Appellant's Exhibit 1 through 2 will be admitted into the record as evidence.

(Appellant's Exhibits 1-2 were received in evidence by the Administrative Law Judge.)

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

Is that correct, Mr. Shamoun?

MR. SHAMOUN: No objection, Your Honor.

JUDGE WONG: Thank you. CDTFA's Exhibits A through I will be admitted into the record as evidence.

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

1 Appellant has one witness, Mr. Alfred Atallah.

2 Before -- Mr. Shamoun, before you begin your  
3 presentation, let me swear in Mr. Atallah.

4 Please raise your right hand.

5

6 ALFRED ATALLAH,

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

10

11 JUDGE WONG: Thank you.

12 All right. CDTFA has no witnesses.

13 Mr. Shamoun, please proceed with your  
14 presentation and witness testimony. You have 45 minutes.

15

16 PRESENTATION

17 MR. SHAMOUN: Well, thank you very much, Your  
18 Honor. I appreciate your time today.

19 This case originated back in almost a decade ago  
20 in 2013. In 2013 I received a phone call from a law  
21 school classmate of mine, Alfred Atallah. And so we  
22 actually know each other through law school. And he gave  
23 me a call and said that his business was being audited by  
24 the State Board of Equalization at the time. So I, being  
25 a tax attorney and a tax law firm, told him I would assist

1 him in the audit.

2 So the audit periods are for 2007, 2008, and  
3 2009. The case went all the way up before the Board of  
4 Equalization and then the change happened, which kind of  
5 delayed us with transition from CDTFA to OTA, but it was  
6 right before the Board prior to it transitioning. We  
7 attended the audit. And as the exhibits that were  
8 provided by the government, A through F, are pretty much  
9 all the documents that are required and sought after for a  
10 sales tax audit.

11 During that audit, the auditor wanted all nine of  
12 these exhibits: A, all the sales and use tax returns for  
13 the period, all the monthly profit and loss statements,  
14 all of the tax returns, all of the Z-tapes, the daily Z  
15 journals. Every document that was required for the audit  
16 was provided to the auditor, and they are all attached as  
17 exhibits. We did attach as additional exhibits,  
18 Exhibits 1 and 2, which 1 provides a subsequent sample of  
19 the business to show that it has the same markup, same  
20 sales, and same -- similar pattern from the period before.

21 Throughout that audit, we answered every one of  
22 their questions and provided documents, but it boiled down  
23 to one simple question. How much were you charging gas  
24 every single day? The documents that were provided to the  
25 auditor provided their Z-tapes daily totals. We could not



1 provide the actual daily price that was charged on a daily  
2 basis because our cash register system would not provide  
3 that.

4           Based on that question and that question alone,  
5 although all documents provided, receipts, daily journals,  
6 bank deposits balanced out, no additional deposits, a  
7 complete and accurate set of records were provided,  
8 Z-tapes, matching bank statements. But we cannot say with  
9 certainty what we charged every single day for gas.  
10 Ultimately, the auditor made an assessment, used OPUS as a  
11 threshold and said, "Because your markup doesn't seem that  
12 high, we are going to assess the OPUS price as to what you  
13 were charging your gas prices during this three-year  
14 period, and we are going to send you a bill for that  
15 difference."

16           And that's the very, very simply issue that we  
17 have before us, is whether or not we as the taxpayer  
18 provided all that we are required to provide, did provide,  
19 an accurate set of records, in order for the CDTFA or for  
20 the State to make a determination that there are  
21 underreported sales. These methodologies are used when  
22 adequate records are not provided. In this case, as  
23 attached by the exhibits from the Respondent, those are  
24 the exact records that we are relying upon at our hearing,  
25 simply that we have our books and records.

1           And what Mr. Atallah is going to testify now  
2           subsequent, is how they do their business, how they keep  
3           their records, and how they run their operation. All  
4           sales have been reported in this manner, and there should  
5           not be an adjustment based on OPUS. Based on pure  
6           speculation, there's nothing that shows records that were  
7           not provided as to why we cannot rely upon our accurate  
8           set of books that those were our sales, and tax was paid  
9           accurately on those individuals.

10           So we will show you and hope that the testimony  
11           of Mr. Atallah, in addition to the documents that we will  
12           provide and go over one by one, will show you that all  
13           books and records are accurate and that no additional  
14           sales tax should be assessed based on OPUS numbers.  
15           Because it underlyingly is required that we would have had  
16           to provide the daily charge rate for gas, which is not a  
17           requirement of any business to keep a journal of.

18           And if the State of California wants that  
19           requirement, then they should advertise that requirement  
20           to the public so that if they get audited and provide  
21           everything completely and accurately, that they're not  
22           stuck getting a bill that could be in the hundreds of  
23           thousands of dollars. In this case it's still a  
24           substantial amount of money, and we've appealed it.

25           And I've taken this case with a pro bono because

1 it is truly unjust to charge this individual a tax when  
2 they are providing their records. Because what more can  
3 someone do but provide adequate records.

4 I would like to call my first witness, Your  
5 Honor.

6 JUDGE WONG: This is Judge Wong. Certainly. Go  
7 ahead.

8 MR. SHAMOUN: Okay. So, I'm sorry. Mr. Atallah,  
9 were you sworn?

10 Did you swear him in. I didn't hear that. He's  
11 all sworn in?

12 JUDGE WONG: This is Judge Wong. Yes, I swore  
13 him in prior to your preparation.

14 MR. SHAMOUN: Okay.

15

16 DIRECT EXAMINATION

17 BY MR. SHAMOUN:

18 Q Good afternoon, Mr. Atallah. How are you doing  
19 today?

20 A I'm doing great. Thank you for asking.

21 Q Okay. So what is your relationship to Pine  
22 Valley?

23 A I'm a family member of the trust that owns the  
24 ownership entity, Pine Valley LLC. I handle all the  
25 financial and operational aspects of the business.

1 Q And do you have a full-time job?

2 A I'm also an attorney and, you know, work with our  
3 family in other various interests, but I do both.

4 Q When did you become a lawyer?

5 A I think -- I believe 2003, November of 2003 I was  
6 sworn in.

7 Q And so during the time that the audit took place  
8 for tax period '07, '08, and '09, you were operating a law  
9 practice while supervising the operations of the gas  
10 station?

11 A Yes, and I do that until today.

12 Q Okay. What makes you well-suited to speak about  
13 the daily operations and the finance or the management of  
14 the company?

15 A Well, we -- our family acquired the business in  
16 1995 when I was still in high school. I started working  
17 from day one in all aspects of the business, so I think  
18 that makes it about 27 years. I also hold a bachelor's  
19 degree in business administration, a juris doctor. I'm  
20 very familiar with all the accounting practices and  
21 operational aspects of our business.

22 Q And how many employees did the business have  
23 during the audit period?

24 A Yeah. Our employees vary, you know, from year to  
25 year depending on demand, but we typically had between six

1 to eight employees for the store.

2 Q And are those the six to eight employees that  
3 been there many years prior to the audit period?

4 A Most of them, yes. We have some turnover, you  
5 know, during the year. But a lot of our employees, being  
6 that we're a back country store, stay with us for a while.  
7 But we do have some turnover.

8 Q So you have a main core group of people that had  
9 been there for many years prior to '07 and post '07;  
10 correct?

11 A Yes. Correct.

12 Q And what were the employee's responsibilities  
13 day-to-day?

14 A All employees are trained to operate every aspect  
15 of the store. So we have a convenience store inside along  
16 with deli and pizza, as well as, obviously, keeping the  
17 store stocked and so forth. So our main positions are  
18 cashier and deli and pizza and all the employees are  
19 trained to kind of do everything just in case you have a  
20 short fall. But mainly those are the main positions:  
21 Cashier, deli and pizza, and filling coolers and stocking  
22 shelves.

23 Q And then you go ahead review -- and then do you  
24 review their closing procedures to make sure that all the  
25 money gets to the bank, basically?

1           A    Yes.  On a daily basis we review all cash drops  
2           and credit card receipts, and we do the Z-tapes after the  
3           shifts and make sure the money in the till matches what we  
4           rang up that day, just to make sure everything jives.  And  
5           if it doesn't we, you know, will find out why or what  
6           happened.  And we to that on a daily basis.

7           Q    And for your monthly accounting work, who does  
8           your monthly accounting for you?

9           A    We've had -- since we acquired the business, Jody  
10          Roemmich from Business Control Service.  He does a very  
11          thorough job monthly on gathering all of our invoices, all  
12          of our vendor receipts that we keep for him.  And then he  
13          gets all of our daily income reports and balances, our  
14          bank statements, and make sure that everything is  
15          matching.  So we try to have our daily checks ourselves,  
16          and then we have our bookkeeper who does it on a monthly  
17          basis just in case something happens, you know, we know  
18          that month.  So if anything, we maybe have had 30 days  
19          that have passed.

20          Q    Okay.  And you give him the daily Z-tape per day  
21          and all of your expenses for the month; is that correct?

22          A    Exactly.  And then also, you know, if there's  
23          some variances in the Z-tape where we have one of us  
24          that's gets gas, we'll write it down on there to make sure  
25          everything matches.  So he gets everything, our Z-tapes,

1 our invoices, our vendor receipts and any adjustments that  
2 took place during the day.

3 Q And the daily Z-tape, basically, provides totals  
4 for every category when you use either register, like,  
5 versus it doesn't printout every single sale of that day;  
6 is that correct?

7 A Yes, that's correct. So we have several  
8 departments, like, grocery, deli, pizza, gasoline. I  
9 don't have them in front of me, but there's probably six  
10 or seven different departments. And when we do the Z-tape  
11 we can see what we did on a conglomerate basis for each  
12 one of those department.

13 Q Okay. And during the audit period, the auditor  
14 wanted us to provide -- did the auditor want you to  
15 provide a daily journal of every single sale transaction?

16 A I don't believe so. They just asked us for the  
17 daily records.

18 Q Right. But if you were to provide the daily gas  
19 price, the only way to be able to provide, like, each gas  
20 transaction would be to have the capabilities of having  
21 the -- every detail come in on one day; correct?

22 A Yes. Our system did not allow us to show the  
23 daily gas price because we would ring up the gas sale in  
24 the register of whatever the customer purchased per each  
25 sale, and then the Z-tape would add it all up and give us

1 a global number that we would crosscheck with how many  
2 gallons we sold that day.

3 Q Okay. And you've had that same system, you know,  
4 until this day?

5 A I believe we just -- we just changed everything  
6 this last year when we switched over from Independent to  
7 Valero. But, yes, we had it up until, I think, 2019.

8 Q The government felt in their -- the State felt in  
9 their assessment as to why they wanted to charge OPUS as a  
10 template for what your sales were because your markup  
11 percentage is around 15 percent. Why is your markup at  
12 15 percent, and how would you counter their argument that  
13 it should be higher?

14 A Our markup, you know, changes when -- you know,  
15 on a weekly basis sometimes. You know, sometimes it goes  
16 on for a while if the gas prices stay steady, but gas  
17 prices change all the time. So we can't have a fixed  
18 markup just because you have competition, you have, you  
19 know, other vendors in the area that may be selling gas  
20 for a certain price, and you have to keep in touch with  
21 your general market. And since we are a back-country  
22 store, we have a unique, you know, market set that we have  
23 to adhere with regards to travelers that are coming on the  
24 freeway and local residents that live there.

25 So our markup is never consistent because



1 sometimes you'll be making, you know, more on gas.  
2 Sometimes you'll be making less on gas, depending on if  
3 there was a big spike, as I'm sure everyone is kind of  
4 seeing what's happening now. Sometimes there's a lull,  
5 and the gas prices stay steady for a long time, but they  
6 are general times.

7 I believe during this time period you can see gas  
8 was a lot less expensive than it is today, but our markup  
9 would vary on a day-to-day basis, week-to-week basis  
10 depending on what's going on in the global economy, the  
11 gas prices, San Diego and then Pine Valley in the back  
12 country.

13 Q Okay. So it's your testimony that it's very  
14 volatile?

15 A Very volatile. It's probably one of the most  
16 volatile aspects of any part of our business because --

17 Q Even with -- even with volatility, you have a --  
18 is your markup low, just -- why is your markup low? Let's  
19 say you adjust it, but just overall your markup in the  
20 stateside is low, you know. Is there a reason why you're  
21 that competitive with your pricing? Is there a reason why  
22 you have a low markup, although it changes over time?

23 A Yes, because we have competition in the area.  
24 And if competition is selling gas for a certain price, you  
25 can't just impute any markup you want and you won't even

1 have any sales. So if -- if -- and we have some  
2 competition up the freeway that's a local casino, let's  
3 say, and they give gas away pretty cheap. So you have to  
4 compete with that casino being a small two-pump station  
5 that we are. So I would -- I argue with the State that  
6 you can't just impute any kind of margin to us because we  
7 have to be competitive with the general area.

8 Q Do you feel those OPUS prices are reflective of  
9 what your prices are?

10 A Completely not. I never even heard of OPUS until  
11 it was brought up that that's what the State was using to  
12 impute a profit margin to us when we report everything we  
13 sell.

14 Q Okay. And during the initial audit, did you  
15 review the sales and use tax returns with the related  
16 summary sheet?

17 A Yes.

18 Q And do you believe them to be accurate?

19 A Completely accurate.

20 Q Okay. So and for the Government's Exhibit 1, The  
21 Sales and Use Tax Return, that's what I'm talking about,  
22 and Alfred confirms it's validity. The general -- you  
23 provided a general journal which provides every single  
24 line item for daily sales and every expense on there. Did  
25 you review that?

1           A    Yes, I did.

2           Q    Is it accurate?

3           A    Completely accurate.

4           Q    How about the monthly and profit loss statements  
5 for the audit period, did you review those?

6           A    Yes, I did.

7           Q    Are they accurate?

8           A    They're all completely accurate. I reviewed  
9 those monthly, and I reviewed them again during this audit  
10 period.

11          Q    Have you ever rung up any sales of gas that you  
12 did not ring up on your register?

13          A    No.

14          Q    Did you think any of your employees have rung up  
15 any amount that are not being recorded on the register?

16          A    It could happen. But, you know, like I said, we  
17 do daily checks with the total sales that show up on the  
18 Z-tape at that time versus the gallons that the  
19 underground storage tank say were dispensed. And if there  
20 was a difference, you know, we would -- we would catch it,  
21 hopefully. There's also some theft that takes place. We  
22 don't have the modern credit card machines that they do  
23 outside of the pump.

24                So sometimes travelers would come and say, "Turn  
25 on pump number one." They either give us a credit card or

1 not, and if the cashier trusted them, they have driven off  
2 at certain times. So there is some theft that takes  
3 place. But we'll document that when that happens, and the  
4 cashier will write it on the action sheet for the till so  
5 we can show there's a difference between what was sold and  
6 what was rung up.

7 Q So I appreciate your honesty in that sense that  
8 we can never know for sure if employees are stealing;  
9 correct?

10 A Oh, no, because there's so many different  
11 aspects, but we try to do our best and -- and monitor the  
12 best we can.

13 Q And that's why they have -- the State has a  
14 procedure called pilferage. They'll give you that per  
15 pilferage. But if there's pilferage in gas, you have a  
16 second mechanism to make -- to double check that those gas  
17 sales match the total because you weren't tracking the --  
18 your sales daily. So, you know, for -- so lack of a  
19 better question, it's hard to know if an employee is  
20 pilferage on general items, but you would know if they're  
21 not ringing up gas or ringing up a different price for  
22 gas; correct?

23 A Yes. For gas it would be a lot easier like you  
24 said. Let's say an employee would not ring up a bag of  
25 Doritos. Well, we have decent inventory checks, but we

1 don't have a sophisticated POS systems that, you know,  
2 some businesses do. And even in those businesses it's  
3 tough to track. But with gas it's a lot harder because we  
4 see how many gallons were sold that day.

5 And if there is a discrepancy between the Z-tape  
6 and how many gallons were sold, you know, we would  
7 question the cashier immediately. And if they don't have  
8 an explanation for it, you know, we have to monitor that  
9 cashier and make sure it doesn't happen again. But we --  
10 we'd never really had too much of that problem because the  
11 cashiers knew that we would check the daily gallons  
12 against the total gas rung up on the Z-tape.

13 Q Okay. And where do your fuel wholesalers come  
14 from?

15 A Generally from San Diego. We used a couple. I  
16 believe back then it was SC Fuels and Supreme Oil.

17 Q And when do you change your pricing?

18 A Whenever there's extreme change in the wholesale  
19 price, you know, maybe greater than 20 cents, we would  
20 have to change our pricing. If there's less than 20 cents  
21 changing, we probably would keep it. And then we also  
22 monitor the competition in the area. Usually, they stick  
23 with whatever the prices are going on. But if there's a  
24 general 20 cents or more change, that's when we would  
25 change our price after we get the gas delivered and get

1       invoiced for it.

2               Q    Is your business pretty consistent or sporadic?

3               A    It's pretty consistent.  We've been in operation  
4       since we've owned it since 1995, and our sales are pretty  
5       consistent.

6               Q    Can you just not for too long but just a minute  
7       or two explain why it's consistent just by giving the  
8       Judges just a vision of, you know, the store, its location  
9       and neighborhood type and how, you know, with development  
10      and how it's just been the same.  You want to just  
11      elaborate, you know, quickly about that?

12              A    Yes.  So our business, Pine Valley Store, is an  
13      old store that's been around, I think, since the 19 --  
14      since the 1940s.  There's even some photos of horse and  
15      buggy where old Highway 80 before Interstate 8 was built.  
16      When we took it over, it served as a convenience store for  
17      the town, which, I believe, only had about 3,000  
18      residents.  So there's not a lot of business that comes  
19      from the town because most people that live there work in  
20      the city.

21              So Pine Valley slowly became a place where people  
22      lived, and then also a place where people stopped as  
23      they're traveling between Arizona and San Diego.  And  
24      we've become that small country store serving the  
25      community, serving tourists, serving travelers.  So what

1 that means is the business is going to be consistent  
2 because most travelers that are not business related, are  
3 traveling during the weekends.

4 And then we have a park behind the store that  
5 gets busy during the weekends in the summer as well. So  
6 it's been pretty consistent. The weekend business is  
7 generally more than the weekday business. And since we've  
8 opened the store, it has not really changed. We've had  
9 our ups and downs, but it's been a great store that the  
10 community loves and that we can serve, and then also be a  
11 stop for travelers that run out of gas.

12 Because we're not a big operation, we only have  
13 two pumps, and, you know, we can't compete with, let's  
14 say, the larger gas stations that are in the El Cajon area  
15 which is about 25 miles west of us. So we're kind of the  
16 emergency stop for gas. And then we serve, you know,  
17 homemade pizza and deli sandwiches and so forth to all the  
18 travelers.

19 Q Okay. Thank you. And so you just -- and so in a  
20 bigger picture your role, you had a full time business,  
21 and you have a core staff team and you monitor them daily,  
22 and you set the gas prices when you're going to change gas  
23 prices; correct?

24 A Yes. We set them. Only myself or my father can  
25 authorize the change of gas prices.

1           Q    And would you say that your markup is pretty  
2 consistent year over year? Have you noticed you've  
3 changed your markup, or you kept a pretty reasonable  
4 markup throughout all these years?

5           A    I think we've kept a pretty reasonable markup  
6 throughout all these years. It's not our core business,  
7 but for gas, we're kind of -- we put it all together with  
8 all the services we offer. But we've been pretty  
9 consistent since we've owned the store.

10          Q    And your gas inventory you get -- can you track  
11 gas inventory daily?

12          A    Yes. It's on our UST system. At that time,  
13 again, we just recently upgraded everything per California  
14 regulation, all the underground storage tanks of -- you've  
15 probably seen a lot of gas stations with their ground tore  
16 up. But during this time, we had an underground storage  
17 tank system that every day we would see how many gallons  
18 are in each tank. One, because we needed to monitor when  
19 we need to reorder; and two, to crosscheck against what we  
20 sold for the day.

21          Q    Okay. And had you ever heard of OPUS before this  
22 hearing?

23          A    I have not.

24          Q    How much gas do you consume? How much  
25 self-consumption of gas do you consume for the -- out of



1 the business?

2 A I would say between 30 to 50 gallons per week on  
3 average.

4 Q Is the business far from your home?

5 A It's about 27 miles away from my parents' house  
6 and about maybe 32 miles away from -- from my house. And  
7 going up it's a big grade because you go from zero to  
8 4,000 feet in 27 miles. So you consume a lot of fuel  
9 going uphill and then, obviously, not as much coming  
10 downhill.

11 Q Okay. And when you get gas for yourself, how  
12 does it work?

13 A We would have the cashier write down on -- we  
14 have an action sheet because there's some non-cash  
15 transactions that take place if -- you know, there's some  
16 local businesses that would come in and sign for things,  
17 and they would pay us at the end of the month. So we'd  
18 have to account for that on the daily till. So whatever,  
19 you know, we would consume, we would write it down and  
20 enter it into the cash register. So when we see the  
21 tapes, we'll see that there was some gas acquired by  
22 either myself or my father.

23 Q So the gas was rung up, but you write a slip that  
24 you don't have to provide the cash so the cash balances;  
25 correct?

1           A    Correct.

2           Q    Okay.  So they would ring up your gas sales?

3           A    Yes.

4           Q    Okay.  What sort of point-of-sale system do you  
5 use?

6           A    We had, at the time, a general cash register with  
7 a scanner.  So the cashiers would not have to learn or  
8 remember all the prices in the store.  It would scan items  
9 and then we can total out or enter them in manually.  Then  
10 we had a gas department on that cash register, but it was  
11 not connected.  We did not have the sophisticated POS  
12 systems that some of these larger stations do just because  
13 it was costly.

14                    We had a Gilbarco Fuel Management System that had  
15 our four pumps -- our four dispensers with two pumps.  And  
16 when a customer would come in, they would either buy \$20  
17 in gas.  We would ring up \$20 in gas in the cash register  
18 and then type "20 dollars" on the Gilbarco System which  
19 would dispense \$20 in gas to the -- to the customer.

20                    And other times we would just take credit cards  
21 and leave them on the side until they fill it up, and then  
22 they'd come back in and say we're done with number one.  
23 They bought \$47 worth of gas.  We'd ring it up and swipe  
24 their credit card.

25           Q    Okay.  So is your testimony your cash registers

1 provide the pricing and the totals that come out are just  
2 in the categories for how much you sold based on the  
3 differing categories that you have in the system?

4 A Yes. I believe that's been -- been our issue  
5 with CDTFA is that we didn't have the price per gallon on  
6 the Z-tapes. And we never had price per gallon unless  
7 there were particular instances, like government  
8 employees, that required their credit card system to have  
9 the price per gallon. So those were some of the records  
10 that we provided to show what we were charging for gas  
11 during those times.

12 Q But your daily prices per gas are dealt with --  
13 it should -- you -- every day your system has to have what  
14 the price is outside in the system. That has to be  
15 adjusted?

16 A Yes. Per the Department of Weights and Measures,  
17 they would come test our tanks. We'd have to have the  
18 price per gallon advertised outside on a sign that's  
19 visible to our customers. And then we would get periodic  
20 checks from the Department of Weights and Measures to make  
21 sure, you know, you're dispensing a gallon is an actual  
22 gallon. Because I think there's been issues where people  
23 have those things tampered with.

24 But for us, yes, we had to advertise the price  
25 per gallon. It was registered in our Gilbarco System to

1 dispense how many gallons per dollars that are purchased.

2 Q Okay. Just a few more questions, Mr. Atallah.  
3 During the audit period, did you provide all of the fuel  
4 purchase invoices?

5 A Yes.

6 Q Did you -- were you -- did you provide the  
7 mini-mart purchases cost of goods and consumables for the  
8 audit period?

9 A Yes, I did.

10 Q Were they accurate?

11 A Yes, they were.

12 Q And did you provide the daily Z-tapes for each  
13 and every day for 2007, '08, and '09 for the audit period?

14 A Yes, I did.

15 Q Did you provide them all of the bank statements?

16 A Yes, we did.

17 Q And did you provide the tax returns?

18 A Yes, we did.

19 Q And you signed all of those tax returns; correct?

20 A Yes.

21 Q They're all signed under penalty of perjury;  
22 correct?

23 A Yes, they are.

24 Q So it is your testimony today that all sales are  
25 reported, and you have -- all sales are rung up and

1 reported on your sales tax returns and income taxes  
2 returns?

3 A Yes, they are. We've been very proud,  
4 Mr. Shamoun, that throughout our years in business we've  
5 never been audited. This is actually the first time we've  
6 actually dealt with something like this. And any time all  
7 of our sales tax reports have always passed with flying  
8 colors. We never had any issues with the IRS, FTB, and we  
9 pride ourselves on running a very transparent operation.  
10 That's something that, you know, my dad has always  
11 believed in and instilled in his children and all the  
12 people that work for him.

13 To him, you know, going this far with this was  
14 very important just to show that, you know, if we're going  
15 to be imputed -- we're going to have income imputed  
16 against us, then so be it. But we want to show the CDTEFA  
17 that we provided everything that we can. We're as  
18 transparent as we can be. You know, we hope that -- that  
19 they side with us.

20 MR. SHAMOUN: Okay. I have no further questions,  
21 Your Honor.

22 JUDGE WONG: Thank you. Mr. Shamoun, does this  
23 complete your presentation as well, or do you have  
24 anything further?

25 MR. SHAMOUN: Well, I have the closing argument.

1 So I'd love to make some arguments now besides the opening  
2 statement. But I do have a closing argument that I would  
3 like to close with.

4 JUDGE WONG: Okay. Then we will wait for that  
5 closing. You have an opportunity to present that closing  
6 argument after CDTFA's presentation.

7 MR. SHAMOUN: Yes.

8 JUDGE WONG: This is Judge Wong. First, I would  
9 like to offer CDTFA an opportunity to cross-examine  
10 Mr. Atallah.

11 MR. SUAZO: This is Randy Suazo. We have no  
12 questions.

13 JUDGE WONG: This is Judge Wong. Thank you.

14 Now I'll turn to my co-panelists to see if they  
15 have any questions for either Mr. Shamoun or Mr. Atallah,  
16 starting with Judge Geary.

17 JUDGE GEARY: Thank you. This is Judge Geary. I  
18 think I just have one question for Mr. Atallah.

19 Mr. Atallah, you mentioned competitors, and I  
20 think you said in El Cajon, approximately 25 miles to the  
21 west. But you also mentioned a casino somewhere. Where  
22 is that casino, and in what ways is it a competitor in  
23 terms of gas sales in your region?

24 MR. ATALLAH: It's about, I think, 10 miles or  
25 less east of us. I have to look at the map. It's called

1 Golden Acorn Casino. And then there's also a Shell and  
2 Chevron gas station between us and Golden Acorn that's  
3 right off the freeway. And then there's, I think, one or  
4 two gas stations in the back country that are closer to us  
5 that are smaller businesses. And, you know, the casinos  
6 give away their gas as you know to bring in players. So  
7 they are one of our people we have to -- one of the  
8 competitors we have to watch.

9 JUDGE GEARY: And, actually, I have one other  
10 question or perhaps a series of questions about one other  
11 topic, and it has to do with the Z-tapes. I think that  
12 you mentioned that your Z-tapes do not indicate the price  
13 per gallon of the product sold unless it's a government  
14 employee because for some reason they're required to  
15 provide that information; is that correct?

16 MR. ATALLAH: Yes. It's not on the Z-tape. It  
17 would be on the credit card receipt for that government  
18 employee. I think we provided several. When the  
19 government employee would come in, they use these cards.  
20 I believe they were called Voyager cards during that time.  
21 And when they run their credit card through the machine,  
22 the credit card machine would have to have the price of  
23 gas and how many gallons purchased just so they could show  
24 their superior that their -- you know, what they are  
25 getting and what they paid for gas that day.

1           JUDGE GEARY: Judge Geary again. And for those  
2 government employees who swiped their cards and receive  
3 that kind of information on their receipts, the Z-tapes  
4 would still just show the total amount of price paid for  
5 the gas; is that right?

6           MR. ATALLAH: Exactly. It would show the total  
7 gross dollars received for gas that day for all gallons  
8 sold.

9           JUDGE GEARY: Okay. Thank you.

10          Thank you, Judge Wong. Those are the only  
11 questions I have.

12          JUDGE WONG: This is Judge Wong. Thank you,  
13 Judge Geary.

14          Judge Cho, do you have any questions for either  
15 Mr. Shamoun or the witness?

16          JUDGE CHO: This is the Judge Cho. Just a couple  
17 of quick questions for Mr. Atallah.

18          Mr. Atallah, you mentioned something about a  
19 Gilbarco Gas System. And I was wondering, how do you set  
20 the price on that? You said it's a separate system from  
21 the POS register system; correct?

22          MR. ATALLAH: Yes.

23          JUDGE CHO: So when your prices that you changed  
24 outside of the gas station, the price the consumer sees,  
25 how do you change the price on the Gilbarco System? Do



1       you have a separate machine?

2               MR. ATALLAH: No. It's done through the system.  
3       It's pretty complicated because you have to enter all  
4       these codes. So what we would do typically when we have a  
5       change in price in gas, before we go change it on the  
6       street, we would change it with the Gilbarco System. You  
7       would have to put these codes in. It's a lot easier  
8       today, but back then you'd have to put these codes in and  
9       then for each type of gas you sell.

10              Let's say we only had unleaded gas, so we had  
11       regular, mid- grade and super. You'd have to go to each  
12       category on the Gilbarco System and put, you know, if you  
13       raise the gas 20 cents, you know, unleaded, raise 20  
14       cents, mid-grade raise to 20 cents, and super raise \$0.20.  
15       Once you do that correctly, it would register that price  
16       on the machines outside. So the customers would see the  
17       price of gas for each category on the buttons that you  
18       press. And then we would change the numbers on the sign  
19       outside.

20              JUDGE CHO: This is Judge Cho. Thank you for  
21       that explanation. So is it a separate, like a computer  
22       terminal inside of your convenience store or is it  
23       something you can do remotely?

24              MR. ATALLAH: You cannot do it remotely back  
25       then. I mean, I don't know if today you can with the

1 newer systems. Back then it looked like a -- I don't have  
2 a picture of it. But it looked like a, you know, a  
3 large -- you know, probably about this big little system  
4 with a bunch of -- a bunch of buttons. And then you could  
5 see, like, the different readouts for each pump. So pump  
6 1, pump 2, pump 3, pump 4 would be in red, and the prices.  
7 So when somebody would come in and give us a, let's say,  
8 \$20, we would take that \$20, ring it up in the register,  
9 and go to the Gilbarco and put pump number 1, \$20, enter,  
10 and it would dispense \$20 worth of gas on pump number 1.

11 JUDGE CHO: This is Judge Cho. Thank you. So  
12 did that Gilbarco System have any kind of a record-keeping  
13 capability? Did it tell you, like, your, average -- did  
14 it have any kind of printout of any sort?

15 MR. ATALLAH: No.

16 JUDGE WONG: Or any kind of way of accessing the  
17 data?

18 MR. ATALLAH: No. Only that we would be able to  
19 see what gallons what we sold per day. That was tied into  
20 our underground storage tank system. So every morning,  
21 whoever opens would come and take the readout of how many  
22 gallons are in the tanks, and we would compare that with  
23 the previous days, and we would know how many gallons of  
24 gas were dispensed.

25 JUDGE CHO: This is Judge Cho. Thank you for the

1 explanation. Those are the only questions that I had.

2 JUDGE WONG: This is Judge Wong. Thank you.

3 I think I only have one or two questions for  
4 Mr. Atallah. You described the location of your gas  
5 station. I just wanted to probe that a little bit. So is  
6 it near -- you said near an off-ramp or a freeway or a  
7 highway, or is it located at a cross section? Or --

8 MR. ATALLAH: We're about one mile off the  
9 freeway, off the Pine Valley exit. So you can't see our  
10 store from the freeway but, you know, people know it's  
11 there. Not like the casino which has a huge sign right on  
12 the freeway and the Chevron and the Shell which have huge  
13 signs right on the freeway. So we're on Old Highway 80,  
14 which is the old highway that was the predecessor to  
15 Interstate 8.

16 JUDGE WONG: This is Judge Wong. And how close  
17 are your nearest competitors, like, what mile radius or  
18 half-mile radius is it? Are you -- do you know that?

19 MR. ATALLAH: I don't know exactly, Judge Wong,  
20 but I can estimate if you would like.

21 JUDGE WONG: Sure.

22 MR. ATALLAH: And I think this could easily be,  
23 you know, found on Google. But there's Golden Acorn, I  
24 think, is 10 miles. There's the Chevron and Shell that's  
25 between us and Golden Acorn maybe like 7 or 8 miles.

1 There's a store in Descanso, the Descanso Junction, that's  
2 probably about four miles away from us. And then, you  
3 know, there -- I think there might be one more around  
4 Julian, which is -- it's not so far in miles, but it's far  
5 in having to turn and go through the mountain to get  
6 there.

7 JUDGE WONG: This is Judge Wong. Thank you. And  
8 do you or some of your employees keep track of what your  
9 competitors are charging for gasoline? And if so, how did  
10 you do that?

11 MR. ATALLAH: Well, today it's much easier with  
12 internet. They have this thing called GasBuddy. So you  
13 don't even have to go anywhere. You can just log on and  
14 you can see what everybody is charging. But back then,  
15 you know, one of us kind of -- always went up the mountain  
16 during the week, so we would check the major, you know,  
17 the casino. We would check the Descanso market, and we  
18 would check also the prices in El Cajon, which are really  
19 low for the city. They're probably one of the lowest, I  
20 would say, in all of San Diego County.

21 So we would check all those prices and kind of  
22 get a general idea of what's going on in the market. It  
23 wasn't a, you know, full-proof way to kind of know if  
24 you're being competitive but, you know, you knew you were  
25 within the range of your surrounding competitors.

1 JUDGE WONG: This is Judge Wong. And that was  
2 done on a weekly basis or every couple of days?

3 MR. ATALLAH: I would say probably every couple  
4 of days. But we would also know, Judge Wong, when we get  
5 a change in the wholesale price. Because usually when  
6 prices stay steady, the competitors wouldn't change too  
7 much because everybody is doing what they're doing. But  
8 when prices would change -- when we would get a price  
9 change, then we would go to make sure what everybody was  
10 selling for.

11 And there were times where, you know, sometimes  
12 we would buy gas at a higher price, and we wouldn't be  
13 able to raise our price because the competitor had bought  
14 it a week before. And they had that week to make a little  
15 bit of their margin or didn't raise their price. So there  
16 were times where we actually broke even or even lost money  
17 during those periods.

18 JUDGE WONG: This is Judge Wong. Thank you very  
19 much. Those are all the questions I had for now. Now,  
20 we'll turn to CDTFA for their presentation.

21 You have 20 minutes. Thank you.

22

23 PRESENTATION

24 MR. SUAZO: This is Randy Suazo.

25 The Appellant operates a gas station with a

1 convenience store and a take-out restaurant in Pine  
2 Valley, California. The Appellant has three main revenue  
3 streams for taxable sales; taxable sales of food -- fuel,  
4 taxable mini-mart sales, and taxable sales of pizza. The  
5 business is located near on and off ramps for  
6 Interstate 8.

7 The Department performed an audited examination  
8 for the period of April 1st, 2007, through  
9 March 31st, 2010. This was the Appellant's first audit.  
10 The Appellant provided federal income tax returns for  
11 years 2007, 2008, 2009, monthly income statements, and  
12 very few sales invoices to customers for the audit period.  
13 Initial comparison of recorded sales per income statements  
14 reveals no differences with amounts per Appellant's sale  
15 and use tax returns, Exhibit D, page 112.

16 The Department's computation of audited taxable  
17 sales includes separate calculations for fuel sales,  
18 taxable mini-mart sales, restaurant sales, and the  
19 disallowed claimed exempts food exception. The pizza  
20 sales were considered reasonable and accepted. Taxable  
21 mini-mart sales were calculated by the Appellant by  
22 segregating taxable and nontaxable mini-mart purchases and  
23 marking up recorded taxable mini-mart purchases by  
24 35 percent and reporting sales tax on the calculated  
25 sales; Exhibit D, pages 102 and 103.

1           Review of the Appellant's segregation disclosed  
2           that some taxable items were segregated as nontaxable,  
3           therefore, an adjustment was made. Computation of the  
4           disallowed claimed food exemption is based on the actual  
5           cost of taxable items misclassified as exempt food  
6           products. Misclassified purchases were marked up using  
7           the same 35 percent markup as recorded taxable sales.  
8           Both the cost amounts and the estimated markup percentage  
9           were provided by the Appellant; Exhibit D, pages 106 to  
10          109.

11           Audited taxable sales were calculated using the  
12          Appellant's actual gallons of fuel purchased and applying  
13          quarterly average per gallon sales prices for fuel grade  
14          adjusted for Appellant's price differentials. A markup  
15          approach was not used to establish audited fuel sales.  
16          Since Appellant did not have records of its fuel prices  
17          for the audit period, the Department had to estimate the  
18          sales prices. The Department obtained weekly retail  
19          gallon sales prices of fuel from the United States  
20          Department of Energy; Exhibit F.

21           The U.S. Department of Energy is a federal agency  
22          that provides independent statistics and analysis of fuel  
23          selling prices. Separate data is available for each state  
24          and for certain large cities or regions, including the  
25          Los Angeles and San Francisco regions. No separate data

1 is available for San Diego County.

2 The Department noted that the per gallon selling  
3 prices per U.S. Department of Energy for Los Angeles  
4 region were less than statewide averages. Therefore, the  
5 Department transcribed weekly Los Angeles region fuel  
6 prices for all grades of gas for the period of  
7 January 1st, 2001, through May 17, 2010. The Department  
8 then computed the average monthly and quarterly per gallon  
9 prices; Exhibit D, page 74 to 87. The quarterly per  
10 gallon selling prices were per U.S. Department of Energy  
11 were weighted using percentages provided by the Appellant,  
12 that is 82 percent for regular fuel, 8 percent for  
13 mid-grade, and 10 percent for premium fuel; Exhibit D,  
14 pages 72 and 73.

15 The Department then obtained per gallon selling  
16 prices information for the Appellant's gas station for the  
17 most -- for most of the audit period, second quarter 2007  
18 through fourth quarter 2009, from Oil Price Information  
19 Service, often referred to as OPUS. OPUS is a company  
20 that collects and provides actual sales prices for gas  
21 stations. The OPUS information obtained on Exhibit D,  
22 page 88, are the Appellant's average selling prices  
23 observed for the sale of regular fuel at the Appellant's  
24 gas station by quarter.

25 The Department compared the Appellant's average



1 quarterly per gallon sales price for regular fuel and U.S.  
2 Department of Energy average per gallon selling prices for  
3 regular fuel for the corresponding periods. The  
4 Department found that the Appellant's per gallon selling  
5 prices were anywhere from 31 cents to 57 cents more than  
6 the U.S. Department of Energy average per gallon selling  
7 prices. This means the Appellant charged an overall  
8 13.82 percent greater amount charged per gallon than U.S.  
9 Department of Energy reported for the Los Angeles area;  
10 Exhibit D, page 88.

11 The quarterly weighted per gallon selling prices  
12 per U.S. Department of Energy were increased by quarterly  
13 price differential to obtain the weighted per gallon sales  
14 price per period. For the first quarter 2010, OPUS  
15 information was not valuable, so the average price  
16 differential is used. The Department multiplied the  
17 weighted per gallon sales price, net of sales tax with the  
18 gallons of fuel purchased to compute audited taxable sales  
19 of fuel for the audit period; Exhibit D, page 72.

20 The Department then combined all audited sales of  
21 fuel, mini-mart and restaurant, to arrive at audited  
22 taxable measure. After credit for reported taxable sales,  
23 understated taxable sales of over \$174,000 was noted. In  
24 support of the audited understatement, the Department  
25 offers the following: During the audit period, the

1 Appellant provided the Department with nine receipts that  
2 showed examples of what they charge customers. The  
3 Decision and Recommendation dated March 16, 2016, noted  
4 that by using the Appellant's supplied receipts, the  
5 assessment would go up as the overall price differential,  
6 based on OPUS, of 13.82 percent would increase 18 percent,  
7 which would increase the established liability; Exhibit A,  
8 page 13.

9 As part of the appeals process on  
10 September 4, 2020, the Appellant provided documentation  
11 that included additional gasoline sales receipts for 13  
12 customers with applicable gasoline purchase invoices from  
13 the Appellant's suppliers. The receipts and purchase  
14 invoices were from December 15th, 2008, through  
15 December 18, 2009, a full one-year period. Review of the  
16 exhibits disclose markups ranging from a low of  
17 18.93 percent to a high of 35.33 percent. The average  
18 markup for this one-year time period was 24.97 percent,  
19 which is almost identical to the audited markup of  
20 24.98 percent for the audited mark -- or the 2009 period;  
21 Exhibit H and Exhibit I.

22 This analysis shows that audited amounts are  
23 accurate and reasonable. The analysis also disclose that  
24 the Appellant's recorded markups are not reliable;  
25 Exhibit D, page 91. Yet, the Appellant's 24.9 percent

1 markup, Exhibit H, page 214, is applied to audited  
2 purchases for the audit period. Fuel sales would increase  
3 to almost \$3.2 million, and unreported taxable sales would  
4 be \$419,000 instead of the \$174,000 computed by the  
5 auditor, thereby, increasing the assessment by \$245,000.

6 The Appellant continues to contend the U.S.  
7 Department of Energy prices for Los Angeles are greater  
8 than would be found in Pine Valley. The Department's  
9 evidence shows the opposite. Again, during the appeals  
10 procedure process, the Appellant provided copies of credit  
11 card receipts obtained from customers who they stated --  
12 who were stated to be, by the Appellant, government  
13 employees making purchases of unleaded fuel; Exhibit G,  
14 pages 200 to 208. It is unknown if these customers  
15 required a special rate as government employees, or if  
16 these were the Appellant's normal selling prices.

17 A comparison of the sales prices for the nine  
18 credit card receipts covering mid-December 2008 through  
19 November 2009 with corresponding U.S. Department of Energy  
20 selling prices for the Los Angeles region, Exhibit F,  
21 page 192, shows an overall increase price differential of  
22 over 41 cents per gallon, Exhibit A, page 48, meaning the  
23 Appellant's sales prices were on average more than 41  
24 cents per gallon higher than the average sales price for  
25 the U.S. Department of Energy amounts for the Los Angeles

1 region. The OPUS price differential for the same time  
2 period was almost identical.

3 The Department also conducted as a search of the  
4 Appellant's stated sales prices for fuel on the internet  
5 and found gasoline fuel prices for five separate dates;  
6 Exhibit G, pages 209 to 213. The Department compared the  
7 Appellant's weighted sales prices by grade to  
8 corresponding U.S. Department of Energy stated prices;  
9 Exhibit F, pages 2009 to 2013 -- excuse me. All prices  
10 for all grades sold by the Appellant were higher than the  
11 Los Angeles prices.

12 Thus, evidence shows the Appellant's selling  
13 prices of fuel is greater than the Los Angeles region U.S.  
14 Department of Energy averages. Price differential used in  
15 the audit, based on OPUS, is reasonable and fair. It  
16 should be noted, again, that the audit method is based on  
17 the number of gallons purchased and the sales price per  
18 gallon. The Department did not mark up the dollar value  
19 purchases of gasoline and, therefore, a change in the  
20 Appellant's markup on each gallon does not impact the  
21 accuracy of Department's audit results.

22 In addition, for the audit period, the Department  
23 used Appellant's actual sales prices, per OPUS pricing, to  
24 calculate average quarterly sales prices for each grade of  
25 gasoline, which were then multiplied by gallons of

1 gasoline purchased as calculated from the amount of sales  
2 tax per gallon the Appellant prepaid to its gasoline  
3 vendors.

4 The Department reasonably accounted for the  
5 Appellant's price changes throughout the audit period.  
6 And, therefore, these price changes do not impact the  
7 accuracy of the audit results. Further, Appellant has  
8 provided no better sales price information which can be  
9 used to calculate more accurate gasoline sales prices per  
10 gallon during the audit period.

11 As to the Appellant's argument concerning the  
12 ratios of gasoline grade used, the Department used the  
13 ratios provided by the Appellant in the appeals  
14 conference, Exhibit D, page 73, even though the Appellant  
15 provided no records from within the audit period from  
16 which to establish his ratios. Appellant has not provided  
17 any basis for the current desire to use a different ratio.

18 In summary, Appellant failed to provide necessary  
19 records for the audit. The Department's indirect testing  
20 and evidence presented show the Appellant has understated  
21 their taxable sales liability. The Appellant has not  
22 provided any substantive documentation to support  
23 adjustments to the audit findings. Therefore, Department  
24 requests that the Appellant's appeal be denied.

25 This concluded my presentation. I'm available to

1 answer any questions you may have.

2 JUDGE WONG: This is Judge Wong. Thank you.

3 I'll now turn to my co-panelists for any  
4 questions they may have for CDTFA, starting with  
5 Judge Geary.

6 JUDGE GEARY: I have no questions for the  
7 Department. Thank you.

8 JUDGE WONG: This is Judge Wong. Thank you.

9 Judge Cho, do you have any questions for CDTFA?

10 JUDGE CHO: This is Judge Cho. Just a couple of  
11 questions. According to Appellant, they said they  
12 provided all the Z-tapes to CDTFA, is that correct, CDTFA?

13 MR. SUAZO: I believe they did supply Z-tapes.  
14 The problem with the Z-tapes is they didn't have price per  
15 gallon. Most of the time when you get a POS report, it's  
16 going to have that. And at the end of every shift change,  
17 that normally happens at a gas station, is that you will  
18 have gallons sold times selling price to see if -- to get  
19 the sales of the gallon to make sure that the person in  
20 charge of the register is ringing it up correctly, and  
21 there's no shortage.

22 That was not provided. There should have been  
23 worksheets on a daily basis for every shift change  
24 available along with the -- since they didn't have a POS  
25 testimony.

1           JUDGE CHO: Okay. This is Judge Cho. Thank you  
2 for the explanation. So because it didn't have the price  
3 per gallon, CDTFA, it's your position that those Z-tapes  
4 are unreliable; is that correct?

5           MR. SUAZO: That would be accurate.

6           JUDGE WONG: Okay. This is Judge Cho. Thank  
7 you. But is there any dispute as to Appellant's prior  
8 testimony that -- wherein Mr. Atallah kind of explained  
9 the process, and he stated that they would kind of  
10 reconcile at the end of the day all the gallons that were  
11 sold. And he said that because of the type of sale here,  
12 which is the sale of fuel, that it would be very difficult  
13 for the employee or anybody to make an error with respect  
14 to the sale of gasoline.

15          MR. SUAZO: That's right.

16          JUDGE CHO: Does the Department have any --

17          MR. SUAZO: Go on.

18          JUDGE WONG: Does the Department have any kind of  
19 response to that testimony today?

20          MR. SUAZO: That's why you would have a worksheet  
21 if you didn't have it on a POS so that you would see  
22 number of gallons sold times selling price per the shift  
23 to equal the number of -- the dollar value of sales for  
24 regular, for premium, and for the mid-grade. That way  
25 when they balance out at the end of the night, you would

1 balance it back to the register, plus the food sales, plus  
2 the pizza sales, plus the taxable items such as beer,  
3 liquor, what-have-you, and would balance out. So you  
4 would have to have that to make sure you're not being  
5 short changed.

6 JUDGE CHO: This is --

7 MR. SUAZO: If they had that, that would be a  
8 reason why their -- why they can't find the difference.

9 JUDGE CHO: This is Judge Cho. Thank you very  
10 much. That's the only question that I had.

11 JUDGE WONG: Thank you, Judge Cho.

12 This is Judge Wong. I also had a couple of  
13 questions for CDTFA. Could you address Appellant's  
14 argument for self-consumption and shrinkage allowances.

15 MR. SUAZO: The self-consumption you would still  
16 have to pay tax on the -- on the cost of the gas. So, you  
17 know, you would only save on the markup portion, or I  
18 guess the markup portion of the difference between the --  
19 what the gas is purchased at and what it was selling at,  
20 depending on if it was rung up at all.

21 And the other thing about the shrinkage,  
22 basically -- I'll just read what I have here. Request for  
23 spillage and evaporation adjustments, the Department first  
24 notes that the Appellant has presented no calculations or  
25 documents to establish the amount or frequency of these



1 types of gasoline losses that it alleges occurred in the  
2 audit period. Thus, Appellant has failed to quantify its  
3 request for an allowance.

4 Next the Department considers possible reasons  
5 for such alleged losses of gasoline. If spillage occurred  
6 during delivery by suppliers to the Appellant's tanks, we  
7 would expect the Appellant would receive a reduction in  
8 the number of gallons delivered with the corresponding  
9 price reduction per credit on its final purchase invoice.  
10 Therefore, this scenario would already be accounted for in  
11 the Department's audit method.

12 Based on the actual number of gallons  
13 successfully delivered, if spillage occurred when a  
14 customer is filling his or her vehicle tank, this spilled  
15 gasoline was first purchased by the customer and sold by  
16 the Appellant when it passed through the meter in the  
17 pump. So regardless, if some gasoline is occasionally  
18 spilled by customers, Appellant nevertheless sold the  
19 spilled gasoline, prompting sales tax to be due on the  
20 entire sale. That's if you had a prepay.

21 If you didn't have a prepay, I doubt that -- I  
22 seriously doubt that there would be much spillage at all  
23 that they would give a customer an allowance for, because  
24 once you start spilling a little bit, you're going to  
25 stop. You're not going to spill over a quarter of gallon

1 or a tenth of a gallon because you'll end up smelling like  
2 gasoline. So you would automatically stop.

3 So I think that addresses your concern there.

4 JUDGE WONG: This is Judge Wong. Thank you. And  
5 I just had one last question regarding a line in the  
6 Decision and Recommendation. So CDTFA calculated a  
7 bookmark up of 14.35 percent for gasoline for the audit  
8 period, but D&R mentions that CDTFA expected a  
9 higher-than-average markup around 20 percent for gasoline.  
10 And I was just wondering how CDTFA arrived at that  
11 20 percent markup.

12 MR. SUAZO: Basically, if you were to look at the  
13 markup -- if you were to get the invoices that they  
14 supplied us and then you look at the purchases that you  
15 have to go against those receipts that they supplied us,  
16 it's showing 24.98 percent. So you're asking them to  
17 accept 14-point-something versus 24.98, which is already,  
18 you know, shown to be there. And that's in exhibit -- I  
19 believe that's in Exhibit H.

20 MR. PARKER: Sorry. Go ahead, Randy.

21 MR. SUAZO: I believe that's in Exhibit H when he  
22 calculated the markup after they gave us the items. It  
23 was calculated out for 2000 -- end of 2008, almost end of  
24 2009 period, the 24.98, if you look at exhibit H. And  
25 what the recorded markup was after you take out the tax

1 included and the prepay, it's 14.98. So the overall  
2 audited markup I believe is on page 91; Exhibit D,  
3 page 91.

4 Recorded mark ups for a three-year audit period,  
5 if you would look at the recorded book markup, it's 14.35.  
6 If you look at the post-audit markup, it's 21.57. So --  
7 and, again, if you look at the Exhibit H, it's actually  
8 24.97 for that last period, which is almost identical to  
9 24.98 post-audit markup. It's a 100th of a percent off.

10 MR. SHAMOUN: And that is based on the nine  
11 receipts. These are just based on the nine receipts that  
12 we found that compared to OPUS pricing that day; correct?

13 JUDGE WONG: Hi this is Judge Wong. You'll have  
14 a -- sorry. Mr. Shamoun, you'll have a chance to address  
15 CDTFA's arguments on your rebuttal and closing. Right now  
16 it's just questions by the panel for CDTFA on their  
17 arguments.

18 MR. SHAMOUN: Yeah. I'm sorry, Your Honor. I  
19 just wanted to clarify just for all of us to understand  
20 what any markup that was just based on. I just want to  
21 make sure that you understood that it was just based on  
22 those nine receipts. And I just -- I apologize, Your  
23 Honor. I should not have interrupted. Sorry.

24 JUDGE WONG: This is Judge Wong. No, it's okay.  
25 Thank you.

1           MR. SUAZO: That's why it was important for the  
2 taxpayer to have the actual prices on a daily basis, you  
3 know, at best. That way they would be able to show.  
4 However, like I said before, normally if you're doing a  
5 gas station back in the day -- well, back in the late 70s  
6 early 80s when I was running a gas -- when I was doing a  
7 gas station, you always had a worksheet at the end of the  
8 shift, and you would multiple the number of gallons that  
9 comes off the little -- there's a little meter reader --  
10 times the average selling -- times the price per gallon to  
11 calculate your sales of unleaded, premium, and mid-range.  
12 You total them all up, and then that would be your  
13 gasoline selling prices.

14           He should have had a worksheet, something like  
15 that, that he could provide to the auditor because that  
16 would clarify what the prices were for unleaded, mid, and  
17 premium. He did not supply that. I don't know if he  
18 didn't have it, or they don't use it, but that would have  
19 helped him greatly. If he would have had a POS system,  
20 that would have also helped him greatly.

21           JUDGE WONG: This is Judge Wong. Oh, Mr. Parker,  
22 you had -- you were interjecting. Did you want to --

23           MR. PARKER: Yeah. Thank you, Judge Wong. This  
24 is Jason Parker. I just want to add on that when we  
25 conduct the audits, we noticed that the recorded markup

1 was around 14 percent. The 20 percent is based on the  
2 auditor's knowledge of conducting similar types of  
3 businesses audits and the field officer's knowledge of  
4 that area.

5 So they -- their understanding was that the  
6 markup that was recorded was lower than what they  
7 expected. So they needed to do further investigation and  
8 testing. That's what warranted it, not that we were  
9 looking to mark it up 20 percent. That was just their  
10 knowledge to warrant for their investigation.

11 MR. SUAZO: And, again, the audit is not based on  
12 a markup. The audit is based on the selling price times  
13 gallons. It's not a markup.

14 JUDGE WONG: This is Judge Wong. Thank you.

15 I note that Mr. Suazo has made some statements,  
16 like factual statements regarding his own personal  
17 experience, I guess in the 70s and 80s and what should  
18 have been done. I just want to note that Mr. Suazo is not  
19 under oath and is not testifying to any facts, unless he  
20 wants to be subjected to -- no. Okay. I just want to  
21 clarify. Thank you.

22 MR. SUAZO: Sorry about that.

23 JUDGE WONG: No. No worries.

24 Okay. That's all the questions I had for CDTEFA.  
25 And now it's Appellant's opportunity to offer rebuttal and

1 closing remarks.

2 And you have 15 minutes for that. You actually  
3 have a little leeway because you didn't use all of your  
4 time on opening. Mr. Shamoun, your rebuttal and closing  
5 remarks.

6

7

CLOSING STATEMENT

8

MR. SHAMOUN: Thank you, Your Honor.

9 I wish that we had the opportunity to cross -- to  
10 have the testimony of the actual auditor. If this was a  
11 normal trial, I would object to just the prior comments as  
12 hearsay if we're going to be making comments of what the  
13 auditor was, you know, thinking or doing or how they  
14 were -- were handling this.

15 We had requested the auditor to be here so that  
16 we would not have to go off the written documents as to  
17 what took place. But unfortunately, we were denied that  
18 opportunity to bring the auditor here. I felt it was  
19 imperative that we talk to the auditor about why -- why  
20 they felt it was necessary to use OPUS when adequate  
21 records were provided.

22 If you look at the overall theme right now of  
23 just the previous statements that were stated by the  
24 Respondent, it's a method of --there are some people who  
25 would write down their daily total on a per day basis.

1 There are examples of -- of records that could have been  
2 and would have proven what the actual daily prices were,  
3 but we're missing the big picture here.

4 It's what -- this is not required. And if it's  
5 not required, and although I know it was not helpful, then  
6 it should not be a factor that you take into  
7 consideration. In a nutshell, based on my 20 years of  
8 experience, I know of no successful argument regarding the  
9 use of OPUS selling prices.

10 The CDTFA has successfully hidden behind the fact  
11 that the OPUS methodology is not obtainable. In  
12 anticipation of this hearing, we subpoenaed OPUS to get  
13 their methodology and their records as to how they come up  
14 the prices, how accurate they come up with the prices, and  
15 just to get some more validating information as to the  
16 validity of OPUS, why it's used and why the government  
17 uses it. Unfortunately, we've got nothing.

18 Nothing was submitted in an exhibit to this  
19 hearing as to OPUS, why it's used, its validity, and why  
20 it is still relevant until today. They have provided a  
21 third party, the government. The State has provided a  
22 third-party system with no back up, no authentication,  
23 nothing to prove why it's relevant, its methodology, and  
24 whether it's even accurate. We have nothing admitted into  
25 evidence today about OPUS overall.

1           But the underlying question becomes is why do we  
2 use OPUS? Simply, why do we use OPUS? On page 5, lines  
3 15 to 16, the CDTFA stated that, "Petitioner did not  
4 provide any source documents, such as cash register  
5 tapes." However in the audit comments, Exhibit E,  
6 page 144, state that cash register Z-tapes were provided.  
7 Z-tapes are a summary of sales.

8           The report is misleading and that they should  
9 have said a daily Z-tape that has every single sales item  
10 that list the retail price for everything was not  
11 provided. No, it was not provided, nor do we have those  
12 records, nor do we have the capability. The only records  
13 and books that were provided were daily cash register  
14 tapes so the Department could verify -- so that -- but  
15 they could not provide the daily selling prices.

16           On page 11, lines 15 though 18 of Exhibit A, it  
17 states, "Petitioner provided nine sales receipts, source  
18 documents, for sales during the audit period." The  
19 Department concluded that the retail selling price of the  
20 fuel, per those nine receipts, were substantially  
21 consistent with petitioner's average selling prices  
22 obtained by OPUS and then, therefore, gave credibility to  
23 OPUS's pricing.

24           Bottom line is CDTFA is justified in using  
25 alternative methods when there's a basis of no supporting



1 documents. As you'll see in Exhibit E, page 44,  
2 Petitioner provided books and records, everything;  
3 everything that is required by an individual to provide,  
4 daily receipts, bank statements that match, tax returns  
5 that match sales tax returns, no unreported deposits,  
6 everything accurately.

7 We were able to provide nine sales receipts that  
8 we found. We were hopeful that if we could find that  
9 receipt and look at Google street view and get the date  
10 and find something that would show to them that what we  
11 have shown to the State of what we were selling on that  
12 day matched that receipt. Unfortunately, it's hard to  
13 sometimes go back and put something together when you  
14 never knew you had to do it in the first place.

15 Petitioner, we -- our main argument, CDTFA is not  
16 justified in using an alternative method to calculate  
17 sales because adequate records were produced including  
18 source documents. We could run inferences. The State  
19 could run inferences on average markup or what they should  
20 have done. But as we all know every store is different.  
21 We tried to draw similarities, and we do this when we  
22 don't have records, when you don't have sales, when you  
23 have excess deposits, not when you have a clean and set  
24 accurate set of books with an additional protocol that  
25 there could not be theft by an employee because it would

1 be noticed in the tracking of the total sales.

2 It makes our argument stronger that its sales in  
3 trying to come up and make this argument with you on  
4 average markup for a business in a store. This is not  
5 that. And we have to be clear. We could look at the  
6 markup. We could look at this. We could look at all how  
7 we tried to see if OPUS is correct. But as the State just  
8 said, the adjustment was made simply by taking fuel  
9 purchases which is good. It's pretty accurate. You got  
10 purchase sales numbers. So that would fluctuate as far  
11 as, you know, you have purchases of gallons, this is your  
12 selling price.

13 So that would account for all that. But the  
14 bottom line is the selling price is what we recorded and  
15 what we provided sales tax on. All source documents were  
16 given. There is not enough reason to not take the  
17 documents that were provided and claim falsely that  
18 adequate books and records were not provided. There's  
19 nothing that was not provided that this individual  
20 taxpayer provided. Even cost of goods sold, receipts were  
21 given. They looked at everything.

22 It was not ultimately until they decided to use  
23 the OPUS numbers to create a liability. When the CDTFA  
24 uses alternate methods to establish sales, it's been their  
25 longstanding policy at the CDTFA to use two or more

1 methods to estimate sales comparing the results of one  
2 method against the results of another method. The Audit  
3 Manual 0407.05 indicates the following sources of  
4 information and procedures have been found useful in  
5 determining probable sales; bank deposits,  
6 Section 0405.25, they were provided; gross profit and net  
7 worth analysis test, Section 40406.4; income tax returns,  
8 sections 0406.5, purchase plus markup.

9 If enough of information is available to do so,  
10 the auditor should use two or more of these methods to  
11 come up with an alternate method. That was not done here.  
12 Bank statements were also provided, and they were ignored.  
13 The CDTFA speculated here. Purely speculated. One  
14 speculation was the amount of income that the taxpayer  
15 made. \$100,000 per year was the profit. It was looked at  
16 as if it was odd.

17 We don't have -- if this is one of those cases  
18 where let the document speak for themselves. I'm not here  
19 as the attorney. And even to prepare for this it was  
20 difficult to create an argument. Our argument is we  
21 provided everything. We've given the government  
22 everything. There isn't any reason to believe that this  
23 taxpayer underreported sales. They were accurate. All  
24 records were provided.

25 One methodology was used, which was OPUS pricing

1 based on speculation that this store should have a higher  
2 markup. This store should do this and -- loose, loose  
3 analogies, not really relevant to the overall case. Yes,  
4 we worked on it a long time. And when I wanted to bring a  
5 representative from the agency to talk about OPUS, to talk  
6 about when it's used and often and why, we were denied  
7 that opportunity.

8 And when I wanted to the opportunity to bring the  
9 auditor here to see why it was used and why they felt that  
10 what was provided was not adequate, we get hearsay  
11 statements provided by the two individuals from the state  
12 regurgitating what they read through the audit report.  
13 The documents speak for themselves. All sales were  
14 recorded. Many methodologies were looked at to see if  
15 there's any underreported sales. It wasn't -- this was  
16 the last draw of the auditor. I was there during the  
17 audit 10 years ago, and I still remember it.

18 And we ended up at OPUS because all other  
19 methodologies didn't work to create a liability. We  
20 believe that the CDTF has not fulfilled their burden,  
21 have not fulfilled their requirements to use alternate  
22 methods, and should not assess an additional tax to the  
23 Petitioner in this case.

24 JUDGE WONG: This is Judge Wong. Does that  
25 complete your rebuttal and closing, Mr. Shamoun?

1 MR. SHAMOUN: Yes, Your Honor.

2 JUDGE WONG: Thank you. And now I will turn to  
3 my panel for any final questions they may have for the  
4 parties.

5 MR. SHAMOUN: I'm sorry, Your Honor. Can I make  
6 one final comment? I'm so sorry.

7 JUDGE WONG: Sure. This is Judge Wong. Go  
8 ahead, Mr. Shamoun.

9

10 FURTHER CLOSING STATEMENT

11 MR. SHAMOUN: Yes. Thank you, Judge.

12 I wanted to comment real quick. We talked about  
13 the two issues as far as pilferage and self-consumption,  
14 and I just wanted to give our arguments on those two  
15 points that I forgot to touch on in my closing. The paper  
16 was underneath.

17 An adjustment should be made for shrinking of  
18 inventory to account for pilferage, spoilage, theft,  
19 natural disasters, fire losses where operable. When  
20 shrinkage is present, the state can allow up to 1 percent  
21 of the cost of these items. We would argue to at least,  
22 if an adjustment -- a full adjustment is not made but an  
23 adjustment to be made for pilferage.

24 And also one fact that I would like to point out  
25 is that the selling prices obtained by OPUS from the

1 Department of Energy are selling -- and I would have loved  
2 to have been provide more information, but they don't give  
3 you any information. But this is, we do know, is that  
4 their selling prices are for every Monday. So they track  
5 their selling prices for every Monday.

6 The monthly average selling price is computed by  
7 adding the selling prices from every Monday and dividing  
8 it by the number of Mondays in the month. And the  
9 quarterly average selling prices for OPUS are set up by  
10 these monthly Monday averages. Because OPUS uses a Monday  
11 daily average, and we had submitted other evidence and  
12 submitted in our written brief as to arguments on the  
13 dates that they found receipts on prices, that we feel  
14 that OPUS is flawed and that even its methodology of  
15 tracking only Mondays is not really reflective.

16 And if -- you know, our main argument is we  
17 should not have to use OPUS. And attacking it in that way  
18 is that it is we don't need OPUS. However, if it is  
19 applied, I do like to just call out the flaw in OPUS being  
20 used in the sense that it tracks pricing every Monday.  
21 But for all intents and purposes, it's not whether OPUS is  
22 valid, although I point that there are -- we can't prove  
23 its strength, and we can't prove its validity and its  
24 methodology and, therefore, it should not be used. But at  
25 the very least, I don't want to stray. We provided

1 accurate records. We don't need to be using OPUS to  
2 determine what our sales are.

3 Thank you.

4 JUDGE WONG: This is Judge Wong. Thank you,  
5 Mr. Shamoun.

6 And now I'll turn to my panel for any final  
7 questions that they might have for either Appellant or  
8 CDTFA.

9 Mr. Atallah, are you also available to answer any  
10 questions the panel might have, any final questions?

11 MR. ATALLAH: Yes. I'm here still.

12 JUDGE WONG: This is Judge Wong. Thank you. And  
13 just to remind you that you are still under oath if the  
14 panel does have any questions for you.

15 I'll turn to Judge Geary for any final questions.

16 JUDGE GEARY: Hi. This is Judge Geary. I don't  
17 have any questions at this time. But, Judge Wong, could  
18 you circle back to me after Judge Cho in the event -- if  
19 he asks questions, in the event I have some follow up.

20 JUDGE WONG: This is Judge Wong. Certainly.

21 JUDGE GEARY: Thank you.

22 JUDGE WONG: Judge Cho, any questions for either  
23 party or the witness?

24 JUDGE CHO: This is Judge Cho. Yes. I have a  
25 question for Mr. Atallah.

1           So after I had asked Mr. Suazo about the Z-tapes  
2           and why they're not reliable, explained that in order to,  
3           I guess, reconcile the two, you would need to know the  
4           sales price. So I was wondering, when you reconciled on a  
5           daily basis, you have your total gallons sold, and I  
6           believe you said you got that from the Gilbarco System,  
7           and then you have your total sales that you received from  
8           your POS register from the register system, how did you  
9           ensure that those two numbers matched without knowing the  
10          sales price for the day?

11           MR. ATALLAH: We do know the sales price for the  
12          day, Your Honor. Every day -- I mean, the sales price is  
13          advertised and it's on our Gilbarco System. So we do know  
14          what the sales price is every day.

15           JUDGE CHO: So did you record that?

16           MR. ATALLAH: No. We would just -- we would just  
17          double check it every single day with the Z-tapes to make  
18          sure the sales are in line with how many gallons were  
19          dispensed from the tanks.

20           JUDGE CHO: This is Judge Cho. Thank you. And  
21          then how about those days when the price would change  
22          somewhere in the middle of the day or sometime during the  
23          day. Because you would have, I guess, one sales price in  
24          the morning, and I'm assuming a different sales price  
25          later on in the day without knowing the change or without



1 recording it in anywhere or in any location because you  
2 said the Gilbarco System doesn't keep a record of the  
3 changes. How did you reconcile those days?

4 MR. SUAZO: We would only change prices at the  
5 end of the day before the next shift starts. We never  
6 changed prices during midday. That wouldn't be a good  
7 business practice anyways for us since people might have  
8 paid a different price right before they -- they came,  
9 before we made the change.

10 JUDGE CHO: This is Judge Cho. Okay. Gotcha.  
11 So you would base your reconciliation of the gallons to  
12 total sales on the Gilbarco price that you saw at the end  
13 of the day; is that correct?

14 MR. ATALLAH: Yeah. We would do -- we would have  
15 one price for that day, and then we would make the change.  
16 So the next it would only be one price. We never had a  
17 day where there were two different prices being paid in  
18 the same Z-tape.

19 JUDGE CHO: Okay. This is Judge Cho. Thank you  
20 very much for the explanation. Those are all the  
21 questions that I have.

22 JUDGE WONG: This is Judge Wong. Mr. Atallah, so  
23 did the gas station operate 24 hours, or did they have an  
24 opening and closing time?

25 MR. ATALLAH: Opening and closing time.

1 JUDGE WONG: Do you know what those were during  
2 the audit period?

3 MR. ATALLAH: We've changed them, Judge Wong,  
4 since Covid and, you know, I can't be certain 15 years  
5 ago. But typically we would open at 6:00 a.m., and we  
6 would close at, I believe, 10:00 p.m. during the weekdays.  
7 And on Fridays and Saturdays we'd stay open an extra hour  
8 to, like, 11:00 p.m.

9 JUDGE WONG: This is Judge Wong. So when you did  
10 change the price of gasoline, it took place after when the  
11 business was closed. Is that correct that's my  
12 understanding of what you're saying?

13 MR. ATALLAH: Or before we opened in the morning.

14 JUDGE WONG: This is Judge Wong. Thank you.  
15 And I'll turn to Judge Geary for any final  
16 questions.

17 JUDGE GEARY: Thank you, Judge Wong. This is  
18 Judge Geary. Actually, I have a couple of questions for  
19 Mr. Shamoun.

20 It sounds like the Appellant is arguing that it  
21 was denied an opportunity to obtain testimony from the  
22 auditor, and it was denied an opportunity to provide  
23 evidence relating to OPUS and where and how it gets its  
24 information and whether or not that information is  
25 accurately reported. And I want to inquire of

1 Mr. Shamoun, who denied you an opportunity to obtain  
2 information from the auditor?

3 MR. SHAMOUN: Oh, we -- I will deter -- defer to  
4 co-counsel Chandara Diep. I didn't think she would  
5 testify. I could speak to her, or should I have her  
6 introduce herself and just answer that question, because  
7 she was more in tune of requesting their presence at the  
8 trial today.

9 JUDGE GEARY: Hold on for a second. I don't want  
10 to take testimony for anybody. That's really your  
11 prerogative to offer testimony, but you stated in your  
12 opening remarks. How is it that you came to believe that  
13 you were denied an opportunity to obtain testimony from  
14 the auditor?

15 MR. SHAMOUN: No problem, Your Honor. I will  
16 answer that question.

17 Okay. We requested to Judge Wong in our initial  
18 witness list who we want to call as a witness. We listed  
19 the auditor as a witness, and it was denied twice by  
20 Judge Wong.

21 JUDGE GEARY: Did you issue a subpoena to the  
22 auditor?

23 MR. SHAMOUN: Yes, we did.

24 JUDGE GEARY: What happened with that subpoena?

25 MR. SHAMOUN: It was denied by the Judge.

1 JUDGE GEARY: Are you an attorney, Mr. Shamoun?

2 MR. SHAMOUN: Yes.

3 JUDGE GEARY: You can issue a subpoena. Did you  
4 personally issue a subpoena to that witness?

5 MR. SHAMOUN: No. No I didn't. When I -- did I  
6 request it? No, I did not.

7 JUDGE GEARY: And you said that a subpoena was  
8 issued to OPUS; that's correct?

9 MR. SHAMOUN: No. Just request for information  
10 was issued to them --

11 JUDGE GEARY: Okay.

12 MR. SHAMOUN: -- for their methodology.

13 JUDGE GEARY: So you never issued a subpoena to  
14 that organization to request information or to request the  
15 person most knowledgeable to testify at this hearing?

16 MR. SHAMOUN: We did not via subpoena. We did  
17 request via email and via letter to provide information,  
18 and they did respond saying they do not provide any  
19 details on how they come up with their pricing. So they  
20 did respond.

21 JUDGE GEARY: You were referring -- this is my  
22 last area of inquiry, at least. You referred in your  
23 closing comments -- it looked like you were referring to  
24 documents as you were describing how OPUS does its  
25 calculations, and you specifically referred to them

1 obtaining information regarding Monday sales prices. Did  
2 you receive some written information from OPUS about that  
3 particular matter?

4 MR. SHAMOUN: Yes.

5 JUDGE WONG: Is that information part of your  
6 evidentiary package, one of your exhibits?

7 MR. SHAMOUN: It's already in the CDTFA's  
8 Exhibit G.

9 JUDGE GEARY: Okay. Great. Thank you. Those  
10 are the only questions that I have.

11 MR. SHAMOUN: And, Your Honor, I did not issue a  
12 subpoena. I asked for the Court to allow the witness  
13 testimony. When the Court denied it, I did not subpoena  
14 the witness because I -- I just thought because I had  
15 already requested it in our witness list and it was denied  
16 to call as a witness, that my subpoena would not -- if the  
17 Judge is not going to allow the testimony, I did not want  
18 to do that because I did not feel it would -- would work  
19 really in this, you know, administrative hearing, and that  
20 I could, you know, force the person to appear with a  
21 subpoena.

22 But if we're not going to allow the testimony as  
23 being, you know, already been provide -- it's not going to  
24 lead to additional information, that was the analysis, I  
25 did not go that route because I felt that in the end, you

1 know, a judge is going to have to allow this person. So I  
2 could have organically got the auditor there, but I could  
3 not, you know, control the allowed testimony of the  
4 witness. Does that make sense.

5 JUDGE GEARY: Yes. I understand. You referred  
6 to a Court. In fact, you were referring, I take it, to  
7 Judge Wong and to OTA?

8 MR. SHAMOUN: Yeah. I'm sorry.

9 JUDGE GEARY: All right.

10 MR. SHAMOUN: You always get -- you know, you've  
11 administrative hearings and courts, I apologize, but yes.  
12 And in regards to OPUS, I did not issue a subpoena. Their  
13 letter was basically, we don't provide our propriety  
14 information. It's provided on Mondays, and we don't tell  
15 you how we come up with it, and we're not going to give it  
16 to you. And so I did not, you know, press them further to  
17 do that.

18 JUDGE GEARY: Thank you, Mr. Shamoun. Those are  
19 my only questions.

20 MR. SHAMOUN: They did request that we get it  
21 from CDTFA, their methodology. But we did request it from  
22 the CDTFA of how they come up with this methodology, but  
23 we never did receive that information.

24 MR. BROOKS: Your Honor, this is Christopher  
25 Brooks, Tax Counsel for CDTFA. I'm going to object to the

1 idea that OPUS provided some information that it only  
2 provides sales based on Monday. We haven't seen anything  
3 of that sort. And I know that Mr. Shamoun has referenced  
4 Exhibit G. I basically flipped there. I don't think that  
5 applies to -- I don't think that applies to OPUS or  
6 Monday, so I'm going to object based on that.

7 MR. SHAMOUN: If the Court would allow me to  
8 supplement the exhibits that were admitted today at a  
9 subsequent time with information -- all information I've  
10 received from OPUS, if it would allow, I could resubmit  
11 any and all information that would corroborate the  
12 statements that I've made here today.

13 JUDGE WONG: This is Judge Wong. Let's take a  
14 10-minute break, and I'll consult with my panel. So let's  
15 take a 10-minute break. Please mute yourselves and turn  
16 off your camera and then we will reconvene at -- it's 2:46  
17 now, about 2:56. But don't leave though, just please  
18 mute.

19 MR. SHAMOUN: I'm going to mute it and still be  
20 here.

21 JUDGE WONG: Okay. Thank you.

22 (There is a pause in the proceedings.)

23 JUDGE WONG: All right. This is Judge Wong. Let  
24 us go back on the record.

25 Before the break there was a request to hold the

1 record open to provide some additional material regarding  
2 OPUS from Mr. Shamoun.

3 CDTFA, do you have any objection to holding the  
4 record open to provide that information?

5 MR. BROOKS: Good afternoon. This is Christopher  
6 Brooks.

7 The Department would object. We've had motions  
8 on that earlier over the last two years where we establish  
9 that there was nothing that was going to be -- getting to  
10 that. Plus, that was on the request for the Department to  
11 provide the witnesses, but there's nothing that we've seen  
12 where Appellant needs additional time to provide  
13 information that it had with OPUS. We saw partial emails,  
14 partial information. OPUS is a business. They have a  
15 process that they use. You have to enter into a contract.  
16 We haven't seen any of that information on what the exact  
17 language was between them. But that's been over two  
18 years.

19 I don't see where we gain anything by holding  
20 open the record when we know that OPUS isn't -- unless  
21 they are going to enter into some new agreement. But I  
22 don't know that we would gain anything by waiting. What  
23 we've shown is that the numbers that the Department came  
24 up with based on the documents that Appellant provided,  
25 show what the markup should be, show that OPUS and their



1 records are virtually identical. I don't know what  
2 they're going to use to offset their own prices, their own  
3 purchase prices that's going to change the outcome of this  
4 assessment for this hearing.

5 JUDGE WONG: Thank you, Mr. Brooks.

6 Mr. Shamoun, would you like to address CDTFA's  
7 objection?

8 MR. SHAMOUN: Yes, Your Honor. The -- prior to  
9 me asking to provide the information was the question by  
10 Judge Geary in regards to the Monday information. I went  
11 and looked at Exhibit D. It is explicit in Exhibit D,  
12 page 80 to 83. When the Department set their OPUS  
13 guidelines for how they came up with the pricing in their  
14 spreadsheet between pages 80 to 83, they list the OPUS  
15 pricing, and it's every Monday.

16 So the information is already, Your Honor, what  
17 you were looking for in regards to the Monday. It's in  
18 Exhibit D, page 80 and 83, when the Department calculated  
19 the average selling price. It inputted over 400 entries,  
20 all of the OPUS pricing. And it's -- as you'll see by the  
21 dates, January 1, 8:15 and the dates it corresponds to  
22 every Monday. So that is where -- that's already provided  
23 for in the information.

24 I don't know if at this point now we need to  
25 provide you with any subsequent information since I found

1 it in the exhibits that were submitted by the government  
2 for this hearing.

3 MR. BROOKS: Your Honor, if I can respond to  
4 that?

5 JUDGE WONG: Sure. This is Judge Wong. Okay.  
6 Go ahead but please --

7 MR. BROOKS: If Mr. Suazo wants to address it,  
8 either way. Okay.

9 Those pages that Counsel is referring to are not  
10 optimal to OPUS. Those are pages that are referenced as  
11 to the Department of Energy, and they provide an average.  
12 And the average is Monday to Monday. And so it's not just  
13 compiled on Monday. It has to go from Sunday to Sunday of  
14 the week, and they're saying that it ends -- and you'll  
15 see that on -- in the pages 182 or something like that. I  
16 just looked at real quick.

17 Yeah, I think it's actually page 191 is the first  
18 page of an additional exhibit shows the Department of  
19 Energy. And at the very top underneath the column, in  
20 gold it says, "Weekly Los Angeles regular all  
21 formulations." And below that it says, "Ending date." So  
22 it's just an average of over a week. It has nothing to do  
23 with OPUS.

24 JUDGE WONG: Thank you, Mr. Brooks.

25 MR. SHAMOUN: But the Department of Energy uses

1 the OPUS pricing, which calculates it on that one -- on  
2 every Monday. All the reports are on a Monday. The  
3 people that report -- I mean, so maybe I will then -- I do  
4 want to then continue to provide documentation in regards  
5 to OPUS because I -- the OPUS prices are provided on every  
6 Monday. People who report to OPUS only are required to  
7 report one day a week. So the sales number are one day a  
8 week.

9 I do believe it correlates to this. But if  
10 there's a dispute, I think it would be beneficial for all  
11 parties to know this information. It could be a short  
12 window of time, and I could just supplement the file  
13 without any commentary. But if it's relevant to making a  
14 determination here -- and, again, I don't want to dismiss  
15 our main purpose that we don't -- you know, two arguments.  
16 One, whether we need OPUS and then B, whether OPUS is even  
17 accurate.

18 My main strong argument is we've provided  
19 accurate records. There should be no adjustment. We  
20 don't need OPUS. But if it's relevant to even the  
21 validity of OPUS, which I do still, you now, we'll still  
22 focus and make arguments for. If it's going to make -- if  
23 it's going to create more facts to make us make a more  
24 informed decision, I could provide to the court all  
25 methodology that I have.

1           But the burden should be on the State.  If  
2           they're going to assess a taxpayer on a formula that is an  
3           outside third party, you would think that they would  
4           provide that information as to why it's relevant and why  
5           they should and, yet, they haven't here.  So I do believe  
6           that the burden is on the State.  If they're going to use  
7           this methodology, give us some reason as to why and how,  
8           and give us an opportunity, our due process rights to  
9           cross-examine and to confront this, its accuracy and its  
10          validity.  And we have not been afforded this opportunity.

11           JUDGE WONG:  This is Judge Wong.  Mr. Shamoun,  
12          how much time would you need to supplement the record with  
13          OPUS-related materials?

14           MR. SHAMOUN:  Week.  Week, 10 days.  I mean,  
15          we'll give you what we have.  We'll look at the file.  I  
16          mean, it's not -- and, you know, even a few days, I mean.  
17          Not much time, I mean.

18           JUDGE WONG:  Okay.  I'm going to give -- I'm  
19          going to hold the record open and allow Appellant to  
20          supplement it.  And I'm also going to provide CDTFA with  
21          an opportunity to respond.  So you mentioned a week --  
22          15 days and 15 days.

23                    Would 15 days be adequate?  Okay.

24                    And, CDTFA, is 15 days enough for you to respond  
25          once you receive supplemental submissions?

1           MR. SUAZO: This is Randy Suazo. It's hard to  
2 say at this point. I mean, it seems fair. I guess we can  
3 ask for an extension, right?

4           JUDGE WONG: You can. I would prefer -- okay.  
5 How about we do 30 and 30, just because there's a July 4th  
6 holiday coming up and what not, and just so we have set  
7 deadlines. Is 30 and 30, okay?

8           MR. SUAZO: Should be.

9           MR. SHAMOUN: Yes, Your Honor.

10          JUDGE WONG: Okay. Let's just do that, and then  
11 we'll close the record after that time period is up. All  
12 right. So --

13          MR. SHAMOUN: I'm sorry. If I can make one final  
14 comment. Again, I'm sorry. Just one final comment. I  
15 know there was a comment by the State in regards to sales  
16 tax. Just for the record, sales tax is charged on the  
17 wholesale purchase price and then, subsequently, on sales  
18 the sales tax is given. So on the wholesale cost of the  
19 gas that was purchased, sales tax was paid on that cost.  
20 And so if there was any self-consumption, tax is already  
21 paid.

22                 However, in this circumstance even  
23 self-consumption is rung up in the register but not have  
24 to be paid. So, actually, the taxpayer in this  
25 circumstance overpaid because they weren't required to

1 have to ring up the gas that they use for  
2 self-consumption. The tax was paid on the original  
3 wholesale price upon acceptance.

4 But also it was actually taken on the retail side  
5 for accounting records because it's run by employees. Him  
6 and a family member would grab gas. They rang it up. And  
7 when they add the register, that missing cash is because  
8 the employee didn't have to pay for it. But the sale is  
9 recorded and income tax is even paid on it as well, income  
10 and sales tax.

11 They are beyond honest in the way they operate  
12 their business more than I have ever seen. And so their  
13 testimony is evidence, and I would love to give weight to  
14 the testimony of Alfred Atallah today in the accuracy of  
15 his records and recordkeeping.

16 JUDGE WONG: All right. Thank you, Mr. Shamoun.

17 All right. That will do it for today. As I  
18 mentioned, we're holding the record open. I'll be issuing  
19 an order with deadlines for additional submissions first  
20 from Appellant and then from CDTFA. After which, the  
21 record will be closed, and then we will issue a decision  
22 no later than 100 days from that day. So be looking out  
23 for that order, which I'll be issuing before the end of  
24 the week.

25 And I thank everyone for their time and

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presentations. I look forward to additional submissions.

Now, the oral hearing is now adjourned, and I  
thank everyone again. Thank you.

Off the record.

(Proceedings adjourned at 3:09 p.m.)

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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 18th day of July, 2022.

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