

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
MARCO CRAFTSMASTERS, INC, ) OTA NO. 18043011  
 )  
 APPELLANT. )  
 )  
 )

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, August 17, 2022

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
12900 Park Plaza Dr., Suite 300, Cerritos,  
California, 91401, commencing at 11:12 a.m.  
and concluding at 12:32 p.m. on Wednesday,  
August 17, 2022, reported by Ernalyn M. Alonzo,  
Hearing Reporter, in and for the State of  
California.

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APPEARANCES:

Panel Lead: ALJ MICHAEL GEARY

Panel Members: ALJ ANDREW KWEE  
ALJ RICHARD TAY

For the Appellant: NEDEEN NASSER

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

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-14 were received at page 8.)

(Department's Exhibits A-O were received at page 9.)

OPENING STATEMENT

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CLOSING STATEMENT

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By Ms. Nasser 40

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Cerritos, California; Wednesday, August 17, 2022  
11:12 a.m.

JUDGE GEARY: Ms. Alonzo, let's go on the record.

Will the parties please identify themselves by  
stating their names and who they represent, beginning with  
the Appellant.

Is your microphone on? Try the button. Is the  
green light lit?

MS. NASSER: How about now?

JUDGE GEARY: Yes. Start over, please.

MS. NASSER: Nedeem Nasser for the Appellant and  
taxpayer, Marco Craftmasters, Inc.

JUDGE GEARY: Thank you.

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

MR. PARKER: Jason Parker, Chief of Headquarters  
Operations Bureau. And we also have Chad Bacchus from our  
Legal Division in the audience.

JUDGE GEARY: Thank you.

It's my understanding that there will be no  
witness testifying today.

Is that correct, Appellant?

MS. NASSER: Correct.

JUDGE GEARY: And is that correct, Respondent?

1 MR. SAMARAWICKREMA: Yes.

2 JUDGE GEARY: Thank you.

3 We have exhibits that have been marked for  
4 identification in this appeal. They consist of  
5 Appellant's exhibits marked 1 through 14 for  
6 identification, and Respondent's exhibits marked A through  
7 R for identification. The parties provided copies of the  
8 exhibits to each other and to OTA, and OTA staff  
9 incorporated all proposed exhibits into an electronic or  
10 digital hearing binder, which should be in the possession  
11 of all the parties and of the Judges.

12 Has Appellant confirmed that Appellant's exhibits  
13 incorporated into the binder are complete and legible --  
14 as complete and as legible as the ones that you submitted?

15 MS. NASSER: Regarding legibility, yes.

16 JUDGE GEARY: Are the exhibits incomplete?

17 MS. NASSER: I would say that Exhibit R would be  
18 incomplete in that it offered a -- an amended return but  
19 did not include the original return.

20 JUDGE GEARY: All right.

21 MS. NASSER: And I feel I should have had both of  
22 them.

23 JUDGE GEARY: Let me -- are the exhibits that  
24 were submitted on behalf of your client complete and  
25 legible?

1 MS. NASSER: Oh, I'm sorry.

2 JUDGE GEARY: That's all right.

3 MS. NASSER: Yes, they are, Your Honor.

4 JUDGE GEARY: Okay.

5 And, Respondent, have you reviewed the binder?

6 And can you confirm that the exhibits that have been  
7 included in the binder are complete and as legible as the  
8 ones that you submitted?

9 MR. SAMARAWICKREMA: Yeah. We reviewed it, and  
10 it's complete and legible.

11 JUDGE GEARY: All right.

12 I did note that the original return is not an  
13 exhibit. I intended, perhaps, ask about that. Did you  
14 want that original return to be an exhibit on behalf of  
15 Appellant?

16 MS. NASSER: If Appellant is going to introduce  
17 the amended return, I only feel that it's right to also  
18 include the original.

19 JUDGE GEARY: You meant to refer to Respondent, I  
20 think?

21 MS. NASSER: I'm sorry. Yes.

22 JUDGE GEARY: Well, the parties are free to  
23 submit whatever exhibits they want. If you decide that  
24 you would like to have that original return submitted as  
25 an exhibit, I think that we can accommodate you. Do you

1       have a copy of the exhibit with you today?

2               MS. NASSER:   I do not.

3               JUDGE GEARY:   I think that, if you wanted that to  
4       be an exhibit, we can make arrangements to hold the record  
5       open long enough for you to submit that. And if the  
6       Department felt it needed to respond to that submission by  
7       submitting an additional document, I would give it that  
8       opportunity. So we'll address that at the end of the  
9       hearing, okay?

10              MS. NASSER:   All right. Thank you.

11              JUDGE GEARY:   All right.

12              The parties were instructed to state any  
13       objections they might have to the proposed evidence in  
14       writing, and neither party has done that.

15              Does Respondent have any objection to the  
16       admission of Appellant's Exhibits 1 through 14?

17              MR. SAMARAWICKREMA:   We don't.

18              JUDGE GEARY:   Okay. Those exhibits are admitted.

19              (Appellant's Exhibits 1-14 were received  
20       in evidence by the Administrative Law Judge.)

21              Does Appellant have any objection to the  
22       admission of Respondent's Exhibits A through R?

23              MS. NASSER:   Other than completing, possibly,  
24       Exhibit R, Exhibit O was a Board Hearing summary. I  
25       believe this is the CDTFA's predecessor who issued that.



1 I'm not quite sure exactly where it came from because it's  
2 not authenticated, dated, or signed. And it just appears  
3 to be a self-serving document for them. So inasmuch as  
4 the OTA was later created, I would believe that this  
5 document is irrelevant to this case.

6 JUDGE GEARY: So are you stating an objection on  
7 the grounds of relevance or lack of authentication, and  
8 self-serving?

9 MS. NASSER: All three.

10 JUDGE GEARY: All right.

11 I'm going to overrule all of those objections and  
12 allow Exhibit O to be admitted.

13 (Department's Exhibit O was received in  
14 evidence by the Administrative Law Judge.)

15 How about the other exhibits with the exception  
16 of your belief that the original return should be  
17 submitted as an exhibit? Do you have any objection to the  
18 others of the exhibits proposed by Respondent?

19 MS. NASSER: No objections.

20 JUDGE GEARY: All right. All of the Respondent's  
21 Exhibits A through R are admitted.

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

24 The issues to be decided in this appeal have been  
25 discussed with the parties at a prehearing conference, and

1       they've been identified with the agreement of the parties  
2       as follows: The first issue, is Appellant entitled to a  
3       reduction of unreported taxable sales; the second issue  
4       is, is Appellant entitled to a reduction to the measure of  
5       disallowed claimed sales for resale; and the third issue  
6       is, did Respondent correctly impose the negligence  
7       penalty?

8               Does Appellant continue to agree that those are  
9       the three issues that Appellant would like to have the  
10      panel consider?

11             MS. NASSER: It does.

12             JUDGE GEARY: Thank you.

13             And does Respondent agree those are the issues to  
14      be decided?

15             MR. SAMARAWICKREMA: Yes.

16             JUDGE GEARY: Thank you.

17             As discussed at our prehearing conference,  
18      Appellant requested and will be allowed 30 minutes for its  
19      opening argument. Respondent requested and will be  
20      allowed 20 minutes for its only argument, and Appellant  
21      will have an option of making a closing argument of not  
22      more than approximately 5 minutes.

23             Do we have -- are there any question from either  
24      party before we begin arguments?

25             MS. NASSER: If I finish my initial argument

1       early, can I reserve time?

2               JUDGE GEARY:   Yes, you can.

3               Any other questions?

4               All right.   Hearing none, then, Appellant, you  
5       may begin your first argument whenever you're ready.

6               MS. NASSER:   Okay.

7               JUDGE GEARY:   Excuse me.   Let me remind you  
8       before you start, try to keep the microphone fairly close  
9       to you.   And if you turn your head, for example, to make  
10      reference to your notes, just be careful that your voice  
11      may fade if you turn away from the microphone.

12              MS. NASSER:   Okay.   Thank you.

13              JUDGE GEARY:   Thank you.

14

15                               PRESENTATION

16              MS. NASSER:   The audit period in this case was  
17      merely six quarters.   It was all of 2011 and the first  
18      quarters of 2012.   My client and taxpayer is a small  
19      business that sold retail and wholesale furniture.   Around  
20      the quarters chosen for the audit, the furniture industry  
21      was deeply depressed and many companies were going out of  
22      business.

23              The Audit Manual states that double the amount of  
24      quarters that were audited should have been audited to get  
25      a fair audit.   In this case, only six quarters were

1     audited. I believe that will form the basis of showing  
2     that the CDTFA did not meet its burden in a reasonable  
3     assessment of unreported taxable sales and disallowed  
4     claimed sales for resale.

5             The Appellant was assessed a Notice of  
6     Determination for the amount of \$198,100 with respect to  
7     unreported taxable sales and \$399,405 for disallowed  
8     claimed sales for resale. In addition, they tacked on a  
9     negligence penalty of approximately \$5,500. All these are  
10    at issue at this case. But when a taxpayer challenges the  
11    Notice of Deficiency, the Department has the burden to  
12    explain the basis for the deficiency, and we don't believe  
13    they've met that burden.

14            Beginning with the first issue, the unreported  
15    taxable sales from the original -- the unreported taxable  
16    sales, the Department arrived at the number \$198,100  
17    because it solely used the Appellant's original federal  
18    income tax return. That tax return was amended. So  
19    everything that they got from that was just from a return  
20    that should not have even been used. 2012 is not at issue  
21    in this case, just 2011 for this portion of the  
22    deficiency.

23            The Appellant had amended the 2011 original  
24    federal income tax return, but the Department chose not to  
25    use it in their decision. When asked why the taxpayer

1 amended the return, the taxpayer was able to explain that  
2 away. It was not -- the Department did not take that  
3 explanation and, instead, decided to reuse the original  
4 tax return which had an inflated number of sales because  
5 it yielded a higher tax. Please note that the original  
6 tax return did not match the P&L, nor the sales and use  
7 tax returns, nor did it -- was it corroborated by the  
8 sales receipts or even the bank deposit analysis.

9 So there was no real basis upon which to use the  
10 sales listed in the original federal income tax return.  
11 On the contrary, the Department claimed that it was the  
12 best evidence but failed to establish why it was the best  
13 evidence over even the bank deposit analysis. All other  
14 returns and receipts and bank deposits corroborated one  
15 another. The outlier was in that original tax return,  
16 federal income tax return.

17 In fact, even the amended tax return correlates  
18 with the other documents. Yet, the Department found that  
19 the amended tax return was unreliable. Yet, if that was  
20 unreliable and the original tax return was unreliable,  
21 then what was the basis for using the original tax return.  
22 The Department doesn't really say. In fact, in a related  
23 case where the -- there were -- the same owner of the  
24 Appellant company also owned another company that was  
25 audited. In that case, the Department did take the

1 amended tax return for 2011, in which case it didn't take  
2 it in this instance. So I don't know why unreliable in  
3 this case but not in the related company that had the same  
4 circumstances as in this case.

5 Another point that the Department made was that  
6 it wouldn't accept sales receipts and invoices because  
7 they claimed that they were handwritten and unnumbered.  
8 But that should not be a basis for not accepting sales  
9 receipts and invoices. Small businesses generally have  
10 handwritten receipts, especially, in industries where very  
11 few transactions are made per day. It should be noticed  
12 that the amended return matches the sales and use tax  
13 return, and that should be the best evidence and not the  
14 original federal income tax return.

15 CDTFA not met its initial burden of using that in  
16 assessing the unreported taxable sales. Moving on to the  
17 next issue, disallowed claimed sales for resale, that was  
18 almost \$400,000 that they assessed in that case. \$139,000  
19 of it was attributed to Lovell's Gallery, which was also  
20 known as Paradise Art or related to Paradise Art. Both  
21 were located in the State of Florida. They should have  
22 been discounted as interstate sales. The Department does  
23 note that this is a real furniture business.

24 They were able to provide screen shots of that  
25 and showed that it was in business in 2012. That being

1     said, it is plausible that all the receipts given should  
2     have been relied upon and discounted and not -- and not  
3     disallowed. And the Department should not have disallowed  
4     those claimed sales for resale.

5             The Department also disallowed trucking receipts  
6     showing that sales were made and sent to Florida. The  
7     Department had contradicted itself a couple of times  
8     because they first claim that they did not accept those  
9     sales because they believed that Paradise Art went out of  
10    business in 2007 or 2008. But later on in the  
11    Department's brief, they did state that it was -- it  
12    became inactive in -- at the end of 2012, which was after  
13    the audit period.

14            There was also sales made to a related company  
15    also owned by the same owner. Basically, it was transfers  
16    of inventory. Those should have been allowed to -- to --  
17    as resale items because they were the same company and  
18    just, they were sharing inventory. So if one of the  
19    entities transferred some of the goods to the other, that  
20    should have been exempt in that -- in that instance.  
21    There was a total of -- let me see if I can get the number  
22    for you -- \$94,430 in that case. So those two combined  
23    would have drastically reduced the assessed amounts of  
24    \$399,000.

25            The remaining sales claimed for resale were also

1 rejected because the Department claimed that they went out  
2 of business. But I was able to provide in brief some  
3 printouts from the State Department showing that they were  
4 still active in many instances. And in those instances,  
5 the Department should have been allowed those, but it did  
6 not.

7 Another argument that the Department made was  
8 they did not want to accept the resale certificates from  
9 the Appellant because they said that the handwriting was  
10 too similar to each other. However, what they don't say  
11 is that the signatures were similar. I don't know whether  
12 or not it matters that the formed portion of a resale  
13 certificate must be filled out by the person applying for  
14 it. There's nothing in the CDTFA manual that suggest that  
15 either. So long as the information is accurate and  
16 there's a valid signature, those should have been allowed.  
17 And it was wrong for the Department to discount those.

18 I'll reserve any remaining time. Thank you.

19 JUDGE GEARY: Let me repeat that. I have just  
20 over 11 minutes used for your first closing. Thank you.

21 Let me ask my fellow judges if they have any  
22 questions.

23 Judge Kwee, any questions at this point?

24 JUDGE KWEE: I have just -- so that's really  
25 loud. Sorry. I have just one question about the amended



1       2011 federal income tax return. So it looks like there  
2       was zero tax reported. Is that the same, like, the  
3       amended return didn't claim any refund or any amounts due  
4       to for -- any additional amounts that's owed to Appellant  
5       on the federal side; is that correct?

6               MS. NASSER: I don't believe so, but I haven't  
7       taken a closer look to see exactly. I can pull it up.  
8       Correct.

9               JUDGE KWEE: Okay. The IRS did they accept the  
10      amended return or was there -- was it questioned?

11              MS. NASSER: Not that I know of. I haven't -- I  
12      haven't heard word from that.

13              JUDGE KWEE: Okay. And the last question was the  
14      amended return, was that filed before or after the audit  
15      with CDTFA?

16              MS. NASSER: Well, I don't exactly remember what  
17      days the audit took place. But the audit period was  
18      through June of 2012, and the date of this was  
19      October 2012.

20              JUDGE KWEE: Okay. Thank you.

21              I'll turn it back over to Judge Geary.

22              JUDGE GEARY: Thank you.

23              Judge Tay, do you have any questions?

24              JUDGE TAY: I have no questions. Thank you.

25              JUDGE GEARY: I have -- I have a couple of

1 questions for Appellant. Is there any -- the copy of the  
2 amended return that's in evidence is unsigned. There's  
3 nothing to indicate on it that it was filed. Is there  
4 anywhere -- can you point anything in the evidence that  
5 shows that document was actually filed with the IRS?

6 MS. NASSER: Not in the documents contained here  
7 other than it was never questioned by the Department that  
8 it was filed.

9 JUDGE GEARY: Okay. The numbers from the  
10 original return were transcribed onto a schedule, I  
11 believe, in the audit work papers. And my  
12 understanding -- my understanding is that Appellant --  
13 Appellant has asserted that it filed the amended return  
14 because it intentionally over reported income in order to  
15 satisfy concerns that Appellant believes some lenders  
16 might have. Is that -- is my understanding correct?

17 MS. NASSER: That's correct.

18 JUDGE GEARY: All right. So explain to me, if  
19 you can, how the amended return, which reported a net  
20 income to the corporation of \$3,937, could have helped  
21 Appellant when the original return reported the exact same  
22 amount of net income. How did that help a situation with  
23 the -- what you're arguing about, how it helped the  
24 situation with the lenders?

25 MS. NASSER: So I think it's the gross sales that

1 we we're looking at, and I don't know exactly how to  
2 calculate debt service -- what's the word here? Bear with  
3 me a moment. I don't know exactly how to calculate  
4 combined debt service coverage ratio, but I do know that  
5 gross receipts are taken into consideration for that. And  
6 let's see. And I believe that it was the 2011 original  
7 that had inflated gross receipts.

8 JUDGE GEARY: It did. It had a different gross  
9 receipts. The original reported gross receipts of  
10 \$610,748 according to the schedule that's in the audit  
11 work papers allowed the amended reported gross receipts of  
12 \$412,648 exactly \$198,100 difference. But cost of goods  
13 sold reported on the original was \$379,959, and on the  
14 amended was \$181,859, also exactly \$198,100.

15 MS. NASSER: Right.

16 JUDGE GEARY: And so to answer my question, how  
17 did this help?

18 MS. NASSER: So I believe -- you know, I could go  
19 look into debt service coverage ratio some more and see  
20 exactly what numbers the bank looked at. But it's my  
21 understanding that they look at the gross receipts  
22 numbers.

23 JUDGE GEARY: Where -- this is switching gears  
24 slightly. Where in the evidence will I find a clear  
25 reference to when Appellant first notified Respondent that

1       there was an amended return?

2               MS. NASSER: I believe it might have been  
3 included in the D&R. So that would have been maybe  
4 Exhibit N. I can double check.

5               JUDGE GEARY: You mean the D&R might indicate  
6 when that -- the amended return was first --

7               MS. NASSER: Submitted.

8               JUDGE GEARY: All right. I'll look there.  
9 That's fine. Unless you know of someplace else I might  
10 look?

11              MS. NASSER: No. I'm pretty sure that's where I  
12 found it.

13              JUDGE GEARY: All right. You mentioned in your  
14 first closing -- your first argument, that there were  
15 sales or what you refer to as inventory transfers between  
16 Appellant and a related company, and you argued that those  
17 should have been allowed as sales for resale. Did your  
18 client -- did Appellant claim those transfers as sales for  
19 resale on any return?

20              MS. NASSER: I don't recall if it was on the  
21 return, but I remember during the audit it was. It was  
22 claimed.

23              JUDGE GEARY: All right. Thank you. Those are  
24 the only questions that I have. Let me just check and  
25 make sure.

1 Judge Kwee, anything else?  
2 JUDGE KWEE: Hi. This is Judge Kwee. I don't  
3 have any other questions at this time. Thank you.  
4 JUDGE GEARY: Thank you.  
5 And, Judge Tay, any questions?  
6 JUDGE TAY: None. Thank you.  
7 JUDGE GEARY: Thank you. Thank you for your  
8 help.  
9 Is Respondent ready to give its closing?  
10 MR. SAMARAWICKREMA: Yes, Judge.  
11 JUDGE GEARY: You may proceed.  
12 MR. SAMARAWICKREMA: Thank you, Judge.

13

14 PRESENTATION

15 MR. SAMARAWICKREMA: Appellant is a California  
16 corporation that operated a furniture store from  
17 January 1st, 2011, through June 30th, 2019, in Pasadena,  
18 California. Appellant sold furniture at retail and  
19 wholesale.

20 The Department audited Appellant's business for  
21 the period January 1st, 2011, through June 30th, 2012.  
22 During the audit period, Appellant reported around  
23 \$911,000 as total sales and claimed around \$632,000 as  
24 nontaxable sales for resale and around \$217,000 as  
25 nontaxable sales in interstate and foreign commerce

1 resulting in reported taxable sales of around \$62,000.

2 And that will be on your Exhibit A, pages 40 and 41.

3 During the audit, Appellant failed to provide  
4 complete sales records, such as sales invoices, credit  
5 card sales receipts, resale certificates, shipping  
6 documents, payment information from its customers, sales  
7 journals, and sales summaries to support its reported  
8 total taxable and nontaxable sales for the audit period.  
9 In addition, Appellant failed to provide complete purchase  
10 invoices or purchase journals. Appellant was unable to  
11 explain how it reported sales on its sales and use tax  
12 returns, specifically, what sources it relied upon.

13 The Department completed four verification  
14 methods to evaluate the reasonableness of Appellant's  
15 reported total taxable and claimed nontaxable sales.  
16 Ultimately, the Department was unable to verify  
17 Appellant's reported amounts. First, the Department  
18 compared Appellant's sales, as reported on its 2011  
19 federal income tax return, to reported sales and  
20 calculated a difference of around \$198,000. And that will  
21 be on your Exhibit A, page 54.

22 It was noted that on Appellant's profit and loss  
23 statement \$198,000 was recorded as other income. And that  
24 will be on your Exhibit A, page 58. The Department also  
25 noted a difference of \$80,000 between merchandise

1 purchases reported on the federal income tax return and  
2 those reported in the profit and loss statement. And that  
3 will be on your Exhibit A, pages 54 and 58.

4 Second, the Department reviewed Appellant's bank  
5 statements for the audit period and compared the net bank  
6 deposits which reported total sales on the sales and use  
7 tax returns and calculated an overall difference of around  
8 \$129,000. And that will be on your Exhibit A, page 62.

9 Although Appellant stated net bank deposits were  
10 used to report total sales on its sale and use tax  
11 returns, it could not explain the difference. Appellant  
12 claimed that some cash payments from its customers had  
13 been deposited in the personal bank account of his  
14 president. However, the amount of cash payments from his  
15 customers deposited into the personal bank account was not  
16 provided. Therefore, the Department determined Appellant  
17 did not report its actual sales on its sales and use tax  
18 return for the audit period.

19 Third, Appellant provided sales invoices for  
20 first quarter 2011 for the Department's review and refused  
21 to summarize its sales as requested by the Department.  
22 The Department reviewed the provided sales invoices and  
23 noted that the invoices were not numbered, meaning that  
24 the Department would not be able to verify that Appellant  
25 provided complete sales invoices for review.

1 Fourth, the Department reviewed Appellant's sales  
2 and use tax return for the audit period and determined  
3 that 7 percent of all sales were reported as taxable; and  
4 69 percent were claimed as sales for resale; and 24  
5 percent were claimed as sales in interstate and foreign  
6 commerce. However, based on the audited sales, the  
7 taxable sales ratio was around 60 percent.

8 In response to the audit resales and during the  
9 appeal process, Appellant made three different claims  
10 regarding the \$198,000 difference in sales. Appellant  
11 stated the \$198,000 did not relate to Appellant's sales.  
12 It related to sales of discounted merchandise that it  
13 attempted to sell on consignment. And, finally, the  
14 Appellant artificially inflated its sales figures by that  
15 amount to ensure that he did not breach its mortgage loan  
16 contract.

17 Appellant subsequently provided an amended  
18 federal income tax return for year 2011 on which it  
19 reduced both the total sales and purchases by \$198,000.  
20 And that will be on your Exhibit A, page 54, and  
21 Exhibit R. The Appellant explained that it falsified its  
22 federal income tax return. Then it attempted to hide its  
23 failure to maintain loan payments to total sales ratio  
24 required on a business loan agreement. Appellant argues  
25 that the originally filed federal income tax return should



1 be ignored because total sales were intentionally  
2 inflated.

3 As support, Appellant provided copies of letters  
4 from his bank regarding default of certain terms of a loan  
5 agreement. And that will be on your Exhibit A, pages 135  
6 through 139, and Exhibit L. Upon examination of  
7 Exhibit L, the Department noted that the loan was entered  
8 into on March 24th, 2009, which is prior to Appellant's  
9 start date of January 1st, 2011. And Appellant is not  
10 named as a borrower. And that will be on your Exhibit A,  
11 pages 135 through 139 and Exhibit L.

12 Therefore, the letters from the bank failed to  
13 establish that Appellant was subject to the loan  
14 provisions, which as Appellant contends, were the reasons  
15 it inflated total sales for year 2011. The Department  
16 also notes that the merchandise purchases reported on  
17 their amended federal income tax return were reduced by  
18 \$198,000. And that will be on your Exhibit R and  
19 Exhibit A, page 54.

20 Appellant has not provided an explanation for the  
21 reduction to reported merchandise purchases. And the  
22 Department notes that the merchandise purchases recorded  
23 in the profit and loss statement for year 2011 exceeded  
24 reported merchandise purchases on the amended federal  
25 income tax return by \$118,000. According to IRS

1 instructions for Form 1120-S, the IRS specifically  
2 requires to attach a statement that identify the line  
3 number of each amended item, the corrected amount or  
4 treatment of the item, an explanation of the reason for  
5 each change.

6 The Department noted that Appellant did not  
7 include a statement explaining what changes it made as  
8 required by the IRS with the amended return. And that  
9 will be on your Exhibit R. Appellant did not provide  
10 reliable documentary evidence to support the adjustment  
11 made on the amended federal income tax return and has not  
12 shown that it actually filed the amended federal income  
13 tax return with the IRS or the Franchise Tax Board or that  
14 either agency accepted the amended return.

15 Based on the foregoing, the Department does not  
16 accept information included on the amended federal income  
17 tax return. The mere act of preparing an amended federal  
18 income tax return is not sufficient to prove that the  
19 original federal income tax return was incorrect.

20 Therefore, the Department determined that the available  
21 evidence supports the audit finding that Appellant  
22 understated its taxable sales by around \$198,000. And  
23 Appellant has not provided any reasonable verifiable  
24 documentary evidence to support any adjustment.

25 As for claimed sales for resale, the Department

1 reviewed the available information and determined that  
2 Appellant made sales for resale of around \$232,000 to  
3 Lovell's Gallery. And that will be on your Exhibit A,  
4 page 60. For the remaining claimed sales for resale, the  
5 Department determined that the Appellant did not provide  
6 any reliable information to support its claimed sales for  
7 resale. Also, Appellant failed to provide a valid resale  
8 certificate, shipping documents, or payment information  
9 for Paradise Art to support its sales for resale.

10 The resale certificate that Appellant provided  
11 for Paradise Art was not signed or dated. It did not  
12 specify what type of property it sold, and it did not  
13 specify what type of property it purchased from Appellant.  
14 And that will be on your Exhibit G. Upon further review,  
15 the Department noted that the Google Street view images of  
16 Paradise Art street dates from January 2008 to show the  
17 building with the Paradise Art sign on the building. And  
18 that will be on your Exhibit I.

19 However, the same image from April 2011 shows the  
20 same building but with no Paradise Art signage on the  
21 building. And that will be on your Exhibit J. Images  
22 from April 2011 show windows and other signs that read,  
23 "Everything must go. Going out of business and entire  
24 inventory must go." The Department noted most claimed  
25 sales for resale to Paradise Art took place after April

1       2011, meaning that Paradise Art was likely closed when the  
2       claimed sales for resale were allegedly made.

3               Paradise Art did not respond to XYZ letters, and  
4       the Department could not confirm that Paradise Art resold  
5       the items it allegedly purchased from Appellant.  
6       Appellant provided copies of shipping documents of filed  
7       deliveries but could not tie them to specific sales  
8       invoices. Further, few sales invoices Appellant provided  
9       did not include shipping information, contact information,  
10      or any other useful information that could be used to  
11      verify the nature of the transaction.

12              Appellant states Paradise Art used cash for  
13      payment, so there's no record of payment. Therefore, the  
14      payment from Paradise Art could not be verified with  
15      Appellant's available bank statements. The Department  
16      considered whether Appellant's sales to Paradise Art was  
17      an exempt sale in interstate and foreign commerce.  
18      However, Appellant has not provided any documentation such  
19      as bill of lading to support that the tangible personal  
20      property was delivered to an out-of-state location.

21              Accordingly, there is no basis on which to  
22      determine that Appellant made any nontaxable exempt sales  
23      to Paradise Art during the audit part. Therefore, the  
24      Department then compared the claimed sales for resale of  
25      around \$632,000 with audited sales for resale of \$232,000

1 to calculate the disallowed unsupported sales for resale  
2 of around \$400,000 for the audit period. And that will be  
3 on your Exhibit A, page 60.

4 After the appeal conference, Appellant provided  
5 additional documents as further support for its claimed  
6 sale for resale. Appellant identified seven customers,  
7 including Paradise Art and provided a list of sales to  
8 those customers, copies of seller's permit, resale  
9 certificates, and sales invoices. And that will be on  
10 Exhibit A, pages 72 through 133, and Exhibit N, pages 19  
11 through 27.

12 The Department notes, except for Paradise Art,  
13 Appellant has not previously identified the six other  
14 customers during the Department's test of claimed sales  
15 for resale. And that will be on your Exhibit A, pages 60  
16 and 133. Also, for the six customers held seller's  
17 permit, but each permit had been closed for a year or more  
18 before the alleged sales for resale were made. And that  
19 will be on your Exhibit A, pages 128 through 130.

20 For two of the businesses, the Department found  
21 discrepancies that caused it to question the authenticity  
22 of the resale certificates. For example, for one resale  
23 certificate, the corporate name of the business was  
24 accurate, but the name under which the business operated  
25 as shown on the sales invoices was a name that was not

1 used by the business during the period the sales invoices  
2 were purportedly issued. And that will be on your Exhibit  
3 A, pages 128 through 130, and Exhibit N, page 22.

4 Moreover, the sales invoices Appellant provided  
5 to support additional alleged sales for resale are not  
6 numbered. And that will be on your Exhibit A, pages 77  
7 through 133. Numbering of sales invoices is a basic  
8 internal control for ensuring completeness. Appellant has  
9 not provided sales journals or sales summaries to verify  
10 whether the additional alleged sales for resale were  
11 reported on the sales and use tax returns.

12 Due to the lack of internal control and audit  
13 trials, the Department questions the reliability of all of  
14 the sales invoices that is provided by Appellant after the  
15 appeals conference in regards to its sales for resale.  
16 And that will be on your Exhibit A, pages 128 to 130.

17 JUDGE GEARY: About two minutes left.

18 MR. SAMARAWICKREMA: Okay.

19 The Department notes that the additional  
20 information provided by Appellant there's unexplained  
21 discrepancies in the amount of currently claimed sales for  
22 resale compared to the amount Appellant originally claimed  
23 in its sale and use tax return.

24 Finally, the Department questions the  
25 authenticity of the documents provided as the handwriting

1 on these documents appears to be from the same individual.  
2 And that will be on your Exhibit A, pages 128 through 130,  
3 and Exhibit N, pages 19 through 27. Because the documents  
4 are allegedly from various unrelated customers, the  
5 Department would not accept the handwriting to be the  
6 same. Therefore, the Department determined that Appellant  
7 has not provided credible evidence to support further  
8 adjustment to disallow claimed sales for the resale.

9 The Department determined unreported taxable  
10 sales of around \$198,000 and disallowed unsupported  
11 claimed sales for resale of \$400,000, which resulted in  
12 total unreported taxable sale of around \$598,000 for the  
13 audit period. And that will be on your Exhibit D,  
14 page 45. Unreported taxable sales were compared with  
15 reported taxable sales of around \$62,000 to calculate the  
16 error rate of 958.75 percent for the audit period.

17 Finally, the Department imposed a negligence  
18 penalty based upon its determination that Appellant's  
19 books and records were incomplete and inaccurate for sales  
20 and use tax purposes, and because Appellant failed to  
21 accurately report its taxable sales. Specifically,  
22 Appellant did not provide detail summary records of sales  
23 or purchases. As the sales invoices were not numbered,  
24 which was not practical to determine whether invoices were  
25 complete.

1           In addition, audit examination disclosed an error  
2     rate of around 959 percent. This extremely high error  
3     rate is additional evidence of negligence. Appellant has  
4     not provided any reasonable documentation or evidence to  
5     support an audit adjustment to the audit finding.  
6     Therefore, for all of these reasons, the Department  
7     requests the appeal be denied.

8           This concludes our presentation, and we are  
9     available to answer any questions the panel may have.  
10    Thank you.

11           JUDGE GEARY: Thank you.

12           Let me ask my judges.

13           Judge Kwee, do you have any questions?

14           JUDGE KWEE: This is Judge Kwee. Did CDTFA  
15     verify the I guess the federal income tax return info  
16     through an interagency request, or do they -- are they at  
17     all disputing that the return was amended?

18           MR. SAMARAWICKREMA: In preparing for this  
19     hearing, the Department requested the -- all the returns  
20     amended and the original return from the Franchise Tax  
21     Board, and last week we received a notice saying they  
22     don't have any records --

23           JUDGE KWEE: No, I --

24           MR. SAMARAWICKREMA: -- for 2011.

25           JUDGE KWEE: I'm sorry. No records that the



1       amended return was filed or no records from that time  
2       period because it was purged?

3               MR. SAMARAWICKREMA:   That one we don't know, but  
4       the information we received from Franchise Tax Board it  
5       says, "No record."

6               JUDGE GEARY:   Okay.   And you don't know the  
7       reason for no records --

8               MR. SAMARAWICKREMA:   Yeah.

9               JUDGE KWEE:   -- just that there's no records.  
10      Okay.   Thank you.

11              JUDGE GEARY:   Thank you Judge Kwee.

12              Judge Tay, do you have any questions?

13              JUDGE TAY:   I'd like to ask a couple of  
14      questions.   Did you make a request of -- I'm just  
15      following up on Judge Kwee's questions.   Did you make a  
16      request or request a transcript from the IRS?

17              MR. SAMARAWICKREMA:   The -- no.   We didn't  
18      request from the IRS, but it from -- we did from Franchise  
19      Tax Board.

20              JUDGE TAY:   Okay.   Second question is, in terms  
21      of the \$198,000, the unreported taxable sales, why is the  
22      number used on the federal income tax return better than  
23      the result of the bank deposit analysis?

24              MR. SAMARAWICKREMA:   That's a good question,  
25      Judge.   According to -- during the audit, the taxpayer

1 specifically indicated that he -- that the Appellant was  
2 depositing the cash -- depositing into his president's  
3 bank account. So -- but we -- the Department did not have  
4 the personal bank account to identify the total cash  
5 deposits that the Appellant received from the customers.  
6 And because of that, we believe the federal income tax --  
7 the federal income original -- the original federal income  
8 tax return numbers were more reliable than the bank  
9 deposits that we had. We only had the bank -- the bank  
10 information for the business account.

11 And also, the Appellant specifically informed  
12 that they use the bank deposits to report the total sales  
13 and -- but during our -- the field work, we identified  
14 that the taxpayer, you know, specific said they deposited  
15 the cash deposit in his president's personal bank account.

16 JUDGE TAY: Okay. Thank you. Sorry. No further  
17 questions.

18 JUDGE GEARY: Thank you, Judge Tay.

19 I believe Judge Kwee indicates he has a question  
20 for the Appellant.

21 JUDGE KWEE: Yes. Thank you, Judge Geary.

22 So I just wanted to make sure I understand what  
23 happened and what we're asking. So as I understand it, in  
24 March 2012 Bank America issued a Notice of Default to  
25 Appellant and asked for updated financials. There was a

1 2011 return filed with the IRS which overstated the gross  
2 receipts and the cost of goods sold, and that was provided  
3 to Bank of America.

4 And then there was an audit by CDTFA in July  
5 around July 12th, and then they used the numbers from the  
6 federal income tax return for 2011. And then after that,  
7 in October 2012, there was an amended federal income tax  
8 return with the correct numbers, but CDTFA did not accept  
9 those correct numbers and instead continued to use the  
10 overstated numbers.

11 So you're asking that we would use the corrected  
12 numbers. And my question is -- well, first if that's a  
13 correct understanding. And second, was there  
14 documentation provided to support the corrected numbers on  
15 the amended return that you're asking us to use?

16 MS. NASSER: Well, in so far as looking at the  
17 bank deposit analysis, for instance, if you look at let's  
18 say Exhibit A at 62, you'll see that the bank deposit  
19 analysis totals for 2011 only show \$400,368. That is very  
20 close to the number claimed for the gross sales in the  
21 amended return of \$412,000 and some change. So the  
22 difference there was, you know, would have accounted for  
23 anything that may have accidentally gone into the personal  
24 account of the owner.

25 So -- so that to me is a closer number, and that

1 would corroborate the numbers listed there. If, you know,  
2 if the CDTFA was able to show that the inflated numbers  
3 were more reliable because maybe they found more receipts  
4 or something like that to that effect, then, you know, I'd  
5 be -- I'd be willing to take a second look.

6 But nothing in the evidence indicates that the  
7 original 2011 federal income tax return was more reliable  
8 than the amended return. And because of that, the whole  
9 \$198,000 is in question.

10 JUDGE KWEE: Okay. Thank you. Okay. I think I  
11 understand now. Thank you.

12 I'll turn it over back to Judge Geary.

13 JUDGE GEARY: Thank you, Judge Kwee.

14 I have a question or two for the Department. The  
15 first is, Department, do you have a copy of the original  
16 return that Appellant filed -- the original federal income  
17 tax return?

18 MR. SAMARAWICKREMA: No. We basically have a  
19 transcript from the original return, so we don't have the  
20 actual copy of the federal income tax return. That's why  
21 we -- it's not part of our exhibits.

22 JUDGE GEARY: Okay. And do you have -- can you  
23 point to anything in the evidence that has been admitted  
24 that we can refer to to determine when Appellant first  
25 disclosed the existence of the amended return?

1           MR. SAMARAWICKREMA: Yeah, give me a moment.  
2           That's December 16, 2014, and --

3           JUDGE GEARY: What are you referring to so that I  
4           can see?

5           MR. SAMARAWICKREMA: Oh, yeah. Yeah. It's also  
6           included in the decision, but there was an email received  
7           from the Appellant's representative listing that they're  
8           submitting resale certificates, amended return, and all  
9           the other information. So it's in our exhibit. So I  
10          think it's between Exhibit 73 and 133. I'm just looking  
11          at that.

12          JUDGE GEARY: Of Exhibit A?

13          MR. SAMARAWICKREMA: Yeah.

14          JUDGE GEARY: Okay.

15          MS. NASSER: May I also add, if it helps?

16          JUDGE GEARY: Sure.

17          MS. NASSER: I think Exhibit F also makes mention  
18          of an amended return, and that was back in 2012.

19          MR. SAMARAWICKREMA: Yeah.

20          JUDGE GEARY: Are you saying that the Exhibit F,  
21          which I have as an October 10th, 2012, letter makes  
22          reference -- rather than reading it now, does it make  
23          reference to the amended return that wasn't filed until  
24          six days later? It was not dated until six days later I  
25          should say.

1 MS. NASSER: It does -- it does make reference to  
2 it.

3 JUDGE GEARY: Tell me where so I can look at it.

4 MS. NASSER: First page, number 1-C.

5 JUDGE GEARY: That appears to be a statement to  
6 the accountant, your client's accountant at the time. I  
7 believe that's a statement of what Respondent wanted to  
8 see to support an argument as opposed to being a reference  
9 to what in fact was already in existence. But it does  
10 indicate to me, at least, that it was on October 10th,  
11 2012 -- and perhaps you would agree -- on October 10th,  
12 2012, at that point, no amended return had been provided  
13 to Respondent. Would you --

14 MS. NASSER: Right. There was -- there was at  
15 least knowledge of it of its existence.

16 JUDGE GEARY: Well, I'm not sure that indicates  
17 knowledge of its existence. I think the letter, to me,  
18 indicates -- it's an indication by the Respondent  
19 regarding what it would like to see support an argument  
20 being made by the Appellant. I don't think that that's an  
21 indication that it exists. And, I think, according to the  
22 document itself, it didn't exist until six days later  
23 because that's the date on that document, the amended  
24 return.

25 My question to you would be, would you concede

1       that as of October 10th, 2012, that the return that is now  
2       Exhibit R for Respondent had not yet been created? Given  
3       that it's not dated until six days later, I think that  
4       would be a safe concession.

5               MS. NASSER: Yes. So long as -- my only issue is  
6       I don't -- I don't know that Exhibit R is -- I'm not quite  
7       sure where they got. It's not considered part of the  
8       working papers from the audit. So I don't know if the  
9       date of that is the correct date.

10              JUDGE GEARY: Okay. All right.

11              MR. SAMARAWICKREMA: Judge Geary, may I -- that  
12       is Exhibit L, page 1. That letter is included as a part  
13       of Exhibit L too.

14              JUDGE GEARY: The letter being the one that we  
15       were making reference to?

16              MR. SAMARAWICKREMA: No. It's -- the letter came  
17       from the Appellant's previous accountant to the appeal  
18       auditor. That is in our binder Exhibit L --

19              JUDGE GEARY: I see it.

20              MR. SAMARAWICKREMA: -- page 1.

21              JUDGE GEARY: It's on page 183 of the PDF --

22              MR. SAMARAWICKREMA: Correct.

23              JUDGE GEARY: -- in the electronic binder, a  
24       letter from Roy McGarrell and company indicating that they  
25       were attaching the amended return for year 2020 and

1 letters from Bank of America. Thank you. Those were the  
2 only questions that I have. Let me just check with my  
3 fellow judges.

4 Anything else right now before we allow the  
5 Appellant to conclude her arguments?

6 JUDGE KWEE: I don't have any questions. Thank  
7 you.

8 JUDGE GEARY: Judge Tay?

9 JUDGE TAY: I think I'll wait to see what she has  
10 to say in her final. Thank you.

11 JUDGE GEARY: All right.

12 And is Appellant ready for the final closing?

13 MS. NASSER: Sure.

14 JUDGE GEARY: You actually only used  
15 11-and-a-half minutes from your first argument. So  
16 technically you have about 16 minutes left. I don't think  
17 you'll need 16 minutes, but you may proceed.

18 MS. NASSER: Thank you.

19

20 CLOSING STATEMENT

21 MS. NASSER: There was question about my client  
22 being listed as a borrower to the loan, but the bank  
23 letters are all listed in Exhibit L. So if you look at  
24 Exhibit L at pages 2 through 7, you will see that not only  
25 was the owner of the Appellant company listed, but also



1       were other related companies. And the letters asked for a  
2       combined debt servicing ratio, which means it was  
3       important that being an S corporation, the Appellant  
4       company, the owner's tax returns were also equally  
5       important in that case.

6               Secondly, I just want to add that filing of the  
7       2011 amended return was never in question. It wasn't in  
8       question during the D&R. It was never in question during  
9       the response brief that was filed by the Department. And  
10      so I don't know that that's an issue that we're trying to  
11      take up right now. It seems like they -- they have  
12      conceded when they kept referring to the amended return  
13      and using it in their analysis. Using it substantively, I  
14      should add.

15             I do not believe that the Department has  
16      adequately addressed why it used the original 2011  
17      numbers, the original numbers from the original 2011 tax  
18      return. They did kind of hyperbolate in saying that there  
19      weren't any documents to substantiate the sales. Those  
20      did exist, but the Department did not accept them. And,  
21      secondly, the taxpayer did say, "We used a bank deposit  
22      analysis. That's what we use, and then we give it to the  
23      accountant, and the accountant handles our tax returns."

24             So that was their method of computing sales. The  
25      Department disregarded that. I don't know why, but they

1 did. They may have claimed that some of the monies went  
2 to the personal account. However, what would be a closer  
3 number to use? The bank deposit analysis with -- and  
4 request the -- I'm sorry -- and request the personal bank  
5 accounts for -- to review and have the taxpayer identify  
6 which sales went in there incorrectly?

7 Either way you can see from the amended tax  
8 return that an additional \$12,000 was listed above the  
9 bank deposit analysis that would show a greater number  
10 from the bank deposit analysis. So that should have  
11 addressed that issue. Whether or not \$198,000 should have  
12 been added, I don't think that's a fair assessment. And I  
13 don't think that's reasonable, and so I think the  
14 Department failed in this respect.

15 So because the Department did not meet its  
16 burden, I think that the unreported taxable sales of  
17 \$198,100 should not be assessed against the taxpayer.  
18 Further, because of the disallowed claims for resale I  
19 believe I have addressed all of that in the brief. I've  
20 addressed Department's contentions in my brief and in my  
21 reply brief showing that there were truck -- truck  
22 receipts that were not used. The Department also notes  
23 that Paradise Art was in business in 2012 after claiming  
24 that it was not in business in 2012.

25 I've also shown in -- pardon me -- various

1 printouts from the different states where those sales were  
2 made that many of those businesses were still filing  
3 reports and not closed during the periods where maybe they  
4 canceled their sales tax or their sales permits, if they  
5 did. It's -- it's not uncommon for there to be blanket  
6 resale certificates, especially, if there's an ongoing  
7 relationship with the companies.

8 I believe that if a company did go out of  
9 business but still continued to operate or gave up its  
10 resale certificate but continued to operate, it would have  
11 been an inadvertent error on my client to accept those  
12 sales as sales for resale. But nothing in here claims  
13 that -- nothing in here shows that they, in fact, did go  
14 out of business. In fact, a lot of these show they were  
15 still operating.

16 And the final point was the Milano Fine Furniture  
17 being a related company. Those sales should not have been  
18 taxed as they should have been for resale. There's no  
19 question that Milano Fine Furniture is a related company  
20 that it does have a valid resale certificate. And so it  
21 was documented that there was sales there in \$94,430. So  
22 I'm not quite sure why it wasn't accepted, other than the  
23 fact that they were related. I mean, so maybe the  
24 Department just didn't believe it, but I don't think that  
25 was enough for them to disregard that.

1           And because the Department didn't meet its  
2     burden, I'd ask that the negligence penalty be abated as  
3     well. And that's all I have.

4           JUDGE GEARY: Thank you.

5           Judge Tay, you indicated that you might -- you  
6     wanted to wait until Appellant finished argument. Do you  
7     have any question?

8           JUDGE TAY: Just one clarifying perhaps. So just  
9     to understand with regard to the loan documents, you're  
10    saying that because the owners of -- the Appellants are  
11    named borrowers, then the tax return of Appellant is  
12    relevant to the debt service equity?

13          MS. NASSER: Yes.

14          JUDGE TAY: Yes. Okay.

15          MS. NASSER: It's all related.

16          JUDGE TAY: Okay.

17          I'm going to turn to Respondent really fast.

18          After hearing that explanation, do you have any  
19    response to that contention by Appellant?

20          MR. SAMARAWICKREMA: The loan was -- the loan  
21    agreement was entered in, like, so many years before the  
22    start date of this Appellant. And the -- we received four  
23    letters under Exhibit L. Based on those, the letters, you  
24    know, the Department did not understand the -- I'm sorry.  
25    The Department did not receive the actual loan contract

1 for us to analyze. And if the Department had the loan  
2 contract, we would have given a better explanation for  
3 your questions. But based on the letters we have, the  
4 Appellant is not part of that contract.

5 And most of the sales from this Appellant goes to  
6 its personal bank account. I don't -- the Department  
7 didn't know what was the arrangement of the bank or how to  
8 interpret that debt ratio. And we requested the  
9 contract -- the loan contract to get a better  
10 understanding, and up to date we don't have that.

11 So -- and if you -- we have so many concerns with  
12 this audit. If you refer to the Exhibit A, page 52  
13 sorry -- page 52 -- sorry -- page 51, Exhibit A, page 51,  
14 under resale section, the first paragraph last sentence  
15 specifically says, like, "Taxpayer stated that sales  
16 invoices were made up to make up for the difference  
17 between bank deposits and taxable sale."

18 So because of the reliability of the record and  
19 the taxpayer, Appellant gave three different explanations  
20 during three different times. And because of those  
21 reasons, you know -- you know, we need more information to  
22 give a specific answer for your question. You know, if  
23 you have the loan contract then we can see whether the  
24 future companies will incorporate into their loan  
25 agreement.

1 JUDGE TAY: Thank you.

2 Appellant, is there anywhere in the record that  
3 shows the relevance of Appellant's tax return as to the  
4 loan and the debt service ratio?

5 MS. NASSER: Yes, in the brief I noted that it  
6 was an S corporation and that -- the Appellant is an S  
7 corporation so it's passed through. That's firstly.  
8 Secondly, there is a letter that says -- that demanded  
9 personal financial information from all persons listed in  
10 the letter, and that would be Mr. and Mrs. -- it's in the  
11 letter. I don't know if I should say it on the live  
12 stream.

13 But the record does reflect that it did ask for  
14 personal financial information in addition to the  
15 business. And because it was a subchapter S corporation,  
16 it made sense that the Appellant's company's finances  
17 flowed through, and that it would be included.

18 JUDGE TAY: Thank you. I have no further  
19 questions.

20 JUDGE GEARY: Thank you, Judge Tay.

21 Let's talk about what we are going to do about  
22 the original return. And I think we should also address  
23 Appellant's concern that Appellant assumed that the fact  
24 of filing of the amended return was not an issue and  
25 extrapolating from that. I'm assuming that Appellant

1 would argue that Appellant has not had an opportunity to  
2 address that argument. And I think we can deal with that  
3 by holding the record open.

4 My proposal, subject to input from the parties,  
5 would be to hold the record open for a reasonable period  
6 of time to allow Appellant to one, provide a copy of the  
7 original return and two, provide whatever evidence  
8 Appellant chooses to provide to establish the fact of this  
9 signature on and filling of the amended return.

10 Of course, as to the additional evidence  
11 concerning the filing of the original return, I think that  
12 we would have to allow Respondent an opportunity also to  
13 respond to any such submission. Let me ask Respondent  
14 first.

15 Does Respondent have any objection to proceeding  
16 in that fashion?

17 MR. SAMARAWICKREMA: No objections.

18 JUDGE GEARY: Now, let me ask you on behalf of  
19 Appellant, what kind of time are we talking about? How  
20 long would it take you first to obtain a copy of the  
21 original return?

22 MS. NASSER: That's a great question because I  
23 don't -- I know I don't have access to it, and so it would  
24 be a matter of reaching out. And I know the Appellant is  
25 not currently with the same accountant. So I don't know

1       how easy that's going to be to get.

2               JUDGE GEARY: Let me ask you this. Let's say --  
3       let me propose this. Let me propose that we would hold  
4       the record open for 30 days to allow Appellant to submit  
5       whatever additional evidence Appellant chooses to offer  
6       only on the issue of whether or not the amended return  
7       was, in fact, signed and filed and also to offer the  
8       original tax return.

9               If -- as that 30 days is approaching and  
10       Appellant has good cause for requesting an extension of  
11       the time, then Appellant can make that request through  
12       OTA. And we would consider allowing an extension -- a  
13       reasonable extension of time to allow Appellant to marshal  
14       whatever evidence Appellant chooses to offer on that  
15       specific issue and to get the -- a copy of the original  
16       return. Is that acceptable?

17              MS. NASSER: That's acceptable.

18              JUDGE GEARY: All right.

19              And my order would probably also be that the  
20       Respondent would have 30 days to the extent that Appellant  
21       offers evidence on the issue of whether or not the amended  
22       return was signed and filed, Appellant would have 30 days  
23       to respond to such evidence. I think if all Appellant  
24       ultimately does is provide a copy of original return, I  
25       don't see any need for Respondent needing to file a



1 response to that.

2 Does Respondent see a need?

3 MR. SAMARAWICKREMA: No.

4 JUDGE GEARY: Okay. All right.

5 So that's going to be my order, and I will issue  
6 a written order sometime after today, but you're all on  
7 notice now that that's going to be the order. 30 days  
8 from today's date will be the date that the additional  
9 evidence is due from Appellant, and 30 days from the date  
10 Appellant produces that evidence or provides that evidence  
11 to Respondent. Even if it's done in 20 days, then that  
12 will be the time that the Department's 30 days will run  
13 from, assuming she produces evidence that Department needs  
14 to reply to.

15 All right. The evidence -- the case is not going  
16 to be deemed submitted until this additional briefing is  
17 completed. We will notify the parties by letter, I  
18 believe, when the additional briefing has been completed  
19 and when the record is closed. And after that date, the  
20 three judges will get together. We'll talk about the  
21 evidence and the issues. We will reach our decision,  
22 prepare a written decision, and that written decision will  
23 be provided to the parties within 100 days of the date the  
24 record closes. And that's going to conclude this  
25 proceeding for now.

1           Let me ask our reporter, how long of a break you  
2           need so I can announce approximately when the streaming  
3           will begin on the afternoon calendar.

4           THE STENOGRAPHER: May we go off the record?

5           JUDGE GEARY: Yes.

6           (There was a pause in the proceedings.)

7           JUDGE GEARY: Thank you everybody for  
8           participating. I have already mentioned that in the  
9           coming weeks we will decide the case after the record  
10          closes. So the hearing in Marco Craftmasters, Inc., is  
11          adjourned.

12          (Proceedings adjourned at 12:32 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for  
the State of California, do hereby certify:

That the foregoing transcript of proceedings was  
taken before me at the time and place set forth, that the  
testimony and proceedings were reported stenographically  
by me and later transcribed by computer-aided  
transcription under my direction and supervision, that the  
foregoing is a true record of the testimony and  
proceedings taken at that time.

I further certify that I am in no way interested  
in the outcome of said action.

I have hereunto subscribed my name this 6th day  
of September, 2022.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER