

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
 MOVEEL FUEL, LLC, ) OTA NO. 18011872  
 )  
 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 9:31 a.m.  
and concluding at 10:54 a.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 ANDREW KWEE

Panel Members: ALJ SHERIENE RIDENOUR  
ALJ DANIEL CHO

For the Appellant: HAIG KELEDJIAN

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

RANDY SUAZO  
CHAD BACCHUS  
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-5 were received at page 8.)  
(Department's Exhibits A-H were received at page 8.)

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1 Cerritos, California; Wednesday, August 17, 2022

2 9:31 a.m.

3  
4 JUDGE KWEE: We are ready to start the record,  
5 and we're opening the record in the Appeal of Moveel Fuel,  
6 LLC. This matter is being heard before the Office of Tax  
7 Appeals, and the OTA Case Number is 18011872. Today's  
8 date is Wednesday, August 17th, 2022, and time  
9 approximately 9:31 a.m. This hearing is being conducted  
10 in person in Cerritos, California, and it's also being  
11 live streamed on our public YouTube channel.

12 Today's hearing is being heard by a panel of  
13 three administrative law judges. Myself, I'm Andrew Kwee.  
14 I will be the lead Administrative Law Judge. And to my  
15 right is Daniel Cho, and to my left is Sheriene Ridenour.  
16 And these are the other members of the tax appeals panel.  
17 All three of us will be meeting after the hearing to  
18 produce a written decision as equal participants.  
19 Although, I'll be conducting today's hearing, any judge  
20 present today may ask questions or otherwise participate  
21 in order to ensure that we have everything that we need to  
22 decide this appeal.

23 With that said and for the record, I will please  
24 ask the parties to state their names, starting with the  
25 representative for the taxpayer.

1 MR. KELEDJIAN: Haig Keledjian.

2 JUDGE KWEE: Okay. Thank you.

3 And for CDTFA, would you please identify  
4 yourselves for the record.

5 MR. SUAZO: Randy Suazo, Hearing Representative.

6 MR. PARKER: Jason Parker, chief of Headquarters  
7 Operation Bureau. And we also have Chad Bacchus from our  
8 Legal Division.

9 JUDGE KWEE: Okay. Great.

10 So then for the exhibits, I just wanted to go  
11 over that quickly because at the prehearing conference we  
12 had Exhibits A through G for CDTFA. But then after the  
13 prehearing conference CDTFA added an additional exhibit,  
14 Exhibit H. And I just wanted to first check, was that  
15 exhibit previously submitted and -- just to the parties,  
16 and it just wasn't included in the exhibit index, or is  
17 that new information?

18 MR. SUAZO: It was -- it was given after the PHC,  
19 prehearing conference. We found additional evidence to  
20 support our case, so it was given to both -- I believe  
21 both parties. Well, yeah, actually, both parties. And it  
22 wasn't submitted before the prehearing conference.

23 JUDGE KWEE: Okay. And for Appellant's  
24 representative, do you have any objection to the new  
25 document, exhibit -- I'm sorry -- it was Exhibit H for

1 CDTFA.

2 MR. KELEDJIAN: It was given to me on Thursday  
3 afternoon of last week -- Friday afternoon of last week.  
4 Yeah, it's nothing new. They always produce documents  
5 last day -- the last week. I do object to it.

6 JUDGE KWEE: Okay.

7 And so with that said, the document looks like a  
8 document that Appellant had furnished. So I would give  
9 you an opportunity to respond, and I can hold the record  
10 open to allow you 30 days to respond to anything raised by  
11 the new exhibit, if that works for you.

12 MR. KELEDJIAN: Yes. Thank you.

13 JUDGE KWEE: Okay.

14 And so, CDTFA, are you -- do you have any  
15 objections to holding the record open for 30 days to  
16 respond to the new exhibit.

17 MR. SUAZO: No objections.

18 JUDGE KWEE: Okay. Okay.

19 So with that said, I believe we then have  
20 Exhibits A through H for CDTFA, and 1 through 5 for the  
21 taxpayer. And those were the documents that we previously  
22 discussed at the prehearing conference, plus the one new  
23 document for CDTFA. And I understand there's no remaining  
24 objections to the admission of any of these documents for  
25 CDTFA. Is that correct, your understand.

1           MR. SUAZO: That's correct.

2           JUDGE KWEE: Okay.

3           And for Appellant is that a correct statement to  
4 your understanding?

5           MR. KELEDJIAN: My documents are marked A through  
6 E.

7           JUDGE KWEE: Oh, yes. I had A through E, but the  
8 taxpayer's exhibits are supposed to be numbered, not  
9 lettered. So I renumbered them 1 through 5, and the  
10 document I had just summarized that I distributed had the  
11 numbers showing, you know, like 1 for A, 2 for B. Is that  
12 okay?

13          MR. KELEDJIAN: Yes.

14          JUDGE KWEE: Okay. Great.

15          So then we're admitting Exhibits 1 through 5,  
16 which were originally lettered A through E for the  
17 taxpayer, and A through H for CDTFA without further  
18 objections but subject to holding the record open for the  
19 30 days to allow Appellant's representative to provide  
20 comments on the new CDTFA Exhibit H. With that said,  
21 those items are admitted into the record.

22                 (Appellant's Exhibits 1-5 were received  
23 in evidence by the Administrative Law Judge.)

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



1           And the next item is the issues for the appeal.

2       I understand that there are four issues. Those issues  
3       were summarized at the prehearing conference with the -- I  
4       don't have any changes to them, but I'll just summarize  
5       them here for the parties. And, for the recorder, the  
6       first issue was whether the liability as determined by  
7       CDTFA is overstated.

8           The second issue that we're going to be deciding  
9       is whether an allowance is warranted in connection with  
10      the disallowed sales and use tax return Schedule G,  
11      credits for sales tax prepay to suppliers that was claimed  
12      by Appellant.

13           The third issue is whether OTA has jurisdiction  
14      to order an adjustment for overpayments on Appellant's SG  
15      account. And just to clarify, this isn't just determining  
16      that there was an overpayment. That's saying if there was  
17      an overpayment, is whether we have jurisdiction to order  
18      an adjustment.

19           And the fourth issue is whether -- and that's  
20      assuming we find jurisdiction on the third. The fourth  
21      issue is whether Appellant is entitled to bad debt  
22      deduction for prepaid sales tax accounts found worthless  
23      and charged off for income tax purposes. So then we only  
24      get to Issue 4 if we find in favor for the Appellant for  
25      Issue 3.

1           And does that summarize those issues? Is that  
2           still the same for both parties? I guess I'll start with  
3           Appellant's representative.

4           I'm sorry. Could you please --

5           MR. KELEDJIAN: I'm having a hard time tying-in  
6           to whether the S -- the credits that are on the SG return  
7           have anything to do with the bad deduction. I -- I think  
8           whatever that finding is, they are two different issues.  
9           Those credits sitting over there are not from the bad  
10          debt. The SG return -- the numbers that are sitting on  
11          the SG return is a liability.

12          JUDGE KWEE: Right.

13          MR. KELEDJIAN: It has nothing to do with the bad  
14          debt.

15          JUDGE KWEE: Oh, yeah. So that's why I listed  
16          them as four separate issues. The first one was whether  
17          the liability is overstated. The second one is the  
18          Schedule G credit. And the third and fourth one had to do  
19          with the bad debt.

20          MR. KELEDJIAN: But you stated that it was con --  
21          that the fourth issue is contingent upon findings of  
22          three -- or fourth issue.

23          JUDGE KWEE: Oh, the fourth issue was contingent  
24          on finding jurisdiction to resolve the fourth issue. So  
25          the third issue is whether we have jurisdiction, and the

1 fourth issue was whether the bad debt deduction -- so the  
2 third issue is whether we have jurisdiction to order an  
3 adjustment. Hence, for basically for if we found that  
4 there is bad debt on the Schedule G account.

5 MR. KELEDJIAN: Well, we can discuss it later on  
6 when it's brought up, but the liability itself deals with  
7 SG payments. The tax audit itself deals with SG payments.  
8 I don't believe Number Four has anything to do with  
9 jurisdiction. It's part of the audit.

10 JUDGE KWEE: Oh, okay. So from my understanding  
11 is that the bad debt deduction that was being claimed for  
12 the SG payment?

13 MR. KELEDJIAN: No. It was claimed for the sales  
14 tax permit. It's the prepayment of the sales tax permits  
15 that we never received. We paid the refinery. We didn't  
16 get the money back. And that number reflects our  
17 liability on the SR return, the sales tax return.

18 JUDGE KWEE: Right. Right. No. I understand  
19 that you claimed it on the sellers permit. So I guess  
20 maybe I should ask.

21 Does CDTFA have -- want to respond or have a  
22 thought on the phrasing of the issues?

23 MR. SUAZO: Basically, our understanding is that  
24 the bad debt is for the sellers permit. That's what he's  
25 claiming for. And the claim -- the overpayment of the --

1 of the prepaid tax on the SG permit, he's trying to say --  
2 well, our understanding is he's trying to say that -- how  
3 can I put this? On the SG permit, he's trying to claim  
4 that they paid the refinery, and he should be entitled to  
5 the money back on the refinery.

6 JUDGE KWEE: Okay. So was there any concern  
7 about jurisdiction then, or could I strike the --

8 MR. SUAZO: There's a concern about jurisdiction  
9 between the SG and the SR permits.

10 JUDGE KWEE: Okay. So maybe I phrased Issue 3  
11 incorrectly. Could you clarify what CDTFA's concern about  
12 jurisdiction was and then maybe I could rephrase that  
13 Issue 3.

14 MR. SUAZO: Basically, I had this in my -- in my  
15 presentation but --

16 JUDGE KWEE: Would it help if we took a brief  
17 recess just to -- because I want to make sure I phrase the  
18 issues correctly before the parties discuss what the  
19 interest should be. Would it help to take a five-minute  
20 break for the, I guess, for CDTFA to determine the concern  
21 was on the jurisdiction.

22 MR. SUAZO: All right. Okay.

23 JUDGE KWEE: Okay. So we are going to go off the  
24 record for a brief moment, five minutes, and then we'll  
25 return at 9:46. The time is 9:41, and CDTFA can confer.

1 (There is a pause in the proceedings.)

2 JUDGE KWEE: So let's go back on the record.

3 And, CDTFA, did you have a way to summarize the  
4 jurisdiction concern or proposal for the jurisdiction  
5 issue?

6 MR. SUAZO: Basically, our understanding is that  
7 he's trying to claim something that he's getting a  
8 prepayment on an SG account, and he's trying to claim it  
9 on an SR account, which are two distinct accounts. So  
10 we're saying that there's no jurisdiction. And plus the  
11 time period for claiming on the SG would have passed at  
12 this time. And the SG account is not being heard today.  
13 It's only the SR account that's being heard today.

14 JUDGE KWEE: Okay. So if I phrased it as whether  
15 OTA has jurisdiction to order adjustments that would  
16 impact the Appellant's SG account, would that summarize  
17 your concern?

18 MR. SUAZO: I believe, yeah.

19 MR. PARKER: Also, Judge Kwee, I have a comment  
20 on the exhibits. In looking through our emails, when we  
21 provided exhibits back on May 13th, we provided Exhibit H  
22 to evidence@ota and also cc' d the Appellant's  
23 representative on that date. So the Exhibit H was  
24 actually provided in May.

25 JUDGE KWEE: Oh, prior to the first time, this

1 was scheduled for a hearing. Okay.

2 MR. SUAZO: Between the prehearing conference and  
3 the actual hearing -- proposed actual hearing date.

4 JUDGE KWEE: So I'll turn back to Appellant's  
5 representative.

6 So the proposal is to rephrase the third issue as  
7 to whether OTA has jurisdiction to order adjustments that  
8 would impact Appellant's SG account. And I think what  
9 they're saying is that because the prepaid sales tax is  
10 collected and -- or I guess reported under the SG account  
11 that to the extent that there was bad debt in connection  
12 with the prepaid sales tax amounts that weren't collected  
13 from your customers that it would be related to the SG  
14 account or -- I guess, is that a correct summary of  
15 concern for CDTFA?

16 MR. SUAZO: Sure.

17 JUDGE KWEE: Okay. So I guess that's the issue  
18 that they're raising. Do you have concerns with that  
19 third issue?

20 MR. KELEDJIAN: Yeah. They're mixing up the  
21 issues. There are two issues with the SG account. First  
22 issue with the SG account is there's credits sitting on  
23 the SG account balance, which we want to take credit for.  
24 That's what they're saying, whether we should have  
25 jurisdiction over or not. There's a \$300,000 liability

1 sitting on the SG account. So when you buy fuel in  
2 Southern California, you pay the prepaid taxes up front to  
3 the refinery. So we paid our taxes to the refinery.

4 We filed an SG return, and decide who is going to  
5 get the credit. Are we going to get the credit as an  
6 end-user or retailer? Or are we going to pass it to the  
7 wholesalers? It's because of the SG this whole audit  
8 started. It was an improperly filed SG return. There are  
9 some credits sitting over there.

10 In addition to that, we sold fuel to a wholesaler  
11 who bounced their check. We're saying because they  
12 bounced their check, we never got reimbursed the prepaid  
13 sales tax we paid upfront. So Issue Number 4 has nothing  
14 to do with whether you have jurisdiction with the SG  
15 return. He's mixing these up. There's an SG return  
16 issue. If you have jurisdiction over it, I want credits  
17 that are sitting on the SG side.

18 But if you don't have jurisdiction over it, my  
19 bad debt has nothing to do with it. The adjustment would  
20 have been done on the SR return if it was accepted.

21 JUDGE KWEE: Okay. So I understand that there's  
22 two aspects. There's the SG credit that was claimed. And  
23 then there's the bad deduction of, I think, \$847,000?

24 MR. KELEDJIAN: Right.

25 JUDGE KWEE: And those are two aspects.

1           I understand that CDTFA had raised a concern in  
2           connection with the jurisdiction to grant a, \$847,000 --  
3           if that's the correct amount -- bad debt deduction. Was  
4           your concern with the jurisdiction of the bad debt  
5           deduction.

6           MR. SUAZO: Yes, it is the concern of bad debt  
7           deduction.

8           JUDGE KWEE: Okay. So the way I have the issues,  
9           we are going to address both of concerns that you have  
10          raised -- that Appellant has raised. CDTFA has also  
11          raised concern about the jurisdiction of the \$847,000 bad  
12          debt deduction. I understand that you're saying that  
13          there isn't a concern about jurisdiction. But because  
14          CDTFA has raised it, I will address that but -- and if we  
15          found that there was no jurisdiction, of course, we would  
16          address it.

17          So but I think the way I have it addressed is all  
18          the issues, whether there's an overstatement, two, whether  
19          there's an SG credit and, three, whether there's a bad  
20          deduction. You're, of course, free to say that we do have  
21          jurisdiction. It's just because the parties -- one of the  
22          parties has raised that as a potential issue, that is  
23          something I would address.

24          I do understand that you believe there is  
25          jurisdiction but because jurisdiction is questioned by the



1       other party, then I would address it that way.

2               MR. KELEDJIAN: But my concern is not whether or  
3       not there's a jurisdiction issue. He's raising the  
4       jurisdiction issue on Number 4 tied to the SG return. So  
5       if you find the SG return you have no jurisdiction, I  
6       don't get my day for Number 4. And what I'm concerned  
7       about is SG has nothing to do with the issue of Number 4.

8               So I don't want to be wiped out of having my day  
9       in court just because you realize you don't have an issue  
10      over the SG. Because the adjustment for bad debt is done  
11      on the SR return. It has nothing to do with SG. I just  
12      want those two to be a separate issue. And he can argue  
13      any jurisdiction issue he could as long as it's not  
14      related to the SG. That's my point --

15              JUDGE KWEE: Okay. Would it be.

16              MR. KALEDJIAN: -- which hasn't been raised  
17      before anyway.

18              JUDGE KWEE: Would it be easier if I just raised  
19      issue of Issue Number 3 as whether OTA has jurisdiction to  
20      order a bad debt deduction and delete reference to the SG  
21      account? Is that -- would that address your concern?

22              MR. KALEDJIAN: That would be fine.

23              JUDGE KWEE: Okay. And, CDTFA, does that work  
24      for you too?

25              MR. BACCHUS: Just so we're clear -- there's a

1 lot of confusion. The Department is not arguing that  
2 Office of Tax Appeals does not have jurisdiction over  
3 whether a bad debt can be claimed or granted. The issue  
4 with jurisdiction is that the SG account was not audited.  
5 So the SG account is not part of this hearing. There's no  
6 jurisdiction for the Office of Tax Appeals for this  
7 hearing to do anything with the SG account.

8 We're not saying bad debts were claimed on the SG  
9 account. We're just saying that to the extent that there  
10 is an argument about credits on the SG account, that is  
11 not something that is in play today.

12 JUDGE KWEE: Okay. And if I could get quick  
13 clarification then, because the three items that were  
14 raised by Appellant was the adjustments. The first is  
15 just the calculation of liability, and the second was the  
16 SG credit on the sales and use tax return, and the third  
17 was bad debt deduction. Do either of those three issues  
18 impact jurisdiction then? Because if they don't, then I  
19 would just strike jurisdiction as not relevant because  
20 it's not raised by any of the issues asserted by  
21 Appellant.

22 MR. PARKER: Judge Kwee, I think the issue is  
23 that the -- they're claiming that the claimed credits on  
24 the Schedule G are for resale sales, which would be  
25 claimed on an SG account and return. I think that's the

1 issue with the credits. The credits were claimed as part  
2 of the retail sales of fuel on the SR return.

3 JUDGE KWEE: Okay. So then -- so CDTFA's concern  
4 with jurisdiction is in reference to the SG credits that  
5 were claimed then, and that they should have been claimed  
6 under the SG account. Is that what you're saying?

7 MR. PARKER: I believe that that's the issue.

8 JUDGE KWEE: Okay. So let me just think for a  
9 minute. Okay.

10 So for Appellant -- sorry to keep going back and  
11 forth here. So if I phrase this as -- if I go back to  
12 phrasing this as whether OTA has jurisdiction to order  
13 adjustments that would impact Appellant's SG account, with  
14 the understanding that they're raising that in connection  
15 with SG credits, but -- but just the issue is, yeah,  
16 whether we have jurisdiction to order adjustments that  
17 would impact your SG account. I think that captures what  
18 their concern, and that addresses your concern about the  
19 bad debt aspect. Is that fair to say?

20 MR. KELEDJIAN: No. No. I'm not looking for  
21 adjustments on my SG account. Actually, this audit was an  
22 SG audit. It is the audit of the SG that they found that  
23 it was prepared improperly, and then they gave me a bill  
24 on the SR. They never billed this on the SG account. And  
25 the reason they don't bill the SG account, because every

1 gas is accounted for.

2 So the question was which client got to take the  
3 credit. That credit is dictated by the SG return when we  
4 file. We filed it improperly, which created this audit  
5 and gave us the large portion of this bill, which was the  
6 first issue. That's an improperly filed SG return. So to  
7 say that the SG was not audited, it was audited. It  
8 created the liability. But the SG, you can't bill the SG.  
9 You have to bill SR because it reflects the credit we took  
10 on sales taxes.

11 So, inherently, the SG is attached to this audit.  
12 We're not looking for credits on the SG side of it. We're  
13 just saying that the mistakes that were made on the SG  
14 side of it, we want it to reflect on our SR return, which  
15 is in front of the court. That's the jurisdiction  
16 argument. As far as bad debt is concerned, it has nothing  
17 to do with an SG return.

18 Those bad debts are reflected on the tax  
19 return -- the SR tax return only. It come out of SR  
20 activity. It has nothing to do with SG, and they're  
21 mixing it up. I don't know why they're mixing it up, but  
22 they're mixing it up.

23 JUDGE KWEE: Okay. Okay. So I get it. And so  
24 maybe I phrased it incorrectly. So my understanding is,  
25 what they're saying is that they are questioning OTA's

1 jurisdiction to grant under your SR account a Schedule G  
2 credit for prepaid sales tax. And so if I phrase it as  
3 whether OTA has jurisdiction to order adjustments that  
4 would impact -- or whether OTA has jurisdiction to order  
5 the S -- Schedule G credits under your SR account. So --  
6 or I guess whether OTA has jurisdiction to order  
7 Schedule G credits. Is -- do you have -- I think that  
8 captures what their issue is, and do you have any  
9 remaining concern about that?

10 MR. KELEDJIAN: No.

11 JUDGE KWEE: Okay. Perfect. Schedule G and  
12 credits -- okay.

13 So then we have the four issues. One is whether  
14 the liabilities are overstated. Two is the Schedule G on  
15 the SR accounts and, three, was whether there's  
16 jurisdiction to consider that. And four, it was whether  
17 Appellant is entitled to bad debt deduction. And I  
18 realize Issue 2 and 3 should be reversed. The first  
19 should be jurisdiction, and the second was whether a  
20 credit is allowable.

21 So I'll -- in the opinion I'll change the order  
22 so that jurisdiction is addressed before the substantive  
23 issue of whether the credit is allowable. With that said  
24 with those four issues, are there any remaining concerns  
25 from the parties about how the issues are addressed for

1 Appellant?

2 MR. KELEDJIAN: No.

3 JUDGE KWEE: Okay.

4 And for CDTFA?

5 MR. SUAZO: No.

6 JUDGE KWEE: Okay.

7 Great. So I'm sorry about that. I'm glad that  
8 we got that worked out. And that is helpful to understand  
9 that the credit concerned with jurisdiction was being  
10 raised in connection with the Schedule G sales and use tax  
11 return credits as opposed to the bad debt deduction. So  
12 thank you. I'm glad that we got that clarified.

13 With that said, the way that this presentation is  
14 going to go is that we're going to have 30 minutes for  
15 Appellant's opening presentation, followed by 15 minutes  
16 for CDTFA's presentation. There aren't going to be any  
17 witnesses testify, but there are going to be questions  
18 presumably from the panel that could be asked of either  
19 party. Following that, we will have five minutes per  
20 party for any closing remarks.

21 And is that presentation summary I just gave,  
22 does that sound good for both parties? For CDTFA? You  
23 would have 15 minutes. They would have --

24 MR. SUAZO: Sure.

25 JUDGE KWEE: Okay.

1           And for Appellant, does that order of  
2       presentation, does that sound accurate to you?

3           MR. KELEDJIAN:   Yes.

4           JUDGE KWEE:   Okay.   Great.

5           So before we turn it over to Appellant's  
6       representative for their 30 minutes, are there any  
7       question from either party?

8           Okay.   So I have head shakes from both parties.  
9       So then I will turn it over to Appellant's representative.

10          You have 30 minutes for your opening  
11       presentation.   You may proceed.   Thank you.

12

13                               PRESENTATION

14          MR. KELEDJIAN:   So Moveel Fuel is a single member  
15       LLC.   It started as a single-man operation, and it's grown  
16       over the years to 61 employees.   It's in the -- it's in  
17       what they call "the wet-hosing business."   It basically  
18       buys fuel from refiners or other wholesalers and then  
19       takes that fuel and fills up trucks in the middle of the  
20       night, so these trucks aren't in the streets wasting their  
21       own gas waiting at gas stations to buy gas.

22          In addition to the wet-hosing business, it has a  
23       site of sales that it sells to other wholesalers.   So it's  
24       a retailer and a wholesaler all in one.   When it was a  
25       small company, they hired a bookkeeper.   She came in with

1 her own software that she had written or something. It  
2 was this modular software which --

3 JUDGE KWEE: I'm sorry to interrupt you. Would  
4 you mind speaking into the mic --

5 MR. KELEDJIAN: Sure.

6 JUDGE KWEE: -- so we could hear you better?  
7 Thank you.

8 MR. KELEDJIAN: It was a modular software. It  
9 just did accounts receivable and accounts payable. And  
10 she would put together the paperwork to do the financial  
11 statement. And she would also file the sales tax returns  
12 as well as the SG returns.

13 So during this audit period, she prepared SG  
14 returns which said that all of the client sales were  
15 retail, and she didn't bother taking into consideration  
16 the wholesale sales. When she did that, it created a  
17 liability on the SR return, which is why they got audited,  
18 because it's very simple. Because if another wholesaler  
19 is taking credit for these taxes, the Board back then  
20 would match the SR -- the SG returns. And if something  
21 was off, they would inquire or audit the taxpayer. So  
22 that's how this tax audit started.

23 We're not here arguing about the mistakes she  
24 made. We're agreeing with that. If we sold to a  
25 wholesaler and we took credit for those prepaid sales



1     taxes, we shouldn't have done that. That's fine with us.  
2     That's a mistake we made, and we'll pay the price for  
3     that. What I'm arguing for are really three things.  
4     There were some additional sales which the Board added to  
5     what my taxpayer had. Those sales were all based on an  
6     aging receivable report that the old accountant handed to  
7     the State Board at that time, and that added additional  
8     sales.

9             Even though we had bank statements, tax returns  
10    saying that that accounts receivable sheet was wrong, to  
11    date we can't figure out why it was wrong. But there was  
12    an archaic accounting system in place that created that  
13    problem. So my argument here is that I have shown enough  
14    evidence that that mistake doesn't warrant it, and I'll  
15    get into that in a minute.

16            The second part of my argument is that when the  
17    State Board changed to the California Department of  
18    taxation, it created a huge liability for me on the SG  
19    side of the ledger saying we owe money there. Those  
20    monies are the same amount of monies that we incorrectly  
21    filed on the SR return. So we're doubling up. That's the  
22    issue of jurisdiction that I want credit for. If we're  
23    going to owe you on the SG return because we improperly  
24    filed it, which we shouldn't, but at least give me a  
25    credit on the SR return.

1           And finally, one of the biggest wholesalers that  
2     we sold fuel to in those periods, which were denied the  
3     prepayment of sales taxes, that wholesaler bounced  
4     \$847,000. They went out of business. So, in other words,  
5     the State of California got all of its prepaid money from  
6     me up front, but when I gave it to the wholesaler, the guy  
7     bounced his check. The Board in its argument is raising  
8     that this is a bad debt issue, it should have been  
9     reflected on the tax return. It should have been  
10    reflected on the other one. And I'm saying this isn't a  
11    classic bad debt.

12           We're lowering our taxable sales because  
13    wholesale sales are not even taxable. This is different.  
14    What we're trying to lower -- what we're trying to lower  
15    is the prepayment amount that we're giving away because we  
16    never got that prepayment back. The State of California  
17    already got this money. And if we turn around and write a  
18    check to you guys, you're going to get paid twice on the  
19    same gallon of gas. So this is the whole issue with the  
20    bad debt deduction.

21           So in order -- in order for me to try to  
22    understand -- so going back to the first issue. We are  
23    admitting to the fact there were some improperly filed  
24    returns. And based on that, we're admitting to the fact  
25    that we owe you money on this one. That issue is put to

1       bed.

2               The second part where the additional sales are  
3       unwarranted, I attached an Exhibit E -- which is 5 now --  
4       which shows if we use the numbers of the Board how  
5       ridiculous these numbers are. As you guys are well-aware,  
6       there's a profit margin that the Board has used in the  
7       past to do audits. It's called WAM, weighted average  
8       margin. Usually, when you audit a gas station or anybody  
9       in the fuel industry, the Board has said there's a profit  
10      margin that these people have, and based on that profit  
11      margin, we can figure out how many gallons they should  
12      have reported and what sales tax should have been. And  
13      this has been going on for years and years, even back from  
14      the days of the gas war days.

15             Your average gas station or somebody who is doing  
16      wet hosing is going to make anywhere from 20 to 30 cents a  
17      gallon. They can't make more than that. Even today when  
18      gas prices go up, the gas station owners run and raise the  
19      price when gas prices go down, but their profit margin is  
20      always the same. If you -- from -- from crude oil to  
21      diesel fuel, the one that makes the money when prices go  
22      up and down is the guy pulling it out of the ground; not  
23      the wholesalers, not the gas station owners.

24             So what I did in this summary is I summarized  
25      three years of income and expenses, cost of sales and

1 everything. And in 2010, we made 32 cents a gallon -- per  
2 gallon, profit.

3 JUDGE KWEE: One second. I'm getting a feedback  
4 that we're having a hard time hearing you on the live  
5 stream. If you don't mind pulling your mic a little  
6 closer just so that we're able to capture --

7 MR. KELEDJIAN: How's that?

8 JUDGE KWEE: I apologize for interrupting you.

9 MR. KELEDJIAN: No problem.

10 So I provided a spreadsheet that shows in 2010 we  
11 made 32 cents a gallon. During the audit period, if we go  
12 with the numbers of the Board with the additional sales,  
13 we're making 70 -- 74 cents a gallon, which is an  
14 impossibility for somebody in this business to make 74  
15 cents a gallon. These additional sales are wrong. They  
16 came out of an error. There was an error in her system.  
17 That was the reason I was brought in is to clean up all  
18 their operations.

19 There are mistakes made because they grew too  
20 fast. But at the end of the day, we did not make 74 cents  
21 a gallon. It's an impossibility for any wholesaler to  
22 make 70 cents a gallon. A wet-hose operator is not going  
23 to make more than 32 cents a gallon today. Just because  
24 gas prices go up and down, it doesn't mean these guys make  
25 any more money.

1           And at that time, the gas prices were \$2.87,  
2       \$3.01, and \$3.79 at the highest. I mean, you're telling  
3       me one-third of it is going to go to a wholesaler? That's  
4       an impossibility. So these profit -- by adding these  
5       additional sales, the profit margin goes crazy, which  
6       tells me they don't belong there. As far as that's  
7       concerned, I don't know what else I could tell you.

8           As far as the SG return, this whole problem, if  
9       you look at the history, if it's possible for somebody to  
10      go back and look at the days of the State Board of  
11      Equalization, that liability was not there. We didn't owe  
12      anybody that money back -- just when that conversion  
13      happened, as soon as it went on the computer, I've  
14      contacted the State Board. I've contacted the original  
15      auditors on this. They all agree that there should not be  
16      any liability on this SG return. Nobody could figure it  
17      out, and nobody wants to pay attention to it. I don't  
18      know what else to do.

19           There's a liability sitting on the SG return,  
20      which is equal to the liability on my side of the ledger  
21      on the SR return. So I'm really hoping the Board could at  
22      least give us that credit. Right now this taxpayer is  
23      facing additional sales which is unwarranted, double  
24      taxation. And with that, it leads me to the bad debt. It  
25      paid the prepaid sales tax on all the gallons it bought.

1 Every single penny of it was paid. 16 to 29 cents a  
2 gallon was paid during this audit period.

3 When it sold the fuel to Vivo and some of these  
4 other companies, it was to be reimbursed for the 29 and 15  
5 cents a gallon it paid to the State Board of California --  
6 I mean, at that time the State Board. They're checks  
7 bounced. They went bad -- they went bankrupt. So what  
8 happened? We paid the 29 cents to the State of  
9 California. We didn't get to be reimbursed. And that  
10 adjustment is on the SR return, and I'm looking to adjust  
11 for that. This is double taxation.

12 You guys got the money. You got the 16 cents.  
13 What the SG return decides is who is going to take credit  
14 for it. So you adjusted the SG return that, you know,  
15 Vivo should take the credit. But then they bounce the  
16 check, so they don't get the credit. They're out of  
17 business. They probably didn't file a sales tax return.  
18 So now we have to pay this again? It's double taxation  
19 for us. That one gallon of gas is being taxed twice if I  
20 don't get the bad debt deduction on the SR return.

21 That's our case there.

22 JUDGE KWEE: Okay. Thank you.

23 So I guess I'll start by asking the panel.

24 Judge Ridenour, do you have any questions for the  
25 parties?

1 JUDGE RIDENOUR: This is Judge Ridenour. I do  
2 not. Thank you.

3 JUDGE KWEE: Okay.

4 And, Judge Cho, did you have any questions for  
5 the parties?

6 JUDGE CHO: I don't have any questions at this  
7 time. Thank you.

8 JUDGE KWEE: Okay. So I did have, I guess, a  
9 couple of clarifying questions. The first is when  
10 you're -- with respect to the sales or in particular the  
11 bad deduction sales to the retailer, the fuel seller that  
12 went out of business -- or did you not get paid? Are  
13 these then CFN sales, card fuel network sales that were at  
14 issue?

15 MR. KELEDJIAN: No. This was a company that went  
16 out of business. They were another wholesaler.

17 JUDGE KWEE: Right. I mean, was the wholesaler a  
18 CFN? So are you -- was your client basically operating as  
19 part of a card fuel network so then --

20 MR. KELEDJIAN: No. This had nothing to do with  
21 a card fuel network.

22 JUDGE KWEE: Oh, okay.

23 MR. KELEDJIAN: This was sell to another  
24 wholesaler. The numbers were verified. There's no issue  
25 as to the bounced check. During the audit everything was

1       verified, even the gallons that was sold to this  
2       wholesaler.

3               JUDGE KWEE:   Okay.   So your client then made  
4       retail sales at a store and also sold at wholesale to  
5       other fuel suppliers?

6               MR. KELEDJIAN:   Yes, sir.

7               JUDGE KWEE:   Okay.   All right.   Thank you.   I  
8       thought when there was reference to the wholesalers that  
9       it involved CFN network sales.   So I didn't realize that  
10      people -- the parties operated that way that they made  
11      retail sales and wholesales other than outside the CFN  
12      network.   So that was helpful.   Thank you.

13              So and if -- just so I'm understanding how this  
14      is working.   So my understanding is, for example, when the  
15      Appellant would purchase -- and just -- I'm just going to  
16      use numbers for purposes of helping to understand this,  
17      and I understand the numbers might not be accurate with  
18      respect to the tax rates.   But say your Appellant  
19      purchased a thousand gallons of fuel and -- from a fuel  
20      supplier, and then the fuel supplier, say they collected  
21      \$100 in prepaid sales tax from your client, and the client  
22      paid it to the fuel supplier.

23              And then when your client made, for example, if  
24      they sold half of that at retail, then they would claim on  
25      their sales and use tax return a Schedule G credit for



1 half of that, say \$50, and they would also report retail  
2 sales tax.

3 And so the Schedule G credit would offset the  
4 resale sales tax that is imposed on those retail sales.  
5 And I understand that there's no issue with effect to  
6 those transactions. The issues turn to when they're  
7 making sales for resale. I mean, in that case, they would  
8 be responsible because there's no sales tax on the  
9 wholesale transactions, they would be responsible for  
10 collecting the \$50 and prepaid sales tax from Appellant's  
11 customers.

12 But what you're saying, at least for Issue 3, is  
13 that one of those customers didn't pay your client, either  
14 the amount due or the prepaid sales tax. So your client  
15 is out the 50 bucks, or in this case it's \$847,000 in  
16 prepaid sales tax that should have been paid. Is that --  
17 is that the issue with the bad debt?

18 MR. KELEDJIAN: The whole issue is correct. The  
19 only difference is that the 847 is the total bad debt, not  
20 the per gallon.

21 JUDGE KWEE: Oh.

22 MR. KELEDJIAN: The adjustment I'm looking for  
23 would be the gallons that made up the 847 times the  
24 prepaid taxes. I'm not looking for an \$847,000  
25 adjustment.

1 JUDGE KWEE: Okay. Okay.

2 MR. KELEDJIAN: That's the gross sales.

3 JUDGE KWEE: Right. Okay. So that's a measure

4 --

5 MR. KELEDJIAN: But I would take that though, you

6 know.

7 JUDGE KWEE: And just a brief thought, though.

8 Because the prepaid sales tax is imposed at a rate per

9 gallon, but the sales tax is around the dollar, is --

10 MR. KELEDJIAN: It's a percentage.

11 JUDGE KWEE: -- matching that?

12 MR. KELEDJIAN: So it's a percentage.

13 JUDGE KWEE: Okay.

14 MR. KELEDJIAN: So we know the gallons that these

15 people bought. It's actually summarized in the audit work

16 paper.

17 JUDGE KWEE: Okay.

18 MR. KELEDJIAN: So it's very simple, and we know

19 what the rates were for per quarter.

20 JUDGE KWEE: So there would be no concern

21 calculating. Okay.

22 MR. KELEDJIAN: No, not at all.

23 JUDGE KWEE: And so my next question then is --

24 so I forget the name of the particular customer of

25 Appellant that generated that loss. But when they made --

1       when they sold that fuel, they would have collected the  
2       retail sales tax from those sales, and they would have --  
3       or maybe it's a question for CDTFA. I'm wondering if they  
4       had -- if there was a Schedule G credit claimed by the  
5       customer, in which case, you know, it would be, I guess,  
6       the State would be out money because they'd give -- if  
7       they give you a credit and they also give a credit to your  
8       customer that, you know, that would be two parties got the  
9       credit. And I guess maybe I'll wait for CDTFA to answer  
10      that aspect.

11               But that was one thing that I was wondering was,  
12      was this a situation where the State got a windfall or the  
13      State would be out a windfall if -- if we granted the bad  
14      debt deduction. So I'll -- I guess I stated that and  
15      allow CDTFA after their presentation, I'll return to them,  
16      or if they can address that in their presentation if that  
17      was something that was examined or even if that's  
18      something they could share. I don't know if that's  
19      confidential information they can't share. Maybe that's  
20      the case.

21               But, yeah, turning back to Appellant, did you  
22      have any thoughts that you would like to share there since  
23      we --

24               MR. KELEDJIAN: Yeah. We -- we were told at the  
25      time of the audit that Viva -- the company was called

1 Viva -- was out of business, and that they didn't file  
2 their returns.

3 JUDGE KWEE: Oh.

4 MR. KELEDJIAN: But you're right. It would be a  
5 double taxation if they had filed the returns and taken  
6 the credit for it and paid taxes. It would be a -- the  
7 State could lose our money. You're right.

8 JUDGE KWEE: Okay. And then the second thing  
9 was -- so I understand the first issue that you're saying  
10 that there were sales that you didn't make that was picked  
11 up on an account receivable report. But on the second  
12 issue, I guess I'm not understanding. You said that when  
13 there was a conversion. I guess around the time that  
14 CDTFA became CDTFA that there was an issue that a  
15 liability got generated on the SG account.

16 Do you want what that liability is? Is that in  
17 relation to the bad debts or --

18 MR. KELEDJIAN: It's in relation to additional  
19 sales. When you guys calculated additional sales, there's  
20 got to be the gallons that reflect that, right? So they  
21 just added it when it was transferred over to the CDTFA.

22 JUDGE KWEE: Okay. So --

23 MR. KELEDJIAN: If you're telling me I sold a  
24 million dollars more of gas, which is what you're telling  
25 me on my SR audit, there's got to be gas. Everything is

1       accounted for. Where did the fuel come from? Did it come  
2       from the air? So hypothetically, in order to balance  
3       things out, somebody made an adjustment on the SG return.

4               JUDGE KWEE: Oh, oh. I think I understand then.  
5       So you're saying that --

6               MR. KELEDJIAN: It should not be made.

7               JUDGE KWEE: Okay. Okay. So this is issue --  
8       Issue 1. You got billed for Issue 1, then Issue 2 you got  
9       billed on the SG account for --

10              MR. KELEDJIAN: Right.

11              JUDGE KWEE: Oh, I get it.

12              MR. KELEDJIAN: For the phantom fuel.

13              JUDGE KWEE: Okay. Okay.

14              MR. KELEDJIAN: You're going to give me the  
15       phantom fuel, give me the phantom credit.

16              JUDGE KWEE: Okay.

17              MR. KELEDJIAN: And that happened exactly when  
18       the change happened from the sales tax return to the  
19       CDTFA. All of a sudden this bill started showing up, and  
20       I've been trying to fix this. And we could, you know,  
21       clean this whole thing out at this hearing.

22              JUDGE KWEE: So I guess that -- the next question  
23       is then, if we were to find that we delete the Issue 1,  
24       that would automatically resolve Issue 2 just because it's  
25       related to Issue 1. So then --

1 MR. KELEDJIAN: Thank you.

2 JUDGE KWEE: Okay. I see. So those, Issue 1 and  
3 Issue 2, are related in that sense. So, technically, even  
4 if we didn't have jurisdiction, it would still -- yeah.  
5 Okay. I think -- I think I understand the concern with  
6 Issue 1. And did -- did you -- I can't remember if there  
7 was a specific dollar amount listed to break down the  
8 liability for Issue 1 that was -- was that -- because I  
9 thought it was like -- was it 13-something or am I  
10 misremembering what the issue was?

11 MR. KELEDJIAN: I don't remember the exact  
12 number. It's been over ten years. It's in the audit  
13 report. We'll accept the numbers. Whatever the auditor  
14 found is additional unreported sales is what --

15 JUDGE KWEE: Okay. Great. So there's no dispute  
16 about the calculation amounts?

17 MR. KELEDJIAN: No. Calculations are nice.  
18 We're fine.

19 JUDGE KWEE: Okay. So with that additional  
20 questioning, I believe that was everything that I had that  
21 I wanted to ask about. Did the questioning that I asked  
22 spark any questions from the panel? Judge Ridenour?

23 JUDGE RIDENOUR: No. Thank you very much.

24 JUDGE KWEE: Okay.

25 And Judge Cho?

1 JUDGE CHO: None here. Thank you.

2 JUDGE KWEE: Okay.

3 So then I will turn it, at this point, over to  
4 CDTFA for your opening presentation. And you have  
5 15 minutes. You may proceed when you're ready. Thank  
6 you.

7

8 PRESENTATION

9 MR. SUAZO: Okay. To bring some clarity to this  
10 case, I believe there's been some confusion as to which  
11 periods are at issue today.

12 The Appellant's opening brief, OTA's  
13 acknowledgment, the Department's response, et cetera, all  
14 reference Case Number 91755, which pertains to the audit  
15 of the seller's permit for the years 2010, 2011, and 2012,  
16 and the Notice of Determination issued on September 2nd,  
17 2015. The Department did not audit or issue any billings  
18 for the SG account for the years 2010, 2011, or 2012.

19 However, as can be found in Exhibit F, pages 96  
20 to 101, the Appellant was issued three separate Notices of  
21 Determination for subsequent periods. These billings were  
22 not a result of an audit, rather, the Department's Account  
23 Analysis Unit questioned the accuracy of the returns  
24 filed.

25 When no response was received, the Department

1 issued a billing for the seller's permit for the period  
2 July 1st, 2014, through June 30th, 2015, on October 31st,  
3 2016, and on a billing for the SG account for the period  
4 March 1st, 2014, through June 30th, 2015, issued on  
5 October 31st, 2016. A third billing for the seller's  
6 permit for the period of October 1st, 2015, through  
7 December 31st, 2015 was issued on October 19th, 2016, due  
8 to self-assessed amended return with no payment received.

9 The Appellant filed an appeal on all three of  
10 these Notices of Determination, and an appeals conference  
11 was held on November 14, 2017, for the three CDTFA cases.  
12 The decision dated March 31st, 2013, Exhibit F, page 103  
13 and 104, indicates the Appellant conceded the amounts due.  
14 As relevant here is the fact that these three billings are  
15 clearly outside the audit period, years 2010 through 2012,  
16 and these three cases are not included in the OTA Case  
17 Number 18011872. So my presentation today will be limited  
18 to the periods covered by the appeal.

19 The Appellant operates a mobile fuel service  
20 selling diesel fuel at both retail and wholesale levels  
21 using their fleet of delivery trucks. The Appellant was  
22 issued a seller's permit in a separate fuel distributor  
23 account, which is often referred to as an SG account. The  
24 Department performed an audit of the Appellant's seller's  
25 permit for the period of January 1st, 2010, through



1 December 31st, 2012; Exhibit A.

2 A concurrent audit of the SG account was not  
3 performed; Exhibit F, page 92. The Appellant filed a  
4 timely petition of the sales and use tax audit. The  
5 Appellant did not appear at the scheduled appeals  
6 conference on March 21st, 2017, and a decision was issued  
7 on April 26th, 2017; Exhibit C. During the audit  
8 examination, the Department transcribed sales tax  
9 collected and compared them to the amounts reported on the  
10 sales and use tax return.

11 An unexplained difference of over \$250,000 in  
12 sales tax was noted. This equates to unreported taxable  
13 sales of over \$2.5 million; Exhibit G, page 112. A  
14 reconciliation of prepaid sales tax was also performed per  
15 Appellant's Schedule G. The Schedule G is a fuel seller's  
16 permit -- supplement for the sales and use tax returns. A  
17 seller's Schedule G includes prepayments for all gallons  
18 of fuel sold at retail. The Department noted that the  
19 Appellant overstated his prepayment credit because they  
20 included all gallons purchased, rather than just gallons  
21 sold at retail.

22 The overstated credits were disallowed and  
23 included in the audit findings; Exhibit G, page 113. The  
24 Appellant contends the amount of unreported taxable sales  
25 of fuel include sales made to a customer referred to in

1 the Appellant's record as Viva, which were subsequently  
2 determined to be worthless and uncollectible amounts,  
3 which should be removed from the audit taxable measure  
4 because they're considered bad debts by the Appellant.

5 Where retail sales are concerned, Appellant may  
6 claim a deduction for taxable sales which become bad  
7 debts. Only if the amounts one, had been found to be  
8 worthless and two, had been charged off for income tax  
9 purposes. For the period from -- for the period  
10 January 1st, 2010, through December 31st, 2012, the  
11 Appellant has not provided any detail documentation  
12 regarding its bad debts on taxable sales to Viva or any  
13 other customer as prescribed per Regulation 1642(e).

14 Documentation from Moveel to the Department,  
15 dated February 26th, 2015, concerning transactions and  
16 payments between Viva and the Appellant, disclose that the  
17 Appellant id received payment of \$3.1 million in 2012 and  
18 another \$1.65 million in the second quarter of 2013 from  
19 Viva; Exhibit H, pages 114 to 135. The information  
20 further shows that the Appellant continued selling to Viva  
21 well into 2013. Therefore, any bad debts would have come  
22 in 2013 and not during the audit period.

23 The opening brief submitted by the Appellant  
24 dated, February 21st, 2019, contains a sales utilization  
25 report. Appellant's opening brief, pages 24 and 25,

1 showing sales made to Viva 1001 of 48,026 gallons of  
2 diesel fuel totaling \$197,116 and Viva 1002 of 64,604  
3 gallons of diesel fuel totaling \$214,259. The Department  
4 contends this is additional proof that no bad debts  
5 existed from Viva in the audit period as the Appellant  
6 would not have continued selling to Viva had bad debts  
7 existed prior to 2013.

8 Since there is no evidence that any taxable sales  
9 were found to be both worthless and charged off during the  
10 audit period, the Appellant should not be relieved of  
11 liability for any claimed bad debts covered by this  
12 appeal. Additionally, the Department reviewed Appellant's  
13 sales journals for the audit period. The sales journals  
14 indicate the Appellant made a relatively small amount of  
15 retail sales to Viva representing less than two percent of  
16 all sales.

17 The taxable sales of fuel to Viva occurred solely  
18 in the second quarter of 2011, the taxable measure a  
19 little of \$69,000. The remaining \$4.29 million in sales  
20 for wholesale transactions made during the period of  
21 October 1st, 2011, through December 31st, 2012. Since  
22 those transactions were not retail sales, they are  
23 irrelevant to this appeal, and the Department focused on  
24 potential bads [sic] from the Appellant's retail sales.

25 The Department questions any of the Appellant's

1 bad debts from Viva are from the second quarter 2011,  
2 basically, the retail sale time period. Again, since a  
3 reasonable business entity would not continue to do  
4 business with a customer who did not pay past debts, the  
5 Department contends that the Appellant's continued  
6 relations with Viva is evidence that Viva satisfied the  
7 payment of all taxable sales amounts.

8 Furthermore, the Department reviewed bank deposit  
9 information provided as part of the Appellant's opening  
10 brief. Those records show multiple instances where cash  
11 and checks were deposited with notations that the amounts  
12 were to satisfy previous deposits, which were returned due  
13 to non-sufficient funds.

14 Regarding the Appellant's claim that bad debts  
15 were written off for income tax purposes in the year 2013.  
16 The audit period for this appeal ended on December 31st,  
17 2012. Therefore, no allowance should be made to the audit  
18 findings for the years 2010 through 2012 for amounts found  
19 uncollectible and written off in year 2013 or later  
20 periods. If Appellant wrote off bad debts in its 2013  
21 income tax returns or any later period, then the Appellant  
22 would need to have filed a timely claim for refund.

23 Pursuant to Regulation -- to Revenue -- sorry.  
24 Pursuant to Revenue & Taxation Code 6902 subdivision (a),  
25 a claim for refund must be filed within three years from

1 the last day of the month following the close of the  
2 quarterly period for which the overpayment was made,  
3 within six months from the date of when the termination  
4 becomes final or within six months from the date of  
5 overpayments, whichever period expires later.

6 There's no proof that the Appellant filed a  
7 timely claim for refund, including year 2013. And the  
8 time period for filing a claim for refund for debts  
9 written off in the year 2013 has long since passed. The  
10 Appellant also claims to have an overstatement of amounts  
11 due for their SG account. The SG account is a separate  
12 account for distributors of fuel to account for  
13 prepayments of sales tax reimbursed by their customer.

14 The Department did not perform an audit  
15 examination for the Appellant's SG account. No billings  
16 were issued to the SG account for the periods covered by  
17 this appeal, and the Appellant has not filed a timely  
18 claim for refund for its SG account. The Department has  
19 submitted Exhibit F, which includes information regarding  
20 liabilities established for the Appellant under the SG  
21 account and seller's permit for periods after the audit  
22 period that is subject to this appeal.

23 As you can see, those billings do not include  
24 years 2010 through 2012. Thus, the Appellant claims that  
25 Department issued a billing for the SG account for the

1 same periods as the audit period are unfounded. In  
2 summary, the Appellant has not provided any documentation  
3 to support adjustments to audit findings or detailed proof  
4 of any taxable sales, which were found to be worthless and  
5 written off for income tax purposes during the audit  
6 period. Therefore, the Department requests the appeal be  
7 denied.

8 Lastly, the minutes and orders for this case  
9 requests the Department provide additional information  
10 regarding the question as to whether a taxpayer may claim  
11 bad debt deduction under an SG account for prepaid sales  
12 tax accounts found worthless and charged off for income  
13 tax purposes. The answer to this question is yes. Sales  
14 and Use Tax Law Section 6480.6 dealing with prepayments of  
15 tax does allow for a bad debt deduction to be claimed.

16 If a fuel distributor includes reimbursement for  
17 the prepayment of sales tax with billings for fuels sold  
18 at wholesale, then reports these amounts on their SG  
19 return and later find these amounts to be worthless, the  
20 taxpayer would be entitled to claim a bad debt deduction  
21 in the same period the amounts are found to be worthless  
22 and charged off for income tax purposes.

23 If a taxpayer fails to claim the bad debts in the  
24 same period, then they must file a claim for refund  
25 subject to statutory limitations noted in Section 6902.

1 In this case the SG account was not audited. No bad debts  
2 were charged off for income tax purposes during the  
3 periods covered by this appeal, a timely claim for refund  
4 was not filed.

5 Questions posed regarding offsets to SG versus SR  
6 accounts. The Department contends that these two accounts  
7 are separate and distinct. Any offset or refund of  
8 possible SG credits, the liability established for a sales  
9 and use tax permit are subject to the statute of  
10 limitations and applicable statutes for the refunds and  
11 appeals. The appeal before you today is based on a timely  
12 petition of Notice of Determination issued for the audit  
13 of sales and use tax seller's permit for the years 2010  
14 through 2012.

15 The bad debts on taxable sales of fuel were not  
16 written off for income tax purposes until year 2013, which  
17 is after the audit period. Therefore, an adjustment to  
18 the audit findings at issue is not permissible. In  
19 preparation for this hearing, the Department has reviewed  
20 the Appellant's SG account and noticed that there was no  
21 audit for billing issued for the SG account for periods  
22 covered by this appeal.

23 Since the Department did not perform an audit for  
24 the SG account, we have no means to determine if the  
25 reported amounts were correct, much less whether a credit

1 is due. The Appellant's SG returns include two  
2 components, Schedule A and Schedule B. Schedule A  
3 includes all gallons of fuel sold by the Appellant for  
4 both wholesale and retail sales. Schedule B is for  
5 gallons of fuel purchased by the Appellant. For all  
6 periods in the audit period the gallons purchased and sold  
7 by the Appellant on their Schedule A and B were the same.

8 This is typical when no fuel inventory is  
9 maintained in storage tanks. Had the Department examined  
10 the SG account, reconciliations would have been made to  
11 ensure that all gallons were properly reported. Since bad  
12 debts were not written up until 2013, no credit for bad  
13 debts would have been allowed. The Appellant has not  
14 filed a timely claim for refund for the SG account for any  
15 periods covered by this appeal and statute period has long  
16 since passed.

17 Accordingly, the Department contends the panel  
18 has no authority to consider or any adjustment or offset  
19 of liability determined for the audit period covered by  
20 the Appeals Case 917755 for any reported unverified SG  
21 credits. Okay.

22 Regarding the subsequent billings issued by the  
23 Department covered by CDTFB Case Number -- by the three  
24 other cases that were heard after the -- after the audit  
25 period, these cases are not included in the OTA case as



1 before today, and the Appellant has not filed an appeal  
2 case with OTA, and the CDTFA decision is final.  
3 Therefore, we contend that the panel has no authority to  
4 consider these periods or order any adjustment or offset  
5 for these liabilities against those at issue today.

6 That concludes my presentation. I'm available to  
7 answer any questions you may have.

8 JUDGE KWEE: Yes. This is Judge Kwee. I just  
9 had a couple of clarifications. I guess let's -- let's  
10 start with the \$847,000 in measure -- bad debt deduction.  
11 CDTFA's position there -- or the first issue is that  
12 you're saying this was claimed on the 2013 return. That  
13 return is outside of the audit period, so then the bad  
14 deduction to the extent allowable, would be for a  
15 different audit period not before us.

16 And then the second aspect that you're saying is  
17 that, although a bad debt deduction could be allowable, it  
18 would be under the Schedule -- the SG return and not the  
19 SR return for the prepaid sales tax. Is that -- was that  
20 something you were saying, or was that not what you were  
21 saying?

22 MR. SUAZO: For the prepaid sales tax, yes,  
23 that's what we're saying.

24 JUDGE KWEE: Okay. So then they could -- so  
25 Appellant would have been able to file a claim of bad debt

1 deduction for the prepaid sale tax from Viva that was not  
2 collected, but it would have had to go into the SG return.  
3 Okay. So then, I guess -- so CDTFA is disputing OTA's  
4 jurisdiction to order a bad debt deduction then. So  
5 you're just disputing jurisdiction over the Schedule G  
6 credit and the sales and use tax return and the bad  
7 deduction on the sales and use tax return; is that correct  
8 then?

9 MR. SUAZO: Yes. Because, basically, if there  
10 was a bad debt deduction, it appears to have occurred in  
11 2013. Again, he got -- based on Exhibit H, they were paid  
12 for everything up to that point.

13 JUDGE KWEE: Okay. Yeah. I understand that. I  
14 just want to make sure I had the issue statement correct.  
15 So it seems like I have jurisdiction now. As I raised as  
16 a concern, I had two issues. One of the SG and the two --  
17 I mean, the one is the Schedule G on the SR account and  
18 two, is the bad debt deduction on the SR account and  
19 whether that would have to be in the SG account. Okay. I  
20 think I understand what you're saying there.

21 And I'm not sure. I'd like to go back to the  
22 second issue, which was -- or I guess, actually, it's the  
23 first issue, which was the concern that CDTFA picked up  
24 additional sales, which Appellant never made from an aging  
25 accounts receivable. And I'm not sure you addressed that

1 or -- did you -- I mean, I guess I wasn't understanding  
2 what CDTFA's position was with respect to that first issue  
3 on whether or not they -- sales were properly picked up or  
4 not.

5 MR. SUAZO: There was a reaudit done on this  
6 case. So I'm not sure if the taxpayer knew that there was  
7 an adjustment made.

8 JUDGE KWEE: Okay. I'm sorry. Ms. Alonzo, did  
9 you have -- okay. You're looking at me, and I thought you  
10 wanted to ask a question.

11 So then I'll ask my co-panelists then.

12 Judge Cho, did you have any questions for either  
13 parties?

14 JUDGE CHO: Yeah. I just wanted to see if I can  
15 fully understand this situation. So the Department stated  
16 that it did not audit the SG account for the liability  
17 years at issue, which is 2010 through 2012; correct,  
18 Mr. Suazo?

19 MR. SUAZO: That's correct.

20 JUDGE CHO: Okay. So if it didn't audit the SG  
21 account but it disallowed the -- a portion of the tax  
22 claimed on the Schedule G, wouldn't the Department need to  
23 have verified those figures in order to disallow a portion  
24 of Schedule G on the SR return? How else would the  
25 Department have known to disallow a portion of that

1 amount?

2 MR. SUAZO: Basically, I think what happened was  
3 when you -- when they did look at it -- if somebody had  
4 looked at Schedule G, they would have saw that it was --  
5 that they encompassed the entire amount, so there was no  
6 balance remaining. So they would have had to claim the  
7 whole thing; right?

8 JUDGE CHO: I'm sorry. You're asking me the  
9 or --

10 MR. SUAZO: Well, I'm --

11 JUDGE CHO: Instead of --

12 MR. SUAZO: -- answering your question.

13 JUDGE CHO: Instead of using a hypothetical,  
14 would you mind applying it to the facts of this case?

15 MR. SUAZO: Okay. Hold on.

16 JUDGE CHO: So the Department examined Schedule G  
17 in this case, and they disallowed a portion of -- of the  
18 reported amounts. Do you know why?

19 MR. SUAZO: Well, the Schedule G was because --  
20 they disallowed it was because they included all -- all  
21 purchases made, and that's where it's -- instead of just  
22 the retail sales. So they over-claimed the Schedule G  
23 credit. So it's a disallowed credit that they were  
24 taking.

25 JUDGE CHO: Okay. They noticed that there were

1       some sales for resale on the Schedule G account. And then  
2       does that mean the Department just accepted the reported  
3       amounts without looking at the underlying schedule -- not  
4       schedule -- the underlying SG account in this case?

5               MR. SUAZO: What they did was they looked at the  
6       amount of sales that were retail sales. I believe what  
7       they did then was they looked at the amount claimed for  
8       those retail sales back to the vendor -- back to the  
9       customers or what-have-you and the vendors, and then they  
10      saw whether or not it matched up. If there was a  
11      difference, they took the difference and they put that as  
12      an over claimed credit.

13             JUDGE CHO: And they did all this only on the SR  
14      account and not the SG account?

15             MR. SUAZO: Well, since there was no SG audit  
16      being done, it would have only been on the SR, but it was  
17      using the SG account information on the -- if you look at  
18      Exhibit -- Exhibit G, page 113.

19             JUDGE CHO: I believe it says, "Compiling error  
20      on sales tax."

21             MR. SUAZO: Yeah. This is where they -- this is  
22      where they get the \$720,000.

23             JUDGE CHO: Is that Schedule R1-12 A, or am I on  
24      the wrong page?

25             MR. SUAZO: It is 20G-3. Bates numbering system

1 page 113.

2 JUDGE CHO: Okay. I'm there. Sorry. I was on  
3 page 112.

4 MR. SUAZO: Okay.

5 JUDGE CHO: OKAY. So I'm there.

6 MR. SUAZO: Okay. So basically what you have is  
7 you have the seller's permit of Moveel Fuel claims per  
8 Schedule G fuel sales. And then you have other amounts  
9 claimed on the Schedule G for different companies to get a  
10 total claim per Schedule G of \$4.8 million and the  
11 purchases from the vendors of \$4.863 million, amount  
12 overstated of \$13,000. Then you also have resold direct  
13 diesel sales. And this is where I guess the taxpayer over  
14 claimed the amounts because that's where the majority of  
15 it comes from, the \$706,990 at the -- on Column X on the  
16 grand total.

17 So you add the \$13,268, a difference overstated  
18 prepaid sales tax, plus the over claimed for the summary  
19 of Columns 2 through W, which includes Column X. You add  
20 those 2 together and you get the 720.

21 JUDGE CHO: Okay. Thank you. So with all this  
22 information, the Schedule G account was never updated or  
23 adjusted. Only these figures were, I guess, used only for  
24 the SR account; is that correct? Is that what the  
25 Department is saying?

1 MR. SUAZO: Yes.

2 JUDGE CHO: Okay. Thank you.

3 JUDGE KWEE: Judge Cho, are you finished with  
4 your questions?

5 JUDGE CHO: Yeah. That's all for now. Let me  
6 try to take a look at my notes too. Thank you.

7 JUDGE KWEE: Okay.

8 Judge Ridenour, did you have any questions for  
9 either party -- for Appellant -- sorry -- for CDTFA?

10 JUDGE RIDENOUR: No. Thank you very much.

11 JUDGE KWEE: Okay.

12 JUDGE CHO: Judge Kwee, can I ask one quick  
13 questions?

14 JUDGE KWEE: Yes, go ahead.

15 JUDGE CHO: All right. Thanks. This if more for  
16 Appellant.

17 Appellant, with respect to the sales journals  
18 that CDTFA obtained from you or from the taxpayer, I  
19 understand your position is just that if you were to  
20 extrapolate that data, it would result in profit margins  
21 that are extremely high and unrealistic. However, do you  
22 have any other explanation as to why your records indicate  
23 that you sold that amount of fuel?

24 MR. KELEDJIAN: The system they had in place had  
25 a way of repeating itself on sales and would pick up

1 random-access numbers. Her whole software was antiquated.  
2 It did things that -- I'm not a computer expert. But our  
3 bank deposits, our tax returns all reflect numbers with a  
4 proper profit number or a reasonable profit margin. I  
5 can't explain it. I'm not a computer expert, but it would  
6 add sales to people we have no idea.

7 And if you could entertain me for another second?  
8 Your question about whether the SG was audited or not, if  
9 you look at the auditor's notes, she was asked by  
10 headquarters to look at the SG return and audit it. If  
11 you look at Ms. Kay N-G -- I don't want to butcher her  
12 name, but in the report says that another company had  
13 claimed credit. MTLs incorporated had submitted invoices  
14 that are claiming prepaid sales taxes on diesel paid to  
15 Moveel Fuel, LLC, account number 78-20932 Moveel Fuel is  
16 not reporting the prepaid taxes they collected from MTLs  
17 on Schedule A on their SG account to verify in the audit.  
18 That means she's looking at the SG returns.

19 They had to have audited the SG to get these  
20 numbers. They cannot-- it would have been a nightmare.  
21 The SG is the road map to everything. So the SG was  
22 audited in period, sir, and it was just adjusted because  
23 MTLs had gotten the credit for this. And the only way to  
24 get credit is to adjust them -- the -- our SG return at  
25 Moveel.



1 JUDGE CHO: Okay. Thank you very much. Those  
2 are the only questions I had. Thank you.

3 MR. KELEDJIAN: Your welcome.

4 JUDGE KWEE: Okay. I believe we're ready to turn  
5 it over to the closing arguments by either party. So,  
6 again, it's five minutes per party, and I'll turn it over  
7 to Appellant's representative.

8 You have five minutes for any closing remarks.

9 MR. KELEDJIAN: Thank you. Thank you very much.  
10

11 CLOSING STATEMENT

12 MR. KELEDJIAN: Sir, this is a very complicated  
13 audit, and we're -- we're -- I can't say we're a victim,  
14 but we're a victim to bad accounting, which we are going  
15 to admit to it and pay our price. But we're also a victim  
16 of the Board changing over from the State Board becoming  
17 the California Department of Taxation. This whole issue  
18 with the SG returns and the mess it created by rebuilding,  
19 it all started with the change, and we're double paying  
20 our taxes. We're double paying on the bad debt.

21 There were -- he mentioned three other Notice of  
22 Determinations. When I got involved with it, I realize  
23 they were incorrect and we, you know, settled the case and  
24 paid for it. So we're a small company that grew too fast.  
25 The accounting system didn't reflect the speed of the

1 invoice that it needed to take out. But we're out  
2 \$847,000 to a vendor.

3 The whole issue he mentioned that we kept on  
4 giving him gas. And, you know, the guy would say give me  
5 ten gallons of gas, and I'll pay you, you know, for both  
6 of them next week and then bounce a check, and then buy  
7 more and bounce a check. So in 2013, I was told they took  
8 a deduction of bad debt. They've had three different  
9 accountants in there during this period to do the tax  
10 returns. The lady who prepared these sales tax returns,  
11 we find out later happens to work for Viva, which owed us  
12 a lot of money. So we don't know what's going on.

13 The bottom line is the Board is doubling up on us  
14 in two areas. It got its sales tax money upfront. We  
15 paid them. You guys got your 19 cents, 26 cents, and  
16 because of this bad debt issue and all the mix up, we  
17 didn't get the credit for that. If we pay for it it's  
18 doubling up.

19 Number two, there's a bill sitting on the SG side  
20 of it. If we pay that, and then we pay it on this side.  
21 The SG return, as he so eloquently said, always has to  
22 equal to zero. Why it's not a zero? Why there was no  
23 Notice of Determinations? Why there was no appeals? No  
24 discussion? I don't know. But that bill showed again  
25 after the transformation from the State Board of

1 Equalization to the California Department of Taxation.

2 And we have 61 employees. We want to stay in  
3 business. We want to be fair. We've upgraded our system.  
4 Our reporting is much better. Again, it's complicated.  
5 Sometimes they do make a mistake, but we pay it, we work  
6 it out, we move on. We were never audited before. We  
7 were never audited since. So with that, give me leeway,  
8 you know. We're -- we don't want to pay twice. We just  
9 want to pay once, and we feel we're paying twice.

10 JUDGE KWEE: Okay. Thank you.

11 So for, CDTFA, you have five minutes for your  
12 closing remarks. Thank you.

13

14 CLOSING STATEMENT

15 MR. SUAZO: Basically, I just wanted to state  
16 that the Notice of Determinations issued on the SG  
17 accounts were in 2014 and '15 one in '16. He keeps on  
18 blaming its change from the Board of Equalization to the  
19 CDTFA. However, these were before the change occurred.  
20 The change occurred for CDTFA, I believe in July 1st,  
21 2017. So all of this would have occurred beforehand. So  
22 it would have had no impact on the billings.

23 JUDGE KWEE: Oh, thank you. Is that everything  
24 that CDTFA has for today?

25 MR. SUAZO: Yeah.

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JUDGE KWEE: All right.

Before we conclude, I'm going to turn over to my panel again to see if there are any remaining questions.

So, Judge Ridenour, do you have anything further to add before I conclude?

JUDGE RIDENOUR: I do not. Thank you, everybody.

JUDGE KWEE: Okay.

And, Judge Cho, do you have anything to add before I conclude?

JUDGE CHO: I don't either. Thank you.

JUDGE KWEE: Okay. Great.

Thank you, everyone, for coming in today.

The Judges will meet and decide your case later on. I would remind you that the record is being held open for 30 days to allow Appellant's representative time to comment on the CDTFA's last -- most recent Exhibit G. And then thereafter an opinion will be issued within 100 days of the date that the record closes. OTA will send out a notice once the additional briefing period has concluded letting you know when the record is closed.

Thank you for coming in today. The hearing in the Appeal of Moveel Fuel, LLC, is now adjourned.

(Proceedings adjourned at 10:54 a.m.)

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I have hereunto subscribed my name this 6th day  
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