

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
 X. QU,) OTA NO. 20116938
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, October 11, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken
at 12900 Park Plaza Dr., Cerritos, California,
91401, commencing at 11:21 a.m. and concluding
at 12:49 p.m. on Tuesday, October 11, 2022,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ NATASHA RALSTON

Panel Members: ALJ JOSHUA LAMBERT
ALJ JOSHUA ALDRICH

For the Appellant: X. QU

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

SUNNY PALEY
STEPHEN SMITH
KIMBERLY WILSON

Interpreter: Kenneth Chen

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-2 were received at page 9.)

(Department's Exhibits A-E were received at 10.)

OPENING STATEMENT

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By Mr. Qu 11

By Ms. Paley 18

CLOSING STATEMENT

PAGE

By Mr. Qu 27

1 Cerritos, California; Tuesday, October 11, 2022

2 11:21 a.m.

3
4 JUDGE RALSTON: We are now on the record in the
5 Appeal of X. Qu. These matters are being heard before the
6 Office of Tax Appeals. The OTA Case Number is 20116938.
7 Today's date is Tuesday, October 11th, and the time is
8 approximately 11:21.

9 I want to note that before we went on the record
10 we did swear in the interpreter, and the interpreter has
11 affirmed that he is certified to interpret between English
12 and Mandarin and Mandarin and English, including the
13 Wenzhou dialect.

14 THE INTERPRETER: The interpreter is not able to
15 interpreter Wenzhou dialect.

16 JUDGE RALSTON: Okay. Thank you. Is Mandarin
17 sufficient for Mr. Qu?

18 MR. QU: Yes.

19 JUDGE RALSTON: Okay. Thank you.

20 Today's hearing is being heard by a panel of
21 three Administrative Law Judges. I am Judge Ralston, and
22 I will be the lead judge. Judge Aldrich and Judge Lambert
23 are the other members of this tax appeals panel. All
24 three judges will meet after the hearing and produce a
25 written decision as equal participants. Although the lead

1 judge will conduct the hearing, any judge on this panel
2 may ask questions or otherwise participate to ensure we
3 have all the information needed to decide this appeal.

4 I'm going to ask the parties to introduce
5 themselves. I'm actually going to start with Respondent
6 CDTFA, if you could please state your name, and who you
7 represent for the record.

8 MS. PALEY: My name is Sunny Paley, and I
9 represent CDTFA.

10 MR. SMITH: My name is Stephen Smith, and I
11 represent CDTFA.

12 MS. WILSON: Kim Wilson, represents CDTFA.

13 JUDGE RALSTON: Thank you.

14 And for the Appellant's, if we can have everyone
15 introduce themselves.

16 JUDGE RALSTON: Can I ask you to sit a little
17 closer to the mic or make sure it's on.

18 MR. QU: My name is Xin Liang Qu.

19 JUDGE RALSTON: Thank you.

20 MR. QU: Thank you.

21 JUDGE RALSTON: And Ms. Ling, if you could
22 introduce yourself.

23 MS. LING: My name is Zhou Ai Ling.

24 JUDGE RALSTON: And for the interpreter, if you
25 could introduce yourself also.

1 THE INTERPRETER: My name is Kenneth Chen, and
2 I'm the interpreter.

3 JUDGE RALSTON: Thank you.

4 As confirmed at the prehearing conference, there
5 are two issues to be decided in this appeal. The first is
6 whether appellant has established that an adjustment to
7 the measure of unreported purchases of counterfeit items
8 subject to use tax is warranted, and the second issue is
9 whether the finality penalty should be abated.

10 Is that the parties understanding of the issues?

11 MS. PALEY: Yes.

12 MR. QU: Do I need to tell you the information
13 right now regarding why we're not imported?

14 JUDGE RALSTON: No. Right now we're just going
15 over how the hearing is going to run. And then we'll get
16 to your opening presentation, and I will swear Mr. Qu in,
17 and then you can present your case.

18 Okay. So Respondent's Exhibits A through E are
19 admitted without objection.

20 MR. QU: Right now I'm going to ask my wife to
21 read my statement.

22 JUDGE RALSTON: Not at this time. I will let you
23 know.

24 MR. QU: Sorry.

25 JUDGE RALSTON: No problem.

1 As far as the exhibits that Mr. Qu submitted
2 today, can you just confirm when these were prepared?

3 MR. QU: It was prepared yesterday, last night,
4 and I -- she prepared this until 2:00 a.m. this morning.

5 JUDGE RALSTON: And how are these documents
6 different than the documents that CDTFA has already
7 submitted in the record?

8 MR. QU: So that the cost that I wrote out right
9 here and the one that we sold are different. And whatever
10 that the CDTFA written out for us, and we believe that
11 there are -- so there is discrepancy between the items
12 that I purchased from the resource, and also the price I
13 sold at. And police purchased twice, once on
14 June 14th, 2017, and the other one is on
15 August 30th, 2017. And all together they purchased, price
16 was \$1,184.60.

17 JUDGE RALSTON: Okay. Thank you.

18 MR. QU: So I continue?

19 JUDGE RALSTON: I just wanted -- at this point, I
20 just wanted kind of a general explanation of what these
21 documents were, and I will give you a chance later to
22 really explain your arguments.

23 MR. QU: Okay.

24 JUDGE RALSTON: Thank you.

25 So Respondent CDTFA has objected to these

1 exhibits. They are not timely. We are going to go ahead
2 and admit them. And we will assign the appropriate weight
3 to them when we evaluate this case.

4 JUDGE RALSTON: Oh, yes. Ms. Paley, please.

5 MS. PALEY: May I inquire just for references,
6 which is Exhibit 1 and which one is Exhibit 2?

7 JUDGE RALSTON: Yes, that's what I was looking
8 at. I'm trying to figure out what I can refer to to
9 distinguish them.

10 MS. PALEY: If I may make a suggestion?

11 JUDGE RALSTON: Please.

12 MS. PALEY: One denotes selling price, and one
13 denotes purchase price. So perhaps one of them could be 1
14 and one could be 2, please.

15 JUDGE RALSTON: Perfect. Okay. So the exhibit
16 with the purchase price, we are going to label that
17 exhibit Appellant's Exhibit 1 and admit it.

18 (Appellant's Exhibit 1 was received in
19 evidence by the Administrative Law Judge.)

20 And the one with the selling price we will label
21 Exhibit 2 and admit it.

22 (Appellant's Exhibit 2 was received in
23 evidence by the Administrative Law Judge.)

24 And as noted Respondent's Exhibits A through E
25 are admitted without objection.

1 (Department's Exhibits A-E were received in
2 evidence by the Administrative Law Judge.)
3 Mr. Qu will be testifying under oath without
4 objection. As far as the order of the hearing, Appellant
5 will have 30 minutes to present. Respondent will also
6 have 30 minutes to present. And then the Appellant will
7 have ten minutes for rebuttal. At any time the Panel
8 members may ask questions of either party.

9 And because, Mr. Qu, you're going to testifying
10 under oath, Respondent will also have the opportunity to
11 ask you questions after your presentation. So, Mr. Qu,
12 I'm going to swear you in now. Can you please raise your
13 right hand.

14
15 X. Qu,
16 produced as a witness, and having been first duly sworn by
17 the Administrative Law Judge, was examined and testified
18 as follows:

19
20 JUDGE RALSTON: Thank you. You can put your hand
21 down. So we are ready to proceed with Appellant's opening
22 presentation. Mr. Qu, you have 30 minutes. Please begin
23 when you are ready.

24 MR. QU: Is it possible to ask my wife to
25 present?

1 JUDGE RALSTON: Yes. Sorry. I should have been
2 more clear. But, yes, she can present.

3 MR. QU: Thank you very much.

4 JUDGE RALSTON: I'm sorry. Can I ask the
5 Appellant to turn on your microphone. Thank you.

6 MR. QU: Thank you.

7 MS. LING: Right now, I'm going to present my
8 husband's and then what he wants to say in the statement
9 that I wrote down last night. I'm going to present to
10 you.

11 MR. QU: Shall I take this to the judge? My wife
12 is able to speak like in English.

13 MS. LING: No, I'm going to speak in Mandarin.

14 JUDGE RALSTON: No. You can just read it. It
15 will be into the record, and it'll be transcribed. So
16 we'll have a copy. Thank you.

17 MR. QU: Thank you very much.

18

19 PRESENTATION

20 MS. LING: Your Honor, my name is Zhou Ai Ling.
21 The following is my statement, and I swear everything I
22 say is truth. Because I've never been to school, and I
23 live in poverty. So even though I can speak Mandarin, I'm
24 not able to read Chinese. So this letter was originally
25 written in my original dialect, and I ask my wife to write

1 them down. So today I ask my wife to present this to you,
2 and I just ask for your forgiveness.

3 Because of financial difficulty in the family
4 back in 2017, and I heard from some of my friends, and
5 they say I can make some money if I purchase some belts
6 online and sell them out, and I can make some money. And
7 during that time, I didn't know it was illegal. So I
8 imported some of those products online, and I didn't even
9 have any receipts. And that's it. And now I know that I
10 made a mistake. In the future I'm not going to do
11 anything illegal like this. And because of this I also
12 pay my price, and I also have been in jail.

13 And I admit that on June 14th, 2017, and
14 August 30th, 2017, altogether I sold products that worth
15 of \$1,184.60. And there's discrepancy from your agency,
16 what you have said. And I've already listed out the
17 selling price and purchase price, and I would like to have
18 judge to read it. And I'm willing to pay the tax for all
19 the products that I have sold out.

20 And regarding the products that was confiscated
21 by the police on September 13, 2017, at my home in
22 Arcadia, all these products were not sold out. And I
23 didn't make any profit from them. So I refuse to pay the
24 tax for all these confiscated items. Right now I don't
25 have any income. Because of the Covid-19, during the last

1 few years, we lost our jobs and gigs. Right now I even
2 have more difficulties in finding a job because I have --
3 I was incarcerated. And then the background checks won't
4 be -- I won't pass the background checks. Therefore, no
5 businesses would hire me.

6 I even thought about driving an Uber, but the
7 background was not passed. I do not have any assets. So
8 I share an old car with my wife. Originally, I just
9 wanted to help my family, and I broke the law. We have
10 been in the United States for 20 years already, and we
11 always pay tax. Right now I don't have money to have an
12 attorney to represent me.

13 THE INTERPRETER: Interpreter needs her to repeat
14 again.

15 I can only make uphill by myself. So, Your
16 Honor, and also the representative from tax agency, please
17 consider my situation and to deduct the tax that I need to
18 pay.

19 Thank you very much.

20 JUDGE RALSTON: Thank you. Does that conclude
21 your opening presentation?

22 MR. QU: Yes.

23 JUDGE RALSTON: Yes. Thank you.

24 Ms. Paley, I forgot to ask. With regard to the
25 exhibits that Appellant submitted today, do you need time,

1 like after the hearing to respond to them?

2 MS. PALEY: Depending on whether or not the Panel
3 has questions. I guess I would ask to reserve. I'm able
4 to proceed today with the information, and I've had the
5 opportunity to review them. If the Panel has questions
6 that I can't answer based upon them, then, yes, I would
7 ask for the opportunity to address that further.

8 JUDGE RALSTON: Okay. So depending on how the
9 rest of the hearing goes, we'll revisit that at the end.
10 And if I forget, just let me know.

11 MS. PALEY: Yes, please.

12 JUDGE RALSTON: Thank you. So, Ms. Paley, did
13 you have any questions for Mr. Qu?

14 MS. PALEY: No, thank you.

15 JUDGE RALSTON: Okay.

16 I'm going to turn to my Panel members.

17 Judge Aldrich, did you have any questions?

18 JUDGE ALDRICH: No questions. Thank you.

19 JUDGE RALSTON: Okay.

20 And, Judge Lambert, did you have any questions?

21 JUDGE LAMBERT: This is Judge Lambert. I have a
22 question. In these documents, what's the total purchase
23 price you're stating for these items? What's the purchase
24 price that's different than what CDTFA is stating?

25 MR. QU: So whatever that we purchase online the

1 price was much lower. And also there was another -- and
2 then it's different from whatever that was listed by the
3 tax agency. And also, there is another -- and then the
4 selling price it just -- it's not correct. The selling is
5 not listed out, and the one tax agency listed out are
6 different.

7 JUDGE LAMBERT: This is Judge Lambert. I was
8 just wondering if you knew the exact amounts of the
9 purchase price that you're claiming.

10 MR. QU: Are you talking about the -- the price
11 that we purchased?

12 JUDGE LAMBERT: Yeah. I believe that CDTFA is
13 stating that the purchase price is around \$100,000.

14 No. CDTFA, can you correct that or clarify?

15 MS. PALEY: Well, I'll go into it in my
16 preparation. However, since we did not have purchase
17 invoices, we were left to rely upon calculated sales
18 prices.

19 JUDGE LAMBERT: Right. That's what I was
20 meaning, that the sales -- the purchase price, I mean, is
21 based on the sales price. Well, maybe we can move on and
22 Appellants can take a look at the information. If they
23 come up with anything later, you could let us know.
24 Thanks.

25 MR. QU: Is it possible for me to present him --

1 in representing them? Can I ask my wife to present this
2 to you?

3 JUDGE RALSTON: You want her to explain to us
4 what you're saying?

5 MR. QU: I'm going to ask my wife to present it
6 to you because I cannot read it. I cannot read this, and
7 I can swear that everything is true. I'm not telling a
8 lie.

9 JUDGE RALSTON: Okay. So you just want her to
10 read what's on the documents for us?

11 MR. QU: Correct.

12 JUDGE RALSTON: Yes, she can read what's in the
13 document.

14 MR. QU: Thank you, Your Honor.

15 JUDGE RALSTON: Sure.

16 MS. LING: So the first one is regarding
17 June 14th, 2017; and then the purchase total was \$598.80,
18 and then the selling total was \$704.60. The next one is
19 regarding August 30th, 2017, and then the purchase total
20 is \$408. I made a mistake because I missed one page. Is
21 it possible to give me two to five minutes to find out?
22 Is it possible for me to calculate that really fast with
23 my phone?

24 JUDGE RALSTON: Yeah. You want to take, like, a
25 five-minute recess?

1 MR. QU: Yes.

2 JUDGE RALSTON: Sure. We'll take a five-minute
3 recess. We're going to go off the record and will be back
4 at -- let's just make it five-and-a-half. We'll be back
5 at noon.

6 (There is a pause in the proceedings.)

7 JUDGE RALSTON: Okay. We're ready to go back on
8 the record. Thank you everyone.

9 MR. QU: I 'm sorry to cause -- to ask for a
10 break for five minutes. After I read and then I found out
11 it was a mistake. But I'm sorry for using up people's
12 time. So once again on August 30th, the purchase total is
13 \$408, and then the selling total is \$480. And then
14 regarding the purchase total for the confiscated item from
15 September 13th, I find out the total and present it to
16 you. Because all these items were confiscated by the
17 police.

18 JUDGE RALSTON: If you have the total available,
19 you can give it to me right now. If you don't have it,
20 that's fine. We can go ahead and total it later.

21 MS. LING: I already have the total, but those
22 are the items that were not sold.

23 JUDGE RALSTON: Okay. Thank you.

24 MS. LING: Shall I present to you.

25 JUDGE RALSTON: Just give me the number quickly.

1 MS. LING: Okay. So the total of the purchase on
2 September 13th was \$25,632.60. But we didn't sell them.
3 And if they were sold all together, it would be about
4 \$31,147.40.

5 JUDGE RALSTON: Thank you.

6 MR. QU: Thank you very much.

7 JUDGE RALSTON: So we're going to move on to
8 Respondent's presentation. Ms. Paley, are you ready to
9 present?

10 MS. PALEY: Yes.

11 JUDGE RALSTON: Okay. You have 30 minutes. You
12 can start whenever you're ready.

13 MS. PALEY: Thank you.

14 And Mr. Interpreter, please let me know if you'd
15 like for me to stop more often.

16

17 PRESENTATION

18 MS. PALEY: This is a use tax case based upon the
19 possession for sale of counterfeit goods. Use tax is
20 imposed on the storage use or other consumption of
21 tangible personal property purchased from any retailer for
22 storage use, or consumption in this state measured by the
23 sales price, unless that use is specifically exempted or
24 exclude by statute.

25 Every person storing, using, or otherwise

1 consuming tangible personal property in this state that
2 was purchased from a retailer is liable for the tax. And
3 the purchaser's liability for the tax is not extinguished
4 until the tax has been paid to the State, unless the
5 purchaser can produce a receipt for the tax from a
6 retailer who is engaged in the business in the state or is
7 otherwise authorized by CDTFA to collect the tax. Revenue
8 & Taxation Code Section 6009.2(a), provides that storage
9 and use includes a purchase by convicted purchaser of
10 tangible personal property with a counterfeit mark or
11 counterfeit label or an illicit label on that property or
12 in connection with that purchase, regardless of whether
13 the purchase is for resale in the regular course of
14 business.

15 Convicted purchaser means a person convicted of a
16 counterfeiting offense, including a violation under Penal
17 Code Section 350 on or after the date of purchase.

18 Between April and September 2017, Appellant Mr. Qu sold
19 accessories with brand-name labels, such as Burberry,
20 Chanel, Coach, Gucci, Hermès, Louis Vuitton, MCM, Michael
21 Kors, and Prada, including handbags, handbag emblems,
22 sunglasses, belts and wallets in and around Los Angeles,
23 California.

24 Appellant did not report any sales or purchases
25 subject to tax. He has also not provided any records for

1 audit or during this appeal until we received 1 and 2 just
2 before the hearing today. Exhibit 2 appears to be a
3 restatement of the audit work papers schedules 12A, 12B-1
4 and 12B-2, however with incorrect or different totals than
5 ours prepared by Ms. Wilson. We submit on both Exhibits 1
6 and 2 that the amounts provided are unsubstantiated and
7 were reported or prepared over five years after the fact.

8 Whereas, we relied upon timely recorded evidence,
9 and that an investigator made two undercover purchases of
10 counterfeit goods from Mr. Qu in June and August of 2017.
11 And that's detailed in Exhibit C of the investigative
12 consultant's report. On June 14th, 2017, Appellant sold
13 124 items with counterfeit marks or labels for \$740,000.
14 But for being counterfeit, the items would have had a
15 total manufacturer suggested retail price or MSRP of about
16 \$81,000, which is a markdown of \$80,620.

17 And on August 30th, 2017, Appellant sold the
18 investigator 90 items for \$540. But for being
19 counterfeit, items have an MSRP of \$84,150, and that is a
20 mark down of \$83,610. The MSRPs and sales prices compute
21 to an overall markdown percentage of 12,830.47 percent.

22 Would you like me to say the number again?

23 THE INTERPRETER: Yes.

24 MS. PALEY: 12,830.47 percent; and that's shown
25 in Exhibit A-3 of the appeals decision. On

1 September 13th, 2017, detectives from the Los Angeles
2 County Sheriff's Department arrested Appellant and
3 executed a search warrant seizing from him 19,955 items
4 with counterfeit marks or labels with a total of MSRPs of
5 just over \$13 million. That's at Exhibit A-4.

6 MR. QU: Is it possible that I can object?

7 JUDGE RALSTON: Excuse me. I didn't hear you.

8 MR. QU: Is it possible I can object right now?

9 JUDGE RALSTON: After Respondent's presentation,
10 you will have ten minutes for a rebuttal. So just make a
11 note, and then you can present your information.

12 MR. QU: Okay. Thank you.

13 MS. PALEY: Applying the known markdown factor of
14 12,930.47 percent, the calculation reveals Appellant could
15 have sold the seized goods for \$100,998.

16 Say it again?

17 THE INTERPRETER: Please say again.

18 MS. PALEY: Yes. Applying the known markdown
19 factor of 12,930.74 percent, the calculation reveals that
20 Appellant could have sold the seized goods for \$100,998.

21 On July 13th, 2018, in Los Angeles County
22 Superior Court, Appellant was convicted of two felony
23 counts of Penal Code Section 350(a)(2) for selling or
24 possessing for sale over 1,000 items of counterfeit goods
25 pursuant to a guilty plea on June 21st, 2018. A sentence

1 of 16 months imprisonment was imposed as reflected in
2 Exhibit D, at page 5 through 7. As a result of that
3 counterfeiting offence conviction, Appellant is a
4 convicted purchaser as described in Revenue & Taxation
5 Code Section 6009.2(b).

6 As a result of that counterfeiting offense
7 conviction, Appellant is a convicted purchaser as
8 described in Revenue & Taxation Code Section 6009.2(b),
9 and is liable for use tax based on Appellant's purchase
10 price for the counterfeit goods. Appellant has not
11 provided any supporting documentation of his purchase
12 price for the counterfeit goods. Therefore, the
13 Department used an estimate for the purchase price for the
14 counterfeit goods in line with Revenue & Taxation Code
15 Section 6481.

16 The audited estimate was calculated by taking the
17 MSRP and applying the established markdown percentage of
18 12,830.47 percent, which was computed by comparing the
19 MSRPs to the actual sales prices Appellant charged to the
20 undercover buyer. In the absence of any purchase records,
21 the Department must and has used the best information
22 available to it. And we submit that Exhibits 1 and 2 are
23 unreliable and unsubstantiated and urge them to be treated
24 as argument.

25 The Department's audit, Exhibit E, methodology

1 forms the basis for the August 14th, 2018, Notice of
2 Determination, Exhibit B. The Department has the minimal
3 initial burden of showing that its determination was
4 reasonable and rational, and the burden shifts to
5 Appellant to establish that a different result is
6 warranted, pursuant to the Office of Tax Appeals 2019
7 precedential opinion Appeal of TFCG, Inc, in California
8 case law.

9 Except as otherwise specifically provided by law,
10 the burden of proof is upon the taxpayer to prove all
11 issues of facts by a preponderance of the evidence. That
12 is, the taxpayer must establish by documentation or other
13 evidence that the circumstances it asserts are more likely
14 than not to be correct. As held in the Appeal of TFCG and
15 codified in Title 18 Section 35003(a), unsupported
16 assertions are not sufficient to satisfy a taxpayer's
17 burden of proof.

18 Appellant's hardship claims are heard and
19 understood but do not form a basis for an adjustment of
20 measure. Additionally, a finality penalty of \$945.60 was
21 imposed for the liability period after Appellant had
22 failed to timely appeal the Notice of Determination and
23 failed to pay the liability when it became final or due
24 and payable, pursuant to Revenue & Taxation Code Section
25 6565.

1 Appellant had previously been informed during the
2 appeals process that in order to request relief of the
3 penalty, the CDTFA-735 form needed to be completed and
4 submitted. Since no such form or request was received,
5 the appeals decision did not consider penalty relief.
6 Revenue & Taxation Code Section 6596 provides that the
7 penalty for failure to make timely payment may not be
8 relieved for reasonable cause without a written request
9 setting forth the facts on which the claim for relief is
10 based.

11 We submit to the Panel that no adjustments are
12 warranted to the penalty or to the use tax determination.

13 Thank you.

14 JUDGE RALSTON: This is Judge Ralston. I have a
15 question for Respondent. Are you able to meet with the
16 taxpayer after the hearing to discuss, like, offer and
17 comprise or any --

18 MS. PALEY: We are not. However, we -- I can
19 provide information regarding that program.

20 JUDGE RALSTON: Okay.

21 Mr. Qu, if you were provided with forms or
22 information from CDTFA, do you have someone that can help
23 you read them and fill them out?

24 MR. QU: I will not understand it at all, and I
25 don't understand any English at all. So I don't know what

1 to do.

2 JUDGE RALSTON: Okay.

3 MR. QU: So every time I received a letter from
4 OTA, I always ask somebody to read it to me because I
5 don't understand any -- any written document in Chinese or
6 English.

7 JUDGE RALSTON: Okay. Does CDTFA happen to know
8 if the Form 735 is available in Mandarin? And I
9 understand if you don't know off the top of your head.

10 MS. PALEY: I don't know. Would you like --
11 going back to your prior question on the offers and
12 comprise, I can provide a telephone number for that
13 program. However, it requires a final adjustment prior to
14 any engagement in the program, but I can provide that
15 phone number.

16 JUDGE RALSTON: Okay. Thank you. And also for
17 CDTFA, does it have to be the form 735, or can it be any
18 written request for the relief of the finality penalty.

19 MS. PALEY: Any written request would.

20 JUDGE RALSTON: Okay. What about, like, an oral
21 request that was made under oath. I know that's kind of a
22 new thing.

23 MR. SMITH: CDTFA would not consider that a
24 written request but --

25 JUDGE RALSTON: Okay.

1 So if CDTFA were to provide you, Mr. Qu, with
2 some information about some additional programs or things
3 they have, is there -- I know you said you have people
4 that can assist you in reading it. Do you have someone
5 who can read the information for you?

6 MR. QU: Because previously they sent email to me
7 or like they even send the paper mail to me, or they even
8 like tried to provide me any information, but I don't
9 understand anything. I don't even know how to read
10 anything on my phone. I rarely even use my phone.
11 Besides making phone calls or receiving phone calls, I
12 don't use anything with my phone.

13 Is it possible for me to talk to you?

14 JUDGE RALSTON: I'm sorry. Can you repeat that?

15 MR. QU: Is it possible for me to say something?

16 JUDGE RALSTON: Yes, please.

17 MR. QU: Your Honor, let me say something from
18 the bottom of my heart. I've never broken any laws during
19 the 20 years that I've been in the United States. And I
20 never asked the government to provide any subsidy to me.
21 And I just try to make some money, including going to swap
22 meets and selling items.

23 JUDGE RALSTON: Let me just stop you there for
24 just a minute. We're going to give you ten minutes to
25 respond to CDTFA's presentation.

1 MR. QU: And regarding everything that has been
2 said from the Office of Tax Appeals, I don't agree with
3 them.

4 JUDGE RALSTON: Okay. We're going to -- I'm
5 going to let you do your rebuttal now. So I'll give you
6 ten minutes to speak. You can give the Panel any
7 information, and then the Panel may have some follow-up
8 questions.

9 MR. QU: Okay. Thank you.

10 JUDGE RALSTON: Please begin when you're ready.

11

12 CLOSING STATEMENT

13 MR. QU: Your Honor and also ladies and gentlemen
14 in this room, and I've been in the United States for about
15 20 years already, and my family has some difficulties
16 right now. And whatever the Office of Tax Appeals request
17 for, I believe that they are not reasonable.

18 And because all these products are fake products
19 right here, and then I also purchase all these logos
20 online as well. And then all these logos maybe cost about
21 a few cents or -- and then you say that all these products
22 are counterfeit. I just don't understand. And I respect
23 all the -- all the personnel right here on the Panel, and
24 I would just like to be treated fairly and reasonably
25 because I don't understand anything, and I also was not

1 educated.

2 And then because I've been in jail before, so for
3 me to go anywhere it's just kind of difficult. And my mom
4 is already over 80 something years old already. And for
5 me to visit her, it's really difficult. And I'm afraid
6 not able to enter the United States if I leave this
7 country, and also my wife is not healthy. And I also
8 asked -- I never request government for any type of
9 assistance or subsidies, and I sold in swap meet before.
10 And then I also had all the permits.

11 Right now I sustain my life by working a few
12 different common gigs. Sometimes I cannot even pay my
13 rent. And right now my wife and I share one car to drive
14 together. It's a Honda 2011. Right now if I were
15 capable, I would do it. But right now I'm really not
16 capable to pay all this money to the government. So if
17 the government is able to help me to reduce this tax and
18 then maybe pay for a few hundred dollars, then I might be
19 able to do that.

20 And then I'm just trying to make money and then
21 just pay maybe a few -- some dollars, under \$100 per
22 month. And then besides, I would just try to make some
23 money right now, and my wife is not healthy. She goes to
24 doctor all the time, and then she's using Medi-Cal right
25 now. And then last year I also had a surgery. And then

1 despite the assistance from governments, and overall the
2 U.S. Government still treat me really nicely.

3 And right now the point is that I just need to
4 continue to work hard and then to provide for my family
5 and not to break the law again. And regarding all the
6 laws I've broken in the past, I guess I would just go
7 ahead and not to commit that again and believe I don't
8 make same mistake.

9 Okay. Thank you, everyone.

10 JUDGE RALSTON: Thank you.

11 MR. QU: Thank you very much.

12 JUDGE RALSTON: I did have a follow-up question.
13 So when you referred -- to CDTFA, when you referred to the
14 telephone number regarding the offer and compromise
15 program --

16 MS. PALEY: Yes.

17 JUDGE RALSTON: -- do you know if they have
18 Mandarin available?

19 MS. PALEY: They have the interpreter relay
20 service available. The telephone is 916-322-7931. Again,
21 however, there has to be a final judgment for the officer
22 and comprise to engage.

23 JUDGE RALSTON: Okay.

24 MS. PALEY: There's also publication 56. It's in
25 English, a publication, but if someone were able to

1 interpret that for him.

2 JUDGE RALSTON: Okay.

3 So, Mr. Qu, what Ms. Paley was referring to is
4 she provided a phone number that you can reach out to at a
5 later date, and they can give you some information about
6 some programs that CDTFA has to assist taxpayers in your
7 situation, if it applies to you. So -- and they do have
8 someone that could speak to you in Mandarin on that phone
9 line.

10 MR. QU: Is it possible that it's able to be
11 settled by today?

12 JUDGE RALSTON: What's going to happen after
13 today is what the Panel does is we review the information
14 that has been submitted by both parties, including the
15 conversations and presentations that we had today at this
16 hearing. And then the three Panel members will meet and
17 discuss this case after this hearing, and we will issue a
18 written decision within 100 days.

19 What -- the number that Ms. Paley provided is for
20 a program with CDTFA, which you could reach out to after
21 the hearing. And I'm hoping that they could discuss with
22 him whether or not he would qualify, whether there was a
23 final liability that he qualified, and that he could --
24 they could explain that to him better than we can here.

25 MS. PALEY: Yes.

1 JUDGE RALSTON: Thank you.

2 Okay. So I am going to turn to my Panel members
3 to see if they have any questions. Judge Aldrich, did you
4 have any questions?

5 JUDGE ALDRICH: This is Judge Aldrich. I don't
6 have any questions for either of the parties. Thank you.

7 JUDGE RALSTON: Thank you.

8 And, Judge Lambert, did you have any questions?

9 JUDGE LAMBERT: This is Judge Lambert. I just
10 had a question for CDTFA on the purchase prices based on
11 the sales price. Is that really reasonable that someone
12 would purchase something and sell something for the same
13 price and not make any profit? And also if we're saying
14 that there's no evidence of what the purchase price is,
15 you know, I believe that CDTFA often computes average
16 markups and is aware of possible markups. So would it be
17 really reasonable that -- to say that the purchase price
18 would equal the sales price?

19 MS. PALEY: We recognize the limitation of our
20 calculation in that it would be basically selling at cost.
21 However, we do not have any documentation to justify or to
22 show what -- what is the markup on a criminal enterprise
23 of counterfeit goods? We do not know and do not have
24 anything to base that upon. So without evidence it would
25 be unsubstantiated to justify.

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JUDGE LAMBERT: Okay. Thank you.

JUDGE RALSTON: Okay. I think that will conclude
our hearing today. So thank you everyone for attending.

Today's hearing in the Appeal of Qu is now
adjourned, and the record is closed.

As I mentioned. The judges will meet and will
send you a written opinion of our decision within
100 days. And the next hearing will resume at 1:20.
Thank you.

(Proceedings adjourned at 12:49 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
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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 19th day
of October, 2022.

ERNALYN M. ALONZO
HEARING REPORTER