

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:)
)
E. HONARCHIAN,) OTA NO. 20127046
)
) APPELLANT.
)
)
)

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

Fresno, California

Thursday, September 29, 2022

Reported by:

Cynthia P. Hernandez
CSR No. 13521

Job No. :
38707 OTA(A)

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15 TRANSCRIPT OF PROCEEDINGS, taken at
16 855 M Street, Suite 960, Fresno, California,
17 commencing at 1:00 p.m. on Thursday,
18 September 29, 2022, reported by
19 Cynthia Hernandez, CSR No. 13521, a
20 Certified Shorthand Reporter in and for
21 the State of California.
22
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25

1 APPEARANCES:

2
3 Panel Lead: ALJ TERESA STANLEY

4
5 Panel Members: ALJ JOSHUA ALDRICH
6 ALJ SARA HOSEY

7
8 For the Appellant: E. HONARCHIAN

9
10 For the Respondent: STATE OF CALIFORNIA
11 DEPARTMENT OF TAX AND
12 FEE ADMINISTRATION

13 RAVINDER SHARMA

14 CHRISTOPHER BROOKS

15 RANDY SUAZO
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I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received in evidence at
page 7)

(Department's Exhibits A-E were received in evidence at
page 7)

P R E S E N T A T I O N S

	PAGE
By Mr. Honarchian	8
By Mr. Sharma	12

1 FRESNO, CALIFORNIA; THURSDAY, SEPTEMBER 29, 2022

2 1:00 P.M.

3 -oOo-

4 JUDGE STANLEY: We're on the record, then, in the
5 appeal of Honarchian, case number 20127046. The date is
6 September 29, 2022, in Fresno, California. The time is
7 1:05 p.m.

8 Again, for the record, I'm Judge Teresa Stanley.
9 And I have with me Judge Josh Aldrich and Judge
10 Sara Hosey, who is replacing Judge Amanda Vassigh. The
11 parties did not object to that substitution.

12 The lead will conduct the panel, but the three of
13 us will equally deliberate and issue a written opinion
14 within 100 days of the conclusion of this hearing or 100
15 days of the closure of the record, whichever one comes
16 later.

17 Please identify yourselves and who you represent,
18 and I'm going to start with the appellant.

19 MR. HONARCHIAN: Eddie Honarchian, Appellant.

20 MR. SHARMA: Ravinder Sharma, hearing representative
21 for the CDTFA.

22 MR. BROOKS: Christopher Brooks, tax counsel for
23 CDTFA.

24 MR. SUAZO: Randy Suazo, hearing representative of
25 CDTFA.

1 JUDGE STANLEY: Okay. Thank you.

2 And for the benefit of the public that's viewing
3 this and the parties, I note that the Office of Tax
4 Appeals, which I might sometimes refer to as OTA, is
5 independent from the California Department of Tax and
6 Fee Administration, which I might refer to as CDTFA or
7 "the department." And any -- and we're also independent
8 of any other tax agency.

9 The Office of Tax Appeals is not a court, but
10 we're an independent appeals agency. We're staffed with
11 our own tax experts.

12 The only evidence in our record is that which was
13 submitted to us during this appeal by both parties.

14 The issue that we discussed at the pre-hearing
15 conference was whether for the liability period,
16 April 1st, 2012, through March 31st, 2015, has appellant
17 established that a reduction to the measure of
18 unreported taxable sales is warranted?

19 The second issue was that appellant previously
20 disputed but does -- no longer disputes the CDTFA's
21 disallowance of a bad debt deduction.

22 Is that correct, Mr. Honarchian?

23 MR. HONARCHIAN: Correct.

24 JUDGE STANLEY: And Mr. Sharma?

25 MR. SHARMA: That is correct. Thank you.

1 JUDGE STANLEY: Okay. Appellant submitted as evidence
2 CDTFA's Appeals Bureau decision, to which CDTFA did not
3 object.

4 And, Mr. Honarchian, you don't have any additional
5 exhibits to present; is that correct?

6 MR. HONARCHIAN: Not at this time.

7 JUDGE STANLEY: Okay. And the CDTFA -- so I'm going
8 to go ahead and admit Appellant's Exhibit -- we'll call
9 it Exhibit 1 -- into the record.

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

12 JUDGE STANLEY: And then CDTFA submitted Exhibits A
13 through E. Appellant did not object at the prehearing
14 conference, but he claimed that he didn't see them.

15 Have you -- do you have any objections at this
16 point, Mr. Honarchian?

17 MR. HONARCHIAN: I do not.

18 JUDGE STANLEY: Okay. So without objection, CDTFA's
19 Exhibits A through E will be admitted into evidence too.

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

22 JUDGE STANLEY: Okay. So that means we're ready to
23 proceed. I'm going to turn it over to you,
24 Mr. Honarchian.

25 We talked about a 10-minute presentation, but I

1 assume that you will be testifying as to the facts
2 related to the case, right?

3 MR. HONARCHIAN: Correct.

4 JUDGE STANLEY: Okay. So I'm going to ask that you
5 raise your right hand.

6 And do you swear or affirm that you'll tell the
7 truth, the whole truth and nothing but the truth?

8 MR. HONARCHIAN: Yes.

9 JUDGE STANLEY: Okay. Thank you.

10 And just for purposes of the public, I will say
11 that when we do CDTFA's presentations, since they don't
12 have any witnesses testifying to facts, they will only
13 be arguing the case, that their members will not need to
14 be sworn in.

15 So, Mr. Honarchian, you can proceed when ready.

16
17 PRESENTATION

18 MR. HONARCHIAN: Okay. First of all, I signed a
19 statute of limitation that extended only until
20 July 31st, 2016, so I would like the judges to look at
21 that.

22 Second, I hired a CPA to seek help in reviewing
23 and responding to the exhibits. I didn't receive the
24 exhibits until September 14th, which was a couple weeks
25 ago, but I gave him 142 pages of documents I received.

1 And he said that -- he said he is in the middle of
2 income tax. I guess October 17th he has to file a bunch
3 of people's income tax.

4 So he said that he won't be able to look at them
5 until October 24th of -- next month, October 24th,
6 because of -- so he says he would probably need about
7 40 hours to compare my invoices to the DMV data and to
8 review all the exhibits that CDTFA has provided. So
9 he's going to need 40 hours for that. I'm hoping that
10 we could keep this hearing open until I conduct a review
11 of the DMV data.

12 Third, on the prehearing, the CDTFA claims the DMV
13 data is more reliable than my invoices, but I don't see
14 how, because the DMV data is an estimate only; my
15 invoices are the exact figure.

16 So my CPA has to prove that the DMV data is wrong
17 or that the DMV -- that the vehicles were not sold or
18 the vehicles were repossessed or the DMV paid -- the
19 money I paid DMV was on vehicles that were returned or
20 refunded -- was issued -- a refund was issued to the
21 customer.

22 Fourth, on June 10th of 2020, the Business Tax and
23 Fee Division was ordered by the Tax Council to perform a
24 re-audit. Business and Tax and Fee Division never
25 conducted the re-audit. They still never even wanted to

1 look at my invoices.

2 That would be it for now.

3 JUDGE STANLEY: Mr. Sharma, does the department have
4 any questions of Mr. Honarchian?

5 MR. SHARMA: No. The department doesn't have any
6 questions at this time. Thank you.

7 JUDGE STANLEY: Okay. And is the department able to
8 address what I understand might be a recently raised
9 issue just now?

10 The first point that Mr. Honarchian made is with
11 respect to a waiver he signed. And I don't know -- I
12 haven't looked into that, because this is the first time
13 I've heard it, so I don't know if the department knows
14 when the waiver was signed, what cover -- what period it
15 covered and whether the NOD was issued during that time.

16 MR. SHARMA: Yes. We can address that issue.

17 JUDGE STANLEY: Okay.

18 MR. SHARMA: Appellant signed a waiver of limitation
19 extension after July 31st, 2016, and the NOD was issued
20 on February 16, 2016. Properly excluded and signed
21 waivers are attached as part of Department's exhibit,
22 Exhibit A, page 66, which shows waiver extended after
23 July 31st. Page 67 shows original waiver after
24 January 31st, 2016.

25 So those were properly executed waivers and time

1 of -- I mean, notice of determination was timely issued
2 under the properly executed and signed waivers by the
3 appellant.

4 JUDGE STANLEY: Okay. Thanks for addressing that out
5 of turn.

6 I do also -- before I ask the panel if they have
7 any additional questions I wanted to address
8 Mr. Honarchian's statement that he only received the
9 exhibit a couple weeks ago. The Office of Tax Appeals
10 records does reflect that we sent an email dated
11 April 26, 2021, to Appellant that included a link to
12 CDTFA's exhibits, and Appellant did respond to that
13 email. That doesn't mean that he went in and looked at
14 the documents in the link, though. And that's not to
15 take away from your request to have more time to review
16 them.

17 I just want to say that most of CDTFA's exhibits
18 are also -- were papers which would have been presented
19 to you at the end of the audit.

20 Okay. And, Judge Hosey, do you have any questions
21 for the witness?

22 JUDGE HOSEY: Not at this time. Thank you.

23 JUDGE STANLEY: Judge Aldrich, do you have any
24 questions?

25 JUDGE ALDRICH: Hi. This is Judge Aldrich. I had a

1 couple of questions for the appellant.

2 So you raised the issue of the timeliness of the
3 notice of determination. And so are you calling into
4 question the validity of the waiver of limitations? So
5 there's two in evidence that the department referenced.
6 Are you saying that those aren't valid or you didn't
7 sign them or -- I guess, what's your argument there?

8 MR. HONARCHIAN: Well, I was just -- I'm not saying I
9 didn't sign them. I'm just saying that it extended only
10 until July 31st, 2016, the ones I signed. So we are now
11 in 2022, so I don't know if that even -- you know, the
12 limitations even --

13 JUDGE ALDRICH: Okay. I think I understand your point
14 in that regard. No further questions.

15 MR. HONARCHIAN: Thank you.

16 JUDGE STANLEY: Okay. Thank you.

17 Since there are no more questions for
18 Mr. Honarchian, Mr. Sharma, you can proceed.

19 MR. SHARMA: Thank you. This is Ravinder Sharma.

20
21 PRESENTATION

22 MR. SHARMA: Appellant operated a car dealership in
23 Fresno, California, since June 2009. The department
24 performed an audit examination for the period of
25 April 1, 2012, through March 31, 2015.

1 Appellant reported total sales of approximately
2 \$2.1 million; claimed deductions of a little more than
3 \$533,000, resulting in reported taxable sales of \$1.5
4 million for the audit period.

5 Appellant also reported X-tax purchases subject to
6 use tax for approximately \$12,000 for the audit period.
7 Exhibit A pages 5 to 6.

8 Appellant provided federal income tax returns for
9 years 2012 to 2014. Appellant did not provide any
10 detailed books or records for the audit period. Due to
11 lack of books or records the department could not verify
12 the reporting method or the accuracy of reported
13 amounts.

14 The analysis of Appellant's reported total sales
15 per sales and tax returns and reported gross receipts
16 per federal income tax returns reveal a difference of
17 \$186,000 for 2012. Exhibit A, page 42.

18 The department compared reported taxable sales
19 with cost of goods sold per federal income tax returns
20 and arrived at inconsistent markups for the audit
21 period. Exhibit A, page 42.

22 Based on the above analysis, the department
23 determined that Appellant's books and records were
24 inadequate and unreliable for sales and use tax
25 purposes.

1 In the absence of reliable books or records, the
2 department used an indirect audit method to verify the
3 accuracy of reported amounts and to determine unreported
4 taxable sales.

5 Since Appellant did not provide any general or
6 subsidy ledgers, dealer jackets, sales contracts,
7 purchase invoices, bank statements, the department
8 obtained Department of Motor Vehicle -- that's called
9 DMV data -- from its data analysis section to verify
10 whether the taxable sales were properly reported.

11 The department used the estimated sales price for
12 each vehicle from DMV data and determined audited
13 taxable sales of a little more than \$3.3 million for
14 first quarter 2012 to fourth quarter 2014. Exhibit A,
15 pages 14 to 25; and \$570,000 for first quarter 2015.
16 Exhibit A pages 10 and 26 to 41.

17 Based on the above audit procedures, the
18 department determined audited taxable sales of around
19 \$3.87 million for the audit period. Exhibit A, page 10.

20 Appellant reported taxable sales of \$1.53 million,
21 resulting in unreported taxable sales of a little more
22 than \$2.34 million for the audit period.

23 This audit procedure also resulted in credits of
24 around \$26,000 for 2012, but Appellant failed to provide
25 any documents to support those credit amounts;

1 therefore, the department disallowed credits for 2012.

2 During the appeals process the department noted
3 duplicate transactions of around \$12,000, which weren't
4 adjusted, resulted in unreported taxable sales of \$2.36
5 million for the audit period. Exhibit A, page 8.

6 Appellant has not provided any documentary
7 evidence to show that audited taxable sales established
8 based on the DMV data is not correct.

9 During his opening statement, Appellant talked
10 about -- that the department has not conducted a
11 re-audit. The department submits that the re-audit has
12 been conducted as directed by the seasoned report.

13 And Appellant also talked about the DMV data is
14 estimate. Department submits that DMV data is estimate,
15 but it is based on the Vehicle License Fee code, which
16 is generally used by the DMV to assign a value within
17 the range of \$200. And it's been the department's
18 practice to use that estimated sales price with the
19 lowest range, and that's what the department has done.

20 And as it goes to Appellant's contention that the
21 DMV data is more reliable, the department submits that
22 the DMV data is based on the cost adjusted by the buyer,
23 and the only difference is -- as explained earlier, is
24 the estimated sales price. Other than that, DMV data is
25 more reliable because it has been maintained by a third

1 party and other independent government agency.

2 Based on the above, the department has fully
3 explained the basis for deficiency. The department has
4 used approved audit methods to determine the deficiency.
5 Therefore, based on the evidence presented, the
6 department requests that Appellant's appeal be denied.

7 This concludes my presentation and I'm available
8 to answer any questions you may have. Thank you.

9 JUDGE STANLEY: Thank you.

10 Judge Hosey, do you have any questions for CDTFA?

11 JUDGE HOSEY: Yes, I do have one. This is Judge
12 Hosey.

13 In your presentation you stated that no books and
14 records were provided by the appellant during the
15 initial audit. Was that the case during the re-audit as
16 well?

17 MR. SHARMA: Yes, that's correct.

18 During the re-audit the appellant wanted the
19 department to go over at his business and look at all
20 these boxes, which is not the department's policy.
21 Because as I explained earlier, department has used DMV
22 data, which is more reliable and complete, which is
23 monitored by a third party, which the department denied
24 that, to go to his business and look at each and every
25 invoice or whatever he claimed in the boxes.

1 JUDGE HOSEY: Okay. Thank you for the clarification.

2 And then, Appellant, these are the invoices you
3 referenced in your presentation, the --

4 MR. HONARCHIAN: Correct.

5 JUDGE HOSEY: The boxes of invoices you have?

6 MR. HONARCHIAN: Correct, yes.

7 JUDGE HOSEY: Okay. Thank you.

8 JUDGE STANLEY: Judge Aldrich, do you have any
9 questions?

10 JUDGE ALDRICH: Hi. This is Judge Aldrich.

11 For the department, I guess, if you could give me
12 a quick distinction between the audit and the re-audit,
13 since Appellant has put forth the argument that the
14 re-audit wasn't conducted. Just the highlights.

15 MR. SHARMA: The only information we noted during the
16 re-audit was duplicate transaction of \$12,400. During
17 the assessment there was duplicate transaction and that
18 has been adjusted.

19 JUDGE ALDRICH: Okay. Thank you. No further
20 questions.

21 JUDGE STANLEY: Okay. Thank you.

22 Mr. Honarchian, you can have five minutes to
23 respond to whatever you heard CDTFA say or any other
24 information that you want the panel to know before we
25 conclude.

1 MR. HONARCHIAN: On the re-audit they only looked at
2 nine invoices, and that's where they found that there
3 was a duplicate. I'm sure if they looked at all of them
4 there would be more duplicates and more credits.

5 Like, in their audit there isn't any allowance of
6 any returns. I mean, I had several returns, several
7 repossessions, several -- I mean, numerous valid returns
8 there.

9 The BOE does have procedures for requesting
10 records from taxpayers. In regulation 698.5 it requires
11 that they issue an information document request with a
12 30-day deadline and a second information document
13 request with a 15-day deadline, and a final demand prior
14 to issuing a bill. The auditor just disregarded those
15 procedures and just issued a bill.

16 Also, the BOE failed to educate me on how to file
17 a return and now I owe over \$46,000. Basically the
18 publication I received when I registered for a permit is
19 not enough knowledge or education to file a return.
20 It's very frustrating how to input numbers into the BOE
21 system. I didn't know how to do the vehicle returns or
22 refunds. I didn't even know how to input them.

23 Also -- I mean, I had a secretary that helped me
24 and she supposedly knew how to do it, but I think I knew
25 more than her. Now that they've switched over from the

1 BOE to the CDTFA it's way easier and now we pay the
2 sales tax directly to the DMV, so, you know, there is no
3 way to make a mistake. If from the beginning we would
4 have been able to just pay the DMV directly for the
5 sales tax instead of paying it quarterly we wouldn't be
6 in this situation.

7 That's all I have.

8 JUDGE STANLEY: Thank you, Mr. Honarchian.

9 Judge Hosey, do you have any additional questions?

10 JUDGE HOSEY: No further questions. Thank you.

11 JUDGE STANLEY: Judge Aldrich, do you have any
12 additional questions?

13 JUDGE ALDRICH: This is Judge Aldrich. Just a couple
14 of additional questions.

15 You were referring to credits. What credits
16 specifically were you --

17 MR. HONARCHIAN: Well, I have returns, repossessions.
18 Like, we paid the DMV for a vehicle's registration and
19 then we returned the vehicle, so we never got credited
20 for the tax for that. Because if they are going by the
21 DMV data, it will show that that tax is due and where we
22 gave the customer a refund.

23 So there's some credits there that I'm hoping that
24 we get more time to have a CPA look into, and take my
25 invoices and the DMV data and figure out where there

1 should be some credits. I'm sure there should be
2 numerous credits for returns, repossessions. So there
3 should be some valid returns there.

4 JUDGE ALDRICH: Okay. Thank you.

5 And I guess I'm wondering at the time that you
6 filed your sales and use returns did you denote any of
7 those credits or --

8 MR. HONARCHIAN: No.

9 JUDGE ALDRICH: So they wouldn't be reflected
10 elsewhere? So on your federal returns or your sales and
11 use tax returns they wouldn't have appeared?

12 MR. HONARCHIAN: Well, on the federal tax returns I
13 did -- I remember we had some repossessions. And it
14 would be under "transportation" on the federal tax
15 returns. But as far as income coming in is all I
16 reported to the income tax returns.

17 JUDGE ALDRICH: So quick question there.

18 On the repossession, you said that would be under
19 transportation and not under bad debts deductions?

20 MR. HONARCHIAN: Bad debt deductions? Yeah, it would
21 be under repossessions -- oh, it would be under
22 transportation. I don't -- I never filed a bad debt
23 deduction or even on a tax return.

24 JUDGE ALDRICH: Okay.

25 MR. HONARCHIAN: Or even know what a bad debt

1 deduction is.

2 JUDGE ALDRICH: Thank you. I think that answers my
3 questions.

4 JUDGE STANLEY: Okay. I don't have any additional
5 questions, other than just clarifying how much time you
6 need following the hearing.

7 You said that you are having a CPA go over the
8 records with you. And it sounds like you are doing what
9 we talked about at the prehearing conference, where you
10 have to have somebody compare your invoices to the DMV
11 data, because that's what the audit used. So that's the
12 only thing that's going to be helpful to the Office of
13 Tax Appeals, is to see if that data is wrong in any
14 respect at this point.

15 So I had talked -- prior to the hearing I talked
16 about giving you time to do that. It sounds like your
17 CPA needs at least a month to even get to it. And so
18 would you like 60 days to file a response or do you
19 think you need even more than that?

20 MR. HONARCHIAN: Well, he said 40 hours, so I don't
21 know how long it's going to take him on -- I didn't ask
22 him how long that 40 hours would take, but I think
23 60 days should be enough time.

24 JUDGE STANLEY: Okay. Why don't I give you 60 days?
25 And if for some reason you are unable to complete that

1 review with him, with your CPA, by the date that we set
2 and the order -- I'll issue an order after the hearing.
3 If you can't meet that deadline just let us know and ask
4 for an extension and we'll take that up then.

5 MR. HONARCHIAN: I will.

6 JUDGE STANLEY: And Mr. Sharma, how long does the
7 department wish to have to respond?

8 MR. SHARMA: Depending on the volume of documents that
9 would be submitted. I think 30 days should be enough,
10 but if there are a lot of documents maybe 45 days.

11 JUDGE STANLEY: Okay. And, again, this might fall
12 right during the holiday time, your 30 days. So, again,
13 if the department does need more time than the deadline
14 that is ultimately set, then you can request an
15 extension as well.

16 MR. SHARMA: Thank you.

17 THE COURT: So we're going to hold the record open in
18 this case. So that means that we will not issue a
19 written opinion within 100 days of today. We're going
20 to wait for this additional briefing process to
21 complete, and then that will start the hundred days to
22 getting an opinion out.

23 We're going to recess this hearing and
24 reconvene -- approximately 15 minutes we'll reconvene
25 for the next hearing. Thank you all for your

1 participation and have a good afternoon.

2 (Proceedings concluded at 1:30 p.m.)

REPORTER'S CERTIFICATE

I, CYNTHIA P. HERNANDEZ, CSR NO. 13521, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were taken before me
at the time and place therein set forth.

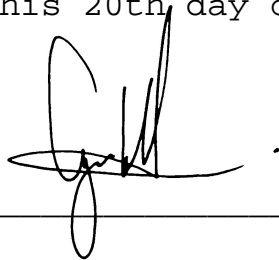
That the testimony of the witness, the questions
propounded, and all objections and statements made were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct transcript
of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any of the parties, nor financially
interested in the action.

I declare under penalty of perjury under the laws of
California that the foregoing is true and correct.

Dated this 20th day of October, 2022.

A handwritten signature in black ink, appearing to be 'C. Hernandez', is written over a horizontal line.

CYNTHIA P. HERNANDEZ, CSR NO. 13521

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\$1.5 13:3	17th 9:2	42 13:17,21	Administration 3:10 6:6
\$1.53 14:20	1:00 2:17 5:2	45 22:10	Administrative 7:11,21
\$12,000 13:6 15:3	1:05 5:7	<hr/> 5 <hr/>	admit 7:8
\$12,400 17:16	1:30 23:2	<hr/> 5 13:7 <hr/>	admitted 7:19
\$186,000 13:17	1st 6:16	<hr/> 6 <hr/>	affirm 8:6
\$2.1 13:2	<hr/> 2 <hr/>	6 13:7	afternoon 23:1
\$2.34 14:22	2009 12:23	60 21:18,23,24	agency 6:8,10 16:1
\$2.36 15:4	2012 6:16 12:25 13:9,17 14:14,24 15:1	66 10:22	ahead 7:8
\$200 15:17	20127046 2:6 5:5	67 10:23	Aldrich 3:5 5:9 11:23,25 12:13 17:8,10,19 19:11, 13 20:4,9,17,24 21:2
\$26,000 14:24	2014 13:9 14:14	<hr/> 7 <hr/>	ALJ 3:3,5
\$3.3 14:13	2015 6:16 12:25 14:15	7 4:5,7	allowance 18:5
\$3.87 14:19	2016 8:20 10:19, 20,24 12:10	<hr/> 8 <hr/>	Amanda 5:10
\$46,000 18:17	2020 9:22	8 4:14 15:5	amounts 13:13 14:3,25
\$533,000 13:3	2021 11:11	855 2:16	analysis 13:14,22 14:9
\$570,000 14:15	2022 2:18 5:1,6 12:11	<hr/> 9 <hr/>	answers 21:2
<hr/> - <hr/>	24th 9:5	960 2:16	appeal 2:5 5:5 6:13 16:6
-ooo- 5:3	25 14:15	<hr/> A <hr/>	appeals 2:1 6:4,9, 10 7:2 11:9 15:2 21:13
<hr/> 1 <hr/>	26 11:11 14:16	A-E 4:6 7:20	APPEARANCES 3:1
1 4:5 7:9,10 12:25	29 2:18 5:1,6	absence 14:1	appeared 20:11
10 14:16,19	<hr/> 3 <hr/>	accuracy 13:12 14:3	appellant 2:7 3:7 5:18,19 6:16,19 7:1,13 10:18 11:3, 11,12 12:1,22 13:1,5,8,9 14:5, 20,24 15:6,9,13 16:14,18 17:2,13
10-minute 7:25	30 22:9,12	additional 7:4 11:7 19:9,12,14 21:4 22:20	appellant's 4:5
100 5:14 22:19	30-day 18:12	address 10:8,16 11:7	
10th 9:22	31 12:25	addressing 11:4	
12 4:15	31st 6:16 8:20 10:19,23,24 12:10		
13521 2:19	<hr/> 4 <hr/>		
14 14:15	40 9:7,9 21:20,22		
142 8:25			
14th 8:24			
15 22:24			
15-day 18:13			

7:8,10 13:14,23
15:20 16:6

approved 16:4

approximately
13:1,6 22:24

April 6:16 11:11
12:25

arguing 8:13

argument 12:7
17:13

arrived 13:20

assessment
17:17

assign 15:16

assume 8:1

attached 10:21

audit 11:19 12:24
13:4,6,10,20 14:2,
17,19,22,23 15:5
16:4,15 17:12
18:5 21:11

audited 14:12,18
15:7

auditor 18:14

B

bad 6:21 20:19,20,
22,25

bank 14:7

based 13:22
14:17 15:8,15,22
16:2,5

Basically 18:17

basis 16:3

beginning 19:3

benefit 6:2

bill 18:14,15

BOE 18:9,16,20
19:1

books 13:10,11,
23 14:1 16:13

boxes 16:20,25
17:5

briefing 22:20

Brooks 3:12 5:22

bunch 9:2

Bureau 7:2

business 9:22,24
16:19,24

buyer 15:22

C

California 2:2,16,
21 3:9 5:1,6 6:5
12:23

call 7:8

called 14:8

calling 12:3

car 12:22

case 5:5 8:2,13
16:15 22:18

CDTFA 5:21,23,
25 6:6 7:2,7,12
9:8,12 16:10
17:23 19:1

CDTFA's 6:20
7:2,18 8:11 11:12,
17

Certified 2:20

Christopher 3:12
5:22

claimed 7:14 13:2
16:25

claims 9:12

clarification 17:1

clarifying 21:5

closure 5:15

code 15:15

commencing
2:17

compare 9:7
21:10

compared 13:18

complete 16:22
21:25 22:21

conclude 17:25

concluded 23:2

concludes 16:7

conclusion 5:14

conduct 5:12
9:10

conducted 9:25
15:10,12 17:14

conference 6:15
7:14 21:9

contention 15:20

contracts 14:6

correct 6:22,23,
25 7:5 8:3 15:8
16:17 17:4,6

cost 13:19 15:22

Council 9:23

counsel 5:22

couple 8:24 11:9
12:1 19:13

court 6:9 22:17

cover 10:14

covered 10:15

CPA 8:22 9:16
19:24 21:7,17
22:1

credit 14:25

credited 19:19

credits 14:23 15:1
18:4 19:15,23
20:1,2,7

CSR 2:19

customer 9:21
19:22

Cynthia 2:19

D

data 9:7,11,13,14,
16 14:9,12 15:8,
13,14,21,22,24
16:22 19:21,25
21:11,13

date 5:5 22:1

dated 11:10

days 5:14,15
21:18,23,24 22:9,
10,12,19,21

deadline 18:12,13
22:3,13

dealer 14:6

dealership 12:22

debt 6:21 20:20,
22,25

debts 20:19

decision 7:2

deduction 6:21
20:23 21:1

deductions 13:2
20:19,20

deficiency 16:3,4

deliberate 5:13

demand 18:13

denied 16:6,23

denote 20:6

department 3:10
6:5,7 10:3,5,7,13
12:5,23 13:11,18,
22 14:2,7,8,11,18
15:1,2,10,11,14,
19,21 16:2,3,6,19,
21,23 17:11 22:7,
13

department's 4:6

7:20 10:21 15:17 16:20			
Depending 22:8	E	F	H
detailed 13:10	earlier 15:23 16:21	facts 8:1,12	hand 8:5
determination 11:1 12:3	easier 19:1	failed 14:24 18:16	heard 10:13 17:23
determine 14:3 16:4	Eddie 5:19	fall 22:11	hearing 5:14,20, 24 9:10 21:6,15 22:2,23,25
determined 13:23 14:12,18	educate 18:16	February 10:20	helped 18:23
difference 13:16 15:23	education 18:19	federal 13:8,16,19 20:10,12,14	helpful 21:12
directed 15:12	email 11:10,13	Fee 3:10 6:6 9:23, 24 15:15	Hernandez 2:19
directly 19:2,4	end 11:19	figure 9:15 19:25	highlights 17:14
disallowance 6:21	equally 5:13	file 9:2 18:16,19 21:18	hired 8:22
disallowed 15:1	established 6:17 15:7	filed 20:6,22	hold 22:17
discussed 6:14	estimate 9:14 15:14	final 18:13	holiday 22:12
disputed 6:20	estimated 14:11 15:18,24	found 18:2	Honarchian 2:6 3:7 4:14 5:5,19 6:22,23 7:4,6,16, 17,24 8:3,8,15,18 10:4,10 12:8,15, 18 17:4,6,22 18:1 19:8,17 20:8,12, 20,25 21:20 22:5
disputes 6:20	evidence 4:5,6 6:12 7:1,11,19,21 12:5 15:7 16:5	Fresno 2:16 5:1,6 12:23	Honarchian's 11:8
disregarded 18:14	exact 9:15	frustrating 18:20	hoping 9:9 19:23
distinction 17:12	examination 12:24	fully 16:2	Hosey 3:5 5:10 11:20,22 16:10, 11,12 17:1,5,7 19:9,10
Division 9:23,24	excluded 10:20	G	hours 9:7,9 21:20, 22
DMV 9:7,11,12,14, 16,17,18,19 14:9, 12 15:8,13,14,16, 21,22,24 16:21 19:2,4,18,21,25 21:10	executed 10:25 11:2	gave 8:25 19:22	hundred 22:21
document 18:11, 12	exhibit 4:5 7:8,9, 10 10:21,22 11:9 13:7,17,21 14:14, 16,19 15:5	general 14:5	
documentary 15:6	exhibits 4:6 7:5, 12,19,20 8:23,24 9:8 11:12,17	generally 15:16	
documents 8:25 11:14 14:25 22:8, 10	experts 6:11	give 17:11 21:24	
due 13:10 19:21	explained 15:23 16:3,21	giving 21:16	
duplicate 15:3 17:16,17 18:3	extended 8:19 10:22 12:9	good 23:1	
duplicates 18:4	extension 10:19 22:4,15	goods 13:19	
		government 16:1	I
		gross 13:15	identify 5:17
		guess 9:2 12:7 17:11 20:5	inadequate 13:24
			included 11:11
			income 9:2,3 13:8,16,19 20:15, 16

inconsistent

13:20

independent 6:5,
7,10 16:1**indirect** 14:2**information**

17:15,24 18:11,12

initial 16:15**input** 18:20,22**invoice** 16:25**invoices** 9:7,13,
15 10:1 14:7 17:2,
5 18:2 19:25
21:10**issue** 5:13 6:14,19
10:9,16 12:2
18:11 22:2,18**issued** 9:20
10:15,19 11:1
18:15**issuing** 18:14

J

jackets 14:6**January** 10:24**Josh** 5:9**JOSHUA** 3:5**Judge** 5:4,8,9,10
6:1,24 7:1,7,11,
12,18,21,22 8:4,9
10:3,7,17 11:4,20,
22,23,25 12:13,16
16:9,10,11 17:1,5,
7,8,10,19,21 19:8,
9,10,11,13 20:4,9,
17,24 21:2,4,24
22:6,11**judges** 8:20**July** 8:20 10:19,23
12:10**June** 9:22 12:23

K

knew 18:24**knowledge** 18:19

L

lack 13:11**Law** 7:11,21**lead** 3:3 5:12**ledgers** 14:6**liability** 6:15**License** 15:15**limitation** 8:19
10:18**limitations** 12:4,
12**link** 11:11,14**long** 21:21,22
22:6**longer** 6:20**looked** 10:12
11:13 18:1,3**lot** 22:10**lowest** 15:19

M

made 10:10**maintained** 15:25**make** 19:3**March** 6:16 12:25**markups** 13:20**MATTER** 2:5**means** 7:22 22:18**measure** 6:17**meet** 22:3**members** 3:5

8:13

method 13:12
14:2**methods** 16:4**middle** 9:1**million** 13:2,4
14:13,19,20,22
15:5**minutes** 17:22
22:24**mistake** 19:3**money** 9:19**monitored** 16:23**month** 9:5 21:17**Motor** 14:8

N

NOD 10:15,19**note** 6:3**noted** 15:2 17:15**notice** 11:1 12:3**number** 5:5**numbers** 18:20**numerous** 18:7
20:2

O

object 5:11 7:3,13**objection** 7:18**objections** 7:15**obtained** 14:8**October** 9:2,5**Office** 2:1 6:3,9
11:9 21:12**open** 9:10 22:17**opening** 15:9**operated** 12:22**opinion** 5:13
22:19,22**order** 22:2**ordered** 9:23**original** 10:23**OTA** 2:6 6:4**owe** 18:17

P

p.m. 2:17 5:2,7
23:2**pages** 8:25 13:7
14:15,16**paid** 9:18,19 19:18**panel** 3:3,5 5:12
11:6 17:24**papers** 11:18**part** 10:21**participation**
23:1**parties** 5:11 6:3,
13**party** 16:1,23**pay** 19:1,4**paying** 19:5**people's** 9:3**perform** 9:23**performed** 12:24**period** 6:15 10:14
12:24 13:4,6,10,
21 14:19,22 15:5**permit** 18:18**point** 7:16 10:10
12:13 21:14**policy** 16:20**practice** 15:18**pre-hearing** 6:14**prehearing** 7:13

9:12 21:9	quarterly 19:5	referring 19:15	21:14
present 7:5	question 12:4 20:17	reflect 11:10	respond 11:12 17:23 22:7
presentation 7:25 8:17 12:21 16:7,13 17:3	questions 10:4,6 11:7,20,24 12:1, 14,17 16:8,10 17:9,20 19:9,10, 12,14 21:3,5	reflected 20:9	Respondent 3:9
presentations 4:12 8:11	quick 17:12 20:17	refund 9:20 19:22	responding 8:23
presented 11:18 16:5	<hr/> R <hr/>	refunded 9:20	response 21:18
previously 6:19	raise 8:5	refunds 18:22	resulted 14:23 15:4
price 14:11 15:18, 24	raised 10:8 12:2	regard 12:14	resulting 13:3 14:21
prior 18:13 21:15	Randy 3:13 5:24	registered 18:18	return 18:17,19 20:23
procedure 14:23	range 15:17,19	registration 19:18	returned 9:19 19:19
procedures 14:17 18:9,15	Ravinder 3:11 5:20 12:19	regulation 18:10	returns 13:8,15, 16,19 18:6,7,21 19:17 20:2,3,6,10, 11,12,15,16
proceed 7:23 8:15 12:18	re-audit 9:24,25 15:11 16:15,18 17:12,14,16 18:1	related 8:2	reveal 13:16
proceedings 2:15 23:2	ready 7:22 8:15	reliable 9:13 14:1 15:21,25 16:22	review 9:8,10 11:15 22:1
process 15:2 22:20	reason 21:25	remember 20:13	reviewing 8:22
properly 10:20,25 11:2 14:10	receipts 13:15	replacing 5:10	<hr/> S <hr/>
prove 9:16	receive 8:23	report 15:12	sales 6:18 13:1,3, 14,15,18,24 14:4, 6,10,11,13,18,20, 21 15:4,7,18,24 19:2,5 20:6,10
provide 13:9 14:5,24	received 4:5,6 7:10,20 8:25 11:8 18:18	reported 2:18 13:1,3,5,12,14,15, 18 14:3,10,20 20:16	Sara 3:5 5:10
provided 9:8 13:8 15:6 16:14	recently 10:8	Reporter 2:20	seasoned 15:12
public 6:2 8:10	recess 22:23	reporting 13:12	secretary 18:23
publication 18:18	reconvene 22:24	repossessed 9:18	section 14:9
purchase 14:7	record 5:4,8,15 6:12 7:9 22:17	repossession 20:18	seek 8:22
purchases 13:5	records 11:10 13:10,11,23 14:1 16:14 18:10 21:8	repossessions 18:7 19:17 20:2, 13,21	September 2:18 5:1,6 8:24
purposes 8:10 13:25	reduction 6:17	represent 5:17	set 22:1,14
put 17:13	refer 6:4,6	representative 5:20,24	Sharma 3:11 4:15 5:20 6:24,25 10:3, 5,16,18 12:18,19, 22 16:17 17:15
<hr/> Q <hr/>	referenced 12:5 17:3	request 11:15 18:11,13 22:14	
quarter 14:14,15		requesting 18:9	
		requests 16:6	
		requires 18:10	
		respect 10:11	

22:6,8,16
Shorthand 2:20
show 15:7 19:21
shows 10:22,23
sign 12:7,9
signed 8:18
10:11,14,18,20
11:2 12:10
situation 19:6
sold 9:17 13:19
sounds 21:8,16
specifically
19:16
staffed 6:10
Stanley 3:3 5:4,8
6:1,24 7:1,7,12,
18,22 8:4,9 10:3,
7,17 11:4,23
12:16 16:9 17:8,
21 19:8,11 21:4,
24 22:6,11
start 5:18 22:21
State 2:2,21 3:9
stated 16:13
statement 11:8
15:9
statements 14:7
statute 8:19
Street 2:16
Suazo 3:13 5:24
subject 13:5
submits 15:11,
14,21
submitted 6:13
7:1,12 22:9
subsidy 14:6
substitution 5:11
Suite 2:16
support 14:25

supposedly
18:24
swear 8:6
switched 18:25
sworn 8:14
system 18:21

T

talked 7:25 15:9,
13 21:9,15
tax 2:1 3:10 5:22
6:3,5,8,9,11 9:2,3,
22,23,24 11:9
13:6,8,15,16,19,
24 19:2,5,20,21
20:11,12,14,16,23
21:13
taxable 6:18 13:3,
18 14:4,10,13,18,
20,21 15:4,7
taxpayers 18:10
Teresa 3:3 5:8
testifying 8:1,12
thing 21:12
Thursday 2:17
5:1
time 5:6 7:6 10:6,
12,15,25 11:15,22
19:24 20:5 21:5,
16,23 22:12,13
timeliness 12:2
timely 11:1
today 22:19
total 13:1,14
transaction
17:16,17
transactions
15:3
TRANSCRIPT
2:15

transportation
20:14,19,22
truth 8:7
turn 7:23 11:5

U

ultimately 22:14
unable 21:25
understand 10:8
12:13
unreliable 13:24
unreported 6:18
14:3,21 15:4

V

valid 12:6 18:7
20:3
validity 12:4
Vassigh 5:10
vehicle 14:8,12
15:15 18:21 19:19
vehicle's 19:18
vehicles 9:17,18,
19
verify 13:11 14:2,
9
viewing 6:2
volume 22:8

W

wait 22:20
waiver 10:11,14,
18,22,23 12:4
waivers 10:21,25
11:2
wanted 9:25 11:7
16:18
warranted 6:18

weeks 8:24 11:9
whichever 5:15
witnesses 8:12
wondering 20:5
written 5:13 22:19
wrong 9:16 21:13

X

X-TAX 13:5

Y

years 13:9