

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
 HUFF FOODS, LLC,) OTA NO. 19125557
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, October 19, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
400 R Street, Sacramento, California, 95811,
commencing at 1:00 p.m. and concluding
at 1:54 p.m. on Wednesday, October 19, 2022,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ KEITH LONG

Panel Members: ALJ TERESA STANLEY
ALJ ANDREW KWEE

For the Appellant: A. HUFF

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

NALAN SAMARAWICKREMA
CHAD BACCHUS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received at page 7.)
(Department's Exhibits A-J were received at page 7.)

OPENING STATEMENT

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By Mr. Samarawickrema	20

CLOSING STATEMENT

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By Ms. Huff	32

1 Sacramento, California; Wednesday, October 19, 2022

2 1:00 p.m.

3

4 JUDGE LONG: We are opening the record in the
5 Appeal of Huff, Foods, LLC. The OTA Case Number is
6 19125557. This matter is being held before the Office of
7 Tax Appeals. Today's date is October 19th, 2022, and the
8 time is approximately 1:00 p.m. This hearing is being
9 convened at Sacramento, California.

10 Today's hearing is being heard by a panel of
11 three Administrative Law Judges. My name is Keith Long,
12 and I will be the lead Administrative Law Judge. Judge
13 Teresa Stanley and Judge Andrew Kwee are the other members
14 of this tax appeals panel. All three judges will meet
15 after the hearing and produce a written decision as equal
16 participants. Although the lead judge will conduct the
17 hearing, any judge on this panel may ask questions or
18 otherwise participate to ensure that we have all the
19 information needed to decide this appeal.

20 For the record, starting with the Appellant, will
21 the parties please state their names and who they
22 represent.

23 MS. HUFF: My name is Anna Huff representing Huff
24 Foods, LLC, DBA Salad Farm.

25 JUDGE LONG: Thank you. Actually, can you -- can

1 you just talk a little louder and repeat.

2 MS. HUFF: My name is Anna Huff, and I am the
3 owner of Huff Foods LLC, DBA Salad Farm.

4 JUDGE LONG: Thank you. I think that was better.
5 And who is with you, Ms. Huff?

6 MS. HUFF: He's just accompanying me.

7 JUDGE LONG: Okay. Thank you.

8 And CDTFA.

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

11 MR. PARKER: Jason Parker, Chief of Headquarters
12 Operations Bureau with the Department.

13 MR. BACCHUS: Chad Bacchus with the Department's
14 Legal Division.

15 JUDGE LONG: Thank you. So today we have no
16 witnesses. We have the following exhibits for this appeal
17 consisting of CDTFA Exhibits A through J. At the
18 prehearing conference taxpayer had no objections.

19 Does this remain true, Ms. Huff?

20 MS. HUFF: Yes.

21 JUDGE LONG: Thank you. They're admitted without
22 objection. Additionally, after the prehearing conference,
23 Appellant submitted an exhibit index identifying
24 Exhibits 1 through 6. At the prehearing conference, CDTFA
25 did not have any objections to Exhibits 1 through 4, which

1 were previously labeled A through D. Does CDTFA have any
2 objections to Exhibit 5 or 6?

3 MR. SAMARAWICKREMA: No objections.

4 JUDGE LONG: Thank you.

5 CDTFA Exhibits A through J are admitted without
6 objection, and Appellant's Exhibits 1 through 6 are
7 admitted without objection.

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

10 (Appellant's Exhibits 1-6 were received
11 in evidence by the Administrative Law Judge.)

12 There are two issues in this appeal. They are:
13 Whether Appellant has shown that adjustments are warranted
14 to the audited understatement of reported taxable sales;
15 and two, whether the understatement was the result of
16 negligence. This appeals hearing will take approximately
17 one hour. We will begin with the Appellant's opening
18 presentation.

19 Ms. Huff, you have 15 minutes to make your
20 opening presentation, and you may begin when you are
21 ready.

22

23 PRESENTATION

24 MS. HUFF: Okay. I apologize I'm going to be
25 reading it off my paper.

1 Huff Foods LLC, DBA Salad Farm argues before the
2 Panel that it is acceptable to request the adoption of a
3 second approach in order to arrive at a fair estimate of
4 sales and use tax that represents the business activities
5 during the audit period, that it should reassess the sales
6 projections given that the large deposits noted on bank
7 statements do not correspond to any sales, and relief from
8 penalties due to casualty loss.

9 First and foremost, the California Department of
10 Tax and Fee Administration has only used one technique to
11 calculate taxable sales for coming to its conclusions.
12 The only available method is the Appellant's presented
13 bank statements. The bank statements clearly show overall
14 amounts, but they do not break down the proportion of
15 sales of cold versus hot goods. There's no observation
16 test applied by the CDTFA for its findings.

17 Since salads are the restaurant's primary entre,
18 and cold products are therefore involved, it is unfair for
19 the CDTFA to calculate a tax sales percentage. Despite
20 the fact that hot dishes are on the menu, Salad Farm
21 restaurants are known for their salads. Salads are the
22 main reason customers visit any Salad Farm restaurant.

23 Second, the CDTFA has made an assumption and is
24 claiming sales tax on all purchases of taxable hot foods
25 and carbonated beverages totaling \$794,413 from

1 January 1st, to June 30th, 2016. Bank records show the
2 deposits totaling \$794,413 were not entirely generated
3 through sales.

4 To keep the company viable, harmony loans were
5 placed into the account. And a copy of a section from a
6 bank statement that details electronic debt withdrawals
7 made by On Deck Capital, Funding Metrics, and Quick Fix
8 Capital to pay back borrowed funds was enclosed as
9 Exhibit 1.

10 Additionally, the CDTFA should make the effort to
11 use at least a second method in addition to the bank
12 statements.

13 JUDGE LONG: Ms. Huff, I'm sorry. Two things.
14 First, would you mind slowing down a little bit so that I
15 can take notes?

16 MS. HUFF: Okay.

17 JUDGE LONG: And second, you said on Deck Capital
18 Funding, Metrics, and what was the third company?

19 MS. HUFF: Quick Fix Capital.

20 JUDGE LONG: Quick Fix Capital. Thank you.
21 Continue.

22 MS. HUFF: Additionally, the CDTFA should make
23 the effort to use at least a second method in addition to
24 the bank statements in order to establish and prove the
25 correct number of taxable sales, such as by comparing

1 other Salad Farm restaurants. I ask that the OTA compare
2 the primary product, that the Salad Farm restaurant in
3 question offered, to those of other still opened
4 locations, because the CDTFA has only taken into account
5 the current estimate of taxable sales. Such records are
6 not available to me, but the CDTFA or OTA are authorized
7 to examine such database.

8 The menu that was attached as Exhibit 2 is from a
9 comparable Salad Farm restaurant, and it includes a
10 detailed description of each salad as well as hot items.
11 However, the restaurant's specialty and main source of
12 revenue for Salad Farm restaurants has always been the
13 selling of salads. I'm not sure why the auditor advises
14 applying the 80-80 rule since the majority of customers
15 entering a Salad Farm restaurant do so to place a salad
16 order, a cold product.

17 The restaurant's name was Salad Farm, and salads
18 were the primary meal. Cold food products made up the
19 majority of its sales. Salad Farm is not at all claiming
20 that it only offered cold food products. Rather, these
21 hot goods made for a small portion of sales and not
22 100 percent as the CDTFA has stated. As a result, only a
23 small number of hot items were sold.

24 Once more, the CDTFA and/or the OTA can gather
25 information from different Salad Farm restaurants to draw

1 a valid comparison and observation. I am requesting that
2 the restaurant be measured and examined with a reasonable
3 distance. All Salad Farm restaurant sales structures
4 include historical data that demonstrates that they also
5 sold hot items. But these are not the principle sellable
6 items, and these hot items do not truly represent Salad
7 Farm restaurants true product.

8 Furthermore, on February 28, 2016, Salad Farm's
9 doors were closed when the second robbery took place, six
10 months after the first robbery; Exhibits 3 and 4. The
11 restaurant's interior was ostensibly destroyed. Nothing
12 in its entirety was still present. Complete destruction
13 of the counters, computer hard drive, and POS system makes
14 the ten percent negligence fine for failing to submit any
15 records disproportionate. Given that Salad Farm had no
16 control over the situation, Salad Farm rejects to be held
17 accountable for negligence or a refusal to furnish records
18 due to this unprecedented circumstance.

19 Conclusively, Salad Farm is requesting the
20 historical information from other Salad Farm restaurants
21 be gathered in order to conduct an appropriate
22 observation, that a sincere effort be made to use at least
23 two methods to eat -- to reach a verdict, and that it be
24 taken into account that records were only kept digitally
25 and were destroyed during the robbery. Salad Farm didn't

1 intend for or want to be in this bad predicament.

2 Thank you.

3 JUDGE LONG: Thank you, Ms. Huff. I have a few
4 questions, and I'm sure my Panel members will have a few
5 questions as well.

6 First, looking at your Exhibit 5, the amended
7 sales and use tax returns, there were some discrepancies.
8 So I wanted to make sure that I was clear. First, the
9 amended sales and use tax returns when you add them all
10 together indicate total sales of \$740,000 -- \$740,994 and
11 nontaxable sales of \$674,452, which would result in
12 taxable sales of \$66,542. But when you look at the amount
13 of taxable sales indicated on those returns, it only comes
14 up to \$61,476. This looks like it's just a result of some
15 math errors. Do you know which amount you assert to be
16 correct?

17 MS. HUFF: The amended returns were the correct
18 amounts that I did file as Exhibit 4, I believe.

19 JUDGE LONG: It's Exhibit 5. But what I'm saying
20 is the total sales minus the taxable sales on the
21 indicate -- on the amended returns that you filed are more
22 than the amount that you listed as taxable sales on those
23 same returns.

24 MS. HUFF: Yes. That's correct. There was an
25 error as I did the first time -- I did myself the sales --

1 the quarterly sales tax returns without taking any proper
2 deductions of the products. And so, therefore, that's why
3 they were correct.

4 JUDGE LONG: Okay. And then so on the original
5 sales and use tax returns that you filed, you reported
6 taxable sales of \$60,587, which is less than the amount
7 that you reported on the amended returns. So do you
8 concede to the difference? It's about a thousand-dollar
9 difference.

10 MS. HUFF: I don't exactly remember in this case.

11 JUDGE LONG: Okay. Thank you. And then with
12 respect to -- I know that you only kept digital records.
13 What were the sales and use tax returns based on -- the
14 amended returns. How did you come to those figures.

15 MS. HUFF: We -- I think that the CPA that helped
16 me to do the records. It was also based on what the CDTFA
17 had come up with. Except again, he said I had not taken
18 any deductions for the cold products. And that was one of
19 the errors that it was found with him.

20 JUDGE LONG: Okay. And then also, finally, with
21 respect to the amount of total sales that are reported on
22 those amended sales and use tax, returns, it's \$740,000 --
23 \$740,994. You also asserted that you received loans of
24 \$145,068. That's, approximately, when you add those two
25 numbers together it's about \$20,000 more than you

1 deposited in the bank during the audit period. Can you
2 explain the difference between those amounts and -- or
3 between the amounts received and the amounts deposited?

4 MS. HUFF: If there was any cash involved, it was
5 probably used for the purchase of products for the
6 restaurant, and that might have made the difference.

7 JUDGE LONG: So the restaurant wouldn't have
8 deposited all of its cash?

9 MS. HUFF: Just when there was a loan. I had a
10 couple of personal loans, and they were handed to me. So
11 with that, I would purchase some of the products. They
12 were personal loans from friends and family members.

13 JUDGE LONG: Okay. Thank you. I don't have any
14 further questions. I'm going to ask my Panel members if
15 they would like to take this opportunity to ask you some
16 questions.

17 Let's start with Judge Stanley.

18 JUDGE STANLEY: Yes. I can see in the evidence
19 that you presented evidence of just one deposit from what
20 appears to be a loan for \$8,780. And that would be
21 Exhibit 1, page 3.

22 MS. HUFF: Right.

23 JUDGE STANLEY: And I was wondering if you can
24 point us to anywhere where it shows evidence of other
25 deposits for loans during the audit period?

1 MS. HUFF: The deposit -- I did not go through
2 the entire statements of the whole audited period. And
3 again, when I made the deposits, whether it was in the
4 form of a check, I just went and deposited it to the bank.
5 But when you put it in the bank, it doesn't show that it's
6 a loan. In that particular case it came directly.

7 It was made as a direct deposit but many of my
8 loans were not -- the check was sent, like, mailed in. It
9 wasn't a direct deposit. And so I would just make the
10 deposit, but it did not show that it was -- that it came
11 from a loan. You just -- I just made the deposits.

12 JUDGE STANLEY: So is there any way, when we're
13 looking at what we have in the evidence that we do have
14 here at the Office of Tax Appeals, is there any way for us
15 to identify which of those deposits are loans?

16 MS. HUFF: Not in the bank statements because I
17 will make deposits like if I made a deposit of money -- a
18 check that was sent to me as a loan, I would deposit also
19 with sales. I would just make one deposit. That's --
20 that's -- that was one of the main issues that I had. I
21 cannot break down, and I did ask. I did go back to the
22 bank and ask them if it was possible to get any copies of
23 checks that I had deposit in the large amounts so that I
24 can continue with the business, and they said it was not
25 possible.

1 As a matter of fact, they said I was fortunate to
2 get the statements because it's such an old account. So
3 there was no way that I can pull up the deposits made
4 through loans that I made to the bank.

5 JUDGE STANLEY: Okay. Thank you. I don't have
6 any further questions.

7 JUDGE LONG: Thank you, Judge Stanley.

8 Judge Kwee, do you have any questions?

9 JUDGE KWEE: Sorry. Yes. This is Judge Kwee. I
10 just had a couple of questions. And just to make sure
11 we're on the same page, because from my understanding
12 during your presentation you were talking about making
13 sales of salads, which are cold foods. Are you -- are
14 you -- did you sell the salads for consumption on the
15 premises or was that to-go?

16 MS. HUFF: Mainly -- mainly they were to-go.
17 Salad Farms is mainly a lunch restaurant. People would
18 order online, would come in, and pick up their packages.
19 Yes, we did have a seating area but like any other place,
20 at lunch time everybody makes their -- 90 percent I would
21 say a lot of it, it was just to-go.

22 JUDGE KWEE: Okay. You're not contending that
23 the sales of salad for consumption on the premises are
24 taxable. You're just saying that most of your sales were
25 to-go and the to-go sales were nontaxable?

1 MS. HUFF: With the cold, right. But even
2 those -- just the salad sold that people would eat at the
3 restaurant. I mean, they're cold product.

4 JUDGE KWEE: Oh, so -- oh, you're saying that
5 salads are -- you're requesting an adjustment for all
6 salads sales, not just regardless of whether it was sold
7 at the restaurant or sold to eat at home?

8 MS. HUFF: Correct. Because anybody that would
9 buy a Caesar salad, a Caesar salad is a cold product,
10 right. And if you sit down at the restaurant, yeah, okay,
11 it's there. But if you take it to-go the -- I see it as
12 the same thing.

13 JUDGE KWEE: Okay. And another question on
14 CDTFA's decision, they included a copy of a receipt --

15 MS. HUFF: Yes.

16 JUDGE KWEE: -- for the 373 West Bonita,
17 Claremont, is that -- that's the store --

18 MS. HUFF: That -- that was the restaurant. Yes.

19 JUDGE KWEE: Okay. And are you able to address
20 the concern there that the store collected sales tax on
21 the salad sales.

22 MS. HUFF: Not on the salads, on the part if they
23 ordered, let's say, hot chicken to-go on the salad, then
24 the portion -- it would be the hot food not the cold
25 salad.

1 JUDGE KWEE: Okay.

2 MS. HUFF: And that was one receipt you know that
3 anybody could have posted. I mean, if we need to have
4 much more than one receipt in order to be able to see the
5 difference --

6 JUDGE KWEE: And you don't have those other
7 receipts because of the burglary or --

8 MS. HUFF: -- of the -- yes. What happened at
9 the time, the whole place was completely destroyed. And
10 when I was called in, and I walked into the restaurant,
11 there was not a piece -- not an area that you cannot walk
12 that it was so broken with glass everywhere. And after
13 the first robbery, what they found was my petty cash with
14 \$500. After the first robbery, I would not leave any cash
15 at all. I assumed that these people when they robbed the
16 second time they looked and looked, and they could not
17 find any cash, and that's when everything was destroyed.

18 Unfortunately, I was in a bad state, and what I
19 did personally when I saw all the pieces of computers and
20 glass and everything, I picked everything up and went and
21 threw it away in the dumpster behind the building where I
22 would normally throw my trash away. I didn't keep
23 anything else and immediately I closed the restaurant that
24 evening.

25 JUDGE KWEE: Okay. And one other question. So

1 the -- there's also an exhibit showing a salad menu and
2 the address there is different. It's 3600 Soto Street in
3 Saint Vernon. Is that --

4 MS. HUFF: Right. That's why I mentioned that I
5 had included as Exhibit 2 from a comparable Salad Farm
6 restaurant because I don't have any menus from my
7 restaurant.

8 JUDGE KWEE: Okay. I understand now. Thank you.
9 So I will have CDTFA during presentation -- as
10 understanding it was only -- in regards to the to-go
11 orders, and I don't have any other questions at this time.

12 So I'll turn it back over to Judge Long.

13 JUDGE LONG: Thank you, Judge Kwee.

14 My understanding is that Judge Stanley actually
15 had one more question.

16 JUDGE STANLEY: I had one more question, but I
17 think you just answered it. When you had the burglary
18 where everything was destroyed, did you make a police
19 report with specific items that were stolen or damaged?

20 MS. HUFF: The police came in, and they wrote a
21 report. But when I went back, I didn't -- I didn't get a
22 copy right away. But when I went back to get it, whatever
23 I submitted, that's the only thing that they could provide
24 for me at the Claremont Police Department; the history
25 that shows that the robbery was in progress, but I could

1 not get anything else. And yes, they wrote everything
2 down, what everything had been destroyed.

3 JUDGE STANLEY: Okay. And I think you just
4 answered one of Judge Kwee's questions by saying they
5 destroyed the computer. They didn't steal it.

6 MS. HUFF: They -- everything was broken into
7 pieces.

8 JUDGE STANLEY: And you threw it away?

9 MS. HUFF: Yes. Yes, I did.

10 JUDGE STANLEY: Okay. Thank you. That
11 clarifies.

12 JUDGE LONG: Thank you.

13 And now we'll turn to CDTFA. CDTFA you have
14 30 minutes. You may begin when you're ready.

15 MR. SAMARAWICKREMA: Thank you, Judge.

16

17 PRESENTATION

18 MR. SAMARAWICKREMA: Appellant is a California
19 limited liability company that operated a franchise
20 restaurant selling various cold and hot food items with
21 draft beer, carbonated and noncarbonated beverages in
22 Claremont, California.

23 For cold food, Appellant sold mostly
24 made-to-order tossed salads. Appellant's customers could
25 select from a variety of ingredients, dressings, and meat

1 for their salad orders. The restaurant had indoor and
2 outdoor seats. And that will be on your Exhibit D, pages
3 19 and 20. Appellant obtained a seller's permit with an
4 effective date from April 12, 2013, through June 30th,
5 2016. Appellant closed this business on June 30th, 2016,
6 with no successor.

7 The Department audited Appellant's business for
8 the period January 1st, 2014, through June 30th, 2016.
9 During the audit period, Appellant reported taxable sales
10 of around \$61,000. And that will be on your Exhibit A,
11 page 17. During our presentation, we will explain why the
12 Department rejected Appellant's reported taxable sales,
13 why the Department used an indirect audit approach, how
14 the Department determined Appellant's unreported sales tax
15 for the audit period, and why the Department recommended a
16 negligence penalty for that Appellant.

17 During the audit, Appellant failed to provide
18 complete sales records. Appellant did not provide
19 complete documents of original entry, such as POS data,
20 POS sales receipts, and credit card sales receipts for the
21 audit period. In addition, Appellant failed to provide
22 complete purchase invoices or purchase journals for the
23 audit period. Due to Appellant's lack of reliable
24 records, the Department determined that further
25 investigation was necessary. The Department completed

1 four verification methods to evaluate the reasonableness
2 of Appellant's reported total and taxable sales.

3 First, the Department analyzed Appellant's
4 reported sales for the audit period. And that will be on
5 your Exhibit B, page 27. The Department noted an average
6 reported daily sale of \$78 ranging from as low as \$11 to
7 as high as \$227 for the period January 2014 through
8 February 2016. And that will be on your Exhibit B,
9 page 27. The Department viewed this as a very low daily
10 sale for a restaurant selling draft beer. For comparison,
11 Appellant's average daily sales based on audited sales
12 were around \$1,000. And that will be on your Exhibit H,
13 page 1.

14 Second, the Department requested federal income
15 tax returns from the Franchise Tax Board and received
16 Appellant's original and amended federal income tax
17 returns for years 2014, 2015, and 2016. And that will be
18 on your Exhibit H and Exhibit I. The Department compared
19 Appellant's reported total sale of around \$61,000 to the
20 Department with sales of \$730,000 reflected on Appellant's
21 amended federal income tax returns and calculated an
22 overall difference of around \$670,000. And that will be
23 on your Exhibit H, page 2.

24 Third, the Department compared Appellant's
25 reported total sales of around \$61,000 with the bank

1 deposit of \$866,000 and calculated an overall difference
2 of around \$805,000 for the audit period. And that will be
3 on your Exhibit A, page 29, 41 and 42. Appellant only
4 reported 7 percent of her bank deposits as sales for the
5 audit period.

6 Fourth, the Department obtained Appellant's
7 credit card sales information for the period January 2014
8 through February 2016. And that will be on your
9 Exhibit A, page 43. The Department compared the reported
10 total sales to the credit card sales and calculated an
11 overall quarterly credit card sales ratio of around
12 600 percent ranging from as low as 230 percent to as high
13 as 3,600 percent for the period April 1st, 2014, through
14 December 31, 2015. And that will be on your Exhibit B,
15 page 23. This is an indication that not all of
16 Appellant's credit card sales and cash sales transaction
17 had been reported in its original sales and use tax return
18 for the audit period.

19 In contrast, based on the bank deposits
20 information, the calculated credit card ratio was around
21 55 percent, which the Department determined to be a more
22 reasonable credit card sales ratio. And that will be on
23 your Exhibit A, pages 41 and 42. Appellant was unable to
24 explain the reason with reasonable documentation for the
25 low reported daily sales, amended federal income tax

1 return differences, bank deposit differences, high
2 reported credit card sales ratios. Therefore, the
3 Department conducted further investigation by analyzing
4 Appellant's bank deposit information, credit card sales,
5 and credit card sales ratios for the audit period.

6 Due to the lack of records and some documents
7 relating to sales and merchandise purchases, the
8 Department was not able to determine Appellant's sales
9 using a direct audit approach for the audit period.
10 Therefore, the Department determined Appellant's audited
11 sales of around \$794,000 using its bank statements for the
12 audit period. And that will be on your Exhibit A,
13 page 38.

14 Based on Appellant's business, the Department
15 noted Appellant offered a variety of hot foods such as
16 soup, grilled sandwiches, quesadillas, oven-baked
17 potatoes. The Department also examined Yelp reviews which
18 reveal that Appellant had tables and chairs inside and
19 outside the restaurant, and that Appellant charged sales
20 tax reimbursement on the total sale of food, which
21 included both hot and cold foods to-go. And that will be
22 on your Exhibit B, page 33 and 34, and Exhibit E, page 18.

23 Based on the foregoing, the Department determined
24 that more than 80 percent of Appellant's sales are for
25 sale of food, and more than 80 percent of Appellant's sale

1 of food are taxable. Thus, the Department concluded that
2 the Appellant fell under the 80-80 rule, which means that
3 all sales are taxable. As such, the Department considered
4 the excise tax sale of around \$794,000 to be Appellant's
5 audited taxable sales for the audit period. And that will
6 be on your Exhibit A, page 38.

7 The Department then compared the audited taxable
8 sales of around \$794,000 with a reported taxable sales of
9 around \$61,000 to determine unreported taxable sales of
10 around \$733,000 for the audit period. And that will be on
11 your Exhibit A, page 38. The Department then compared the
12 unreported taxable sales with the reported taxable sales
13 of around \$61,000 to calculate an error rate of around
14 1,200 percent for the audit period.

15 Appellant did not agree with the audit findings
16 for the audit period. Appellant claimed that it is
17 entitled to an adjustment for cold food to-go for the
18 audit period because the major meal on its menu was salad,
19 and sales primarily comprised of cold food to-go.
20 Appellant did not provide any documentary evidence to
21 support its cold food to-go. However, to support this --
22 support her -- the Appellant's contention, Appellant
23 provided its menu and amended sales and use tax return for
24 the period January 1st, 2014, through March 31st, 2016.

25 Appellant also provided Appellant's amended state

1 income tax return for years 2014, 2015, and 2016. The
2 Department reviewed and analyzed Appellant's amended and
3 sales tax returns and ultimately rejected them. Appellant
4 amended its total sale and taxable sales for the audit
5 period. Upon examination of Appellant's amended sales and
6 use tax returns, the Department noted that Appellant did
7 not provide any source documents or POS download with all
8 folders to collaborate the figures listed in the amended
9 sales and use tax returns.

10 Appellant also did not provide any documentary
11 evidence to support its cold food to-go sales. The
12 Department reviewed the amended sales and use tax return
13 and determined that an overall recorded quarterly taxable
14 ratio of around 9 percent, ranging from as low as
15 5 percent to as high as 22 percent for the period
16 April 1st, 2014, through March 31st, 2016. And that will
17 be on your Exhibit J, page 1. These figures show that the
18 recorded taxable sales ratio for the audit period was
19 significantly low for this type of restaurant.

20 As to Appellant's contention that the majority of
21 its sales for cold food to-go is based on an examination
22 of Appellant's provided menu and online information,
23 Appellant offered a variety of hot food items in addition
24 to cold food and draft beer. In addition to online
25 pictures of Appellant's business, the location shows

1 indoor and outdoor seating area indicating that Appellant
2 sold food prepared for immediate consumption at or on
3 Appellant's premises. And that will be on your Exhibit D,
4 pages 16 through 20.

5 There's no dispute that 80 percent of Appellant's
6 total sales consist of food sales. And based on the fact
7 that Appellant sold hot food and had indoor and outdoor
8 seating, the Department determined that more than
9 80 percent of Appellant's retail sale of food is taxable.
10 This in turn indicated that the 80-80 rule applies to
11 Appellant and Appellant's sale of cold food to-go are also
12 taxable. Appellant has not provided sales records or POS
13 data showing that less than 80 percent of its sales were
14 taxable.

15 The Department's determination is corroborated by
16 the image of a POS sales receipt dated April 4th, 2015,
17 from Yelp showing that Appellant charged sales tax
18 reimbursement on both hot and cold food to-go. The fact
19 that Appellant charged sales tax reimbursement on all of
20 its sales show that it believed that all of its sales were
21 taxable. And that will be on your Exhibit B, pages 33 and
22 34, and Exhibit E, page 18.

23 Based on the foregoing, the Department determined
24 that Appellant did not provide reliable documentary
25 evidence to make any adjustment to the audit findings.

1 The Department determined that the unreported sales tax
2 based upon the best available information and evidence
3 shows that the audit produced fair and reasonable results.
4 Appellant has not provided more reliable information to
5 meet its burden of proof that the audit results are
6 overstated. The Department imposed a negligence penalty
7 based on its determination that Appellant's books and
8 records were incomplete and inadequate for sales and use
9 tax purposes and because Appellant failed to accurately
10 report its taxable sales.

11 Specifically, the Department noted that Appellant
12 provided limited records for the audit period and
13 Appellant failed to provide documents of original entry to
14 support its reported sales tax liability. As a result,
15 the Department had to compute Appellant's taxable sales
16 based upon the best available information. In addition,
17 the audit examination disclosed unreported taxable sales
18 of around \$733,000, which when compared with the reported
19 taxable sales of around \$61,000 for the audit period,
20 resulted in an error rate of around 1,200 percent.

21 This high error rate is additional evidence of
22 negligence. Appellant has not provided reasonable
23 documentation or evidence to support an adjustment to the
24 audit finding. Therefore, the Department requests the
25 appeal be denied.

1 This concludes our presentation. We are
2 available to answer any questions the Panel may have.
3 Thank you.

4 JUDGE LONG: Thank you.

5 Judge Stanley, do you have any questions?

6 JUDGE STANLEY: I do not have any questions at
7 this time. Thank you.

8 JUDGE LONG: Judge, Kwee, do you have any
9 questions?

10 JUDGE KWEE: Yes. Thank you. So one question is
11 I understand Huff Foods was a franchisee of Salad Farm.
12 So I mean, just in relation to whether or not other Salad
13 Farm franchisees had, you know, allowances for cold food
14 to-go separately accounted for. I mean, I understand you
15 can't say anything confidential about other taxpayers, but
16 I'm wondering as far as this taxpayer is concerned, you
17 know, you do have that information.

18 I'm not sure if there's like the possibility for
19 disparate treatment because she's saying -- and I
20 understand that you know, even under the regulation that
21 if you have separate accounting for cold food sold to-go,
22 that is something that would be allowable. I'm just
23 wondering if there was like con -- if I'm allowed to
24 ask -- if there was consistency in how that was treated up
25 here versus other potential franchisees in the same

1 business? If that was something that was considered or if
2 that wasn't even something concerned by CDTFA during the
3 course of the audit?

4 MR. SAMARAWICKREMA: The Department try -- tried
5 to obtained the actual sales information from the
6 franchiser, but they did not provide the information. But
7 based on the -- the sales receipt that the Department
8 found, indicate that Appellant charged sales tax on both
9 cold food to-go and hot food to-go. And based on that, we
10 concluded that the taxpayer charged tax on everything.
11 And if the taxpayer provided any -- any sales documents to
12 show that they recorded cold food to-go separately, then
13 we can make an adjustment.

14 JUDGE KWEE: Okay. So as far as the receipts
15 that you're referring to, were those two receipts that
16 were printed from Yelp, and I think it was Exhibit 2 in
17 your decision? There's -- is that what you were referring
18 to, or were there additional receipts besides just those
19 two? Because it wasn't entirely clear to me from the two
20 available receipts that was cold food because the -- if
21 you're looking at it, it's a Caesar salad, ham and cheese
22 panini with added spinach and chicken.

23 I mean, I'm not sure what we're seeing is cold
24 food there or -- sorry. I guess it wasn't entirely clear
25 to me what -- what you're referring to the same thing that

1 I'm looking at in the record?

2 MR. SAMARAWICKREMA: That is page 34, Exhibit A
3 and also Exhibit D, page 18.

4 MR. PARKER: Judge Kwee, I'd like to point out
5 that in the presentation by the Appellant, she mentioned
6 that Caesar salads were cold salads and the to-go receipt
7 that is on -- it's Bates number 225. It's part of
8 Exhibit B. It has a Caesar salad listed on there, and the
9 top of the receipt shows that it is a to-go transaction
10 and tax was charged on the entire receipt.

11 JUDGE KWEE: Okay. And I guess Caesar salad
12 could be -- okay, cold. The chicken is cold. Okay. So I
13 guess that answers that question. Thank you. And one
14 other thing. I'm not sure if you had addressed that
15 contention raised by the taxpayer that even their sale of
16 salads on the premises should not be taxable. I'm not
17 sure if you wanted to address that aspect or not.

18 MR. SAMARAWICKREMA: Yeah. If it is -- yeah. If
19 salad is consumed on the premises, it's taxable. But
20 if -- if it is to-go and the taxpayer keep separate
21 records then it's exempt. If it is -- but for this
22 taxpayer, we concluded that the taxpayer comes under the
23 80-80 rule. And also based on the sales receipt we found,
24 taxpayer charged tax on both hot and cold food to-go.

25 And we -- during the field work, we -- you know,

1 the taxpayer did not provide any information to show that
2 they have cold food to-go with -- with the reasonable
3 documentation.

4 JUDGE KWEE: Okay and --

5 MR. PARKER: And Judge Kwee, I'd just like to add
6 that Regulation 1603(c) provides that cold food when
7 consumed at the -- at facilities of the retailer, which
8 would be dine-in or at their outside tables is taxable.

9 JUDGE KWEE: Okay. Great. Thank you. I will
10 turn it back to Judge Long then.

11 JUDGE LONG: Thank you.

12 Ms. Huff, we'll move onto your closing
13 presentation. You asked for five minutes.

14

15 CLOSING STATEMENT

16 MS. HUFF: Yes. I'd just like to -- I'd just
17 like to repeat and ask that what we're requesting is the
18 historical information from other Salad Farm restaurants
19 be gathered in order to conduct an appropriate
20 observation. I'd also like to mention that they have --
21 the CDTFA has brought up the fact that we sold beer. Beer
22 was only -- it was not -- it didn't go well with the
23 business. So after the first six months, we did not sell
24 beer any more, and we never renewed the license.

25 And the restaurant did close on February 28,

1 2016, not June 30th, 2016. Probably that's when the last
2 bank statement was sent out in June. But we actually
3 closed. We did not open the first day of March. We did
4 have seating areas but mainly -- I mean, most of the
5 tables were empty, and we did have also an outside area.

6 But that outside area and in the city of
7 Claremont, it wasn't just specifically for my restaurant.
8 There was a Chinese -- there is a Chinese restaurant. And
9 to me, a lot of times they would use my seating area
10 outside because they did not have enough space. But most
11 of my food was just to-go.

12 Again, we -- we're surrounded by six private
13 universities and most of them were teachers and students
14 that would come and get the salads, and it was always
15 to-go. Most of it was to-go, not to sit in the area in
16 the restaurant. And so I ask the OTA that a sincere
17 effort be made. This is not something I want to do. This
18 is not -- I don't want be here. I don't want to have
19 anymore contact with the CDTFA.

20 I have gone through hell and back, sir. My house
21 had a lien of \$108,000 and, apparently, the explanation
22 that I got from the CDTFA is that it was a computer error,
23 and it was something out of their control. Well, the
24 robbery was definitely out of my control, sir. If that
25 would not have happened, I would still probably be in

1 business. That was my life savings, and my late husband's
2 savings. It all went into the restaurant, and it was all
3 lost.

4 This is not something I wanted to do. The
5 robbery occurred, and it wasn't -- it was completely out
6 of my control, like the computer made an error in the lien
7 against my house that is worth \$300,000. They put a lien
8 of \$108,000. So the State of California wants a third of
9 my property for something that I had no control over it.

10 Thank you.

11 JUDGE LONG: Thank you.

12 I do have a few final questions before we
13 conclude. I just want to check in with CDTFA. My
14 understanding is that even though the seller's permit was
15 closed on June 30th. Closure date -- the end of February
16 closure date was agreed upon; is that correct?

17 MR. SAMARAWICKREMA: We used a bank statement, so
18 the last three months there were no deposits. So the
19 sales only, you know, determine up to February 2016.

20 JUDGE LONG: Okay. Thank you.

21 And then in addition, I just want to ask
22 Ms. Huff, with respect to the robbery, I understand that
23 you have the police report information, or we have -- we
24 have all of the police report information you could
25 obtain. Was there an insurance claim with respect to the

1 robbery or anything of that kind?

2 MS. HUFF: I did not do anything. I was done
3 with it. I did not file any claims. I did have
4 insurance, but I did not file any insurance claims, sir.

5 JUDGE LONG: Thank you. And then I just wanted
6 to mention with respect to the other Salad Farm
7 operations, OTA is an independent, neutral agency, and
8 we're not responsible for the auditing. And we actually
9 are not allowed to examine information outside of the
10 record for the appeal in front of us. So OTA itself would
11 not be able to investigate other Salad Farm operations.
12 So I just want to make that clear before we concluded.

13 Okay. I just want to make sure my co-panelists
14 don't have any other questions.

15 Judge Stanley looks like a no.

16 Judge Kwee?

17 JUDGE KWEE: This is Judge Kwee. I don't have
18 any further questions. Thank you.

19 JUDGE LONG: Okay. Thank you. Then this
20 concludes today's hearing for the appeal of Huff Foods.
21 The record is now closed, and a decision can be expected
22 within 100 days.

23 (Proceedings adjourned at 1:54 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
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by me and later transcribed by computer-aided
transcription under my direction and supervision, that the
foregoing is a true record of the testimony and
proceedings taken at that time.

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

I have hereunto subscribed my name this 8th day
of November, 2022.

ERNALYN M. ALONZO
HEARING REPORTER