

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
STUDIO 33 STAGE PRODUCTIONS, INC., ) OTA NO. 21129311  
 )  
 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 9:38 a.m. and concluding  
at 10:30 a.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 SUZANNE BROWN

Panel Members: ALJ ANDREW KWEE  
ALJ KEITH LONG

For the Appellant: SAMUEL HOPPE

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

NALAN SAMARAWICKREMA  
CHRISTOPHER BROOKS  
JASON PARKER

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I N D E X

E X H I B I T S

(Department's Exhibits A-G were received at page 8.)

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1 Sacramento, California; Wednesday, October 19, 2022

2 9:38 a.m.

3

4 JUDGE BROWN: We are on the record for the Appeal  
5 of Studio 33 Stage Productions, Inc., OTA Case Number  
6 21129311. Today is Wednesday, October 19th, and it is  
7 approximately 9:38 a.m. We're holding this hearing in  
8 Sacramento, California.

9 I am Judge Suzanne Brown, and I am the lead ALJ.  
10 My co-panelists today are Judge Andrew Kwee and Judge  
11 Keith Long. Although I am the lead ALJ for purposes of  
12 conducting the hearing, all three ALJs are coequal  
13 decision makers in this process and are free to ask  
14 questions at any time.

15 I will start by asking each of the participants  
16 to please state their names for the record. I'll ask  
17 CDTFA to go first.

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

20 MR. PARKER: Jason Parker, Chief of Headquarters  
21 Operations Bureau.

22 MR. BROOKS: Christopher Brooks, Tax Counsel for  
23 CDTFA.

24 JUDGE BROWN: Thank you.

25 For Appellant?

1           MR. HOPPE: Sam Hoppe for Studio 33 Stage  
2           Productions, CPA.

3           JUDGE BROWN: Okay. Thank you all.

4           I will briefly confirm that Judge Keith Long has  
5           been added to the panel to replace Judge Sheriene  
6           Ridenour. And prior to going on the record, both parties  
7           stated that they have no objection to the substitution.

8           Okay. Next, I want to confirm that both parties  
9           received the prehearing conference minutes and orders that  
10          I -- we issued. It was dated October 4th.

11          CDTFA, did you receive the documents?

12          MR. SAMARAWICKREMA: Yes, we did.

13          JUDGE BROWN: Okay. And Appellant?

14          MR. HOPPE: Yes, we did.

15          JUDGE BROWN: Okay. Then I'm going to be  
16          referring to it just to say as we discussed at the  
17          prehearing conference, and as I confirmed in my prehearing  
18          conference minutes and orders, we're going to go through  
19          what the exhibits will be and what the time estimates are,  
20          all the things we talked about during the prehearing  
21          conference.

22          First, let me just confirm as we said during the  
23          prehearing conference what the issue for hearing is today,  
24          and that is whether Appellant has shown that adjustments  
25          are warranted to the audited understatement of reported

1 taxable sales.

2 Appellant, can you confirm that's the  
3 understanding of the issue?

4 MR. HOPPE: Yes, that my understanding.

5 JUDGE BROWN: CDTFA?

6 MR. SAMARAWICKREMA: Yeah, that's our  
7 understanding.

8 JUDGE BROWN: Very good. Thank you very much.

9 Next we have documentary exhibits that are  
10 proposed for admission into evidence. And as I explained  
11 during the prehearing conference, OTA's regulations  
12 require that proposed exhibits must be submitted at least  
13 15 days in advance of the hearing. I received proposed  
14 exhibits from CDTFA, and they were Exhibits marked A  
15 through G.

16 And I want to confirm, Appellant, you did receive  
17 these exhibits?

18 MR. HOPPE: I did.

19 JUDGE BROWN: Okay. And you had received them, I  
20 believe, prior to the prehearing conference?

21 MR. HOPPE: Correct.

22 JUDGE BROWN: And then I also attached them to  
23 the prehearing conference order.

24 MR. HOPPE: Correct.

25 JUDGE BROWN: Okay. And you indicated during the

1 prehearing conference you did not believe you were going  
2 to have any objections to these exhibits being admitted?

3 MR. HOPPE: No.

4 JUDGE BROWN: Okay. And so you have no  
5 objection?

6 MR. HOPPE: No objections.

7 JUDGE BROWN: Then I will say that CDTFA's  
8 Exhibits A through G are admitted into evidence.

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

11 And Appellant, you did not submit any exhibits?

12 MR. HOPPE: I did.

13 JUDGE BROWN: Okay. So understand you can rely  
14 on CDTFA's exhibits.

15 MR. HOPPE: Yes.

16 JUDGE BROWN: They're everybody's exhibits now,  
17 and you can refer to them, et cetera.

18 MR. HOPPE: Thank you.

19 JUDGE BROWN: Okay. Thank you.

20 All right. And I'll just confirm that,  
21 Appellant, you are not calling any witnesses today?

22 MR. HOPPE: No.

23 JUDGE BROWN: Okay.

24 And, CDTFA, you are not calling any witnesses  
25 today?



1 MR. SAMARAWICKREMA: Yes.

2 JUDGE BROWN: Yes, you are not?

3 MR. SAMARAWICKREMA: Yeah.

4 JUDGE BROWN: Okay. All right.

5 And then let's go over the order of events and  
6 time estimates. Appellant had indicated his presentation  
7 would take about 15 minutes.

8 MR. HOPPE: Yeah, or shorter.

9 JUDGE BROWN: Okay. So that's still a good --

10 MR. HOPPE: Good estimate.

11 JUDGE BROWN: -- estimate of time for you? And  
12 understand that after Appellant's presentation there may  
13 be questions from --

14 MR. HOPPE: Absolutely.

15 JUDGE BROWN: -- the Panel. And then we'll have  
16 CDTFA's presentation, and CDTFA had indicated an estimate  
17 about 30 minutes; is that correct?

18 MR. SAMARAWICKREMA: Yes.

19 JUDGE BROWN: And that's still a good time  
20 estimate?

21 MR. SAMARAWICKREMA: Yeah.

22 JUDGE BROWN: Okay. Thank you. And understand  
23 there may be questions from the Panel. And then we  
24 were -- had planned for Appellant to have a rebuttal of up  
25 to ten minutes. Okay. And everyone agrees these time

1 estimates are sufficient. All right.

2 Then I believe I've covered everything. Does  
3 anyone have questions about the process or anything to  
4 raise before we begin Appellant's presentation? No.  
5 Okay. Then if no one has anything further to raise, we  
6 can go ahead with Appellant's presentation.

7 Mr. Hoppe, you have 15 minutes.

8  
9 PRESENTATION

10 MR. HOPPE: Thank you. I appreciate your time  
11 this morning and your consideration.

12 Your Honors, we have just a few points to make,  
13 and then we can move on. We contend that the BTFD used a  
14 methodology that was not reasonable in calculating the  
15 taxable sales. If we view -- can look at -- or I'll  
16 reference Exhibit F, page 3, line 12, in the appeals  
17 decision. It essentially calculates that they're using  
18 the percentage of 71 percent of nontaxable sales taking  
19 the federal income tax number and then applying the  
20 71 percent percentage to that number to come up with  
21 untaxable sales or taxable sales in that case.

22 Using our calculations and those that we  
23 submitted initially, we believe that the original tax  
24 returns filed for sales tax that resulted in an amount of  
25 \$208,000 of taxable sales versus the 700-some thousand --

1       \$900,000, if we look at Exhibit A on page 53, there is a  
2       reported audited taxable sales of \$938,443.

3               JUDGE BROWN: Can I just interrupt --

4               MR. HOPPE: Sure.

5               JUDGE BROWN: -- with one quick question? When  
6       you say page 53, do you mean the page 53 of the --

7               MR. HOPPE: Of the exhibit.

8               JUDGE BROWN: -- of the exhibit itself, or not --  
9       not page 53 of the --

10              MR. HOPPE: Page 50 --

11              JUDGE BROWN: -- or the Bates Stamped page 53?

12              MR. HOPPE: Yeah.

13              JUDGE BROWN: Okay.

14              MR. HOPPE: That's correct.

15              JUDGE BROWN: Sorry to interrupt. Go ahead.

16              MR. HOPPE: No worries.

17              And in Column I, we have their calculation of  
18       \$938,443, all reportable sales of \$193,512. That's --  
19       that's close. And, actually, we calculated a number a  
20       little bit higher than that but -- so with the discrepancy  
21       of the \$744. Bottom line is there's a -- they used an  
22       imputed number of 71 percent to calculate Column D, and we  
23       feel that -- well, we know that that number includes  
24       stage -- staging equipment that was paid for already, and  
25       so would not be subject to sales tax.

1           The contention that we have with CDTFR -- or  
2     CDTFA is that we don't have the ability to prove that  
3     those were purchased amounts, and that's because these  
4     were purchased in the late 80s. And so they're having  
5     something reasonable beyond even a statute of ten years  
6     would be -- would be, in our view, unreasonable. So we do  
7     believe that taxable sales is probably closer to around  
8     what we calculated between 15 and 16 percent, which was  
9     reflected on the original tax returns, and that total  
10    amount of taxes that was either collect -- to be  
11    collected. I think they paid most of it.

12           I, you know, honestly, I don't know. Which is  
13    around \$16,000, which is a delta -- substantial delta  
14    considering the liability that -- that CDTFA is asking  
15    for. So the basic -- it comes down to one basic thing,  
16    and that is we would exclude that rental, leasing, staging  
17    component of the sales, and we would go -- we would go  
18    back to having what we originally had the taxable sales  
19    where we think that 16, 17 percent of the sales number is  
20    a reasonable number. We're happy to pay taxes on that  
21    number. And that to have receipts of purchased equipment  
22    or purchased leasing equipment from 1984 to 1995 is you  
23    know a little unreasonable.

24           So that's essentially what we contend, and  
25    that's -- we're just asking for our original tax returns

1 to be accepted as filed and the liability be reinstated at  
2 the \$16,000 amount. And I leave that to the other side  
3 now.

4 JUDGE BROWN: Thank you very much.

5 Co-Panelists, do you have questions for the  
6 Appellant? Judge Long?

7 JUDGE LONG: Yes. Thank you. I just want to be  
8 clear. The Appellant's position is that they purchased  
9 all of the lease equipment between 1984 and 1995, and then  
10 nothing after for the 20 years?

11 MR. HOPPE: The -- the majority of it. It's  
12 steel -- it's steel staging. So there's very -- I mean  
13 it's -- nothing is happening to this type of staging. So  
14 their business model changed quite a bit as well. And so  
15 they went from -- they did sell components, and that  
16 was -- that represents that 15 to 17 percent. But it  
17 wasn't higher earlier, and then it dropped quite a bit.  
18 But the staging equipment that they are renting, the  
19 majority of it was purchased in the 80s -- the late 80s  
20 and early 90s.

21 JUDGE LONG: Okay. Thank you. No further  
22 questions.

23 JUDGE BROWN: And, Judge Kwee, do you have any  
24 questions at this time?

25 JUDGE KWEE: Yes, I did have one just quick

1 clarification. So the steel staging equipment, was that  
2 purchased and reused the same as it was purchased, or did  
3 you guys fabricate it at all?

4 MR. HOPPE: It wasn't fabricated. It was  
5 purchased. My understanding is it was purchased. It was  
6 repaired on occasion. And the materials used to repair  
7 those stages actually -- and it was interesting to me  
8 because I didn't think you would repair things like that  
9 with plywood, but they would use plywood and things like  
10 that. And so those were also taxes that were -- sales tax  
11 was paid on to do that.

12 Although I -- and they did hold -- I do  
13 understand that they held a seller's permit -- a seller's  
14 permit during the time period of the audit and -- but  
15 their business model changed dramatically. And so they  
16 were selling dramatically less equipment. And you can see  
17 in the sale -- just their sales in general from -- during  
18 the audit period dropped off dramatically as he moved his  
19 operation from Southern California to Northern California.

20 He left some components of his business in  
21 Southern California, but it changed dramatically during  
22 that period where they weren't really selling the staging  
23 anymore. They were just doing setup, take down, leasing.

24 JUDGE KWEE: And as far as the retailers from  
25 which he purchased the stages, they're -- are they still

1 in business or are they no longer --

2 MR. HOPPE: Some. And we tried to get invoices  
3 from that period to come up with some type of proof, but  
4 they didn't have those records.

5 JUDGE KWEE: Okay. Yeah. That's what I was  
6 going to ask if you made an attempt to do like an ABC or  
7 an --

8 MR. HOPPE: We did.

9 JUDGE KWEE: Okay.

10 MR. HOPPE: We did. We -- we attempted and  
11 there -- we went back to some of the -- his earlier  
12 vendors that he'd had. We couldn't even get things that  
13 were more recent. I mean, again, it seems to me that  
14 things fall off ten years out and no one is keeping  
15 records after that period of time.

16 JUDGE KWEE: Right. Yeah. I, yeah, definitely  
17 see your point. 1984 is a long time ago.

18 MR. HOPPE: Yeah. It was a while ago for sure.

19 JUDGE KWEE: Okay. Thank you. I don't have any  
20 further questions. I'll turn it back to the lead ALJ.

21 JUDGE BROWN: Thank you.

22 I don't think I have any questions at this time.

23 MR. HOPPE: Okay.

24 JUDGE BROWN: Okay. So now we will turn to  
25 CDTFA. And whenever you are ready, you have 30 minutes

1 for your presentation.

2 MR. SAMARAWICKREMA: Thank you, Judge.

3

4 PRESENTATION

5 MR. SAMARAWICKREMA: Appellant is a California  
6 corporation that engaged in the retail sale and the lease  
7 of stage equipment since 1987.

8 JUDGE BROWN: I'm sorry. I think you need to  
9 speak up a little more into the microphone. Make sure --  
10 yes. Thank you. You have to kind of almost bite into it.

11 MR. SAMARAWICKREMA: Okay.

12 JUDGE BROWN: Get very close. Thank you.

13 MR. SAMARAWICKREMA: Appellant is a California  
14 corporation that engaged in the retail and the lease of  
15 stage equipment since 1987 when it was a sole  
16 proprietorship. In 2014, the business changed to a  
17 corporation. In 2015, the corporate officer changed. The  
18 audit began on June 15, 2018, and resulted in unreported  
19 taxable sales of around \$744,000. And that will be on  
20 your Exhibit A, page 53.

21 During the audit period, Appellant sold retail  
22 stage equipment with an option for installation.  
23 Appellant charged tax reimbursement on the retail price of  
24 fixtures and equipment but did not charge tax on  
25 installation labor. He directs sales tax reimbursement to



1 the selling price on retail transactions but did not  
2 collect use tax for rental transactions.

3 Appellant also operated an ice rink in Folsom,  
4 California, and charged for admission and for ice skate  
5 rentals. The Department audited Appellant's business for  
6 the period April 1st, 2015, through December 31st, 2018.  
7 During the audit period, Appellant reported total sale of  
8 around \$194,000 for the audit period with no claimed  
9 deductions. And that will be on your Exhibit A, page 46.

10 During the audit Appellant failed to provide  
11 complete sales records such as POS sales information,  
12 sales invoices, and credit card sales receipts for the  
13 audit period. In addition, Appellant failed to provide  
14 complete purchase invoices or purchase journals for its  
15 rental equipment. Comparison of 2016 to 2017 federal  
16 income tax returns show us a discrepancy between sales and  
17 use tax returns. In 2016 and 2017, Appellant reported  
18 total sale of only \$15,400 on its sales and use tax  
19 returns but reported gross receipts of almost \$1.1 million  
20 on its federal income tax returns. And that will be on  
21 your Exhibit A, page 81.

22 Due to these large discrepancies, the Department  
23 began evaluating and testing the limited documents  
24 Appellant provided. The record shows that in 2015  
25 Appellant's reported taxable sales started to decline.

1 And that will be on your Exhibit A page 46. The  
2 Department noted that prior to 2015, Appellant reported  
3 rental transaction as taxable sales. And that will be on  
4 your Exhibit A, pages 48 through 52, and page 58.

5 But in 2015 through 2018, Appellant listed stage  
6 equipment rental as services in his general ledger and,  
7 thus, did not report them as taxable transactions. And  
8 that will be on your Exhibit A, pages 59 through 61, and  
9 Exhibit B. Appellant consolidated income from the sale of  
10 retail stage equipment, rental of stage equipment, and ice  
11 rink business into total sales reported in his federal  
12 income tax returns. The Department needed to test for the  
13 measure of taxable sales.

14 The Department determined that the ice rink was  
15 not the cause of the large discrepancies. Both the rink  
16 admission and the ice skate rentals were found to be  
17 nontaxable transactions. Therefore, the Department  
18 segregated the ice rink transaction from the stage  
19 production transactions. For the audit, the Department  
20 reviewed available general ledger information and then  
21 segregated Appellant's ice rink business from the stage  
22 equipment business. And that will be on your Exhibit A,  
23 page 55 and 56.

24 The Department scheduled ice rink sales per year  
25 and deducted those amounts from sales reflected on

1 Appellant's federal income tax returns to determine total  
2 retail sales, rentals, and installation labor. And that  
3 will be on your Exhibit A, pages 55 and 57. The  
4 Department reviewed Appellant's 2017 bank statements.  
5 Those bank statements show that some income attributed to  
6 stage equipment was understated in the general ledger.  
7 Therefore, the Department used 2017 bank deposits to  
8 determine total retail sales, rentals, and installation  
9 labor for around \$256,000 for year 2017. And that will be  
10 on your Exhibit A, page 75.

11 Appellant did not provide complete sales  
12 information to determine Appellant's installation labor  
13 and taxable rental amount for the audit period.  
14 Therefore, the Department scheduled the available sales  
15 invoices and calculated around 86 percent of the invoice  
16 totals were for sale of taxable items, and 14 percent were  
17 for taxable installation labor. And that will be on your  
18 Exhibit A, page 63.

19 The Appellant did not provide invoices or any  
20 relevant information to determine its total taxable rental  
21 amounts and taxable retail sale amount for the audit  
22 period. Therefore, the Department tested reported taxable  
23 sales for the year 2014, which is outside of the audit  
24 period, and found reported taxable sales including taxable  
25 rental to be acceptable. And that will be on your

1 Exhibit A, page 62.

2 For year 2014, the Department subtracted ice rink  
3 sales per Appellant's general ledger from reported total  
4 sales reflected on Appellant's sales and use tax return to  
5 determine total sales, including retail sales, rentals,  
6 and installation labor for around \$434,000. And that will  
7 be on your Exhibit A, page 62. The Department then  
8 compared the reported taxable sales of around \$308,000 for  
9 Appellant's 2014 sales and use tax return for total sales,  
10 including retail sales, rentals, and installation labor of  
11 \$434,000 to determine 71 percent of the retail sales were  
12 taxable. And that will be on your Exhibit A, page 62.

13 To benefit Appellant, the Department used the  
14 taxable percentage of 71 percent instead of the taxable  
15 percentage of 86 percent derived from available sales  
16 invoices. And that will be on your Exhibit A, pages 62  
17 and 63. The Department used a 71 percent determination  
18 throughout the audit examination to determine taxable  
19 sales, including taxable rentals to calculate Appellant's  
20 unreported taxable sales for the audit period.

21 In 2015 through 2016, the Department determined  
22 Appellant's federal income tax returns provided the most  
23 complete record of total sales for this period. For 2017,  
24 the Department determined that Appellant's bank deposits  
25 provided the most complete record of total sales for year

1     2017. In 2018, the Department used total sales reflected  
2     in the general ledger for first quarter 2018 and second  
3     quarter 2018.

4             Since there were no records for third quarter  
5     2018 and fourth quarter 2018, the Department used the  
6     average quarterly taxable sales derived from January 1st,  
7     2018, through June 30th, 2018, to determine audited  
8     taxable sales. The Department calculated audited taxable  
9     sales for April 1st, 2015, through December 31, 2016,  
10    which were compared to reported taxable sales to determine  
11    unreported taxable sales of around \$425,000 for the period  
12    April 1st, 2015, through December 31st, 2016. And that  
13    will be on your Exhibit A, page 55.

14            For January 1st, 2017, through December 31st,  
15    2017, the Department calculated audited taxable sales  
16    which were compared with the reported taxable sales to  
17    determine unreported taxable sales of \$166,000 for the  
18    period January 1st, 2017, through December 31st, 2017.  
19    And that will be on your Exhibit A, page 56. For  
20    January 1st, 2018, through June 30th, 2018, the Department  
21    determined audited taxable sales of around \$77,000. And  
22    that will be on your Exhibit A, page 58.

23            Similarly for July 1st, 2018, through  
24    December 31st, 2018, the Department calculated audited  
25    taxable sales of around \$77,000. The Department then

1 combined the audited taxable sales for both periods to  
2 determine the audited taxable sales of around \$144,000 for  
3 the year 2018. Since Appellant did not report any taxable  
4 sales for year 2018, the unreported taxable sales for the  
5 period January 1st, 2018, through December 31st, 2018  
6 remain the same, and that will be on your Exhibit A, pages  
7 54 and 58.

8 In total, the Department determined unreported  
9 taxable sales of around \$744,000 for the audit period.  
10 And that will be on your Exhibit A, page 53. Unreported  
11 taxable sales were compared with reported taxable sales of  
12 around \$194,000 to calculate the error rate of around  
13 385 percent for the audit period. Had the Department used  
14 Appellant's taxable sales percentage of 86 percent derived  
15 from its available sales invoices to determine audited  
16 taxable sales for the audit period, the unreported taxable  
17 sales would increase by around \$191,000 from \$744,000 to  
18 \$975,000 for the audit period.

19 Therefore, the Department determined that the  
20 audit calculation of unreported taxable sales in this  
21 audit was reasonable and was in Appellant's favor.  
22 Appellant disagreed with the audit finding and claimed  
23 that it purchased most of his rental inventory between  
24 1987 and 1995 from multiple vendors, and that it always  
25 paid sales tax to the vendors on rental equipment at the

1       time of purchase.

2               Appellant contends that the rental equipment was  
3       mostly purchased in the 1980s when the business began  
4       operating. According to Appellant, it used the same stage  
5       equipment throughout its business operation making various  
6       repairs to the equipment using supplies purchases tax-paid  
7       from local hardware stores. In support of this  
8       contention, Appellant provided purchase invoices. And  
9       that will be on your Exhibit F, pages 410 through 412.

10              Appellant also contends that the business model  
11       between 1987 and 2006 was to sell and rent stage  
12       equipment, but due to economic recession in 2008,  
13       Appellant changed his business model to setup and tear  
14       down the equipment after each event instead of renting  
15       equipment individually. Appellant provided two invoices  
16       dated June 29, 2016, and May 11, 2018, for tax-paid  
17       purchase of material used for stage legs, and staging,  
18       which it states is a part of his rental inventory. And  
19       that will be on your Exhibit A, pages 41 and 42.

20              Appellant further contends that the new office  
21       manager fell behind on filing Appellant's sales and use  
22       tax returns and did not invoice customers correctly.  
23       Appellant explained that the taxable portion of his  
24       business decreased because early in the audit period, the  
25       manager did not understand how it reports sales tax and

1 was reporting nontaxable transaction as taxable. The  
2 Department reviewed and analyzed this information and  
3 ultimately rejected them.

4 It is undisputed that Appellant rented stage  
5 equipment, therefore, the only remaining issue is whether  
6 Appellant paid tax at the time of purchasing the stage  
7 equipment. If it did not, it was obligated to collect use  
8 tax on rental receipts and remit the tax to the  
9 Department. Appellant did not provide sufficient purchase  
10 records such as purchase invoices for rental equipment or  
11 ABC letters to allow the Department to determine whether  
12 Appellant paid tax on its purchases of rental equipment.  
13 ABC letters are letters from Appellant's vendors that  
14 would state whether rental equipment was purchased with  
15 tax paid or excluding tax.

16 The Department maintains that although Appellant  
17 provided some records, most do not support that Appellant  
18 paid tax at stores when purchasing rental equipment. The  
19 Department notes that prior to the previous corporate  
20 officer leaving the business in 2015, Appellant charged  
21 and collected use tax on rental receipts. And after the  
22 previous corporate officer left, Appellant changed his  
23 reporting method.

24 The Department contends that the purchase  
25 invoices provide by Appellant are insufficient to warrant



1 any adjustment because the plywood purchased by Appellant  
2 could have been used for any type of repair, and it cannot  
3 trace purchases to any specific item used as a rental.

4 The Department asserts that while Title 18 of the Court of  
5 Regulation, Regulation 1698 authorizes the destruction of  
6 records after four years. That section does not apply to  
7 records supporting the tax paid status of rental property.

8 The Department contends that Appellant has met  
9 its burden to demonstrate that a stage equipment was  
10 purchased, tax paid and is, therefore, liable for use tax  
11 measured by its rental receipts. During the prehearing  
12 conference and according to the minutes and orders of the  
13 prehearing conference, your Panel placed on notice an  
14 application of the ice rink income in Schedule 12(a)(1)  
15 and Schedule 12(c). And that will be on your Exhibit A,  
16 pages 55 through 57 and page 68.

17 The Department estimated the ice rink income of  
18 around \$389,000 for year 2016 but used the reported ice  
19 rink income of around \$270,000 in Schedule 12(a)(1) to  
20 determine tax liability for year 2016. And that will be  
21 on your Exhibit A, pages 55 through 57 and page 68. The  
22 Department reviewed Schedule 12(a)(1), and it concluded  
23 that it accurately determined Appellant's taxable sales,  
24 including taxable rental for year 2016.

25 However, if the Department uses estimated ice

1     rink income of around \$309 -- \$379,000 in Schedule 12(c)  
2     to determine taxable sales, including taxable rental, then  
3     it is also required to adjust its required recorded total  
4     sale of around \$634,000 reflected in Schedule 12(a)(1) to  
5     include unrecorded ice rink income. Therefore, the  
6     Department determined that it correctly determined  
7     unreported taxable sales, including taxable rental using  
8     the best available information without determining  
9     additional total sales and ice rink income for the audit  
10    period including year 2016.

11           Had the Department used the Appellant's total  
12    reported sales, including ice rink sales and taxable sales  
13    reflected on Appellant's sales and use tax return for year  
14    2014 to determine taxable sales percentage of 50 percent  
15    and used this percentage to determine audited taxable  
16    sales for the period April 1st, 2015, through  
17    December 31st, 2016, the unreported taxable sales would  
18    increase by around \$12,000 from \$425,000 to \$437,000 for  
19    the period April 1st, 2015, through December 31st, 2016.

20           Therefore, the Department determined that the  
21    audit calculation of unreported taxable sales in this  
22    audit was reasonable and was in Appellant's favor since it  
23    was the lowest of the differences determined. Ultimately,  
24    the Department decided to use an audit method which  
25    yielded the lowest division measure to give a benefit to

1 Appellant.

2 As mentioned earlier, Appellant did not provide  
3 complete sales and rental equipment purchase invoices and,  
4 therefore, the Department was unable to verify the  
5 accuracy of reported sales and use tax using a direct  
6 audit method. Therefore, an alternate audit method was  
7 used to determine unreported tax. Accordingly, the  
8 Department determined the unreported tax based upon the  
9 best available information. Appellant has not provided  
10 reasonable documentation or evidence to support an  
11 adjustment to the audit finding. Therefore, for all of  
12 these reasons, the Department request the appeal be  
13 denied.

14 This concludes our presentation, and we are  
15 available to answer any questions the Panel may have.

16 Thank you.

17 JUDGE BROWN: Thank you.

18 I'll start with my co-Panelists and ask if they  
19 have any questions.

20 JUDGE LONG: I do not have any questions.

21 JUDGE BROWN: Judge Kwee?

22 JUDGE KWEE: Hi. This is Judge Kwee. I just had  
23 a couple of questions. So the beginning of your  
24 presentation -- for CDTFA -- you had mentioned that  
25 Appellant, prior to 2015, had been reporting the items as

1 taxable and then afterwards changed their reporting. I  
2 only see in the audit work papers a mention for 2014. I  
3 don't see any prior years. So when you were saying  
4 previously, were you referring to 2014, or were there  
5 additional years in the record that you were also  
6 referring to?

7 MR. SAMARAWICKREMA: Oh, no. The Department is  
8 referring to 2014.

9 JUDGE KWEE: Okay. Thank you.

10 MR. SAMARAWICKREMA: Yeah. And also according to  
11 the Appellant's opening brief, they specifically say the  
12 reported rental as taxable in previous years.

13 JUDGE KWEE: Okay. Thank you. And the other  
14 question that I had was because I understand that he has  
15 been in business for a while but maybe as -- there was a  
16 predecessor or potentially a legal or statutory successor,  
17 and I'm just wondering were there any prior audits of the  
18 other entities that were conducted that might have looked  
19 at the issue of, you know, tax paid leases?

20 MR. SAMARAWICKREMA: We don't think we have a  
21 prior audit for the previous owners for the sole  
22 proprietor.

23 JUDGE KWEE: Oh, so from 1984 to 2015 there was  
24 no audit of the prior entities?

25 MR. SAMARAWICKREMA: No.

1 JUDGE KWEE: Okay.

2 And, Judge Brown, do you mind if I turn to  
3 Appellant to ask the same question?

4 JUDGE BROWN: No. Go ahead.

5 JUDGE KWEE: Okay. And for Appellant, I guess,  
6 you heard my question. Do you know the answer of whether  
7 or not --

8 JUDGE BROWN: Can I -- do I hear a ringing?

9 JUDGE KWEE: Just a moment while we turn off the  
10 phone.

11 MR. HOPPE: No worries.

12 JUDGE KWEE: Okay. So --

13 MR. HOPPE: Yeah, not to my knowledge that  
14 there -- I don't think there was. The ownership has never  
15 changed. It was a different form before. They -- he was  
16 a sole proprietor who operated in Southern California for  
17 a long time and then incorporated, is my understanding.

18 JUDGE KWEE: Okay. Yeah. The reason I was  
19 asking was just to see if, for example, that it might have  
20 been examined because there was the issue with the lack of  
21 the records. So maybe if they had it in a different  
22 audit -- but it sounded like the answer is no?

23 MR. HOPPE: Yeah. And -- and, you know, actually  
24 it might have been preferable to have been audited so that  
25 we would have had guidance at that point to show that we

1       had just kind of followed the guidance from that period,  
2       but it's not the case.

3               JUDGE KWEE:   Okay.   Well, thank you then.   That  
4       was my only two questions.   So I'll turn it back to  
5       Judge Brown.

6               JUDGE BROWN:   Thank you.   I think I just wanted  
7       to follow up with CDTFA about the question that had been  
8       raised at the prehearing conference about the amounts for  
9       calculating ice rink income for -- I believe it was for  
10      2016.   Hold on.   We'll compare it -- to calculate the  
11      amount of ice rink income used in Schedule 12(a) for  
12      computation of the stage equipment business income for  
13      2016 compared with Schedule 12(c)'s calculation of ice  
14      rink income for that year.   And I wanted to make sure I  
15      understand the -- my understanding is CDTFA reduced the  
16      gross receipts on Appellant's federal income tax return  
17      for 2016 by using the incorrect recorded ice rink income.

18              So they reduced it by \$270,378, but the -- let's  
19      see.   I'm just not clear why CDTFA didn't use the -- its  
20      other calculation of \$388,868 that was on the -- when  
21      you -- when CDTFA calculated there was this incorrect  
22      amount of the ice rink income.   Why did you use different  
23      amounts?

24              MR. SAMARAWICKREMA:   If you use the estimated  
25      number of \$389,000, there's a difference between recorded

1       and estimated, \$119,000. So if you're using that  
2       estimated number, then we had to increase the total sales  
3       because total sales were understated. You know, that's  
4       why we determined that we -- the Department did an  
5       estimated additional total sales or additional ice rink  
6       income.

7               If you use estimated \$389,000, then in order to  
8       do the mathematical -- to correctly compute the total  
9       sales, including rental retail and installation, you had  
10      to add \$119,000 to the total sales. You know, like, the  
11      ice rink total sales were underreported. If you're  
12      increasing the ice rink income then we need to increase  
13      the total sales too. So at the end it's a wash. You  
14      know, you increase the ice rink income by \$119,000 and  
15      you'll do the same addition to the total sales.

16             JUDGE BROWN: And that goes back to what you said  
17      in your presentation about that -- so that calculation  
18      would not be in the taxpayer's favor?

19             MR. SAMARAWICKREMA: No.

20             JUDGE BROWN: Appellant?

21             MR. SAMARAWICKREMA: No, because you know you add  
22      \$119,000 for the ice rink income, then you will do the  
23      same -- you have to add the same amount for the total  
24      sales. So at the end it's a wash.

25             JUDGE BROWN: Okay. Thank you. If my

1 co-Panelists don't have anything further, then I will say  
2 that I think we have -- if CDTFA has completed its  
3 presentation, we can now hear Appellant's rebuttal.

4 MR. HOPPE: Thank you.

5

6 CLOSING STATEMENT

7 MR. HOPPE: I do appreciate CDTFA's thoroughness,  
8 and they were thorough in the audit. But the analysis  
9 used a flawed number to begin with and so --

10 JUDGE BROWN: I think you need to speak into your  
11 microphone.

12 MR. HOPPE: Yeah. Yeah.

13 JUDGE BROWN: Yes. Thank you.

14 MR. HOPPE: So we're using -- they started with a  
15 flawed number. You ended with a really flawed number. As  
16 in any spreadsheet calculation, if you use a bad number,  
17 you're -- in a formula, it's going to -- it's going to --  
18 your outcome is not going be correct. So again -- and  
19 they argue and we agree. We agree that it comes down to  
20 the fact that if the staging equipment was paid for, then  
21 it would not be included in taxable sales.

22 They contend that we did not prove that, and I  
23 would probably contend that we would have a hard time  
24 proving that because of the -- because of the age of the  
25 documentation that we would have to recover, and which in



1 my opinion -- in our opinion, it's unreasonable.

2 But if those are excluded from sales, then we  
3 have, instead of a 71 percent percentage of total sales  
4 being taxable sales on the equipment, staging and renting,  
5 that it's closer to 16, which is what we reported. Now I  
6 do understand that we -- that in '18 -- and I'm coming to  
7 understand as I look through the analysis, that it looks  
8 like in '18 -- '17 and '18 and going into -- yeah, it  
9 looks like '17 and '18 where the estimated taxable sales  
10 had to be imputed, that there probably weren't reported  
11 numbers or filings at that time, and we're happy to  
12 correct that.

13 Again, we -- we're not trying to avoid taxes.  
14 We're just wanting to pay the fair amount of taxes, and we  
15 think that's around 16 percent of total sales of reported  
16 sales and not 71. And that's -- that is what we'd like  
17 to -- to present. So I'll -- if you have any questions,  
18 I'm happy to answer them.

19 JUDGE BROWN: Can you clarify when you say that  
20 "we'd be happy to correct that," what do you mean?

21 MR. HOPPE: We'd be happy to correct if there  
22 were un -- if there were tax returns that were not filed,  
23 or income that was not reported at that 16 percent level  
24 for years -- for the quarters in question for '17 and '18,  
25 happy to do that. I don't know off the top of my head if

1       those were filed. My understanding is I thought they  
2       were.

3               If they weren't, we're happy to correct that,  
4       meaning for those unreported tax return years. But at the  
5       level of 16 and -- or 15 to 16 percent of total sales  
6       rather than the 71 percent. And I think that was  
7       reflected in our initial response to the Department in --  
8       we calculated that the total tax on taxable sales for the  
9       audit period at about \$208,000 which resulted in a tax --  
10      total tax of \$16,670. And again, happy -- happy to pay  
11      that. That's -- that's reasonable.

12             JUDGE BROWN: Thank you. Co-Panelists do you  
13      have anything further?

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

16             JUDGE LONG: This is Judge Long. I don't have  
17      any questions either. Thank you.

18             JUDGE BROWN: All right. Then I believe if we've  
19      concluded -- everyone has concluded their presentations,  
20      then we can wrap up the hearing. And I will just -- okay.

21             I will note that this concludes the hearing. The  
22      record is closed, and the case is submitted. The judges  
23      will meet and decide the case based on the evidence,  
24      arguments, and applicable law. We will mail both parties  
25      our written decision no later than 100 days from today.

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The hearing is now adjourned. Thank you  
everyone.

(Proceedings adjourned at 10:30 a.m.)

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I, Ernalyne M. Alonzo, Hearing Reporter in and for  
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That the foregoing transcript of proceedings was  
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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.

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