

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
PLATINUM EQUITY PARTNERS, INC.,) OTA NO. 18124089
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, December 13, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
PLATINUM EQUITY PARTNERS, INC.,) OTA NO. 18124089
)
APPELLANT.)
)
_____)

Transcript of Proceedings, taken at
12900 Park Plaza Dr., Cerritos, California,
91401, commencing at 12:59 p.m. and concluding
at 2:19 p.m. on Tuesday, December 13, 2022,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Panel Lead: ALJ NATASHA RALSTON

Panel Members: ALJ ANDREW WONG
ALJ TERESA STANLEY

For the Appellant: STEVEN MATHER
H. HOJATI

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

RAVINDER SHARMA
CHRISTOPHER BROOKS
JASON PARKER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-4 were received at page 8.)

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

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

P A G E

By Mr. Mather 10

By Mr. Sharma 40

A P P E L L A N T ' S

W I T N E S S E S :

D I R E C T

C R O S S

R E D I R E C T

R E C R O S S

Mr. Hojati 15

C L O S I N G S T A T E M E N T

P A G E

By Mr. Mather 50

1 Cerritos, California; Tuesday, December 13, 2022

2 12:59 p.m.

3
4 JUDGE RALSTON: So we are now on the record in
5 the Appeal of Platinum Equity Partners, Inc. These
6 matters are being heard before the Office of Tax Appeals,
7 OTA Case Number 18124089. Today's date is Tuesday,
8 December 13th, 2022, and the time is approximately 12:59
9 p.m.

10 Today's hearing is being heard by a panel of
11 three Administrative Law Judges. I'm Judge Ralston. I'll
12 be the lead judge. We also have Judge Wong and
13 Judge Stanley is the other member of this tax appeals
14 panel. All three judges will meet after the hearing and
15 produce a written decision as equal participants.
16 Although as the lead judge I will be conducting the
17 hearing today, any judge on this panel may ask questions
18 or otherwise participate so that we can ensure that we
19 have all the information that we need to decide this
20 appeal.

21 As I mentioned earlier, this hearing is being
22 live streamed to the public and is also being recorded.
23 The transcript and the video recording are part of the
24 public record and will be posted on our website.

25 Also present is our Stenographer Ms. Alonzo who

1 is reporting this hearing verbatim. So to ensure that we
2 have an accurate record, we ask that everyone speaks one
3 at a time and does not speak over each other. Also speak
4 clearly and loudly. When needed Ms. Alonzo will stop the
5 hearing process to ask for clarification. And after the
6 hearing, Ms. Alonzo will produce the official hearing
7 transcript which will be available on the Office of Tax
8 Appeals website.

9 First thing we're going to start with is the
10 party introductions. I'm going to ask you to please state
11 your name and who you represent for the record, starting
12 with the Appellants, the taxpayers.

13 MR. MATHER: Good afternoon, Your Honor. I am
14 Steve Mather appearing for the Appellant Platinum Equity
15 Partners. I have with me Mr. Hamid Hojati.

16 MR. HOJATI: Yes. My name is Hamid Hojati.

17 JUDGE RALSTON: Thank you.

18 And for CDTFA.

19 MR. SHARMA: Ravinder Sharma, Hearing
20 Representative, CDTFA.

21 MR. PARKER: Jason Parker, Chief of Headquarters
22 Operations Bureau with CDTFA.

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

25 JUDGE RALSTON: Thank you.

1 So we held the prehearing conference in this
2 matter on November 9th, 2022. And as confirmed at the
3 prehearing conference, there are four issues to be decided
4 in this appeal.

5 The first is whether the reaudit represents a new
6 determination that was barred by the statute of
7 limitations.

8 The second issue is whether further adjustments
9 are warranted to the audited understatement of reported
10 taxable sales.

11 The third is whether additional relief of
12 interest is warranted.

13 And the fourth, is whether the negligence penalty
14 is warranted.

15 The parties have agreed that the issue of bad
16 debts is not at issue in this appeal.

17 Is that your correct understanding, Mr. Mather?

18 MR. MATHER: Yes.

19 JUDGE RALSTON: And also CDTF?

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

21 JUDGE RALSTON: Thank you.

22 As for witnesses, Appellant intends to call
23 Mr. Hamid Hojati, who was the CEO of Platinum Equity
24 Partners, Inc., during the period at issue to testify
25 under oath or affirmation, and Respondent has not objected

1 to Mr. Hojati testifying. And Respondent does not intend
2 to call any witnesses.

3 I assume that's still correct.

4 MR. MATHER: That's correct.

5 JUDGE RALSTON: Thank you.

6 Moving onto exhibits. Appellant submitted
7 Exhibits 1 through 4. Respondent has not objected to
8 Appellant's exhibits, and Appellant's Exhibits 1 through 4
9 hereby admitted without objection.

10 (Appellant's Exhibits 1-4 were received
11 in evidence by the Administrative Law Judge.)

12 Respondent has submitted Exhibits A through I.
13 Appellant did not have any objection to Respondent's
14 exhibits, so Respondent's Exhibits A through I are
15 admitted without objection.

16 (Department's Exhibits A-I were received in
17 evidence by the Administrative Law Judge.)

18 And is that everyone's correct understanding of
19 the exhibits?

20 MR. MATHER: That's correct.

21 MR. SHARMA: That's correct. Thank you.

22 JUDGE RALSTON: Thank you.

23 I'm just going to go over the order of the
24 hearing. So as we discussed at the prehearing conference,
25 Appellant will have approximately 60 minutes which will

1 consist of about 5 minutes for Mr. Mather's opening
2 statement and then approximately 55 minutes for witness
3 testimony. After Mr. Hojati gives his testimony, you may
4 have questions from the panel or questions from Respondent
5 CDTFA. Then Respondent will have 30 minutes for their
6 presentation. Appellant will then have 5 minutes for
7 rebuttal. And, of course, the panel members may ask
8 questions at any time.

9 Does anyone have any questions before we move on
10 to opening presentations?

11 MR. MATHER: Nope.

12 MR. SHARMA: No. Department has no questions.

13 Thank you.

14 JUDGE RALSTON: Okay. Thank you.

15 So Mr. Hojati, before -- I think it'll be easier.
16 I'm going to go ahead and swear you in now, and then
17 Mr. Mather can start his presentation. So if you could
18 please raise your right hand.

19

20 H. HOJATI,

21 produced as a witness, and having been first duly sworn by
22 the Administrative Law Judge, was examined and testified
23 as follows:

24

25 JUDGE RALSTON: Thank you.

1 So we are ready to proceed with Appellant's
2 opening presentation. You have approximately 60 minutes,
3 so please begin when you are ready.

4 MR. MATHER: Thank you.

5
6 PRESENTATION

7 MR. MATHER: The Panel has correctly stated the
8 issues in the case, and I'll just briefly touch on each
9 one of them. The first issue is the statute of
10 limitations issue. The audit in this case started in May
11 of 2007. So it's been more than 15 years ago. And there
12 were delays during the course of the examination for
13 personal reasons for the auditor, but the Notice of
14 Determination was originally issued in October of 2008.

15 After that, we went to an appeals hearing. And
16 in the appeals hearing it was determined that the method
17 used in the Notice of Determination, which was essentially
18 a markup on cost of sales, was not a reliable way to
19 estimate the taxable sales in the case because of various
20 problems with the under -- the basically the cost of sales
21 numbers that was originally being used.

22 So based on that in the Decision and
23 Recommendation, which was issued in February of 2010, the
24 hearing officer determined that the markup method should
25 not be used and that instead there should be a new audit

1 made using a percentage of taxable sales method.

2 So, essentially, the statute of limitations issue
3 as it relates to that is that the determination in the
4 Notice of Determination was essentially thrown out, and a
5 new audit was commenced in 2010, which was beyond the
6 three-year statute of limitations and beyond any extension
7 of the statute of limitations going back to the original
8 audit period on the original audit. And since it was an
9 entirely different method and an entirely new audit, the
10 attempts to come up with a reasonable audit determination
11 before should not be viewed as extending the statute of
12 limitations for the new audit. So in a nutshell that's
13 the statute of limitations issue.

14 With respect to the underlying or the ultimate
15 determination in the case, there's really two principal
16 grounds that we have for disagreeing with that. The first
17 is the taxpayer had -- originally had very extensive and
18 very complete records of all the activities of the
19 business. This is an auto body shop business. It's
20 regulated by multiple agencies.

21 All the information was tracked through a
22 computer reporting system that fed into the general
23 ledger. There are insurance companies involved in almost
24 every single one of the jobs. They monitor the
25 completeness and accuracy of all the billings and all of

1 the charges that they receive. This is a heavily
2 monitored business that had complete records.

3 The Department auditor did not make a very
4 concerted effort to determine if the records were accurate
5 or not. It instead just, you know, compared some bank
6 deposits without a complete analysis to -- and the federal
7 income tax return again without an analysis and said,
8 okay, well, we can't trust these records, and so we're
9 going to start making estimates.

10 As I indicated, the first estimate was based on a
11 markup, which was ultimately not accepted by the Hearing
12 Officer in the initial determination. So our position is
13 that there was an insufficient grounds to disregard the
14 records and come up with millions in the initial
15 determination. Close to \$10 million of additional sales
16 on \$10 million of reported sales, when there were minor
17 discrepancies that were ultimately explained between the
18 bank deposits and the federal income tax return.

19 If we get down -- if we get past that and it's
20 determined that the Department is allowed to just make up
21 the numbers on their own, the method in the second audit
22 was flawed. They're really two parts of the audit in the
23 second audit. There's a determination of what the taxable
24 sales were. The auditor in the second audit -- who is not
25 the same auditor as in the first audit -- made a

1 determination based on the federal income tax return but
2 didn't take into account amounts appearing as revenue on
3 the federal income tax return that were not sales of any
4 kind.

5 So there were paint rebates and there were
6 payments from third parties that were not a sale of any
7 kind. So that is one component of the error in the second
8 audit determination.

9 The other component is the auditor did do a
10 sampling of certain ROs or repair order jackets,
11 basically. Each job has a jacket where all of the
12 information concerning that particular repair is kept. So
13 the auditor in the second audit did do a sample of that,
14 but came up with a number in excess of 40 percent which is
15 not justified by any of the records.

16 And we have our own sampling which we did of
17 conservative repair orders for the four locations of the
18 body shop, you know, for each one of the four. And the
19 taxable percentage is closer to a third than it is to
20 40 percent. And that's the second error in the execution
21 of the second audit.

22 Last on the penalty the -- as I indicated before,
23 the auditor or the taxpayer had extensive records, very
24 detailed records, general ledgers, all of these and had a
25 meticulous bookkeeping system. It did fall apart later in

1 the audit because the taxpayer had a theft of his computer
2 records. So his server was stolen, and there wasn't back
3 up. So later on in the process, there were not records to
4 basically refute what the later audit determination was --
5 the audit determination in the second audit.

6 So we were down to manual records at that time
7 consisting mostly of the paper ROs. But this was a
8 taxpayer that made a concerted effort to be -- to get this
9 information correct. And he's really already paying a
10 penalty because of the theft of these records for which
11 there was a police report filed, and that was provided to
12 the Department.

13 And so there really is no basis in this case to
14 find that the taxpayer didn't exercise ordinary care. And
15 to basically come up with a number that's almost pulled
16 out of thin air to compare to and then say, well, because
17 the number is large based on an estimate, when our number
18 based on the actual records was -- is much more reliable,
19 we don't think is sufficient basis to impose a penalty.

20 That concludes my opening remarks.

21 JUDGE RALSTON: Thank you. And you can begin
22 your testimony with Mr. Hojati.

23 ///

24 ///

25 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

2

3
4
5
6
7
8
9
10

- 11
- 12
- 13

14

15

16

17
18
19
20
21
22
23

24

25

1 A Because we're doing business with them. They
2 have a commitment that we purchase from them only and
3 the -- until the contract is over. They have a purchase
4 agreement also. I believe it was millions of dollars that
5 we had to purchase from them to get the pre-bates of
6 one-and-a-half million dollars.

7 Q So if you -- let's say the number was \$10 million
8 of sales, so you had to purchase \$10 million of product
9 from them over the next few years and --

10 A No. Usually we didn't purchase everything from
11 them. We, basically, if the sales was \$13 million, we
12 would buy 5 percent, which was represented of paint and
13 paint material. That was 5 percent of the sales we had.
14 So we would purchase from them exclusively. That's why
15 they paid us pre-bates.

16 Q Oh, so it was based on a percentage of sales or
17 on a set dollar amount typically?

18 A A percentage of the sales.

19 Q Okay. But, basically, they would pay you up
20 front because you entered into this contract to buy things
21 from them in the future?

22 A Yes, that's correct.

23 Q Okay. The next line we have "Enterprise/Other."
24 Can you explain what that amount was?

25 A Enterprise, is the same concept. We -- if a

1 customer comes into the shop and they want to rent a car,
2 we refer them to Enterprise. And Enterprise was the only
3 company that we were using at that time. And, basically,
4 they paid us pre-bates ahead of time, monthly pre-bate,
5 because of the referral they were getting from us. So
6 that's what this pre-bate was all about.

7 Q Okay. And do you recall about how much the
8 monthly amount was for that?

9 A It was \$50,000-something a month, which --

10 Q Fifteen or fifty?

11 A Fifty. \$50,000 a month that I remember.

12 Q Okay. Could you turn to Exhibit 3, page 3. Let
13 me help you. There.

14 A Thank you.

15 Q So in this -- this is a summary of bank deposits
16 for amounts that were not taxable sales. So the
17 Enterprise amount there is -- can you see what that is?

18 A The Enterprise was -- I think it was \$300,000.

19 Q That column there. Sorry.

20 A Oh, that column was \$15,500 a month.

21 Q Okay. That reflects monthly payments from
22 Enterprise then. It wasn't --

23 A Yeah. They were paying pre-bates of \$15,000 a
24 month, basically, from the month of January to December.

25 Q So was that based on a percentage of referrals,

1 or was it just --

2 A No. It was a flat fee of -- with Enterprise.
3 They would pay us a flat fee per month. And in order for
4 us to earn a flat fee, we would give them all the
5 customers that would walk in the door. So that was the
6 deal. That was the arrangement with Enterprise
7 Rent-A-Car.

8 Q Okay. So if you could turn to the next page then
9 in Exhibit 3, which I think is page 4. You don't have it.
10 Here, let me hand it to you. So in that first column,
11 again, you have an Enterprise column which are -- and
12 that's the same. This is for 2006 instead of 2007. So --

13 A Yeah. They used to pay us \$13,000 a month --
14 \$13,745 a month, and they would pay us monthly. So
15 that's --

16 Q And then did it -- it looks like it was changed
17 to quarterly. Was that it? Or do you remember that?

18 A They paid us pre-bate also, \$92,370 in the month
19 of August.

20 THE STENOGRAPHER: May I please ask you to please
21 speak up a little louder? I'm having a hard time hearing
22 you.

23 MR. HOJATI: Yeah.

24 THE STENOGRAPHER: Thank you.

25 A \$93,370.55. That's what it shows. They paid a

1 pre-bate. And they paid us because -- they paid us a
2 pre-bate because we were doing work with them. And
3 instead of a monthly payment, they paid us a pre-bate,
4 \$93,000.

5 Q You were not selling any kind of product to them;
6 is that right?

7 A No. I wasn't selling any product. We were just
8 referring the customers that comes through the door to
9 Enterprise Rent-A-Car.

10 JUDGE RALSTON: And, Mr. Hojati, you can pull the
11 microphone towards you also if you need to. Whatever is
12 easier.

13 MR. HOJATI: Okay. Yes.

14 BY MR. MATHER:

15 Q Okay. So I know this is, you know, this is
16 almost -- it's over 15 years ago now, but were there other
17 kinds of income that got deposited into the account that
18 were not really sales or --

19 A Yeah. Sometimes with my business there was a
20 cash flow that we weren't getting. Some insurance
21 companies they pay us late. So I had to take and inject
22 money in myself in order to get over the hump as you put
23 it. So I would compensate for that, basically. But I
24 don't remember -- it says Hamid \$350,000. But based on
25 the record that I see, I put in \$350,000 in year 2005.

1 Q All right. Now, I'd like to turn to Exhibit 4.
2 You have that in front of you, Mr. Hojati?

3 A Yes, I do.

4 Q And can you describe what this represents?

5 A This represents after we got the audit. This
6 represents every RO by the RO number. It says how much
7 sales tax we collected, how much parts we purchased, how
8 much the sales tax on the parts that we purchased was, and
9 the paint material is a taxable item, how much paint
10 material was used for that particular RO. So but that
11 would --

12 Q And could you describe what kind of record this
13 would have been prepared from?

14 A This would of -- every car that comes in, we open
15 an RO number for it. And everything for that repair order
16 basically goes in that jacket, whether it's parts, whether
17 it's labor. We have to have a breakdown for the insurance
18 companies that we're involved in.

19 Q And what percentage of your repairs during this
20 time period would have been with insurance companies?

21 A I would say 90 percent, maybe more. Maybe
22 95 percent because we're a direct repair program for the
23 insurance company. They would send us work, and we
24 basically perform based on what they wanted.

25 Q So which insurance companies were you doing work

1 for at that time?

2 A Mercury Insurance for one. AAA was for another
3 one. It was a different insurance company, but these are
4 the most famous ones that we worked with, and we had a
5 contract with them. We were billing them directly. So,
6 basically, if the car comes into the shop, if it's got a
7 AAA insurance, we would ride over our own bill.
8 Basically, they would send the inspector to check to make
9 sure everything is accurate. But so that's how the RO was
10 made for that particular job.

11 Q And did the insurance companies pay much
12 attention to what you were billing them?

13 A Yes. They were -- that's why they send the
14 inspector out to check to make sure whatever they're
15 billing -- we're billing them is accurate.

16 Q And did -- did the billing -- did the underlying
17 documentation for the billing, did that need to be
18 included in this jacket for the insurance company?

19 A Not necessarily. But if they wanted it, it was
20 provided to them upon request. So we had the breakdown of
21 why they were billed so much. And let's say \$5,000 why
22 they billed -- why we billed them for \$5,000.

23 Q So if there was a question, then the documents in
24 the jacket were the backup to show why things cost what
25 they did?

1 A Yes, it was a backup for them.

2 Q And so those were the same jackets then that
3 reflect each RO number in this Exhibit 4?

4 A Yes, it did.

5 Q So what was the process then to prepare
6 Exhibit 4?

7 A The process was going through every jacket to
8 make sure everything is accounted for, what was the
9 insurance company was billed, which a total repair of the
10 bill, which also had a breakdown of how much we paid the
11 sales tax on, let's say parts and paint was taxable, how
12 much we paid to Board of Equalization for that particular
13 RO.

14 Q So there's a shaded column on this schedule.
15 What does that represent?

16 A So that's the total of paints that they purchased
17 for that particular RO and paint material. That's what's
18 taxable. That's what we paid to Board of Equalization.

19 Q So then in this first block of numbers the total
20 in that column is 28.7 percent. So that's the
21 taxable percent from that sample; is that correct?

22 A Yes, that's correct.

23 Q And that's the taxable percentage of the total
24 sale?

25 A Yes.

1 Q Okay.

2 A So it would vary based on the job that we had to
3 do on the car. So that's why you see a variance. Some of
4 it was just parts. So the percentage was higher, and some
5 of it was parts and labor. So the percentage is lower.

6 Q So what was the -- how is the labor charged
7 determined? Did the insurance company have to approve it?
8 What did the insurance company approve?

9 A So the labor charge, if it's out of line, the
10 insurance company pulls that particular RO for that car,
11 and they see if it's justified what we charged. So
12 it's -- they check us out at the beginning but not all the
13 time. After one or two years, they trust us with our
14 adjustment call based on the RO.

15 Q So if you could take me through the approval
16 process for the RO, what interaction with the insurance
17 company is there?

18 A So the interaction comes with the insurance
19 company comes if questions come up. Let's say I give an
20 example. RO 3512 in Santa Ana was in question. So the
21 insurance company wants to see all the parts for that
22 particular RO number and all the paint that was used. So
23 we had to provide for them all the parts, invoices, and
24 all the paints that we use for that car. And so --

25 Q And is there an estimate the insurance company

1 approves ahead of time, or how does that work?

2 A Yes. The estimate is approved by the insurance
3 company. The estimate is written by us, and it was sent
4 to the insurance company. That's how we get paid. So
5 based on what we get paid, we have the breakdown of each
6 repair order. We know how much we have to pay the sales
7 tax, how much we have to pay for paint material for that
8 particular RO.

9 Q And then do you get paid based on the estimate,
10 or do you get paid when the work is done and they can see
11 the work was -- the insurance company can see the work was
12 done?

13 A They can see the work is done. Usually we get
14 paid when the work is done. So the insurance company pays
15 us the complete estimate that we bill them. Let's say the
16 job was \$4,700 -- \$4,735.88. That came from our
17 estimates, and the insurance company just pays that for
18 that particular RO or repair order.

19 Q Okay. And so in this -- this Exhibit 4 has many
20 pages, but there's a reference to Santa Ana, to Culver
21 City. I don't know if T/L is something. Can you explain
22 what those references mean?

23 A Santa Ana plus total losses, so we counted all
24 the total losses. We don't do any repair on total losses.
25 The repair is beyond the cost of the car. So that's why

1 it's there.

2 Q So would a total loss get assigned an RO number?

3 A Yeah. It would get an assigned RO number, but we
4 don't do any repair for that. We just charge \$100 for the
5 insurance company, and that's part of the job we have to
6 do for that -- for the insurance company.

7 Q So that's just a fee though? That's not selling
8 anything to the insurance company?

9 A Yes. That's just the fee of the labor.

10 Q And so when in the process do you find out that
11 it's a total loss?

12 A So if the car is more than -- has more than
13 50 percent repair. Let's say the car is \$10,000 cost, and
14 the cost of repair is 6,000, that car is a total loss
15 unless we make arrangements with the insurance company
16 that we're going to repair that car no more than \$6,000.
17 So what the insurance company doesn't want to see is a car
18 if the cost is \$10,000 for the car, they don't want to see
19 an estimate of \$8,500 for the same car, if that makes
20 sense.

21 Q And who decides if it's a total loss?

22 A They decide. Our people decide whether it's a
23 total loss or not. Usually --

24 Q I'm sorry. Is it the insurance company that
25 decides or your people that decide?

1 A Well, our people. In the case of AAA, we have a
2 direct repair program for them. We would write the
3 estimate for them. We would say to AAA that this car
4 could be a total loss. And insurance company would agree,
5 and we make it a total loss at that point. We wouldn't
6 repair that car.

7 Q Okay. So it's kind of at the estimate phase is
8 you make an estimate of what the repair is?

9 A Yes. Yes.

10 Q And are there cases in which the estimate -- I
11 mean the actual repair goes over the estimate?

12 A I'm sorry. Repeat your question.

13 Q Well, are there sometimes does the actual repair
14 go over the estimate?

15 A Yes. Yes.

16 Q When does that happen?

17 A Well, that happens when the car is an obvious
18 total loss. Let's say cost of the repair is \$10,000, and
19 the cost of the car is \$5,000. So that's an obvious total
20 loss.

21 Q Okay. I mean, let's say the car is worth \$10,000
22 and you have an initial estimate of \$2,000. Do you ever
23 collect more than \$2,000? Do you ever get into the job
24 and find out that there's more damage or --

25 A Yeah. When we get to the job if it's more

1 damage, the \$2,000 job could be a \$2,500 job when
2 completed. And so that's --

3 Q Do you have to get the insurance company's
4 permission then to increase the estimate, or do you just
5 do it and they pay it?

6 A Yeah. They -- they look at the first estimate.
7 They send \$2,000, then they look at the supplement also,
8 \$500. But we have to get their blessing if there's a
9 supplement involved.

10 Q So if you're doing -- if you're doing an
11 insurance company repair, which you said was 90
12 percent-plus, you basically have to get approval in
13 advance before you can do the work and bill it from the
14 insurance company?

15 A Yes.

16 Q Now, can you describe, you know, your bookkeeping
17 or your accounting system that you had back in these
18 years?

19 A So the accounting system works with the
20 estimating system. We have a different estimating system.
21 It's got a different software, but it is
22 interactable [sic] with the accounting system. So
23 whatever is on the estimate. Let's say the repair is
24 \$2,000. It gets transferred to our accounting system,
25 which is the same amount \$2,000. And that's how we keep

1 track of how much AAA, let's say, they owe us. It's got a
2 breakdown per job because we open ROs, repair orders, for
3 all the repairs. So that's how the accounting system
4 works.

5 Q So going back to the example we had before, is
6 that when you make a \$2,000 estimate, the \$2,000 amount
7 automatically is transferred from your estimating system
8 or your job costing system into your accounting system;
9 right?

10 A Yes, it is.

11 Q And then what happens if you have to increase it
12 by \$500?

13 A So that gets deleted, and the new amount from the
14 estimating system comes over. Let's say the \$2,000 job is
15 an initial job and it's got \$500 additional work that we
16 have to do. So the final bill stays the same on the
17 estimating system, and then it gets transferred to the
18 accounting system for \$2,500.

19 Q And then do you use the accounting system to
20 track if you've been paid?

21 A Yes. Yes.

22 Q So the accounting system tracks the estimates and
23 the payments received; correct?

24 A Tracks the estimate from our estimate system, and
25 the payments are received by the mail -- or the insurance

1 company. And basically that gets posted to every RO once
2 we receive the payment.

3 Q And so how in the system then is the -- are the
4 sales tax returns generated?

5 A The sales tax is generated by the estimating
6 system. It tells us how much parts we use for that
7 particular repair order, and how much sales tax we have to
8 pay for that particular repair order. And the insurance
9 company pays for that too. So whatever we get paid from
10 the insurance company, we pay the Board of Equalization at
11 the end of the month.

12 Q So then the -- on the sales tax return you have
13 to report total sales, and you report taxable sales, and
14 then you report the taxes due. Where do those three
15 numbers come from in the system?

16 A From estimating system. It comes from the
17 estimating system that generates the estimate for the
18 insurance company.

19 Q And those essentially -- those numbers are then
20 essentially backed up by the papers in the jacket for each
21 other RO? Is that --

22 A Yes, it is.

23 Q Okay.

24 A And it is backed up by the parts we purchased for
25 that car and for the paint that we used for that car. So

1 those are the taxable items.

2 Q So did you have any reason to believe that your
3 accounting system during this period was not reporting the
4 sales or the sales tax collected accurately?

5 A No. No, I didn't think of that. So we're
6 heavily regulated by the insurance companies, and they
7 check to make sure they don't overpay or they don't
8 underpay. So we pay exactly what we're getting paid from
9 the insurance company.

10 Q And what other regulatory agencies review your
11 records and your business operation?

12 A Sometimes we have a complaint from one of the
13 customers. They don't like their repair. We have to --
14 we have to provide it for Bureau of Automotive. That's
15 the licensing agency for the body shops. We have to have
16 a license for that. And they send somebody over to check
17 the repair order for that particular car. And if
18 everything is okay, they say it's okay, and there is no
19 fine for us.

20 But if it's not okay, and they say it's -- to
21 work it out with the owner of the vehicle. So in this
22 case, we didn't have any violation with Bureau of
23 Automotive or the insurance company. That's a problem
24 with the insurance company too. When you get a violation
25 from Bureau of Automotive, we get -- the insurance

1 companies are concerned too that my shop is not doing the
2 proper job for them.

3 MR. MATHER: I don't believe I have any further
4 questions.

5 JUDGE RALSTON: Okay. Thank you.

6 Does Respondent have any questions for
7 Mr. Hojati?

8 MR. SHARMA: Department has no questions. Thank
9 you.

10 JUDGE RALSTON: Thank you.

11 Judge Wong, did you have any questions?

12 JUDGE WONG: I do have a few questions for
13 Appellant. Actually, maybe also for Mr. Mather too. You
14 mentioned earlier that there was a server with records on
15 that that was stolen. When was that stolen?

16 MR. HOJATI: It was stolen. The police reports
17 have the dates, but it was after the first started -- I'm
18 not sure of the date.

19 MR. MATHER: Yeah. It was during the audit. It
20 was, you know, so that the initial returns were prepared
21 from the records. But then at some point I think it
22 was -- I can't remember, and I couldn't find the police
23 report, but I think it should be in the Department's file.
24 But it was at some point during the audit. I think it was
25 either at the -- one of the lull periods in the first

1 audit or between the first and the second audit.

2 JUDGE WONG: Okay. I guess my question is kind
3 of like more of a big picture. Like, what records were on
4 that server that are missing that you would need to refute
5 the reaudit results? Because it seems like, you know,
6 Exhibits 1 through 4 or at least 2 through 4 are
7 summary -- summary records based on other records. It
8 seems like you have enough records to come up with these
9 summaries. So I was just wondering what records were
10 stolen that are missing that you needed to refute what the
11 reaudit results were. Or maybe I'm --

12 MR. MATHER: Well, I think, you know, what was
13 really lost in the theft of the server was kind of the
14 computerized summaries in the estimation system and in the
15 general ledger system, if you will, and the interface
16 between the two. That was all done through computer
17 programs. So we can do Exhibit Number 4 because that's
18 from the paper backup, but that's -- that's -- you know,
19 that meant going through every single one of the RO files,
20 the paper files, and recreating the record.

21 If we hadn't lost the system, we could have done
22 that for the entire universe of ROs and just track it all
23 through the system, and the audit could have really been
24 done like it should have been done, which is just tracking
25 through the system and making sure the system was

1 accurately transferring the information from the estimator
2 system to the general ledger system.

3 JUDGE WONG: Thank you. So is there anything
4 that's missing then that you needed to refute the reaudit
5 results, or did you have everything, even the backups?

6 MR. MATHER: Well, we had the backup.

7 JUDGE WONG: Okay.

8 MR. MATHER: I mean the backup wasn't lost. They
9 didn't steal the paper files. But like I say --

10 JUDGE WONG: Okay.

11 MR. MATHER: -- that put us in a position to
12 having to recreate a record, for example, from part of the
13 paper records instead of being able to show directly from
14 the computerized program that, you know, how this was all
15 done.

16 JUDGE WONG: Got it. Okay. Thank you. Also, I
17 had a question about the pre-bates, specifically, the
18 \$1.5 million pre-bates from your vendor -- your paint
19 vendor; is that correct?

20 MR. HOJATI: Yes.

21 JUDGE WONG: Which paint vendor was that?

22 MR. HOJATI: At that time we were using Dupont
23 that they paid one-and-a-half-million dollars ahead of
24 time.

25 JUDGE WONG: CDTFA had made an argument in its --

1 I think it's their -- one of their briefings where they
2 said they had already account -- like, made an adjustment
3 for that \$1.5 -- made a \$1.5 million adjustment. This is
4 in -- let's see. It's Exhibit I, page 3. It's near
5 the -- it's in the second half of the page, and it's one
6 of the bullet points. It's the second bullet point. And
7 so they mention they had made a \$1.5 million adjustment,
8 and they -- so I'll just read it.

9 The Appellant claims a rebate of \$1.5 million is
10 included as a taxable deposit with the Department's
11 transcription. However, the reaudit work papers include
12 an adjustment of \$1.5 million in April 2005 with the
13 corresponding notation stating, "Akzo Nobel Pre-Paid
14 Discount Structured as a loan." Without evidence to the
15 contrary, it is presumed these amounts are one in the
16 same.

17 Is -- are they one in the same?

18 MR. HOJATI: I'm not looking at the exhibit that
19 you're reading, but if it's -- I think the document that
20 I'm looking at is based on taxes that were filed in 2004,
21 '05, and '06. That's what the auditor is using. So I
22 don't know about this if they considered that. If they
23 would have, it should have been less in 2005, but it's
24 not. They use what was reported on a tax return,
25 \$14 million on tax return that was reported. So I don't

1 know if that's true or not.

2 MR. MATHER: I think it's fair to say there's
3 only one \$1.5 million. And I guess --

4 MR. HOJATI: Yeah.

5 MR. MATHER: -- I'm not sure what the point of
6 their statement is. It's --

7 JUDGE WONG: I guess -- I guess their point --
8 I'm going to put words in CDTFA's mouth, but they can
9 argue it themselves. It seems that they already took into
10 account this \$1.5 million pre-bate. I guess their answer
11 is like, the reaudit results already factor in this \$1.5
12 million. I think that's the bottom line.

13 MR. MATHER: Yeah. And I don't believe that's
14 true --

15 JUDGE WONG: Okay.

16 MR. MATHER: -- because I believe they were using
17 the federal income tax number --

18 MR. HOJATI: Yeah.

19 MR. MATHER: -- and the 1.5 was in that number.

20 JUDGE WONG: Okay. I just wanted to see what
21 your position on that was. And my final question is, do
22 you ever have jobs where the bill comes in under the
23 estimate, or is it always the estimate or over?

24 MR. HOJATI: The estimate is always a
25 conservative estimate. Let's say if we have a contract

1 with an auto club, we write a conservative estimate. But
2 it's always higher, not lower.

3 JUDGE WONG: Okay. Thank you. That's all the
4 questions I have --

5 MR. HOJATI: Yeah.

6 JUDGE WONG: -- for now.

7 JUDGE RALSTON: Judge Stanley, did you have any
8 questions?

9 JUDGE STANLEY: Yes, just a couple.

10 Mr. Hojati, with respect to Exhibit 4, you are
11 showing us that the sales tax included amounts and the
12 pre-bates. Is there anything that you have provided to us
13 that backs up that chart, because I assume that was
14 created by you or Mr. Mather?

15 MR. HOJATI: So I don't think Board of
16 Equalization wanted the evidence, but this chart that you
17 see is based on the paper filed that was open for that
18 particular repair order. So all the breakdown is there,
19 if it's needed. But that was never in question before.

20 JUDGE STANLEY: Okay. And what I'm specifically
21 referring to, though, are not the ROs as you were
22 discussing but the pre-bate amounts that are non-sales
23 amounts that were deposited for Enterprise and the
24 pre-bates and the tax. You have a chart with four pages.
25 Do you have -- and you have provided to us and/or CDTFA

1 the supporting documentation that would support those
2 numbers?

3 MR. HOJATI: Yes, I believe so.

4 JUDGE STANLEY: And if so, can you by any chance
5 show us where in the exhibits we might be able to find
6 that?

7 MR. HOJATI: For one-and-a-half-million dollars?

8 JUDGE STANLEY: That and/or the approximately
9 \$15,000 a month that you say was paint pre-bates and the
10 amounts that Enterprise was pre-bating. Do we have
11 anything that we can look at objectively other than what
12 your company or representative have prepared on this
13 particular exhibit, on this chart?

14 MR. HOJATI: I think that was provided for the
15 Board of Equalization at the time, the pre-bate
16 one-and-a-half-million dollars and the money we were
17 getting pre-bates from Enterprise. But to go back, I
18 don't know if I can find it, but it was provided.

19 MR. MATHER: That's my recollection also. These
20 schedules weren't prepared to be attached to the brief.
21 They were prepared in the course of the second audit.

22 JUDGE STANLEY: Okay. So you believe that within
23 the audit or reaudit that that information would be
24 available and would have been noted by the auditor --

25 MR. MATHER: I don't believe so.

1 JUDGE STANLEY: -- and started --

2 MR. MATHER: I mean, the reaudit was 12 years
3 ago, so I don't remember it like it was yesterday. But
4 yeah, that's my recollection.

5 JUDGE STANLEY: Okay. Gotcha. And then the only
6 other question I had were, with the list of invoices that
7 you did provide, what are the ones that say "missing" or
8 don't have any values in them?

9 MR. HOJATI: So some of the files were missing.
10 We couldn't locate them. So for Santa Ana, out of -- I'm
11 estimating -- 25 files, there were only 2 missing. So we
12 couldn't find that file, number 6 and 17 on Santa Ana. So
13 that could happen with human error. They would file it
14 differently. They would file it in a different place. I
15 don't know what the explanation was why we couldn't find
16 that file. But at the time we couldn't find it, so we
17 just put "Missing File" on the particular.

18 JUDGE STANLEY: Thank you. And then lastly, on
19 that same exhibit besides a couple being missing, there
20 are some that have zero values. Would those be the ones
21 you referred to as total losses, or is that something
22 different?

23 MR. HOJATI: If it's got a zero value, yes, a
24 total loss. So that means we didn't repair that car.

25 JUDGE STANLEY: Okay. I think that's all I have

1 for now. Thank you.

2 JUDGE RALSTON: Okay. And, Mr. Hojati, I just
3 wanted to clarify when we were discussing earlier the
4 example of, I think, the estimate for the repair was, say,
5 \$2,000, but maybe the repair actually ended up \$2,500 and
6 there's that additional \$500, did you say that the \$2,000
7 is what would be reflected in the estimating system even
8 though the actual amount ended up being \$2,500, and that
9 the sales and use tax returns were prepared from the
10 estimating system so they wouldn't pick up that extra
11 \$500; is that correct?

12 MR. HOJATI: That is not correct, Your Honor.

13 JUDGE RALSTON: Okay.

14 MR. HOJATI: So if we would have spent \$2,500 for
15 a job, that would get transferred to accounting from the
16 estimating system. So \$2,500 was billed to the insurance
17 company. And based on the file being closed at \$2,500, we
18 would pay Board of Equalization for \$2,500 sales tax.

19 JUDGE RALSTON: Okay. Thank you.

20 MR. HOJATI: You're welcome.

21 JUDGE RALSTON: Okay. Thank you.

22 We are ready for CDTFA's presentation.

23 Mr. Sharma, you have 30 minutes. Please begin
24 when you're ready.

25 MR. SHARMA: Thank you.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

11
12
13
14
15
16
17
18

19
20
21
22
23
24

25

1 for sales and use tax returns and reported gross receipts
2 for federal income tax returns revealed unexplained
3 differences of approximately \$752,000 for 2004, \$89,000
4 for 2005, and \$613,000 for 2006; Exhibit A, page 112.
5 Appellant claimed these differences to be pre-bates and
6 discounts from sales but did not provide documentary
7 evidence to support its claim.

8 The Department's analysis of sales journal for
9 the available period of October 2005 through March 2007,
10 revealed that recorded taxable sales exceeded reported
11 taxable sales by approximately \$501,000; Exhibit A,
12 page 140. The Department's compared reported taxable
13 sales for sales and use tax return billed the cost of
14 goods sold on federal income tax returns and calculated
15 negative markups of 49.1 percent for 2004, 32.64 percent
16 for 2005, and 30.87 percent for 2006; Exhibit B, page 187.

17 Negative markups mean reported taxable sales but
18 less than the cost of goods sold for all three years.
19 Based on the Department's analysis, it determined that
20 Appellant's books and records were unreliable and
21 inadequate for sales and use tax purposes. In the absence
22 of reliable and adequate books and records, the Department
23 used an indirect audit method to verify the accuracy of
24 reported amounts and to determine unreported taxable
25 sales.

1 The Department used markup method to determine
2 unreported taxable sales of approximately \$10.2 million
3 for the audit period; Exhibit B, page 170. However,
4 during the appeals process, Appellant argued that markup
5 method was not acceptable as it was based on the purchases
6 per federal income tax returns, which were overstated. So
7 the Department and Appellant agreed to use taxable sales
8 ratio method to verify the accuracy of the reported
9 taxable sales and determine unreported taxable sales.

10 The Department selected samples of 25 job folders
11 for each of the four locations for the month of
12 October 2004, November 2004, May 2005, and June 2005, and
13 75 job folders for each of the four locations for the
14 month of August 2006 and September 2006. The Department
15 examined and transcribed information from each job folder
16 provided by Appellant and determined audited taxable sales
17 ratio of approximately 37 percent for 2004 and 41 percent
18 for 2005 and 2006; Exhibit A, pages 61 to 111.

19 Due to lack of books and records for first
20 quarter 2007, the Department used taxable ratio for 2006
21 to project unreported taxable sales for first quarter
22 2007. The Department used gross receipts for federal
23 income tax return to determine audited total sales of
24 \$13.2 million for 2004, \$14.8 million for 2005,
25 \$16.9 million for 2006, and \$20.4 million for 2007;

1 Exhibit A, pages 61, 112, and 115 to 118. The Department
2 applied audited taxable sales ratio to the audited total
3 sales to determine unreported taxable sales of
4 \$7.8 million for the audit period; Exhibit A, pages 60 and
5 61.

6 The Department assessed a negligence penalty of
7 10 percent. Understatement is 72 percent because due to
8 failure to maintain and provide mandatory books and
9 records as required by Revenue & Taxation Code 70053,
10 70054 and Regulation 1698, and negligence in reporting
11 correct sales tax amounts to the Department. Appellant
12 contends that Notice of Determination is barred by the
13 statute of limitations. In response the Department
14 submits that it has issued a timely Notice of
15 Determination on October 10, 2008, which was supported by
16 a series of properly executed and signed waiver of
17 limitation extending the statute of limitations to
18 January 31, 2009; Exhibit H, page 271 to 283.

19 Appellant contends that its eligible for interest
20 relief under Revenue & Taxation Code 6593.5. In response
21 the Department submits that after reviewing all documents,
22 it recommends relief of interest of \$102,459.25 for the
23 period April 1, 2011, to October 31st, 2013, subject to
24 Appellant's filing of CDTFA Form 735, which is "Request
25 For Relief of Penalty, Collection Cost Recovery Fee and

1 Audit/Or Interest" as required by Revenue & Taxation Code
2 6593.5.

3 Appellant contends that Department incorrectly
4 computed taxable sales percentage and submitted an 18-page
5 worksheet with its additional brief dated November 7,
6 2019. In response the Department submits that it has
7 reviewed Appellant's worksheets and noted that Appellant
8 listed nontaxable sales higher and taxable sales lower
9 than what was determined by the Department without any
10 documentary evidence. Due to lack of documentary
11 evidence, the Department rejected Appellant's worksheet.
12 Please refer to Department's additional brief dated
13 December 6, 2019, Exhibit I, pages 314 to 340.

14 Appellant contends that the Department
15 inconsistently and incorrectly applied bank deposits
16 analysis in determining gross sales and submitted a
17 four-page worksheet with its additional brief dated
18 November 7, 2019. In response the Department submits that
19 audited total sales were determined using federal income
20 tax return data, and it did not include any bank deposits.
21 Even though bank deposits are listed on Exhibit A,
22 page 61, but they're not included in the final
23 calculations. Further, the Department analysis of bank
24 deposits and federal income tax returns for 2005 and 2006
25 revealed that reported gross receipts for federal income

1 tax return did not include sales tax.

2 Appellant contends that bank deposits need to be
3 adjusted for sales tax collected. In response the
4 Department submits that it does not include any bank
5 deposits for determination of audited taxable sales. In
6 fact, as previously explained, audit findings are based on
7 gross receipts by Appellant's federal income tax returns
8 and taxable sales ratio based on Appellant's job folders.

9 The Department has fully explained the basis for
10 deficiency and proved that the determination was
11 reasonable based on available books and records. Further,
12 the Department has used approved audit methods to
13 determine the deficiency and issued timely Notice of
14 Determination. Therefore, based on the evidence
15 presented. The Department request that Appellant's appeal
16 be denied.

17 This includes my presentation, and I'm available
18 to answer any question you may have. Thank you.

19 JUDGE RALSTON: Thank you.

20 I have a question for the Appellant. So the job
21 folders, if there were any changes made to the estimate
22 for that repair, that information would all be
23 contained -- would be added to the job folder?

24 MR. HOJATI: Yes.

25 JUDGE RALSTON: So when CDTFA did their audit and

1 looked at the job folders they would have had any
2 information as to whether there were any changes or the
3 estimate increased?

4 MR. HOJATI: Yes.

5 JUDGE RALSTON: What about did you ever have
6 situations where maybe -- like, maybe there was damage to
7 one side of the car or something, but then the customer
8 wanted, like, another part, another ding or dent or
9 something fixed as well, would that be, like, a separate
10 repair order with a separate job folder? Or would that
11 all be placed in the same job folder?

12 MR. HOJATI: No. It would be a separate job
13 order. If the customer -- that happens. If the customer
14 wants additional repair, that would be a separate folder.

15 JUDGE RALSTON: Okay. And so when CDTFA did
16 their audit, would they take note -- like, what would they
17 look at if there was, for example, an estimate that said
18 the repairs were going to be \$2,000. And then once they
19 got in and started doing the work and it shows that
20 there's actually \$2,500 worth of the repairs to do, is
21 that the number they would look at, the \$2,500 or --

22 MR. SHARMA: That's correct. Because when the
23 Department reviewed all the job folders, whatever
24 information was included, if there was revised audit,
25 revised -- I mean, estimate, the Department would have

1 transcribed the revised estimate in their worksheets. And
2 also based on Department's review, we noted -- as I
3 explained in my presentation -- there was a lot of taxable
4 items, which was lower amount on Appellant's worksheets
5 and higher on the Department's worksheets without
6 explanation why those amounts would have been lower than
7 the higher.

8 JUDGE RALSTON: Thank you.

9 Judge Wong, did you have any questions?

10 JUDGE WONG: Oh, I just wanted to confirm that
11 this was Appellant's first audit -- first and only audit,
12 I guess?

13 MR. SHARMA: That's correct.

14 JUDGE WONG: Okay. Thank you. No further
15 questions.

16 JUDGE RALSTON: Judge Stanley, did you have any
17 questions?

18 JUDGE STANLEY: Just one and it's probably just a
19 clarification question. Mr. Sharma, you said the
20 Department used the gross receipts from the federal income
21 tax returns, but you didn't say -- unless you said it
22 before -- that you excluded the nonbusiness deposits --
23 the nonbusiness amounts that were included on the fitters.

24 MR. SHARMA: So what the Department say is that
25 they looked at the gross receipts for federal income tax

1 returns. They also looked at bank deposits. They
2 compared the gross receipts and bank deposits. The bank
3 deposits, when they were transcribed, all the nontaxable
4 receipts, like, \$1.5 million as we said, if it's the same
5 transaction, was already adjusted.

6 Based on the bank deposit analysis when we
7 compared with the gross receipt based on the federal
8 income tax returns, we find that all those nontaxable
9 revenues which were claimed were already adjusted on the
10 bank deposits and the difference was determined through
11 the sales tax collected.

12 As I said, if you look at page 61 even though the
13 Department transcribes the bank deposits, but those were
14 never included in the final calculation, but those were
15 determined through the sales tax collected, and that was
16 the basis for the Department to determine that the gross
17 receipts per federal income tax return was net of sales
18 tax.

19 I hope I clarified that question. Thanks.

20 JUDGE STANLEY: And while I would ask the
21 Appellant then if that comports with what they believe
22 happened here.

23 MR. MATHER: No. I don't believe that is what
24 happened. Because, I mean, it's a case of apples and
25 oranges because the federal income tax return was prepared

1 on an accrual basis and comparing that to bank deposits,
2 which is fundamentally a cash basis determination, it's
3 never going to match exactly. And we don't believe that
4 the Department did accurately take those differences into
5 account.

6 JUDGE STANLEY: That's all that I have. Thank
7 you.

8 JUDGE RALSTON: And Mr. Mather I have a question
9 regarding relief of interest. I know that the -- I think
10 you mentioned earlier that the reaudit was like 12 years
11 ago. I know that Respondent prepared a table where they
12 went through and they listed the periods of kind of how
13 the -- where the appeal was in the appeals process. Were
14 there any other specific dates, or are you in agreement?
15 I know they conceded a certain portion and agreed that
16 relief of interest was due for that portion. Were there
17 any other specific periods or times that you could point
18 to and to say? Or are you just kind of saying that the
19 entire audit just took too long?

20 MR. MATHER: I'm not sure as a legal matter if
21 periods during the appeal are eligible for interest
22 relief, but this appeal has been pending over 12 years.
23 And, you know, I understand that they can take a while,
24 but 12 years is an astonishingly long period of time to be
25 in the appeals process. And so -- I mean, the original

1 petition, I think, was filed in 2008. So it's actually
2 14 years.

3 So to the extent that's available under the law,
4 which again I'm not saying it is, I just haven't
5 researched it. There's got to be some interest abatement
6 in a 14-year appeal.

7 JUDGE RALSTON: Thank you.

8 Oh, Judge Stanley.

9 JUDGE STANLEY: Just to follow up on the relief
10 of interest question Judge Ralston asked. Have you ever
11 submitted to the Department any request for relief from
12 interest signed under penalty of perjury stating the time
13 periods that you want to have interest relieved?

14 MR. MATHER: No.

15 JUDGE STANLEY: Okay. Thank you.

16 JUDGE RALSTON: Okay. Oh, Mr. Mather, you have
17 five minutes for your rebuttal.

18 MR. MATHER: Okay. Thank you.

19

20 CLOSING STATEMENT

21 MR. MATHER: The thing that strikes me about this
22 audit is the gross disparity between the asserted
23 additional taxable sales and the -- the determined
24 discrepancies when you're actually evaluating the items in
25 the taxpayer's records and in the federal income tax

1 return that relate to the income itself. The federal
2 income tax returns, which as I said were based on the
3 accrual basis, were prepared from the same accounting
4 system that the Department is quick to discard as being a
5 reliable measure of sales.

6 So we -- but even still and taking into account
7 the accrual cash differences, we're talking about tens and
8 thousands of dollars and hundreds of thousands of dollars
9 in differences on an annual basis, and somehow that leads
10 us to a \$10 million taxable sale determination. So, you
11 know, based on not on sales based or at least originally
12 on analysis of cost of sales, which was determined in the
13 appeals hearing to be an inaccurate number. And that's
14 why that determination was discarded.

15 But why are we going -- why are we coming up even
16 in the second audit with an estimate of \$8 million of
17 additional taxable sales when looking at the direct
18 evidence of additional sales, as I say, the bank deposits
19 and federal income tax returns and the sales journals that
20 were available in the first audit, they all come up with,
21 you know, error percentages in the single digits. And
22 instead we end up with these crazy numbers based on
23 guesses, you know, based on samples and estimates that are
24 disputed.

25 And so, you know, if you're talking about the

1 quality of the underlying evidence, clearly the testing
2 that they did of the numbers that were actually relevant
3 to sales, the federal income tax return gross receipts,
4 the sales journals entries, the bank deposits, those all
5 leave us with audit determinations that are a fraction of
6 what they've come up with these inflated estimates that
7 one which is tossed out and the other which is suspect.

8 And that's really our position as it gets to the
9 merits is let's, you know, okay. We can't -- we can't
10 recreate our records, you know, from the stolen computer
11 to audit that correctly. But at least the elements of the
12 audit that were actually based on sales and revenue and
13 deposits, those are the much better indicator of what
14 small error percentage there should be in this case, or
15 could be in this case, than these crazy projections.

16 And that's my only additional remark.

17 JUDGE RALSTON: Okay. Thank you.

18 I'm going to check with my Panel members one more
19 time.

20 Judge Wong, did you have any additional
21 questions?

22 JUDGE WONG: I did not. Thank you.

23 JUDGE RALSTON: And Judge Stanley?

24 JUDGE STANLEY: Just one clarification question.
25 It sounds, Mr. Mather, like you're not disputing the

1 percentages of taxable sales that they came up with using
2 your records; is that correct?

3 MR. MATHER: No, that's not correct.

4 JUDGE STANLEY: You are?

5 MR. MATHER: We are disputing their taxable
6 percentage, yes. And we're doing it primarily with our
7 Exhibit 4.

8 JUDGE STANLEY: Okay. And do you recall what
9 your average Exhibit 4 came up to?

10 MR. MATHER: It was in the low 30s instead of
11 over 40.

12 JUDGE STANLEY: Okay. That was it. Thank you.

13 JUDGE RALSTON: All right. Thank you everyone
14 for attending. We are ready to conclude this hearing.

15 Today's hearing in the Appeal of Platinum Equity
16 Partners is now adjourned, and the record is closed.

17 The judges will meet and decide your case later
18 on, and we will send you a written opinion of our decision
19 within 100 days.

20 Thank you.

21 (Proceedings adjourned at 2:19 p.m.)

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for
the State of California, do hereby certify:

That the foregoing transcript of proceedings was
taken before me at the time and place set forth, that the
testimony and proceedings were reported stenographically
by me and later transcribed by computer-aided
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 30th day
of December, 2022.

ERNALYN M. ALONZO
HEARING REPORTER