

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:)
)
LIQUOR LOCKER,)
) OTA NO. 20046132
)
APPELLANT.)
)

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Thursday, February 16, 2023

Reported by:

SHELBY K. MAASKE
Hearing Reporter

Job No. :
40542 OTA(B)

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15 TRANSCRIPT OF PROCEEDINGS, taken at
16 12900 Park Plaza Drive, Suite 300, Cerritos,
17 California, commencing at 10:50 a.m. and
18 concluding at 12:16 p.m. on Thursday,
19 February 16, 2023, reported by Shelby K. Maaske,
20 Hearing Reporter.
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25

1 APPEARANCES:

2
3 Panel Lead:

HON. JOSHUA ALDRICH

4
5 Panel Members:

HON. MICHAEL GEARY
HON. LAUREN KATAGIHARA

6
7 For the Appellant:

MARC BRAL
MARIA CRISTOBAL

8
9
10 For the Respondent:

RANDY SUAZO
Hearing Representative

11
12 CHRISTOPHER BROOKS
Tax Counsel

13
14 JASON PARKER
Hearing Representative

I N D E X

E X H I B I T S

(Appellant's Exhibits were received at pages 9)

(CDTFA's Exhibits were received at page 9)

1 Cerritos, California; Thursday, February 16, 2023

2 10:50 a.m.

3
4 ADMINISTRATIVE LAW JUDGE ALDRICH: This is Josh
5 Aldrich. We are opening the record in the appeal of
6 Liquor Locker Incorporated before the Office of Tax
7 Appeals, OTA Case No. 20046132. Today's date is Thursday,
8 February 16, 2023, and it's approximately 10:50 a.m. This
9 hearing is being conducted in Cerritos, California, and it
10 is also being live streamed on OTA's YouTube channel.

11 The hearing is being heard by a panel of three
12 administrative law judges. My name is Josh Aldrich, I'm
13 the lead for purposes of conducting the hearing. I'm
14 joined by Judge Michael Geary and Judge Lauren Katagihara.
15 During the hearing, panel members may ask questions or
16 otherwise participate to ensure that we have all of the
17 information needed. After the conclusion of the hearing,
18 we three will deliberate and decide the issue presented.

19 As a reminder, the Office of Tax Appeals is not a
20 court, it is an independent appeals body. We do not
21 engage in ex parte communication with either party. Our
22 opinion will be based off of the admitted evidence, the
23 relevant law, and the parties' arguments. We have read
24 your submissions, and we are looking forward to hearing
25 your arguments today.

1 Who's present for the Appellant?

2 MR. BRAL: Marc Bral.

3 ADMINISTRATIVE LAW JUDGE ALDRICH: Thank you.

4 MS. CRISTOBAL: Maria Cristobal.

5 ADMINISTRATIVE LAW JUDGE ALDRICH: Thank you.

6 Who's present for CDTFA or the Department?

7 MR. SUAZO: Randy Suazo, hearing representative,
8 CDTFA.

9 MR. PARKER: Jason Parker, chief of Headquarters
10 Operations Bureau, CDTFA.

11 MR. BROOKS: Christopher Brooks, counsel for
12 CDTFA.

13 ADMINISTRATIVE LAW JUDGE ALDRICH: Thank you.

14 Based on a scheduling conflict, OTA made a
15 substitute to the Panel on January 13, 2023, that we sent
16 out to the parties a notice to the tax appeals panel
17 revised.

18 Department, do you have any objections to the
19 substitution made to the Panel?

20 MR. SUAZO: No.

21 MR. BRAL: No.

22 ADMINISTRATIVE LAW JUDGE ALDRICH: Hearing no
23 objection to the substitution, we will move on to the
24 issue. According to the January 23, 2023 Minutes and
25 Orders as distributed to the parties, the issue statement

1 is whether Appellant has shown that adjustments are
2 warranted to the audited taxable measure. Does that issue
3 statement correctly summarize the issue before us,
4 Appellant's representative, Mr. Bral?

5 MR. BRAL: Yes.

6 ADMINISTRATIVE LAW JUDGE ALDRICH: And
7 Department?

8 MR. SUAZO: Yes, it does.

9 ADMINISTRATIVE LAW JUDGE ALDRICH: Thank you.

10 I noted in the e-mails prior to the hearing that,
11 Mr. Bral, you brought up interest relief?

12 MR. BRAL: Yes, I did.

13 ADMINISTRATIVE LAW JUDGE ALDRICH: And just to
14 specify the scope of the interest relief, it's only for
15 the period while the appeal was at OTA?

16 MR. BRAL: Yes.

17 ADMINISTRATIVE LAW JUDGE ALDRICH: All right. I
18 guess I'm not aware of any authority that allows for
19 interest relief for OTA to grant during that period, but
20 you are welcome to make that argument and we'll address it
21 in our written opinion.

22 MR. BRAL: What about for the period of COVID?

23 ADMINISTRATIVE LAW JUDGE ALDRICH: What about for
24 the period of COVID?

25 MR. BRAL: Yes.

1 ADMINISTRATIVE LAW JUDGE ALDRICH: Was the appeal
2 before the Office of Tax Appeals during the entirety of
3 that period?

4 MR. BRAL: I believe so, yes.

5 ADMINISTRATIVE LAW JUDGE ALDRICH: Like I said,
6 you're welcome to make the arguments and we will decide
7 that issue on the written.

8 Moving on to exhibits for the Department, the
9 Department's exhibits are identified alphabetically, A
10 through I, and then after the Minutes and Orders were
11 issued, the Department submitted Exhibits J and K. Those
12 submissions were timely. They also submitted a revised
13 exhibit index indicating Exhibits A through K.

14 Appellant, did you have any objection to the
15 admission of the Department's exhibits into evidence?

16 MR. BRAL: No, we don't.

17 ADMINISTRATIVE LAW JUDGE ALDRICH: Thank you.

18 And for the Appellant, on January 31, 2023, you
19 provided a 24-page exhibit, the top right has H-1 on it, I
20 believe, and you indicated that it supersedes the previous
21 submissions, and that would be your exhibits for this
22 hearing; is that correct?

23 MR. BRAL: That is correct.

24 ADMINISTRATIVE LAW JUDGE ALDRICH: All right.

25 Department, did you have any objections to

1 Appellant's exhibits?

2 MR. SUAZO: No.

3 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay. No
4 objections from either party regarding the respective
5 exhibits, we will admit CDTFA's A through K in the record,
6 and we will refer to Appellant's Exhibit as Exhibit 1.
7 That will be the entirety of the 24-page submission.

8 (All exhibits were received in evidence.)

9 ADMINISTRATIVE LAW JUDGE ALDRICH: All right. So
10 just to give everyone an idea of how the hearing is going
11 to proceed, we have allotted 120 minutes or two hours to
12 Appellant's opening presentation, and then the Department
13 will have approximately 20 minutes, then the Panel will
14 ask questions for approximately 5 to 10 minutes, and,
15 finally, the Appellant will have 10 minutes to make a
16 closing or rebuttal.

17 Like I said, these are estimates for calendar
18 purposes. If you need additional time, let me know at
19 that time and we can reassess what our calendar is like.
20 And regarding witness testimony, my understanding is that
21 neither party is presenting witness testimony; is that
22 correct, Mr. Bral?

23 MR. BRAL: That is correct.

24 ADMINISTRATIVE LAW JUDGE ALDRICH: Mr. Suazo?

25 MR. SUAZO: Yes, sir.

1 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay.

2 And does either party have questions before we
3 move on to presentation? Mr. Bral?

4 MR. BRAL: No, I don't.

5 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay.

6 Mr. Suazo?

7 MR. SUAZO: No question.

8 ADMINISTRATIVE LAW JUDGE ALDRICH: So if you are
9 ready to proceed, Mr. Bral.

10 MR. BRAL: I have a question before I begin. The
11 question is if the Department has reviewed the exhibit we
12 submitted on January 31st, and if they need to address it?
13 Because I don't really have to narrative as such. If we
14 can discuss the exhibits, and if they have any comments --
15 if they want to present their comments. Because the
16 exhibits are self-explanatory. It will help me going
17 through the whole thing --

18 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay.

19 MR. BRAL: -- if that would that work?

20 ADMINISTRATIVE LAW JUDGE ALDRICH: If you want to
21 go through the whole thing and let us know what's
22 important about those exhibits, or what's relevant to the
23 issue, that would be great.

24 MR. BRAL: Okay. The main point of this audit is
25 the way taxable purchases was arrived at, and it basically

1 relied on vendors' verification. Vendors' verification
2 was done not for the entire audit period, it was done for
3 two years, 2012 and 2013. The six months of 2011 wasn't
4 covered and neither was the six months of 2014.

5 There is a problem with the way vendors'
6 verification information was used, and that is in the fact
7 that certain vendors, they included in their purchase
8 verification, invoices that were not yet paid by the
9 taxpayer. They were paid in the following tax year.

10 The assessment includes those invoices as part of
11 that year's purchases for taxable purchases, and they also
12 included part of the general ledger purchases. So the
13 taxable purchases was a combination of the vendors'
14 verification and the purchases for the general ledger, and
15 that presents a duplication of payments.

16 One, the invoices were not paid yet in the tax
17 year in question; and, two, those same invoices were paid
18 in the following year and they're included in the
19 following year's taxable purchases. So we have that issue
20 that taxable purchases for vendors' verification is not
21 really reliable.

22 In addition, because 2011 and '14 were not part
23 of the purchases verification or vendors' verification,
24 the Department, by assumption, they arrived at a
25 percentage of error, and they applied it to 2011 and '14,

1 which is really not acceptable. This was all done when
2 the taxpayer's records were incomplete -- the bank records
3 were incomplete, the general ledger was incomplete, and
4 the auditor left the audit in midstream to go back to the
5 military, and the succeeding auditors needed time to grasp
6 the issue of the audit. So it went on a long journey, so
7 to speak, for several years.

8 The taxpayer's records, once they become provided
9 and available, were not used by the Department. The
10 Department, in a way, refused to use those actual records.
11 They continued with their projection and their assumptions
12 at arriving at the taxable purchases and the markup, and,
13 finally, the taxable sales.

14 If I may refer you to Exhibit R-3 for 2012. It
15 shows taxable purchases per auditor of \$1,043,228.00. We
16 are removing from that \$151,434.00. These are invoices
17 from Sutter Wine and Spirits that were paid in 2013, but
18 were included in the 2012 purchases by the auditor.

19 We are also removing \$10,800.00 as transfer of
20 purchases to inventory. We are also deducting 4 percent
21 as pilferage, theft, and self-consumption. This is a
22 little bit higher than the Department's 3 percent
23 deduction. We arrived at the total purchases of
24 \$824,381.00, by applying a markup of 30 percent, and we
25 arrived at a taxable sales of \$1,071,695.00, and

1 contrasted with the reported taxable sales, we have a
2 difference of \$125,423.00.

3 Moving on to 2013, taxable purchases by auditor
4 were \$1,357,325.00. Again, we had the same problem in
5 having invoices that were not paid in 2013, but included
6 in the vendors' verification and the auditor's taxable
7 purchases figure. We removed those and the amount is
8 \$121,598.00, per Exhibit R-7. We also deduct \$6,600.00 as
9 purchases transferred to inventory.

10 Again, by deducting 4 percent as pilferage,
11 theft, and self-consumption, which is \$49,165.00, we
12 arrived at a corrected taxable purchases of \$1,179,962.00.
13 At a 30 percent markup, that gives a sale \$1,533,951.00,
14 contrastedly reported taxable sales of \$1,108,764.00, it
15 shows a difference of \$425,187.00. So so far, we are
16 acknowledging differences in both 2012 and 2013.

17 For 2014, for the six months, we rely on the
18 purchases or profit and loss because there is no vendors'
19 verification, so we got the actual profit and loss
20 statement for purchases. Again, deducting 4.4 percent for
21 nontaxable purchases and 4 percent for pilferage, theft,
22 and self-consumption, we arrived at a corrected taxable
23 purchases of \$572,449.00, at 30 percent markup, that gives
24 rise to sales of \$1,008,505.00.

25 Removing the nontaxable sales at 12 percent, that

1 figure comes down to \$887,485.00. We have tried to prove
2 this in two different ways. One, by the purchases method
3 and, second, by the sales method. Under the purchases
4 method, the taxable sales was \$744,183.00, reported
5 taxable sales was \$803,734.00, which results in over
6 reporting of \$59,551.00. But if we use the sales method,
7 the taxable sales being \$887,485.00, less reported taxable
8 sales of \$803,734.00, shows an under reporting of
9 \$83,751.00.

10 We move on to the six months of 2011. Again,
11 purchases per actual purchase on the profit and loss
12 statement was \$553,656.00, and that's 4.4 percent
13 nontaxable purchases of \$24,609.00, and less 4 percent
14 pilferage, theft, and self-consumption of \$22,146.00,
15 results in a figure of \$506,901.00. And, again, at
16 30 percent markup, it shows sales of \$658,971.00. Sales
17 for profit and loss was \$696,010.00, less nontaxable sales
18 of 12 percent, \$83,520.00, results in a total figure of
19 \$612,490.00.

20 Now, tying all these exhibits, R-2, R-3, and R-4,
21 back to Exhibit R-1, which is a summary statement. It
22 shows in 2012, there was a difference of \$125,423.00. In
23 2013, the difference was \$425,187.00. And in the six
24 months of 2011, there was a difference of \$201,648.00.
25 And in the six months of 2014, the difference was

1 \$83,751.00.

2 A grand total of all these differences is
3 \$836,009.00. The taxpayer over reported the taxable sales
4 in 2016 by \$216,881.00, which the Department has
5 apparently accepted. Adopting that over payment results
6 in a final figure of additional taxable measure of
7 \$619,128.00. This is our summary statement. I don't know
8 if the Department wants to make any comments so that I can
9 answer.

10 ADMINISTRATIVE LAW JUDGE ALDRICH: So, typically,
11 the Department, if they chose to incorporate their
12 arguments regarding the submission, they would do that
13 during their time. Is that it?

14 MR. BRAL: There's no question on these exhibits?

15 ADMINISTRATIVE LAW JUDGE ALDRICH: Right now,
16 it's your time to present your argument as you best see
17 fit for the Appellant, and you can reference both your
18 exhibits and the Department's exhibits in making that
19 argument.

20 MR. BRAL: Well, once again, I'd like to
21 reiterate that this was not a conventional audit. The
22 audit -- I don't remember, but apparently, it started in
23 2014 by the auditor, Gino Guzman. And he seemed to be
24 doing a fine job -- a very methodical approach to doing
25 the audit. He asked questions. It was a field audit.

1 We were getting along fine. Unfortunately, he
2 had to leave. He went back to the military after his
3 departure. Things didn't work out correctly. What was a
4 field audit changed to a desk audit. We didn't see any
5 auditors after this. We did not have the benefit of
6 working with a field auditor at close range to provide
7 documents and to resolve issues. So the Department just
8 relied on their testing -- indirect testing, theories,
9 hypotheses, projections and assumptions, and all behind
10 back doors. This is not acceptable.

11 A conventional audit, if it is supposed to be
12 done as a field audit, it should continue to conclusion.
13 It should be done with the taxpayer's representatives in
14 ways to not only gather information and resolve issues,
15 but to speed up the audit. Had Gino Guzman stayed on this
16 audit, this would have finished within six months at the
17 most because he was right on the audit. He knew where he
18 was going with it.

19 There were documents that were not yet available.
20 They became available when he left, and by that time, it
21 was too late because the Department did not want to use
22 the actual taxpayer's records. Unfortunately, this is the
23 way this audit turned out. We believe it's damaging to
24 the taxpayer. It's always better to interact with the
25 taxpayer or its representatives during the course of an

1 audit to resolve issues, to ask questions, to sort out
2 differences, and to come to a final resolution. That
3 wasn't done.

4 The Department stubbornly pursued their methods,
5 whatever they were, indirect testing, projections,
6 assumptions, which were wrong in many, many cases, and we
7 have got a cabinet full of exhibits and evidence and
8 documents and records. It's beyond that now.

9 Something which wasn't done, and in any audit
10 that alleges under reporting of taxable sales, is to
11 perform a physical observation of the daily sales. This
12 wasn't done. This is a universally accepted method of
13 verifying a business's daily sales. I used to be an
14 auditor in England. We relied on that. I have had other
15 audits by organizations and by CDTFA, and in almost every
16 audit, a physical observation was performed, but not in
17 this one.

18 I don't think the auditors even visited the
19 taxpayer's place of business. Had they done so, they
20 would have realized this business location is in a remote
21 spot on Sunset Boulevard near Crescent Heights, far from
22 foot traffic. Almost the foot traffic is nonexistent.
23 What does that say? That says there are not too many
24 people walking in to purchase something.

25 That also means when you don't have walk-ins,

1 cash sales is a small part of daily sales. The other
2 thing that was wrongfully assessed is the fact that out of
3 the total sales, credit card sales are totally accounted
4 for. They are in the bank statements. They're all
5 deposited. So the alleged \$1.8 million under reporting of
6 taxable sales could only mean one thing, under reported
7 taxable cash sales in a business that, at the best of
8 times, in the best of days, didn't have more than
9 \$1,000.00 in cash sales.

10 If you project that into three years, and being
11 open seven days a week, this is not even possible in any
12 alternative reality. How could that be possible? How?
13 Why didn't the Department observe the daily sales? That's
14 elementary audit procedure. Any auditor will do that.

15 Obviously, the Department also assumes that all
16 purchases get sold. Nothing is added to inventory. They
17 allow a minimum amount for theft, pilferage, and
18 self-consumption. There were instances where the unit
19 prices of goods were incorrectly assessed, because the
20 auditor assumed or estimated that there were more units
21 per pack or per box than they actually were in. That
22 results in a higher markup. If you have six units per
23 pack and the auditor assumes it's 12 per pack, that has an
24 impact on the markup.

25 Obviously, the taxpayer also, in the later years,

1 started selling goods in bigger quantities at a reduced
2 price, which is referred to as bulk sale. We have
3 demonstrated by producing sales records for those sales
4 that show contrast to the purchase price, the markup was
5 lower than the average sales. And one very important fact
6 about this taxpayer, he hardly ever sells anything at
7 shelf prices.

8 The Department is welcome to go and visit his
9 place of business and observe how many goods he has sold
10 at the display prices. His customers are by and large his
11 friends. His customers are of many years standing. They
12 all get a discount. He's a friendly guy. I myself have
13 been to his store many times, and I ask for a bottle of
14 single malt whiskey which is priced at, maybe, \$80.00, and
15 he would take \$60.00 from me, not because I'm his CPA,
16 that's the kind of friendly guy he is.

17 This is not an argument to win over your sympathy
18 for him, but it's a fact. Very few items are sold at
19 actual display prices. In addition, every liquor store
20 such as this, they have seasonal or occasional sales or
21 promotional items. They put certain champagnes at very
22 competitive prices for sale. I mean, none of these
23 different idiosyncrasies about this taxpayer are taken
24 into account by the Department's very abstract indirect
25 methods and testing measures.

1 Again, I apologize, but I need to reiterate that
2 problem with respect to the vendors' verification, and
3 that is a very material discrepancy, in that the
4 Department relied on vendors' verification information
5 that was based on invoice sales.

6 The taxpayer's records are done on a cash basis.
7 The general ledger records purchases as they have been
8 paid, not as accrued. That is not his method of
9 accounting. So if they did the vendors' verification,
10 they should have excluded the invoices that have not been
11 paid in that year.

12 Let's say in 2012, they should not have included
13 invoice sales to the taxpayer because they were paid in
14 the subsequent year and included in the subsequent year
15 purchases.

16 When you don't segregate the cash accrual and you
17 mix accrual with cash, you mix vendors' verification with
18 the journal ledger, which are both on different methods at
19 different times, you get the result that the Department
20 produced. It's given rise to a false liability that
21 doesn't exist. I think we have been more than fair in
22 acknowledging that the discrepancies in the audit years,
23 and it appears that they are all stemming from accounting
24 errors.

25 In 2013, there was under reporting in sales tax

1 returns of about \$200,000.00 in one year in the audit
2 period, and the other discrepancies were an incorrect
3 breakdown of the total sales between taxable sales and
4 nontaxable sales. So in some of the quarters of the sales
5 tax returns, the amount of nontaxable sales were
6 overstated. So we corrected all of that. It's taken us a
7 long time, but we have come up with a final summary, which
8 presents our case. I'm done.

9 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay. So I do
10 have questions for you, Mr. Bral, but I will reserve those
11 until after the Department presents. I'll be coming back
12 to those; okay?

13 MR. BRAL: Okay.

14 ADMINISTRATIVE LAW JUDGE ALDRICH: Mr. Suazo, are
15 you ready to present?

16 MR. SUAZO: Sure.

17 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay.

18 MR. SUAZO: Appellant is a corporation operating
19 a liquor store in Los Angeles since March 2002. The
20 Department performed an audit examination for the period
21 from July 1st, 2011, through June 30, 2014.

22 This is the Appellant's first audit. Appellant
23 reported gross sales of \$4.2 million and claimed
24 deductions of \$628,000.00 for exempt food sales and
25 \$295,000.00 for sales tax included.

1 This resulted in taxable sales reported of
2 roughly \$3.3 million. Appellant provided the following
3 records, federal income tax returns from 2011, 2012, and
4 2013; bank statements from only one of four bank accounts;
5 general ledgers for 2011 through 2013; purchase invoices
6 for only November 2014; and cash register Z tapes for six
7 days in January 2016.

8 Appellant did not provide detailed cash register
9 tapes, purchase invoices or records of cash payouts for
10 the audit period. 1099(k) data was obtained from the
11 Department's data analysis section. A comparison of
12 federal income tax returns to sales and use tax returns
13 for 2011 through 2013 disclosed a difference of around
14 \$165,000.00 for 2013, Exhibit E, page 181.

15 Analysis of Appellant's bank deposits to reported
16 sales revealed a difference of \$530,000.00 for the audit
17 period, Exhibit E, page 97. Appellant has three other
18 bank accounts, however, no bank statements from these
19 account were provided, Exhibit E, page 100. 1099(k) data
20 shows credit card sales of \$3.256 million for third
21 quarter 2011 through fourth quarter 2013.

22 Appellant reported total sales of \$3.266 million
23 for the same period, which means the Appellant only
24 reported about \$10,000.00 in cash sales for the same
25 period, Exhibit E, page 98.

1 Further analysis shows that reported total sales
2 for six of the 12 quarters reviewed were either less than
3 or almost the same as credit card deposits which means no
4 cash sales reported to the Department. Based on provided
5 bank statements and Department's 1099(k) data, reported
6 credit card sales ratio was 99.69 percent, which is
7 extremely high for a liquor store, Exhibit E, page 98.

8 Since Appellant did not provide purchase invoice
9 and purchase accounts, the Department surveyed Appellant's
10 vendors to verify the accuracy of total purchases as
11 reported on the federal income tax returns. Based on a
12 review of the general ledger, the Department sent letters
13 to 25 vendors. 10 vendors responded to the Department
14 with information about their sales to the Appellant from
15 2011 through 2013.

16 Based on the responses for the 10 vendors, the
17 Department established taxable purchases of \$2.23 million,
18 Exhibit E, page 62, columns D to M. And nontaxable
19 purchases of \$65,000.00 through years 2012 through 2013,
20 Exhibit E, page 62, columns AD to AG. Due to lack of
21 responses from the other vendors, the Department used the
22 general ledger information to establish additional taxable
23 purchases of around \$120,000.00, there's Exhibit E,
24 page 62, columns N through AD. The audit taxable
25 purchases totaled \$2.35 million for 2012 and 2013, Exhibit

1 E, page 63, column C.

2 It should be noted that the audited total
3 purchases of \$2.46 million, Exhibit E, page 102, is
4 \$585,000.00 more than the Appellant's reported purchases
5 of \$1.875 million for the two-year period, Exhibit E,
6 page 101.

7 The Department compared audited taxable
8 purchases to reported taxable sales and arrived at a
9 combined markup of negative 12.58 percent for 2012 and
10 2013, Exhibit E, page 61. Based on the above analysis,
11 the Department determined that the Appellant's books and
12 records were incomplete and inadequate for sales and use
13 tax purposes, so an indirect audit method was used to
14 verify taxable sales.

15 The auditor conducted a shelf test on January 8,
16 2015, using available purchase invoices from
17 November 2014, and some prices provided by Appellant's
18 employee. This would include both regular selling prices
19 and sales prices, as was normally done. Normally what
20 happens is if there's an item on sale, it gets included
21 into the markup process. The weighted markup percentage
22 of 37.70 was established, Exhibit E, page 74.

23 The audited taxable purchases of \$2.35 million
24 were adjusted for 1 percent for shrinkage/pilferage to
25 establish cost of goods sold. The weighted markup factor

1 established through the shelf test was applied to the
2 adjusted cost of goods sold to compute audited taxable
3 sales of \$3.2 million for a 2012/2013, two-year period.

4 Audited taxable sale were compared to reported
5 taxable sales of \$2.055 million, and a difference of
6 almost \$1.15 million was revealed. Error rates were
7 calculated, Exhibit E, page 60, and applied to the
8 respective periods to establish audited taxable sales of
9 approximately \$5.2 million.

10 When compared to the reported taxable sales of
11 around \$3.3 million, the difference for the audit period
12 of more than \$1.85 million was disclosed which computed to
13 overall error rate of 56 percent, Exhibit E, page 59.
14 Appellant submitted additional evidence during the appeals
15 process. Department reviewed all additional documents
16 submitted by the Appellant.

17 During the review, it was noted that Department
18 had used the wrong form to calculate the markup, and the
19 computation used was a sales markup percentage and not the
20 markup percentage for four categories in the markup
21 process, the liquor, wine, cigarette, and sundry items,
22 were incorrectly marked up.

23 The sales margin is based on the sales less cost
24 divided by the sale s, versus the markup computation which
25 is sales less cost divided by cost. And the sales margin

1 computes to a lower percentage since it is typically
2 divided by a higher base. This error benefitted the
3 Appellant.

4 The Department conducted a second re-audit to
5 correct these calculation errors and considered additional
6 documents submitted by the Appellant to adjust the
7 beginning and ending inventory, and to allow
8 self-consumption of 2 percent, Exhibit G, pages 248 to
9 257.

10 Re-audit findings resulted in additional taxable
11 sales of \$2.18 million, Exhibit G, page 251, and
12 self-consumption subject to use tax of \$69,000.00, Exhibit
13 G, page 276. Total understatement was determined to be
14 more than \$2.2 million, Exhibit G, page 248, which was
15 around \$395,000.00 more than the original notice of
16 termination of approximately \$1.86 million.

17 Since any additional assessment would be added,
18 the statute under Regulation Taxation Code 6563, the
19 Department did not process the second re-audit and
20 maintained the original assessment of \$1.86 million,
21 Exhibit G, pages 238 through 241.

22 The audit findings are reasonable. Based on
23 1099(k) data, the Department established total credit card
24 sales of almost \$3.25 million for the period from
25 July 1st, 2011, through December 31, 2013. Audited total

1 sales for this period were more than \$4.8 million. The
2 credit card sales ratio is roughly 68 percent of gross
3 audited sales. And while 68 percent credit card ratio is
4 higher than expected for a liquor store during this time
5 period, it demonstrates that the audit results are
6 reasonable, Exhibit A, page 5 and Exhibit B, page 35.

7 During the appeals process the Appellant
8 submitted various contentions and provided supporting
9 documents but none of the documents are sufficient or
10 reliable enough to review the audit findings. The
11 Appellant contends that the weighted markup is too high
12 because Appellant had a significant number of bulk sales
13 of liquor sold at a lower markup.

14 To support their position, the Appellant provided
15 some sales receipts, a few purchase invoices, and purchase
16 statements. One significant problem with those documents
17 is that all purchase invoices were well after the sales
18 receipts, Exhibit G pages 262 and 263, and Exhibit K,
19 pages 333 through 354.

20 The gaps between sales and purchase documents
21 ranges from five months to 61 months, whereas the
22 Department shelf test is done by comparing selling prices
23 to purchase prices all within a purchasing cycle.
24 Therefore, the Department rejected some of Appellant's
25 markup calculations as unreliable and not representative

1 of Appellant's business.

2 In addition, using the Appellant's own federal
3 income tax returns for 2011, 2012, and 2013, tax gross
4 sales are \$3.7 million, Exhibit E, page 181, line 40, and
5 the recorded cost of goods sold are \$2.6, Exhibit E, page
6 181, line 17. This computes to a 41.75 recorded markup.

7 The Appellant's 41.75 mark up is higher than the
8 37.7 taxable markup used in the audit findings. The
9 taxable purchases accounted for 95 percent of purchases,
10 and this is another indicator that the audit findings are
11 reasonable.

12 Regarding the Appellant's contention that audited
13 taxable purchases are not correct and includes some
14 nontaxable purchases. The Department contends that 95
15 percent of audit tax purchases are based on data provided
16 by third-party vendors which is more accurate and more
17 reliable than purchases recorded on the federal income tax
18 returns.

19 The remaining 5 percent of audited taxable
20 purchases are based on general ledger data provided by the
21 Appellant. Despite various requests, Appellant has not
22 provided purchase invoices as they relate to vendors
23 surveyed period of years 2012 and 2013.

24 Furthermore, a review of recorded taxable and
25 nontaxable sales for the second quarter of '14 and through

1 fourth quarter of '15, which happened after Department's
2 first contact with Appellant on July 16, 2014, shows
3 Appellant reported nontaxable sales ratio to total sales,
4 4.34 percent for second quarter 2014, and 5.43 percent for
5 third quarter 2014. So the reported nontaxable sales
6 ratios appeared to be in line with the audit findings.

7 Appellant contends that purchases recorded on
8 federal income tax returns are different from vendors'
9 surveys due to timing. Appellant contends books and
10 records on a cash basis whereas vendors' survey is on an
11 accrual basis. Purchases available for sale when received
12 by Appellant -- purchases are available for sale when
13 received by Appellant and not when paid, so vendor survey
14 data is more reliable and accurate than federal income tax
15 data.

16 Moreover, Appellant has not submitted any
17 sufficient verifiable documents to show that audited
18 taxable purchases provided by vendor are incorrect.
19 Appellant contends that the audit was not done based on an
20 observation test. Observation test is a standard and
21 acceptable audit procedure for a restaurant bar or a
22 marijuana dispensary audit.

23 In the Department's experience, the markup method
24 is the best approach to use for a liquor store. Appellant
25 contends that the audit should be done based on bank

1 deposits. Appellant did not provide any sales records.
2 The Department's analysis shows that not all cash sales
3 were deposited into the bank account. Audit comments
4 showed that the Appellant stated they had multiple bank
5 accounts, yet only one bank account was provided, Exhibit
6 E, page 100.

7 In the absence of detailed sales records, cash
8 payout records, and all bank statements, an audit
9 performed using bank deposits is not practical. Appellant
10 contends the Department should have used different testing
11 to compute taxable sales. The two tests proposed by the
12 Appellant were not feasible under the circumstances. And
13 explained, the markup procedure used by the Department is
14 reasonable.

15 Based on the above, the Department has fully
16 explained the basis for the deficiency and proved the
17 determination was reasonable based on the available books
18 and records, and the Department has used approved audit
19 methods to determine the deficiency. Therefore, based on
20 the evidence presented, the Department requests that the
21 Appellant's appeal be denied.

22 Concerning the two totals -- this was based on
23 the Minutes and Orders. Concerning the two totals on
24 1R12E-2E, that's Exhibit F, pages 232 and 233. The
25 percentage shows a markup of taxable items only at 65.69

1 percent, which is what was used in the weighted markup.
2 So the 65.69 is for taxable items only. And the 67.01
3 percent markup included nontaxable drinks that was not
4 used in the updated weighted markup calculations.

5 This was used in the original audit or revised
6 audit. This concludes our presentation. I'm available to
7 answer any questions you may have.

8 ADMINISTRATIVE LAW JUDGE ALDRICH: Thank you.

9 For the Department, can you tell me what the
10 percentage for pilferage, theft, and self-consumption was?

11 MR. SUAZO: Well, what was going to happen is
12 they were going to do a re-audit and they were going to
13 increase the self-consumption to 2 percent and the
14 pilferage was going to remain at 1 percent, because
15 basically no data was provided to show that this guy had a
16 higher pilferage rate than normal.

17 However, because of the error that was found in
18 the markup process for liquor, wine, cigarettes, and
19 sundry items, the markups increased, so when they
20 recomputed the whole thing, they found that the original
21 assessment was actually understated, but they reverted
22 back to that original statement.

23 ADMINISTRATIVE LAW JUDGE ALDRICH: I see. And
24 for -- above 1 percent and 2 percent for spoilage or
25 self-consumption, theft, what kind of information would

1 the Department expect to receive?

2 MR. SUAZO: Police reports, something of that
3 nature -- insurance claims, videotape surveillance, I
4 suppose, might help.

5 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay. And I'm
6 going to turn to Appellant's representative.

7 Mr. Bral, how did you come up with the 4 percent
8 figure for pilferage, theft, and self-consumption?

9 MR. BRAL: Actually, the Department -- we have it
10 in e-mails from the Department. They agreed to 3 percent
11 in an e-mail. And everything I just heard, with all due
12 respect, is all old news. It's the initial work of
13 indirect testing of the Department and rehashed today.

14 The fact is this -- and I have to correct the
15 record -- the taxpayer went through some changes in his
16 business, during the audit period, he opened new bank
17 accounts. Our office was unaware of the new bank
18 accounts. They eventually came to light, we got copies of
19 all of the bank statements. And there were a lot of
20 withdrawals from the bank to pay certain vendors who had
21 paid in cash in exchange for a 2 percent cash discount.

22 All of this was made available to us in the early
23 days of the audit. We approached the audit department
24 that we have full and complete records. They refused to
25 take them. They refused to look at them. They continued

1 to concentrate on what the Department has accepted on
2 their indirect testing methods, the taxable purchases,
3 which is largely incorrect.

4 We appealed to the Department several times. I
5 spoke to different officials of CDTFA. Finally, two
6 official -- and we have it in writing, the e-mails -- they
7 recommended the case to be re-audited, and it never
8 happened. They did some cosmetic revisions behind their
9 desks and they moved on with the same projections and
10 assumptions. No reference to reality of the taxpayer's
11 situation.

12 If the actual records of the taxpayer are
13 available, why did the Department just state that they
14 could not get them? That they only got one bank account
15 records? They didn't get the general ledger. They didn't
16 get anything. It's not correct. We had all of the
17 records. I submitted to you copies of the profit and loss
18 statements and the balance sheet for the three-year audit
19 period, and those are based on taxpayer's actual records,
20 they're not based on projections or assumptions or
21 indirect testing.

22 The bottom line is this, and I'll go there again.
23 \$1.8 million alleged under reporting of sales, that
24 translates to, right away, the taxable cash sales is not
25 what the Department just stated, which said 3 percent of

1 total sales. It's not correct. Records show it's not
2 correct. It's almost around the industry average.

3 How does the Department -- the proof of the
4 pudding is this, \$1.8 million additional taxable sales
5 means \$1,000.00 of additional taxable sales per day for
6 the audit period, on top of the \$700.00 a day that was
7 reported in cash sales, which the Department doesn't
8 recognize, and that is in the records. The average daily
9 sales over the audit period averages about \$700.00 a day.

10 The alleged assessment means additional \$1,000.00
11 of taxable cash sales per day. This is -- I'm sorry to
12 use this language -- beyond absurdity. It doesn't happen
13 in that store. It's never happened in that store. How
14 can that store do \$1,700.00 to \$2,000.00 a day in cash
15 sales where there is hardly any foot traffic? Who else
16 pays cash and -- you know, nowadays, people use credit
17 cards.

18 The Department is complaining about the ratio
19 between credit card sales and cash sales. The trend has
20 been towards use of credit cards. People are using less
21 cash. Okay. Those are, you know, some older times during
22 the audit period 2012, '13, people still were using cash.
23 But to allege an additional \$1,000.00 a day, this can
24 never stand.

25 This case needs to be decided by a court of law

1 and an expert attorney to prove to the Department that
2 their indirect method of testing is dangerous. Their
3 refusal to use the actual books and records of the
4 taxpayer is irresponsible. And to come up with this
5 fictitious, false assessment is -- I don't know how to put
6 it. It's unconstitutional. This is, like, extortion.

7 You can't force a taxpayer to agree to an
8 assessment when it just doesn't make sense with reality.
9 This is not the reality of this business. Again, I
10 welcome the Department -- I know it's late. We've asked
11 for it many, many times. It was supposed to have been
12 done and never got done, the case could be re-audited.

13 We have nothing to lose and everything to prove
14 that based on actual records, we'd prevail. And the
15 Department representative said they compared to taxpayer's
16 reported sales to the federal income tax returns. This is
17 not an apple-with-apple comparison. The federal income
18 tax returns are on a case basis and so is the general
19 ledger and the profit and loss statement.

20 The taxpayer's accounting method is cash. The
21 Department insists that they can use an accrual way of
22 vendors' verification and combine it with cash method of a
23 taxpayer to arrive at their projected taxable purchases.
24 This is not acceptable. This is a false figure. It
25 doesn't represent the actual purchases of the taxpayer.

1 ADMINISTRATIVE LAW JUDGE ALDRICH: Thank you,
2 Mr. Bral.

3 At this time I will refer to my fellow panel
4 members to see if they have any questions.

5 Judge Geary?

6 ADMINISTRATIVE LAW JUDGE GEARY: Thank you. I
7 have one question for the Department. I know that it
8 relied upon information from vendors to calculate a
9 majority of the purchases, and I was going to ask how it
10 determined purchases from vendors who did not respond to
11 the inquiry, and I believe in, perhaps, the supplemental
12 decision and recommendation, it refers to an amount of
13 approximately \$119,000.00. And then Mr. Suazo stated
14 during responses to questions, I believe, this morning,
15 that that information may have come from the general
16 ledger. Is that where it's from?

17 MR. SUAZO: Yes, it did. If you look at Exhibit
18 E, I believe --

19 ADMINISTRATIVE LAW JUDGE GEARY: We will find
20 that.

21 MR. SUAZO: It's in the exhibits. You will find
22 the 10 vendors who did respond, and they're the first
23 group of vendors, and then there's 25 other vendors
24 underneath them that comes from the general ledger.

25 ADMINISTRATIVE LAW JUDGE GEARY: In your

1 presentation, you talked about the Appellant providing
2 some Z tapes but no detail register tapes. Can you just
3 explain the difference between the Z tapes that were
4 provided and the detailed registered tapes that you
5 indicated had not been provided?

6 MR. SUAZO: The detailed register tapes would
7 include -- it's sort of like a point of sales system that
8 tells you what actually was purchased based on the skew
9 number versus a summary tape, which is just going be,
10 like, either a shift change summary and end of day
11 summary, so you probably are not going to have what
12 exactly got sold.

13 ADMINISTRATIVE LAW JUDGE GEARY: So the Z tapes
14 that were produced were more in the nature of summaries
15 that were produced either at the end of the day or at the
16 end of shifts within that day showing total sales during
17 that period of time, and what was not produced were
18 register tapes showing individual sales and the details of
19 those sales; is that correct.

20 MR. SUAZO: That would be the difference, yes.

21 ADMINISTRATIVE LAW JUDGE GEARY: And I take it
22 the Department could not determine from Z tapes whether
23 any items were sold at below shelf price?

24 MR. SUAZO: No. But when you do a shelf test --
25 or when the Department does a shelf test, whatever the

1 price is on the shelf or what the assistant, in this case,
2 I believe it was one of the employees, went around with
3 the auditor to get prices, so if there was something on
4 sale, it's automatically included in the markup
5 calculation.

6 ADMINISTRATIVE LAW JUDGE GEARY: But the
7 information that was stated by the Appellant's
8 representative regarding this taxpayer, the Appellant,
9 regularly selling items at discounts, there was no way
10 that could be confirmed from any of the evidence that was
11 provided for the audit?

12 MR. SUAZO: There was an attempt to do that in
13 the second re-audit. In the second re-audit, what they
14 did was the Appellant's representative gave them some
15 invoices and what they tried to do is match them up to the
16 purchase invoices, however some of the purchase invoices
17 were from 2016, but the sales occurred in 2014, so it
18 doesn't -- it's not going to link up correctly. You want
19 to do it within the same purchasing cycle.

20 It's in the paperwork. It's in the second
21 re-audit. Because in the first re-audit, what happened
22 was they adjusted for the inventory, like, it has a
23 \$20,000.00 adjustment there, and then they adjusted for
24 self-consumption, and they didn't adjust for additional 1
25 percent for pilferage. They remained at one percent.

1 And they did a few calculations because the
2 Appellant stated that, you know, nontaxable drinks were
3 included, so they adjusted that out which is what you
4 asked me about earlier in the Minutes and Orders, and I
5 explained that in my presentation. That was all
6 recomputed.

7 And then the Appellant, after the first re-audit,
8 was not happy because they didn't include the bulk sales.
9 When I went back for a second re-audit, that is when the
10 person who was handling the audit realized that they used
11 the sales margin on liquor, wine, cigarettes, and sundry
12 items versus a markup percentage. And as I explained
13 earlier, a sales percentage is a lot lower than a markup
14 percentage.

15 So when you recalculated everything, the
16 liability actually increases, but since the notice of
17 termination had already gone out -- at one point it was
18 \$1.86 million -- they just let it stay at that.

19 ADMINISTRATIVE LAW JUDGE GEARY: I have a couple
20 of questions also for the Appellant -- perhaps just one.
21 You referred to the fact that when the audit was begun and
22 perhaps during the earlier part of the audit, all of the
23 records were not available, but at some later time,
24 Appellant made available to Respondent all of the records
25 that it would need to do a direct audit; is that what you

1 were saying?

2 MR. BRAL: Correct. Yes, we did.

3 ADMINISTRATIVE LAW JUDGE GEARY: And have you
4 produced any of these records as exhibits in this case?

5 MR. BRAL: They did not accept the actual
6 records.

7 ADMINISTRATIVE LAW JUDGE GEARY: But you don't
8 have them in our in OTA's record, do you?

9 MS. CRISTOBAL: No, we did not.

10 ADMINISTRATIVE LAW JUDGE GEARY: Actually, I have
11 to ask the questions of your representative.

12 MR. BRAL: The Department did not want to have
13 the new information. They didn't want to receive the
14 additional bank records or the new updated general ledger.
15 And let me --

16 ADMINISTRATIVE LAW JUDGE GEARY: Let me stop you,
17 because I have specific questions I want to ask. I think
18 you have given argument, and I think you are going to be
19 given an opportunity, but I don't want you to mix too much
20 argument in when responding to my questions.

21 You told us what the Department has refused to
22 do, but the Office of Tax Appeals is here to look at your
23 evidence and you have not produced as evidence in this
24 proceeding these records that you've made reference to.
25 You produced summaries in the 24 pages of documents that

1 were submitted as exhibits. Correct?

2 MR. BRAL: Correct, because those are the basis
3 of the audit, which we thought it's already too late for
4 that. We offered the Department to receive them at an
5 earlier stage, they refused to accept them because they
6 were engaging in their own indirect testing methods. And
7 they didn't want to go and the Glendale principal auditor
8 specifically refused to take the actual record.

9 ADMINISTRATIVE LAW JUDGE GEARY: But why aren't
10 they part of our record? Why didn't you submit them as
11 exhibits to OTA?

12 MR. BRAL: They are hundreds, if not thousands,
13 of pages of documents.

14 ADMINISTRATIVE LAW JUDGE GEARY: So they were to
15 extensive?

16 MR. BRAL: I believe the Department or OTA would
17 find it too late for that. Also with reference to the
18 Department representative's statement --

19 ADMINISTRATIVE LAW JUDGE GEAR: Let me just
20 interrupt you for a second. You're about to launch into
21 some additional argument. I think you should reserve
22 that. You've answered my questions. I'm going to turn it
23 back over to our lead judge and let him take over. Thank
24 you.

25 MR. BRAL: Thank you.

1 ADMINISTRATIVE LAW JUDGE ALDRICH: Thank you. At
2 this time I wanted to ask and see if Judge Katagihara had
3 any questions?

4 ADMINISTRATIVE LAW JUDGE KATAGIHARA: I do. I
5 wanted to ask CDTFA if they have a response to the
6 Appellant's accusation that you wouldn't accept records.

7 MR. SUAZO: As far as I know, whatever records
8 were provided would have been accepted. That's the normal
9 process. Whether or not they would rely on those
10 records -- basically, you know, just because you have
11 records doesn't mean it's going to be accurate.

12 If we found another way to do an audit that would
13 give a true indicator of what the sales are, that's what
14 we would use and that is why the markup method was
15 applied. As the taxpayer had stated, they said the markup
16 of 37 percent is too high; however, their own federal
17 income tax returns that they now say is inaccurate, as
18 that they are saying they owe money to us, showed a 41.7
19 percent.

20 If you add what they say they owe to us and you
21 accept their cost off goods sold, that just means that
22 their markup is even more. So they're saying that their
23 records are accurate, however, they're saying that they
24 owe money, so I don't know which way they're going with
25 this thing.

1 ADMINISTRATIVE LAW JUDGE KATAGIHARA: My second
2 question, just to get clarification with regards to the
3 first revised audit and the second revised audit, I
4 understand that because of the change in the markup
5 formula that the notice of determination remained the same
6 amount, but the bulk sales -- I just want confirmation
7 that the bulk sales and the pilferage consumption amounts
8 were allocated in those audits.

9 MR. SUAZO: If you go to the second re-audit,
10 which is Exhibit G, you will see that there was an
11 accounting for the bulk sales of liquor. What they did
12 what was took what the Appellant had given them, they
13 recomputed, gave a percentage amount for bulk and gave a
14 percentage amount for retail, and then they applied it
15 that way. And you will see a detail of this in the second
16 re-audit.

17 They also allowed again for the self-consumption
18 and they had the privilege remain at 1 percent. But the
19 thing is, is that when they recomputed the true numbers of
20 the markup, it shot up and it increased by a huge amount,
21 so they just remained with what they had put on the notice
22 of termination and that was it.

23 ADMINISTRATIVE LAW JUDGE KATAGIHARA: Thank you.

24 ADMINISTRATIVE LAW JUDGE ALDRICH: Are you done
25 with your questions?

1 ADMINISTRATIVE LAW JUDGE KATAGIHARA: Yes. Thank
2 you.

3 ADMINISTRATIVE LAW JUDGE ALDRICH: At this time,
4 I think we are going to give Mr. Bral an opportunity to
5 rebut or provide a closing statement if you'd like.

6 MR. BRAL: Okay. First of all, I want to clarify
7 what the Department representative said in answer to the
8 Judge's question whether the Department found out if any
9 sales in the store were sold at lower-than-shelf prices.
10 He answered by saying, yes, we referred to the purchase
11 invoices and the sales invoice, and that doesn't answer
12 the question that he meant he was referring to bulk sale.

13 The Judge's question was with reference to sales
14 taking place in the store, from the shelf, did the
15 Department's auditor test that, whether any sales were
16 being sold at lower-than-shelf prices, and the Department
17 failed to answer that correctly.

18 Secondly, the Department's representative keeps
19 referring to the first audit and re-audit and the second
20 re-audit. We are totally unaware of any re-audits. A
21 re-audit, in my opinion, is a re-audit of the audit, means
22 to do the audit again, to go over it and see where things
23 fell apart and how can they fix it. If they didn't, for
24 instance, have the complete books and records, could they
25 incorporate them in the so-called first re-audit and the

1 second re-audit?

2 Why didn't they do it? Why didn't they do the
3 so-called re-audit in their terminology within their own
4 closed doors? The taxpayer and we were not aware of doing
5 a re-audit. What he means is they did some minor
6 revision, which really didn't mean anything, because it
7 didn't change anything. So that is not a re-audit. This
8 is just cosmetic stuff, and it's not really helpful in
9 resolving this audit.

10 This case should have been based on the
11 taxpayer's actual records. This is required by law. It's
12 not as if the taxpayer refused to provide them. It's not
13 as if they were incomplete or missing. They became
14 available a few months after the audit started. A few
15 months, not years.

16 The Department in Glendale, they decided they
17 want to go with their indirect method of testing, and they
18 didn't want to accept them. We argued all the way during
19 the past several years, why don't you use the taxpayer's
20 actual books and records? He has different bank accounts
21 and different bank statements. And the gentleman argued
22 that we can't rely on the federal income tax returns and
23 the general ledger. We stand by them. We stand by the
24 general ledger and the federal income tax.

25 We do admit the reported taxable sales where, in

1 some quarters, were incorrectly reported. But we stand by
2 the taxpayer's actual books and records, namely, the
3 general ledger, the profit and loss statement, the balance
4 sheet, and the federal income tax returns.

5 So I think this audit -- I'm sorry -- I will use
6 the word corrupt, and that's what it is, because it's not
7 based on actual books and records. It's just purely on
8 projections and indirect testing, assumptions, what they
9 think the markup is, and what they think the taxable
10 purchases is based on vendors' verification.

11 And I'm sure that the Department still has not
12 convinced you that the taxable purchases incorrectly
13 included invoices that are an accrual method of accounting
14 contrasted with the books and records that are on a cash
15 basis. So there are a lot of unanswered questions

16 ADMINISTRATIVE LAW JUDGE ALDRICH: Does that
17 include your closing?

18 MR. BRAL: Yes, thank you.

19 ADMINISTRATIVE LAW JUDGE ALDRICH: Thank you.
20 Okay. Well, thank you, everyone, for their time. We are
21 going to be concluding the hearing. The record is now
22 closed. The Panel will meet and decide based off of the
23 evidence and arguments presented today, and we will send
24 both parties our written opinion within 100 days. And
25 while this hearing is concluded, there is another hearing

1 today this afternoon. Please cut the live stream.

2 (The hearing concluded at 12:16 p.m.)
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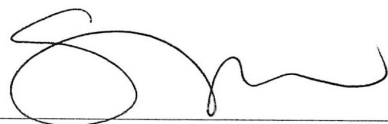
1 HEARING REPORTER'S CERTIFICATE

2
3 I, Shelby K. Maaske, Hearing Reporter in and for
4 the State of California, do hereby certify:

5 That the foregoing transcript of proceedings was
6 taken before me at the time and place set forth, that the
7 testimony and proceedings were reported stenographically
8 by me and later transcribed by computer-aided
9 transcription under my direction and supervision, that the
10 foregoing is a true record of the testimony and
11 proceedings taken at that time.

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

14 I have hereunto subscribed my name this 13th day
15 of March, 2023.

16
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19 _____
Shelby Maaske,
Hearing Reporter

20 SHELBY K. MAASKE
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