

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
P. COLAMBAARACHCHI,) OTA NO. 21017152
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, January 26, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 12:58 p.m. and concluding at 1:56 p.m. on
Thursday, January 26, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ MIKE LE

Panel Members: ALJ ANDREW KWEE
ALJ TERESA STANLEY

For the Appellant: GIHAN WEERASEKERA

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

RANDY SUAZO
KEVIN SMITH
JASON PARKER

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I N D E X

E X H I B I T S

(Department's Exhibits A-E were previously received at the prehearing conference.)

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

	<u>PAGE</u>
By Mr. Colambaarachchi	8
By Mr. Suazo	22

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. Colambaarachchi	35

1
2
3
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California; Thursday, January 26, 2023

12:58 p.m.

JUDGE LE: We are opening the record in the Appeal of Colambaarachchi. This matter is being held before the Office of Tax Appeals. The OTA case number is 21017152. Today's date is Thursday, January 26th, 2023, and the time is 12:58 p.m.

This hearing is being conducted electronically with the agreement of the parties. Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Mike Le, and I will be the lead judge. Judge Andrew Kwee and Judge Teresa Stanley are the other members of this tax appeals panel.

All three judges will meet after the hearing and produce a written opinion as equal participants. Although the lead judge will conduct the hearing, any judge on this panel may ask questions or otherwise participate to ensure that we have all the information needed to decide this appeal.

Now for the parties' introductions. For the record, will the parties please state their name and who they represent, starting with Respondent.

MR. SUAZO: Randy Suazo, Hearing Representative CDTFA.

1 JUDGE LE: Thank you, Mr. Suazo.

2 MR. PARKER: Jason Parker, Chief of Headquarters
3 Operations Bureau with CDTFA.

4 JUDGE LE: Thank you, Mr. Parker.

5 MR. SMITH: Kevin Smith from the Legal Division.

6 JUDGE LE: Thank you.

7 And for Appellant, please state your name.

8 MR. WEERASEKERA: My name is Gihan Weerasekera.

9 JUDGE LE: Thank you, Mr. Weerasekera.

10 This is Judge Le. Let's move on to my minutes
11 and orders. As discussed with the parties at the second
12 prehearing conference on January 5th, 2023, and notated in
13 my minutes and orders, the issues in this matter are
14 first, whether adjustments to Respondent's computation of
15 taxable sales are warranted based on sales for resale or
16 cash-back transactions -- and cash-back transactions. The
17 second issue is whether Appellant is responsible for
18 remitting its sales tax, which she did not charge and
19 collect sales tax.

20 Appellant's representative, Mr. Weerasekera, will
21 testify as a witness and at this oral hearing.

22 MR. WEERASEKERA: Yes, Your Honor.

23 JUDGE LE: Thank you.

24 Appellant has not submitted any exhibits.
25 Respondent's Exhibits A through E were entered into the

1 record in my minutes and orders. This oral hearing will
2 begin with Appellant's presentation and witness testimony
3 for up to 30 minutes.

4 Does anyone have any questions before we begin
5 with Appellant's presentation?

6 Respondent CDTFA, any questions?

7 MR. SUAZO: This is Randy Suazo. No questions.

8 JUDGE LE: Thank you.

9 And turning to Appellant, any questions.

10 MR. WEERASEKERA: No, Your Honor.

11 JUDGE LE: Thank you.

12 In that case, this is Judge Le. I would like to
13 swear you in now. Would you raise your right hand.

14

15 GIHAN WEERASEKERA,

16 produced as a witness, and having been first duly sworn by
17 the Administrative Law Judge, was examined and testified
18 as follows:

19

20 MR. WEERASEKERA: I do, Your Honor.

21 JUDGE LE: Thank you. Okay. Appellant, you have
22 up to 30 minutes for your presentation starting at
23 1:02 p.m. Please proceed.

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1 transaction. It goes as under the customer details.

2 So the Appellant gave all the information to the
3 auditors and more importantly, paid all due taxes that
4 were collected. Again, coming back to the audit process,
5 we were very cooperative with the audit from the
6 beginning, never broke a deadline that was given by the
7 auditors, the timeframe to comply. So -- sorry. So
8 the -- initially the auditor requested a list of vendors
9 that were not charged taxes -- charged taxes on the
10 receipt. We provided a list of vendors the receipts of
11 those transactions in which it clearly shows that we did
12 not collect any taxes on those transactions.

13 Towards the end, the two auditors, Mr. Henny and
14 Ms. Berlin -- Berlin Alcantraz scheduled a site meeting, a
15 site visit they said. They claim that it's -- that
16 they're going to observe the daily operation of the
17 business, and the auditors explained the procedure where
18 they only observe and both auditors will be there. It was
19 a test day also. So at the same time, they requested an
20 non-taxed sales receipts in which vendors did those
21 transactions.

22 Basically, they wanted to get a breakdown, okay,
23 which transactions were done on each day by which vendor.
24 So we requested a reasonable time frame to go through
25 three years' worth of receipts to provide that

1 information. And they granted that information in that
2 timeline. We asked for, like, 30-day time limit to go
3 through all the transactions. They complied.

4 Then on the site -- then they came on the date
5 that we have scheduled for them to do a site visit. And
6 along with them, they brought a third person. We were not
7 aware of him initially and did not introduce me -- to me,
8 myself, or anybody who he was. And Ms. Berlin and Mr.
9 Henny explained to me the process what's going to be --
10 what are they going to be doing that day.

11 And they were asking for transactions -- what
12 transactions. They came around 1:00 p.m., and they asked
13 me, like, what transactions we have done prior to
14 1:00 p.m. So we gave them a breakdown of transactions.
15 There were only, like, two transactions on that day. They
16 wanted to see the credit card receipts. So we provided
17 them. When I was doing that, I personally was doing that
18 with Ms. -- with two auditors.

19 The third person I saw my -- on the side of my
20 eye like, you know, he was accessing the computer. So
21 then I was a little bit concerned about that because I did
22 not know who this person was. So asked Mr. Henny, who is
23 one of the auditors, what is he, and is he with you? And
24 he said, yes, he was with us, and he's a technical
25 technician, like a computer tech from the Department.

1 And later he gave me, like, a business card
2 saying he was a technical operator or something, and he
3 was going through the computer. I said -- I even asked
4 whether it's legal. You said like, you know, you're just
5 observing. You're going through the computer. And
6 Mr. Henny said like, you know, we thought it would be
7 easier for you because you have to go three years' worth
8 of receipts to find these clients, the vendors. We
9 thought it's going to be easier for you if we are to bring
10 a Department computer personnel to go through and get the
11 information.

12 Somehow from that -- apparently, he's gone
13 through the computer system. And also, he has gone
14 through the database of the computer and the system files
15 of the computer. Somehow by doing so they corrupted the
16 computer in front of me, and they could not access any of
17 the information from that time on. We cannot access any
18 of the receipts, prior receipts. Luckily that we took --
19 that we provided to the Department on the audit. We gave,
20 but any of those information was not retrievable by that
21 time on.

22 I overheard, personally, Mr. Henny asking even
23 like, you know, what were you able to get? And he said --
24 he replied nothing, pretty much. And I had to reenter all
25 my inventory from that time on, each inventory by hand

1 entered to the computer again. It took me weeks to enter
2 to begin with.

3 So basically, from that time like then -- then I
4 told Mr. -- the auditors that I cannot give that
5 information. You saw what happened. But at that time --
6 even at that time, they wanted to get an end of the day,
7 like a closeout report. I was able to give, like manually
8 putting no sale. Meaning like because my inventory was
9 blank by that technician whatever he did.

10 So that was initially my request from the
11 Department, if they were to go through the computer what
12 kind of legality like, you know, they had to go through in
13 order to get access from the computer from the Appellant
14 because we did not give any approval for the Department to
15 come and mess with the computer system. So -- and then so
16 what the Department asked was like, you know, we cannot
17 prove these sales are actually nontaxable sales.

18 So I was asking the auditors how can I provide
19 that information because you yourself came to the
20 location, try to access those information, and you deleted
21 all the files. So I was able to give the details
22 initially when the auditors came to the site. We gave the
23 two invoices that was done prior to they are coming. So
24 after they are coming, like they asked me for the same
25 information. It was not there, and they could not

1 retrieve any of the files.

2 They were trying to -- the technician was trying
3 to do reboot the computer, try to do something. Clearly,
4 he could not retrieve any of the files. So I was telling
5 this in the last meeting also, meaning, prior to them
6 generate the report of the audit. I said you are asking
7 for something that you deleted, and I don't know.

8 I'm not a lawyer like I said, but I know my
9 rights. There has to be some kind of rights as a taxpayer
10 like a Fourth Amendment right. Like how could somebody
11 come and search somebody else's electronic device without
12 any court approval. That is illegal as far as I am
13 concerned. So that's why I ask, request the court to give
14 subpoenas for the two auditors and the technician so they
15 can come today and under oath can answer my questions or
16 your questions what happened? What did happen on that
17 day.

18 I asked from the counsel from the Department.
19 She refused. This is prior to the subpoena, Your Honors.
20 I requested that information, please give the name of the
21 technician who came there -- came on that day and accessed
22 the computer. They refuse to do that. And this is not an
23 unreasonable request. I was able to get some information
24 off of the internet that Ms. Alcantraz, one of the
25 auditors, have testified on a case named A-1 Auto audit.

1 They have -- she has taken a warrant for seizure
2 or look through computers on that audit, and she was able
3 to come to court or like hearings and presented that
4 information. So that's the same basis we requested why
5 can't the auditor come and give that information, present
6 that information to this day, to this hearing, and they
7 fail to do that.

8 So again I'm -- I hope this court will see the
9 evidence the Appellant provided -- or the verbal testimony
10 I provided today, more importantly what the Department Tax
11 Board has not provided and make a judgment based on that.
12 What they're basically asking is for something for us to
13 provide that they themselves deleted. So how can we
14 present something that they deleted? We cannot do that,
15 Your Honors.

16 And there is a vast -- the power over here is not
17 equal as a taxpayer and the government -- the local
18 government over here. They have the upper hand. They
19 come and when they were visiting the location, I even
20 asked Mr. Henny is this legal? And he said this is a
21 process of the audit, which confused me like, you know.

22 Then I asked why you said like it's only going to
23 be a visual like, you know, they are observing how many
24 customers I get, what kind of operation we do. And they
25 also asked me for my vendor information, meaning like, you

1 know, who I am buying my merchandise, and my purchasing
2 prices, my -- our profit margins. Everything. We
3 provided everything, Your Honors. There's nothing to
4 hide.

5 And the power dynamic again like, you know, the
6 Appellant Padma Colambaarachchi, she is my mother-in-law,
7 and she's almost 80 years old. So running a small
8 business by herself, old school base like, you know, paper
9 writing by hand, and paid taxes. So far did not do -- did
10 everything according to the rules and the regulations.
11 And for them to come to her location and without even
12 telling anybody, myself or her, to go through the
13 electronic stuff to get like, you know, bullishly like,
14 you know, without doing that. Like I think it's not
15 right.

16 And at the end, they are trying to cover that by
17 saying, no you have to produce this information. We did
18 produce a list of vendors that we sold to. What they
19 wanted to get at was like which day -- okay. If the
20 Vendor A, they wanted to see vendor A got this merchandise
21 on this day and at this time and how they paid. So
22 that -- those information were in the POS system, the
23 computer, which they tried to come and retrieve.

24 They pretended like they were trying to do the
25 Appellant a favor by bringing in a technician like a

1 special computer specialist and get that information for
2 the Appellant. That was not the -- clearly not the
3 purpose of that visit, you know. If that's the case, they
4 would even notify us, we are going to bring somebody like
5 that. That's never happened, Your Honor.

6 So I hope -- you know, we provided every -- all
7 the information to the Department, and Department did not
8 do their work. And I don't think -- the Appellant
9 believes that she does not owe this much for the
10 transactions that she did not charge taxes because she
11 does not have to charge those taxes for -- from the resale
12 permit holders.

13 That's the -- that's our testimony, Your Honor.

14 JUDGE LE: This is Judge Le. Thank you,
15 Mr. Weerasekera for your testimony. Does that conclude
16 your preparation as of this moment?

17 MR. WEERASEKERA: Yes, Your Honor.

18 JUDGE LE: Thank you.

19 This is Judge Le again. Let me turn to
20 Respondent.

21 CDTFA, do you have any questions for the witness?

22 MR. SUAZO: This is Randy Suazo. No questions.

23 JUDGE LE: This is Judge Le. Thank you.

24 Let me turn to my panel now to see if they have
25 any questions.

1 Judge Stanley, any questions?

2 JUDGE STANLEY: I actually do have one. I didn't
3 see anywhere in the audit report that there were any
4 comments made about computer data being destroyed. Do you
5 know why that would be?

6 MR. WEERASEKERA: Are you asking from the
7 Appellant, Your Honor?

8 JUDGE STANLEY: Yes. Yes.

9 MR. WEERASEKERA: Okay. I'm sorry. They refer
10 that to as the Appellant was unable to provide any
11 information to justify the sales -- nontaxable sales. My
12 understanding is at this point, since they did not have a
13 warrant, they can't say we deleted those files. So
14 because of that day, they always say that the Appellant's
15 duty is -- oh, now I remember.

16 When the electronic files were gone, the --
17 Mr. Henny, one of the auditors, was saying, oh, you should
18 have kept hard copies, like photocopies of the resale
19 permits. That's not how everything was done. Like, you
20 know, the electronic -- the resale permits were
21 electronically stored in the sense that it was on the
22 computer. Everything was on the computer. The sales tax
23 resale numbers were under customer's files.

24 And the customer file, if we were to have the --
25 able to -- if we were able to get the customer file, it

1 should show like the date and what items were purchased
2 and what transactions were not charged sales taxes.
3 Obviously, we cannot retrieve that information anymore.

4 So the final meeting with the supervisors --
5 along with the supervisors and two auditors, I brought --
6 when I brought this information there, they asked me at
7 their office that we are liable because of that. Meaning
8 like, you know, we should have kept our records somewhere
9 else.

10 JUDGE STANLEY: And just one other follow-up
11 question. The audit report does indicate that you had
12 told them that -- told the auditor that a computer was
13 stolen from your vehicle and that's why some of the
14 records weren't available. Is that a different computer?

15 MR. WEERASEKERA: It was a different computer.
16 Nothing to do with that. That's a personal computer of my
17 mother-in-law, and that has nothing to do with it. It
18 does not have any POS or any software, Your Honor, that
19 was at the business location. It was a stand-alone
20 computer, and that one was the -- it was a laptop. It has
21 nothing to do with the business.

22 JUDGE STANLEY: Thank you. I don't have any
23 other questions.

24 JUDGE LE: This is Judge Le. Thank you,
25 Judge Stanley.

1 Turning now to Judge Kwee. Do you have any
2 questions.

3 JUDGE KWEE: Hi. This is Judge Kwee, and I did
4 have a question or clarification that I would like to ask
5 of the Appellant.

6 So just so I'm understanding how this would work.
7 For example, if Luxury Perfumes -- which I believe is one
8 of the retail items that you have listed and selling --
9 you would have had a resale certificate for them. And
10 then that was stored electronically into your
11 point-of-sale system, but then that electronic resale
12 certificate was corrupted and lost because of the computer
13 audit -- because of the computer specialist that CDTFA
14 sent over? Is that what --

15 MR. WEERASEKERA: It was basically, Your Honor,
16 like, you know, the resale number goes under the customer
17 name. The customer, let's say for example, Luxury
18 Perfumes, that's one of the locations that we kind of -- I
19 buy from them. They come and buy from us, and we never
20 charge sales taxes from each other because we are in the
21 same trade. So the customer name would be the Luxury
22 Perfumes, and it goes to the resale number and the
23 address. That's how it goes, Your Honor.

24 And the resale permits, if I do not know a
25 retailer, that retail certificate we compare that with the

1 agency's website, that I enter the resale number and
2 website of the agency shows it whether it's a valid resale
3 certificate or it's an invalid one or the trade, what
4 trade they are not. For example, if they sell tires, of
5 course, we don't sell perfumes for them.

6 We will sell perfumes for them, but we will, of
7 course, the taxes, and that will be reported to the Tax
8 Board. So the information that's under the customer is
9 the -- the customer name, resale certificate number, then
10 the address, and of course the receipt has the dates --
11 all the dates which we provided to the auditors. And it
12 clearly shows like, you know, these are the dates, these
13 are the merchandise, and these are the taxes that were not
14 collected. That's how the receipts go.

15 JUDGE KWEE: Okay. And this is Judge Kwee. So
16 just to follow up on that question, so I understand that,
17 you know, you would keep, say, Luxury Perfumes and their
18 resale certificate number in the point-of-sale system
19 electronically along with some information about that.
20 But did you ever obtain from Luxury Perfumes like a signed
21 piece of paper stating that they're purchasing property
22 for purposes of resale, or did you only request their
23 permit number?

24 MR. WEERASEKERA: Just the permit number, Your
25 Honor. We never got their signatures on any of the

1 papers. And like, you know, we have vendors like we deal,
2 but we never sign any documents because they know our
3 resale permit number, and we are in the same trade. And
4 all my vendors like, you know -- not the small vendors
5 like Luxury Perfumes where we exchange or buy their
6 perfumes.

7 But I'm talking about like big vendors that --
8 being shipped from New York or Florida or anywhere. We
9 never signed any document or any kind of paper saying
10 anything, you know. That's -- that's actually one thing
11 the two auditors provided to me, like, you know -- oh said
12 provide. Since this happened like the corruption of these
13 files, they told me one time, we can give you this phone
14 number.

15 They gave me a phone number that it'll show, you
16 know, the -- I can get it signed by the vendors saying
17 they purchase merchandise from me for no resale -- under
18 resale certificate without paying taxes. I said that's
19 fine. Give me that because I know the vendors. I can
20 send it to them, and that was never provided.

21 JUDGE KWEE: I see. So then there weren't any
22 physical documents. I understand now because there was no
23 documents exchanged between the parties. Okay. I think I
24 understand that. I don't have any further questions, so I
25 will turn it back to Judge Stanley. Thank you.

1 JUDGE LE: Thank you.

2 This is Judge Le. I just want to check with
3 Judge Stanley one more time, if you have any questions at
4 this time?

5 JUDGE STANLEY: No. I don't have any further
6 questions. Thank you.

7 JUDGE LE: This is Judge Le. Thank you.

8 Okay. So now let's turn to Respondent CDTFA.

9 It is now your turn for your presentation. You
10 have up to 30 minutes, starting at 1:26 p.m. Please
11 proceed. Thank you.

12

13 PRESENTATION

14 MR. SUAZO: Hello. This is Randy Suazo.

15 Appellant is a sole proprietorship and operated
16 two retail stores doing business as Perfume Hut. Both
17 were located at Town Center Mall in Moreno Valley,
18 California. The first location began operations in
19 November 2012. The second location operated from May 1st,
20 2013, until December 1st, 2017.

21 The audit period is from January 1st, 2016,
22 through March 31st, 2019. All sales listed on the sales
23 and use tax returns are reported as taxable, Exhibit A,
24 page 12. Records reviewed included federal income tax
25 returns for 2016 and 2017, profit and loss statements for

1 2018 and 1st quarter 2019, bank statements, purchase
2 invoices, and sales spreadsheets for the audit period.
3 Point-of-sale system or POS reports for the period from
4 December 15th, 2017 through March 31st, 2019, were also
5 provided.

6 However, Appellant did not provide descriptive
7 sales receipts data, i.e., there were no customers listed
8 on the customer listing. It was all coded as "Customer
9 101." This is on pages -- this can also be found on a
10 hard copy printout that the taxpayer provided -- that the
11 Appellant provided to the State on Exhibit A, pages 606 to
12 630.

13 Appellant used sales spreadsheets to prepare and
14 file quarterly sales and use tax returns. Comparison of
15 gross receipts per the federal income tax returns and the
16 profit and loss statements to the sales and use tax
17 returns for the audit period disclosed differences of over
18 \$870,000, Exhibit A, page 346. It was noted in those
19 records only \$30,000 in wages as cost of labor were
20 reported by the Appellant for 2016 and 2017 as wages. In
21 2018 and 2000 -- and first quarter 2019 financial
22 statements, i.e., the profit and loss statements, no wages
23 were shown.

24 The Department compared reported taxable sales
25 with cost of goods sold for federal income tax returns and

1 profit and loss statements and arrived at a negative
2 markup of roughly 48 percent for the audit period,
3 Exhibit A, page 344. The negative markup means Appellant
4 is selling merchandise below cost. Comparison of bank
5 deposits to reported sales show that bank deposits
6 exceeded reported taxable sales by almost \$900,000 for the
7 audit period, Exhibit A, page 342.

8 A download of daily sales reports for the five
9 quarter period from first quarter 2018 through first
10 quarter 2019 revealed recorded taxable sales of over
11 \$390,000. When compared to reported taxable sales of
12 roughly \$138,000, the same period, a difference of more
13 than a quarter-of-a-million dollars was noted, Exhibit A,
14 page 35.

15 Based on the Department's analysis, it was
16 determined that the Appellant's records were unreliable
17 and inadequate for sales and use tax purposes. In the
18 absence of reliable records, the Department used indirect
19 audit methods to determine audited taxable sales. For the
20 2017 period, the Department used the adjusted ex tax sales
21 of \$436,000, based on the Appellant's federal income tax
22 return, to establish audited taxable sales. The \$436,000
23 was compared to reported taxable sales of \$111,000 to
24 determine unreported taxable sales of \$325,000 for the
25 2017 period, Exhibit A, pages 345 and 346.

1 For the 2016, 2018, and first quarter 2019
2 periods, differences between bank deposits through
3 reported taxable sales totaling more than \$616,000 were
4 used to determine unreported taxable sales, Exhibit A,
5 page 342. Based on the above audit procedures, the
6 Department determined unreported taxable sales of
7 approximately \$941,000, Exhibit A, page 15.

8 As a reasonableness test, the Department
9 performed a shelf test which showed a markup of
10 approximately 99 percent, Exhibit A, pages 17 and 18.
11 Using an adjusted cost of goods sold based on the federal
12 income tax returns and the profit and loss statements and
13 applying the markup factor, taxable sales of approximately
14 \$1.4 million was computed, Exhibit A, page 16.

15 The \$1.4 million in taxable sales based on the
16 markup method is greater than the \$1.3 million used in the
17 audit findings. Accordingly, the Department used --
18 Accordingly, the Department's use of the federal income
19 tax returns data for 2017 and bank deposits for the other
20 periods is justifiable. The Department contends the
21 amounts used in the audit assessment benefit the Appellant
22 are conservative and reasonable, Exhibit A, page 342.

23 Appellant contends that differences between bank
24 deposits and reported taxable sales represent sales for
25 resale. Appellant has failed to provide any documentary

1 evidence, such as resale certificates to support sales for
2 resale as required by Regulation 1668. Appellant also
3 contends that it should not be held liable for tax on
4 sales for which it did not collect reimbursement from its
5 customers. This is not correct.

6 Appellant is a retailer and is liable for sales
7 tax on all of its taxable sales regardless of whether it
8 collected sales tax reimbursement, Revenue & Taxation Code
9 6051 and Regulation 1700. Appellant's assertion that
10 credit card transactions included giving cash back to
11 customers impacted the audit findings for 2016, 2018, and
12 first quarter 2019 is without merit. Any cash given out
13 would have been from cash sales, thereby reducing cash
14 deposits from the bank deposits which creates no effect to
15 the bank deposit assessment.

16 Appellant did not provide any documents within
17 the audit period, such as individual credit card sale
18 transactions or deposit slips to show that credit card
19 sales or credit card deposits included any amount
20 representing a cash-back given to customers. In the
21 Department's experience, giving cash back on credit card
22 transactions, which is essentially providing a cash
23 advance on a credit card transaction, is not a service the
24 retailer would make.

25 Advancing cash on a credit card would be a

1 transaction performed at a financial institution, such as
2 a bank or a credit union, not a transaction handled by a
3 retailer of perfume. It is extremely uncommon for a
4 retailer of any kind to offer cash advances. Therefore,
5 the Department cannot say whether a cash back ratio of
6 33.11 percent on credit card deposits is too high, only
7 that it is a service that a retailer would not offer.

8 Credit card deposits totaled \$1,057,000 for the
9 13-quarter audit period. Cash back at 33.11 percent would
10 equal over \$350,000 for the audit period. This would
11 translate to basically \$27,000 per quarter without any --
12 just on the cash back. Without any documentation provided
13 during the audit period, no adjustment should be made.
14 Appellant has not provided any documentary evidence to
15 support an adjustment to the audit findings. Therefore,
16 based on the evidence presented, the Department request
17 the Appellant's appeal be denied.

18 This concludes my presentation, and I'm available
19 to answer any questions you may have.

20 JUDGE LE: This is Judge Le. Thank you for your
21 presentation.

22 Let me, again, turn to the Panel so see if they
23 have any questions.

24 Judge Stanley, any questions for the parties?

25 JUDGE STANLEY: No. This is Judge Stanley. I

1 don't have any questions at this time. Thank you.

2 JUDGE LE: Thank you.

3 And turning to Judge Kwee. Any questions?

4 JUDGE KWEE: Yeah. I believe I have a question
5 or two. So I guess Appellant's -- one of the issues that
6 they had brought up was that they weren't able to provide
7 certain documentation because CDTFA's audit -- I guess
8 audit computer specialist corrupted their point-of-sale
9 system or corrupted the data. I couldn't see reference to
10 that in the audit file. Could CDTFA clarify if part of
11 the reason why documentation was unavailable was due to
12 actions by CDTFA's staff?

13 MR. SUAZO: There's no notes in any of the
14 comments, including the assignment activity report, of a
15 computer audit specialist being out in the field with the
16 auditor. There are no notes as to any corruption by the
17 Department of the taxpayer's records in either the
18 assignment activity report or audit itself.

19 JUDGE KWEE: Okay. And separate question, I
20 guess one of the last things that Appellant mentioned was
21 that CDTFA had talked about possibly allowing an XYZ, you
22 know, letter process to consent to the 13 retailers that
23 they had identified. But if I understand it correctly,
24 they didn't ultimately allow them to do that, I guess at
25 the time, to send out those XYZ letters, or is that a

1 correct understanding? Or I'm just curious why they
2 didn't give them time to do the XYZ letter process.

3 MR. SUAZO: On the comments I can't find anything
4 saying that an XYZ letter process was undertaken.
5 However, it's normal procedure by the Department to allow
6 for an XYZ letter procedure. This is a verification of
7 sales for resale. The problem is if you look at the
8 detail, such as in -- I believe that's 606 to 630,
9 Exhibit A. And also, on -- it's going to take me a little
10 bit. Hold on one second.

11 If you look at -- well, basically, 12 -- let me
12 see if I can get to the number. It's quite a long
13 schedule. It's the download from December 15th, 2016,
14 through September 30 -- not September, but March 31st,
15 2019. And I'm trying to get you the page numbers right
16 now. Hold on one second. Sorry about this. I just don't
17 have it at my fingerprints. I thought it was 12B, but it
18 might be 12A-1 or -2.

19 MR. PARKER: This is Jason Parker. I'd just like
20 to have a little clarification. It is Schedule 12B-1. It
21 begins on page 201 of Exhibit A, and it's a fairly lengthy
22 file. It's the POS download which many of these
23 transactions match the printed report that's in the file
24 on pages 606 to --

25 MR. SUAZO: 630.

1 MR. PARKER: -- 660. So as you can see in here,
2 the customer name is not part of the sales transactions.
3 So there's no way to identify what sales were made to any
4 alleged resale customers.

5 JUDGE KWEE: Okay. I see. So we just have a
6 customer number.

7 MR. SUAZO: It's just 101.

8 JUDGE KWEE: I see. So --

9 MR. PARKER: It's 101 for every transaction.
10 Sorry. This is Jason Parker.

11 JUDGE KWEE: Okay. Maybe I would turn it back to
12 Appellant just for a quick follow up then. Was there any
13 documentation that you had in the file to indicate which
14 sales were to which customers, like, I guess, which would
15 identify customer number? They all seem to be "Customer
16 101" in CDTFA's point-of-sale download report.

17 MR. WEERASEKERA: It was the merchandise. That's
18 how we were going to track, like, which customer paid
19 what. And also, the credit card terminal reports, like,
20 you know, we can compare the -- which sales were done by
21 which vendor. That's how we were going to go about doing
22 it.

23 JUDGE KWEE: Oh, based on what's sold?

24 MR. WEERASEKERA: Yes, the merchandise and the
25 credit card terminal because it registers on the POS the

1 credit card used and the name on the credit card on the
2 POS. It's a separate file on the POS.

3 JUDGE KWEE: Oh, and that's -- I don't see that
4 in the download that's in the, I guess, the audit schedule
5 by CDTFA. Is that not part of their file then, the
6 document -- I guess the information you're referencing,
7 that's not -- I don't -- I don't believe that's been
8 submitted, or has that been submitted?

9 MR. WEERASEKERA: You're asking, me, Your Honor,
10 of the Appellant?

11 JUDGE KWEE: I was asking if that was something
12 that you had provided.

13 MR. WEERASEKERA: Yeah, those were the total
14 transaction history. That's what they wanted -- the
15 auditors wanted from -- well, they wanted to the end of
16 the period. They wanted to see all the receipts on the
17 transactions. That's what we provided them.

18 JUDGE KWEE: Okay. I guess I just didn't see in
19 the documentation that CDTFA was just referencing where it
20 included the additional information that you were just
21 talking about, like even a -- like even the product at
22 issue.

23 MR. WEERASEKERA: That's why we wanted to have
24 additional days to go back on the transactions. Because
25 on the POS system you can put a quote and get all the

1 transactions that were not charged sales taxes. So we
2 were going to backtrack like each transaction to get who
3 bought this, and we can go to those vendors and get it
4 signed by the vendors or like statements saying this, the
5 merchandise we bought on this day. We were going to
6 backtrack all the transactions, Your Honor.

7 JUDGE KWEE: Oh, I see. But then you didn't do
8 that. I -- I see.

9 MR. WEERASEKERA: We couldn't do that.

10 JUDGE KWEE: Okay. And that's not something
11 you're not able to do anymore then?

12 MR. WEERASEKERA: Not from that time on, no, not
13 from the day on.

14 JUDGE KWEE: Okay. Thank you for that
15 clarification. I will turn it back to Judge Stanley then.

16 JUDGE LE: This is Judge Le. Thank you,
17 Judge Kwee.

18 I do have one question for CDTFA, and I think you
19 touched on it. But the audit work papers stated the
20 auditor used the higher of the gross receipts from federal
21 income tax return or bank deposits to arrive at audited
22 taxable sales. Doesn't the CDTFA typically use the lower
23 of the two, not the higher?

24 MR. SUAZO: In this case, both of them would have
25 been lower because when you look at the markup procedure,

1 the markup procedure actually shows a higher amount. And
2 this is why I referenced the wages. Because if you look
3 at the wages, there is a cost of goods -- cost of labor is
4 only \$30,000 for 2016 and 2017. There is no wage for 2018
5 and 2019.

6 Also, if you look at the P&L or the profit and
7 loss statement that was provided, which is -- let me see
8 if I can go back and reference it -- the profit and loss
9 which show losses for 2018 and 2019. If you -- the profit
10 and loss statement that was provided by the Appellant did
11 not include the rent or any of the normal expenses that
12 would be incurred by a business that they did include in
13 the federal income tax returns.

14 So if you look at that period -- or the 2018 and
15 2019 periods, they would have had losses. If you add back
16 the rent of roughly \$120,000 in 2018 and probably about
17 \$30-some thousand dollars in 2019 for the three months
18 looked at, without including any cost of labor or any
19 wages or including any type of expense item, it was more
20 practical in this case to use the bank deposits.

21 And even the bank deposits would not account for
22 the lack of wages. Now, whether or not people were being
23 paid in cash and it wasn't being deposited into the bank,
24 we don't know. But it is sort of strange that somebody
25 would have two facilities at a mall and have basically no

1 wages.

2 MR. PARKER: This is Jason Parker. I just wanted
3 to add something on for clarification. When we conduct
4 audits, we're trying to find the correct measure of tax.
5 You know, a lot of times we will use a lower amount that's
6 more fair and reasonable for doing like a markup or
7 something along those lines. But in this case with the
8 bank deposits and the federal income tax returns, if the
9 federal income tax returns are higher than the bank
10 deposits, the bank deposits may not have all cash
11 deposited into the bank. So they may not be accurate.

12 Then again, if the bank deposits are higher than
13 the income tax returns, the income tax returns may not be
14 accurate because obviously there are additional deposits
15 in addition to what they reported on their income tax
16 returns. So we're trying to find the correct amount of
17 sales in the audit period.

18 MR. SUAZO: Yeah. And, again, when you look at
19 the markup, I mean, we went with a -- we went -- we didn't
20 assess on the markup. We assessed on her own records.

21 JUDGE LE: This is Judge Le. Thank you.

22 At this time, I'm going to go ahead and turn it
23 to Appellant for their rebuttal to Respondent's arguments.

24 Appellant you have up to 10 minutes, starting at
25 1:47 p.m.

1 MR. WEERASEKERA: Okay. Thank you, Your Honor.

2

3 CLOSING STATEMENT

4 MR. WEERASEKERA: He brought up two locations.

5 The second location was shut down -- or not shut down --
6 closed down back in 2016. So 2017, '18, '19 there were no
7 two locations. So I want to make that point.

8 And if you see like \$30,000 in wages and certain
9 years there's no such wages, so those are not -- we did
10 not have that location because it was in the same mall,
11 and the mall wanted us to have two locations. We figure
12 it out. We kind of divide into -- to the same customers
13 like, you know, in two different locations, one upstairs
14 and one downstairs. Therefore, after the lease ended, we
15 closed down. I believe it was 2016, if not, it was 2017.
16 That's why there's the two years there are no wages
17 because we did not have two locations.

18 Number two, he mentioned about the sales tax
19 reported. There was a vast discrepancy on the sales tax
20 reported versus the income taxes. The reason being is on
21 the sales tax record, Appellant only reported the taxable
22 sales only, not the nontaxable sales. Meaning, if we had
23 for an example, \$1,000 nontaxable sales and \$1,000
24 nontaxable rates, Appellant only dated the sales tax
25 report just as \$1,000.

1 That was questioned by the auditors, two
2 auditors, and the Appellant told them that -- like I said,
3 she's old school. She had a way of doing things. This
4 started back in 2002 at the sales office department where
5 at that time they only had handwritten sales tax reports,
6 not the electronic way. They -- she participated in sales
7 tax seminar when she opened the business back in 2002 with
8 her then-husband.

9 Then they were advised on certain line, put the
10 tax sales -- taxable sales. So the Appellant never put
11 down nontaxable rates on the tax reporting. So when they
12 say there's like, you know, the IRS shows \$400,000 and
13 only had \$150,000 or \$200,000, whatever the amount that
14 was not reported was the nontaxable rates. It's not like
15 she reported X amount for the IRS. Of course, she reports
16 everything that comes in on the credit card slips to IRS
17 and the cash amounts to the IRS.

18 Because otherwise IRS would see, hey, you got
19 \$200,000 in credit card, but you cannot report anything
20 like, you know, anything else other than like, you know,
21 what you received. But on the sales tax side, the
22 Appellant only reported the taxable sales on the
23 reporting. I know it's not the correct way to do it.
24 There's another line that says "Total Sales Minus Taxable
25 Sales." I do get it right now because the auditor showed

1 us like, you know, exactly what to do.

2 So now we know how to do but like, you know, but
3 that's what the discrepancy is about. It's not she's
4 trying to hide some sales and not show some other sales to
5 IRS or the sales Department. Sales Department, she only
6 showed the taxable sales when she was reporting.

7 Number two, they were talking cash back sales.
8 This is a business in Moreno Valley Mall. There's so many
9 vendors, like the small vendors, not like a regional --
10 it's not like nationwide vendors. A lot of vendors, they
11 don't take credit cards. They only do cash-base sales.
12 So there is two ATM machines in the mall. One charges \$5,
13 and the other one charges, I believe, \$4.50 to make a
14 transaction. So as a service, this business used to
15 provide -- charge \$2.50. If they buy a perfume, \$2.50 to
16 give cash back. That's why the cash back is so high.

17 Because the mall doesn't have -- one of the ATMs
18 is broken all the time anyway. So it's like the -- for
19 other vendors like, you know, who take only cash, that's a
20 service we provide. That's why the credit card and
21 they're -- when the auditors were at the location, they
22 witness five transactions, and they wrote it down on
23 their -- I don't know what they put it on the report, but
24 two auditors, when they were at the location with the
25 technician, they wrote down all the sales we did.

1 There were five sales on that day, two were
2 cash-back sales, meaning the customer specifically asked
3 cash back. They took copies, or I printed out the
4 additional copy, two copies of credit card slips for
5 the -- for their official use for the -- to the auditors.
6 So out of five there were two. When they were in the
7 location, there were two cash-back sales. So they can
8 come up with the numbers, Your Honor. This is high and
9 this is low. It is what it is because how could you --
10 somebody say there was a cash-back sale and if there's no
11 cash back sale. I don't understand that. I mean, that's
12 so provable.

13 Number three, the counsel said there is no record
14 of a technician. Of course, there is no record of the
15 technician because it was not done legally. Like I said,
16 I'm not an attorney, but I did research certain things,
17 and it's not legal what they did. Of course, there's no
18 record. That's why I wanted to have them come into this
19 hearing, and they can testify, and they blocked it. I
20 asked two times.

21 A counsel named Pamela, I believe, representing
22 the Department she said no. And like on my testimony, I
23 gave an example. The auditors do come for these hearings,
24 and they testify. And it is not an unusual request for me
25 to do, but they did not show up. I mean, if they were to

1 show up over here, they could have no records, meaning
2 it's not that it did not happen. It did happen. It's
3 just they don't have proof on it.

4 Thank you so much, Your Honor.

5 JUDGE LE: This is Judge Le. Thank you for your
6 rebuttal.

7 Let me turn to the ALJ Panel for a final time to
8 see if anybody has any final questions.

9 Judge Stanley, any final questions before we
10 conclude the hearing?

11 JUDGE STANLEY: This is Judge Stanley. I don't
12 have any questions. Thank you.

13 JUDGE LE: Thank you, Judge Stanley.

14 This is Judge Le. Turning now to Judge Kwee.

15 Any final questions before I conclude the
16 hearing?

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

19 JUDGE LE: Thank you, Judge Kwee.

20 I do not have any further questions myself. So
21 there's nothing further. I believe that concludes our
22 hearing. Thank you everyone for coming in today.

23 This case is submitted on January 26, 2023, and
24 the record is now closed. We will decide this case later
25 on, and we will send you a written opinion of our decision

1 within 100 days.

2 Today's hearing in the Appeal of Colambaarachchi
3 is now adjourned.

4 (Proceedings adjourned at 1:56 p.m.)

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