

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
 FOUR CAFÉ, LLC,) OTA NO. 19044592
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

State of California

Thursday, April 13, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken
in the State of California, commencing at
1:02 p.m. and concluding at 2:18 p.m. on
Thursday, April 13, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in
and for the State of California.

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APPEARANCES:

Panel Lead: ALJ KEITH LONG

Panel Members: ALJ JOSHUA ALDRICH
ALJ RICHARD TAY

For the Appellant: SOLIS COOPERSON

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

NALAN SAMARAWICKREMA
CHAD BACCHUS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-16, Appendix A, and Appendix B were received at page 10.)

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

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1 California; Thursday, April 13, 2023

2 1:02 p.m.

3
4 JUDGE LONG: We're opening the record in the
5 Appeal of Four Café, LLC. The OTA Case Number is
6 19044592. This matter is being held before the Office of
7 Tax Appeals. Today's date is April 13th, 2023, and the
8 time is approximately 1:00 p.m. This hearing is being
9 held at our Cerritos location.

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

20 As a reminder, the Office of Tax Appeals is not a
21 tax court. It is an independent appeals body. The Panel
22 does not engage in ex parte communications with either
23 party. OTA will issue an opinion based on the parties'
24 arguments, the admitted evidence, and the relevant law.

25 For the record, will the parties state their name

1 and who they represent, starting with the representatives
2 for CDTFA.

3 MR. SAMARAWICKREMA: Nalan Samarawickrema,
4 Hearing Representative for the Department.

5 MR. PARKER: Jason Parker, Chief of Headquarters
6 Operations Bureau with CDTFA.

7 MR. BACCHUS: Chad Bacchus with the Department's
8 legal division.

9 JUDGE LONG: And for the taxpayer.

10 MR. COOPERSON: Solis Cooperson for the
11 petitioner, Four Café.

12 MR. WILTON: Corey Wilton, co-owner of the Four
13 Café, LLC.

14 JUDGE LONG: Thank you.

15 And there are two issues in this appeal. They
16 are: One, whether reductions are warranted to the
17 measures of unreported tax; and two, whether Appellant was
18 negligent.

19 I also understand that Mr. Wilton will be
20 testifying as a witness. Is that correct?

21 MR. COOPERSON: Yes. As to some issues, yes.

22 JUDGE LONG: Okay. Before we go any further, I
23 would like to swear Mr. Wilton in so that his testimony --
24 his presentation can be considered as testimony.

25 Mr. Wilton, will you please raise your right

1 hand.

2

3 C. WILTON,

4 produced as a witness, and having been first duly sworn by
5 the Administrative Law Judge, was examined and testified
6 as follows:

7

8 JUDGE LONG: Thank you.

9 The exhibits for this appeal consist of CDTFA
10 Exhibits A through E. At the prehearing conference
11 Appellant stated that there were objections to these
12 exhibits.

13 Can Appellant please confirm this?

14 MR. COOPERSON: I'm sorry. I can't hear that.

15 JUDGE LONG: Can you please confirm that there
16 were no objections to CDTFA Exhibits A through E.

17 MR. COOPERSON: That is correct. We made no
18 objection.

19 JUDGE LONG: Thank you.

20 And CDTFA, can you please confirm that A through
21 E is the correct exhibit list for you.

22 MR. SAMARAWICKREMA: Yes, Judge.

23 JUDGE LONG: Thank you. These exhibits are
24 admitted without objection.

25 ///

1 (Department's Exhibits A-E were received in
2 evidence by the Administrative Law Judge.)

3 In addition, Appellant submitted Exhibits 1
4 through 16 at the prehearing conference. CDTFA stated
5 that there were no objections to those exhibits.

6 CDTFA, can you confirm that that is the case.

7 MR. SAMARAWICKREMA: We have no objections.

8 JUDGE LONG: Thank you.

9 After the prehearing conference, Appellant
10 submitted a revised exhibit index, which included
11 Appendix B. Appendix B is akin to a brief and will be a
12 part of the administrative record.

13 Can CDTFA please confirm whether they received
14 Appendix B.

15 MR. SAMARAWICKREMA: Yes, Judge.

16 JUDGE LONG: Thank you.

17 And as it is akin to a brief, did CDTFA want time
18 after this hearing to respond to Exhibit B in writing?

19 MR. BACCHUS: We actually don't believe that we
20 did receive it. I think what we saw was Appendix A or
21 Exhibit A.

22 JUDGE LONG: Okay. Then after this hearing I'll
23 make sure that the revised exhibit index with Appendix B
24 is distributed to CDTFA, and we will hold the record open
25 for 30 days for CDTFA to make a response.

1 Will the taxpayer please confirm that the exhibit
2 index consists of Appendix A, Appendix B, and Exhibits 1
3 through 16.

4 MR. COOPERSON: Actually, we sent an Appendix A.
5 I don't believe there is a B.

6 JUDGE LONG: Okay. I'm going to go off the
7 record for five minutes to double check. So I'm going to
8 turn my microphone off now.

9 (There is a pause in the proceedings.)

10 JUDGE LONG: We're back on the record.

11 To repeat, we received Appendix B on March 24th
12 and acknowledged it on March 28th.

13 MR. COOPERSON: Yes. There is one-page Exhibit
14 B. Yes.

15 JUDGE LONG: I'll just give everyone a minute to
16 get on the same page.

17 MR. BACCHUS: So the Department did find it, but
18 we don't need any time to respond to it. Any response
19 that we have will be covered in our presentation today.

20 JUDGE LONG: Okay. Thank you. So then I won't
21 hold the record open for 30 days for a response.

22 All right. Moving forward. The exhibits
23 summarized above are admitted into the evidentiary record.

24 ///

25 ///

1 (Appellant's Exhibits 1-16, Appendix A,
2 Appendix B were received in evidence by
3 the Administrative Law Judge.)

4 Now, before we continue forward, I just wanted to
5 note that at the prehearing conference Appellant was asked
6 to clarify whether as a result of its own bank deposit
7 analyses it conceded to unreported taxable sales measuring
8 \$804,886.32. Does Appellant concede to this amount?

9 MR. COOPERSON: Yes. Part of what Exhibit B was
10 to explain why there was a difference. We responded to
11 the question. Essentially there was, with respect to the
12 June 21, 2019, accounting, we discovered an error in one
13 of the numbers. And we corrected that error in the data,
14 on the August 29, 2019, submission.

15 JUDGE LONG: Right. I read the submission. I
16 just wanted to make sure that it was absolutely clear
17 since there was a dispute with respect to the decision and
18 recommendation that CDTFA had issued.

19 MR. COOPERSON: I can tell you exactly where the
20 error was. I can lay it out for you.

21 JUDGE LONG: No. That's okay. Thank you.

22 MR. COOPERSON: Okay.

23 JUDGE LONG: Okay. So we're ready to move
24 forward. Mr. Cooperson, you may begin your presentation.
25 You have 60 minutes, and that includes your witness

1 testimony. You may use your time as you wish.

2

3 PRESENTATION

4 MR. COOPERSON: Four Café was a start-up
5 business. It began approximately in the middle of year
6 2010. Mr. Wilton really had no restaurant experience
7 prior to that. It was kind of an on-the-fly thing. They
8 didn't have a lot of money starting up, and they did the
9 best they can. The original premises was approximately --
10 approximately 906 square-feet, and they only had a few
11 tables in there.

12 About how many tables did you have at that time?

13 MR. WILTON: I think there was about six.

14 MR. COOPERSON: About six tables at that time.
15 And in the middle of the assessment period, they were
16 actually closed down for a short period of time when they
17 had the opportunity to double the size of the restaurant,
18 and that occurred in approximately --

19 MR. WILTON: Late 2012.

20 MR. COOPERSON: Okay. Late 2012.

21 JUDGE LONG: I'm sorry.

22 MR. WILTON: Late 2012. Sorry.

23 JUDGE LONG: Thank you.

24 MR. COOPERSON: So the numbers are substantially
25 changed. What we found in error of the Board of

1 Equalization submission and their Appellant numbers -- or
2 their reports before we filed an appeal, was that they
3 apparently didn't use real data. It appeared to us that
4 they took a test period, which was late in the game around
5 2013 after the expansion already took place, and applied
6 that scenario backwards into 2010. With the change of the
7 size of the restaurant and the shutdown periods, it really
8 had no compliance with what the reality actually was.

9 So around the same time the restaurant was also
10 audited by the Internal Revenue Service. And so the data
11 that we used to come up with the exhibits and the
12 compilation of the accounting, which is actually Exhibit 4
13 is the -- Exhibit 4, page 3 of 3 is our synopsis of the
14 August 29th, 2019, accounting, and we used actual real
15 numbers. These are numbers justified by the Internal
16 Revenue Service. They are numbers adopted from actual
17 bank deposits, and there's a history of what the
18 percentage of tips were in that restaurant.

19 The percentage of tips is very important because
20 as the tip percentage goes down it's an inverse
21 relationship to the amount of taxable sales. Because when
22 the tips go up, the tips are a bigger portion of the
23 deposits, therefore, taxable sales go down. The
24 experience in the restaurant was actually that there was
25 about a 17 percent tip ratio, and that was based on

1 Mr. Wilton's personal experience not on conjecture. He
2 was responsible for compiling what the tips were because
3 the staff, which started with about 6 people in 2010, had
4 expanded to about 15 people by the end of the audit period
5 in 2013.

6 It was Mr. Wilton's job, and he will testify that
7 he had to compile the actual amount of the tips because
8 there was a revenue share among the staff, and he actually
9 had to pay those tips to staff. It was a very important
10 function that he had. And so based on the bank deposits,
11 the elimination of the sales tax, which is almost
12 10 percent. It's 9.75 percent back then. And we used a
13 median factor of 12.5 percent tip factor, which is
14 actually a low-ball percentage on the tips. We had
15 arrived to the -- to the total amount. Then we do submit
16 that the original sales tax return submitted by Mr. Wilton
17 had some inconsistencies.

18 So -- but based on the new reports we came up
19 with, that he was short about -- I can't find the right
20 page -- approximately \$72,000 of sales tax. And that's
21 for the years of 2011, 2012, 2013 and, of course, the last
22 quarter of 2010. And our complete calculations are laid
23 out in Exhibit 4. These are actual numbers, not
24 conjecture. And I'd like Mr. Wilton maybe to explain how
25 he compiled his tip percentage, if he may because it's an

1 important item here.

2 BY MR. COOPERSON:

3 Q How did you come up with the percentage of tips
4 and conclusions, if you could explain.

5 A Well, we would -- in the beginning, we would --
6 we didn't. We just operated pre-point of sale system. So
7 we just had a tabulation of, you know, everything that
8 came in our tips because we could see those because they
9 are broken out on a line item. And, you know, throughout
10 the audit period, we ended up procuring a, kind of, like a
11 second-rate point of sale system because it was really
12 difficult to operate just on a cash register. And it was
13 not a very great system.

14 It was very difficult to use and ultimately, you
15 know, we would -- we had a tip pooling system, and
16 everybody had the same breakdown because of -- there's a
17 relationship in the restaurant in terms of who
18 participated in the tips. So it was very easy to see
19 that, you know, I think industry standards are somewhere
20 around 17 percent, 15 to 20 percent tip allocations. So
21 that's what we would do.

22 We would -- you know, I would -- I would -- that
23 was my responsibility to make sure that the tips were
24 dispersed properly. And my experience was that on average
25 we would see around 17, 17-and-a-half percent. Sometimes

1 it would be a little more and sometimes it would be a
2 little less, but it's kind of typical in the industry.

3 Q Mr. Wilton, was it your responsibility to
4 actually pay those tips to your personnel team?

5 A Yes.

6 Q Okay. And so you have actual knowledge of what
7 you paid them and the percentage that you used; is that
8 correct?

9 A Yes.

10 Q There's another portion that we disagree with from
11 the State's analysis is the cash inclusion. I think the
12 State used about twice as much cash as actually
13 experienced. Mr. Wilton, in 2010 going into 2011, first
14 of all, you have a point-of-sale machine; is that correct?

15 A Yes.

16 Q What happened to that system?

17 A The system crashed. It was a stand-alone system
18 that we purchased from, like, a vendor who came and
19 solicited us for the system. And it was like I said
20 extremely difficult to use and a very antiquated system.
21 I guess it was just because we really couldn't afford a
22 state-of-the-art system. But when that system crashed, we
23 immediately went to a cloud-based point-of-sale system
24 known as Revel, which was like back then it was on an iPad
25 which is the like, kind of, first iteration of those

1 things which was much easier to use.

2 Q When did you change to that system?

3 A I believe it was late 2012.

4 Q Okay. Do you believe that you were -- who
5 prepared the sales tax returns for 2010, 2011
6 through 2012?

7 A Myself.

8 Q And do you believe you made a fair representation
9 to the State? Did you intentionally or negligently fail
10 to report what you believe was correct?

11 A No. I believe I was tabulating everything to the
12 best of my ability.

13 Q And using the information at your fingerprints,
14 which was the actual experience; correct?

15 A Yes.

16 Q In fact, just as a side note, we compiled what
17 the extra tax measure would be if we had used
18 17.5 percent, and it came up to about \$61,000 due. But we
19 did not include that exhibit because -- because we had
20 submitted the prior at 12-and-a-half percent which, in
21 fact, was a concession of like a median point between what
22 the State was using which was, I think, 9 percent to what
23 Mr. Wilton believed it should be, which was 15 to 17. So
24 we came up with 12.5, which is what we believe the fair
25 measure is in the analysis we did.

1 And here again, this is not conjecturing numbers.
2 All the bank deposits, the IRS, audit report, the 1099-K
3 from the credit card companies, it's all included in that
4 analysis, and we presented all those documents as
5 exhibits. So why we're here is because we can't even
6 understand how the State came up with what they did. It's
7 just -- we believe they used 2013 numbers from the new
8 system, which didn't correlate to their actual history of
9 what was going on in the restaurant.

10 So I think based on the fact that the exhibits
11 were reported, we gave you our up-to-date accounting as to
12 what the actual numbers show. I believe that's what we
13 submitted today is we hope the Board will accept our
14 presentation because I believe it's accurate. And I --
15 and it's kind of unfair to the Appellant because it's
16 been, due to Covid, this thing has been extended many
17 times. We started this in 2013-year-end. It's now 2023.
18 That's 10 years ago. I said, that's outrageous.

19 And I think the actual appeal has been going on
20 for 7 or 8 years, and it's highly unfair. The State's
21 position is that they benefit by time. But I think it's
22 highly unfair for a taxpayer to have to pay interest and
23 penalties for an extended period of time because you can't
24 get a timely hearing date. So we asked for a waiver of
25 penalties -- or negligence penalties. I understand the

1 interest is probably not negotiable, but we would like to
2 waive that also, if I may.

3 So I guess I would yield, if you have any
4 questions?

5 JUDGE LONG: Thank you. I do have some
6 questions. Let me just make sure that I write this down
7 in my notes real quickly. Okay. So I wanted to talk
8 about the business side of -- oh. But before I ask my
9 questions, I do have to give CDTFA the opportunity to
10 ask -- to cross-examine the witness, if they would like
11 to.

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

13 MR. SAMARAWICKREMA: No questions for the
14 witness. Thank you.

15 JUDGE LONG: Thank you.

16 Okay. So. Moving forward, first can you please
17 explain how the increase in business size effected the
18 credit card ratio during the liability period. Were there
19 more credit cards used -- is that your assertion? -- once
20 the business increased?

21 MR. COOPERSON: I believe there -- the -- there
22 was very little cash going through this restaurant from
23 what I understand. I think Mr. Wilton could speak to that
24 directly.

25 MR. WILTON: Yeah. I --

1 MR. COOPERSON: You need to speak up.

2 MR. WILTON: Oh, sorry.

3 I think it was due. For us there was an increase
4 due to getting a point-of-sale system that handled credit
5 cards much easier for customers. So it was just easier
6 for them to transact that way.

7 JUDGE LONG: Okay. So to be clear then, later in
8 the audit period they would use more credit cards is your
9 assertion?

10 MR. WILTON: I believe so.

11 JUDGE LONG: Okay. Thank you. And then with
12 respect to the bank statements, for several months there
13 are zero cash deposits into the bank accounts. Is that
14 a -- is your assertion or your contention that there were
15 no cash sales during those months, or is it a situation
16 where not a -- the business was not depositing all the
17 cash that it received.

18 MR. WILTON: We did receive cash, but it was a
19 very, very low amount. And we also had accounts where we
20 would do -- like, go to the farmer's market and buy
21 specific things, like, for products for the restaurant.
22 So at times we would use the cash for that.

23 JUDGE LONG: Okay. And Mr. Cooperson, can you
24 please explain the basis for the 12-percent cash allowance
25 that was contained in the bank deposit analysis?

1 MR. COOPERSON: I'm not sure what number you're
2 referring to. There -- we --

3 JUDGE LONG: Well, when you look at the bank --

4 MR. COOPERSON: Yeah. We did apply a cash amount
5 here. If looking at the 829 accounting, Exhibit 4, on
6 the -- on the third column it says, "Credit Card
7 Deposits." And then we added cash deposits to come up
8 with the actual sales deposit -- the sales amount. So we
9 did account for some cash coming through according to what
10 Mr. Wilton had divulged to us.

11 JUDGE LONG: Okay. My question I guess is, were
12 there records to show that this cash -- when there was no
13 bank deposit of cash but there was cash included into your
14 analysis in that final column, were there records to
15 support that added cash?

16 MR. COOPERSON: I don't recall any such records,
17 but Mr. Wilton was also keeping track of his cost of goods
18 sold. And using the analysis that the State had
19 presented, it makes no sense as to what the actual cost of
20 goods sold would be to the level of sales. You just can't
21 produce that much food for sale using the percentages that
22 the State used.

23 JUDGE LONG: Okay. And then --

24 MR. COOPERSON: Here again we're relying on
25 actual data, actual experience.

1 JUDGE LONG: Okay. Thank you. And then so with
2 respect to the cash allowance it worked out to 12 percent.
3 Does that mean that your contention is that the credit
4 card ratio should be 88 percent as opposed to the
5 77 percent that's calculated by CDTFA?

6 MR. COOPERSON: Well, it's not -- the cash amount
7 seems to fluctuate. It's not the same percentage
8 throughout.

9 JUDGE LONG: Okay. I'm sorry. I came up with
10 that percentage by just looking at the top of the chart.
11 That's why I just used the number 12 percent.

12 MR. COOPERSON: Well, it says, "Less tax and tip
13 is 12.5 percent with accounting for the tax and tips."
14 The tax is about 10 percent.

15 JUDGE LONG: Okay.

16 MR. COOPERSON: Because when you deposit the
17 total amount, that includes sales taxes, 9.75 percent, and
18 tip ratio. So the net amount becomes the taxable sales.

19 JUDGE LONG: Got it. Hold on one moment, please.
20 Right. I'm talking about -- I just want to make sure that
21 I was correctly looking at this. Exhibit 4, page 3 of 3,
22 if you look at column -- the columns aren't labeled -- but
23 1, 2, 3, 4, 5, 6, 7 from the right it says, "Additional
24 12 percent cash allowance of taxable sales income less
25 cash deposit." And I just wanted to clarify with that.

1 MR. COOPERSON: Yes, that was added to the amount
2 of taxable sales at 12 percent.

3 JUDGE LONG: So then if that's the case, is
4 contention that the credit card ratio should have been
5 88 percent rather than 77 percent?

6 MR. COOPERSON: Is that correct?

7 MR. WILTON: I guess so, yeah. Well, I think you
8 would know better, yes?

9 MR. COOPERSON: Yes.

10 MR. WILTON: Yes.

11 JUDGE LONG: Yes. Okay. Thank you. And then
12 with respect to the compilation in the -- of the bank
13 deposit analysis, can you please explain. There are some
14 differences that I noted between the Appellant's merchant
15 card statements and those reported in bank -- in your bank
16 deposit analysis. For example, using 2013 as an example,
17 I note that for January 2013 the merchant statement shows
18 \$81,188, and the analysis is \$81,211 for April 2013.
19 That's obviously a small difference.

20 But as a further example for May 2013 the
21 statement is \$112 and the analysis is \$113. And then in
22 June the statement is \$99,000, but the analysis shows \$91.
23 So it seems like there are some discrepancies. Is there
24 an explanation for the discrepancies?

25 MR. COOPERSON: Here, again, when you get a

1 1099-K form from a credit card, they are called merchant
2 discounts but there's really no discounts. They're
3 charging fees. Plus the -- it shows the total amount of
4 the bill that was charged to the credit card, which
5 includes sales taxes and tips.

6 So the actual taxable sales would be if you take
7 12 percent for tips, hypothetically, and 10 percent for
8 sales tax, that's 22 percent. So the -- the actual
9 taxable sales would be approximately 78 percent of the
10 total amount.

11 JUDGE LONG: Right. But that's not the question.
12 The question is why 1, 2, 3, 4 on your bank deposit
13 analysis the -- the column that's just labeled "Credit
14 Card Deposit," why don't those numbers match to the
15 amounts that are shown on the merchant bank statements?
16 Sometimes it shows -- sometimes that column reads higher
17 amounts, and sometimes it reads lower. I'm just curious
18 if there's an explanation for that or --

19 MR. COOPERSON: I haven't compared them side by
20 side, actually. I have not done that.

21 JUDGE LONG: Okay. Thank you. And then I just
22 wanted to move forward with respect to the federal
23 assessment. My understanding with respect to the federal
24 assessment is that it's -- the federal increase was not
25 very much.

1 MR. COOPERSON: No. No.

2 JUDGE LONG: And so CDTFA should only raise gross
3 receipts by the amount of the federal increase. Is
4 that --

5 MR. COOPERSON: Yeah. I believe you're talking
6 about the audit -- the IRS audit.

7 JUDGE LONG: Correct.

8 MR. COOPERSON: I believe they only assessed, I
9 think, a \$25,000 difference is what I recall. But that --
10 that was not all on the sales end. It was part
11 disallowance of expenses too. There are some expenses.
12 It's the total of the entire audit, which includes sales
13 and deductions. I don't think the IRS found much
14 difference in the gross amount of sales as we -- as we
15 originally reported.

16 JUDGE LONG: Okay. And if I could just get a
17 little bit more background detail on the business itself.
18 It's my understanding with respect to CDTFA's calculation
19 on the tip ratio is based on the to-go nature of the
20 business. Can you describe how the business operated? I
21 know it's called a cafe. Can you describe, was it -- was
22 it people walking up to a counter --

23 MR. COOPERSON: Yeah.

24 JUDGE LONG: -- and ordering coffee and --

25 MR. WILTON: No, no. It's actually pretty

1 much -- I wouldn't consider it a full-service restaurant,
2 but it is a bona fide restaurant. It's definitely not
3 just a cafe. And so a customer would come in, and it's an
4 order at the counter system. And we would give them a
5 number, and they would go find a seat. And then our staff
6 would service them throughout the whole meal. And I guess
7 the technical term or -- would be fast-casual, I guess.

8 JUDGE LONG: Okay. And then do you know
9 approximately how many people ordered to-go food there?

10 MR. WILTON: I would probably say maybe
11 20 percent.

12 JUDGE LONG: Okay.

13 MR. WILTON: Somewhere around there.

14 JUDGE LONG: Thank you. I have no further
15 questions.

16 I just want to ask my co-panelist if they have
17 any questions for Appellant.

18 Judge Tay, do you have any questions?

19 JUDGE TAY: Perhaps just one question for the
20 witness. Could you just clarify what you -- what
21 documents you used to prepare the state tax returns that
22 were filed?

23 MR. WILTON: Well, I would just use a report from
24 the point of sale that we had.

25 JUDGE TAY: For each period, I guess?

1 MR. WILTON: I believe so. Yeah.

2 JUDGE TAY: Okay. And were those reports
3 provided?

4 MR. WILTON: Provided by?

5 JUDGE TAY: Oh, provided to us during this
6 period.

7 MR. WILTON: No. Because the system that I had
8 purchased just prior to the audit period had completely
9 crashed.

10 JUDGE TAY: Oh, I see.

11 MR. WILTON: It -- we lost everything. It was
12 like one of these things that had a hard drive in it. It
13 was like a big kind of clunky thing, and it completely
14 just went out. And it was really -- we were kind of in a
15 tailspin because we had lost all of our data, and it was
16 very difficult to -- we immediately -- like I alluded to
17 earlier, we immediately went to an iPad kind of
18 cloud-based system that was a lot more easy to deal with.

19 It was this -- the system was just very difficult
20 and personally, didn't have any experience. I mean, this
21 was my wife and I starting a small restaurant in -- on the
22 heels of the GFC, and it was just like really kind of us
23 finding our way, you know.

24 JUDGE TAY: I understand. Thank you. So it's
25 completely like an electronic system?

1 MR. WILTON: Yeah.

2 JUDGE TAY: Those records have been lost since

3 then --

4 MR. WILTON: That's correct.

5 JUDGE TAY: -- is what I'm hearing from you?

6 MR. WILTON: That's correct.

7 JUDGE TAY: Thank you for clarifying, Mr. Wilton.

8 I have no further questions.

9 JUDGE LONG: Thank you.

10 And Judge Aldrich, do you have any questions?

11 JUDGE ALDRICH: Yes. Just a couple of questions.

12 Good afternoon, Mr. Cooperson and Mr. Wilton. Thank you

13 for being here. So Mr. Cooperson had mentioned that --

14 this question is for Mr. Wilton. But Mr. Cooperson had

15 mentioned that this was your foray into the restaurant

16 business?

17 MR. WILTON: Yes, sir.

18 JUDGE ALDRICH: Was this your first retail

19 business?

20 MR. WILTON: This was my first business of any

21 sort. Yes, sir.

22 JUDGE ALDRICH: Of any sort?

23 MR. WILTON: Yes.

24 JUDGE LONG: Okay. And then with respect to the

25 tip calculation, you said that it was a pooled kind of tip

1 fund that was then divided among staff?

2 MR. WILTON: Yes, sir.

3 JUDGE ALDRICH: And how are those payments made?
4 Were the payments made to the staff members through their
5 checks?

6 MR. WILTON: Yes, sir.

7 JUDGE LONG: Okay. And so did you write out
8 those checks, or did you use some sort of payment service
9 like ADP or --

10 MR. WILTON: In the beginning, I think for the
11 first year, we had wrote those checks. And then we did
12 end up getting I believe it was a payroll company. I'm
13 not quite sure of the date, but at some point, in I think
14 2012-ish, we did.

15 JUDGE ALDRICH: Okay. So I'm just trying to
16 figure out what -- I guess, do we have any of those
17 records, those payroll records which would demonstrate the
18 amount of tips paid out?

19 MR. WILTON: I don't have any of those. I did
20 try to find some of them, but I don't have -- I don't
21 have -- I don't really have any records, like, a lot of
22 records from that time period because it was quite some
23 time ago.

24 JUDGE ALDRICH: Okay. And then so you had
25 mentioned that it was you and your wife's business?

1 MR. WILTON: That's correct.

2 JUDGE ALDRICH: And did she have any restaurant
3 experience prior?

4 MR. WILTON: She did not. Well, she had worked
5 in restaurants before and she -- she was basically in
6 charge of the menu and the food. She was a private chef
7 for a number of years before we started this venture.

8 JUDGE ALDRICH: Okay. And a follow-up question
9 to Judge Long's questions about the general operation of
10 the business. And so your hours started at 9:00?

11 MR. WILTON: No. We started at 11:00 a.m., I
12 believe.

13 JUDGE ALDRICH: Okay.

14 MR. WILTON: And we had a strict curfew by the
15 city that we had to close by 9:00 p.m. due to --

16 JUDGE ALDRICH: Okay. 11:00 to 9:00?

17 MR. WILTON: Yeah. -- due to the Colorado
18 Specific Plan, which was -- where we operate -- in the
19 jurisdiction that we operate.

20 JUDGE ALDRICH: Okay. And so would your busy
21 hour be lunch time or dinner?

22 MR. WILTON: Typically, it was lunch time.

23 JUDGE ALDRICH: Typically lunch time?

24 MR. WILTON: Yes.

25 JUDGE ALDRICH: Okay. And then more traffic

1 through the week like from surrounding businesses, or was
2 it more of a weekend eatery?

3 MR. WILTON: I think it was more -- I would say
4 it was more like a weekday kind of lunch spot.

5 JUDGE ALDRICH: Okay. All right. Thank you very
6 much.

7 MR. WILTON: Thank you.

8 JUDGE ALDRICH: No further questions from me.
9 I'm going to turn it back over to Judge Long.

10 JUDGE LONG: Thank you. I just want to turn our
11 attention to the CDTFA's presentation.

12 CDTFA, you requested 30 minutes. You may begin
13 when you're ready.

14 MR. SAMARAWICKREMA: Thank you, Judge.

15

16 PRESENTATION

17 MR. SAMARAWICKREMA: Appellant is a California
18 limited liability company that operated a farmer's market
19 style restaurant located in Eagle Rock, California.
20 Appellant sold farmer's market inspired soup, salad,
21 sandwiches, and desert for dine-in and to-go. Appellant
22 offered catering services.

23 The Department audited Appellant's business for
24 the period October 1st, 2010, through December 31st, 2013.
25 During the audit, Appellant provided POS sales data for

1 only the period August 30th, 2013, through December 31st,
2 2013, but failed to provide complete documents of original
3 entry, such as its actual POS download with all folders,
4 POS sales reports, credit card sales receipts, sales
5 journals, guest checks, and copies of catering contracts
6 for the audit period.

7 In addition, Appellant failed to provide complete
8 purchase invoices and purchase journals. Appellant used a
9 Revel point-of-sale system to record its sales. Appellant
10 stated he compiled sales from his POS sales report into
11 handwritten monthly sales summaries. These handwritten
12 monthly sales summaries were given to an outside
13 accountant to prepare its sales and use tax return for the
14 audit period. Appellant stated that all POS sales data
15 prior to August 30th, 2013, were lost when the POS system
16 crashed, and there was no way to obtain Appellant's sales
17 data for the October 1st, 2010, through August 29th, 2013.

18 The Department completed several verification
19 methods to evaluate Appellant's reported taxable sales.
20 The Department noted that according to Appellant's fourth
21 quarter 2013 sales and tax return, Appellant's average
22 reported daily sales increased from the average reported
23 daily sales during the first 11 quarters of the audit
24 period. And that will be on your Exhibit A, page 484.
25 The Department found this significant increase because

1 Appellant filed its fourth quarter 2013 sales and use tax
2 return after it received an engagement letter from the
3 Department. And that will be on your Exhibit A, page 20.

4 The Department also noted that Appellant's POS
5 sales data for the period August 30th, 2013, through
6 December 31st, 2013, showed recorded average daily sales
7 of over \$3,600. And that will be on your Exhibit A,
8 page 59. This is an indication that Appellant did not
9 report all of his sales in his sales and use tax returns.
10 The Department compared Appellant's reported total sales
11 with Appellant's profit and loss statements, federal
12 income tax returns, POS sales data and found material
13 differences. And that will not on your Exhibit A, pages
14 13 through page 482.

15 The Department also reviewed Appellant's
16 available bank statements which disclosed Appellant
17 deposited very little or zero cash sales for eight months,
18 which calculated to around 5 percent cash deposit
19 percentage. And that will be on your Exhibit A, page 478.
20 When the bank deposits of around \$1.7 million are compared
21 to reported total sales of around \$1 million, there's an
22 overall difference of around \$700,000 for the period
23 January 2011 through December 2011, and January 2013
24 through December 2013. And that will be on your
25 Exhibit A, page 478.

1 Based on Appellant's record, it had a book markup
2 of around 109 percent, which the Department determined was
3 too low considering the items sold menu prices, customer
4 base, and the location of the restaurant. And that will
5 be on your Exhibit A, page 481. The Department compared
6 Appellant's reported total sales to the credit card sales
7 and calculated an overall credit card sales ratio of
8 around 131 percent ranging from as low as 99 percent to as
9 high as 186 percent for the period January 2011 through
10 December 2013. And that will be on your Exhibit A,
11 page 485.

12 Average ex tax credit card sales for this period
13 of around \$600,000, more than the reported sales to the
14 Department. And that will be on your Exhibit A, page 485.
15 This is an indication that not all of Appellant's credit
16 card and cash sales transactions had been reported in its
17 sale and use tax return for the audit period. Appellant
18 was unable to explain these results. Therefore, the
19 Department conducted further investigation by analyzing
20 Appellant's credit card sales and credit card sales
21 percentages.

22 To calculate audited taxable sales, the
23 Department used the available POS sales data for the
24 period August 30th, 2013, through December 31st, 2013, to
25 determine a credit card sales percentage of around

1 77 percent and a credit card tip percentage of around
2 7 percent. And that will be on your Exhibit A, page 59.
3 Appellant claims its credit card sales percentage is
4 higher than 77 percent for the first 11 quarters of the
5 audit period. However, Appellant did not provide any
6 reasonable documentary evidence to support this argument.
7 Therefore, the Department rejected this argument.

8 The Department also noted average daily sales of
9 around \$3,600. And that will be on your Exhibit A,
10 page 59. Appellant did not provide any other reliable
11 evidence to calculate its credit card and credit card tip
12 percentages. Therefore, the Department determined it used
13 the best available information to determine Appellant's
14 audited credit card sales and credit card tip percentages.
15 The Department used credit card sales from the bank
16 statement for the period January 1st, 2011, through
17 September 30th, 2013 and Form 1099-K information for the
18 period October 1st, 2013, through December 31st, 2013, to
19 determine credit card sales of around \$2.9 million for the
20 period January 1st, 2011, through December 31st, 2013.
21 And that will be on your Exhibit A, pages 470 through
22 page 478.

23 The Department applied the credit card sales
24 ratio and credit card tip ratio to total credit card sales
25 of around \$2.9 million and determined audited taxable

1 sales of around \$3.2 million for the same period. And
2 that will be on your Exhibit A, pages 56 through 58. The
3 Department then compared the audited taxable sales to the
4 reported taxable sales to calculate unreported taxable
5 sales of around \$1.3 million for the period January 1st,
6 2011, through December 31st, 2013. And that will be on
7 your Exhibit A, page 56.

8 Because Appellant did not provide record for year
9 2010, the Department calculated unreported taxable sales
10 of around \$75,000 for fourth quarter 2010 by using an
11 error rate calculated using figures from the year 2011.
12 And that will be on your Exhibit A, page 55. In total,
13 the Department determined that total unreported taxable
14 sales of around \$1.4 million for the audit period. And
15 that was on your Exhibit A, page 55.

16 When the Department is not satisfied with
17 accuracy of the tax return filed, it makes the basis
18 determination of tax due upon the facts contained in the
19 return of any information that comes within its
20 possession. Taxpayer shall maintain and make available
21 for examination on request by the Department all records
22 necessary to determine to the correct tax liability under
23 the sales and tax use law and all records necessary for
24 the proper completion of the sales and use tax return.

25 When the taxpayer challenges the Notice of

1 Determination, the Department has the burden to explain
2 the basis for that deficiency. When the Department
3 explanation appears reasonable, the burden of proof shifts
4 to the taxpayer to explain why the Department asserted
5 deficiency is not valid.

6 Had the Department used the audited average sales
7 of around \$3,600 without adjusting for the annual growth,
8 then the audited taxable sales would have increased by
9 almost \$1 million for the audit period. And that will be
10 on your Exhibit A, page 487. The Department performed a
11 mock-up analysis to verify the reasonableness of audited
12 taxable sales. The Department compared the audited sales
13 with the purchases reflected on Appellant's available
14 federal income tax returns to calculate the audited markup
15 of around 228 percent. And that will be on your
16 Exhibit A, page 481.

17 The Department determine that the audited taxable
18 sales markup of around 228 percent was reasonable and that
19 the auditor taxable sales were likewise reasonable. The
20 Department also analyzed Appellant's available sales and
21 business expense information as reported on its federal
22 income tax returns to verify the reasonableness of the
23 audit finding. Those federal income tax returns show the
24 ratio of reported daily expenses to reported daily sales
25 was 120 percent. And that will be on your Exhibit A,

1 page 486.

2 A similar analysis was made comparing reported
3 daily expenses to average audited daily sales resulting in
4 a ratio of 80 percent for year 2011 and 84 percent in
5 2012. And that will be on your Exhibit A, page 486.

6 Based on these analyses, the Department concluded that the
7 audited taxable sales were reasonable. Appellant contends
8 that applying the credit card sales percentage and the
9 credit card percentage calculated for fourth quarter 2013
10 to prior quarters of the audit period grossly inflated
11 audited taxable sales. Appellant contends that the
12 targeted change in the business resulted in increased
13 sales beginning in September 2013.

14 As support, Appellant provided a prepared sales
15 worksheet based on cash deposits, credit card sales
16 information and with allocation for tips and sales tax
17 reimbursement in an attempt to establish its actual
18 taxable sales for the audit period. And that will be on
19 Appellant's Exhibit 3, pages 21 and 22, and Exhibit 4,
20 page 25. Appellant asserts that the cash deposits and
21 credit card sales information used to prepare the sales
22 worksheet were based on information obtained from the
23 business bank deposits. And that will be on your
24 Exhibit 3, page 21 and 22, and Exhibit 4, page 25.

25 Appellant also provided Citibank statements for

1 the period October 2010 through December 2013, Form 1099-K
2 information for years 2011 and 2012, and merchant
3 statement summaries of credit card sales for years 2012
4 and 2013. Using this information, Appellant calculated
5 unreported taxable sales of around \$805,000 for the audit
6 period. And that will be on Appellant's Exhibit 4,
7 page 25.

8 The Department reviewed and analyzed this
9 information but ultimately determined that the information
10 did not support a reduction to the tax liability because
11 Appellant did not provide complete source documentation to
12 calibrate the figures listed in the self-prepared sales
13 worksheets. However, the Department did review
14 Appellant's self-prepared sales worksheet for the fourth
15 quarter 2013. The credit card sales percentage recorded
16 in the self-prepared worksheet for fourth quarter 2013 was
17 significantly higher than the audited credit card sales
18 percentage from Appellant's own POS sales data for the
19 fourth quarter 2013. And that will be on your Exhibit A,
20 page 59, Exhibit 3, pages 21 and 22, and Exhibit 4,
21 page 25.

22 The Department also noted Appellant did not
23 report any of its cash sales on its self-prepared
24 worksheets for 15 of the 39 months of the audit period.
25 And that Appellant recorded low cash sales in an

1 additional 6 months. And that will be on Appellant's
2 Exhibit 3, pages 21 and 22. The Department compared
3 Appellant's recorded cash sales to cash sales as recorded
4 in Appellant's POS data and found some material
5 differences.

6 For example, POS data shows cash sales for
7 September 2013 of around \$20,000, but Appellant recorded
8 \$13,000; \$30,000 for October 2013 but recorded \$52;
9 \$27,000 for November 2013 but recorded zero cash sales;
10 and \$25,000 for December 2013 but recorded \$13,000. And
11 that will be on your Exhibit A, page 59, and Appellant's
12 Exhibit 3, pages 21 and 22.

13 Appellant's calculation also included an
14 estimated tip rate of 12.5 percent without supporting
15 documentary evidence. And that will be on Appellant's
16 Exhibit 4, page 25. However, the Department determined
17 the actual 7 percent tip rate as noted in the POS data
18 showed constant tip rates from month to month. And that
19 will be on your Exhibit A, page 59. Appellant did not
20 provide any evidence showing that the credit card tip rate
21 that was used in this audit is incorrect, nor did it
22 provide any information to calculate a different tip
23 percentage.

24 For all of these reasons, the Department
25 determined that self-prepared sales worksheet is not

1 complete and not reliable. Therefore, the Department
2 finds that the POS sales data for the period August 30th,
3 2013, through December 31st, 2013, and the credit card
4 sales information present the best information from which
5 to determine Appellant's audited taxable sales for the
6 audit period.

7 Appellant also claims it expanded the capacity of
8 the restaurant, and the Department did not take that
9 information into consideration when determining audited
10 sales for early part of the audit period. The restaurant
11 capacity may have increased in size, but there's no
12 evidence the restaurant's menu, pricing, or general
13 operation materially changed from the beginning of the
14 audit period to the end of the period, which would affect
15 whether customer paid for meals in cash versus credit
16 cards.

17 Therefore, the Department rejected this argument
18 because the Department determined Appellant's audited
19 credit card sales using Appellant's own records for the
20 audit period. Thus, the audited sales already accounted
21 for these sales fluctuations due to any targeted change in
22 the business during the audit period because the audited
23 credit card sales only included credit card receipts that
24 were made during the audit period.

25 An increase in daily total sales would not

1 necessarily change the credit card sales percentage
2 because the Department would expect that the credit card
3 sales and cash sales increase proportionately resulting in
4 no change to the credit card sales percentage.

5 Appellant also contends that an audit conducted
6 by the Internal Revenue Service discloses gross sales
7 which was substantially less than the taxable sales
8 determined by the Department for years 2011 and 2012.
9 Appellant asserts that unlike the criteria considered by
10 the Department, the audit method used by the IRS was a
11 total assessment of actual cash flow and money deposited
12 into accounts.

13 As support, Appellant provided the IRS reports
14 for the years 2011 and 2012 to support its contention.
15 The Department reviewed and analyzed this information but
16 ultimately determined that the information did not support
17 a reduction to the tax liability. Upon examination of
18 Appellant's federal income tax return, the Department
19 noted that the sales reflected on Appellant's federal
20 income tax return of around \$440,000 more than the
21 reported sales to the Department for the years 2011 and
22 2012. And that will be on your Exhibit A, page 482.

23 The Department determined Appellant's unreported
24 sales tax in accordance with a generally accepted sales
25 and use tax audit procedures. And the primary objective

1 of the Department's audit program is to provide reasonable
2 assurance that taxpayer pay neither more nor less sales
3 tax than required by law. The Department is not bound by
4 the result of another taxing agency. And whether the IRS
5 audit disclosed gross sales, which was substantially less
6 than the taxable sales determined by the Department for
7 years 2011 and 2012, is not processed here.

8 Finally, the Department imposed a negligence
9 penalty based upon its determination that Appellant's
10 books and records were incomplete and inadequate for sales
11 and use tax purposes, and because Appellant failed to
12 accurately report its taxable sales. Specifically, the
13 Department noted that Appellant provide limited records
14 for the audit period. And Appellant failed to provide
15 documents of original entry to support its reported sales
16 tax liability. As a result, the Department had to
17 determine Appellant's taxable sales based upon the credit
18 card sales ratio method.

19 In addition, the audit examination disclosed
20 unreported taxable sales of around \$1.4 million, which
21 when compared with reported taxable sales of around
22 \$2 million for the audit period resulted in an error rate
23 of 70 percent. This high error rate is additional
24 evidence of negligence. Because Appellant did not provide
25 accurate records for the audit, the Department was unable

1 to verify the accuracy of reported sales tax using a
2 direct audit method. Therefore, an alternative audit
3 method was used to determine unreported sales tax.

4 Here, the understatement cannot be attributed to
5 a bonafide and reasonable belief that the bookkeeping and
6 recordkeeping practices was sufficiently complying with
7 the requirement of the sales and use tax law. Therefore,
8 Appellant was negligent and the penalty should be upheld.
9 Appellant has not provided any reasonable documentation or
10 evidence to support an adjustment to the audit finding or
11 the negligence penalty, therefore, the Department request
12 the appeal be denied.

13 This concludes our presentation. We're available
14 to answer any questions the panel may have. Thank you.

15 MR. PARKER: One thing I wanted to add-on before
16 we go to questions, the Appellant, during their testimony,
17 indicated that the credit card usage rate that we used in
18 the fourth quarter of '13 that credit card usage would
19 have gone up over the audit period, which would indicate
20 that the credit card usage would be lower in prior
21 quarters. Meaning, cash sales would be higher in those
22 prior quarters than what we used at the audit. So if the
23 credit card ratio was lower in the prior periods, the
24 audit liability would go up just based on the Appellant's
25 testimony.

1 Thank you. That concludes our presentation.

2 JUDGE LONG: Thank you.

3 I just have -- I just want to clarify with
4 respect to the tip ratio. It was calculated at
5 7.48 percent by CDTFA, and I just want to be sure that I
6 understand. It looks like Schedules 12-D2 of the audit
7 include the POS data for August through December 2013. I
8 just want to make sure that the tip percentage ratio is
9 the average tip ratio for those months; is that correct?

10 MR. SAMARAWICKREMA: That's the average tip
11 percentage from the credit card sales, credit card tip
12 percentage from the total credit card including tax and
13 tips.

14 JUDGE LONG: And it does not include any cash
15 tips; is that correct?

16 MR. SAMARAWICKREMA: That's correct.

17 JUDGE LONG: Okay. And I'm sorry. I mentioned
18 when I was asking questions of Appellant with respect to
19 CDTFA's determination with respect to that tip, my
20 understanding was that it was determined the calculation
21 was reasonable based on the ordering of food and pick up
22 of food at the counter and the to-go nature of the
23 business. Is that correct, or am I off base here?

24 MR. SAMARAWICKREMA: The credit card ratio was
25 determined based on the payment folder of the POS system.

1 JUDGE LONG: Okay. Thank you. I have no further
2 questions.

3 Judge Tay, do you have any questions?

4 Hold on one moment.

5 JUDGE TAY: I have no further questions. Thank
6 you.

7 JUDGE LONG: Thank you.

8 Judge Aldrich, do you have any questions?

9 JUDGE ALDRICH: This is Judge Aldrich. No
10 questions. Thanks.

11 JUDGE LONG: Thank you, Judge Aldrich.

12 Okay. We are ready to move on to Appellant's
13 final statement.

14 Mr. Cooperson, you requested 5 minutes to make a
15 final statement, and you may begin when ready.

16 MR. COOPERSON: Thank you.

17

18 CLOSING STATEMENT

19 MR. COOPERSON: Yeah. I've listened to the
20 presentation from the Board of Equalization, and all I'm
21 hearing is that they're making a lot of subjective guesses
22 at things. The only real data point they're using is
23 August of 2013. They even said they're using subjective
24 criteria of what is the neighborhood like. I mean, how is
25 that actual data? If a spaceman came to Earth and happen

1 to crash into the ocean, he could easily say Earth is all
2 ocean because that's all he saw.

3 But the reality is what Mr. Wilton has actually
4 experienced, and we demonstrated that reality in the
5 presentation of actual bank records, deposits, IRS audits,
6 and his personal experience in compiling tips. Using that
7 small window that the State is using, they -- it doesn't
8 even take into consideration the difference in the size of
9 the restaurant that doubled within the audit period. It's
10 just not the same. You can't compare one with the other.

11 So I submit that I believe Mr. Wilton's exhibit
12 of his analysis of what the correct amount would be on
13 Exhibit 4 there is accurate. It's based on real data.
14 And the State is just coming up with data, garbage in,
15 garbage out. It's just not valid in my opinion.

16 JUDGE LONG: Thank you.

17 And CDTFA, did you want to make any final
18 remarks?

19 MR. SAMARAWICKREMA: No, Judge.

20 JUDGE LONG: Thank you.

21 We're ready to conclude. However, during
22 Appellant's presentation he requested that we consider the
23 issue of interest abatement. My understanding is that we
24 do not have a copy of CDTFA's 735, which is the correct
25 form to request interest abatement. So I'm going to hold

1 the record open for 15 days to give Appellant the
2 opportunity to provide a copy of that document. And then
3 once received, we will give CDTFA the opportunity to
4 respond if they wish, and we'll give an additional --

5 MR. COOPERSON: If you can expand that to five
6 days because I'm a tax attorney, and we're engaged in --
7 even though there's an extension by the State and the IRS,
8 we do have out-of-state clients, and Monday is tax day.
9 So the next two days is heavily -- it's a heavy time for
10 my office. I would just ask until the end of next week.

11 JUDGE LONG: Thank you. I understand, and it
12 appears the consensus over here is that we will give you
13 30 days, and then we will give CDTFA 30 days to respond if
14 they wish.

15 MR. BACCHUS: Mr. Long, can we ask that the
16 request for interest relief specify which periods there
17 was alleged delay or error by the Department?

18 JUDGE LONG: Yes. As that is a requirement, I
19 believe, of an interest relief request.

20 So as you may know, CDTFA 735 is an interest
21 relief statement. Interest relief is only allowable in
22 limited circumstances, such as unreasonable delay by the
23 State agency. So you have to specifically explain your
24 contentions with respect to what period of time there was
25 unreasonable delay. Otherwise, are there any questions

1 regarding that before we conclude, Mr. Cooperson?

2 MR. COOPERSON: With just the interest, I think
3 is common knowledge that for about two years the State was
4 adversely closed down. There were no audits. Everything
5 was postponed.

6 JUDGE LONG: Right. I understand that. I'm
7 actually not able to make a decision with respect to the
8 interest abatement today, and not at all until a copy of
9 that form is submitted. So I don't want to discuss that
10 piece of it further or your arguments with respect to it.

11 I think we're ready to conclude this hearing. I
12 just want to check. Are my co-Panelists ready to close
13 this appeal. Judge Tay?

14 JUDGE TAY: I have no questions.

15 JUDGE LONG: Thank you.

16 And Judge Aldrich?

17 JUDGE ALDRICH: I have no further questions from
18 me. Thanks.

19 JUDGE LONG: Thank you.

20 This case is submitted on Thursday, April 13th,
21 2023. The record will be held open until May 13th, 2023,
22 for the submission of CDTFA 735.

23 Thank you everyone for coming in today.

24 The judges will meet and decide your case later
25 on, and we will send you a written opinion of our decision

1 within 100 days after the record is closed.

2 Oh, sorry. Hold on. Sorry.

3 The record is held open for 60 days, so it would
4 actually be June 13th. Now, the record is closed. Thank
5 you all for joining us today.

6 This concludes our hearings for April 13th, 2013.

7 (Proceedings adjourned at 2:18 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 1st day
of May, 2023.

ERNALYN M. ALONZO
HEARING REPORTER